

ZIOPHARM ONCOLOGY INC
Form DEF 14A
March 20, 2006

U.S. SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

**SCHEDULE 14A INFORMATION
INFORMATION REQUIRED IN PROXY STATEMENT
Proxy Statement Pursuant to Section 14(a)
of the Securities Exchange Act of 1934
(Amendment No.)**

Filed by the Registrant
Filed by a Party other than the Registrant

Check the Appropriate Box:

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

ZIOPHARM ONCOLOGY, INC.

(Name of Registrant as Specified in Its Charter)

(Name of Person(s) Filing Proxy Statement if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- No fee required
 - Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
- (1) Title of each class of securities to which transaction applies:
 - (2) Aggregate number of securities to which transaction applies:
 - (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):
 - (4) Proposed maximum aggregate value of transaction:
 - (5) Total fee paid:
 - Fee paid previously with preliminary materials:
 - Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.
 - (1) Amount Previously Paid:

- (2) Form, Schedule or Registration Statement No.:
 - (3) Filing Party:
 - (4) Date Filed:
-

ZIOPHARM Oncology, Inc.

1180 Avenue of the Americas, 19th Floor
New York, New York 10036

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

To the stockholders of ZIOPHARM Oncology, Inc.:

Please take notice that the Annual Meeting of Stockholders of ZIOPHARM Oncology, Inc. (the Company) will be held, pursuant to due call by the Board of Directors of the Company, at the NY Academy of Sciences, 2 East 63rd Street, between Madison and 5th Avenues, New York, NY 10021, on Wednesday, April 26, 2006 at 10:00 a.m. Eastern Time, or at any adjournment or adjournments thereof, for the purpose of considering and taking appropriate action with respect to the following:

1.

To elect eight directors;

2.

To adopt an amended and restated certificate of incorporation for the Company;

3.

To approve an amendment to the Company's 2003 Stock Option Plan to increase the number of shares of common stock reserved for issuance thereunder from 1,252,436 shares to 2,002,436 shares;

4.

To ratify the appointment of Vitale, Caturano & Company, Ltd. as the independent registered public accounting firm of the Company for fiscal 2006; and

5.

To transact any other business as may properly come before the meeting or any adjournments thereof.

Pursuant to action of the Board of Directors, stockholders of record on March 10, 2006 will be entitled to vote at the meeting or any adjournments thereof.

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A proxy for the annual meeting is enclosed. You are requested to fill in and sign the proxy, which is solicited by the Board of Directors, and mail it promptly in the enclosed envelope. Adoption of each proposal requires the affirmative vote of the holders of a majority of the outstanding shares of the Company's common stock present and entitled to vote at the annual meeting.

By Order of the Board of Directors

ZIOPHARM Oncology, Inc.

By:

Richard Bagley, President, Chief Operating
Officer and Treasurer

March 27, 2006

**Proxy Statement
of
ZIOPHARM Oncology, Inc.**

1180 Avenue of the Americas, 19th Floor
New York, New York 10036

**Annual Meeting of Stockholders
to be held
April 26, 2006**

VOTING BY PROXY AND REVOCATION OF PROXIES

This proxy statement is furnished in connection with the solicitation of proxies by the Board of Directors of ZIOPHARM Oncology, Inc. (periodically referred to in this proxy statement as the Company) to be used at the annual meeting of our stockholders to be held on Wednesday, April 26, 2006 at 10:00 a.m. Eastern Time, at the New York Academy of Sciences, 2 East 63rd Street, between Madison and 5th Avenues, New York, NY 10021, or at any adjournment or adjournments thereof, for the purpose of considering and taking appropriate action with respect to the following:

1.

To elect eight directors;

2.

To adopt an amended and restated certificate of incorporation for the Company;

3.

To approve an amendment to the Company's 2003 Stock Option Plan to increase the number of shares of common stock reserved for issuance thereunder from 1,252,436 shares to 2,002,436 shares;

4.

To ratify the appointment of Vitale, Caturano & Company, Ltd. as the independent registered public accounting firm of the Company for fiscal 2006; and

5.

To transact any other business as may properly come before the meeting or any adjournments thereof.

The approximate date on which this proxy statement and the accompanying proxy were first sent or given to stockholders was March 27, 2006. Each stockholder who signs and returns a proxy in the form enclosed with this proxy statement may revoke the proxy at any time prior to its use at the annual meeting by giving notice of such revocation to the Company in writing, in open meeting or by executing and delivering a new proxy to the Treasurer of the Company. Unless so revoked, the shares represented by each proxy will be voted at the annual meeting and at any adjournments thereof. Presence at the annual meeting of a stockholder who has signed a proxy does not, alone, revoke that proxy; revocation must to be announced by the stockholder at the time of the meeting. All shares which are entitled to vote and are represented at the annual meeting by properly executed proxies received prior to or at the annual meeting, and not revoked, will be voted at the annual meeting and any adjournments thereof.

VOTING PROCEDURES

Only holders of record of the Company's common stock at the close of business on March 10, 2006, the Record Date for the annual meeting, are entitled to notice of and to vote at the annual meeting. On the Record Date, there were 7,272,992 shares of common stock outstanding. Each share of common stock entitles the holder thereof to one vote upon each matter to be presented at the annual meeting. A quorum, consisting of a majority of the outstanding shares of the common stock entitled to vote at the annual meeting, must be present, either in person or represented by proxy, for each matter presented at the annual meeting before action may be taken on that matter.

Each proxy returned to the Company will be voted in accordance with the instructions indicated thereon. Adoption of each proposal requires the affirmative vote of the holders of a majority of the shares of the Company's common stock present in person or represented by proxy at the annual meeting.

Unless a contrary choice is specified, all shares represented by proxies will be voted: **FOR** the election of the director nominees named in this proxy statement; **FOR** the adoption of an amended and restated certificate of incorporation for the Company; **FOR** the increase in the number of shares of common stock reserved for issuance under the Company's 2003 Stock Option Plan from 1,252,436 shares to 2,002,436 shares; and **FOR** ratification of Vitale, Caturano & Company, Ltd.'s appointment as our independent registered public accounting firm for fiscal 2006. If any director nominee should withdraw or otherwise become unavailable for reasons not presently known, the proxies which would have otherwise been voted for that director nominee may be voted for a substitute director nominee selected by the Company's Board of Directors.

