AMERICAN EXPRESS CO
Form DEF 14A
March 16, 2009
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

(Rule 14a-101)

SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of the

Securities Exchange Act of 1934

(Amendment No. __)

Filed by the Registrant x

Filed by a Party other than the Registrant ¨

Check the appropriate box:

¨ Preliminary Proxy Statement

¨ **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))** x Definitive Proxy Statement

¨ Definitive Additional Materials

¨ Soliciting Material Pursuant to Section 240.14a-12

American Express Company

(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):

x 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:

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

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(3)

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

(4) Proposed maximum aggregate value of transaction:

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¨ Fee paid previously with preliminary materials.

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(1) Amount Previously Paid:

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

(3) Filing Party:

(4) Date Filed:

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AMERICAN EXPRESS COMPANY

200 VESEY STREET

NEW YORK, NEW YORK 10285

NOTICE OF

ANNUAL MEETING OF SHAREHOLDERS

DATE	Monday, April 27, 2009, at 10:00 a.m. Eastern Time
PLACE	American Express Service Center 7701 Airport Center Drive Greensboro, North Carolina 27409
ITEMS OF BUSINESS	(1) Election of Directors. (2) Ratification of appointment of PricewaterhouseCoopers LLP as our independent registered public accounting firm for 2009. (3) Advisory (non-binding) vote approving executive compensation. (4) Shareholder proposal relating to cumulative voting for Directors. (5) Shareholder proposal relating to the calling of special shareholder meetings. (6) Such other business that may properly come before the Meeting.
RECORD DATE	You can vote if you are a shareholder of record on February 27, 2009.

STEPHEN P. NORMAN
Secretary & Corporate Governance Officer

March 13, 2009

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AMERICAN EXPRESS COMPANY

200 VESEY STREET

NEW YORK, NEW YORK 10285

March 13, 2009

PROXY STATEMENT

GENERAL INFORMATION

We are providing these proxy materials to you in connection with the solicitation of proxies by the Board of Directors of American Express Company for the 2009 Annual Meeting of Shareholders and for any adjournment or postponement of the Meeting. In this proxy statement, we refer to American Express Company as the Company, we, our or us.

We are holding the Annual Meeting at 10:00 a.m. Eastern Time on Monday, April 27, 2009, at the Company s Service Center in Greensboro, North Carolina, and invite you to attend in person. Directions to the Company s Greensboro Service Center are on page 61. If you need special assistance at the Meeting because of a disability, you may contact Stephen P. Norman, our Secretary, by telephone at (212) 640-5583, by e-mail at stephen.p.norman@aexp.com or by writing to him at the Company s headquarters at 200 Vesey Street, New York, New York 10285.

The Company has arranged for a live audio webcast of the 2009 Annual Meeting to be accessible to the general public on the Internet at http://ir.americanexpress.com. (Information from such site is not incorporated by reference into this proxy statement.) A replay of the Meeting s audio webcast will also be available at the same Web site address beginning later the same day.

Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting to Be

Held on April 27, 2009

The Company s Proxy Statement and 2008 Annual Report to Shareholders are available at www.proxyvote.com.

We are pleased this year once again to take advantage of the Securities and Exchange Commission (SEC) rule that permits companies to furnish proxy materials to shareholders over the Internet. On or about March 16, 2009, we started mailing to certain of our shareholders a Notice of

Internet Availability of Proxy Materials. This Notice contains instructions on how to access our proxy statement and 2008 Annual Report to Shareholders and vote online. By furnishing this Notice, we are lowering the costs and reducing the environmental impact of our Annual Meeting.

Shareholders who did not receive the Notice of Internet Availability of Proxy Materials will continue to receive a paper or electronic copy of our proxy statement and 2008 Annual Report, which we intend to start mailing on or about March 16, 2009.

VOTING INFORMATION

Record Date

You may vote all common shares that you owned as of February 27, 2009, which is the record date for the Annual Meeting. On February 27, 2009, we had 1,159,636,176 common shares outstanding and eligible to vote. Each common share is entitled to one vote on each matter properly brought before the Meeting.

Ownership of Shares

You may own common shares in one or more of the following ways:

- directly in your name as the shareholder of record, including shares purchased through the BuyDIRECT stock purchase plan or restricted stock awards issued to employees under our long-term incentive plans;
- indirectly through a broker, bank or other holder of record in street name ; or
- indirectly through the American Express Company Stock Fund of our Retirement Savings Plan (RSP) or the Employee Stock Ownership Plan of Amex Canada, Inc.

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If your shares are registered directly in your name, you are the holder of record of these shares and we are sending these proxy materials directly to you. As the holder of record, you have the right to give your proxy directly to us. If you hold your shares in street name, your broker, bank or other holder of record is sending these proxy materials to you. As a holder in street name, you have the right to direct your broker, bank or other holder of record how to vote by completing the voting instruction form that accompanies your proxy materials. Regardless of how you hold your shares, we invite you to attend the Meeting.

How to Vote

Your vote is important. We encourage you to vote promptly. Internet and telephone voting are available through 11:59 p.m. Eastern Time on Wednesday, April 22, 2009, for shares held in employee plans, and through 11:59 p.m. Eastern Time on Sunday, April 26, 2009, for all other shares. You may vote in the following ways:

By Telephone. If you are located in the United States or Canada, you can vote your shares by calling the toll-free telephone number and following the recorded instructions. You will need the 12-digit Control Number included on your Notice of Internet Availability of Proxy Materials, on your proxy card or in the instructions that accompany your proxy materials, as applicable. You may vote by telephone 24 hours a day. The telephone voting system has easy-to-follow instructions and allows you to confirm that the system has properly recorded your votes. If you vote by telephone, you do not need to return your proxy card or your voting instruction form.

By Internet. You can also vote your shares by the Internet. You will need the 12-digit Control Number included on your Notice of Internet Availability of Proxy Materials, on your proxy card or in the instructions that accompany your proxy materials, as applicable. You may vote by the Internet 24 hours a day. As with telephone voting, you will be able to confirm that the system has properly recorded your votes. You may incur telephone and Internet access charges if you vote by the Internet. If you vote by the Internet, you do not need to return your proxy card or your voting instruction form.

By Mail. If you are a holder of record, you can vote by marking, dating and signing your proxy card and returning it by mail in the enclosed postage-paid envelope. If you hold shares in street name, please complete and mail the voting instruction form.

At the Annual Meeting. The way you vote your shares prior to the Meeting will not limit your right to change your vote at the Meeting if you attend in person. If you hold your shares in street name, you must obtain a valid proxy, executed in your favor, from the holder of record if you wish to vote these shares at the Meeting.

All shares that have been properly voted and not revoked will be voted at the Meeting. If you sign and return your proxy card without any voting instructions, your shares will be voted as the Board of Directors recommends.

Revocation of Proxies. You can revoke your proxy at any time before your shares are voted if you (1) submit a written revocation to our Secretary, (2) submit a later-dated proxy (or voting instruction form if you hold shares in street name), (3) provide subsequent telephone or Internet voting instructions or (4) vote in person at the Meeting.

Shares Held Under Plans

If you participate in the BuyDIRECT stock purchase plan, your proxy includes the number of shares enrolled in that plan as well as any shares you have acquired through dividend reinvestment. If you participate in the RSP or the Employee Stock Ownership Plan of Amex Canada, Inc., your proxy includes shares that the relevant plan has credited to your account.

To allow sufficient time for the RSP and the Employee Stock Ownership Plan of Amex Canada, Inc. trustees to vote, the trustees must receive your voting instructions by 11:59 p.m. Eastern Time on Wednesday, April 22, 2009. If the trustees for the RSP and the Employee Stock Ownership Plan of Amex Canada, Inc. do not receive your instructions by that date, the trustees will not vote your shares.

Confidential Voting

We maintain the confidentiality of the votes of individual shareholders. We do not disclose these votes to any member of management, unless we must disclose them for legal reasons. However, if a shareholder writes a comment on the proxy card, the comment will be forwarded to management. In reviewing the comment, management may learn how the shareholder voted. In addition, the Inspectors of Election and selected employees of our independent tabulating agent may have access to individual votes in the normal course of counting and verifying the vote.

Quorum and Required Vote

Quorum. We will have a quorum and will be able to conduct the business of the Annual Meeting if the holders of a majority of the votes that shareholders are entitled to cast are present at the Meeting, either in person or by proxy.

Routine and Non-Routine Proposals. New York Stock Exchange (NYSE) rules determine whether proposals presented at shareholder meetings are routine or not routine. If a proposal is routine, a broker or other entity holding shares for an owner in street name may vote on the proposal without receiving voting instructions from the owner. If a proposal is not routine, the broker or other entity may vote on the proposal only if the owner has provided voting instructions. A broker non-vote occurs when the broker or other entity is unable to vote on a proposal because the proposal is not routine and the owner does not provide any instructions.

We have been advised by the NYSE that the election of Directors, the ratification of the appointment of our independent registered public accounting firm and the advisory (non-binding) vote approving executive compensation are routine items. The shareholder proposals are not routine items.

Broker Vote. If you hold your shares in a bank or brokerage account, you should be aware that if you fail to instruct your bank or broker how to vote within 10 days of the Meeting, the bank or broker is permitted to vote your shares in its discretion on your behalf on routine items. While banks and brokers have historically cast their votes on routine items in support of management in the absence of instructions from their clients, many firms are now casting uninstructed votes in the same proportion as their clients instructed votes. Thus, if you want to assure that your shares are voted in accordance with your wishes on Items 1, 2 and 3, the routine matters in this proxy statement, you should complete and return your voting instruction form before April 17, 2009.

Votes Required for the Election of Directors and Approval of the Proposals. To elect Directors and adopt the other proposals, the following votes are required:

Item	Vote Required	Abstentions and Broker Non-Votes, if any
Election of Directors	Affirmative vote of a majority of the votes cast	Not considered as votes cast and have no effect on the outcome
Ratification of appointment of independent accounting firm	Approval of the majority of the votes cast	Not considered as votes cast and have no effect on the outcome
Advisory (non-binding) vote approving executive compensation	Approval of the majority of the votes cast	Not considered as votes cast and have no effect on the outcome
Shareholder Proposals	Approval of the majority of the votes cast	Not considered as votes cast and have no effect on the outcome

There are no cumulative voting rights.

Multiple Shareholders Sharing the Same Address

In accordance with the notices we previously sent to street name shareholders who share a single address, we are sending only one Notice of Internet Availability of Proxy Materials or one 2008 Annual Report and proxy statement to that address unless we have received contrary instructions from any shareholder at that address. This practice, known as householding, is designed to reduce our printing and postage costs. However, if any shareholder residing at such an address wishes to receive a separate Notice of Internet Availability of Proxy Materials or a separate 2008 Annual Report and proxy statement, he or she may contact the Company s Secretary. If you are receiving multiple copies of our 2008 Annual Report and proxy statement or Notice of Internet Availability of Proxy Materials, you can request householding by contacting the Company s Secretary. The contact information for the Company s Secretary is stated on page 1 under *General Information*.

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Cost of Proxy Solicitation

We will pay the expenses of soliciting proxies on behalf of the Board of Directors. Our Directors, officers or employees may solicit proxies for us in person, or by mail, telephone, facsimile or electronic transmission. We have hired Morrow & Co., LLC, 470 West Ave., Stamford, CT 06902, to help us distribute and solicit proxies. We will pay them $17,500 plus expenses for these services.

CORPORATE GOVERNANCE

Our business is managed by the Company s employees under the direction and oversight of the Board of Directors. Except for Kenneth I. Chenault, our Chairman and Chief Executive Officer, none of our Board members is an employee of the Company. The Board limits membership of the Audit Committee, Compensation and Benefits Committee and Nominating and Governance Committee to independent, non-management Directors. We keep Directors informed of our business through discussions with management, materials we provide to them, visits to our offices and their participation in Board and Board Committee meetings.

The Board of Directors has adopted Corporate Governance Principles which, along with the charters of the Board Committees, the Company s Code of Conduct for employees and the Code of Business Conduct for Directors, provide the framework for the governance of the Company. The Board of Directors has also appointed a Corporate Governance Officer to promote best practices and help the Company remain in the forefront of good corporate governance. The Corporate Governance Officer periodically reviews the Company s governance principles and practices to assure that they continue to reflect high standards and makes recommendations to the Nominating and Governance Committee in connection with the Company s governance practices.

A complete copy of the Company s Governance Principles, the charters of each of the Board Committees and the Codes of Conduct for employees and Directors may be found on the Company s Investor Relations Web site at http://ir.americanexpress.com. Copies of these materials are available without charge upon written request to the Secretary of the Company.

Summary of the Company s Corporate Governance Principles

Independence of Directors. A substantial majority of the Board of Directors shall consist of independent, non-management Directors who meet the criteria for independence required by the NYSE.

A Director is independent if he or she does not have a material relationship with the Company or one of its subsidiaries.

The Board has established the following guidelines to assist it in determining Director independence.

1. A Director will not be considered independent if:

(i) within the last three years the Director was an employee of the Company or an immediate family member was an executive officer of the Company;

(ii) the Director or an immediate family member received, during any twelve-month period within the last three years, more than $120,000 per year in direct compensation from the Company (other than Director and Committee fees and pension or other deferred compensation);

(iii) the Director or an immediate family member is a partner of the Company s independent registered public accounting firm; the Director is a current employee of such firm; a member of the Director s immediate family is an employee of such firm and works on the Company s audit; or the Director or immediate family member was within the last three years a partner or employee of such firm and worked on the Company s audit;

(iv) within the last three years an executive officer of the Company served on the compensation committee of another company that employed the Director, or an immediate family member of the Director, as an executive officer; or

(v) the Director is a current employee, or has an immediate family member who is an executive officer, of a company that made payments to, or received payments from, the Company in an amount which, in any of the last three fiscal years, exceeds the greater of $1 million or 2% of the other company s consolidated gross revenues.

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2. The Board has determined that a material relationship with the Company will be deemed to exist if a Director is:

(i) an executive officer of a charitable organization and the annual contributions of the Company and the American Express Foundation to the organization (exclusive of gift-match payments) exceed the greater of $1 million or 2% of the organization s total annual revenues;

(ii) a partner of or of counsel to a law firm that performs substantial legal services to the Company on a regular basis; or

(iii) a partner, officer or employee of an investment bank or consulting firm that performs substantial services to the Company on a regular basis.

3. The Board of Directors also has determined that the following relationships are not material and do not impair a Director s independence:

(i) possession and use of an American Express® Card or use of the Company s travel services by a Director or his or her immediate family members on terms and conditions similar to those available to other Cardmembers;

(ii) incurring indebtedness to the Company, on the American Express® Card or otherwise as permitted by law, or use of the Company s financial services, by a Director or his or her immediate family members on terms and conditions similar to those available to other persons of like creditworthiness;

(iii) transactions in the ordinary course of business between the Company and another company where the Director or an immediate family member serves as an executive officer, provided the Director or immediate family member owns less than a 10% equity interest in the other company and the amounts paid or received by the other company did not exceed, in any of the last three fiscal years, the greater of $1 million or 1% of its consolidated gross revenues;

(iv) transactions in the ordinary course of business between the Company and another company where the Director serves on the other company s board and owns less than a 10% equity interest in the other company, regardless of the amount involved;

(v) service on the board of another public company on which an executive officer of the Company also serves as a board member, except for compensation committee interlocks described in Section 1(iv);

(vi) service as a director, trustee or executive officer of a charitable organization where an executive officer of the Company also serves as a director or trustee, unless the annual contributions of the Company and the American Express Foundation to the organization (exclusive of gift-match payments) exceed the greater of $1 million or 1% of the organization s total annual revenues;

(vii) service as an executive officer of a public company that also uses the Company s independent registered public accounting firm;

(viii) membership in the same professional association, social, fraternal or religious organization or club as an executive officer of the Company; or

(ix) prior attendance at the same educational institution as an executive officer of the Company.

Based on these guidelines, on January 26, 2009, the Board of Directors determined that 10 of the Company s 12 Director nominees are independent: Ms. Burns and Messrs. Akerson, Chernin, Leschly, Levin, McGinn, Miller, Reinemund, Walter and Williams. The other non-management Director nominee, Ms. Barshefsky, as well as Mr. Chenault, are not deemed independent under these guidelines.

Composition of the Board. Directors should be persons who have achieved prominence in their fields and who possess significant experience in areas of importance to the Company, such as general management, finance, marketing, technology, law, international business or public sector activities.

Directors should possess integrity, independence, energy, forthrightness, analytical skills and commitment to devote the necessary time and attention to the Company s affairs. Directors should possess a willingness to challenge and stimulate management and the ability to work as part of a team in an environment of trust.

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Voting for Directors. In a non-contested election, the vote required to elect a Director by the shareholders is the affirmative vote of a majority of the votes cast in favor of or against a nominee. In any such election of Directors, any incumbent Director who receives a greater number of votes *against* his or her election than votes *for* such election shall immediately submit his or her resignation to the Board. The Board of Directors, excluding such Director, shall decide whether or not to accept such resignation and shall promptly disclose and explain its decision in a Form 8-K filed with the Securities and Exchange Commission within 90 days after the results of the election are certified. In deciding whether or not to accept the resignation, the Board shall consider all factors deemed relevant, including the stated reason why shareholders who cast *against* votes did so, the qualifications of the Director, and whether the Director s resignation from the Board would be in the best interests of the Company and its shareholders. The Board will also consider a range of possible responses to the shareholder vote, including, for example, acceptance of the resignation or rejection of the resignation and having the Director continue to serve but curing the grievance causing the *against* votes.

In a contested election, the Director nominees who receive the plurality of votes cast are elected as Directors.

Communicating with Directors. Communications to the Board or to individual members of the Board may be made by letter, e-mail or telephone and should be directed to the Company s Secretary, who will forward them to the intended recipients. If a shareholder wishes to communicate a concern to the Chair of the Audit Committee about the Company s financial statements, accounting practices or internal controls, the concern should be submitted in writing to the Chair of the Audit Committee in care of the Company s Secretary. If the concern relates to the Company s governance practices, business ethics or corporate conduct, the concern should be submitted in writing to the Chair of the Nominating and Governance Committee in care of the Company s Secretary. If the shareholder is unsure as to which category his or her concern relates, he or she may communicate it to any one of the independent Directors in care of the Company s Secretary. The contact information for the Company s Secretary is stated on page 1 under *General Information*.

The Company s whistleblower policy prohibits the Company or any of its employees from retaliating or taking any adverse action against anyone for raising a concern in good faith. If a shareholder nonetheless prefers to raise his or her concern to the Board in a confidential or anonymous manner, the concern may be directed to the Office of the Ombudsperson at the Company s headquarters or by telephone at 1-800-297-1010. The Ombudsperson will refer the concern to the Chair of the Audit Committee who will assure that the matter is properly investigated.

Executive Sessions. The non-management Directors shall meet periodically in executive session without the Chief Executive Officer present, and the independent non-management Directors shall meet in executive session at least once annually.

The executive sessions of non-management Directors shall be presided over by the Director who is the chairman of the Committee responsible for the issue being discussed. Executive sessions relating to general topics, such as the review of the Company s overall performance, shall be presided over by the longest serving Director. The Board schedules at least three executive sessions of non-management Directors each year, including one executive session of independent Directors only. However, any Director may request additional executive sessions of non-management Directors to discuss any matter of concern. During 2008, the Board held four executive sessions of non-management Directors, one of which included independent Directors only.

Other. Non-management Directors shall have access to individual members of management or to other employees of the Company on a confidential basis. Directors are authorized to conduct independent investigations and to hire outside consultants or experts at the Company s expense. Directors shall also have access to Company records and files, and Directors may contact other Directors without informing Company management of the purpose or even the fact of such contact.

The Company believes that each Director should have a substantial personal investment in the Company. A personal holding of 20,000 shares of the Company is recommended for each Director. Directors are expected to acquire and maintain this share ownership threshold within five years of joining the Board.

The Board of Directors encourages all its members to attend the Annual Meeting of Shareholders. In 2008, 10 of the Director nominees were present at the Annual Meeting of Shareholders.

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Board Meetings

During 2008, the Board of Directors met 12 times. All of our Directors attended 75% or more of the meetings of the Board and Board Committees on which they served in 2008.

The following table lists our four Committees, the Directors who currently serve on them and the number of Committee meetings held in 2008.

Membership on Board Committees

Name	Audit	Compensation and Benefits	Nominating and Governance	Public Responsibility
Mr. Akerson	C			
Ms. Barshefsky				C
Ms. Burns				
Mr. Chenault				
Mr. Chernin				
Mr. Leschly		C		
Mr. Levin				
Mr. McGinn				
Mr. Miller				
Mr. Reinemund				
Mr. Walter			C	
Mr. Williams				
2008 Meetings	14	9	4	3

C = Chair

= Member

Audit Committee

The responsibilities of the Audit Committee are described in the following Report of the Audit Committee.

All members of the Audit Committee are independent Directors as required by the listing standards of the NYSE and the Company s Corporate Governance Principles. The Board has also determined that each of the members of the Audit Committee meets the requirements for being an audit committee financial expert as defined by SEC rules.

Report of the Audit Committee

The role of the Audit Committee is to assist the Board of Directors in its oversight of the Company s financial reporting process. Management has the primary responsibility for the financial statements and the reporting process, including the system of internal controls. The Company s independent auditors are responsible for auditing the Company s financial statements and expressing an opinion as to their conformity to accounting principles generally accepted in the United States.

In the performance of its oversight function, the Audit Committee has reviewed and discussed with management and the independent auditors the Company s audited financial statements. The Audit Committee also has discussed with the independent auditors the matters required to be discussed by Statement on Auditing Standards No. 61, as amended (AICPA, *Professional Standards*, Vol. 1. AU Section 380), as adopted by the Public Company Accounting Oversight Board in Rule 3200T, relating to communication with audit committees. In addition, the Audit Committee has received from the independent auditors the written disclosures and letter required by applicable requirements of the Public Company Accounting Oversight Board regarding the independent accountant s communications with the audit committee concerning independence, has discussed with the independent auditors their independence from the Company and its management, and has considered whether the independent auditors provision of non-audit services to the Company is compatible with maintaining the auditors independence.

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The Audit Committee discussed with the Company s internal auditors and independent auditors the overall scope and plans for their respective audits. The internal auditors are responsible for preparing an annual audit plan and conducting internal audits under the control of the Company s General Auditor, who is accountable to the Audit Committee. The Audit Committee met with the internal auditors and independent auditors, with and without management present, to discuss the results of their examinations, their evaluations of the Company s internal controls and the overall quality of the Company s financial reporting. In addition, the Audit Committee met with the Chief Executive Officer and Chief Financial Officer of the Company to discuss the processes that they have undertaken to evaluate the accuracy and fair presentation of the Company s financial statements and the effectiveness of the Company s systems of disclosure controls and procedures and internal control over financial reporting.

Based on the reviews and discussions referred to above, the Audit Committee recommended to the Board of Directors, and the Board has approved, that the Company s audited financial statements be included in the Company s 2008 Annual Report to Shareholders and Annual Report on Form 10-K for the year ended December 31, 2008 for filing with the Securities and Exchange Commission.

AUDIT COMMITTEE

Daniel F. Akerson, Chairman

Ursula M. Burns

Richard C. Levin

Robert D. Walter

Ronald A. Williams

Compensation and Benefits Committee

The Compensation and Benefits Committee (Compensation Committee) has oversight responsibility for the compensation and benefit programs for executive officers and other employees. The processes and procedures by which the Compensation Committee considers and determines named executive officer compensation are described in the Compensation Discussion and Analysis included in this proxy statement. The Compensation Committee may delegate all or a portion of the authority granted to it by the Board to one or more Compensation Committee members, senior executives or committees in accordance with applicable laws, regulations and plan requirements. All members of the Compensation Committee are independent Directors as required by the listing standards of the NYSE and the Company s Corporate Governance Principles.

Compensation Committee Interlocks and Insider Participation. The current members of the Compensation Committee are Messrs. Chernin, Leschly, McGinn, Miller and Walter. Mr. Popoff served as a member of the Compensation Committee until his retirement as a Director in April 2008. None of the current members or Mr. Popoff is a former or current officer or employee of the Company or any of its subsidiaries. None of the current members or Mr. Popoff has any relationship required to be disclosed under this caption under the rules of the SEC.

Nominating and Governance Committee

The Nominating and Governance Committee considers and recommends candidates for election to the Board, advises the Board on Director compensation, oversees the annual performance evaluations of the Board and Board Committees, advises the Board on corporate governance matters and administers the Company s Related Person Transaction Policy. All members of the Nominating and Governance Committee are independent Directors as required by the listing standards of the NYSE and the Company s Corporate Governance Principles.

Director Nomination Process. The Nominating and Governance Committee considers and recommends candidates for election to the Board. The Committee also considers candidates for election to the Board who are submitted by shareholders. Each member of the Committee participates in the review and discussion of Director candidates. In addition, Directors who are not on the Committee may meet with and evaluate the suitability of candidates. In making its selections of candidates to recommend for election, the Committee seeks persons who have achieved prominence in their fields and who possess significant experience in areas of importance to the Company, such as general management, finance, marketing, technology, law, international business or public sector activities. The minimum qualifications that the Nominating and Governance Committee believes must be

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met for a candidate to be nominated include integrity, independence, energy, forthrightness, strong analytical skills and the willingness to devote appropriate time and attention to the Company s affairs. Candidates should also demonstrate a willingness to work as part of a team in an atmosphere of trust and a commitment to represent the interests of all the shareholders rather than those of a specific constituency.

Shareholders who wish to submit nominees for election at an annual or special meeting of shareholders should follow the procedure described on page 59. The Nominating and Governance Committee applies the same standards in considering candidates submitted by shareholders as it does in evaluating candidates submitted by members of the Board of Directors.

Public Responsibility Committee

The Public Responsibility Committee reviews issues that affect the communities in which we work or the public interest in general. These issues include legislation and regulation affecting the Company, philanthropic programs, the Company s political action committee and corporate political contributions, government relations activities, other policies affecting the communities in which the Company operates, and the environment.

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COMPENSATION OF DIRECTORS

It is the goal of the Nominating and Governance Committee to maintain the level of Director compensation above the mid-point of comparable companies. In 2005, the Committee engaged an independent compensation advisory firm, Frederic W. Cook & Co., Inc., to review Director compensation, and, as a result of that review, in 2006, the Committee recommended that the Directors receive the compensation described below. The Committee reviews Director compensation approximately every two years. In 2008, the Committee determined not to make any changes.

The following table provides information on the Company s compensation of non-management Directors for 2008. In addition, the Company reimburses Directors for out-of-pocket expenses attendant to Board membership.

Name	Fees Earned or Paid in Cash ($)(1)	Stock Awards ($)(2)	Option Awards ($)(3)	Change in Pension Value and Nonqualified Deferred Compensation Earnings ($)(4)	All Other Compensation ($)(5)	Total ($)
Mr. Akerson	$ 110,000	$ 62,322	$0	$ 34,957	$ 25,645	$ 232,924
Ms. Barshefsky	87,500	62,322	0	0	71	149,893
Ms. Burns	90,000	62,322	0	0	19,013	171,335
Mr. Chernin	85,000	62,322	0	1,930	71	149,323
Mr. Jordan	45,000	0	0	36,667	75,024	156,691
Mr. Leschly	100,000	62,322	0	20,181	35,813	218,316
Mr. Levin	90,000	62,322	0	1,149	71	153,542
Mr. McGinn	85,000	62,322	0	0	71	147,393
Mr. Miller	85,000	62,322	0	0	24,996	172,318
Mr. Popoff	47,500	0	0	8,323	75,024	130,847
Mr. Reinemund	82,500	62,322	0	0	71	144,893
Mr. Walter	102,500	62,322	0	2,243	16,521	183,586
Mr. Williams	90,000	62,322	0	0	71	152,393

(1) *Annual Retainers.* The Company pays its non-management Directors an annual retainer of $80,000 for Board service and pays an additional annual retainer of $10,000 to members of the Audit Committee and $5,000 to members of the Compensation and Benefits Committee, including the chairs. The Company also pays an annual retainer to the chair of each of the Committees as follows: Audit $20,000; Compensation and Benefits $15,000; Nominating and Governance $10,000; and Public Responsibility $10,000. The Company pays no fees for attending meetings, but the annual retainer for Board service of $80,000 is reduced by $20,000 if a Director does not attend at least 75% of our Board meetings and meetings of any Committee on which he or she serves. All the non-management Directors, except for Messrs. McGinn and Reinemund, deferred all or a portion of their 2008 retainers into either a cash account, a share equivalent unit account, or both, under the Deferred Compensation Plan for Directors and Advisors described below in note 4. Messrs. Jordan and Popoff retired from Board service in April 2008. Included in this column is the portion of the annual retainer for Board and Committee service each received in 2008.

(2)

Share Equivalent Unit Plan. To assure that the majority of each non-management Director s annual compensation is aligned with shareholder interests, each non-management Director is credited with share equivalent units (SEUs) upon election or re-election at each annual meeting of shareholders. Each SEU reflects the value of a common share of the Company. Each Director receives additional SEUs as dividend equivalents on the units in his or her account. SEUs do not carry voting rights and must be held until a Director ends his or her service as a Director or, if applicable, as an Advisor. At that time, each SEU is payable in cash equal to the then value of one Company common share. The SEUs do not count toward the share ownership guidelines we have established for Directors.

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Upon his or her re-election to the Board on April 28, 2008, each non-management Director was credited with 3,400 SEUs, having a date of grant fair value of $162,826, based on the price of Company common shares on such date. We have reported in this column (i) the grant date fair value of these SEU awards, which was recognized as an expense by the Company in its financial statements in 2008, reduced by (ii) the decline in the value of these awards during 2008. This decline in value was recognized as a reversal of expense by the Company in its financial statements in 2008. Because they retired from the Board, Messrs. Jordan and Popoff did not receive an SEU award in 2008.