A stockholder who abstains with respect to any proposal is considered to be present and entitled to vote on that proposal, and is in effect casting a negative vote. A stockholder (including a broker) who does not give authority to a proxy to vote, or withholds authority to vote, on any proposal shall not be considered present and entitled to vote on that proposal.

The Board of Directors unanimously recommends that you vote FOR each of the proposals set forth above.

While the Board of Directors knows of no other matters to be presented at the annual meeting or any adjournment thereof, all proxies returned to the Company will be voted on any such matter in accordance with the judgment of the proxy holders.

ELECTION OF DIRECTORS
(Proposal One)

The Board of Directors currently consists of eight (8) directors, each of whom has been nominated for re-election by the Board of Directors. If re-elected, each nominee has consented to serve as a director of the Company, to hold office until the next annual meeting of stockholders, or until his successor is elected and shall have qualified.

Set forth below is information regarding the individuals nominated for election to the Board of Directors, which includes information furnished by them as to their principal occupations for the last five years, certain other directorships held by them, and their ages as of the date of this proxy statement.

Name and Age of Director and Nominee	Principal Occupation, Business Experience for the Past Five Years and Directorships in Public Companies	Director Since
Jonathan Lewis, M.D., Ph.D. Age 47	Jonathan Lewis has served as Chief Executive Officer and a director since the Company's September 2005 merger with ZIOPHARM, Inc. Prior to the merger, Dr. Lewis served as Chief Executive Officer of ZIOPHARM, Inc. since January 2004. From July 1994 until June 2001, Dr. Lewis served as Professor of Surgery and Medicine at Memorial Sloan-Kettering Cancer Center and he served as Chief Medical Officer and Chairman of the Medical Board at Antigenics, Inc. from June 2000 until November 2003. He serves as a director on the Board of POPPA (the Police Organization Providing Peer Assistance) of the New York Police Department (NYPD) and as a member of the Medical Advisory Board of the Sarcoma Foundation of America.	2005
Richard E. Bagley Age 62	Richard E. Bagley has served as President, Chief Operating Officer and Treasurer and a director since the Company's September 2005 merger with ZIOPHARM, Inc. Prior to the merger, Mr. Bagley served as President and Chief Operating Officer of ZIOPHARM, Inc. since July 2004 and as Treasurer of ZIOPHARM, Inc. since March 2005. Mr. Bagley served as a consultant to ZIOPHARM, Inc. prior to joining that company while also serving as a senior advisor to The University of Texas M.D. Anderson Cancer Center and Spaulding & Slye Colliers International in the period from May 2003 to July 2004. Mr. Bagley initiated a career in pharmaceuticals in 1968 with Smith Kline and French Laboratories, leaving in 1985 after serving as President of the consumer products division. From 1985-1990, Mr. Bagley served in several capacities at Squibb Corporation, including as President E. R. Squibb & Sons, U.S. in 1988 and 1989. He served as Director, Chief Executive Officer and President of ImmuLogic Pharmaceutical Corporation from 1990 to 1994, as Director, Chief Executive Officer and Chairman of ProScript, Inc. from 1994 to 1998, as Director, President and Chief Executive Officer of AltaRex Corp. from 1998 to May	2005

2003.

Murray Brennan, M.D.

Age 65

Murray Brennan has served as a director since the Company's September 2005 merger with ZIOPHARM, Inc. Prior to the merger, Dr. Brennan served as a director of ZIOPHARM, Inc. since December 2004. Dr. Brennan has been Chairman of Memorial Sloan-Kettering Cancer Center's Department of Surgery since 1985, and is a former Vice President of the American College of Surgeons, a position he held from 2004 to 2005. Dr. Brennan is also a member of the National Academy of Sciences. He served as director of the American Board of Surgery from 1984 to 1990, Chairman of the American College of Surgeons' Commission on Cancer from 1992 to 1994, President of the Society of Surgical Oncology from 1995 to 1996, and President of the American Surgical Association from 2002 to 2003.

2005

Name and Age of Director and Nominee	Principal Occupation, Business Experience for the Past Five Years and Directorships in Public Companies	Director Since
James Cannon Age 67	James Cannon has served as a director since the Company's September 2005 merger with ZIOPHARM, Inc. Prior to the merger, Mr. Cannon served as a director of ZIOPHARM, Inc. since December 2004. Mr. Cannon is Vice Chairman, Chief Financial Officer and a member of the board of directors of BBDO Worldwide. Mr. Cannon joined BBDO in 1967, was appointed Chief Financial Officer of the agency in 1984, and was elected to its board of directors in 1985. In 1986, Mr. Cannon was appointed Comptroller and a member of the board of directors of Omnicom, a company affiliated with BBDO Worldwide, and served in those capacities through May 2002. In 1987, Mr. Cannon also served as Director of Financial Operations of the Omnicom Group from 1987 to 1989, when he rejoined BBDO Worldwide as Executive Vice President and Chief Financial Officer. Mr. Cannon was appointed Vice Chairman of BBDO Worldwide in 1990.	2005
Senator Wyche Fowler, Jr., J.D. Age 65	Wyche Fowler, Jr., has served as a director since the Company's September 2005 merger with ZIOPHARM, Inc. Prior to the merger, Senator Fowler served as a director of ZIOPHARM, Inc. since December 2004. Senator Fowler has been engaged in an international business and law practice since May 2001, and has served as chairman of the board of the Middle East Institute, a non-profit foundation in Washington, DC, since September 2001. Senator Fowler served as U.S. Senator from Georgia from January 1987 to January 1993, and had previously served in the U.S. House of Representatives from 1977 until his senatorial election. During his time in the U.S. Senate, Senator Fowler served as a member of the Senate Appropriations, Budget, Energy and Agriculture Committees. While in the U.S. House of Representatives, he was a member of the House Ways and Means and Foreign Affairs Committees, as well as the Select Committee on Intelligence. President Clinton appointed Senator Fowler as Ambassador to the Kingdom of Saudi Arabia in 1996, where he served through 2001. Senator Fowler is a member of the board of directors of Brandywine Realty Trust, a real estate investment trust traded on the New York Stock Exchange.	2005
Gary S. Fragin	Gary S. Fragin has served as a director since the Company's September 2005 merger with ZIOPHARM, Inc. Prior to the	2005

Age 59

merger, Mr. Fragin served as a director of ZIOPHARM, Inc. since December 2004. Mr. Fragin is currently managing partner of Osborn Partners, LP and managing partner of Fragin Asset Management, LP. Mr. Fragin was the General Partner and Chief Administrative/Operating Officer of Steinhardt Organization, prior to which he was a partner, Director of Trading and member of the Management Committee and Executive Committee at Oppenheimer and Co.

Timothy McInerney

Age 45

Timothy McInerney has served as a director since the Company's 2005 September 2005 merger with ZIOPHARM, Inc. Prior to the merger, Mr. McInerney served as a director of ZIOPHARM, Inc. since July 2005. Since 1992, Mr. McInerney has been a Managing Director of Paramount BioCapital, Inc. where he oversees the overall distribution of Paramount's private equity product. Prior to 1992, Mr. McInerney was a research analyst focusing on the biotechnology industry at Ladenburg, Thalman & Co. Prior to that, Mr. McInerney held equity sales positions at Bear, Stearns & Co. and Shearson Lehman Brothers, Inc. Mr. McInerney also has worked in sales and marketing for Bristol-Myers Squibb.

Name and Age of Director and Nominee	Principal Occupation, Business Experience for the Past Five Years and Directorships in Public Companies	Director Since
<p>Michael Weiser, M.D., Ph.D.</p> <p>Age 43</p>	<p>Michael Weiser has served as a director since the Company's September 2005 merger with ZIOPHARM, Inc. Prior to the merger, Dr. Weiser served as a director of ZIOPHARM, Inc. since that company's inception in September 2003. Dr. Weiser is the Director of Research at Paramount BioCapital, Inc. In addition to serving on the boards of directors of several privately-held companies, Dr. Weiser currently serves on the board of directors of Manhattan Pharmaceuticals, Inc., VioQuest Pharmaceuticals, Inc., Hana BioSciences, Inc., Emisphere Technologies, Inc., and Chelsea Therapeutics, Inc., all publicly-traded biotechnology companies.</p>	<p>2005</p>

EXECUTIVE COMPENSATION**Summary Compensation Table**

The following table sets forth the cash and non-cash compensation awarded to or earned by (i) each individual serving as the Company's chief executive officer during the fiscal year ended December 31, 2005; and (ii) each other individual that served as an executive officer of the Company as of December 31, 2005 and who received in excess of \$100,000 in the form of salary and bonus during such fiscal year (collectively, the named executives).

Name and Principal Position	Year	Annual Compensation			Long-Term Compensation Awards Securities Underlying Options (#)
		Salary (\$)	Bonus (\$)	Other Annual Compensation (\$)	
Dr. Jonathan Lewis, Chief Executive Officer(1)	2005	350,000	250,000 (2)	5,657	141,950
	2004	344,167	500,000 (3)	9,099	268,653
Richard E. Bagley, President, Chief Operating Officer and Treasurer(4)	2005	250,000	50,000 (5)	660	90,614
	2004	43,750	75,000 (6)	4,057	150,668
Dr. Robert Peter Gale, Senior Vice President Research(7)	2005	250,000	150,000 (8)	660	25,048
	2004	239,583	150,000 (9)	2,543	25,110
David C. Olson Former Chief Executive Officer(10)	2005	57,500			
	2004	0			
	2003	0			

(1)

Dr. Lewis became Chief Executive Officer effective upon the Company's September 13, 2005 merger with ZIOPHARM, Inc. Prior to the merger, Dr. Lewis served as Chief Executive Officer of ZIOPHARM, Inc. since January 8, 2004. All compensation reported for fiscal year 2004 represents amounts received from ZIOPHARM, Inc. Compensation reported for fiscal year 2005 represents amounts received from ZIOPHARM, Inc. prior to the September 13, 2005 merger and amounts received from the Company from and after the merger.

(2)

Includes a guaranteed bonus of \$250,000 for work performed in fiscal 2005 that was paid on January 15, 2006.

(3)

Includes a signing bonus of \$250,000 paid on February 23, 2004 and a guaranteed bonus of \$250,000 for work performed in fiscal 2004 that was paid on April 22, 2005.

(4)

Mr. Bagley became President, Chief Operating Officer and Treasurer effective upon the Company's September 13, 2005 merger with ZIOPHARM, Inc. Prior to the merger, Mr. Bagley served President and Chief Operating Officer of ZIOPHARM, Inc. since July 2004 and as Treasurer of ZIOPHARM, Inc. since March 2005. All compensation reported for fiscal year 2004 represents amounts received from ZIOPHARM, Inc. Compensation reported for fiscal year 2005 represents amounts received from ZIOPHARM, Inc. prior to the September 13, 2005 merger and amounts received from the Company from and after the merger.

(5)

Includes a year-end bonus of \$25,000 received by Mr. Bagley on December 30, 2005; also includes \$25,000, a portion of his 2005 guaranteed bonus, that Mr. Bagley was accrued as of December 31, 2005 but which is not payable until July 31, 2006.

(6)

Includes a signing bonus of \$50,000 received by Mr. Bagley on July 30, 2004, and \$25,000, a portion of his 2004 guaranteed bonus, that was accrued as of December 31, 2004 but was paid in July 15, 2005.

(7)

Dr. Gale became Senior Vice President Research effective upon the Company's September 13, 2005 merger with ZIOPHARM, Inc. Prior to the merger, Dr. Gale served as Sr. Vice President Research of ZIOPHARM, Inc. since January 15, 2004. All compensation reported for fiscal year 2004 represents amounts received from ZIOPHARM, Inc. Compensation reported for fiscal year 2005 represents amounts received from ZIOPHARM, Inc. prior to the September 13, 2005 merger and amounts received from the Company from and after the merger.

(8)

Includes a guaranteed bonus of \$150,000 for work performed in fiscal 2005 that was paid on January 31, 2006.

(9)

Includes a guaranteed bonus of \$150,000 for work performed in fiscal 2004 that was paid on April 16, 2005.

(10)

Mr. Olson resigned as an executive officer effective upon the Company's September 13, 2005 merger with ZIOPHARM, Inc. Upon closing of the merger, the Company paid Mr. Olson a one-time fee of \$57,500 pursuant to his December 9, 2004 employment agreement. Mr. Olson received no other cash compensation from the Company for services rendered in his capacity as an executive officer during fiscal years 2003, 2004 and 2005.

Option Grants in Last Fiscal Year

Upon the closing of the September 13, 2005 with ZIOPHARM, Inc., the Company assumed ZIOPHARM, Inc.'s 2003 Stock Option Plan as its Stock Option Plan. Prior to the merger, the Company had its own Incentive Stock Option Plan that was terminated effective as of the closing of the merger.