As of December 31, 2008, the SEU balance in each Director s account was: Mr. Akerson 16,998; Ms. Barshefsky 30,716; Ms. Burns 23,456; Mr. Chernin 10,449; Mr. Jordan 74,344; Mr. Leschly 16,998; Mr. Levin 6,927; Mr. McGinn 16,998; Mr. Miller 24,474; Mr. Popoff 25,888; Mr. Reinemund 6,927; Mr. Walter 24,768; and Mr. Williams 10,604. These amounts represent the aggregate number of SEUs granted under the Share Equivalent Unit Plan for all years of service as a Director, additional units credited as a result of the reinvestment of dividend equivalents and, for Messrs. Jordan, Miller, Popoff and Williams and Ms. Barshefsky and Ms. Burns, retainer amounts deferred into their SEU accounts under the Company s Deferred Compensation Plan for Directors and Advisors and dividend equivalents thereon.

(3) *Option Awards.* The Company has not granted stock options to Directors since April 2002. In April 2002 and in prior years, the Company made stock option grants to each non-management Director on the date of the annual shareholders meeting. As of December 31, 2008, Messrs. Jordan and Leschly each had 13,708 vested outstanding options.

(4) *Retirement Benefits.* We offer no retirement benefits to non-management Directors who began their Board service after March 31, 1996. We pay a retirement benefit to non-management Directors who began their Board service on or before March 31, 1996, have served on our Board for at least five years, and have never been our employees. The retirement benefit consists of a payment of $30,000 per year for each year a Director served on the Board. Payments cease after a Director s death. One of our current Directors, Mr. Akerson, is eligible to receive retirement benefits in the future. Included in this column is the change in actuarial present value from 2007 to 2008 of the accumulated benefit for Mr. Akerson in the amount of $18,373.

Deferred Compensation Plan for Directors and Advisors. Non-management Directors may defer the receipt of up to 100% of their annual retainer fees into either: (1) a cash account that we value based on a schedule linked to our return on equity, which is the same schedule we use for the deferred compensation plan in which management participates shown on page 47, and/or (2) their SEU account. Under either alternative, Directors will receive cash payments and will not receive shares upon payout of their deferrals. This column includes the above-market portion of the earnings during 2008 on amounts deferred under this plan in cash accounts for the following Directors in the amounts stated: Mr. Akerson $16,584; Mr. Chernin $1,930; Mr. Jordan $36,667; Mr. Leschly $20,181; Mr. Levin $1,149; Mr. Popoff $8,323 and Mr. Walter $2,243. Earnings in 2008 were considered to be above-market to the extent that the rate of interest exceeded 5.68%.

(5) *Insurance.* We provide our non-management Directors with group term life insurance coverage of $50,000. The group life insurance policy is provided to the Directors on a basis generally available to all Company employees.

Directors Charitable Award Program. The Company maintains a Directors Charitable Award Program for Directors elected prior to July 1, 2004. To fund this program we purchased joint life insurance on the lives of participating Directors, including Mr. Chenault, and Advisors to the Board. We will receive a $1,000,000 benefit following the death of a Director and $500,000 following the death of an Advisor. We expect to donate one-half of the benefit to the American Express Foundation and one-half to the charitable organization that the Director or Advisor recommends. In 2008, the Company paid premiums for policies on the following Directors in the amounts stated: Mr. Akerson $25,574; Ms. Burns $18,942; Mr. Jordan $0; Mr. Leschly $35,742; Mr. Miller $24,925; Mr. Popoff $0 and Mr. Walter $16,450, which amounts are included in this column.

Matching Gift Program. Directors are eligible to participate in the Company s Matching Gift Program on the same basis as Company employees. Under this program, the American Express Foundation matches gifts to approved charitable organizations up to $8,000 per calendar year.

Advisor Fees for Former Directors. Messrs. Jordan and Popoff serve the Company as Advisors to the Board following their retirement, and each received $75,000 for such service in 2008, which is included in this column.

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OWNERSHIP OF OUR COMMON SHARES

The table below shows how many American Express common shares certain individuals and entities beneficially owned on February 27, 2009. These individuals and entities include: (1) owners of more than 5% of our outstanding common shares; (2) our current Directors; (3) the executive officers named in the *Summary Compensation Table* on page 34; and (4) all current Directors and executive officers as a group. A person has beneficial ownership over shares if the person has voting or investment power over the shares or the right to acquire such power within 60 days. Investment power means the power to direct the sale or other disposition of the shares. Each person has sole voting and investment power over the shares, except as we describe below.

Name	Number of Shares Owned(3)(4)	Right to Acquire(5)	Percent of Class(%)
Warren Buffett, Berkshire Hathaway Inc. and subsidiaries 1440 Kiewit Plaza Omaha, NE 68131	151,610,700(1)		13.07%
Davis Selected Advisers, LP 2949 East Elvira Road, Suite 101 Tucson, AZ 85756	82,324,177(2)		7.10%
Daniel F. Akerson	75,067		*
Charlene Barshefsky	20,134		*
Ursula M. Burns	20,000		*
Kenneth I. Chenault	1,022,624	5,655,824	*
Peter Chernin	11,000	0	*
Edward P. Gilligan	345,924	1,236,886	*
Daniel T. Henry.	46,185	197,186	*
Alfred F. Kelly, Jr.	384,035	1,169,222	*
Jan Leschly	152,132	13,708	*
Richard C. Levin	2,000		*
Richard A. McGinn	18,412		*
Edward D. Miller	20,000		*
Steven S Reinemund	20,000		*
Stephen J. Squeri	66,724	659,957	*
Robert D. Walter	210,300		*
Ronald A. Williams	27,500		*
All current Directors and executive officers (23 individuals)(6)	3,110,146	14,102,842	1.48%

* Less than 1%.

(1) Based on information contained in a report on Form 13F that Berkshire Hathaway Inc. (Berkshire) filed with the SEC, which contained information as of December 31, 2008. Of the shares listed in the table, National Indemnity Co. beneficially owns 120,255,879 shares. National Indemnity Co. is a subsidiary of Berkshire. Mr. Buffett, Berkshire and certain subsidiaries of Berkshire share voting and investment power over these shares. Based on information provided to the Company, Mr. Buffett owns 31.8% of the aggregate voting power of the outstanding shares of Berkshire s Class A Common Stock and Class B Common Stock. As a result of this ownership position

in Berkshire, Mr. Buffett may be considered the beneficial owner of the shares that Berkshire beneficially owns.

In 1995 we signed an agreement with Berkshire designed to ensure that Berkshire s investment in our Company will be passive. The agreement remains in effect so long as Berkshire owns 10% or more of our voting securities. Berkshire made similar commitments to the Board of Governors of the Federal Reserve System. Berkshire and its subsidiaries have also agreed to follow our Board of Directors recommendations in voting Company common shares they own so long as Mr. Chenault is our Chief Executive Officer and Berkshire owns 5% or more of our voting securities. With certain exceptions, Berkshire and its subsidiaries may not sell Company common shares to any person who owns more than 5% of our voting securities or who attempts to change the control of the Company.

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(2) Based on information contained in a report on Schedule 13G that Davis Selected Advisers, LP filed with the Securities and Exchange Commission, which contained information as of December 31, 2008.

(3) This column includes shares held in employee benefit plan accounts on February 27, 2009, as follows:

Name	Number of Shares in Plan Accounts
K.I. Chenault	21,774
E.P. Gilligan	1,544
D.T. Henry	19
A.F. Kelly, Jr.	4,874
S.J. Squeri	4,674
All current executive officers	55,416

(4) Certain executive officers held restricted shares on February 27, 2009, which we include in this column. The executive may vote the restricted shares, but may not sell or transfer them during the restricted period. These restrictions lapse over a period of years ending in 2013. The individuals in the table held the following number of restricted shares:

Name	Number of Restricted Shares
K.I. Chenault	0
E.P. Gilligan	137,916
D.T. Henry	0
A.F. Kelly, Jr.	147,518
S.J. Squeri	10,177
All current executive officers	314,788

(5) These are shares that the named individuals have the right to acquire within 60 days upon the exercise of stock options they hold or in respect of Restricted Stock Units that have vested.

(6) On February 27, 2009, the current Directors and executive officers beneficially owned 17,212,988 shares, or about 1.48% of our outstanding shares. No current Director or executive officer beneficially owned more than 1% of our outstanding shares.

ELECTION OF DIRECTORS

Item 1 Election of Directors

Our Board of Directors currently has 12 members. Each current Director is standing for re-election to hold office until the next Annual Meeting of Shareholders.

If a Director resigns or retires during the year, the Board of Directors, with input from the Nominating and Governance Committee, may elect another Director as a replacement. The Board may also add new members during the year based on a number of factors, such as the size of the Board and the Board s desire to add fresh perspectives or expertise.

The Board has appointed Daniel T. Henry, Stephen P. Norman and Louise M. Parent as proxies who will vote your shares on your behalf. Their names appear on the proxy. These individuals intend to vote for the election of each of the 12 nominees below unless you indicate on the proxy or voting instructions your vote against the nominee. We expect that each nominee will be able to serve if elected as a Director. However, if any nominee is not able to serve, the persons named as proxies may vote for another person as nominated by the Nominating and Governance Committee.

The Board of Directors recommends a vote FOR the election of these nominees as Directors.

We indicate below, in italics, the principal occupation of each nominee. Other information about them appears in regular type.

DANIEL F. AKERSON	Director since 1995	Age 60

Managing Director, The Carlyle Group, a private equity firm, March 2003 to present. Director, Booz Allen Hamilton, Inc., Freescale Semiconductor, Inc., HCR Manor Care, Inc. and MultiPlan, Inc.

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CHARLENE BARSHEFSKY	Director since 2001	Age 58

Senior International Partner, Wilmer Hale, attorneys, Washington, D.C., 2001 to present. United States Trade Representative and a member of the President s Cabinet from 1997 to 2001. Board of Directors, Council on Foreign Relations. Director, The Estée Lauder Companies Inc., Starwood Hotels & Resorts Worldwide, Inc. and Intel Corporation. Trustee, Howard Hughes Medical Institute.

URSULA M. BURNS	Director since 2004	Age 50

President and Director, Xerox Corporation, a global company engaged in manufacturing, servicing and financing a complete range of document equipment and services, April 2007 to present; Senior Vice President and President, Business Group Operations, January 2003 to April 2007. Director, Boston Scientific Corporation, Xerox Corporation, the University of Rochester, National Academy Foundation, The National Center on Addiction and Substance Abuse at Columbia University, Massachusetts Institute of Technology, U.S. Olympic Committee and FIRST (For Inspiration and Recognition of Science and Technology).

KENNETH I. CHENAULT	Director since 1997	Age 57

Chairman and Chief Executive Officer, American Express Company, April 2001 to present; Chief Executive Officer, January 2001 to April 2001. Director, International Business Machines Corporation and The Procter & Gamble Company. Member, the World Trade Center Memorial Foundation. Trustee, NYU Hospitals Center and the New York University School of Medicine Foundation.

PETER CHERNIN	Director since 2006	Age 57

President, Chief Operating Officer and Director, News Corporation, a diversified international media and entertainment company, October 1996 to present.

JAN LESCHLY	Director since 1997	Age 68

Founder and Partner, Care Capital LLC, a private equity firm, May 2000 to present. Director, The A.P. Moller-Maersk Group. Member, the Emory University Business School Dean s Advisory Council. Adjunct Professor, Copenhagen Business School.

RICHARD C. LEVIN	Director since 2007	Age 61

President, Yale University, a private, independent university, July 1993 to present. Director, Satmetrix Systems, Inc. Trustee of the William and Flora Hewlett Foundation.

RICHARD A. MCGINN	Director since 1998	Age 62

General Partner, RRE Ventures, an investment advisory and venture capital firm, August 2001 to present. Director, Verifone, Inc. and Via Systems, Inc.

EDWARD D. MILLER	Director since 2003	Age 68

Former President and Chief Executive Officer, AXA Financial, Inc., a U.S.-based financial services organization providing asset management, financial advisory and insurance services, May 2001 to present. Director, Korn/Ferry International, The Feinstein Institute for Medical Research and Phoenix House. Chairman of the Partnership for New York City s Security and Risk Management Task Force; and Trustee of the New York City Police Foundation. Senior Advisor to National Grid Corp.

STEVEN S REINEMUND	Director since 2007	Age 61

Dean of Business, Wake Forest University, a private, independent university, July 2008 to present. Retired Chairman of the Board, PepsiCo, Inc., a company that produces beverages and convenient foods, May 2007 to present; Executive Chairman of the Board, October 2006 to May 2007; Chairman and Chief Executive Officer, May 2001 to October 2006. Director, Marriott International, Inc. and Exxon Mobil Corporation. Trustee, The Cooper Institute and United States Naval Academy Foundation.

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ROBERT D. WALTER	Director since 2002	Age 63

Founder, Cardinal Health, Inc., a company that provides products and services supporting the health care industry. Executive Director, Cardinal Health, November 2007 to June 2008; Executive Chairman of the Board, April 2006 to November 2007; Chairman and Chief Executive Officer, 1979 to April 2006. Director, Nordstrom, Inc., YUM! Brands, Inc. and Battelle Memorial Institute. Member, The Business Council.

RONALD A. WILLIAMS	Director since 2007	Age 59

Chairman and Chief Executive Officer, Aetna Inc., a company providing managed care benefits and health insurance, October 2006 to present; President and Chief Executive Officer, February 2006 to October 2006; President, May 2002 to February 2006. Member, The Business Council. Trustee, The Conference Board and Connecticut Science Center. Member of Dean s Advisory Council and Alfred P. Sloan Management Society at the Massachusetts Institute of Technology.

RATIFICATION OF THE APPOINTMENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Item 2 Ratification of the Appointment of Independent Registered Public Accounting Firm

On January 26, 2009, the Audit Committee of the Board of Directors appointed PricewaterhouseCoopers LLP as our independent registered public accounting firm for the year beginning January 1, 2009.

Each year the Audit Committee reviews our accounting firm s qualifications, performance and independence in accordance with regulatory requirements and guidelines. At least every ten years, the Audit Committee charter requires a detailed review of the Company s accounting firm, which includes a comparison of resources available in other firms. The Committee conducted such a review in 2004, and appointed PricewaterhouseCoopers LLP on November 22, 2004 as our independent registered public accounting firm for the year beginning January 1, 2005.

We are asking shareholders to ratify the Committee s appointment of PricewaterhouseCoopers LLP for 2009. In the event the shareholders fail to ratify the appointment, the Audit Committee will consider it a direction to consider other accounting firms for the subsequent year.

One or more representatives of PricewaterhouseCoopers LLP will be present at the Meeting and will be given the opportunity to make a statement if he or she desires to do so and will be available to respond to appropriate questions.

Audit Fees

The aggregate fees billed or to be billed for each of the last two fiscal years for professional services rendered for the audit of the Company s annual financial statements, review of financial statements included in the Company s Quarterly Reports on Form 10-Q and services that were provided in connection with statutory and regulatory filings or engagements and other attest services were $20.1 million for 2008 and $16.4 million for 2007.

Audit-Related Fees

The aggregate fees billed or to be billed for each of the last two fiscal years for assurance and related services that were reasonably related to the performance of the audit or review of the Company s financial statements were $1.9 million for 2008 and $2.2 million for 2007. The nature of the services performed for these fees included, among other things, employee benefit plan audits, internal control reviews, attest services not required by statute or regulation, and consultations concerning financial accounting and reporting matters not classified as audit.

Tax Fees

The aggregate fees billed or to be billed for each of the last two fiscal years for professional services rendered for tax compliance and expatriate tax services were $51,000 for 2008 and $63,000 for 2007.

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All Other Fees

There were no fees billed or to be billed for 2008 and 2007 for products and services other than those reported in the three prior categories.

Policy on Pre-Approval of Services Provided by Independent Registered Public Accounting Firm

Pursuant to the requirements of the Sarbanes-Oxley Act of 2002, the terms of the engagement of the Company s independent registered public accounting firm are subject to the specific pre-approval of the Audit Committee. All audit and permitted non-audit services to be performed by the Company s independent registered public accounting firm require pre-approval by the Audit Committee in accordance with pre-approval procedures established by the Audit Committee. All such services provided by our independent registered public accounting firm have been pre-approved. The procedures require all proposed engagements of the Company s independent registered public accounting firm for services of any kind to be directed to the Company s General Auditor and then submitted for approval to the Audit Committee prior to the beginning of any services.

Other Transactions with PricewaterhouseCoopers

We have a number of business relationships with individual member firms of the worldwide PricewaterhouseCoopers organization. Our subsidiaries provide card and travel services to some of these firms and these firms pay fees to our subsidiaries. These services are in the normal course of business, and we provide them pursuant to arrangements that we offer to other similar clients.

The Board of Directors recommends a vote FOR the following resolution:

RESOLVED, that the appointment by the Audit Committee of the Board of Directors of PricewaterhouseCoopers LLP, independent registered public accounting firm, to audit the accounts of the Company and its subsidiaries for 2009 is ratified and approved.

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EXECUTIVE COMPENSATION

Compensation Discussion and Analysis

The following section contains a description and analysis of the 2008 compensation arrangements and decisions we made for our executive officers named in the Summary Compensation Table that follows this section. We refer to such named executive officers as NEOs. The section also describes compensation policies and practices that we have adopted and implemented at the Company.

Compensation Philosophy

Our Company s vision is to be the world s most respected service brand. Our long-term goal is to deliver superior financial performance to shareholders, consistent with our announced on-average and over-time financial targets of 12-15% earnings per share (EPS) growth, revenue growth of at least 8% and return on equity (ROE) of 33-36%. Given the economic and business environment in 2008, and in particular during the latter half of the year, we do not expect to be in a position to achieve those objectives until conditions improve. Our priorities in this environment are to stay liquid, stay profitable and make selective investments that strengthen our competitive position over the longer term.

We have also long believed that we must focus on the Service Profit Chain. This focus starts with engaged employees delivering superior customer service, and satisfied customers leading to superior financial results for shareholders. Having executives who are strong leaders will enable us to attract and retain the best talent to achieve these goals, promote growth and demonstrate the Company s values customer commitment, quality, integrity, teamwork, respect for people, good citizenship, a will to win and personal accountability.

Our compensation program for NEOs is characterized by the following principal elements:

1. **Measurable goals** that promote the Service Profit Chain by focusing on the interests of our three key constituencies shareholders, customers and employees.

2. **Competitive pay practices** that include appropriate performance incentives and total direct compensation opportunities, which are informed by a review of the compensation practices and pay levels of a relevant sample of large companies with a strong brand marketing focus and companies in the payments and financial services industries.

3. **An emphasis on long-term incentive compensation**, reflecting our commitment to (i) meet or exceed our objectives, including enhancing shareholder value, over the intermediate and long term, and (ii) retain a highly talented and experienced senior executive team to lead the Company successfully in a rapidly changing industry and economic environment.

Role of the Compensation and Benefits Committee; Use of Compensation Consultants

The Compensation and Benefits Committee (the Committee) has, among other duties, overall responsibility for the compensation of our NEOs. The Committee s charter, which sets forth its responsibilities and authority, may be accessed by clicking on the Corporate Governance link found on our Investor Relations Web site at http://ir.americanexpress.com. You may also obtain a paper copy of the Committee s charter by writing to our Secretary at the Company s headquarters. The Committee met nine times in 2008. The Committee routinely meets in executive session without management being present.

The Committee has engaged Frederic W. Cook & Co., Inc. (Cook) and considered advice and information from such firm in determining the amount and form of compensation for NEOs. This work has included confirming an updated comparison group of companies, collecting and providing relevant market data, including proprietary data and data and analyses provided by Mercer and other consultants, and developing alternatives to consider for chief executive officer (CEO) compensation.

In connection with its work for the Committee, Cook attended Committee and related meetings with management. Cook provides these services to the Committee, and it also provides services to the Nominating and Governance Committee of the Board with respect to Director compensation. Under the terms of its agreement with the Committee, Cook does not provide any other services to the Company, unless the Committee approves such services in support of the Committee s objectives. In 2008, no such other services were provided. The

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Company uses other compensation and benefits consultants to provide market practice data, actuarial services and/or advice relating to broad management employee programs in which executive officers may participate.

Except with respect to the CEO, whose performance assessment and compensation are reviewed and determined solely by the Committee, the Committee considers input from management in making determinations regarding our executive compensation program and the individual compensation of executive officers and certain other executives. Based on performance assessments including results against our Service Profit Chain goals, leadership and relative responsibilities and contributions, the CEO recommends annual and long-term compensation for each executive officer other than himself. Each year, the CEO presents to the Committee his goal and leadership ratings for each executive officer, and reviews key strengths, development actions and succession plans with the Committee and full Board. After taking into account input from management and Cook, the Committee determines in its judgment what changes, if any, should be made to the executive compensation program for the coming year, and determines the compensation awards for each NEO.

The Committee annually reviews tally sheets reflecting each NEO s outstanding compensation awards, as well as projected value and payouts under our retirement, savings and other plans assuming various scenarios, including retirement, termination of employment and change in control of the Company. The Committee uses the data in the tally sheets as an informational tool to remain apprised of the amount of capital that an NEO has accumulated or may receive in certain circumstances under our compensation programs, and to assist it in confirming that the Company s compensation programs align the interests of the NEO with that of the Company s shareholders. In 2008, the information in the tally sheets demonstrated a very substantial decline in the value of outstanding long-term incentive awards held by our NEOs, as major economies, including the United States, went into recession and shareholder value declined.

Annual Performance Assessment Framework

Our management performance assessment processes cover both organizational and individual results each year. Organizational performance provides a general basis for setting overall levels of compensation. Individual performance provides a basis for differentiating compensation among participants. The Committee exercises significant discretion in assessing performance, rather than solely relying on formulaic designs that may not adequately take into consideration other relevant performance objectives or actual results.

Early each year the CEO develops financial, strategic and organizational objectives for himself. These performance objectives are reviewed and approved by the Committee. The CEO s performance assessment is based on Company and individual performance, and is determined by the Committee after reviewing, among other things, the CEO s written self-assessment of his and the Company s performance against the objectives set forth earlier in the year, as well as input from the other outside Directors.

For each of the other NEOs, the CEO assigns two equally weighted performance ratings. One is based on the performance ratings of the Company as a whole and of the business units or staff groups for which the NEO is responsible (Goal Rating), and the other is based on the executive s leadership behaviors in achieving the Goal Rating (Leadership Rating).

Goal Ratings

We assess organizational and individual performance by reviewing results against goals for our three key constituencies, weighted as shown below. These results provide important lagging and leading indicators of our current and future success.

Shareholders (50% weight). Includes financial results, such as EPS growth, revenue growth, ROE and total shareholder return tied to the previously announced on-average, over-time financial goals of the Company.

Customers (25% weight). Includes customer survey results, expansion, retention and deeper penetration of our customer base, development of new and enhanced products and services, and improvements in competitive positioning and share of customers spend.

Employees (25% weight). Includes employee survey results, achievement of world-class targets for employee satisfaction and engagement, the retention and development of talented employees, and diversity.

The weight we give to the customer and employee goals reflects the importance we place on our Service Profit Chain focus, which we believe fosters the long-term strength of the business. The use of these non-financial metrics also helps to reduce the potential for excessive risk-taking that may be fostered by incentives that depend exclusively on performance against numerical financial targets.

Leadership Ratings

Each NEO s Leadership Rating reflects the CEO s evaluation of his or her performance, which includes feedback from peers and employees, as appropriate, with regard to eight leadership dimensions, such as developing winning strategies, driving innovation and change, and focusing on the customer and client.

Market Comparisons and Benchmarking Framework

The Committee reviews market data for NEO jobs primarily found in the list of companies established each year, consisting of U.S.-based multinational companies from the S&P 500 Index with a strong brand marketing focus and companies in the payments and financial services industries. The companies in the sample are intended to include our competitors for business and talent, as well as strong brand companies, and median gross revenue of the sample is comparable to our revenue. The Committee generally uses the market data as a guide in creating a general framework for overall levels of compensation and establishing what an appropriate level of total direct compensation would be for a given performance rating, recognizing that the available data can be lagging in nature and reflect each company s individual circumstances and jobs. For 2008, the companies used for this comparison are listed below. As the year developed, however, destabilization in the financial services industry, of which we are a part, caused the benchmark data to become significantly less meaningful.

3M	FedEx	Kimberly-Clark
Altria Group	General Electric	PepsiCo
Anheuser-Busch	General Mills	Procter & Gamble
Bank of America	IBM	US Bancorp
Capital One Financial	Johnson & Johnson	Wachovia
Citigroup	JPMorgan Chase	Washington Mutual
Coca-Cola	Kellogg	Wells Fargo
Colgate-Palmolive		

For 2009, the Committee intends to review the criteria used to establish the list of companies. We expect to add and delete companies to ensure that market references remain appropriate.

Determining Compensation and Mix of Compensation Components

The Committee uses its judgment and discretion in making compensation decisions, using the framework described above, as well as a consideration of, among other things, the individual s career with the Company, current compensation arrangements, internal equity and long-term potential to increase shareholder value. The Committee does not use rigid formulae to determine compensation awards or payouts (except in the context of having a maximum deductible compensation value to comply with tax regulations). This approach is incorporated into our compensation programs and assessment process to respond to the evolving business environment and to attract, develop and retain exceptional talent.

Each year the CEO recommends to the Committee the mix of salary, annual incentive and long-term incentive awards that he believes an NEO should receive as total direct compensation based on job responsibilities and performance and talent assessments, while being informed by available market data. As a result, the weighting of each component can vary year to year but is always consistent with our performance orientation. We believe most of the weight in the mix should be on the annual and long-term compensation components that are tied to our financial and Service Profit Chain objectives. We also believe in the use of awards that require vesting and/or future performance to earn value because they encourage a longer term view of the Company s results and the retention of highly talented executives.

For NEOs other than the CEO, the Committee, after receiving recommendations from the CEO, determines pay levels that reflect individual contributions, relative roles and responsibilities and leadership succession. With respect to the differences in the compensation levels between the CEO and the other NEOs, and among the other NEOs, the Committee takes into account internal equity, including the differences in the roles regarding leadership and responsibility for the overall performance and strategic vision of the Company, as well as individual contributions and available market data for comparable positions in comparator companies.

Elements of Total Direct Compensation

Base Salary

The base salary for each NEO reflects his or her position, responsibilities and contributions relative to other executives and available market data. Salaries are typically reviewed, but not necessarily changed, in January of each year as part of our performance and compensation review process, as well as at other times to recognize a promotion or change in job responsibilities or market positioning.

Annual Incentive Awards (AIAs)

The AIA amounts paid to our NEOs are primarily at the discretion of the Committee based on an assessment of the NEO s performance against pre-determined quantitative and qualitative Company, business unit and individual goals, subject to a framework designed to comply with IRS Million Dollar Cap requirements (see page 31). AIAs are most commonly paid in cash but are occasionally paid in a combination of cash and equity, particularly at more senior executive levels, as determined by the Committee.

Long-Term Incentive Awards (LTIAs)

In addition to the AIAs, we also make awards of LTIAs. LTIAs consist of nonqualified stock options (NQSOs), restricted stock awards (RSAs), restricted stock units (RSUs) and portfolio grant (PG) awards. PGs are cash-based incentive awards valued based on multi-year performance, and may be paid in the form of cash, RSAs, RSUs or a combination thereof. The focus of NQSOs, RSAs and RSUs on share price appreciation is balanced by PGs that instead focus primarily on financial targets, as well as our relative total shareholder return. Taken together, we believe our LTIAs provide a balanced incentive for executives to achieve the full range of important medium- and longer-term results and to pursue a career with the Company.

> *Stock Option Awards.* We make annual grants of ten-year NQSOs, which typically become exercisable in equal annual installments over four years from the date of grant. We also make off-cycle grants of ten-year NQSOs for new hires, promotions and in other special circumstances. NQSOs deliver value to the executive only when the Company s share price rises above the exercise price, which is set at the closing price of our common stock on the date of grant. For a discussion of our policy regarding the timing of equity grants see page 26.
>
> *Restricted Stock Awards and Restricted Stock Units.* The Committee may, in its discretion, grant RSAs and/or RSUs to executive officers. Holders of RSAs are entitled to receive dividends on such shares and vote such shares. Holders of RSUs have generally been entitled to receive dividend equivalents but no voting rights prior to vesting. For our NEOs, vesting of RSAs and RSUs is subject to continued employment and achievement of a Company performance requirement, generally a minimum ROE, for one year or a

minimum average annual ROE for three to six years.

Portfolio Grant Awards. PG awards have been awarded annually to executive officers and earn value based on our EPS, revenue, ROE and relative total shareholder return over a multi-year period. The PG s target value represents a notional dollar amount assigned to each NEO s PG that is leveraged to generate lower (including zero) or higher maximum values depending on the level of performance achieved. PG awards for NEOs are designed to support multi-year performance criteria and meet U.S. tax requirements for deductibility of actual payouts. Accordingly, at the end of the performance period, the Committee certifies the maximum deductible value produced by our financial and total shareholder return results, and then determines the actual payout less than (i.e., using negative discretion) or at that maximum deductible value based on its judgment of Company, business unit and individual performance over the performance period. Details for the PG 2008-2010 (PG 08-10) program are on page 26.

Committee Assessment of 2008 Performance and Determination of CEO and NEO Pay

Some of the factors that the Committee considered in assessing our 2008 performance and determining compensation levels in our programs were:

Shareholder goals:

As a result of the challenging economic and business environment during 2008, we did not meet any of our long-term financial objectives during the year. Total revenue net of interest expense grew 3% as compared to 2007; diluted EPS from continuing operations declined 30%, diluted EPS based on net income declined 32%; and ROE was 21.7%. Our total shareholder return, which we sometimes refer to as TSR, was minus 64%, reflecting the decline in our share price during the course of the year, compared with minus 37% for the S&P 500 Index and compared with minus 55% for the S&P Financials. (Total shareholder return is return due to share price appreciation and dividends, assuming dividend reinvestment.)