The following table sets forth the information concerning individual grants of stock options made by the Company or ZIOPHARM, Inc. to the named executives during the fiscal year ended December 31, 2005. All share numbers and dollar amounts relating to stock options granted by ZIOPHARM, Inc. prior to the September 13, 2005 merger with that company are set forth on post-merger basis that gives effect to the conversion of ZIOPHARM, Inc. stock options into stock options of the Company.

Name	Number of Securities Underlying Options Granted (#)	Percent of Total Options Granted to Employees in Fiscal Year	Exercise or Base Price (\$/share)	Expiration Date(s)
Dr. Jonathan Lewis(1)	87,789	19.8 %	\$ 4.31	1/8/14
Dr. Jonathan Lewis(1)	54,161	12.2 %	\$ 4.31	1/8/14
Richard E. Bagley(2)	63,197	14.23 %	\$ 4.31	7/1/14
Richard E. Bagley(2)	27,417	6.17 %	\$ 4.31	7/1/14
Dr. Robert Peter Gale	25,048	5.6 %	\$ 4.31	6/8/15
David C. Olson	0	0 %		

(1)

The number of securities underlying options is subject to an anti-dilution provision pursuant to which Dr. Lewis is entitled to purchase no less than 5% of the Company's common stock until such time as the Company has raised \$25 million in financing.

(2)

The number of securities underlying options is subject to an anti-dilution provision pursuant to which Mr. Bagley is entitled to purchase no less than 3% of the Company's common stock until such time as the Company has raised \$25 million in financing.

Aggregated Option Exercises and Fiscal Year-End Option Values

The following table sets forth the total amount of shares acquired by the named executives upon exercises of stock options during fiscal year 2005, the aggregate dollar value realized upon such exercise, the total number of securities underlying unexercised options held at December 31, 2005 (separately identifying then-exercisable and unexercisable options), and the aggregate dollar value of in-the-money, unexercised options held at December 31, 2005 (separately identifying then-exercisable and unexercisable options). All share numbers and dollar amounts relating to stock options granted by ZIOPHARM, Inc. prior to the September 13, 2005 merger with that company are set forth on

post-merger basis that gives effect to the conversion of ZIOPHARM, Inc. stock options into stock options of the Company.

Name	Shares Acquired on Exercise (#)	Value Realized (\$)	Number of Unexercised Securities Underlying Options at FY-End (#)		Value of Unexercised In-the-Money Options at FY-End \$(1)	
			Exercisable	Unexercisable	Exercisable	Unexercisable
Dr. Jonathan Lewis	0	0	136,868	273,735	\$ 283,892	\$ 567,783
Richard Bagley	0	0	80,427	160,855	\$ 78,011	\$ 156,022
Dr. Robert Peter Gale	0	0	8,370	41,879	\$ 23,528	\$ 47,056
David C. Olson	0	0	0	0		

(1)

Based on the difference between the option exercise price and the closing sale price of the Company's common stock on December 30, 2005 (the last trading day prior to the end of the Company's 2005 fiscal year), which was \$3.25.

Employment and Change-in-Control Agreements

Employment Agreement with Jonathan Lewis, M.D., Ph.D.

On January 8, 2004, ZIOPHARM, Inc. entered into a three-year employment agreement with Dr. Jonathan Lewis, under which we succeeded to ZIOPHARM, Inc.'s rights and obligations upon our merger with that company. Under the agreement, Dr. Lewis receives an annual base salary of \$350,000 and a guaranteed annual bonus of \$250,000. In addition, Dr. Lewis is eligible to receive an annual discretionary bonus of up to 100% of his base salary, as determined by our board of directors. ZIOPHARM, Inc. also paid Dr. Lewis a one-time bonus of \$250,000 upon execution of his employment agreement. Depending upon the events surrounding a possible termination of Dr. Lewis' employment, he may continue to receive his base salary and, in certain circumstances, his guaranteed bonus for one year following such termination. In addition, the vesting of Dr. Lewis' stock options may accelerate in whole or in part upon such termination. Dr. Lewis has agreed not to compete with us during the term of the employment agreement and for a one-year period thereafter, provided that we continue to pay his base salary and guaranteed bonus for that one-year period.

Pursuant to the terms of his employment agreement, we have granted Dr. Lewis options to purchase up to 410,603 shares of common stock, of which options to purchase 268,653 shares are exercisable at \$0.08 per share and options to purchase 141,950 shares are exercisable at \$4.31 per share (each as adjusted to give effect to our merger with ZIOPHARM, Inc.). The options vest in three equal annual installments, the first of which vested on January 8, 2005, with the remaining installments vesting on January 8, 2006 and January 8, 2007. The option is subject to anti-dilution protection from the issuance of equity securities in financing transactions to the extent that Dr. Lewis will maintain potential equity ownership of at least 5% of our stock until such time as we have received \$25 million in gross proceeds from such transactions. The options are governed by our 2003 Stock Option Plan.

Employment Agreement with Richard E. Bagley

On July 21, 2004, ZIOPHARM, Inc. entered into a three-year employment agreement with Mr. Richard E. Bagley, under which we succeeded to ZIOPHARM, Inc.'s rights and obligations upon our merger with that company. Under the agreement, Mr. Bagley receives an annual base salary of \$250,000 and a guaranteed annual bonus of \$50,000. In addition, Mr. Bagley is eligible to receive an annual discretionary bonus, as determined by our board of directors. ZIOPHARM, Inc. also paid Mr. Bagley a one-time bonus of \$50,000 upon execution of his employment agreement. Depending upon the events surrounding a possible termination of Mr. Bagley's employment, he may continue to receive his base salary and, in certain circumstances, his guaranteed bonus for one year following such termination. In addition, the vesting of Mr. Bagley's stock options may accelerate in whole or in part upon such termination. Mr. Bagley has agreed not to compete with us during the term of the employment agreement and for a one-year period thereafter, provided that we continue to pay his base salary for that one-year period.

Pursuant to the terms of his employment agreement, we granted Mr. Bagley options to purchase up to 241,282 shares common stock, of which options to purchase 150,668 shares are exercisable at \$1.70 per share and options to purchase 90,614 shares are exercisable at \$4.31 per share (each as adjusted to give effect to our merger with ZIOPHARM, Inc.). The options vest in three equal annual installments, the first of which vested on July 1, 2005, with the remaining installments vesting on July 1, 2006 and July 1, 2007. The option is subject to certain anti-dilution protections from the issuance of equity securities in financing transactions so that Mr. Bagley will maintain potential equity ownership of at least 3% of our stock until such time as we have received \$25 million in gross proceeds from such transactions. The options are governed by our 2003 Stock Option Plan.