We fell short of the goals we established in our 2008 operating plan for some of our key metrics, including billed business growth and cards-in-force growth. We also saw a worsening of our write-off rate with respect to our U.S. lending portfolio beyond the target we set in our 2008 operating plan and saw our relative position versus our major competitors deteriorate with respect to this metric.

We settled our private antitrust action with MasterCard, which will result in payments to us of up to $1.8 billion, subject to certain performance criteria that our U.S. Global Network Services business must meet.

We acquired and are successfully integrating Corporate Payment Services, General Electric Company s commercial card and corporate purchasing business unit.

We reached a multi-year extension of several key agreements with Delta Air Lines, including, among others, our Co-Brand Card Agreement, Membership Rewards Agreement and Card Services Agreement.

We successfully raised $6.2 billion of deposits within our brokered retail certificate of deposit (CD) program, launched in October 2008. In addition to the retail CD program, we accumulated $7.1 billion of deposits primarily by offering FDIC-insured deposits (up to a $250,000 balance) to sweep account holders at selected broker-dealer networks.

On a year-over-year basis, in 2008 net card fees grew by 12% due both to the growth in our card base up 7% to 92.4 million cards as well as the full-year impact of changes made to the pricing structure of many of our proprietary cards in the fourth quarter of 2007. This and other items reflect our premium value proposition.

We reacted quickly to the weakening economic environment by implementing a multi-year global reengineering initiative to help protect profitability in the near term.

We developed a comprehensive liquidity and funding plan to enable us to satisfy all maturing obligations and fund normal business operations for at least a 12-month period in the event that access to the secured and unsecured fixed income capital markets was completely interrupted for that length of time (excluding the potential early amortization of our securitizations trusts, which we believe is unlikely).

We received approval to become a bank holding company, which clarifies our regulatory status during a time of significant uncertainty in the financial services industry, and allows us to participate more fully in various programs the federal government has introduced or may introduce to provide financial institutions with greater access to capital during the credit crisis.

Our overall control and compliance framework as measured by the internal control and compliance rating assigned to each major business and staff group and the results of internal audits remained at high levels comparable to those ratings assigned for 2007.

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Customer goals:

We had billed business growth of 6% in our Global Commercial Services business notwithstanding the weakened global economy, and in particular, experienced strong growth in the middle market segment. We signed numerous new commercial card clients representing over $500 million in incremental purchase volume.

We continued to expand merchant coverage by making significant investments in our sales force, which has resulted in an increase in the number of locations at which our cards may be used.

We continued to execute against our Global Network Services strategy to grow our strategic partnerships with other card issuers, both within the United States and internationally, with growth in billed business of 27%, growth in cards-in-force generated by our partners of 22% and strong revenue and pre-tax income growth. We added 17 new GNS partners outside the United States, bringing the total number of GNS partners to over 125. We also continued to focus on the premium value segment of the credit and charge card markets by working with our partners to launch 130 new products aimed at these customers.

We continued to effectively support the value proposition behind the premium discount rate that we charge merchants, even in the face of continuing competitive and regulatory pressures, which resulted in a decline in the worldwide average discount rate for the year of only 0.01% versus 2007 despite the shifting mix of billed business away from travel and entertainment categories due to the economic slowdown toward everyday spend categories, which tend to have a lower discount rate.

Our performance relative to that of our peers continued to be strong. Based on our billed business growth versus that of our major network peers, we believe that, once final data become available, our share of spending on general purpose charge and credit cards will have slightly increased versus such peers in the United States and in certain of our key international markets; however, we did experience some share erosion in the last quarter of the year and continued to see share erosion in the small business segment during 2008.

We made progress in improving our customer service satisfaction levels in the United States. The results of customer satisfaction surveys showed year-over-year improvement in 21 of 23 customer satisfaction measures in the United States. We also were ranked highest in customer satisfaction among major U.S. consumer credit card issuers for the second consecutive year by J.D. Power and Associates.

Employee goals:

Despite a challenging environment we continued to maintain or improve our overall level of employee engagement, as measured by impartial survey scores.

We saw gains in 12 of the 16 dimensions measured in our annual employee survey (and no decrease in any area), against already high historical results.

We were recognized by over 30 global and local publications as a best place to work.

Summary of Actions Regarding Annual CEO Compensation

Summary of January 2009 Decisions

The following is a summary of actions undertaken by the Committee in January 2009 with respect to the annual direct compensation awarded to the Company s CEO for 2008. Direct compensation consists of base salary, AIAs and LTIAs. We believe that such information is helpful in understanding the outcomes of the decisions made by the Committee in January 2009, when it reviewed the CEO s and the Company s 2008 performance to establish values and awards for the various compensation components awarded in the annual compensation process. The results of these decisions are presented in the table below. Certain of this information is presented voluntarily to provide insight into how the Committee conceptualizes the total value of the CEO s direct compensation in respect of 2008 and 2007 performance.

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The table below differs from the Summary Compensation Table required by the SEC, which can be found on page 34, and is not a substitute for that table. One major difference is that the stock and option awards columns in the Summary Compensation Table represent the expense recognized for financial statement reporting purposes with respect to equity awards granted in the years shown and prior years. The RSA and NQSO values in the table below represent a planning estimate, based on information available to the Committee at the time of their decision, of the grant date fair value of annual compensation awards granted in January for the prior year s performance. (The table does not include the Special Grant of NQSOs made to Mr. Chenault in January 2008 (as described on page 24), as such grant was not awarded under the annual compensation framework used by the Committee). Another difference is that the Summary Compensation Table includes the PG payout, which was based on a grant decision made in prior years, while the table below shows the expected payout value of a newly-granted PG award. Also, the Summary Compensation Table includes compensation amounts based on the change in pension value and nonqualified deferred compensation earnings, as well as other items of compensation, including perquisites and other personal benefits. The table below excludes amounts attributable to these items because the Committee considers these programs in the context of its assessment of the overall benefit design and not as an element of its annual compensation decisions.

In light of the extraordinary economic circumstances of the past year, Mr. Chenault notified the Committee that he would decline an annual incentive award, given the overall business and economic environment. Although the Committee determined that the Company s performance in the context of the Service Profit Chain, and Mr. Chenault s individual performance including his leadership and accomplishments, would have merited him an annual incentive award, it determined to follow Mr. Chenault s recommendation.

Annual Direct Compensation Awarded to Mr. Chenault for 2008 and 2007 Performance

		Annual Incentive		Long-Term Incentive		
			RSU	PG	NQSO Shares	
Committee Decision Date	**Annual Base Salary**	**Cash**	**Grant Date Value**	**Expected Payout Value (1)**	**Valuation (2)**	**Total**
January 2009	$ 1,250,000 (3)	-0-	-0-	$ 8,250,000	$ 5,000,000	$ 14,500,000
January 2008	$ 1,250,000	$ 6,000,000	$ 6,000,000(4)	$ 8,636,454	$ 5,612,500	$ 27,500,000

(1) PG value shown reflects the Committee s estimate at the time of grant of the amount to be paid out in respect of the PG upon completion of the applicable performance period covered by the PG. The ultimate payout value will be determined by the Committee based on its assessment of performance as applicable for each PG. The Committee established the expected payout value of the 2009 PG award in January 2009, and in March 2009 the performance goals and corresponding payout leverage will be established by the Committee.

(2) For January 2009, the amount shown is the NQSO value that the Committee awarded to Mr. Chenault. The number of NQSO shares granted was determined based on the AXP closing stock price on the grant date, using an estimated value of 25% of the share price. For January 2008, the amount shown is the NQSO value that the Committee awarded to Mr. Chenault, using an estimated value based on the information and assumptions available to the Committee at the time.

Each NQSO is cumulatively exercisable in four equal annual installments, starting with the first anniversary of the applicable grant date, and each has a ten-year term. For 2009, the NQSO had an exercise price of $16.71 per share, and for 2008, the NQSO had an exercise price of $49.13 per share, in each case the AXP closing stock price on the grant date.

(3) At a Committee meeting held on February 9, 2009, Mr. Chenault recommended, and the Committee agreed, that the annual base salary of each the NEOs (including himself) and other senior management of the Company be reduced 10%, effective March 30,

2009, as part of a series of actions to reduce the Company s cost structure. Accordingly, effective such date, Mr. Chenault s base salary will be reduced to $1,125,000. This action for the CEO and the other NEOs presently is intended to be in place only for the balance of 2009, and the Committee will determine appropriate future action with a consideration of economic and market conditions in the months ahead.

(4) Value of RSUs that the Committee awarded in January 2008 in recognition of 2007 performance will vest after three years of continuous employment, subject to achievement of a 15% or more average annual ROE for the period.

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Portfolio Grant 2006-2008 Payout The table below sets forth (i) the performance levels established in early 2006 for PG06-08 (also known as PG-XVII) that would generate a target level of maximum deductible value for the 2006-2008 performance period and (ii) the actual results achieved by the Company during such performance period as certified by the Committee in January 2009:

PG06-08	Weighting	Target Level Required to Achieve Maximum Deductible Value	Actual Company Performance
Average Annual EPS	24%	$1.15 per share	$2.93 per share
Average Annual Revenue	18%	$20 billion	$28.05 billion
Average Annual ROE	18%	13%	31.4%
Total Shareholder Return	40%	Equal to S&P Financial Index	-26.2% (i.e., 0.9 percentage points **lower** than S&P Financial Index)

The Committee used negative discretion to set actual payouts below the maximum deductible values generated by these results. In determining the actual payout, the Committee considered overall financial results and strategic accomplishments over the three-year performance period, including the impact of the rapidly deteriorating global economic environment in 2008, and applied qualitative judgment to award a final payout of 150% of the target awards set at the time of grant in early 2006, as compared to a final payout of 230% the prior year. The PG06-08 awards were paid out in cash in February 2009. Mr. Chenault s total earned award was $6,112,500, which was 150% of his target award of $4,075,000. This cash payment was higher than the previous year s PG payout, despite a lower percentage payout as compared to last year s 230%, because: 1) Mr. Chenault s target award increased from the prior year and 2) this year s award was made in cash, and last year s award was made partially in cash ($500,000) and partially in an RSA awarded in January 2008 with a grant date value of $3,524,979 (this RSA was subject to continued employment and a 2008 ROE of 15% or more, and vested in January 2009). The Committee decided to pay this year s award entirely in cash to reflect the desired mix of pay components. The Committee was limited in the portion of last year s award that could be paid in cash by the terms of the 1998 Incentive Compensation Plan (the 1998 Plan), the plan under which the PG covering 2005-2007 was awarded, which limited the aggregate amount of cash incentive compensation (including AIA and PG payouts) that could be paid to an employee in a given year. That limit did not apply this year.

January 2008 NQSO Awards

Certain LTIA awards granted in 2008 to Mr. Chenault were made as part of the Committee s assessment of his 2007 performance, and to provide additional incentive and reward for continuing a high level of performance. This included Mr. Chenault s January 2008 annual tranche NQSOs, which remained at the same level as those granted to him in January 2007 (625,000 shares), and had an exercise price of $49.13 per share.

In addition to his annual tranche grant, the Committee approved a special NQSO grant in January 2008, consisting of options to purchase 1,375,000 shares of the Company s common stock at an exercise price of $49.13 per share. As previously disclosed, the special NQSO grant was the second of two special grants made to Mr. Chenault to provide additional incentive and reward for a continuing high level of performance. At its meeting on November 30, 2007, the Committee also granted to Mr. Chenault an NQSO to purchase 1,375,000 shares at an exercise price of $58.98 per share, thereby making a total of 2,750,000 shares of the Company s common stock subject to the grants (collectively, the Special Grant). The Committee determined the size of the Special Grant after considering the value of Mr. Chenault s outstanding LTIAs.

The NQSOs comprising the Special Grant will generally not become exercisable prior to January 1, 2014 and will vest only if the Company meets performance levels with respect to (i) growth in diluted earnings per share from continuing operations, (ii) revenue growth, (iii) average annual return on common equity and (iv) annual total shareholder return as compared with annual total shareholder return of the S&P 500 Index, in each case during the six-year period from January 1, 2008 through December 31, 2013 (the Performance Period). If none of the performance metrics is satisfied during the Performance Period, Mr. Chenault will not vest in any NQSOs under the Special Grant. Given Company performance to date, we do not expect any NQSOs under the Special Grant to vest. Additional information regarding the Special Grant, including the target levels of performance required for vesting under each of the metrics, may be found on pages 27-29 of our proxy statement, dated March 11, 2008, which was filed with the SEC on March 14, 2008.

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Summary of Actions Regarding Annual NEO Compensation (below CEO)

Base Salaries

2008 Base Salaries Base salaries for 2008 for each of the NEOs remained at the same levels as those in place at the end of 2007 after a review of competitive market data and individual contributions. Salary information for the NEOs can be found in the Summary Compensation Table on page 34.

2009 Base Salaries In an effort to reduce costs in light of the ongoing extraordinarily difficult business environment, in February 2009 Mr. Chenault recommended and the Committee agreed to reduce the 2009 base salaries for the NEOs by 10% effective March 30, 2009. This action presently is intended to be in place only for the balance of 2009, and the Committee will determine appropriate future action with a consideration of economic and market conditions in the months ahead.

Annual Incentive Awards

In January 2008, the Committee established a grid for each NEO that specified maximum AIA values that would be deductible for each financial performance level during 2008 under IRS Million Dollar Cap requirements. The highest maximum deductible value would be generated by the Company s achievement of the combination of either:

- 2008 diluted EPS of at least $3.40 and ROE of at least 33% (the low end of our on-average, over-time objective); or

- 2008 diluted EPS of at least $3.80 (reflecting a 13% increase over 2007 diluted EPS) and ROE of at least 30%.

In determining actual AIA payouts for 2008 performance, the Committee used its discretion to set award payouts at or below (i.e., negative discretion) the maximum deductible value for each of the NEOs.

The Committee determined that the Company s performance and the individual performance of the NEOs below CEO merited each of them a cash AIA in respect of 2008 performance, although in each case it was a smaller award than the total AIA awarded in respect of 2007 performance, which included cash and RSA or RSU value. This determination took into account each NEO s business unit performance against its shareholder, customer and employee goals, and also took into consideration talent and retention considerations. The table below shows components of the AIA values awarded to Messrs. Gilligan, Kelly, Henry and Squeri in respect of 2008 and 2007 performance:

		Annual Incentive Award		
			RSA/RSU	
Name	Performance Year	Cash	Grant Date Value	Total Annual Incentive Award
E.P. Gilligan	2008	$ 3,500,000	-0-	$ 3,500,000

	2007	$ 3,206,000	$ 1,068,971	$ 4,274,971
A.F. Kelly, Jr.	2008	$ 3,000,000	-0-	$ 3,000,000
	2007	$ 3,625,000	$ 1,124,979	$ 4,749,979
D.T. Henry	2008	$ 2,100,000	-0-	$ 2,100,000
	2007	$ 2,156,000	$ 718,968	$ 2,874,968
S.J. Squeri	2008	$ 1,650,000	-0-	$ 1,650,000
	2007	$ 1,575,000	$ 499,996	$ 2,074,996

As shown above, for 2008, the Committee decided to pay AIAs that were awarded to the NEOs in February 2009 entirely in cash, to reflect the desired mix of pay components. The amounts paid in cash are shown under Bonus in the Summary Compensation Table found on page 34. For 2007, amounts paid in the form of RSAs or RSUs for retention and future incentive purposes are reported in footnote 2 to the Summary Compensation Table on page 39 of our proxy statement dated March 11, 2008, which was filed with the SEC on March 14, 2008.

Long-Term Incentive Awards

January 2008 NQSO Awards In January 2008, the Committee approved annual tranche NQSOs for the NEOs. Mr. Squeri s annual tranche NQSO award of 130,000 shares remained at the same level as that granted to him in January 2007. The annual tranche NQSO levels for each of Messrs. Kelly, Gilligan and Henry of 200,000 shares, 190,000 shares and 150,000 shares, respectively, reflected increases over the grants made to them in January 2007, in light of their strong performance and promotion into their current roles during 2007.

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Information regarding each of the NQSO grants made to the NEOs during 2008 (including Mr. Chenault) can be found in the Grants of Plan-Based Awards table on page 38. In accordance with SEC rules, the Option Awards column of the Summary Compensation Table reports for each NEO the total expense recognized by the Company in 2008, 2007 and 2006, as applicable, for his outstanding NQSOs (including the ratable expense for all NQSOs awarded during the applicable year) that have not been fully expensed prior to 2008, 2007 or 2006, as the case may be.

January 2008 RSA/RSU Awards In January 2008, the Committee granted three RSAs and one RSU to NEOs below CEO for 2007 performance (in addition to cash AIA payments) and as an incentive for future performance, which are reported in the Grants of Plan-Based Awards table on page 38. These awards vest after three years, subject to continued employment and a 15% or more average annual ROE during the vesting period.

Information regarding each of the RSA and RSU grants made to the NEOs during 2008 (including Mr. Chenault) can be found in the Grants of Plan-Based Awards Table on page 38. In accordance with SEC rules, the Stock Awards column of the Summary Compensation Table reports for each NEO the total expense recognized by the Company in 2008, 2007 and 2006, as applicable, for his outstanding RSAs and RSUs (including the ratable expense for all RSAs or RSUs awarded during the applicable year) that have not been fully expensed prior to 2008, 2007 or 2006, as the case may be. The RSAs and RSUs, which were awarded as payment in recognition of 2005-2007 performance, were structured to provide additional executive retention and to comply with the Million Dollar Cap provisions.

PG 2006-08 Payout In January 2009, the Committee determined the payout percentage for PG 06-08 awards to NEOs to be 150% of target value. See page 24 for information regarding results used in determining PG 2006-2008 Payouts.

PG 2008-2010 Awards In January 2008, the Committee granted new PG 08-10 awards to the NEOs for the 2008-2010 performance period as reported in the Grants of Plan-Based Awards table on page 38. The maximum deductible values for particular levels of performance are shown under the caption *Estimated Future Payouts Under Non-Equity Incentive Plan Awards* in the Grants of Plan-Based Awards table. Actual payout values will be determined by the Committee exercising its negative discretion.

PG 2008-2010	**Weighting**	**Threshold Deductible Payout Value**	**Target Deductible Payout Value**	**Maximum (Highest) Deductible Payout Value**
Average Annual EPS	25%	$0.95	$1.50	$3.80
Average Annual Revenue	25%	$20 billion	$22 billion	$30 billion
Average Annual ROE	25%	10%	15%	33%
Company TSR Relative to S&P 500 TSR	25%	Not less than 9 percentage points below	Equal	13 percentage points above

Compensation Governance Policies

Our Policy Regarding the Timing of Equity Award Grants

Under the Company s policy regarding the timing of equity award grants, the Committee makes annual tranche grants of NQSOs, RSAs and RSUs, as well as new PG awards, in January of each year at a meeting held three business days after the Company s issuance of annual financial results for the then-recently completed fiscal year. In this regard, the Committee granted NQSOs, RSAs and RSUs at a meeting held on January 31, 2008, and more recently, at a meeting held on January 29, 2009.

In addition to the annual tranche grants, LTIAs (including PGs) may be granted at other times during the year to new hires and employees receiving a promotion and in other special circumstances. Our policy is that only the Committee may make such off-cycle grants to persons subject to the reporting requirements of Section 16 under the Securities Exchange Act of 1934 (Section 16 Officers). The Committee has delegated the authority to the CEO and the Executive Vice President-Human Resources, acting jointly, to make off-cycle grants to certain non-Section 16 Officers, subject to guidelines established by the Committee. Under our policy, the Committee and such authorized officers may make and approve off-cycle grants of equity awards (and PGs) only on the last trading day of February, April, May, July, August, October and November of each year, as well as the annual tranche grant date each year, as described above, with the grant date of such awards being the date of the approval.

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It is also our policy that the exercise price of option grants be equal to the closing price reported for our stock on the NYSE on the grant date. Generally, the methodology used to determine the number of shares for a given dollar value of NQSOs, RSAs or RSUs to be awarded is also based on the closing price of our stock on the grant date.

Stock Ownership Policy

Our stock ownership policy requires approximately 140 senior executives, including the NEOs, to have a substantial ownership stake in Company shares, which we believe helps to foster a focus on medium- and long-term growth and further links their interests with those of our shareholders.

The policy has these key features:

- Participants are expected to own Company shares with a target value of a multiple of their base salary, ranging from one times base salary for certain participants to 10 times for our CEO. The other NEOs have a target value equal to three or four times their base salary. Ownership includes certain owned shares and shares or share units in Company benefits programs.
- If a participant has not yet reached the applicable target ownership requirement, he or she must retain 75% of the net after-tax shares acquired from any NQSO exercise or vesting of an RSA or RSU award.
- After achieving their stock ownership targets, NEOs and other selected senior executives must retain for at least one year 50% of the net after-tax shares acquired from any NQSO exercise or vesting of an RSA or RSU award.
- All NEOs are in compliance with the stock ownership/holding requirements.

To further encourage a focus on the long term, we prohibit employees from engaging in hedging and other derivative transactions (other than the exercise of employee stock options) with respect to our stock.

Policies Regarding Recoupment of Incentive Compensation

To protect the shareholders interests, we have Policies pursuant to which we will, to the extent practicable, seek to recover performance-based compensation from any executive officer and certain other members of senior management in those circumstances where (i) the payment of such compensation was based on the achievement of financial results that were subsequently the subject of a restatement, (ii) in the Board s view the employee engaged in fraud or misconduct that caused or partially caused the need for the restatement, and (iii) a smaller or no payment would have been made to the employee based upon the restated financial results. These Policies have been superseded in certain respects as a result of the Company s participation in the United States Department of the Treasury s Troubled Asset Relief Program Capital Purchase Program (the CPP), which contains numerous provisions relating to executive compensation matters. For a discussion of certain of the effects of our participation in the CPP on compensation matters, see pages 31-32.

Detrimental Conduct

To help protect our competitive position, we have a detrimental conduct policy, covering approximately 530 executives (including the NEOs). Each covered executive is required to sign an agreement that requires him or her, among other provisions, to forfeit the pre-tax proceeds from some or all of his or her compensation received under the 1998 Plan and the 2007 Incentive Compensation Plan (the 2007 Plan), including RSAs (and dividends paid), NQSOs, RSUs (and dividend equivalents paid), PGs awarded under either plan and, in the case of executive officers, all of his or her AIAs that were received up to two years prior to employment termination, if he or she engages in conduct that is detrimental to the Company during the first year following employment termination. Detrimental conduct includes, for example, working for certain competitors, soliciting our customers or employees, or disclosing our confidential information. The detrimental conduct policy is in addition to the obligations arising under our Code of Conduct.

Elements of Post-Employment and Other Compensation

Severance Benefits

We provide severance benefits on uniform terms and conditions under our Senior Executive Severance Policy and Plan, which applies to approximately 140 executives including the NEOs. We believe that the Policy, together with our ongoing programs, helps us remain competitive in the marketplace for executive talent and implement severance arrangements consistently. In addition, we believe that the Policy enables our executives to consider corporate transactions that are in the best interests of the shareholders without undue concern over whether the transactions may jeopardize their own employment and financial situation. The Committee does, however, review the Policy from time to time to confirm that the Policy is consistent with prevailing market practices and the Committee s view regarding executive severance.

Benefits are available under the Senior Executive Severance Policy in the event of a termination of employment as a result of a reduction in work force, position elimination, office closing, job relocation beyond a certain distance, performance, mutually agreed resignation, or certain terminations within two years following a change in control of the Company.

The amount of separation pay for NEOs is two years of annual compensation (base salary and most recent AIA). Separation pay is generally paid in bi-weekly installments, except that payment is made in a lump sum in the event of certain terminations within two years following a change in control of the Company, as described below. During the separation pay period, NEOs may continue to be covered under certain of our compensation, welfare and benefit plans, and payment of any required employee contribution is deducted from the separation pay in accordance with the employee s previously elected benefit coverage.

In order to receive benefits under the Senior Executive Severance Policy, an employee must sign an agreement that includes provisions relating to, for example, non-competition, non-solicitation of customers and employees, confidentiality and non-disparagement. The agreement also includes a full release of claims.

Our policy regarding the provision of severance benefits has been superseded in certain respects as a result of the Company s participation in the CPP. For a discussion of certain of the effects of our participation in the CPP on compensation matters, see pages 31-32.

Retirement Benefits

NEOs earn retirement benefits under the American Express Retirement Savings Plan (the RSP) and the American Express Supplemental Retirement Plan (the SRP). The NEOs also continue to earn interest credits on outstanding account balances under the American Express Retirement Plan (although such plan was frozen during 2007 and no new contributions are accruing under such plan) and under prior deferred compensation programs. Taken together, these programs are intended to provide competitive retirement income that is linked to Company performance and longer service.

Retirement Savings Plan

The RSP is a broad-based, U.S. tax-qualified savings plan (commonly referred to as a 401(k) plan) providing for employer and employee contributions. On a before-tax basis, eligible employees, including the NEOs, can generally contribute an amount up to the limit prescribed by the Internal Revenue Service, which for 2009 is $16,500. Participants who are, or will be, at least age 50 during the year will also be permitted to contribute additional catch-up contributions of up to $5,500 for 2009.

We generally match 100% of before-tax employee contributions up to 5% of plan compensation for eligible employees in the regular benefit level (including the NEOs). Matching contributions made for employees hired prior to April 1, 2007, generally fully vest upon contribution. Matching contributions made for most employees hired on or after April 1, 2007 will generally vest on the third anniversary of each eligible employee s service with the Company.

We may also contribute an annual discretionary profit-sharing amount for eligible employees (including the NEOs) based on our annual performance. The range for such annual discretionary profit-sharing contributions is 0-5%. As a result of our performance in 2008, the Board approved a profit-sharing contribution of 2.25% of plan compensation for eligible employees in the regular benefit level (including the NEOs). Profit-sharing contributions generally vest on the third anniversary of each eligible employee s service with the Company.

For our employees who commenced their employment prior to April 1, 2007, in light of freezing the Retirement Plan, we generally also contribute at the end of each quarter an additional conversion contribution of up to 8% of quarterly plan compensation for eligible employees in the regular benefit level (including the NEOs). The actual percentage of such conversion contributions for individual participants is based on their projected age and service as of December 31, 2008. The amount of the conversion contributions for the NEOs is as follows: Messrs. Chenault, Gilligan and Henry: 6.0% and Messrs. Kelly and Squeri: 3.75%. Company conversion contributions generally vest on the third anniversary of each eligible employee s service with the Company.

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In February 2009, we announced to employees that we will temporarily suspend Company contributions to the RSP effective March 30, 2009. This includes suspending both Company matching contributions for all employees, as well as conversion contributions for all employees other than those who are retirement eligible (those participants who will attain age 55 with ten years of service as of December 31, 2009). Messrs. Chenault and Henry are retirement eligible and will continue to receive conversion contributions.

Retirement Plan

The Retirement Plan is a broad-based, U.S. tax-qualified cash balance pension plan. In January 2007, we amended the Retirement Plan, effective on or about June 23, 2007, to discontinue future benefit accruals (other than crediting interest to outstanding account balances) as of such date. The Retirement Plan is more fully described under *Retirement Plan Benefits* on page 44.

Supplemental Retirement Plan

U.S. tax law limits the amount of benefits that we can provide under our tax-qualified plans. We maintain the SRP, which is an unfunded, nonqualified arrangement, intended to provide NEOs and other affected employees with the same benefits that they would have received under the RSP (and previously under the Retirement Plan) if those limits did not apply and if certain other items of compensation were includable in calculation of benefits under our tax-qualified plans. Generally, participation in the SRP is limited to employees who have compensation in excess of tax-qualified plan limitations. Each SRP participant has a Retirement Plan-related account for benefits that cannot be provided under the Retirement Plan and an RSP-related account for benefits that cannot be provided under the Retirement Savings Plan.

Beginning with 2008, as part of planning for retirement and other long-term financial needs, we provided NEOs and certain other U.S. paid senior level employees with an annual opportunity to defer receipt of a portion of their base salary, annual incentive award and PG award payout under the SRP, subject to an annual deferral maximum of one-times base salary. The amounts deferred are credited to SRP deferral-benefits accounts, which are subject to continuous employment, ROE performance and other requirements and limits.

SRP Retirement Plan-related account benefits are more fully described under *Retirement Plan Benefits* on page 44. SRP RSP-related account benefits, SRP Deferral account benefits and benefits under prior deferral programs are more fully described under *Nonqualified Deferred Compensation* on page 46.

Change in Control Policies

We have adopted change in control (CIC) policies that are designed to help us attract key employees, preserve employee morale and productivity, and encourage retention in the face of the potential disruptive impact of an actual or potential CIC of the Company. In addition, the CIC policies ensure that the interests of our executives will be materially consistent with the interests of our shareholders when considering corporate transactions. Certain of the provisions under these policies result from a CIC in and of itself (single trigger provisions), while other provisions under these policies result from both a CIC and a subsequent termination of the employment of the NEO or participant (double trigger provisions).

Under our plans and policies, a CIC generally means any of the following occurs:

(1) any individual, entity or group acquires 25% or more of our outstanding common shares or otherwise acquires 25% or more of the combined voting power of the outstanding securities entitled to vote in the election of directors, subject, in each case, to certain exceptions;

(2) a majority of our directors are replaced in specific circumstances;

(3) a merger, reorganization, consolidation or other similar transaction (each a Business Combination) involving our Company is consummated other than: (a) a Business Combination that would result in the voting securities of the Company outstanding immediately prior to the Business Combination continuing to represent at least 50% of the voting power of the securities of the Company outstanding immediately after such Business Combination, (b) a Business Combination in which no person is or becomes the beneficial owner of securities of the Company representing 25% or more of the combined voting power of the Company s then-outstanding securities or (c) a Business Combination that results in a majority of the Company s Board of Directors retaining their director positions after such Business Combination;

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(4) a sale of all or substantially all of the assets of the Company (subject to certain exceptions similar to those described in (3) above); or

(5) a shareholder-approved liquidation or dissolution of the Company.

Single Trigger Change in Control Consequences. The occurrence of a CIC has the following consequences, which are designed to ensure that our NEOs (and other participants) are not deprived of the benefits that they earned and reasonably should expect to receive if there were no CIC.

We are required to contribute assets to a trust to provide for the payment of benefits under our Supplemental Retirement Plan and for the payment of benefits under our U.S. deferred compensation programs that were not earned and vested as of December 31, 2004.

For amounts under our U.S. deferred compensation programs that were earned and vested as of December 31, 2004, we credit two years of interest to the accounts of participants based on the rate in effect for the preceding year, and pay out participants account balances in these programs.

We immediately vest outstanding unvested NQSOs, RSAs and RSUs.

Double Trigger Change in Control Consequences. Upon any termination of the employment of an NEO within two years following a CIC, NQSOs generally will remain exercisable for at least 90 days after the termination date.

Set forth below are the consequences if there is a covered termination of the employment of an NEO within two years following a CIC. A covered termination is an involuntary actual or constructive termination of employment. An NEO or other participant would be deemed to have a constructive termination of employment if we reduce base salary, materially reduce the total value of annual incentive and long-term incentive award opportunities, relocate the NEO s workplace beyond a certain distance or assign the employee duties materially inconsistent with prior duties.

We will pay a pro rata AIA for the pre-termination portion of the year in which termination occurs, based upon the average of the employee s preceding two AIA awards prior to the CIC.

We will immediately vest and pay out PG awards on a pro rata basis, based on the average payout percentage of the employee s two preceding PG award payouts.

Subject to compliance with Section 409A of the Internal Revenue Code, we will pay the separation pay benefits under our Senior Executive Severance Policy in a lump sum instead of in installments.

U.S. health insurance benefits will continue for up to two years, generally on the same basis as prior to the termination of employment.

We will transfer certain split-dollar insurance policies, providing life insurance coverage equal to four times annual base salary up to a maximum of $1.5 million, to participating NEOs and senior executives.

Change in Control Excise Tax Reimbursement and Gross-Up. Upon a CIC or any termination of the employment of an NEO or senior executive within two years following a CIC, we will reimburse the employee for any CIC excise tax due and provide a tax gross-up payment.

Our policies regarding payments upon a CIC are affected by the Company s participation in the CPP. For a discussion of certain of the effects of our participation in the CPP on compensation matters, see pages 31-32.

Perquisites

We provide limited types of perquisites and other personal benefits to our NEOs which we believe are reasonable and consistent with our overall compensation program to better enable the Company to attract and retain superior employees for key positions, and for security and competitive reasons. We have adopted a policy that identifies the comprehensive list of perquisites and other personal benefits available to our executive officers (including the NEOs). Other than as specifically identified in the policy, executive officers of the Company are not entitled to any other perquisite or personal benefit except as may be otherwise approved by the Chair of the Committee.

The approved perquisites and personal benefits include, in the case of one NEO assigned overseas (Mr. Gilligan), certain housing and living expenses and tax reimbursements that arise from the assignment. These amounts are a significant component of the total compensation reported in the Summary Compensation Table. Mr. Gilligan receives the majority of such benefits under our international assignment policy, which is applicable to all employees serving on international assignment and is designed to minimize any financial detriment or gain

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to the employee from the assignment. The value of the perquisites and benefits received by Mr. Gilligan under this policy reflects, among other things, his job level in the Company and the location of his international assignment (London).

We have maintained a security policy that requires the Company s CEO to use Company-owned aircraft and automobiles for business and personal travel. The incremental cost of his use of Company-owned aircraft and automobiles for personal travel, as well as other security measures, is included as perquisites in the Summary Compensation Table below. We also provide a local transportation allowance to our NEOs other than Mr. Squeri, and a cash allowance to all NEOs in lieu of other competitive perquisites.

Effective January 1, 2008, we eliminated tax reimbursements relating to perquisites for NEOs except for those tax reimbursements and tax gross-ups relating to international assignments and relocations, because we view these situations as being for the benefit of the Company.

Death, Disability and Retirement

Upon the death or disability of an NEO (or other participant), unvested NQSOs, RSAs, RSUs and retirement benefits fully vest, and the NQSOs remain outstanding and exercisable for up to five years, subject to the original expiration date. In addition, each outstanding PG award vests and pays out pro rata based on service, and if the NEO is at least 60 years old and has been employed by us for ten or more years (including actual and deemed service), all or a portion of the balance of the PG award vests and is paid.

NEOs (and most other participants) who are between 55 and 59 years old and who are credited with ten or more years of employment service with us (including actual and deemed service) are eligible to retire. For these retirement-eligible NEOs, upon employment termination, unvested RSAs and RSUs that have been outstanding for more than two years will fully or partially vest, PG awards that have been outstanding for more than one year will vest pro rata, and 50% of unvested NQSO shares granted in or after January 2005 that have been outstanding more than one year will vest according to the original vesting schedule. If the NEO is at least 60 years old with ten or more years of service (including actual and deemed service), an additional portion of his or her unvested NQSOs, RSUs and PG awards that would otherwise be forfeited will also vest immediately or according to the original vesting schedule. Retired NEOs may exercise available NQSOs through the end of their original term.

IRS Million Dollar Cap/CPP Limitation on Deductibility

U.S. tax law limits the annual tax deduction on compensation we pay to certain NEOs to $1,000,000 unless the compensation is performance-based (as determined under the Code and related regulations). It has been our general policy to attempt to structure AIA and LTIA compensation as qualified performance-based compensation in order to allow us to fully deduct the compensation. However, the Committee may make payments that are not fully deductible to ensure competitive levels of total compensation for our executive officers or, in its judgment, may make payments that are otherwise necessary or appropriate to achieve our compensation objectives. For the 2008 tax year, we expect under the U.S. tax law limits to be entitled to deduct all AIA and LTIA compensation, except for certain awards granted before an executive became an executive officer; however, interpretations of and changes to applicable tax laws may affect the deductibility of such compensation.

Pursuant to the terms and conditions of the CPP, during the period in which the Treasury Department holds our preferred shares and warrants, the annual tax deduction on compensation that we pay to the NEOs will be limited to $500,000 per NEO beginning with amounts paid in 2009 regardless of whether compensation is performance-based. We continue to expect that our NEOs compensation will be significantly in excess of $500,000 per year. The Committee weighed the CPP s further limitation on deductibility against the benefits to the Company of its participation in the CPP and its competitively compensating its executive officers and concluded that given the unprecedented economic and business environment, participation in the CPP and the importance of retaining management outweighed the expected foregone tax deductions during the Treasury Department s holding period. See below for a description of the impact of our participation in CPP.

Certain Implications of Our Participation in CPP

In January 2009 we participated in the CPP by issuing preferred stock and warrants to the U.S. Department of the Treasury (the Treasury Department). Like other participants in the program, we agreed, as a condition of our participation, to comply with certain provisions relating to executive compensation matters, which were contained in the Emergency Economic Stabilization Act of 2008 (EESA) and rules promulgated by the Treasury Department. As a result, we adopted a policy regarding certain of our compensation programs to ensure

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compliance with the EESA provisions. Pursuant to the American Recovery and Reinvestment Act of 2009 (ARRA), which was enacted in mid-February, the executive compensation provisions of EESA were amended to expand their scope, as well as the matters that they address. ARRA also contained additional provisions regarding executive compensation that were not originally included in EESA. Below is a brief summary of certain of the executive compensation provisions of EESA, as amended by ARRA. It is expected that the Treasury Department will promulgate rules to provide clarity and specificity regarding these provisions to guide CPP participants in their compliance with such provisions. The Committee anticipates making appropriate modifications to our overall compensation framework and certain compensation plans in response to the statutory requirements of EESA and emerging regulatory requirements, while at the same time attempting to maintain the overall objectives of structuring our compensation plans to attract and retain the best talent and promote the Company s growth.

Restriction on Incentive Compensation

The ARRA provides that for so long as the Treasury Department holds the preferred shares of a participant in the CPP, the CPP participant will be prohibited from paying or accruing any bonus, retention award or incentive compensation to an NEO and at least the next 20 most highly compensated employees unless such bonus, retention award or incentive compensation (i) is in the form of long-term restricted stock that does not fully vest during the period in which the Treasury Department holds the CPP participant s preferred shares and (ii) has a value in an amount that is not greater than one-third of the total amount of annual compensation of the applicable NEO or other employee receiving such long-term restricted stock. This provision does not prohibit bonus payments required to be paid under arrangements in place prior to the passage of the ARRA, as such arrangements are determined by the Treasury Department.

Recoupment Policy

Like other participants in the CPP, we agreed to expand the standards under which we may recoup performance-based compensation from our NEOs. Accordingly, to the extent that any bonus, retention award or incentive compensation paid to any NEO during the period in which the Treasury Department holds our preferred shares was based on statements of earnings, revenues, gains or other criteria that are later found to be materially inaccurate, the Company is required to recover such compensation from the affected NEO or other employee. This standard is applicable regardless of whether the material inaccuracy is triggered by an accounting restatement, and covers not only material inaccuracies relating to financial reporting, but also material inaccuracies relating to other performance metrics used to award bonuses and other incentive compensation. Additionally, this standard is applicable regardless of whether the NEO personally engaged in the conduct that caused or gave rise to the material inaccuracy. (The ARRA has amended this provision to include the NEOs and the Company s next 20 most highly compensated employees.)

Severance and Golden Parachutes

Under the terms of the CPP, for so long as the Treasury Department holds a CPP s participant s preferred shares, it is prohibited from making any payment to a NEO and any of the next five most highly-compensated employees for departure from the Company for any reason, except for payments for services performed or benefits accrued.

Risk Assessment

Under the terms governing our participation in the CPP, the Committee is required to review the incentive compensation arrangements for the Company s senior executive officers to ensure that these arrangements do not encourage unnecessary and excessive risks that threaten the value of the Company. In January 2009, the Committee met with the Company s Chief Risk Officer to review the Company s Enterprise Risk framework (which is periodically reviewed with the Board s Audit Committee) and to discuss short-term and long-term risks that might impact business results. Within that context, the Committee reviewed the Company s incentive compensation arrangements and identified features that would discourage senior executive officers from taking risks that are unnecessary or excessive. These features included incentive awards that spanned different timeframes (annual, mid-term and long-term) and depended on performance against a variety of financial and non-financial metrics, including compliance and control, as well as policies related to stock ownership, net share holding requirements and recoupment of awards, and broad Committee discretion to determine awards. The Committee s certification that it has reviewed the senior executive officers incentive compensation arrangements in light of business risks may be found on the following page. ARRA requires that the Committee meet twice annually regarding risk review so long as Treasury s preferred shares are outstanding.

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Report of the Compensation and Benefits Committee

The Compensation and Benefits Committee has reviewed and discussed the Compensation Discussion and Analysis with management. Based on such review and discussions, the Committee recommended to the Board of Directors, and the Board approved, that the Compensation Discussion and Analysis be included in this Proxy Statement.

The Compensation and Benefits Committee certifies that it has reviewed with the Chief Risk Officer the NEO incentive compensation arrangements and has made reasonable efforts to ensure that such arrangements do not encourage NEOs to take unnecessary and excessive risks that threaten the value of the financial institution.

COMPENSATION AND BENEFITS COMMITTEE

Jan Leschly, Chairman

Peter Chernin

Richard A. McGinn

Edward D. Miller

Robert D. Walter

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Summary Compensation Table

The following table summarizes the compensation of our named executive officers (NEOs) for the fiscal year ended December 31, 2008. Our NEOs are our Chief Executive Officer, Chief Financial Officer and the three other most highly compensated executive officers as determined by their total compensation in the table below (excluding the amount in the column captioned Change in Pension Value and Nonqualified Deferred Compensation Earnings in accordance with SEC rules).

The Summary Compensation Table presents compensation information in a standardized format pursuant to SEC rules, which, among other things, require us to report the expense that we recognize each year in our financial statements in respect of NQSOs, RSAs and RSUs that were granted to each NEO over a multi-year period.

Executives do not realize the value of equity-based awards until the awards mature and/or are exercised. The actual value that an NEO will realize from such awards is determined by future Company performance and share price, and may be significantly lower than the amounts indicated in the table, which represent the expense recognized in respect of such awards.

For example, the exercise prices for those options whose expense is reflected in the Summary Compensation Table range from $45.58 to $60.95. The closing price per share of our common stock on March 12, 2009 was $13.15. In addition, the amounts shown for Mr. Chenault under Option Awards include expense recognized in connection with the Special Grant, the vesting of which is subject to meeting various performance requirements. Given Company performance to date, we do not expect any option awards under the Special Grant to vest.

A summary of the Committee decisions on the annual direct compensation awarded to our Chief Executive Officer in respect of 2008 performance, including the Committee s decision regarding his NQSO grant and its decision not to award him a cash bonus or any RSAs or RSUs, can be found on pages 22-24.

Summary Compensation Table (1)

Name and Principal Position	Year	Salary ($)	Bonus ($)(2)	Stock Awards ($)(3)	Option Awards ($)(3)	Non-Equity Incentive Plan Compensation ($)(4)	Change in Pension Value and Non-Qualified Deferred Compensation Earnings ($)(5)	All Other Compensation ($)(6)	Total ($)
K.I. Chenault	2008	$ 1,250,000	$ 0	$ 10,129,931	$ 7,985,934	$ 6,112,500	$ 640,711	$ 1,208,242	$ 27,327,318
Chairman and Chief	2007	$ 1,238,461	$ 6,000,000	$ 6,476,202	$ 8,288,342	$ 500,000	$ 2,671,958	$ 907,945	$ 26,082,908
	2006	$ 1,100,000	$ 6,000,000	$ 5,131,099	$ 12,527,610	$ 500,000	$ 2,745,040	$ 988,450	$ 28,992,199
Executive Officer									
E.P. Gilligan	2008	$ 825,000	$ 3,500,000	$ 2,604,060	$ 3,314,404	$ 1,125,000	$ 67,388	$ 4,364,775	$ 15,800,627
Vice Chairman	2007	$ 759,615	$ 3,206,000	$ 1,636,972	$ 2,634,900	$ 1,414,500	$ 446,178	$ 3,241,012	$ 13,339,177
	2006	$ 575,000	$ 1,800,000	$ 846,709	$ 1,933,104	$ 1,183,050	$ 379,415	$ 3,598,593	$ 10,315,871
A.F. Kelly, Jr.	2008	$ 850,000	$ 3,000,000	$ 2,784,569	$ 3,417,547	$ 1,125,000	$ 86,226	$ 270,134	$ 11,533,476
President	2007	$ 771,154	$ 3,625,000	$ 1,771,091	$ 2,685,830	$ 1,414,500	$ 455,969	$ 316,406	$ 11,039,950

	2006	$ 575,000	$ 2,000,000	$ 1,049,907	$ 1,985,640	$ 1,218,900	$ 439,783	$ 191,435	$ 7,460,665
D.T. Henry	2008	$ 625,000	$ 2,100,000	$ 438,241	$ 2,081,419	$ 300,000	$ 65,304	$ 250,342	$ 5,860,306
Executive Vice President	2007	$ 411,192	$ 2,156,000	$ 360,663	$ 723,161	$ 460,000	$ 226,337	$ 183,166	$ 4,520,519
and Chief Financial Officer									
S.J. Squeri Executive Vice President, Corporate Development and Chief Information Officer	2008	$ 600,000	$ 1,650,000	$ 291,658	$ 2,799,549	$ 675,000	$ 55,873	$ 180,621	$ 6,252,701

(1) Amounts shown are not reduced to reflect the NEO s elections, if any, to defer receipt of salary, bonus or non-equity incentive plan compensation under our deferred compensation programs.

(2) The amounts in this column reflect AIA cash payments made for annual performance under our 2007 Plan, our 1998 Plan or our management Annual Incentive Plan, as applicable.

(3) The amounts in these columns reflect stock and option awards that were granted over a multi-year period in respect of the executive s performance during years prior to 2008. The dollar amounts represent the expense recognized for financial statement reporting purposes with respect to the year ended December 31, 2008. Pursuant to SEC rules, the amounts shown exclude the impact of estimated forfeitures related to service-based vesting conditions.

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NEOs do not receive any cash payments upon the grant of stock and option awards. The amounts shown reflect our accounting expense for these awards and are not necessarily indicative of the value that will be realized by the NEOs upon the sale of any shares received after the vesting of RSAs or RSUs or the exercise of NQSOs. With respect to NQSOs, the exercise price per share of NQSOs for which expense was recognized during 2008 ranged from $45.58 to $60.95.

The assumptions used in the calculation of the amounts for 2008 shown above and in the Summary Compensation Table are included in Note 19 to our audited consolidated financial statements for the year ended December 31, 2008, which are included in our Annual Report on Form 10-K filed with the SEC on February 27, 2009, and the assumptions for awards granted prior to 2008 are included in the corresponding footnote to our audited consolidated financial statements for prior years. See the Grants of Plan-Based Awards table on page 38 for information on awards made in 2008. The amounts shown in these columns reflect our accounting expense for these awards and do not correspond to the actual value that will be recognized by the NEOs.

(4) The amounts in this column reflect the cash payment made to the named executive in respect of PG06-08 awards granted in 2006 (covering the 2006-2008 performance period), and earned at the end of 2008, which vested and were paid in February 2009.

(5) The amounts in this column reflect (a) the actuarial increase in the present value of the NEO s benefits under all defined benefit pension plans established by the Company and (b) the above-market portion of earnings on compensation deferred by the NEO under our nonqualified deferred compensation programs. Earnings on deferred compensation are considered to be above-market to the extent that the rate of interest exceeds 120% of the applicable federal long-term rate. For purposes of this table, the market rate on deferred compensation for 2008 was 5.68%, which is 120% of the federal long-term rate for December 2007, the time when the formulas for 2008 earnings on our deferred compensation programs were established. The amounts attributed to items (a) and (b) are set forth below.

Name	**Change in Pension Value**	**Above-Market Earnings on Deferred Compensation**
K.I. Chenault	$ 452,231	$ 188,480
E.P. Gilligan	$ 49,495	$ 17,893
A.F. Kelly, Jr.	$ 55,407	$ 30,819
D.T. Henry	$ 47,665	$ 17,639
S.J. Squeri	$ 19,235	$ 36,638

(6) See All Other Compensation Table below for additional information.

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All Other Compensation Table

The table below shows the components of the amounts included for each NEO under the All Other Compensation column in the Summary Compensation Table.

Name	Year	Perquisites and Other Personal Benefits ($)(1)	Tax Payments/ Reimbursements ($)	Company Contributions to Defined Contribution Plans ($)(2)	Executive Life Insurance ($)(3)	Total ($)
K.I. Chenault	2008	$ 874,027	$ 0	$ 331,250	$ 2,965	$ 1,208,242
	2007	$ 686,408	$ 72,944	$ 145,922	$ 2,671	$ 907,945
	2006	$ 783,428	$ 117,336	$ 85,250	$ 2,436	$ 988,450
E.P. Gilligan	2008	$ 1,920,862	$ 2,223,690(4)	$ 218,625	$ 1,598	$ 4,364,775
	2007	$ 1,693,437	$ 1,454,808(4)	$ 91,274	$ 1,493	$ 3,241,012
	2006	$ 1,213,650	$ 2,338,985(4)	$ 44,563	$ 1,395	$ 3,598,593
A.F. Kelly, Jr.	2008	$ 81,444	$ 0	$ 187,000	$ 1,690	$ 270,134
	2007	$ 182,715	$ 48,532	$ 83,579	$ 1,580	$ 316,406
	2006	$ 99,968	$ 45,430	$ 44,563	$ 1,475	$ 191,435
D.T. Henry	2008	$ 81,147	$ 0	$ 165,625	$ 3,570	$ 250,342
	2007	$ 97,904	$ 31,868	$ 50,306	$ 3,088	$ 183,166
S.J. Squeri	2008	$ 46,988	$ 0	$ 132,000	$ 1,633	$ 180,621

(1) See the Perquisites and Other Personal Benefits table below for additional information regarding the components of this column.

(2) This column reports Company contributions to the NEO s accounts under the Company s RSP and to the RSP-related account under the Company s SRP. See page 46 for a further description of the RSP-related account under the Company s SRP.

(3) This column reports imputed income to the NEOs under the Company s executive life insurance program.

(4) For Mr. Gilligan, the amount shown in this column includes tax equalization payments and tax reimbursements in connection with his international assignment. These payments and reimbursements are made pursuant to a policy that is designed to facilitate the assignment of employees to positions in other countries by covering taxes over and above those that employees accepting international assignments would have incurred had they remained in their home countries. The amounts shown have been reduced to reflect the Company s retention of certain amounts related to home country taxes from Mr. Gilligan s compensation.

Perquisites and Other Personal Benefits

l t	Personal Use of Company Aircraft ($)(2)	Flexible Perquisite Allowance ($)	Home Security System ($)	Security During Personal Trips ($)	Inter-national Assignment ($)(3)	Filing Fee Reim-bursement ($)(4)	Ea De Co sa Pa ($
99	$ 414,702	$ 35,000	$ 200,898	$ 45,729	n/a	n/a	
01	$ 323,884	$ 35,000	$ 126,992	$ 59,162	n/a	n/a	
19	$ 405,375	$ 35,000	$ 60,716	$ 69,187	n/a	$45,000	
00	$ 4,383	$ 35,000	$ 1,609	n/a	$ 1,841,340	n/a	$3
00	$ 3,923	$ 35,000	$ 1,237	n/a	$ 1,614,074	n/a	$4
00	$ 0	$ 35,000	$ 1,173				

The FDA Modernization Act of 1997 included a pediatric exclusivity provision that was extended by the Best Pharmaceuticals for Children Act of 2002. Pediatric exclusivity is designed to provide an incentive to manufacturers for conducting research about the safety and efficacy of their products in children. Pediatric exclusivity, if granted, provides an additional six months of market exclusivity in the United States for new or currently marketed drugs, if certain pediatric studies requested by the FDA are completed by the applicant. To obtain this additional six months of exclusivity, it would be necessary for us to first receive a written request from the FDA to conduct pediatric studies and then to conduct the requested studies according to a previously agreed timeframe and submit the report of the study. There can be no assurances that we would receive a written request from the FDA and if so that we would complete the studies in accordance with the requirements for this six-month exclusivity. The current pediatric exclusivity provision is scheduled to end on October 1, 2007, and there can be no assurances that it will be reauthorized.

EMPLOYEES

As of March 31, 2004, we had 223 full-time employees, all of whom are employed at-will. Seventy-three of these employees were engaged in research and development, 81 in manufacturing, 31 in clinical, regulatory affairs and quality assurance and 38 in administration, finance, management, information systems, corporate development and human resources. Thirty of our employees have a Ph.D. degree and/or M.D. degree and are engaged in activities relating to research and development, manufacturing, quality assurance and business development. None of our employees is subject to a collective bargaining agreement. We believe our relations with our employees are good.

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Business

SCIENTIFIC ADVISORS

We seek advice from a number of leading scientists and physicians on scientific, technical and medical matters. These advisors are leading scientists in the areas of pharmacology, chemistry, immunology and biology. Our scientific advisors are consulted regularly to assess, among other things:

- our research and development programs;
- the design and implementation of our clinical programs;
- our patent and publication strategies;
- market opportunities from a clinical perspective;
- new technologies relevant to our research and development programs; and
- specific scientific and technical issues relevant to our business.

The following are some of our scientific advisors and their primary affiliations:

Name	Primary affiliation
Harvey Cantor, M.D.	Professor of Pathology at Harvard Medical School
James J. Collins, D.Phil	Professor at Boston University
Alexander Fleming, M.D.	Chief Executive Officer of the Kinexum Corporation
Laurie Glimcher, M.D.	Member of the National Academy of Sciences and Professor of Immunology at Harvard Medical School
Edward S. Horton, M.D.	Chief of Clinical Research at the Joslin Diabetes Center
Thomas Kundig, M.D.	Professor at the University of Zurich
Harold E. Lebovitz, M.D.	Professor of Medicine and the Chief of Endocrinology Emeritus at the State University of New York Brooklyn
Frederick Levy, Ph.D.	Associate Member of the Ludwig Institute for Cancer Research
Greg Petsko, Ph.D.	Professor at Brandeis University
Barrett Rollins, M.D., Ph.D.	Associate Professor of Medicine at Harvard Medical School
Jesse Roth, M.D.	Chief Geriatrician of the Long Island Jewish Medical Center
Jay S. Skyler, M.D.	Chief of Diabetes & Endocrinology at the University of Miami School of Medicine
Rolf Zinkernagel, M.D., Ph.D.	Nobel Laureate in Medicine and Institute Director at the University of Zurich

FACILITIES

In early 2001, we acquired a facility in Danbury, Connecticut to house our Technosphere-related activities, including development and manufacturing of Technosphere Insulin. This facility includes two buildings comprising approximately

187,000 square feet and currently house our research and development, administrative and manufacturing functions, including the Technosphere Insulin formulation, filling and packaging plant. We also lease approximately 20,000 square feet of laboratory space in Elmsford, New York for approximately $36,000 per month, pursuant to an 11-year, renewable lease that expires in October 2004. We believe that our facility in Danbury has sufficient space to contain additional Technosphere Insulin manufacturing capacity necessary to satisfy potential commercial demand for our products for several years after we launch our Technosphere Insulin System and other Technosphere-related products.

We own and occupy approximately 120,000 square feet of laboratory, office and manufacturing space in Valencia, California. The facility contains our principal executive offices and houses our research and development laboratories for our cancer and other immunology programs. We also use this facility to provide support for the development of our Technosphere programs.

LEGAL PROCEEDINGS

We are not currently a party to any material legal proceedings. We may from time to time become a party to legal proceedings arising in the ordinary course of business.

WEBSITE

We maintain an Internet website at http://www.mannkindcorp.com. The information in, or that can be accessed through, our website is not incorporated into and does not form a part of this prospectus.

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EXECUTIVE OFFICERS AND DIRECTORS

The following table sets forth our current executive officers and directors and their ages as of March 31, 2004:

Name	Age	Position(s)
Alfred E. Mann	78	Chairman of the Board of Directors and Chief Executive Officer
Hakan S. Edstrom	54	President, Chief Operating Officer and Director
Richard L. Anderson	64	Corporate Vice President and Chief Financial Officer
Dan R. Burns	52	Corporate Vice President and President, MannKind BioPharmaceuticals
Wayman Wendell Cheatham, M.D., FACE	55	Corporate Vice President and Senior Vice President, Medical & Regulatory Affairs, MannKind BioPharmaceuticals
David Thomson, Ph.D., J.D.	37	Corporate Vice President, Associate General Counsel and Corporate Secretary
Kathleen Connell, Ph.D.(1)(2)(3)	56	Director
Ronald Consiglio(2)(3)	60	Director
Michael Friedman, M.D.(1)(2)	60	Director
Llew Keltner, M.D., Ph.D.	54	Director
Kent Kresa	66	Director
David H. MacCallum(3)	66	Director

(1) Member of the Compensation Committee.

(2) Member of the Nominating and Corporate Governance Committee.

(3) Member of the Audit Committee.

Alfred E. Mann has been one of our directors since April 1999, our Chairman of the Board since December 2001 and our Chief Executive Officer since October 2003. He founded and formerly served as Chairman and Chief Executive Officer of MiniMed, Inc., a publicly traded company focused on diabetes therapy and microinfusion drug delivery that was acquired by Medtronic, Inc. in August 2001. Mr. Mann also founded and, from 1972 through 1992, served as Chief Executive Officer of Pacesetter Systems and its successor, Siemens Pacesetter, a manufacturer of cardiac pacemakers. Since 1993, Mr. Mann has served as Chairman and Co-Chief Executive Officer of Advanced Bionics Corporation, a medical device manufacturer that has entered into an agreement to be acquired by Boston Scientific Corporation. Mr. Mann holds a bachelor s and master s degree in Physics from the University of California at Los Angeles, honorary doctorates from Johns Hopkins University, the University of Southern California and Western University and is a member of the National Academy of Engineering.

Hakan S. Edstrom has been our President and Chief Operating Officer since April 2001 and has served as one of our directors since December 2001. Mr. Edstrom was with Bausch & Lomb, Inc., a health care product company, from January 1998 to April 2001, advancing to the position of Senior Corporate Vice President and President of Bausch & Lomb, Inc. Americas Region. From 1981 to 1997, Mr. Edstrom was with Pharmacia Corporation, where he held various executive positions, including President and Chief Executive Officer of Pharmacia Opthalmics Inc. Mr. Edstrom is currently a director of Q-Med AB, a biotechnology and medical device company, and Ixion Biotechnology, Inc., a biotechnology company. Mr. Edstrom was educated in Sweden and holds a master s degree in Business Administration from the Stockholm School of Economics.

Richard L. Anderson has been our Corporate Vice President and Chief Financial Officer since October 2002. He was previously Senior Vice President, Chief Financial Officer and Secretary at NeoRx Corporation, a Seattle-based publicly traded biotechnology company. From January 1997 to September 2002, Mr. Anderson held various executive positions at NeoRx, including President, Chief Operating Officer and Senior Vice President, Finance and Operations. Mr. Anderson holds a master s degree in Management from Johns Hopkins University, a master s degree in Solid State Physics from the University of Maryland and a bachelor s degree in Physics from Bucknell University.