Employment Agreement with Robert Peter Gale, M.D., Ph.D., D.Sc.

On January 14, 2004, ZIOPHARM entered into a three-year employment agreement with Dr. Robert Peter Gale, under which we succeeded to ZIOPHARM's rights and obligations upon our merger with that company. Under the

agreement, Dr. Gale receives an annual base salary of \$250,000 and a guaranteed annual bonus of \$150,000. In addition, Dr. Gale is eligible to receive an annual discretionary bonus, as determined by our board of directors. Depending upon the events surrounding a termination of Dr. Gale's employment, he may continue to receive his base salary and, in certain circumstances, his guaranteed bonus for one year following such termination. In addition, the vesting of Dr. Gale's stock options may accelerate in whole or in part upon such termination. Dr. Gale has

agreed not to compete with us during the term of the employment agreement and for one-year following the expiration of his employment agreement.

Pursuant to the terms of his employment agreement, we granted Dr. Gale options to purchase up to 25,110 shares of common stock at \$0.44 per share (adjusted to give effect to our merger with ZIOPHARM, Inc.). The options vest in three equal annual installments, the first of which vested on January 15, 2005, with the remaining installments vesting on January 15, 2006 and January 15, 2007. The options are governed by our 2003 Stock Option Plan.

Employment Agreement with David C. Olson

On December 9, 2004, we entered into an employment agreement with David C. Olson. Under the terms of the agreement, we agreed to pay Mr. Olson a one-time fee of \$100,000 if and when we completed a merger, acquisition, or related transaction. In connection with the September 13, 2005 merger with ZIOPHARM, Inc., Mr. Olson agreed to reduce this amount to the extent that our unconsolidated liabilities immediately following the merger exceeded \$425,000. In connection with the merger, we paid Mr. Olson \$57,500 and his employment agreement was terminated in its entirety.

Compensation of Directors

From our September 2005 merger with ZIOPHARM, Inc. through the end of fiscal year 2005, as compensation for service as a member of the Board of Directors, each non-employee director of the Company received a \$3,000 quarterly cash retainer paid in arrears. For the fiscal year ended 2006, as compensation for service as a member of the Board of Directors, each non-employee director of the Company receives a \$5,000 quarterly cash retainer paid in arrears and in addition, each non-employee director serving on the Company's audit committee, compensation committee and nominating committee receives a \$1,000 cash payment for each committee meeting attended by such director. Non-employee directors also receive stock options as granted from time to time and as recommended by the compensation committee.

EXECUTIVE OFFICERS OF THE COMPANY

Name and Title	Age	Principal Occupation, Business Experience for the Past Five Years and Directorships in Public Companies
Jonathan Lewis, M.D., Ph.D. Chief Executive Officer	See	Election of Directors (Proposal One) above.
Richard E. Bagley President, Chief Operating Officer and Treasurer	See	Election of Directors (Proposal One) above.
Robert Peter Gale, M.D., Ph.D., D.Sc. Senior Vice President Research		Robert Peter Gale has served as Senior Vice President Research since the Company's September 2005 merger with ZIOPHARM, Inc. Prior to the merger, Dr. Gale served as Senior Vice President Research of ZIOPHARM, Inc. since January 2004. Dr. Gale is also on the medical staff of UCLA School of Medicine in the Department of Medicine, Division of Hematology and Oncology and is Visiting Professor of Hematology

at Imperial College of Science, Technology and Medicine, Hammersmith Hospital, London. Dr. Gale served as Senior Vice President for Medical Affairs at Antigenics, Inc. from April 2001 until May 2002 and as a consultant to that company from May 2002 through May 2004.

**AMENDMENT AND RESTATEMENT
OF
CERTIFICATE OF INCORPORATION
(Proposal Two)**

The Company's current Certificate of Incorporation does not contain provisions authorizing the creation or issuance of preferred stock, nor does it contain common provisions that limit the personal liability of directors to the Company or its stockholders for monetary damages for breach of certain fiduciary duties or require the Company to indemnify its directors and officers. Proposal Two recommends to the stockholders that the Company's current Certificate of Incorporation be amended and restated in its entirety, in the form set forth in *Appendix A*. If approved by the stockholders at the annual meeting, the Amended and Restated Certificate of Incorporation would divide the Company's 280,000,000 shares of authorized capital stock into 250,000,000 shares of common stock and 30,000,000 shares of preferred stock and authorize the Board of Directors, subject to limitations prescribed by law, to issue such shares of preferred stock in one or more series without further stockholder approval. The amendment and restatement would also limit the personal liability of directors to the Company or its stockholders for monetary damages for breach of certain fiduciary duties and require the Company to indemnify its directors and officers. Finally, the amendment and restatement would make non-substantive changes to the Certificate of Incorporation to conform the number, ordering and content of the sections of the Certificate of Incorporation to the changes described above.

The Board of Directors has unanimously approved the amendment and restatement contained in Proposal Two. The summary description of the proposed Amended and Restated Certificate of Incorporation contained in this proxy statement is qualified by the full text of such proposed Amended and Restated Certificate of Incorporation attached as *Appendix A*.

Reasons for and General Effect of Adoption of Amended and Restated Certificate of Incorporation

Blank Check Preferred Stock

If approved by the stockholders at the annual meeting, the proposed Amended and Restated Certificate of Incorporation will divide the Company's 280,000,000 shares of authorized capital stock into 250,000,000 shares of common stock and 30,000,000 shares of preferred stock, and authorize the Board of Directors, subject to limitations prescribed by law, to issue up to such 30,000,000 shares of preferred stock in one or more series without further stockholder approval. The Board of Directors will have discretion to determine the rights, preferences, privileges and restrictions of, including, without limitation, voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences of, and to fix the number of shares of, each series of preferred stock. Accordingly, the Board of Directors could authorize the issuance of shares of preferred stock with terms and conditions that could have the effect of delaying, deferring or preventing a transaction or a change in control that might involve a premium price for holders of our common stock or otherwise be in their best interest.