Dan R. Burns has been our Corporate Vice President and President of MannKind BioPharmaceuticals, which is our Danbury, Connecticut operation, since September 2002. Prior to joining us, he served as Chief Executive Officer of Trophix Pharmaceuticals, Inc., a pharmaceutical company in 1997, and from 1998 to 1999 he served as Chief Executive Officer of ProScript, Inc., a biopharmaceutical company. From 2000 to 2002, he served as Chief Executive Officer of HealthTalk Interactive, a pharmaceutical services firm. Mr. Burns has held senior executive positions internationally and domestically with Bristol Myers Squibb. Mr. Burns holds degrees in Psychology and Business Administration from McMaster University and Mohawk College.

Wayman Wendell Cheatham, M.D., FACE has been our Corporate Vice President and Senior Vice President, Medical & Regulatory Affairs of MannKind BioPharmaceuticals since August 2002. From April 1999 to August 2002, he was Vice President of Medical & Regulatory Affairs for Takeda Pharmaceuticals North America, Inc., a manufacturer of ethical pharmaceuticals. From August 1996 to April 1999, Dr. Cheatham served as Director of Medical Affairs for Novo Nordisk Pharmaceuticals, Inc., a manufacturer of pharmaceutical preparations. Dr. Cheatham received his M.D. degree from the Pennsylvania State University College of Medicine in 1975. Dr. Cheatham has also been nominated to serve as a member of the board of directors of the American Diabetes Association beginning June 2004.

David Thomson, Ph.D., J.D. has been our Corporate Vice President, Associate General Counsel and Corporate Secretary since January 2002. Prior to joining us, he practiced corporate/commercial and securities law at the Toronto law firm of Davies Ward Phillips & Vineberg LLP from May 1999 through December 2001, except for a period from May to December 2000, when he served as Vice President, Business Development for CTL ImmunoTherapies Corp. From March 1994 to August 1996, Dr. Thomson held a post-doctoral position at the Rockefeller University, where he conducted medical research in the Laboratory of Neurophysiology. Dr. Thomson obtained his bachelor s degree, master s degree and Ph.D. degree from Queens University and obtained his J.D. degree from the University of Toronto.

Kathleen Connell, Ph.D. has been one of our directors since November 2003. Currently, Dr. Connell is president of Connell Group, an investment advisory firm and teaches international finance at the UC Berkeley Haas School of Business. From 1995 to 2002, she served as State Controller of California. Her prior experience includes serving as a president of a NASD-registered investment banking firm, as vice-president of a New York-based bank and as the founder and Chair of the UCLA Center for Finance and Real Estate at the John E. Anderson School of Management, where she taught for five years. Dr. Connell holds a Ph.D. degree from the University of California, Los Angeles.

Ronald Consiglio has been one of our directors since October 2003. Since 1999, Mr. Consiglio has been the managing director of Synergy Trading, a securities-trading partnership. From 1999 to 2001, Mr. Consiglio was Executive Vice President and Chief Financial Officer of Trading Edge, Inc., a national automated bond-trading firm. His prior experience includes serving as Senior Vice President and Chief Financial Officer of Cantor Fitzgerald & Co. and as a member of its board of directors.

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Mr. Consiglio is currently a member of the board of directors of Natrol, Inc, a manufacturer of dietary supplements and a trustee on the board of directors of Metropolitan West Trust, a management investment company. Mr. Consiglio holds a bachelor s degree in Accounting from California State University at Northridge.

Michael Friedman, M.D. has been one of our directors since December 2003. Currently, Dr. Friedman is the President and Chief Executive Officer of the City of Hope National Medical Center. Previously, from September 2001 until April 2003, Dr. Friedman held the position of Senior Vice President of Research and Development, Medical and Public Policy, for Pharmacia Corporation and, from July 1999 until September 2001, was a Senior Vice President of Searle, a subsidiary of Monsanto Company. From 1995 until June 1999, Dr. Friedman served as Deputy Commissioner for Operations for the FDA, and was Acting Commissioner and Lead Deputy Commissioner from 1997 to 1998. Dr. Friedman holds a bachelor s degree, magna cum laude, from Tulane University, New Orleans, Louisiana, and a doctorate in medicine from the University of Texas, Southwestern Medical School.

Llew Keltner, M.D., Ph.D. has been one of our directors since October 2003. He founded EPISTAT, an international pharmaceutical and health care strategy company and has served as its Chief Executive Officer since 1985. He has also served as Chief Executive Officer of MetaStat, an oncology drug development firm, since 1994. In addition, Dr. Keltner is Chairman of Light Sciences Corporation, a company developing light-activated drugs. Dr. Keltner is currently on the board of directors of Infostat, Inc., a contract research organization, Oregon Life Sciences, a venture investment company focused on the bio-med and biotech sectors, LKHealthnet Inc., a company that acquires healthcare network assets, and Goodwell Technologies, Inc., a provider of real-time communications and collaboration services in the health care, financial, travel and lodging and other industries. Dr. Keltner holds a master s degree in Epidemiology and Biostatistics, a Ph.D. degree in Biomedical Informatics and a medical degree from Case Western Reserve University.

Kent Kresa has been one of our directors since June 2004. Currently, Mr. Kresa is Chairman Emeritus of Northrop Grumman Corporation and from September 1990 until October 2003, he was its Chairman. He also served as Chief Executive Officer of Northrop Grumman Corporation from January 1990 until March 2003 and as its president from 1987 until September 2001. Mr. Kresa serves on the boards of Avery Dennison Corporation, Eclipse Aviation Corporation, Fluor Corporation, General Motors Corporation, and several non-profit organizations and universities. He is also a senior advisor for The Carlyle Group and on the Advisory Board of Trust Company of the West. As a graduate of M.I.T., he received a B.S. in 1959, an M.S. in 1961, and an E.A.A. in 1966, all in Aeronautics and Astronautics.

David H. MacCallum has been one of our directors since June 2004. Currently, Mr. MacCallum is the Managing Partner of Outer Islands Capital, a hedge fund specializing in health care investments. From June 1999 until November 2001, he was Global Head of Health Care investment banking for Salomon Smith Barney, part of Citigroup. Prior to joining Salomon Smith Barney, he was Executive Vice President and Head of the Health Care group at ING Barings Furman Selz LLC, an investment banking firm and subsidiary of ING Group, a Dutch financial institution, from April 1998 to June 1999. Prior to that Mr. MacCallum formed the Life Sciences group at UBS Securities LLC, an investment banking firm, where he was Managing Director and Global Head of Life Sciences from May 1994 to April 1998. Before joining UBS Securities LLC, he founded the health care practice at Hambrecht & Quist, an investment banking firm, where he was Head of Health Care and Co-Head of Investment Banking. Mr. MacCallum received an A.B. degree from Brown University and an M.B.A. degree from New York University. He is a Chartered Financial Analyst.

BOARD COMPOSITION

Our business and affairs are managed under the direction of our board of directors. The primary responsibilities of our board of directors are to provide oversight, strategic guidance, counseling and direction to our management. Our board of directors meets regularly on a quarterly basis and additionally as required. Written board materials are distributed in advance of meetings as a general rule, and our board of directors schedules meetings with and presentations from members of our senior management on a regular basis.

Our board of directors consists of eight members, two of which are employees of ours. Five of these directors, Dr. Connell, Mr. Consiglio, Dr. Friedman, Mr. Kresa and Mr. MacCallum are independent directors, as defined by Rule 4200(a)(15) of the National Association of Securities Dealers.

In accordance with the terms of our amended and restated certificate of incorporation and bylaws, upon the completion of this offering, the term of each director then serving shall expire at the next annual meeting of stockholders, at which time the newly elected directors shall serve from the time of election and qualification until the following annual meeting of stockholders and until their successors are duly elected and qualified.

Our amended and restated certificate of incorporation provides that the authorized number of directors may be changed only by resolution of the board of directors. Our directors may be removed for cause by the affirmative vote of the holders of a majority of our voting stock and may be removed without cause by the affirmative vote of the holders of at least two-thirds of our voting stock.

Over the past year, our board of directors has devoted considerable time to further improving our governance by addressing the rules promulgated under the Sarbanes-Oxley Act of 2002 and the proposals and requirements of Nasdaq. In connection with such activities, our board of directors has evaluated its role and function, and examined the following, among other things:

- board and board committee meeting schedules;
- board committee governance and composition; and
- the size and composition of our board of directors and director independence.

As a result of its evaluation and recent corporate governance rules enacted under the Sarbanes-Oxley Act of 2002 and Nasdaq, our board of directors has:

- revised the charter of our audit committee of the board;
- created a separate compensation committee and a nominating and corporate governance committee of the board;
- approved the audit committee s formation of a disclosure committee;
- adopted a code of business conduct and ethics governing our employees, officers and directors to promote high standards of integrity by conducting our affairs in an honest and ethical manner; and

adopted a policy of non-retaliation and a procedure for reporting complaints to protect our employees against unlawful retaliation as a result of their lawful, good-faith reporting of violations of federal or state law or our code of business conduct and ethics by us or any of our agents.

BOARD COMMITTEES

Our board of directors has an audit committee, compensation committee and nominating and corporate governance committee, each of which has the composition and responsibilities described below. Our board of directors is responsible for determining the composition of the members of these key committees.

Audit committee

Our audit committee consists of Mr. Consiglio (chair), Dr. Connell and Mr. MacCallum, each of whom is an independent member of our board of directors. The functions of this committee include, among others:

- evaluating the independent registered public accounting firm s qualifications, independence and performance;
- determining the engagement of the independent registered public accounting firm;
- approving the retention of the independent registered public accounting firm to perform any proposed permissible non-audit services;
- monitoring the rotation of partners of the independent registered public accounting firm on our engagement team as required by law;
- reviewing our financial statements;
- reviewing our critical accounting policies and estimates;
- discussing with management and the independent registered public accounting firm the results of the annual audit and the review of our quarterly financial statements; and
- reviewing and evaluating, at least annually, the performance of the audit committee and its members, including compliance of the audit committee with its charter.

We have appointed Mr. Consiglio as our audit committee financial expert. Both our independent registered public accounting firm and internal financial personnel regularly meet privately with our audit committee and have unrestricted access to this committee.

Compensation committee

Our compensation committee consists of Dr. Friedman (chair) and Dr. Connell, each of whom is an independent member of our board of directors. The functions of this committee include, among others:

- reviewing and recommending policy relating to compensation and benefits of our officers and employees, including reviewing and approving corporate goals and objectives relevant to compensation of our chief executive officer and other senior officers, evaluating the performance of these officers in light of those goals and objectives, and setting compensation of these officers based on such evaluations;
- administering our benefit plans and the issuance of stock options and other awards under our stock plans;
- reviewing and establishing appropriate insurance coverage for our directors and executive officers;

recommending the type and amount of compensation to be paid or awarded to members of our board of directors, including consulting, retainer, meeting, committee and committee chair fees and stock option grants or awards;

reviewing and approving the terms of any employment agreements, severance arrangements, change-of-control protections and any other compensatory arrangements for our executive officers; and

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reviewing and evaluating, at least annually, the performance of the compensation committee and its members, including compliance of the compensation committee with its charter.

Nominating and corporate governance committee

Our nominating and corporate governance committee consists of Dr. Connell (chair), Dr. Friedman and Mr. Consiglio, each of whom is an independent member of our board of directors. The functions of this committee include, among others:

planning for succession with respect to the position of CEO and other senior executives;

reviewing and recommending nominees for election as directors;

assessing the performance of the board of directors and monitoring committee evaluations;

suggesting, as appropriate, ad-hoc committees of the board of directors;

developing guidelines for board composition; and

reviewing and evaluating, at least annually, the performance of the nominating and corporate governance committee and its members, including compliance of the nominating and corporate governance committee with its charter.

COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION

Prior to establishing our compensation committee, our board of directors as a whole made decisions relating to compensation of our executive officers. Drs. Glen Nelson, Donald Drakeman and Edward L. Korwek, former directors, served on our compensation committee in 2002 and 2003. During 2002 and 2003, none of our executive officers served as a member of the board of directors or compensation committee of any other entity that had one or more executive officers who served on our board of directors or compensation committee.

DIRECTOR COMPENSATION AND REIMBURSEMENT

Each of Messrs. Consiglio and Keltner and Drs. Connell and Friedman was granted an option to purchase 10,000 shares of our common stock under our 2004 equity plan effective upon joining our board. These options vest over three years. Effective upon the closing of this offering, all of our non-employee directors will receive an option to purchase 30,000 shares of our common stock as well as annual grants to purchase 10,000 shares of our common stock under the 2004 Non-Employee Directors Stock Option Plan, which is described elsewhere in this prospectus. Each of our non-employee directors receive an annual retainer of $15,000. Each non-employee director who serves as a committee chair receives an additional retainer of $2,000 per year. In addition, we reimburse our non-employee directors for their expenses incurred in connection with attending board and committee meetings, and these directors receive $1,500 for each meeting of the board attended in person, $750 for each telephonic board meeting attended and $750 for each meeting of a committee attended in person or by phone. See also Certain relationships and related transactions Other transactions.

EXECUTIVE COMPENSATION

Summary compensation table

The following table provides information for the fiscal year ended December 31, 2003, regarding compensation awarded to, earned by or paid to our chief executive officers, each of our four other most highly compensated executive officers whose combined salary and bonus for 2003 exceeded $100,000 and an additional individual for whom disclosures would have been provided but for the

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fact that the individual was not serving as an executive officer at the end of 2003. We refer to the individuals listed in the table below as our named executive officers elsewhere in this prospectus.

Name and principal position(s)	Annual compensation(1)		Long-term compensation	All other compensation
	Salary	Bonus	securities underlying options	
Alfred E. Mann Chief Executive Officer and Chairman of the Board of Directors	$100,000	$	240,972	$
Michael G. Page Former Chief Executive Officer and Director	350,015(2)		88,004	166,385(3)
Solomon S. Steiner Former Senior Vice President, Technology and Director	36,676(4)		171,138	452,148(4)
Hakan S. Edstrom President, Chief Operating Officer and Director	322,115	87,000	333,206	
Dan R. Burns Corporate Vice President and President, MannKind BioPharmaceuticals	273,963		133,333	44,731(5)
Richard L. Anderson Corporate Vice President and Chief Financial Officer	280,288		116,666	59,950(6)
David Thomson Corporate Vice President, Associate General Counsel and Corporate Secretary	223,269	63,000	109,095	37,842(7)

(1) In accordance with the rules of the SEC, the compensation described in this table does not include medical, group life insurance or other benefits which are available generally to all of our salaried employees and certain perquisites and other personal benefits received which do not exceed the lesser of $50,000 or 10% of any named executive officer s salary and bonus disclosed in this table.

(2) In October 2003, Dr. Michael Page s employment with us terminated. In accordance with the terms of his severance agreement, we are obligated to pay Dr. Page his base salary at the rate of $330,000 per year for up to 18 months.

(3) In connection with Dr. Page s resignation, he received a severance payment of $165,000. Also includes $1,385 in auto allowance.

(4) In February 2003, Dr. Solomon Steiner s employment with us terminated. In accordance with the terms of his settlement agreement, we were obligated to pay Dr. Steiner approximately $1,049,288 over three years, comprised of $775,365 in deferred compensation from prior years and the remainder comprised of other severance-related items. In 2003, we paid his base salary through February. Additionally, we paid $258,455 in deferred compensation, $192,655 in severance-related items and $1,038 in auto allowance.

(5) Includes $35,731 in temporary housing reimbursements and $9,000 in auto allowance.

(6) Includes $50,546 in relocation reimbursements and $9,404 in auto allowance. Does not include compensation related to an amount loaned to Mr. Anderson, which has been subsequently repaid, or an amount paid to Mr. Anderson for the purchase of his residence, by a limited liability company that is not owned or controlled by us but is controlled by Mr. Mann. See Note 7 to the financial statements for further information.

(7) Includes $28,842 in relocation reimbursements and $9,000 in auto allowance. Does not include compensation related to an amount loaned to Mr. Thomson, which has been subsequently repaid, by a limited liability company that is not owned or controlled by us but is controlled by Mr. Mann. See Note 7 to the financial statements for further information.

Stock option grants in 2003

On October 7, 2001, our board of directors adopted, and our stockholders approved, our 2001 Stock Awards Plan. On March 23, 2004, our board of directors adopted, and our stockholders approved, an amendment and restatement to this plan to become effective upon the closing of this offering. We refer to this plan as the 2004 equity plan, both before and after the effective date of the amendment and restatement. All options granted prior to the closing of this offering are governed by the terms of the

2004 equity plan prior to its amendment and restatement. In 2003, we granted options to purchase a total of 1,664,886 shares of our common stock, with a weighted average exercise price of $9.36 per share, to our employees, including grants to our named executive officers. This total includes 781,572 options issued under the repricing program in exchange for 781,572 outstanding options that were tendered into the program for cancellation. All options granted to our named executive officers are nonstatutory stock options that do not qualify as incentive stock options within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended, or the Code. Under the terms of our 2004 plan, any options to purchase shares of our common stock that expire or are otherwise terminated are returned to the option pool and become available for future grant under the plan. Options expire ten years from the date of grant. See Employee benefit plans 2004 Equity Incentive Plan.

The exercise price per share of each option granted to our named executive officers was equal to the fair market value or 85% of the fair market value of our common stock as determined by our board of directors on the date of the grant. The exercise price is payable in cash, by promissory note, shares of our common stock previously owned by the optionee or pursuant to the net exercise of the option. In determining the fair market value of the stock granted on the grant date, our board of directors considered many factors, including:

- our absolute and relative levels of revenues and other operating results;
- the fact that our options involved illiquid securities in a nonpublic company;
- prices of preferred stock issued by us to outside investors in arm s-length transactions;
- the rights, preferences and privileges of our preferred stock over our common stock; and
- the likelihood that our common stock would become liquid through an initial public offering, a sale of us or another event.

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Options granted in 2003

The following table provides information concerning grants of options to purchase shares of our common stock under our 2004 equity plan to our named executive officers in 2003. No stock appreciation rights covering our common stock were granted to our named executive officers in 2003.

Name	Number of securities underlying options granted	Percentage of total options granted to employees in fiscal year(1)	Exercise or base price per share	Expiration date	Potential realizable value at assumed annual rates of stock price appreciation for option term(2) 5%	10%
					(in thousands)	
Alfred E. Mann		%	$		$	$
Michael G. Page	83,333	5.0	12.75	4/7/05	241	385
Solomon S. Steiner						
Hakan S. Edstrom	233,206(3)	14.0	7.95	11/5/07	2,114	2,926
	100,000	6.0	7.95	11/20/13	1,485	2,836
Dan R. Burns	83,333(3)	5.0	7.95	11/5/07	756	1,046
	50,000	3.0	7.95	11/20/13	743	1,418
Richard L. Anderson	83,333(3)	5.0	7.95	11/5/07	756	1,046
	33,333	2.0	7.95	11/20/13	495	945
David Thomson	50,000(3)	3.0	7.95	11/5/07	453	627
	50,000	3.0	7.95	11/20/13	743	1,418

(1) Based on 1,664,886 options granted during the fiscal year ended December 31, 2003 under our 2004 plan, including grants to executive officers.

(2) Potential realizable values are computed by (a) multiplying the number of shares of common stock subject to a given option by the initial public offering price of $14.00 per share, (b) assuming that the aggregate stock value derived from that calculation compounds at the annual 5% or 10% rate shown in the table for the entire term of the option and (c) subtracting from that result the aggregate option exercise price. The 5% and 10% assumed annual rates of stock price appreciation are mandated by the rules of the SEC and do not represent our estimate or projection of future common stock prices.

(3) Represents the replacement, pursuant to our option re-pricing program, of options granted in an earlier year.

Aggregated option exercises during 2003 and fiscal year-end option values

The following table provides information concerning options granted under our equity plans that were exercised during 2003, and unexercised options held as of December 31, 2003 by each of our named executive officers.

The value realized and the value of unexercised in-the-money options at December 31, 2003 are based on the initial public offering price of $14.00 per share, less the per share exercise price, multiplied by the number of shares subject to the option, without taking into account any taxes that may be payable

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in connection with the transaction. Options outstanding as of December 31, 2003 may not be exercised prior to vesting.

Name	Shares acquired on exercise	Value realized	Number of securities underlying unexercised options at fiscal year-end		Value of unexercised in-the-money options at fiscal year-end	
			Exercisable	Unexercisable	Exercisable	Unexercisable
					(in thousands)	
Alfred E. Mann(1)			60,243	180,729	$	$
Michael G. Page(2)			88,004		104	
Solomon S. Steiner(3)			171,138		1,328	
Hakan S. Edstrom(2)				333,206		2,016
Dan R. Burns(2)				133,333		807
Richard L. Anderson(2)				116,666		706
David Thomson(4)			6,821	102,274	28	614

(1) All options were granted outside of our plans. These options have the same terms as those granted under our 2004 plan.

(2) All options were granted under our 2004 plan.

(3) 46,585 options were granted under the 1991 plan and 124,553 options were granted under the 1999 plan.

(4) 9,095 options were granted under the CTL plan and 100,000 options were granted under the 2004 plan.

EMPLOYEE BENEFIT PLANS

1991 Stock Option Plan

On March 15, 1991, our board of directors adopted, and our stockholders approved, our 1991 Stock Option Plan, or the 1991 plan. The 1991 plan was terminated pursuant to its own terms on March 15, 2001. As of May 31, 2004, options to purchase 126,099 shares of our common stock were outstanding under the 1991 plan. We will not grant additional equity awards under the 1991 plan.

Share reserve. Except with respect to the outstanding options referenced above, no shares of our common stock remain reserved or available for issuance under the 1991 plan.

Administration. Our board of directors administers the 1991 plan, but the board may delegate authority to administer the 1991 plan to a committee of three or more members of the board who qualify under the terms of the 1991 plan. Subject to the terms of the 1991 plan, the plan administrator has authority to construe and interpret the 1991 plan and to determine the option recipients, grant dates, numbers and types of options granted and the terms and conditions of the options, including the period of their exercisability and vesting. The plan administrator also has authority to make adjustments upon changes in capitalization.

Eligibility of awards. The 1991 plan provided for the grant of incentive stock options, or ISOs and nonstatutory stock options, or NSOs, only to our employees. ISOs are subject to section 422 of the Internal Revenue Code of 1986, as amended, or the Code.

Stock options. Stock options were granted under the 1991 plan pursuant to a stock option agreement. All outstanding options granted under the 1991 plan are now fully vested. In general, the term of stock options granted under the 1991 plan may not exceed ten years. Unless an optionee s stock option agreement provides otherwise, if an optionee s service with us terminates for any reason other than death, the optionee may exercise any vested option for up to three months following the termination of service. However, in the event the optionee is an employee of ours and is terminated for cause, all options held by the optionee under the 1991 plan immediately expire and cease to be exercisable.

Shares of common stock subject to options granted under the 1991 plan may be paid for only in cash consideration.

Transferability. Generally, options granted under the 1991 plan are not assignable or transferable, other than by will or the laws of descent and distribution. During the life of the optionee, all rights granted to the optionee under the 1991 plan or under any agreement shall be exercisable only by the optionee.

Additional provisions. Our board of directors has the authority to amend outstanding options granted under the 1991 plan, except that no amendment may adversely affect an optionee without the optionee s written consent.

The 1991 plan provides that we will use our best efforts to cause a registration statement with respect to the common stock issuable under the 1991 plan to be filed within 18 months after we become a publicly reporting company.

1999 Stock Plan

On October 15, 1999, our board of directors adopted, and our stockholders approved, our 1999 Stock Plan, or the 1999 plan. As of May 31, 2004, awards to purchase 305,430 shares of our common stock were outstanding under the 1999 plan. The 1999 plan has been terminated and we will not grant additional equity awards under the 1999 plan.

Share reserve. Except with respect to the outstanding options referenced above, no shares of our common stock remain reserved or available for issuance under the 1999 plan.

Administration. Our board of directors administers the 1999 plan, but the board may delegate authority to administer the 1999 plan to a committee consisting of two or more non-employee directors. The board may adopt, amend and rescind rules and regulations relating to the 1999 plan and may interpret and construe the 1999 plan. Subject to the terms of the 1999 plan, the plan administrator will determine which persons meet the requirements for eligibility, grant dates, the numbers and types of stock awards to be granted and the terms and conditions of the stock awards. Also subject to the limitations set forth in the 1999 plan, the administrator may make appropriate adjustments upon changes to our common stock to the number and type of shares or other securities that may be acquired pursuant to awards granted under the 1999 plan.

Eligibility of awards. The 1999 plan provided for the grant of ISOs, NSOs, stock sales, stock bonuses, restricted stock, reload stock options, stock purchase warrants, other rights to acquire stock, securities convertible into or redeemable for stock, stock appreciation rights, limited stock appreciation rights, phantom stock, dividend equivalents, performance units, performance shares and other awards. All of our directors, employees, consultants or advisers were eligible to be considered for the above awards.

Stock Options. Stock options were granted under the 1999 plan pursuant to a stock option agreement. Common stock may be issued under the 1999 plan for any lawful consideration as determined by the committee, including services rendered by the recipient. The term of options granted under the 1999 plan is for no more than ten years from the date the option was granted. Unless an optionee s stock option agreement provides for earlier termination, if an optionee s service relationship with us terminates due to disability or death, the optionee, or his or her beneficiary, generally may exercise any vested options for up to six months after the date of termination. If an optionee s relationship with us ceases for any reason other than disability or death, the optionee may exercise any vested options for up to thirty days after the date of termination.

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Additional provisions. The board of directors has the authority to amend or terminate the 1999 plan provided that no such amendment or termination deprives the recipient of any award granted under the 1999 plan, without consent of such recipient, of any of his or her rights.

Upon certain changes in our control, all awards under the 1999 plan will vest in full and be exercisable prior to the effectiveness of such transaction. The committee may also accelerate the vesting or exercisablity of any award under the 1999 plan. In no event could any grantee receive, in any fiscal year, awards which exceeded an aggregate of 500,000 shares of our common stock.

Non-employee director options. The 1999 plan included provisions for the automatic grant of options to non-employee directors. Such provisions have never been put into effect and will not be used in the future.

AlleCure Corp. 2000 Stock Option and Stock Plan and CTL ImmunoTherapies Corp. 2000 Stock Option and Stock Plan

In connection with the acquisition by us of AlleCure Corp. and CTL ImmunoTherapies Corp. on December 12, 2001, we assumed all of the outstanding options granted under the AlleCure Corp. 2000 Stock Option and Stock Plan, or the AlleCure plan, and the CTL ImmunoTherapies Corp. 2000 Stock Option and Stock Plan, or the CTL plan. Subsequent to the acquisition, these options were adjusted to cover shares of our common stock at the exchange ratios set forth in the applicable merger agreements. As of May 31, 2004, options to purchase an aggregate of 120,347 shares of our common stock under the AlleCure plan and the CTL plan were outstanding. The AlleCure plan and CTL plan were terminated and we will not grant additional equity awards under the AlleCure plan or the CTL plan, collectively known as the 2000 plans.

Share Reserve. Except with respect to the outstanding options referenced above, no shares of our common stock remain reserved or available for issuance under the 2000 plans.

Administration. Pursuant to the merger, our board of directors administers the 2000 plans, but the board may delegate authority to administer the 2000 plans to a committee that complies with applicable law. Our board of directors has broad authority to administer the 2000 plans.

Eligibility of awards. The 2000 plans provided for the grant of ISOs, NSOs and stock purchase rights to employees, directors and consultants.

Stock Options. Stock options were granted under the 2000 plans pursuant to a stock option agreement. Options granted under the 2000 plans have a maximum term of ten years and vest at the rate specified in the option agreements. Except in the case of options granted to officers, directors, and consultants, options become exercisable at a rate of no less than 20% per year over five years from the date the options were granted.

Acceptable consideration for the purchase of common stock issued pursuant to options granted under the 2000 plans includes cash, common stock previously owned by the optionee, a promissory note or consideration received through a cashless exercise program.

Generally, options under the 2000 plans may not be sold, pledged, assigned, hypothecated, transferred or disposed of in any manner other than by will or by laws of descent and distribution and may be exercised, during the lifetime of the optionee, only by the optionee.

Unless an optionee s stock option agreement provides for earlier termination, if an optionee s service relationship with us terminates due to disability or death, the optionee, or his or her beneficiary, generally may exercise any vested options for up to twelve months after the date the service relationship ends. If an optionee s relationship with us ceases for any reason other than disability or death, the optionee may exercise his or her option within the time specified in the option agreement, or if not specified, for three months. In no event may an option be exercised after the expiration of the term of the option set forth in the option agreement.

The administrator may at any time offer to buy out for a payment in cash or shares, an option previously granted, based on such terms and conditions as the administrator may establish and communicate to the optionee at the time such offer is made.

Stock Purchase Rights. Unless the administrator determines otherwise, a restricted stock purchase agreement grants us a repurchase option exercisable upon the voluntary or involuntary termination of the purchaser s service with us for any reason (including death or disability). The purchase price for shares repurchased pursuant to the restricted stock purchase agreement is the original price paid by the purchaser and may be paid by cancellation of any indebtedness of the purchaser. The repurchase option lapses at such rate as the administrator may determine. Except with respect to shares purchased by officers and directors, the repurchase option lapses at a rate of no less than 20% per year over five years from the date of purchase.

Corporate transactions or changes in control. Our board of directors will make appropriate adjustments for a stock split, reverse stock split, stock dividend, combination or reclassification of the stock, or any other increase or decrease in the number of issued shares of common stock effected without receipt of consideration by the company.

In the event of the proposed dissolution or liquidation of the company, the administrator shall notify each optionee as soon as practicable prior to the effective date of such proposed transaction. The administrator in its discretion may provide for an optionee to have the right to exercise his or her option or stock purchase right until fifteen days prior to such transaction as to all of the optioned stock covered thereby, including shares as to which the option or stock purchase right would not otherwise be exercisable. In addition, the administrator may provide that any company repurchase option applicable to any shares purchased upon exercise of an option or stock purchase right shall lapse as to all such shares, provided the proposed dissolution or liquidation takes place at the time and in the manner contemplated. To the extent it has not been previously exercised, an option or stock purchase right will terminate immediately prior to the consummation of such proposed action.

In addition, in the event we merge or sell all or substantially all of our assets, all outstanding stock awards under the 2000 plans will be assumed, continued or substituted for by any surviving or acquiring entity. If the surviving or acquiring entity elects not to assume, continue or substitute for these awards, each participant will be given notice of the transaction and permitted to exercise all outstanding awards held under the 2000 plans for a period of fifteen days after notice is provided. To the extent it has not been previously exercised, an option or stock purchase right will terminate at the end of such period.

Additional provisions. Our board of directors has the authority to amend outstanding awards granted under the 2000 plans, except that no amendment may adversely affect an award without the recipient s written consent. Our board of directors has the power to amend the 2000 plans. We are required to provide annual financial statements to participants in the 2000 plans.

2004 Equity Incentive Plan

On October 7, 2001, our board of directors adopted, and our stockholders approved, our 2001 Stock Awards Plan. On March 23, 2004, our board of directors adopted, and our stockholders approved, an amendment and restatement of the 2001 Stock Awards Plan to become effective upon the closing of this offering. We refer to this plan as the 2004 plan, both before and after the effective date of the amendment and restatement. All awards granted under the 2004 plan prior to the closing of this offering will continue to be governed by the terms of the 2004 plan prior to its amendment and restatement. All awards granted under the 2004 plan after the closing of this offering will be governed by the terms of the 2004 plan as amended and restated. The material differences between the terms of options granted under the 2004 plan prior to and following this offering are identified below.

Share reserve. An aggregate of 3,659,926 shares of our common stock are reserved for future issuance under the 2004 plan. Shares subject to options and stock awards that expire, terminate, are repurchased or are forfeited under the 2004 plan will again become available for the grant of awards under the 2004 plan. Shares issued under the 2004 plan may be previously unissued shares or reacquired shares bought on the market or otherwise. If any shares subject to a stock award are not delivered to a participant because such shares are withheld for the payment of taxes or the stock award is exercised through a net exercise, the number of shares that are not delivered to the participant shall remain available for the grant of awards under the 2004 plan. If the exercise of any stock award is satisfied by tendering shares of common stock held by the participant, the number of shares tendered shall become available for the grant of awards under the 2004 plan. The maximum number of shares that may be issued under the 2004 plan subject to incentive stock options is 7,000,000.

As of May 31, 2004, options to purchase 1,340,074 shares of our common stock subject to the terms of the 2004 plan prior to its amendment and restatement were outstanding. As of the date hereof, no shares of our common stock have been issued under the terms of the 2004 plan as amended and restated. The 2004 plan prior to its amendment and restatement provided for multiple forms of equity awards, but only options were granted by our board of directors.

Administration. Our board of directors will administer the 2004 plan, but the board may delegate authority to administer the 2004 plan to a committee of one or more members of the board. Subject to the terms of the 2004 plan, the plan administrator will determine the stock award recipients and grant dates, the numbers and types of stock awards to be granted under the 2004 plan and the terms and conditions of the stock awards, including the period of their exercisability and vesting. Subject to the limitations set forth below, the plan administrator will also determine the exercise price, purchase price or strike price, as applicable, for stock awards granted under the 2004 plan.

Eligibility of awards. The 2004 plan provides for the grant of ISOs, NSOs, restricted stock awards, stock appreciation rights, phantom stock awards and other stock awards based in whole or in part by reference to our common stock. ISOs may be granted solely to our employees, including officers. All other stock awards under the 2004 plan may generally be granted to our employees, directors, officers and consultants.

Stock options. Stock options are granted under the 2004 plan pursuant to a stock option agreement. Generally, the exercise price for an ISO cannot be less than 100% of the fair market value of the common stock subject to the option on the date of grant. The exercise price for an NSO is determined by our board of directors. Options granted under the 2004 plan vest at the rate specified in the stock option agreement. In addition, following this offering, our 2004 plan will allow for the early exercise of options, as set forth in an applicable stock option agreement. All shares of our common stock acquired through options exercised early may be subject to repurchase by us. Options granted under the 2004 plan prior to its amendment and restatement must vest at the rate of at least 20% per year and may not be exercised early.

In general, the term of stock options granted under the 2004 plan may not exceed ten years. With respect to options granted under the 2004 plan following this offering, unless the terms of an optionee s stock option agreement provide for earlier termination, if an optionee s service relationship with us, or any affiliate of ours, terminates due to disability, death or retirement, the optionee, or his or her beneficiary, generally may exercise any vested options after the date the service relationship ends for up to twelve months in the event of disability, up to eighteen months in the event of death and up to twenty-four months in the event of selected retirements. If an optionee s relationship with us, or any affiliate of ours, ceases for any reason other than disability, death or retirement, the optionee may exercise any vested options for up to three months after the termination of service, unless the terms of the stock option agreement provide for earlier termination. However, in the event the optionee s service with us, or an affiliate of ours, is terminated for cause (as defined in the 2004 plan), all options held by the optionee under the 2004 plan will terminate in their entirety on the date of termination.

With respect to options granted under the 2004 plan prior to this offering, if an optionee s service with us is terminated due to disability or death, the optionee, or his or her beneficiary, may exercise any vested options for up to six months after the date of termination. If an optionee s service with us is terminated for any reason other than disability or death, the optionee may exercise any vested options for up to thirty days after the date of termination. However, in the event an optionee s service with us is terminated for cause under the terms of the 2004 plan, all options held by the optionee under the 2004 plan will terminate on the date of termination.

Acceptable consideration for the purchase of our common stock issued under the 2004 plan will be determined by our board of directors and may include cash or common stock previously owned by the optionee, or may be paid through a deferred payment arrangement, a broker assisted exercise, the net exercise of the option or other legal consideration or arrangements approved by our board of directors.

Generally, options granted under the 2004 plan may not be transferred other than by will or the laws of descent and distribution unless the optionee holds an NSO and the related option agreement provides otherwise. However, an optionee may designate a beneficiary who may exercise the options granted under the 2004 plan following the optionee s death.

Tax limitations on stock option grants. ISOs may be granted only to our employees. The aggregate fair market value, determined at the time of grant, of shares of our common stock subject to ISOs that are exercisable for the first time by an optionee during any calendar year under all of our stock plans may not exceed $100,000. The options or portions of options that exceed this limit are treated as NSOs. No ISO may be granted to a 10% stockholder unless the following conditions are satisfied:

- the option exercise price is at least 110% of the fair market value of the stock subject to the option on the grant date; and

- the term of any ISO award must not exceed five years from the grant date.

Section 162(m). When we become subject to the requirements of Section 162(m) of the Code, which denies a deduction to publicly held corporations for certain compensation paid to specified employees in a taxable year to the extent that the compensation exceeds $1,000,000, no person may be granted options under the 2004 plan covering more than 2,000,000 shares of our common stock in any calendar year.

Restricted stock awards. Restricted stock awards are purchased through a restricted stock award agreement. To the extent required by law, the purchase price for restricted stock awards must be at least the par value of the stock. The purchase price for a restricted stock award may be payable in cash or through a deferred payment or related arrangement, the recipient s past services performed for us, or any other form of legal consideration or arrangement acceptable to our board of directors. Rights to acquire shares under a restricted stock award may be transferred only as set forth in the restricted stock award agreement.

Stock appreciation rights. Stock appreciation rights are granted under the 2004 plan pursuant to stock appreciation rights agreements. The plan administrator determines the strike price for a stock appreciation right. Stock appreciation rights granted under the 2004 plan vest at the rate specified in the stock appreciation rights agreement.

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The plan administrator determines the term of stock appreciation rights granted under the 2004 plan. Unless the terms of an awardee s stock appreciation rights agreement provides otherwise, if an awardee s service relationship with us, or any affiliate of ours, terminates for any reason, the awardee, or his or her beneficiary, may exercise any vested stock appreciation rights for up to three months after the date the service relationship ends unless the terms of the agreement provide for earlier or later termination.

Phantom stock. Phantom stock awards are granted under the 2004 plan pursuant to phantom stock award agreements. A phantom stock award may require the payment of at least the par value of the option subject to the award. Payment of any purchase price may be made in cash or common stock previously owned by the recipient or a combination of the two. Dividend equivalents may be credited in respect of shares covered by a phantom stock award, as determined by our board of directors. All phantom stock awards will be forfeited upon termination of the holder s service relationship with us, or any affiliate of ours, to the extent not vested on that date.

Other stock awards. The plan administrator may grant other awards based in whole or in part by reference to our common stock. The plan administrator will set the number of shares under the award, the purchase price, if any, the timing of exercise and vesting and any repurchase rights associated with these awards.

Corporate transactions and changes in control. In the event of certain corporate transactions, all outstanding stock awards granted under the 2004 plan following this offering either will be assumed, continued or substituted for by any surviving or acquiring entity. If the surviving or acquiring entity elects not to assume, continue or substitute for these awards, the vesting provisions of these awards will generally be accelerated and the awards will be terminated if not exercised prior to the effective date of the corporate transaction. We may assign any repurchase or reacquisition rights held by us with respect to outstanding stock awards to the surviving or acquiring entity. Following certain change in control transactions, the vesting and exercisability of certain stock awards granted under the 2004 plan following this offering generally will be accelerated only if and to the extent provided in the awardee s award agreement.

Our board of directors will make appropriate adjustments for a stock split, reverse stock split, stock dividend, combination or reclassification of the stock, or any other increase or decrease in the number of issued shares of common stock effected without receipt of consideration by the company.

Additional provisions. Our board of directors has the authority to amend outstanding awards granted under the 2004 plan, except that no amendment may adversely affect an award without the recipient s written consent. Our board of directors has the power to amend, suspend or terminate the 2004 plan. However, some amendments also require stockholder approval.

We are required to provide annual financial statements to individuals who participated in the 2004 plan prior to its amendment and restatement.

2004 Employee Stock Purchase Plan

We adopted, and our stockholders approved, our 2004 Employee Stock Purchase Plan, or the purchase plan, on March 23, 2004. The purchase plan will become effective upon the closing of this offering. The purchase plan is intended to qualify as an employee stock purchase plan within the meaning of Section 423 of the Code. Under the purchase plan, eligible employees will be able to purchase shares of our common stock at a discount price in periodic offerings.

Share reserve. An aggregate of 2,000,000 shares of our common stock are reserved for issuance pursuant to purchase rights granted to our employees or to employees of any of our affiliates under the purchase plan. On the first day of each calendar year, for a period of ten years beginning on January 1, 2005, the share reserve will automatically increase by the lesser of:

700,000 shares;

1% of the total number of shares of our common stock outstanding on that date; or

an amount as may be determined by our board of directors.

However, under the terms of the purchase plan, in no event shall the annual increase cause the total number of shares reserved under the purchase plan to exceed 10% of the total number of shares of our capital stock outstanding on December 31 of the prior year. As of the date hereof, no shares of common stock have been purchased under the purchase plan.

Administration. Our board of directors will administer the purchase plan, but the board may delegate authority to administer the purchase plan to a committee of one or more members of the board. Subject to the terms of the purchase plan, the plan administrator will determine grant dates for purchase rights, interpret the purchase plan and purchase rights and establish rules for the administration of the purchase plan.

Eligibility. The purchase plan is implemented by offerings of rights to eligible employees. Our board of directors will establish the criteria for determining which employees are eligible to participate in an offering. Generally, all regular employees, including executive officers, who work more than twenty hours per week and are customarily employed by us or by any of our affiliates for more than five months per calendar year may participate in the purchase plan. Eligible employees may be granted rights only if the rights, together with any other rights granted under employee stock purchase plans, do not permit such employees rights to purchase our stock to accrue at a rate which exceeds $25,000 of the fair market value of such stock for each calendar year in which such rights are outstanding. In addition, no employee shall be eligible for the grant of any rights under the purchase plan if immediately after such rights are granted, the employee has voting power over 5% or more of our outstanding capital stock, measured by vote or value. For purposes of the purchase plan, stock which may be purchased under an outstanding purchase right is treated as owned by an employee. All outstanding purchase rights granted to an employee will terminate if the employee ceases to be employed by us or by any of our affiliates.

Offerings. Under the purchase plan, employees may purchase shares of our common stock during offerings through payroll deductions. Offerings may last up to 27 months. The first offering will begin on the effective date of this offering and last approximately six months, with one purchase occurring at the end of the six-month period. Eligible employees who participate in an offering may have up to 20% of their earnings for the period of that offering withheld for the purchase of common stock under the purchase plan. The price paid for common stock on the purchase dates will be determined by the plan administrator and will not be less than the lower of 85% of the fair market value of a share of our common stock on the first day of the offering period or 85% of the fair market value of a share of our common stock on the purchase date. Employees may end their participation in the offering at any time during the offering period, and participation ends automatically on termination of employment.

Transferability. Generally, a purchase right granted under the purchase plan may not be transferred other than by will or the laws of descent and distribution. However, an employee may designate a beneficiary who may exercise the purchase right following the optionee s death.

Corporate transactions. In the event of certain corporate transactions, any outstanding rights to purchase our stock under the purchase plan will be assumed, continued or substituted for by the surviving or acquiring entity. If the surviving or acquiring entity elects not to assume, continue or substitute for these rights, then the participants accumulated contributions will be used to purchase shares of our common stock within ten days prior to the corporate transaction and the purchase rights will terminate immediately thereafter.

Our board of directors will make appropriate adjustments for a stock split, reverse stock split, stock dividend, combination or reclassification of the stock, or any other increase or decrease in the number of issued shares of common stock effected without receipt of consideration by the company.

Other provisions. Our board of directors has the authority to amend or terminate the purchase plan. However, no amendment or termination of the purchase plan or outstanding offering may adversely affect any outstanding rights to purchase shares of our common stock other than an amendment or termination as a result of an accounting treatment for the purchase plan that is detrimental to our best interests. Amendments generally will be submitted for stockholder approval only to the extent required by law or applicable exchange rules.

2004 Non-Employee Directors Stock Option Plan

We adopted, and our stockholders approved, our 2004 Non-Employee Directors Stock Option Plan, or the directors plan, on March 23, 2004. The directors plan will become effective upon the closing of this offering. The directors plan provides for the automatic non-discretionary grant of NSOs to our non-employee directors.

Share reserve. An aggregate of 800,000 shares of our common stock are reserved for issuance under the directors plan. Shares subject to options granted under the directors plan that expire or otherwise terminate without being exercised will be returned to the director s plan and become available for issuance under the plan. Shares subject to options granted under the directors plan that are withheld upon the exercise of an option or shares that are provided by a non-employee director to exercise an option, will remain available for issuance under the directors plan. As of the date hereof, no shares of common stock have been issued under the directors plan.

Administration. Our board of directors will administer the directors plan, but the board may delegate authority to administer the directors plan to a committee of one or more members of the board. Our board of directors has broad discretion to interpret and administer the directors plan.

Automatic grants. Pursuant to the terms of the directors plan, upon the completion of this offering, each of our non-employee directors will automatically receive an initial option grant to purchase 30,000 shares of our common stock. Each person who is not an employee of ours who is first elected or appointed to our board of directors after the closing of this offering will receive an initial option grant on the date of his or her election or appointment to purchase 30,000 shares of our common stock. Any person who is a non-employee director on the day of an annual meeting of our stockholders, beginning in 2005, will automatically be granted an option to purchase 10,000 shares of our common stock under the directors plan on that date, the annual grant. However, in the event a non-employee director has not been a non-employee director since the date of the preceding annual meeting of our stockholders, that director will receive an annual grant that has been reduced *pro rata* for each full quarter prior to the date of grant during which such person did not serve as a non-employee director.

Terms. In general, the term of the stock options granted under the directors plan may not exceed 10 years and the exercise price for the options cannot be less than 100% of the fair market value of the common stock on the date of grant. Acceptable consideration for the purchase of our common stock issued under the directors plan will be determined by our board of directors and may include cash or common stock previously owned by the optionee or may be paid through a broker assisted exercise or net exercise feature. All initial option grants under the directors plan vest in three equal annual installments and all annual option grants under the directors plan vest in full on the grant

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date. An optionee whose service relationship with us or any of our affiliates, whether as a non-employee director or subsequently as an employee, director or consultant of either us or one of our affiliates, ceases for any reason may exercise options for the term provided in the option agreement to the extent the options were exercisable on the date of termination.

Transferability. Generally, an option granted under the directors plan may not be transferred other than by will or by the laws of descent and distribution or pursuant to the terms of the option agreement. However, an optionee may designate a beneficiary who may exercise the option following the optionee s death.

Corporate transactions. In the event of certain corporate transactions, all outstanding options granted under the directors plan will be assumed, continued or substituted for by any surviving entity. If the surviving or acquiring entity elects not to assume, continue or substitute for these options, the options will be terminated if not exercised prior to the effective date of the corporate transaction.

Our board of directors will make appropriate adjustments for a stock split, reverse stock split, stock dividend, combination or reclassification of the stock, or any other increase or decrease in the number of issued shares of common stock effected without receipt of consideration by the company.

Additional provisions. Our board of directors may amend or terminate the directors plan at any time. However, some amendments will require stockholder approval and no amendment or termination may adversely affect a non-employee director s outstanding options without the non-employee director s written consent.

401(k) Plan

We sponsor a 401(k) plan that is a defined contribution plan. Employees who complete one month of service with us prior to an open enrollment date are eligible to participate in our 401(k) plan. Participants may make pre-tax contributions to the 401(k) plan each year of up to the statutorily prescribed annual limit, which is $13,000 for 2004. Under the plan, each employee is fully vested in his or her deferred salary contributions after two years of service. Employee contributions are held in trust as required by law and invested by the plan s trustee according to the employee s instructions. Under our 401(k) plan, we may also make discretionary contributions and matching contributions, subject to established limits and a vesting schedule. During the year ended December 31, 2003, we contributed an aggregate of $235,000 to our 401(k) plan. The 401(k) plan is intended to qualify under Section 401(a) of the Code so that contributions to the 401(k) plan, and income earned on these contributions, are not taxable to participants until withdrawn or distributed from the plan.

EXECUTIVE SEVERANCE AGREEMENTS

On August 1, 2003, we entered into executive severance agreements with Drs. Cheatham and Thomson and Messrs. Edstrom, Anderson and Burns. Each agreement is for a period of two years and will be automatically renewed for additional one-year periods unless either party gives notice to terminate the agreement at least 90 days prior to the end of its initial term or any subsequent term.

The agreements provide that each executive is an at will employee and that his employment with us may be terminated at any time by the employee or us. Under the agreements, in the event we terminate an executive s employment without cause (as defined below) or the employee terminates his employment with us for good reason (as defined below), the employee is generally entitled to receive the following:

- the portion of the employee s annual base salary earned through the termination date that was not paid prior to his termination, if any;

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- on the condition the employee executes a general release and settlement agreement, or Release, in favor of us, the employee s annual base salary on the date of termination for a period of 18 months following his termination, subject to certain limitations;

- on the condition the employee executes a Release, an amount equal to the average annual bonus received by the employee for the three years prior to his termination (or the prior period up to three years during which the employee was one of our executive officers and received a bonus);

- in the event the employee met the performance criteria for earning an annual bonus prior to his termination, a portion of the annual bonus earned for the year based on the number of days worked during the year;

- any compensation previously deferred by the employee and any accrued paid time-off that the employee is entitled to under our policy; and

- on the condition the employee executes a Release, health insurance and, under certain circumstances, life, disability and other insurance benefits for a period expiring on the earlier of 18 months following his termination or until he qualifies for related benefits from another employer.

In addition, the executive severance agreements provide that, on the condition the employee executes a Release, each vested stock option held by the employee on the date of termination will be exercisable for a period ending on the earlier of 18 months following that date or the end of the original term of the option.

Under the agreements, an employee may be terminated for cause if he, among other things:

- refuses to carry out or satisfactorily perform any of his lawful duties or any lawful instruction of our board of directors or senior management;

- violates any local, state or federal law involving the commission of a crime other than a minor traffic offense;

- is grossly negligent, engages in willful misconduct or breaches a fiduciary obligation to us;

- engages in any act that materially compromises his reputation or ability to represent us with investors, customers or the public; or

- reaches a mandatory retirement age established by us.

Under the agreements, good reason includes, among other things:

- a reduction of the executive s annual base salary to a level below his salary as of August 1, 2003;

- a material diminution in the executive s position, authority, duties or responsibilities with us, subject to certain limitations;

- an order by us to relocate the executive to an office located more than 50 miles from the executive s current residence and worksite;

- any non-renewal of the executive severance agreement by us, on the condition that the executive may terminate the agreement for good reason only during the 30-day period after he receives notice from us that we intend to terminate the agreement; and

- any material violation of the executive severance agreement by us.

Under the agreements, an employee must inform us if he intends to terminate his agreement for good reason. We have 30 days from the date we receive notice of the employee s intent to terminate the agreement for good reason to cure the default.

CHANGE OF CONTROL AGREEMENTS

On August 1, 2003, we entered into change of control agreements with Drs. Cheatham and Thomson and Messrs. Edstrom, Anderson and Burns. Each agreement is for a period of two years and will be automatically renewed for additional one-year periods unless either party gives notice to terminate the agreement at least 90 days prior to the end of its initial term or any subsequent term.

Under the agreements, a change of control will be deemed to occur upon:

- any transaction that results in a person or group acquiring beneficial ownership of 50% or more of our voting stock, other than us, one of our employee benefit plans, Mr. Mann or any other entity in which Mr. Mann holds a majority of the beneficial interests;
- any merger, consolidation or reorganization of us in which our stockholders immediately prior to the transaction hold less than 50% of the voting power of the surviving entity following the transaction, subject to certain limitations;
- any transaction in which we sell all or substantially all of our assets, subject to certain limitations;
- our liquidation; or
- any reorganization of our board of directors in which our incumbent directors (as defined in the agreements) cease for any reason to constitute a majority of the members of our board.

The agreements provide that in the event of a change of control, the employee is generally entitled to maintain the same position, authority and responsibilities held before the change of control, as well as the following compensation and benefits during the period ending on the earlier of 24 months following the change of control or the termination of his employment with us:

- his annual base salary in an amount equal or greater to his annual salary as of the date the change of control occurs;
- an annual bonus in an amount equal to the average annual bonus received by him for the three years prior to his termination (or the prior period up to three years during which he was one of our executive officers and received a bonus);
- medical, dental and other insurance, and any other benefits we may offer to our executives; and
- prompt reimbursement for all reasonable employment expenses incurred by him in accordance with our policies and procedures.

Under the change of control agreements, we may terminate an executive with or without cause (as defined below) and the executive may terminate his employment with us for good reason (as defined below) or any reason at any time during the 2-year period following a change of control. In the event we terminate an executive without cause or an executive terminates his employment with us for good reason, he is generally entitled to receive the following:

- the portion of his annual base salary earned through the termination date that was not paid prior to his termination, if any;

on the condition the employee executes a Release in favor of us, the employee s annual base salary on the date of termination for a period of 18 months following his termination, subject to certain limitations;

on the condition the employee executes a Release, an amount equal to 150% of his average annual bonus received by the employee for the three years prior to his termination (or the prior period up to three years during which the employee was one of our executive officers and received a bonus);

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- in the event the employee met the performance criteria for earning an annual bonus prior to his termination, a portion of the annual bonus earned for the year based on the number of days worked during the year;
- any compensation previously deferred by the employee and any accrued paid time-off that the employee is entitled to under our policy; and
- on the condition the employee executes a Release, health insurance and, under certain circumstances, life, disability and other insurance benefits for a period expiring on the earlier of 18 months following his termination or until he qualifies for related benefits from another employer.

In addition, the agreements provide that, on the condition the employee executes a Release, each option to purchase shares of our common stock held by him as of the termination date will become fully vested and exercisable at any point during the term of the option, subject to certain limitations.

Under the agreements, in the event we terminate an employee with cause or an employee terminates his employment with us without good reason, his agreement will terminate without any further obligation to either party.

The change of control agreements provide that an employee may be terminated for cause if he, among other things:

- refuses to carry out or satisfactorily perform any of his lawful duties or any lawful instruction of our board of directors or senior management;
- violates any local, state or federal law involving the commission of a crime other than a minor traffic offense;
- is grossly negligent, engages in willful misconduct or breaches a fiduciary obligation to us;
- engages in any act that materially compromises his reputation or ability to represent us with investors, customers or the public; or
- reaches a mandatory retirement age established by us before a change of control occurs.

Under the agreements, good reason includes, among other things:

- a failure by us to make all compensation payments and provide all insurance and related benefits to the employee required under the agreement during his employment following a change of control, subject to certain limitations;
- a material diminution in the employee s position, authority, duties or responsibilities with us;
- an order by us to relocate the employee to an office located more than 50 miles from the employee s current residence and worksite;
- any non-renewal of the change of control agreement by us, on the condition that the employee may terminate the agreement for good reason only during the 30-day period after he receives notice from us that we intend to terminate the agreement; and

any material violation of the change of control agreement by us.

Under the change of control agreements, an employee must inform us if he intends to terminate his agreement for good reason. We have 30 days from the date we receive notice of the employee s intent to terminate the agreement for good reason to cure the default.

The executive and change of control agreements provide that in the event an executive becomes entitled to benefits under both agreements, compensation payments and other benefits will be coordinated to ensure the executive is entitled to receive the benefits described above without duplicating coverage.

LIMITATIONS OF LIABILITY AND INDEMNIFICATION OF OFFICERS AND DIRECTORS

We were incorporated under the laws of the State of Delaware. Section 145 of the Delaware General Corporation Law, or DGCL, generally provides that a Delaware corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the corporation), by reason of the fact that the person is or was an officer, director, employee or agent of the corporation, or is or was serving at the request of the corporation as an officer, director, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit or proceeding, provided that the person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation s best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was illegal. A Delaware corporation may also indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, provided the person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation s best interests, except that no indemnification is permitted without judicial approval if the officer or director is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against the expenses which the officer or director has actually and reasonably incurred.

Our amended and restated certificate of incorporation and amended and restated bylaws provide for the indemnification of our directors and executive officers to the fullest extent permitted under the DGCL and other applicable laws.

As permitted by Delaware law, we have entered into indemnity agreements with each of our directors and executive officers. These agreements generally require us to indemnify our directors and executive officers against any and all expenses (including attorneys fees), witness fees, damages, judgments, fines, settlements and other amounts incurred (including expenses of a derivative action) in connection with any action, suit or proceeding, whether actual or threatened, to which any of these individuals may be made a party by reason of the fact that he or she is or was a director, officer, employee, or other agent of ours or serving at our request as a director, officer, employee, or other agent of another corporation or enterprise, provided that he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to our best interests and, with respect to any criminal proceeding, had no reasonable cause to believe his or her conduct was unlawful. Under the indemnification agreements, all expenses incurred by one of our directors or executive officers in defending any such action, suit or proceeding in advance of its final disposition shall be paid by us upon delivery to us of an undertaking, by or on behalf of the director or executive officer, to repay all advanced amounts if it is ultimately determined that the director or executive officer is not entitled to be indemnified by us under his or her indemnification agreement, our amended and restated bylaws or the DGCL. The indemnification agreements also set forth certain procedures that will apply in the event any of our directors or executive officers brings a claim for indemnification under his or her indemnification agreement.

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Management

In addition, Section 102(b)(7) of the DGCL permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duties as a director, except for liability for:

- any transaction from which the director derives an improper personal benefit;
- acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- unlawful payment of dividends or unlawful stock purchase or redemptions of shares; or
- any breach of a director s duty of loyalty to the corporation or its stockholders.

Our amended and restated certificate of incorporation includes such a provision.

There is currently no pending litigation or proceeding involving any of our directors or executive officers for which indemnification is being sought. We are not currently aware of any threatened litigation that may result in claims for indemnification against us by any of our directors or executive officers.

We have an insurance policy covering our officers and directors with respect to certain liabilities, including liabilities arising under the Securities Act of 1933, as amended, or Securities Act, or otherwise. The policy expires on July 27, 2005.

Certain relationships and related party transactions

The following is a description of transactions or series of transactions since January 1, 2000 to which we have been a party, in which the amount involved in the transaction or series of transactions exceeds $60,000, and in which any of our directors, executive officers or persons who we know held more than five percent of any class of our capital stock, including their immediate family members, had or will have a direct or indirect material interest, other than compensation arrangements, which are described under Management. Except as specifically described below regarding loans to former directors and former executive officers, we believe that the terms obtained or consideration that we paid or received, as applicable, in connection with the transactions described below were comparable to terms available or the amounts that would be paid or received, as applicable, in arm s-length transactions.

MERGER OF PDC, CTL AND ALLECURE

On December 12, 2001, we acquired AlleCure and CTL, and these entities became wholly-owned subsidiaries of ours. Pursuant to the terms of the acquisition, all outstanding shares of capital stock of CTL were exchanged for 2,504,928 shares of our common stock and 267,212 shares of our Series A preferred stock. In addition, all outstanding shares of capital stock of AlleCure were exchanged for 3,697,275 shares of our common stock and 192,618 shares of our Series B preferred stock. At the time of this transaction, we valued the stock issued to the former stockholders of CTL and AlleCure at approximately $195,153,000. Following the acquisition, we changed our name from Pharmaceutical Discovery Corporation to MannKind Corporation. On December 31, 2002, we merged AlleCure and CTL with and into us and became one entity. Our shares of preferred stock issued to the former stockholders of AlleCure and CTL in connection with the merger on December 12, 2001, or the Merger, constitute 100% of the shares of Series A preferred stock and Series B preferred stock issued by us to date.