Blank check preferred stock provisions are provisions in a company's charter documents which authorize that company's board of directors to fix the number of shares constituting series of preferred stock and the designation of the series, the voting powers (if any) of the shares of the series, and the preferences and relative, participating, optional and other special rights, any qualifications, limitations or restrictions, of the shares of such series. The Board of Directors believes that amending and restating its Certificate of Incorporation to authorize the issuance of preferred stock and to provide for blank check preferred stock will provide the Company with increased flexibility in raising future capital. The creation of blank check preferred stock would permit the Board to negotiate with potential

investors regarding the rights and preferences of a series of equity securities. In addition, the Board of Directors would not be required to seek stockholder approval for the creation of a series a preferred stock and, therefore, would be able to proceed expeditiously with a future plan of financing involving preferred stock. Because the development of new drug candidates is a time-consuming and capital intensive process, the Board of Directors believes that increased flexibility in capital raising is in the best interests of the Company and its stockholders, especially from a company without product revenue to date. Although the Board is recommending that stockholders vote for the proposed Amended and Restated Certificate of Incorporation in part to increase flexibility for future financings, the Company currently has no plans in place to utilize preferred stock in connection with any future financings.

If adopted, the blank check preferred stock provisions of the proposed Amended and Restated Certificate of Incorporation may have an impact upon the rights of stockholders and may be characterized as an anti-takeover measure which, if adopted, may tend to insulate management and make the accomplishment of certain transactions involving a potential change of control of the Company more difficult. See *Provisions that May Have an Anti-Takeover Effect* below. However, adoption of the Amended and Restated Certificate of Incorporation is not being recommended in response to any specific effort to which the Company is aware to accumulate the Company's stock or to obtain control of the Company or its Board of Directors. The Board of Directors has considered the potential adverse effects of creating blank check preferred stock and has concluded that such adverse effects are outweighed by the benefits that it would afford the Company and its stockholders.

Limitations on Directors' Liability

The Company's bylaws currently contain provisions indemnifying the Company's directors and officers to the fullest extent permitted by law. If approved by the stockholders at the annual meeting, the proposed Amended and Restated Certificate of Incorporation will contain similar provisions. In addition, as permitted by Delaware law, the proposed Amended and Restated Certificate of Incorporation will provide that no director will be personally liable to the Company or its stockholders for monetary damages for breach of certain fiduciary duties as a director. The effect of this provision will be to restrict the Company's rights and the rights of its stockholders in derivative suits to recover monetary damages against a director for breach of certain fiduciary duties as a director, except that a director will be personally liable for:

- any breach of his or her duty of loyalty to us or our stockholders;
- acts or omissions not in good faith which involve intentional misconduct or a knowing violation of law;
- the payment of dividends or the redemption or purchase of stock in violation of Delaware law; or
- any transaction from which the director derived an improper personal benefit.

This provision will not affect a director's liability under the federal securities laws.

To the extent that the Company's directors, officers and controlling persons are indemnified under the provisions contained in the Amended and Restated Certificate of Incorporation, Delaware law or contractual arrangements against liabilities arising under the Securities Act, the Company has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933, as amended, and is therefore unenforceable.

The Board of Directors believes that the limitations on director liability and the indemnification of directors and officers that would apply to the Company upon adoption of the proposed Amended and Restated Certificate of Incorporation will heighten the Company's ability to attract and retain qualified directors and officers. Because charter provisions limiting director liability and requiring companies to indemnify their directors and officers are common for public reporting companies, the Board of Directors believes that the absence of such provisions in the Company's Certificate of Incorporation may hinder the Company's ability to attract and retain directors and officers who are

averse to the risks associated with lawsuits alleging breach of fiduciary duties.

Description of Capital Stock

Common Stock

The Company's authorized capital stock currently consists of 280,000,000 shares of common stock, par value \$.001 per share. As of the Record Date, shares of common stock were issued and outstanding, and there were holders of common stock, either beneficially or of record. The Company's current Certificate of Incorporation does not authorize the creation or issuance of preferred stock. Each outstanding share of the Company's common stock is validly issued, fully paid and non-assessable.

Voting. The holders of our common stock are entitled to one vote for each outstanding share of common stock owned by that stockholder on every matter properly submitted to the stockholders for their vote. Stockholders are not entitled to vote cumulatively for the election of directors.

Dividend Rights. Holders of the Company's common stock are entitled to receive ratably dividends and other distributions of cash or any other right or property as may be declared by the Board of Directors out of our assets or funds legally available for such dividends or distributions. If Proposal Two is approved by the stockholders at the annual meeting, the dividend rights of holders of common stock will be subject to the dividend rights of the holders of any series of preferred stock that may be issued and outstanding from time to time.

Liquidation Rights. In the event of any voluntary or involuntary liquidation, dissolution or winding up of our affairs, holders of our common stock would be entitled to share ratably in our assets that are legally available for distribution to stockholders after payment of liabilities. If Proposal Two is approved by the stockholders at the annual meeting and if the Company has any preferred stock outstanding at such time, the holders of such preferred stock may be entitled to distribution and/or liquidation preferences that require the Company to pay the applicable distribution to the holders of our preferred stock before paying distributions to the holders of common stock.

Conversion, Redemption and Preemptive Rights. Holders of the Company's common stock have no conversion, redemption, preemptive, subscription or similar rights.

Preferred Stock

If Proposal Two is approved by the stockholders at the annual meeting, the Board of Directors will have discretion to determine the rights, preferences, privileges and restrictions of, including, without limitation, voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences of, and to fix the number of shares of, each series of our preferred stock.

Provisions that May Have an Anti-Takeover Effect

Certain provisions set forth in the proposed Amended and Restated Certificate of Incorporation, in the Company's bylaws and in Delaware law, which are summarized below, are intended to enhance the likelihood of continuity and stability in the composition of the Board of Directors and in the policies formulated by the Board of Directors and to discourage certain types of transactions that may involve an actual or threatened change of control. In that regard, these provisions are designed to reduce the Company's vulnerability to an unsolicited acquisition proposal. The provisions also are intended to discourage certain tactics that may be used in proxy fights. However, such provisions could have the effect of discouraging others from making tender offers for our shares and, as a consequence, they also may inhibit fluctuations in the market price of our common stock that could result from actual or rumored takeover attempts. Such provisions also may have the effect of preventing changes in our management.