Prior to the Merger, Alfred E. Mann, our Chief Executive Officer and Chairman of the Board of Directors, held approximately 63.1% of the outstanding shares of common stock and 83.4% of the outstanding shares of preferred stock of CTL, approximately 51.7% of the outstanding shares of common stock and 100% of the outstanding shares of preferred stock of AlleCure and approximately 76% of the outstanding shares of common stock of PDC. In the Merger, in exchange for all of the outstanding shares of capital stock of AlleCure and CTL held by Mr. Mann, he received 222,864 shares of our Series A preferred stock and 192,618 shares of our Series B preferred stock, and 3,493,850 shares of common stock, which, when combined with his holdings of PDC common stock, totalled 8,107,029 shares of our common stock.

In connection with the Merger, we assumed the obligation under a warrant issued by CTL for the purchase of 118,424 shares of our common stock at an exercise price of $21.12 per share initially issued to Mr. Mann by CTL on March 30, 2001. This warrant expired unexercised on March 31, 2003.

SEVERANCE AGREEMENTS

Dr. Solomon Steiner ceased to be an employee and a director of ours on February 6, 2003 pursuant to a settlement agreement with us. Under the settlement agreement, we became obligated to pay Dr. Steiner approximately $1,049,288 over three years, comprised of approximately $775,365 in deferred compensation from prior years and the remainder comprised of severance-related items. We have paid approximately $451,110 of this amount. An additional $271,378 is due in April 2004, $42,500 is due in September 2004 and the remaining $284,300 is due in April 2005. The settlement

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Certain relationships and related party transactions

agreement further provides that the options held by Dr. Steiner to purchase up to 46,585 shares of our common stock remain fully exercisable through April 2007, and options to purchase up to 124,553 shares of our common stock remain fully exercisable until at least April 2006.

Dr. Stephen McCormack resigned as an employee and a director of ours in February 2003 pursuant to a settlement agreement with us dated March 28, 2003. Under the settlement agreement, we became obligated to pay Dr. McCormack his base salary at the rate of approximately $22,468 per month through December 2003, and a lump sum payment of $67,404 in February 2005.

Mr. John Simard resigned as an employee and a director of ours in September 2002 pursuant to a post-employment agreement with us. The post-employment agreement provides that options held by Mr. Simard to purchase up to 30,316 shares of our common stock remain fully exercisable until January 2, 2006.

Dr. Michael Page, our Chief Executive Officer from January 1, 2003, resigned as an employee and a director of ours effective October 7, 2003. Under the terms of a severance agreement, we are obligated to pay Dr. Page his base salary at the rate of approximately $27,500 per month through April 2005 and a severance payment of $165,000. The agreement also provides for accelerated vesting of an option held by Dr. Page permitting him to purchase up to 83,333 shares of our common stock until April 7, 2005.

LOANS TO FORMER DIRECTORS AND FORMER EXECUTIVE OFFICERS

On May 18, 2000, CTL sold and issued 1,965,000 shares of its common stock to Mr. Simard in exchange for a promissory note in the aggregate principal amount of $1,179,000. The promissory note was due in May 2005, was full recourse as to both principal and interest, and was collateralized by the underlying shares of common stock issued in connection with the note. The note accrued interest at a fixed interest rate, which was less than the market interest rate available for a loan of similar size and terms from a third party. As a result, CTL recognized compensation expense of approximately $121,000 in 2002, which was equal to the amount of the discount on the promissory note based on the difference between a market interest rate and the fixed interest rate and the term of the note. In connection with the Merger, Mr. Simard s shares of common stock of CTL were exchanged for 119,145 shares of our common stock and we were assigned the benefit of the promissory note. All outstanding principal and interest accrued under the note were repaid in full in March 2002.

On September 15, 2000, December 15, 2000 and April 2, 2001, AlleCure sold and issued an aggregate of 1,715,000 shares of its common stock to Dr. McCormack in exchange for three promissory notes in the aggregate principal amount of $1,963,380. The promissory notes are due at various dates from 2005 to 2006, are full recourse as to both principal and interest and are collateralized by the underlying shares of common stock issued in connection with the notes. The notes are pre-payable by Dr. McCormack and he has no service obligation to us under the terms of the stock purchase. The note-for-stock transaction was accounted for as in-substance stock option grants to an employee. As a result, AlleCure recognized stock-based compensation expense of $815,000 during 2001 in connection with these notes, which represented the intrinsic value of the in-substance stock options. This amount was reversed in 2002 because the in-substance options had no intrinsic value as of December 31, 2002. In connection with the Merger, Dr. McCormack s shares of common stock of AlleCure were exchanged for 110,113 shares of our common stock and we were assigned the benefit of the promissory notes. As of December 31, 2003, an aggregate of $2,274,474 in principal and accrued interest was outstanding under the notes.

Certain relationships and related party transactions

COMMON STOCK FINANCINGS

From January 2001 through December 31, 2003, we sold shares of our common stock in private financings as follows:

on June 30, 2001 and on August 31, 2001, we sold 159,048 and 1,192 861 shares of common stock, respectively, for a purchase price of $25.14 per share;

on May 2, 2002 we sold an aggregate of 233,849 shares of common stock for a purchase price of $25.23 per share;

during the period of June 2002 through December 2002 we sold 3,921,767 shares of common stock for a purchase price of $15.00 per share;

in January 2003, we entered into an agreement to sell an aggregate of 41,534 shares of common stock for a purchase price of $15.00 per share, which we sold on December 22, 2003;

during the period February 2003 through May 2003 we sold an aggregate of 2,838,315 shares of common stock for a purchase price of $13.80-$14.55 per share; and

on August 9, 2003 we sold an aggregate of 654,879 shares of common stock for a purchase price of $15.27 per share.

The investors in these financings included the following executive officers, directors, holders of more than five percent of our securities, and the immediate family members and affiliated entities of each:

Purchaser	Shares
Directors and executive officers	
Alfred E. Mann(1)	1,393,443
Kent Kresa(2)	20,000
David H. MacCallum	6,666
Immediate family members	
Claude Girault(3)	66,667
Howard Mann(4)	271,344
Richard Mann(5)	146,302
Carla Mann(6)	100,000
Kevin Mann(7)	26,667
Alfred Mann, Jr.(8)	40,000
Robert Mann(9)	19,818
Rosalind Koff(10)	25,667
5% or greater stockholders	
Biomed Partners, LLC(11)	2,420,496
Biomed Partners II, LLC(11)	2,406,027

(1) Alfred E. Mann holds the shares set forth opposite his name as trustee of the Alfred E. Mann Living Trust dated April 9, 1999.

(2) Kent Kresa holds the shares set forth opposite his name as trustee of the Kresa Family Trust.

(3) Claude Girault is the spouse of Alfred E. Mann.

(4) Howard Mann holds the shares set forth opposite his name as trustee of the Howard T. and Joni C. Mann Family Trust. Howard Mann is the son of Alfred E. Mann.

(5) Richard Mann holds the shares set forth opposite his name as trustee of the Richard Mann Family Trust #1, the Richard Mann Family Trust #2 and the Richard and Cheryl Mann Revocable Living Trust. Richard Mann is the son of Alfred E. Mann.

Certain relationships and related party transactions

(6) Carla Mann holds the shares set forth opposite her name as trustee of the Carla Mann Revocable Trust. Carla Mann is the daughter of Alfred E. Mann.

(7) Kevin Mann is the son of Alfred E. Mann.

(8) Alfred Mann, Jr. is the son of Alfred E. Mann.

(9) Robert Mann is the brother of Alfred E. Mann.

(10) Rosalind Koff is the sister of Alfred E. Mann.

(11) The Alfred E. Mann Living Trust and Minimed Infusion, Inc. are each 0.1% managing members of each of Biomed Partners, LLC and Biomed Partners II, LLC. Alfred Mann has voting and dispositive power over the shares set forth opposite the names of each of these entities.

SERIES C CONVERTIBLE PREFERRED STOCK FINANCING

On December 31, 2003 we sold 980,392 shares of our Series C convertible preferred stock in a private financing at a price of $51.00 per share, including 364,589 shares to the Alfred E. Mann Living Trust.

We effected a one-for-three reverse split of our common stock on July 22, 2004. After giving effect to the reverse split of our common stock, upon the closing of this offering, the outstanding shares of our Series A preferred stock, Series B preferred stock and Series C convertible preferred stock will automatically convert into an aggregate of 6,166,372 shares of our common stock.

INDEMNIFICATION AGREEMENTS WITH DIRECTORS AND EXECUTIVE OFFICERS

We have entered into indemnification agreements with each of our directors and executive officers, in addition to the indemnification provided for in our amended and restated certificate of incorporation and amended and restated bylaws. See Management Limitations of liability and indemnification of officers and directors.

CONSULTING SERVICES

In 2002, while he was one of our directors, Dr. Page provided us with consulting services relating to our research and development programs. We paid Dr. Page approximately $124,000 for his services. We did not enter into a written agreement with Dr. Page regarding his consulting services.

In 2004, we engaged one of our directors, Llew Keltner, to provide consulting services to our management in connection with our efforts to seek potential partners in the development and commercialization of our Technosphere Insulin System. As of March 31, 2004, we have paid Dr. Keltner approximately $36,900 for consulting services rendered.

OTHER TRANSACTIONS

In connection with certain meetings of our board of directors and on other occasions when our business necessitated air travel for Mr. Mann and other MannKind employees, we utilized Mr. Mann s private aircraft and we paid the charter company that manages the aircraft on behalf of Mr. Mann approximately $441,000 in 2002 and approximately $321,278 in 2003.

From January 2002 to October 2003, we leased property located in Sylmar, California from Sylmar Biomedical Park LLC, a company owned by Mr. Mann. Under the lease, we paid Sylmar Biomedical Park approximately $39,081 and $19,709 during the years ended December 31, 2002 and 2003, respectively.

On December 11, 2001, Mr. Mann entered into a put agreement with Mr. Simard whereby Mr. Simard had the right to require Mr. Mann to purchase 119,145 shares of our common stock held by Mr. Simard for a fixed price of approximately $2,948,830, or $24.75 per share. In February 2002 Mr. Simard exercised a portion of the put for approximately $1,921,000, or 77,611 shares, which Mr. Mann paid to Mr. Simard in cash. Mr. Simard resigned in September 2002 and, pursuant to a post-employment agreement that was formalized and executed in January 2003, we assumed

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Certain relationships and related party transactions

Mr. Mann s remaining obligation under the put agreement of approximately $1,028,000. In January 2003, Mr. Simard exercised the remaining 41,534 shares covered by the put agreement and we paid Mr. Simard approximately $1,028,000 in cash. In January 2003, in connection with our assumption of the remaining obligations under the put agreement, Mr. Mann agreed to purchase 41,534 shares of common stock for an aggregate price of approximately $623,000. This price corresponded to the estimated fair value per share of our common stock at the time we entered into the agreement with Mr. Mann, which had declined below the exercise price of the put. We recorded approximately $405,000 as a stock-based compensation expense representing the intrinsic value of the 41,534 shares of common stock subject to the put agreement at the time that we assumed the obligations thereunder.

Principal stockholders

The following table sets forth information regarding beneficial ownership of our capital stock as of May 31, 2004, as adjusted to reflect the sale of shares of our common stock in this offering, by the following:

each person, or group of affiliated persons, known by us to be the beneficial owner of more than five percent of any class of our voting securities;

each of our directors;

each of the named executive officers; and

all of our directors and executive officers as a group.

Beneficial ownership is determined in accordance with the rules of the SEC and is generally based on voting or investment power with respect to securities. Under SEC rules, in computing the number of shares beneficially owned and the percentage ownership, options and warrants to purchase shares of our capital stock that are exercisable within 60 days of May 31, 2004 are deemed to be beneficially owned by the persons holding these options or warrants for the purpose of determining beneficial ownership and computing percentage ownership of that person but are not treated as outstanding for the purpose of computing any other person s ownership percentage.

All information in this table relating to the number and percent of shares for the period before the offering is based on a total of 19,975,089 shares of common stock outstanding on May 31, 2004, 4,930,341 shares of our common stock issuable upon conversion of all outstanding shares of our preferred stock, at the conversion prices then in effect, and shares beneficially owned pursuant to options and warrants. All information in this table relating to the number and percent of shares for the period after the offering is based on a total of 19,975,089 shares of common stock outstanding on May 31, 2004, 6,250,000 shares of common stock offered hereby, 6,166,372 shares of common stock issuable upon conversion of all outstanding shares of preferred stock, at the conversion prices in effect on the date of the offering, and shares beneficially owned pursuant to options and warrants. Except as indicated in the footnotes below, we believe, based on information furnished to us and subject to applicable community property laws, that the persons and entities named in the table below have sole voting and investment power with respect to all shares of common stock shown as beneficially owned by them. The information below also does not reflect any potential participation in our directed share program by such persons or their affiliates. Unless otherwise indicated, the address for each of the

Principal stockholders

stockholders in the table below is MannKind Corporation, 28903 North Avenue Paine, Valencia, California 91355.

Beneficial owner	Number of shares beneficially owned		Percent of shares beneficially owned	
	Before offering	After offering	Before offering	After offering
Named executive officers and directors:				
Alfred E. Mann(1)	15,512,007(2)	15,996,612(3)	62.0%	49.2%
Hakan S. Edstrom				
Richard L. Anderson				
Dan R. Burns				
David Thomson(4)	9,095	9,095	*	*
Kathleen Connell				
Ronald Consiglio				
Michael Friedman				
Llew Keltner				
Kent Kresa	20,000	20,000	*	*
David H. MacCallum	6,666	6,666	*	*
All directors and current executive officers as a group (12 persons)(5)	15,547,768	16,032,373	62.1%	49.3%
Solomon S. Steiner(6)	583,574	583,574	2.3%	1.8%
Michael G. Page(7)	88,004	88,004	*	*
Five percent stockholders:				
Biomed Partners, LLC(8)	2,420,496	2,420,496	9.7%	7.5%
Biomed Partners II, LLC(8)	2,406,027	2,406,027	9.7%	7.4%

* Represents beneficial ownership of less than one percent.

(1) Includes 7,824,173 shares held by the Alfred E. Mann Living Trust, 10,968 shares held by Mannco LLC, 120,486 shares issuable to Alfred E. Mann upon the exercise of options vested as of 60 days following May 31, 2004, 2,420,496 shares held by Biomed Partners, LLC and 2,406,027 shares held by Biomed Partners II, LLC. The Alfred E. Mann Living Trust and Minimed Infusion, Inc. are each 0.1% managing members of each of Biomed Partners, LLC and Biomed Partners II, LLC. Alfred Mann has voting and dispositive power over the shares set forth opposite the names of each of these entities.

(2) Includes 2,729,857 shares issuable upon conversion of preferred stock held by the Alfred E. Mann Living Trust.

(3) Includes 3,214,462 shares issuable upon conversion of preferred stock held by the Alfred E. Mann Living Trust.

(4) Includes 9,095 shares issuable to Dr. Thomson upon the exercise of options vested as of 60 days following May 31, 2004.

(5) Our current executive officers include each of the named executive officers and Wayman Wendell Cheatham.

(6) Includes 171,138 shares issuable to Dr. Steiner upon the exercise of options vested as of 60 days following May 31, 2004.

(7) Includes 88,004 shares issuable to Dr. Page upon the exercise of options vested as of 60 days following May 31, 2004.

(8) The Alfred E. Mann Living Trust and Minimed Infusion, Inc. are each 0.1% managing members of each of Biomed Partners, LLC and Biomed Partners II, LLC. Alfred Mann has voting and dispositive power over the shares set forth opposite the names of each of these entities.

Description of capital stock

The following description of our capital stock gives effect to a one-for-three reverse stock split of our common stock that we effected on July 22, 2004 and to the amendment and restatement of our certificate of incorporation and bylaws which will occur effective upon the closing of this offering, and the conversion, upon the closing of this offering, of all then outstanding shares of our preferred stock into 6,166,372 shares of our common stock.

Upon completion of this offering, our authorized capital stock will consist of 90,000,000 shares of common stock, par value $0.01 per share, and 10,000,000 shares of undesignated preferred stock, par value $0.01 per share. The following description of our capital stock does not purport to be complete and is subject to, and qualified in its entirety by, the DGCL and our restated certificate of incorporation and bylaws, which are filed as exhibits to the registration statement of which this prospectus forms a part.

COMMON STOCK

Outstanding shares

As of May 31, 2004, 19,975,089 shares of our common stock were outstanding and held of record by 319 stockholders. In addition, as of May 31, 2004, 2,132,922 shares of our common stock were subject to outstanding options, 175,227 shares of our common stock were subject to outstanding warrants, and options to purchase 3,659,926 shares of our common stock were available for grant under our 2004 equity plan. Upon completion of this offering, there will be 32,391,461 shares of common stock outstanding, assuming no exercise of the underwriter s overallotment option, no exercise of outstanding options to purchase shares of our common stock and no exercise of warrants to purchase shares of common stock.

Voting rights

Each holder of our common stock is entitled to one vote for each share on all matters submitted to a vote of our stockholders, including the election of our directors. Under our amended and restated certificate of incorporation and bylaws, our stockholders will not have cumulative voting rights. Accordingly, the holders of a majority of our outstanding shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they should so choose. Any action by our common stockholders requires the majority vote of our outstanding shares of common stock.

Dividends

Subject to preferences that may be applicable to any outstanding shares of our preferred stock, holders of our common stock are entitled to receive ratably any dividends our board of directors declares out of funds legally available for that purpose. Dividends on our common stock will be non-cumulative.

Liquidation, dissolution or winding up

If we liquidate, dissolve or wind up, the holders of our common stock are entitled to share ratably in all assets legally available for distribution to our stockholders after the payment of all of our debts and other liabilities and the satisfaction of any liquidation preference granted to the holders of any outstanding shares of our preferred stock.

Rights and preferences

Our common stock has no preemptive, conversion or subscription rights. There are no redemption or sinking fund provisions applicable to our common stock. The rights, preferences and privileges of the holders of our common stock are subject to, and may be adversely affected by, the rights of the holders of any outstanding shares of our of preferred stock, which we may designate and issue in the future.

PREFERRED STOCK

Our current certificate of incorporation authorizes 5,000,000 shares of preferred stock, including:

- 267,213 shares designated Series A preferred stock;
- 192,618 shares designated Series B preferred stock; and
- 980,393 shares designated Series C preferred stock.

See Note 9 of the notes to our financial statements for a description of our currently outstanding preferred stock. Upon the closing of this offering, all outstanding shares of our Series A preferred stock, Series B preferred stock and Series C preferred stock will be converted into 6,166,372 shares of our common stock. Following the conversion, our certificate of incorporation will be amended and restated to delete all references to these shares of preferred stock.

Under our amended and restated certificate of incorporation to be filed upon completion of this offering, our board of directors will have the authority, without further action by our stockholders, to issue up to 10,000,000 shares of our undesignated preferred stock in one or more series and to fix or alter the rights, preferences, privileges, qualifications and restrictions granted to or imposed upon any wholly unissued series of preferred stock, including dividend rights, conversion rights, voting rights, terms of redemption and any liquidation preferences, and to establish from time to time the number of shares constituting any such series. The issuance of preferred stock could result in one or more of the following:

- decreasing the market price of our common stock;
- restricting dividends on our common stock;
- diluting the voting power of our common stock;
- impairing the liquidation rights of our common stock; or
- delaying or preventing a change in control of us.

We currently have no plans to issue any shares of our undesignated preferred stock.

WARRANTS

As of May 31, 2004, warrants to purchase an aggregate of 175,227 shares of our common stock were outstanding, with a weighted average exercise price of $12.54 per share, all of which were exercisable as of that date. On July 22, 2004, certain warrantholders elected to convert their warrants into an aggregate of 22,309 shares of our common stock pursuant to conversion rights held only by these warrantholders. As a result, as of the date hereof, 135,328 shares of our common stock are issuable upon exercise of the remaining warrants, with a weighted average exercise price of $12.54 per share. Each warrant contains provisions for the adjustment of the exercise price and the number of shares issuable upon the exercise of the warrant in the event we declare any stock dividends or effect any stock split, reclassification or consolidation of our common stock. The warrants also contain a provision that provides for an adjustment to the exercise price and number of shares issuable in the event that we issue certain securities for a per share price less than a specified price. We may be in breach of certain notice provisions contained in the outstanding warrants. However, we believe that the impact of any such breach would not be material to our financial condition.

Description of capital stock

STOCK OPTIONS

As of May 31, 2004, options to purchase an aggregate of 2,132,922 shares of our common stock were outstanding, comprised of:

options to purchase 126,099 shares of our common stock granted under the 1991 plan, all of which were exercisable as of that date;

options to purchase 305,430 shares of our common stock granted under the 1999 plan, 304,728 of which were exercisable as of that date;

options to purchase 14,366 shares of our common stock granted under the AlleCure plan, 10,053 of which were exercisable as of that date;

options to purchase 105,981 shares of our common stock granted under the CTL plan, 103,583 of which were exercisable as of that date;

options to purchase 1,340,074 shares of our common stock granted under our 2004 equity plan, 125,301 of which were exercisable as of that date; and

options to purchase 240,972 shares of our common stock granted outside our equity incentive plans, 120,486 of which were exercisable as of that date.

The options outstanding as of May 31, 2004 had a weighted average exercise price of $10.18 per share of our common stock.

Based on options outstanding as of May 31, 2004, 3,659,926 shares of our common stock are reserved for future issuance under our 2004 equity plan effective as of the completion of this offering. In March 2004, our board of directors adopted, and our stockholders subsequently approved, effective upon completion of this offering, our director plan and purchase plan and an increase in the number of shares available for grant under our 2004 equity plan. See Management Employee benefit plans.

REGISTRATION RIGHTS

Following completion of this offering, under a registration rights agreement and pursuant to outstanding and previously exercised warrants to purchase shares of our common stock, holders of an aggregate of 1,048,343 shares of our common stock or their transferees may be entitled to rights with respect to the registration of these shares under the Securities Act, subject to limitations and restrictions described below.

Demand registration rights

On October 15, 1998, in connection with a loan to CTL, CTL granted registration rights pursuant to a registration rights agreement, or Rights Agreement, to debtholders that subsequently converted their debt into preferred stock. The rights covered shares of common stock of CTL issued or issuable upon conversion of its preferred stock. In connection with the Merger, we issued 267,212 shares of our Series A preferred stock to former holders of CTL preferred stock and we assumed CTL s registration obligations with respect to these shares under the Rights Agreement.

Under the Rights Agreement, at any time after 180 days following the completion of this offering, the holders of a majority of the shares of our common stock (on an as converted basis) subject to the Rights Agreement may require us, on not more than two occasions, to file a registration statement under the Securities Act covering these shares as long as the aggregate sale price of these shares to the public is at least $5 million, subject to certain limitations. We will also be required to use our best efforts to have the registration statement declared effective. However, if we believe in our reasonable judgment that proceeding with the registration would have a material and adverse impact on any financing, acquisition, reorganization or other material transaction involving us, we may delay filing the registration statement for a period not to exceed 60 days. Also, if the stockholders requesting registration request that the shares be offered for distribution through an underwriting, we may reduce the number of shares of our common stock requested to be registered upon the advice of our underwriters. If shares of our stock requested to be included in a registration must be excluded pursuant to the underwriters advice, we will register a portion of the shares requested to be registered on a pro rata basis upon the holders of our stock requesting registration.

Piggyback registration rights

Subject to certain limitations, our stockholders who have registration rights under the Rights Agreement also have the right to request that their shares covered by the Rights Agreement be included in any registration of our common stock that is initiated either for our own account or for the account of our other securityholders. However, these stockholders have no registration rights with respect to registrations relating solely to our employee benefit plans or registrations on certain registration statement forms. In each case, we are required to give these holders notice of our intent to file a registration statement with the SEC at least 15 days prior to the filing date.

We have also granted registration rights to holders of 22,309 shares of our common stock issued upon conversion of warrants and holders of outstanding warrants to purchase up to 135,328 shares of our common stock. Under the terms of the warrants, in the event we propose to register any shares of our common stock on a registration statement, these warrantholders may have unlimited rights to request that their shares of common stock issued upon exercise of the warrants and any other shares of our common stock held by the warrantholders be included in the registration. However, if we are offering shares for distribution through an underwriting, we may reduce the number of shares of our common stock requested to be registered by the warrantholders upon the advice of our underwriters. If shares of our stock requested to be included in a registration must be excluded pursuant to the underwriters advice, we will register a portion of the shares requested to be registered on a pro rata basis upon the holders of our stock requesting registration.

Additional registration rights

In addition, we are required to use our best efforts to file a registration statement covering our common stock issuable under the 1991 plan within 18 months after we become a publicly reporting company. We intend to register these shares on a registration statement on Form S-8 under the Securities Act following this offering. See Shares eligible for future sale Stock Options and Form S-8 Registration Rights.

Transferability

The registration rights granted under the Rights Agreement are only transferable to a transferee or assignee who, after the transfer, holds at least 6,063 shares of our common stock (on an as converted basis) subject to the Rights Agreement. The registration rights granted under the warrants may be transferred to any transferee of shares of our common stock issued pursuant the warrants.

Expenses

Generally, we are required to bear all registration, selling and related expenses incurred in connection with the demand and piggyback registrations described above.

ANTI-TAKEOVER EFFECTS OF PROVISIONS OF DELAWARE LAW AND OUR CERTIFICATE OF INCORPORATION AND BYLAWS

We are subject to Section 203 of the DGCL, which regulates acquisitions of some Delaware corporations. In general, Section 203 prohibits, with some exceptions, a publicly held Delaware corporation from engaging in a business combination with an interested stockholder for a period of three years following the date of the transaction in which the person became an interested stockholder, unless:

- the board of directors of the corporation approved the business combination or the other transaction in which the person became an interested stockholder prior to the date of the business combination or other transaction;

- upon consummation of the transaction that resulted in the person becoming an interested stockholder, the person owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding shares owned by persons who are directors and also officers of the corporation and shares issued under employee stock plans under which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

- on or subsequent to the date the person became an interested stockholder, the board of directors of the corporation approved the business combination and the stockholders of the corporation authorized the business combination at an annual or special meeting of stockholders by the affirmative vote of at least 66 2/3% of the outstanding stock of the corporation not owned by the interested stockholder.

Section 203 of the DGCL generally defines a business combination to include any of the following:

- any merger or consolidation involving the corporation and the interested stockholder;

- any sale, transfer, pledge or other disposition of 10% or more of the corporation s assets or outstanding stock involving the interested stockholder;

- in general, any transaction that results in the issuance or transfer by the corporation of any of its stock to the interested stockholder;

- any transaction involving the corporation that has the effect of increasing the proportionate share of its stock owned by the interested stockholder; or

- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 203 defines an interested stockholder as any person who, together with the person s affiliates and associates, owns, or within three years prior to the determination of interested stockholder status did own, 15% or more of a corporation s voting stock.

Section 203 of the DGCL could depress our stock price and delay, discourage or prohibit transactions not approved in advance by our board of directors, such as takeover attempts that might otherwise involve the payment to our stockholders of a premium over the market price of our common stock.

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Amended and restated certificate of incorporation and bylaw provisions

Our amended and restated certificate of incorporation and amended and restated bylaws include a number of provisions that may have the effect of deterring hostile takeovers or delaying or preventing changes in our control or our management, including, but not limited to the following:

Our board of directors can issue up to 10,000,000 shares of preferred stock with any rights or preferences, including the right to approve or not approve an acquisition or other change in our control.

Our restated certificate of incorporation provides that all stockholder actions upon completion of this offering must be effected at a duly called meeting of holders and not by written consent.

Our amended and restated bylaws provide that special meetings of the stockholders may be called only by the Chairman of our board of directors, by our Chief Executive Officer, by our board of directors upon a resolution adopted by a majority of the total number of authorized directors or, under certain limited circumstances, by the holders of at least 5% of our outstanding voting stock.

Our amended and restated bylaws provide that stockholders seeking to present proposals before a meeting of stockholders or to nominate candidates for election as directors at a meeting of stockholders must provide timely notice in writing and also specify requirements as to the form and content of a stockholder s notice. These provisions may delay or preclude stockholders from bringing matters before a meeting of our stockholders or from making nominations for directors at a meeting of stockholders, which could delay or deter takeover attempts or changes in our management.

Our amended and restated certificate of incorporation provides that, subject to the rights of the holders of any outstanding series of preferred stock, all vacancies, including newly created directorships, may, except as otherwise required by law, be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum. In addition, our amended and restated certificate of incorporation provides that our board of directors may fix the number of directors by resolution.

Our amended and restated certificate of incorporation does not provide for cumulative voting for directors. The absence of cumulative voting may make it more difficult for stockholders who own an aggregate of less than a majority of our voting stock to elect any directors to our board of directors.

These and other provisions contained in our amended and restated certificate of incorporation and amended and restated bylaws are expected to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors. However, these provisions could delay or discourage transactions involving an actual or potential change in control of us or our management, including transactions in which our stockholders might otherwise receive a premium for their shares over market price of our stock and may limit the ability of stockholders to remove our current management or approve transactions that our stockholders may deem to be in their best interests and, therefore, could adversely affect the price of our common stock.

LIMITATIONS OF LIABILITY AND INDEMNIFICATION MATTERS

We have adopted provisions in our amended and restated certificate of incorporation that limit the liability of our directors for monetary damages for breach of their fiduciary duties, except for liability that cannot be eliminated under the DGCL. Delaware law permits corporations to eliminate the personal liability of their directors for monetary damages for breach of their fiduciary duties as directors, except liability for any of the following:

- any breach of their duty of loyalty to the corporation or its stockholders;
- acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the DGCL; or
- any transaction from which the director derived an improper personal benefit.

This limitation of liability does not apply to liabilities arising under the federal securities laws and does not affect the availability of equitable remedies such as injunctive relief or rescission.

Our amended and restated certificate of incorporation and our amended and restated bylaws also provide that we must indemnify our directors and executive officers and may indemnify our other officers and employees and other agents to the fullest extent permitted by law. We believe that indemnification under our bylaws covers at least negligence on the part of indemnified parties. Our bylaws also permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in this capacity, regardless of whether our bylaws would permit indemnification.

We have also entered into separate indemnification agreements with our directors and executive officers. These agreements among other things, provide for indemnification of our directors and executive officers for expenses, judgments, fines and settlement amounts incurred by them in any action or proceeding arising out of their services as a director or executive officer or at our request. We believe that these provisions contained in our amended and restated certificate of incorporation and amended and restated bylaws and the indemnification agreements are necessary in order for us to attract and retain qualified persons as directors and executive officers.

TRANSFER AGENT AND REGISTRAR

The transfer agent and registrar for our common stock is expected to be Chase Mellon Investor Services. Chase Mellon Investor Services address is 400 South Hope Street, Suite 400, Los Angeles, California 90071.

NASDAQ NATIONAL MARKET LISTING

There is currently no established public trading market for our common stock. Our common stock has been approved for quotation on The Nasdaq National Market under the trading symbol MNKD.

Shares eligible for future sale

Prior to this offering, no public market existed for our common stock. Future sales of substantial amounts of common stock in the public market, or the perception that these sales could occur, could adversely affect prevailing market prices of our common stock.

Based on 19,975,089 shares of our common stock outstanding on May 31, 2004, upon completion of this offering, we will have 32,391,461 shares of common stock outstanding, assuming no exercise of currently outstanding options or warrants or the underwriters over-allotment option and assuming the conversion, upon the closing of this offering, of all shares of preferred stock into common stock. All of the shares sold in this offering, plus any additional shares sold upon exercise of the underwriters over-allotment option, will be freely transferable without restriction under the Securities Act unless they are held by our affiliates, as that term is defined under the Securities Act and the rules and regulations promulgated thereunder. The remaining shares of our common stock held by existing stockholders are restricted securities. Restricted securities may be sold in the public market only if registered under the Securities Act or if they qualify for an exemption from registration under Rule 144 or Rule 701 promulgated under the Securities Act, which are summarized below, or another exemption.

LOCK-UP AGREEMENTS

We, our executive officers and directors and our existing stockholders holding an aggregate of over 90% of the shares of our capital stock have entered into lock-up agreements with the underwriters. Under these agreements, subject to certain exceptions, we and each of these persons may not, without the prior written approval of UBS Securities LLC, offer, sell, contract to sell or otherwise dispose of, directly or indirectly, or hedge, our common stock or securities convertible into or exchangeable or exercisable for our common stock. These restrictions will be in effect for a period of 180 days after the date of this prospectus. The 180-day lock-up period may be extended for up to 37 additional days under certain circumstances where we announce or pre-announce earnings or material news or a material event within approximately 18 days prior to, or approximately 16 days after, the termination of the 180-day period. Even under those circumstances, however, the lock-up period will not extend if we are actively traded, meaning that we have a public float of at least $150.0 million and average trading volume at least $1.0 million per day. At any time and without public notice, UBS Securities LLC may, in its sole discretion, release all or some of the securities from these lock-up agreements. See Underwriting.

RULE 144

In general, under Rule 144 of the Securities Act as currently in effect, beginning 90 days after the effective date of the registration statement of which this prospectus forms a part, a person who has beneficially owned shares of our common stock that are restricted securities for at least one year, including the holding period of any prior owner other than us or one of our affiliates, would be entitled to sell the number of restricted shares within any three-month period that does not exceed the greater of:

- one percent of the number of shares of our common stock then outstanding, which will equal approximately 323,915 shares immediately after the offering; or

- the average weekly reported trading volume of our common stock on The Nasdaq National Market during the four preceding calendar weeks.

Sales of restricted shares under Rule 144 are also subject to requirements regarding the manner of sale, notice and the availability of current public information about us.

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Shares eligible for future sale

RULE 144(k)

Under Rule 144(k) of the Securities Act as currently in effect, a stockholder who is not one of our affiliates at any time during the 3 months preceding a sale and who has beneficially owned the restricted securities proposed to be sold for at least two years, including the holding period of any prior owner other than us or an affiliate of us, may sell those restricted securities without complying with the manner of sale, notice, public information or volume limitation provisions of Rule 144. However, these manner of sale, notice, public information and volume restrictions always apply to affiliates who sell shares in reliance on Rule 144.

RULE 701

Our directors, officers, other employees and consultants who acquired or will acquire shares of our common stock upon exercise of options granted under our equity incentive plans prior to this offering or who were granted options by AlleCure or CTL and assumed by us in connection with the Merger are entitled to rely on the resale provisions of Rule 701 under the Securities Act. Rule 701, as currently in effect, permits our affiliates and non-affiliates to sell their shares of our common stock issued pursuant to Rule 701 in reliance on Rule 144 beginning 90 days after the effective date of the registration statement of which this prospectus forms a part. Non-affiliates may sell Rule 701 shares without having to comply with the one-year holding period restrictions, subject only to the manner of sale provisions of Rule 144. Affiliates may also sell Rule 701 shares without having to comply with the one-year holding period restrictions, but they must meet the manner of sale, notice, public information and volume limitation provisions of Rule 144. However, substantially all Rule 701 shares of our common stock are subject to lock-up agreements described below and will only become eligible for sale at the expiration of the 180-day lock-up period.

SALE OF RESTRICTED SHARES

After the effective date of this offering, 26,141,461 shares of our common stock outstanding on a pro forma basis, assuming conversion of our preferred stock prior to consummation of this offering, will become eligible for sale under Rule 144 and Rule 701 without registration approximately as follows:

- approximately 6,877,892 shares of our common stock will be eligible for sale in the public market without restriction;

- approximately 14,799,303 shares of our common stock will be eligible for sale in the public market under Rule 144 or Rule 701, beginning 90 days after the effective date of the registration statement of which this prospectus is a part, subject to the volume, manner of sale and other limitations under those rules, approximately 10,722,753 of which are owned or controlled directly or indirectly by Mr. Mann and therefore are subject to the manner of sale, notice, public information and volume limitation provisions described above; and

- the remaining approximately 4,464,266 shares of our common stock will become eligible for sale in the public market from time to time under Rule 144.

The discussion above does not take into consideration the effect of lock-up agreements as described above. Additionally, of the 2,132,922 shares issuable upon exercise of options to purchase our common stock outstanding as of May 31, 2004, approximately 1,387,750 shares will be vested and eligible for sale 180 days after the effective date of this offering under Rule 701.

REGISTRATION RIGHTS

The holders of 1,048,343 shares of our common stock (after giving effect to the conversion of our Series A preferred stock and the exercise of our outstanding warrants), or their transferees, have the right in specified circumstances to require us to register their shares under the Securities Act for resale beginning 180 days from the effective date of this offering. If those holders with demand registration rights, by exercising these rights, cause a large number of shares to be registered and sold in the public market, such sales could have an adverse effect on the market price for our common stock. In addition, if at any time we are required to include in a registration initiated either for our account or for the account of our other securityholders shares held by these holders upon the exercise of their piggyback registration rights, these sales may have an adverse effect on our ability to raise needed capital. See Description of capital stock Registration rights.

STOCK OPTIONS AND FORM S-8 REGISTRATION STATEMENTS

As of May 31, 2004, options to purchase 126,099 shares of our common stock were outstanding under the 1991 plan, options to purchase 305,430 shares of our common stock were outstanding under the 1999 plan, options to purchase 14,366 shares of our common stock were outstanding under the AlleCure plan, options to purchase 105,981 shares of our common stock were outstanding under the CTL plan, options to purchase 1,340,074 shares of our common stock were outstanding under the 2004 equity plan and options to purchase 240,972 shares of our common stock granted outside of our equity plans were outstanding. We have reserved for issuance, effective as of the closing of this offering, 3,659,926 shares of our common stock for issuance under our 2004 equity plan, and 2,800,000 shares of our common stock for issuance under our directors plan and purchase plan.

We intend to register the shares subject to these plans and the options on a registration statement on Form S-8 under the Securities Act following this offering. Subject to the lock-up agreements, the restrictions imposed under the 1991 plan, the 1999 plan, the AlleCure plan, the CTL plan, the 2004 equity plan and related option agreements, shares of common stock issued under these plans or agreements after the effective date of any registration statement on Form S-8 will be available for sale in the public market without restriction to the extent that they are held by persons who are not our affiliates.

Underwriting

We are offering the shares of our common stock described in this prospectus through the underwriters named below. UBS Securities LLC, Piper Jaffray & Co., Wachovia Capital Markets, LLC, Jefferies & Company, Inc. and Harris Nesbitt Corp. are the representatives of the underwriters. UBS Securities LLC is the sole book-running manager for this offering. We have entered into an agreement with the representatives. Subject to the terms and conditions of the underwriting agreement, each of the underwriters has severally agreed to purchase the number of shares of common stock listed next to its name in the following table:

Underwriters	Number of shares
UBS Securities LLC	2,812,502
Piper Jaffray & Co.	1,250,000
Wachovia Capital Markets, LLC	729,166
Jefferies & Company, Inc.	729,166
Harris Nesbitt Corp.	729,166
Total	6,250,000

The underwriting agreement provides that the underwriters must buy all of the shares if they buy any of them. However, the underwriters are not required to take or pay for the shares covered by the underwriters over-allotment option described below.

Our common stock is offered subject to a number of conditions, including:

receipt and acceptance of our common stock by the underwriters; and

the underwriters right to reject orders in whole or in part.

We have been advised by the representatives that the underwriters intend to make a market in our common stock but that they are not obligated to do so and may discontinue making a market at any time without notice.

In connection with this offering certain of the underwriters or securities dealers may distribute prospectus electronically.

Sales of shares made outside the United States may be made by affiliates of the underwriters.

OVER-ALLOTMENT OPTION

We have granted the underwriters an option to buy 937,500 additional shares of our common stock. The underwriters may exercise this option solely for the purpose of covering over-allotments, if any, made in connection with this offering. The underwriters have 30 days from the date of this prospectus to exercise this option. If the underwriters exercise this option they will each purchase additional shares approximately in proportion to the amounts specified in the table above.

COMMISSIONS AND DISCOUNTS

Shares sold by the underwriters to the public will initially be offered at the initial public offering price set forth on the cover of this prospectus. Any shares sold by the underwriters to securities dealers may be sold at a discount of up to $0.58 per share from the initial public offering price. Any of these securities dealers may resell any shares purchased from the underwriters to other brokers or dealers at a discount of up to $0.10 per share from the initial public offering price. If all the shares are not sold at the initial public offering price, the representatives may change the offering price and the other selling terms. Upon execution of the underwriting agreement, the underwriters will be obligated to purchase the shares at the prices and upon the terms stated therein and, as a result, will thereafter bear any risk associated with changing the offering price to the public or other selling terms. The underwriters have informed us that they do not expect discretionary sales to exceed 5% of the shares of common stock to be offered.

The following table shows the per share and total underwriting discounts and commissions we will pay to the underwriters assuming both no exercise and full exercise of the underwriters option to purchase up to 937,500 additional shares.

	No exercise	Full exercise
Per share	$ 0.98	$ 0.98
Total	$6,125,000	$7,043,750

We estimate that the total expenses of the offering payable by us, excluding underwriting discounts and commissions, will be approximately $1,800,000.

NO SALES OF SIMILAR SECURITIES

We, our executive officers and directors and our existing stockholders holding an aggregate of over 90% of the shares of our capital stock have entered into lock-up agreements with the underwriters. Under these agreements, subject to certain exceptions, we and each of these persons may not, without the prior written approval of UBS Securities LLC, offer, sell, contract to sell or otherwise dispose of, directly or indirectly, or hedge, our common stock or securities convertible into or exchangeable or exercisable for our common stock. These restrictions will be in effect for a period of 180 days after the date of this prospectus. The 180-day lock-up period may be extended for up to 37 additional days under certain circumstances where we announce or pre-announce earnings or material news or a material event within approximately 18 days prior to, or approximately 16 days after, the termination of the 180-day period. Even under those circumstances, however, the lock-up period will not extend if we are actively traded, meaning that we have a public float of at least $150.0 million and average trading volume at least $1.0 million per day. At any time and without public notice, UBS Securities LLC may, in its sole discretion, release all or some of the securities from these lock-up agreements.

INDEMNIFICATION

We have agreed to indemnify the underwriters against certain liabilities, including certain liabilities under the Securities Act. If we are unable to provide this indemnification, we have agreed to contribute to payments the underwriters may be required to make in respect of those liabilities.

NASDAQ NATIONAL MARKET QUOTATION

Our common stock has been approved for quotation on The Nasdaq National Market under the trading symbol MNKD.

PRICE STABILIZATION, SHORT POSITIONS, PASSIVE MARKET MAKING

In connection with this offering, the underwriters may engage in activities that stabilize, maintain or otherwise affect the price of our common stock, including:

stabilizing transactions;

short sales;

Underwriting

- purchases to cover positions created by short sales;
- imposition of penalty bids;
- syndicate covering transactions; and
- passive market making.

Stabilizing transactions consist of bids or purchases made for the purpose of preventing or retarding a decline in the market price of the common stock while the offering is in progress. These transactions may also include short sales of our common stock, which involve the sale by the underwriters of a greater number of shares than they are required to purchase in the offering and purchasing shares of common stock in the open market to cover positions created by short sales. Short sales may be covered short sales, which are short positions in an amount not greater than the underwriters over-allotment option referred to above, or may be naked short sales, which are short positions in excess of that amount.

The underwriters may close out any covered short position by either exercising their over-allotment option, in whole or in part, or by purchasing shares in the open market. In making this determination, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the over-allotment option.

Naked short sales are sales in excess of the over-allotment option. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common stock in the open market that could adversely affect investors who purchased in this offering.

The underwriters also may impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased shares sold by or for the account of that underwriter in stabilizing or short covering transactions.

As a result of these activities, the price of the common stock may be higher than the price that otherwise might exist in the open market. If these activities are commenced, they may be discontinued by the underwriters at any time. The underwriters may carry out these transactions on The Nasdaq National Market, in the over-the-counter market or otherwise.

DETERMINATION OF OFFERING PRICE

Prior to this offering, there has been no public market for our common stock. The initial public offering price has been determined by negotiation by us and the representatives of the underwriters. The principal factors considered in determining the initial public offering price included:

- the information set forth in this prospectus and otherwise available to the representatives;
- the history of, and the prospects for, the industries in which we compete;
- our past and present financial performance and an assessment of our management;

our prospects for future earnings and the present state of our development;

the general condition of the securities markets at the time of this offering;

the recent market prices of, and the demand for, publicly traded common stock of generally comparable companies; and

other factors deemed relevant by the underwriters and us.

DIRECTED SHARE PROGRAM

At our request, certain of the underwriters have reserved up to 30% of the common stock being offered by this prospectus for sale at the initial public offering price to our directors, officers, employees and other individuals associated with us and members of their families. The sales will be made by UBS Financial Services Inc., a selected dealer affiliated with UBS Securities LLC, through a directed share program. We do not know if these persons will choose to purchase all or any portion of these reserved shares, but any purchases they do make will reduce the number of shares available to the general public. Certain employees and other persons purchasing these reserved shares will be prohibited from disposing of or hedging the shares for a period of at least 180 days after the date of this prospectus.

AFFILIATIONS

Certain of the underwriters and their affiliates have provided in the past and may provide from time to time certain commercial banking, financial advisory, investment banking and other services for us for which they will be entitled to receive separate fees. The underwriters may, from time to time, engage in transactions with us and perform services for us in the ordinary course of their business.

Legal matters

The validity of our shares of common stock being offered by this prospectus and certain other legal matters will be passed upon for us by Cooley Godward LLP, San Diego, California. Dewey Ballantine LLP, East Palo Alto, California, is counsel for the underwriters in connection with this offering.

Experts

The financial statements included in this prospectus, and the financial statements from which the Selected financial data included in this prospectus have been derived, have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report appearing herein. Such financial statements and Selected financial data have been included herein in reliance upon the report of such firm given upon their authority as experts in accounting and auditing.

Where you can find additional information

We have filed with the SEC a registration statement on Form S-1 under the Securities Act that registers the shares of our common stock to be sold in this offering. This prospectus does not contain all of the information in the registration statement, including the exhibits and schedules filed with the registration statement. The rules and regulations of the SEC allow us to omit from this prospectus certain information included in the registration statement. For further information about us and our common stock, you should refer to the registration statement and the exhibits and schedules filed with the registration statement. With respect to the statements contained in this prospectus regarding the contents of any agreement or any other document, in each instance, the statement is qualified in all respects by the complete text of the agreement or document, a copy of which has been filed as an exhibit to the registration statement of which this prospectus forms a part. You may obtain copies of any materials we file with the SEC at the SEC s Public Reference Room at 450 Fifth Street, N.W., Washington, DC 20549, at prescribed rates. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC also maintains an Internet website that contains reports, proxy and information statements and other information about issuers that file electronically with the SEC. The address of that website is http://www.sec.gov.

Upon completion of this offering, we will become subject to the information and periodic reporting requirements of the Securities Exchange Act of 1934, as amended. Under the Exchange Act, we will file annual, quarterly and current reports, as well as proxy statements and other information with the SEC. These periodic reports, proxy statements and other information will be available for inspection and copying at the SEC s Public Reference Room and the website of the SEC referred to above.

MannKind Corporation and Subsidiary (A Development Stage Company)

INDEX TO FINANCIAL STATEMENTS

Report of Independent Registered Public Accounting Firm

Board of Directors

MannKind Corporation
Valencia, California

We have audited the accompanying consolidated balance sheets of MannKind Corporation and subsidiaries (a development stage company) (the Company) as of December 31, 2002 and 2003 and the related statements of operations, stockholders equity (deficit) and cash flows for each of the three years in the period ended December 31, 2003 and for the period from February 14, 1991 (date of inception) to December 31, 2003. These financial statements are the responsibility of the Company s management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such financial statements present fairly, in all material respects, the financial position of MannKind Corporation and subsidiaries at December 31, 2002 and 2003 and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2003 and for the period from February 14, 1991 (date of inception) to December 31, 2003 in conformity with accounting principles generally accepted in the United States of America.

Los Angeles, California

April 29, 2004

(July 22, 2004 as to the fifth paragraph of Note 1)

DELOITTE & TOUCHE LLP

Los Angeles, California

MannKind Corporation and Subsidiary (A Development Stage Company)

CONSOLIDATED BALANCE SHEETS
(in thousands, except share and per share data)

	December 31, 2002	December 31, 2003	March 31, 2004	Pro forma Stockholders Equity at March 31, 2004
			(unaudited)	(unaudited)
Assets				
Current assets:				
Cash and cash equivalents	$ 19,917	$ 54,120	$ 56,111	
Marketable securities	11,135	1,825	3,194	
Prepaid expenses and other current assets	949	1,859	1,917	
Total current assets	32,001	57,804	61,222	
Property and equipment net	72,675	67,323	66,881	
Restricted cash		559	559	
Other assets	97	190	104	
Total	$ 104,773	$ 125,876	$ 128,766	
Liabilities and stockholders equity				
Current liabilities:				
Accounts payable	$ 4,209	$ 1,926	$ 2,329	
Accrued expenses and other current liabilities	1,757	4,015	4,947	
Payable to stockholder		1,406		
Deferred compensation current	1,864	1,360	1,360	
Total current liabilities	7,830	8,707	8,636	
Deferred compensation		284	284	
Other liabilities	207	120	163	
Total liabilities	8,037	9,111	9,083	
Commitments and contingencies				
Series A redeemable convertible preferred stock, $0.01 par value 267,213 shares authorized; 267,212, issued and outstanding at December 31, 2002 and 2003 and March 31, 2004 (unaudited), respectively; aggregate liquidation value, $5,188 as of December 31, 2003 and $5,252 as of March 31,	4,935	5,188	5,252	

2004 (unaudited)				
Common stock subject to repurchase	1,028			
Stockholders equity:				
Series B convertible preferred stock, $0.01 par value 192,618 shares authorized, issued and outstanding at December 31, 2002 and 2003 and March 31, 2004 (unaudited), respectively; aggregate liquidation value, $15,000 at December 31, 2003 and March 31, 2004 (unaudited)	15,000	15,000	15,000	
Series C convertible preferred stock issuable		50,000		
Series C convertible preferred stock subscriptions receivable		(18,153)		
Series C convertible preferred stock, $.01 par value 980,393 shares authorized; 980,392 shares issued and outstanding at March 31, 2004 (unaudited), aggregate liquidation value of $50,000 at March 31, 2004 (unaudited)			50,000	
Common stock, $0.01 par value 100,000,000 shares authorized; 16,463,904, 19,974,727, 19,975,089 and 26,141,461 shares issued and outstanding at December 31, 2002, 2003, March 31, 2004 (unaudited) and March 31, 2004 (pro forma unaudited), respectively	165	200	200	261
Additional paid-in capital	378,010	433,141	434,202	504,393
Notes receivable from stockholders	(1,310)	(1,412)	(1,438)	(1,438)
Notes receivable from officers		(228)	(153)	(153)
Deficit accumulated during the development stage	(301,092)	(366,971)	(383,380)	(383,380)
Total stockholders equity	90,773	111,577	114,431	119,683
Total	$ 104,773	$ 125,876	$ 128,766	$ 128,766

See notes to financial statements.

MannKind Corporation and Subsidiary (A Development Stage Company)

STATEMENTS OF OPERATIONS
(in thousands, except per share data)

	Year ended December 31,			Cumulative period from February 14, 1991 (date of inception) to December 31, 2003	Three Months Ended March 31,		Cumulative period from February 14, 1991 (date of inception) to March 31, 2004
	2001	2002	2003		2003	2004	
					(unaudited)		(unaudited)
Revenue	$ 326	$	$	$ 2,858	$	$	$ 2,858
Operating expenses:							
Research and development	19,763	42,724	45,613	143,647	11,564	12,799	156,446
General and administrative	10,629	13,215	20,699	57,457	8,807	3,769	61,226
In-process research and development costs	19,726			19,726			19,726
Goodwill impairment		151,428		151,428			151,428
Total operating expenses	50,118	207,367	66,312	372,258	20,371	16,568	388,826
Loss from operations	(49,792)	(207,367)	(66,312)	(369,400)	(20,371)	(16,568)	(385,968)
Other income (expense)	288	487	(25)	(2,196)	(51)	54	(2,142)
Interest income	1,261	617	459	4,639	86	105	4,744
Loss before provision for income taxes	(48,243)	(206,263)	(65,878)	(366,957)	(20,336)	(16,409)	(383,366)
Income taxes	(2)	(2)	(1)	(14)			(14)
Net loss	(48,245)	(206,265)	(65,879)	(366,971)	(20,336)	(16,409)	(383,380)
Deemed dividend related to beneficial conversion feature of convertible preferred stock		(1,421)	(1,017)	(2,438)		(612)	(3,050)

Accretion on redeemable preferred stock	(239)	(251)	(253)	(892)	(60)	(64)	(956)
Net loss applicable to common stockholders	$(48,484)	$(207,937)	$(67,149)	$(370,301)	$(20,396)	$(17,085)	$(387,386)
Basic and diluted net loss per share:							
Historical	$ (4.60)	$ (15.43)	$ (3.63)		$ (1.24)	$ (0.86)	
Pro Forma (unaudited)			$ (3.34)			$ (0.71)	
Shares used to compute basic and diluted net loss per share:							
Historical	10,534	13,472	18,488		16,466	19,975	
Pro Forma (unaudited)			20,107			24,218	

See notes to financial statements.

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MannKind Corporation and Subsidiary (A Development Stage Company)

STATEMENTS OF STOCKHOLDERS EQUITY (DEFICIT)

(in thousands)

	Series B convertible preferred stock		Series C convertible preferred stock		Series C convertible preferred stock issuable	Series C convertible preferred stock subscriptions receivable
	Shares	Amount	Shares	Amount		
BALANCE, FEBRUARY 14, 1991						
Issuance of common stock for cash		$		$	$	$
Net loss						
	—	—	—	—	—	—
BALANCE, FEBRUARY 29, 1992						
Issuance of common stock for cash and services						
Capital contribution						
Net loss						
	—	—	—	—	—	—
BALANCE, FEBRUARY 28, 1993						
Issuance of common stock for cash						
Issuance of stock for notes receivable						
Net loss						
	—	—	—	—	—	—
BALANCE, FEBRUARY 28, 1994						
Issuance of common stock for cash and services						
Collection of stock subscription						
Net loss						
	—	—	—	—	—	—

BALANCE, DECEMBER 31, 1994						
Issuance of common stock for services						
Exercise of stock options						
Stock compensation						
Net loss						
	—	—	—	—	—	—
BALANCE, DECEMBER 31, 1995						
Issuance of common stock for cash and services						
Exercise of stock options						
Stock compensation						
Net loss						
	—	—	—	—	—	—
BALANCE, DECEMBER 31, 1996						
Issuance of common stock for cash and services						
Stock compensation						
Exercise of stock options						
Conversion of notes payable						
Net loss						
	—	—	—	—	—	—
BALANCE, DECEMBER 31, 1997						
Issuance of common stock for cash and services						
Stock compensation						
Exercise of stock options						
Conversion of notes payable						
Net loss						
	—	—	—	—	—	—

[Additional columns below]

[Continued from above table, first column(s) repeated]

	Common stock		Additional paid-in capital	Notes receivable from stockholders	Notes receivable from officers	Deficit accumulated during the development stage	Total
	Shares	Amount					
BALANCE, FEBRUARY 14, 1991							
Issuance of common stock for cash	998	$ 10	$ 890	$	$	$	$ 900
Net loss						(911)	(911)
BALANCE, FEBRUARY 29, 1992	998	10	890			(911)	(11)
Issuance of common stock for cash and services	73	1	887				888
Capital contribution			20				20
Net loss						(1,175)	(1,175)
BALANCE, FEBRUARY 28, 1993	1,071	11	1,797			(2,086)	(278)
Issuance of common stock for cash	11		526				526
Issuance of stock for notes receivable	8		400	(400)			
Net loss						(1,156)	(1,156)
BALANCE, FEBRUARY 28, 1994	1,090	11	2,723	(400)		(3,242)	(908)
Issuance of common stock for cash and services	36		1,805				1,805
Collection of stock subscription				400			400
Net loss						(2,004)	(2,004)
BALANCE, DECEMBER 31, 1994	1,126	11	4,528			(5,246)	(707)
Issuance of common stock for services			8				8
Exercise of stock options	1		22				22
Stock compensation			384				384
Net loss						(2,815)	(2,815)

BALANCE, DECEMBER 31, 1995	1,127	11	4,942			(8,061)	(3,108)
Issuance of common stock for cash and services	1		59				59
Exercise of stock options	3		12				12
Stock compensation			126				126
Net loss						(2,570)	(2,570)
BALANCE, DECEMBER 31, 1996	1,131	11	5,139			(10,631)	(5,481)
Issuance of common stock for cash and services	548	6	190				196
Stock compensation			2				2
Exercise of stock options	27		135				135
Conversion of notes payable	12		60				60
Net loss						(2,280)	(2,280)
BALANCE, DECEMBER 31, 1997	1,718	17	5,526			(12,911)	(7,368)
Issuance of common stock for cash and services	2,253	23	12,703				12,726
Stock compensation			150				150
Exercise of stock options	68	1	24				25
Conversion of notes payable	215	2	1,200				1,202
Net loss						(3,331)	(3,331)

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MannKind Corporation and Subsidiary (A Development Stage Company)

STATEMENTS OF STOCKHOLDERS EQUITY (DEFICIT) (continued)
(in thousands)

	Series B convertible preferred stock		Series C convertible preferred stock		Series C convertible preferred stock issuable	Series C convertible preferred stock subscriptions receivable
	Shares	Amount	Shares	Amount		
BALANCE, DECEMBER 31, 1998		$		$	$	$
Issuance of common stock						
Conversion of notes payable						
Net loss						
BALANCE, DECEMBER 31, 1999						
Conversion of notes payable						
Issuance of Series B preferred stock for cash	193	15,000				
Issuance of common stock for cash, services and notes						
Discount on notes below market rate						
Accrued interest on notes						
Purchase of Series A redeemable convertible preferred stock						
Amount in excess of redemption obligation						
Accretion to redemption value on Series A redeemable convertible preferred stock						

Stock-based compensation						
Net loss						
	—	—	—	—	—	—
BALANCE, DECEMBER 31, 2000	193	15,000				
Issuance of common stock for cash						
Cash received for common stock to be issued						
Issuance of common stock for services						
Exercise of stock options						
Accrued interest on notes						
Payments on notes receivable						
Accretion to redemption value on Series A redeemable convertible preferred stock						
Stock-based compensation						
Issuance of put option by stockholder						
Record merger of entities						
Net loss						
	—	—	—	—	—	—
BALANCE, DECEMBER 31, 2001	193	15,000				
Issuance of common stock for cash						
Issuance of common stock for cash already received						
Issuance of stock award to employee						
Cash received for common stock issuable						
Accrued interest on notes						

[Additional columns below]

[Continued from above table, first column(s) repeated]

	Common stock		Additional paid-in capital	Notes receivable from stockholders	Notes receivable from officers	Deficit accumulated during the development stage	Total
	Shares	Amount					
BALANCE, DECEMBER 31, 1998	4,254	$ 43	$ 19,603	$	$	$ (16,242)	$ 3,404
Issuance of common stock	162	2	532				534
Conversion of notes payable	80	1	994				995
Net loss						(5,679)	(5,679)
BALANCE, DECEMBER 31, 1999	4,496	46	21,129			(21,921)	(746)
Conversion of notes payable	63	1	1,073				1,074
Issuance of Series B preferred stock for cash							