Blank Check Preferred Stock. If approved by the stockholders at the annual meeting, the proposed Amended and Restated Certificate of Incorporation would contain provisions that permit the Board of Directors to issue, without any further vote or action by the stockholders, up to 30,000,000 shares of preferred stock in one or more series and, with respect to each such series, to fix the number of shares constituting the series and the designation of the series, the voting powers (if any) of the shares of the series, and the preferences and relative, participating, optional and other special rights, if any, and any qualifications, limitations or restrictions, of the shares of such series.

Special Meetings of Stockholders. Our bylaws provide that special meetings of stockholders may be called only by the Board of Directors. Stockholders are not permitted to call a special meeting of stockholders or to require that the Board of Directors call such a special meeting.

Delaware Takeover Statute

In general, Section 203 of the Delaware General Corporation Law prohibits a Delaware corporation that is a public company from engaging in any business combination (as defined below) with any interested stockholder (defined generally as an entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation

and any entity or person affiliated with such entity or person) for a period of three years following the date that such stockholder became an interested stockholder, unless: (1) prior to such date, the board of directors of the corporation approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder; (2) on consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number

of shares outstanding those shares owned (x) by persons who are directors and also officers and (y) by employee stock plans in 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 (3) on or subsequent to such date, the business combination is approved by the board of directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66^{2/3}% of the outstanding voting stock that is not owned by the interested stockholder.

Section 203 of the Delaware General Corporation Law defines "business combination" to include: (1) any merger or consolidation involving the corporation and the interested stockholder; (2) any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder; (3) subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder; (4) any transaction involving the corporation that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder; or (5) 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.

**AMENDMENT TO 2003 STOCK OPTION PLAN
(Proposal Three)**

Prior to the Company's September 13, 2005 merger with ZIOPHARM, Inc., the Company maintained an Incentive Stock Option Plan under which 175,000 shares of common stock were reserved for issuance. Effective upon the merger, this Incentive Stock Option Plan and all rights thereunder were terminated. Upon the merger, the Company assumed ZIOPHARM, Inc.'s 2003 Stock Option Plan as its Stock Option Plan. There are currently 1,252,436 shares of the Company's common stock reserved for issuance 2003 Stock Option Plan (the "2003 Plan").

On February 22, 2006, the Board of Directors approved an amendment to the 2003 Plan, subject to approval at the annual meeting by the Company's stockholders, to increase the number of shares reserved for issuance thereunder to 2,002,436. Immediately below is a summary of the existing 2003 Plan and a discussion of the federal income tax consequences of the issuance and exercise of incentives under the 2003 Plan to recipients and to the Company. This summary of the existing 2003 Plan is qualified entirely by reference to the complete text of the 2003 Plan, a copy of which may be obtained by referring to the information that the Company filed with the Securities and Exchange Commission.

Description of the Existing 2003 Plan

General

The purpose of the 2003 Plan is to increase stockholder value and to advance the interests of the Company by furnishing a variety of economic incentives ("Incentives") designed to attract, retain and motivate employees, certain key consultants and directors of the Company. The compensation committee (the "Committee") of Board of Directors administers the 2003 Plan. The Committee may grant Incentives to employees (including officers) of the Company or its subsidiaries, members of the Board of Directors, and consultants or other independent contractors who provide services to the Company or its subsidiaries, in the following forms, each of which is discussed below: (a) performance shares; (b) incentive stock options and non-statutory stock options; (c) stock appreciation rights ("SARs"); (d) stock awards; and (e) restricted stock.

The maximum number of shares of common stock which may be issued under the 2003 Plan is 1,252,436 shares, subject to adjustment in the event of a recapitalization or other corporate restructuring. This number represents approximately 17.2% of the outstanding shares of the Company's common stock on the Record Date.

Stockholders are often interested in the potential for equity dilution resulting from grants of equity incentives (performance shares, stock options, restricted stock, etc.) under a company's equity compensation plans. The percentage amount by which current stockholders' equity interests may be diluted as a result of such grants is commonly referred to as the "overhang." The overhang is calculated by dividing (i) the total number of incentives granted and available for grant under equity compensation plans, by (ii) the total shares outstanding assuming the exercise of all outstanding incentives and the grant and exercise of all available incentives. The current overhang for the 2003 Plan (which is currently the Company's only equity compensation plan) is approximately 14.7%, based on amounts as of the Record Date.

Description of Incentives

Performance Shares. Performance shares consist of the grant by the Company to an eligible employee of a contingent right to receive shares of common stock. Performance shares shall be paid in shares of common stock to the extent performance objectives set forth in the grant are achieved. The number of shares granted and the performance criteria are determined by the Committee.

Stock Options. The Committee may grant non-qualified and incentive stock options to eligible employees to purchase shares of common stock from the Company. The 2003 Plan confers on the Committee discretion, with respect to any such stock option, to determine the term of each option, the time or times during its term when the option becomes exercisable and the number and purchase price of the shares subject to the option.

Stock Appreciation Rights. A stock appreciation right or SAR is a right to receive, without payment to the Company, a number of shares, cash or any combination thereof, the amount of which is equal to the aggregate amount of the appreciation in the shares of common stock as to which the SAR is exercised. For this purpose, the appreciation in the shares consists of the amount by which the fair market value of the shares of common stock on

the exercise date exceeds (a) in the case of an SAR related to a stock option, the purchase price of the shares under the option or (b) in the case of an SAR granted alone, without reference to a related stock option, an amount determined by the Committee at the time of grant. The Committee has the discretion to determine the number of shares as to which an SAR will relate as well as the duration and exercisability of an SAR.

Stock Awards. Stock awards consist of the transfer by the Company to an eligible employee of shares of common stock, without payment, as additional compensation for services to the Company. The number of shares transferred pursuant to any stock award is determined by the Committee.

Restricted Stock. Restricted stock consists of the sale or transfer by the Company to an eligible employee of one or more shares of common stock that are subject to restrictions on their sale or other transfer by the employee which restrictions will lapse after a period of time as determined by the Committee. The price at which restricted stock will be sold will be determined by the Committee, and it may vary from time to time and among employees and may be less than the fair market value of the shares at the date of sale. Subject to these restrictions and the other requirements of the 2003 Plan, a participant receiving restricted stock shall have all of the rights of a stockholder as to those shares.

Transferability of Incentives

Incentives granted under the 2003 Plan may not be transferred, pledged or assigned by the holder thereof except, in the event of the holder's death, by will or the laws of descent and distribution to the limited extent provided in the 2003 Plan or the Incentive, or pursuant to a qualified domestic relations order as defined by the Code or Title I of the Employee Retirement Income Security Act, or the rules hereunder. However, stock options may be transferred by the holder thereof to the holder's spouse, children, grandchildren or parents (collectively, the Family Members), to trusts for the benefit of Family Members, to partnerships or limited liability companies in which Family Members are the only partners or stockholders, or to entities exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

Amendment of the 2003 Plan

The Board of Directors may amend or discontinue the 2003 Plan at any time. However, no such amendment or discontinuance may adversely change or impair a previously granted Incentive without the consent of the recipient thereof. Certain 2003 Plan amendments require stockholder approval, including amendments which would increase the maximum number of shares of Common Stock which may be issued to all participants under the 2003 Plan, change or expand the types of Incentives that may be granted under the 2003 Plan, change the class of persons eligible to receive Incentives under the 2003 Plan, or materially increase the benefits accruing to participants under the 2003 Plan.

Effect of Sale, Merger, Exchange or Liquidation

Unless otherwise provided in the agreement for an Incentive, in the event of an acquisition of the Company through the sale of substantially all of the Company's assets or through a merger, exchange, reorganization or liquidation of the Company or a similar event as determined by the Committee (collectively a transaction), the Committee shall be authorized, in its sole discretion, to take any and all action it deems equitable under the circumstances, including but not limited to:

(1)

terminating the 2003 Plan and all Incentives and (i) granting the holders of outstanding vested options, in lieu of any shares of common stock they would be entitled to receive under such options, such stock, securities or assets, including cash, as would have been paid to such participants if their options had been exercised and such holder had received common stock immediately prior to such transaction (with appropriate adjustment for the exercise price, if

any), (ii) granting the holders of performance shares and/or SARs that entitle the participant to receive common stock, in lieu of any shares of common stock each participant was entitled to receive as of the date of the transaction pursuant to the terms of such Incentive, if any, such stock, securities or assets, including cash, as would have been paid to such participant if such common stock had been issued to and held by the participant immediately prior to such transaction; and (iii) treating holders of any Incentive which does not entitle the participant to receive common stock in an equitable manner as determined by the Committee;

(2)

providing that participants holding outstanding vested common stock-based Incentives shall receive, with respect to each share of common stock issuable pursuant to such Incentives as of the effective date of any such transaction, at the determination of the Committee, cash, securities or other property, or any combination thereof, in an amount equal to the excess, if any, of the fair market value of such common stock on a date within ten days prior to the effective date of such transaction over the option price or other amount owed by a participant, if any, and that such Incentives shall be cancelled, including the cancellation without consideration of all options that have an exercise price below the per share value of the consideration received by the Company in the transaction;

(3)

providing that the 2003 Plan (or a replacement plan) shall continue with respect to Incentives not cancelled or terminated as of the effective date of such transaction and provide to participants holding such Incentives the right to earn their respective Incentives on a substantially equivalent basis (taking into account the transaction and the number of shares or other equity issued by such successor entity) with respect to the equity of the entity succeeding the Company by reason of such transaction; and

(4)

providing that all unvested, unearned or restricted Incentives, including but not limited to restricted stock for which restrictions have not lapsed as of the effective date of such transaction, shall be void and deemed terminated, or, in the alternative, for the acceleration or waiver of any vesting, earning or restrictions on any Incentive.

In addition, the Committee may restrict the rights of participants in the event of a transaction to the extent necessary to comply with Section 16(b) of the Securities Exchange Act of 1934, the Internal Revenue Code or any other applicable law or regulation.

Federal Income Tax Consequences

The following discussion sets forth certain United States income tax considerations in connection with the ownership of common stock. These tax considerations are stated in general terms and are based on the Internal Revenue Code of 1986 in its current form and current judicial and administrative interpretations thereof. This discussion does not address state or local tax considerations with respect to the ownership of common stock. Moreover, the tax considerations relevant to ownership of the common stock may vary depending on a holder's particular status.

An employee who receives restricted stock or performance shares subject to restrictions which create a substantial risk of forfeiture (within the meaning of section 83 of the Code) will normally realize taxable income on the date the shares become transferable or are no longer subject to substantial risk of forfeiture or on the date of their earlier disposition. The amount of such taxable income will be equal to the amount by which the fair market value of the shares of common stock on the date such restrictions lapse (or any earlier date on which the shares are disposed of) exceeds their purchase price, if any. An employee may elect, however, to include in income in the year of purchase or grant the excess of the fair market value of the shares of common stock (without regard to any restrictions) on the date of purchase or grant over its purchase price. The Company will be entitled to a deduction for compensation paid in the same year and in the same amount as income is realized by the employee.

An employee who receives a stock award under the 2003 Plan consisting of shares of common stock will realize ordinary income in the year of the award in an amount equal to the fair market value of the shares of common stock covered by the award on the date it is made, and the Company will be entitled to a deduction equal to the amount the employee is required to treat as ordinary income. An employee who receives a cash award will realize ordinary income in the year the award is paid equal to the amount thereof, and the amount of the cash will be deductible by the

Company.

When a non-qualified stock option granted pursuant to the 2003 Plan is exercised, the employee will realize ordinary income measured by the difference between the aggregate purchase price of the shares of common stock as to which the option is exercised and the aggregate fair market value of shares of the common stock on the exercise date, and the Company will be entitled to a deduction in the year the option is exercised equal to the amount the employee is required to treat as ordinary income.

Options that qualify as incentive stock options are entitled to special tax treatment. Under existing federal income tax law, if shares purchased pursuant to the exercise of such an option are not disposed of by the optionee within two years from the date of granting of the option or within one year after the transfer of the shares to the

optionee, whichever is longer, then (i) no income will be recognized to the optionee upon the exercise of the option; (ii) any gain or loss will be recognized to the optionee only upon ultimate disposition of the shares and, assuming the shares constitute capital assets in the optionee's hands, will be treated as long-term capital gain or loss; (iii) the optionee's basis in the shares purchased will be equal to the amount of cash paid for such shares; and (iv) the Company will not be entitled to a federal income tax deduction in connection with the exercise of the option. The Company understands that the difference between the option price and the fair market value of the shares acquired upon exercise of an incentive stock option will be treated as an item of tax preference for purposes of the alternative minimum tax. In addition, incentive stock options exercised more than three months after retirement are treated as non-qualified options.

The Company further understands that if the optionee disposes of the shares acquired by exercise of an incentive stock option before the expiration of the holding period described above, the optionee must treat as ordinary