

SECURITIES AND EXCHANGE COMMISSION

FORM DEF 14A

Definitive proxy statements

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Mailing Address
1360 O'BRIEN DRIVE
MENLO PARK CA 94025

Business Address
1360 O'BRIEN DRIVE
MENLO PARK CA 94025
6504625900

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934 (Amendment No.)

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

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

Depomed, Inc.

(Name of Registrant as Specified In Its Charter)

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

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- No fee required.
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DEPOMED, INC.

1360 O'Brien Drive
Menlo Park, California 94025

NOTICE OF ANNUAL MEETING OF SHAREHOLDERS To Be Held May 23, 2008

The Annual Meeting of Shareholders of Depomed, Inc. (the "Company") will be held on May 23, 2008 at 9:00 a.m. local time at the Company's headquarters located at 1360 O'Brien Drive, Menlo Park, California 94025. The Annual Meeting is being held for the following purposes, as more fully described in the accompanying Proxy Statement:

1. To elect eight directors to hold office until the 2009 Annual Meeting of Shareholders and until their successors are elected and qualified.
2. To approve an amendment to the 2004 Equity Incentive Plan to increase the number of shares of common stock issuable under the plan by 1,750,000 shares.
3. To ratify the appointment of Ernst & Young LLP as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2008.
4. To transact such other business as may properly come before the meeting or any adjournments or postponements thereof.

Only shareholders of record at the close of business on April 2, 2008 will be entitled to notice of, and to vote at, such meeting or any adjournments or postponements thereof. A list of shareholders entitled to vote at the meeting will be available for inspection at the Company's headquarters for at least 10 days prior to the meeting, and will also be available for inspection at the meeting.

BY ORDER OF THE BOARD OF DIRECTORS



Julian N. Stern
Secretary

Menlo Park, California
April 18, 2008

YOUR VOTE IS IMPORTANT!

You are cordially invited to attend the Annual Meeting. However, to ensure that your shares are represented at the meeting, please submit your proxy by mail using the return envelope provided. Please see the instructions on the proxy and voting instruction card. Submitting a proxy or voting instructions will not prevent you from attending the Annual Meeting and voting in person, if you so desire, but will help the Company secure a quorum and reduce the expense of additional proxy solicitation.

DEPOMED, INC.
1360 O'Brien Drive
Menlo Park, California 94025
(650) 462-5900

PROXY STATEMENT

2008 ANNUAL MEETING OF SHAREHOLDERS

Depomed, Inc. (the "Company") is furnishing this Proxy Statement and the enclosed proxy in connection with the solicitation of proxies by the Board of Directors of the Company (the "Board") for use at the Annual Meeting of Shareholders to be held on May 23, 2008, at 9:00 a.m. local time, at the Company's headquarters located at 1360 O'Brien Drive, Menlo Park, California 94025, and at any adjournments thereof (the "Annual Meeting"). These materials are being mailed to shareholders on or about April 18, 2008.

Only holders of the Company's common stock as of the close of business on April 2, 2008 (the "Record Date") are entitled to vote at the Annual Meeting. Shareholders who hold shares of the Company's common stock in "street name" may vote at the Annual Meeting only if they hold a valid proxy from their broker. As of the Record Date, there were 47,866,571 shares of common stock outstanding.

A majority of the outstanding shares of common stock entitled to vote at the Annual Meeting must be present in person or by proxy in order for there to be a quorum at the meeting. Shareholders of record who are present at the meeting in person or by proxy and who abstain from voting, including brokers holding customers' shares of record who cause abstentions to be recorded at the meeting, will be included in the number of shareholders present at the meeting for purposes of determining whether a quorum is present.

Each shareholder of record is entitled to one vote at the Annual Meeting for each share of common stock held by such shareholder on the Record Date. Shareholders do not have cumulative voting rights. Shareholders may vote their shares by using the proxy card enclosed with this Proxy Statement. All proxy cards received by the Company that are properly signed and have not been revoked will be voted in accordance with the instructions contained in the proxy cards. If a signed proxy card is received which does not specify a vote or an abstention, the shares represented by that proxy card will be voted for the nominees to the Board listed on the proxy card and in this Proxy Statement, for the approval of the amendment of the 2004 Equity Incentive Plan and for the ratification of the appointment of Ernst & Young LLP as the Company's independent auditors for the fiscal year ending December 31, 2008. The Company is not aware, as of the date hereof, of any matters to be voted upon at the Annual Meeting other than those stated in this Proxy Statement and the accompanying Notice of Annual Meeting of Shareholders. If any other matters are properly brought before the Annual Meeting, the enclosed proxy card gives discretionary authority to the persons named as proxies to vote the shares represented by the proxy card in their discretion.

In the election of directors, the eight persons receiving the highest number of "FOR" votes at the Annual Meeting will be elected. The other proposals require the affirmative "FOR" vote of a majority of those shares present in person or represented by proxy and entitled to vote on the proposal at the Annual Meeting. If you hold shares beneficially in street name and do not provide your broker or nominee with voting instructions, your shares may constitute "broker non-votes." Generally, broker non-votes occur on a matter when a broker is not permitted to vote on that matter without instructions from the beneficial owner and instructions are not given. For purposes of determining the number of shares voting on a particular proposal, votes cast for or against a proposal and abstentions are counted as shares voting, whereas broker non-votes are not counted as shares voting. Accordingly, an abstention will have the same effect as a vote against the proposal, and broker non-votes can have the effect of

preventing approval of certain proposals where the number of affirmative votes, though a majority of the votes cast, does not constitute a majority of the required quorum.

A shareholder of record may revoke a proxy at any time before it is voted at the Annual Meeting by (a) delivering a proxy revocation or another duly executed proxy bearing a later date to the Secretary of the Company at 1360 O'Brien Drive, Menlo Park, California 94025 or (b) attending the Annual Meeting and voting in person. Attendance at the Annual Meeting will not revoke a proxy unless the shareholder actually votes in person at the meeting.

The proxy card accompanying this Proxy Statement is solicited by the Board. The Company will pay all of the costs of soliciting proxies. In addition to solicitation by mail, officers, directors and employees of the Company may solicit proxies personally, or by telephone, without receiving additional compensation. The Company may retain a proxy solicitation firm to assist in the solicitation of proxies in connection with the Annual Meeting. In that event, the Company will pay such firm customary fees, which the Company expects would be approximately \$10,000, plus expenses. The Company, if requested, will also pay brokers, banks and other fiduciaries who hold shares of common stock for beneficial owners for their reasonable out-of-pocket expenses of forwarding these materials to shareholders.

BOARD OF DIRECTORS AND DIRECTOR NOMINEES

The Bylaws of the Company provide for a Board consisting of between five and nine directors. The number of directors currently authorized is nine. In accordance with the Bylaws, the Board has adopted a resolution to reduce the number of authorized directors to eight, effective immediately prior to the opening of the polls for the election of directors at the Annual Meeting. Eight directors are to be elected at the Annual Meeting. Unless otherwise instructed, the proxy holders will vote the proxies received by them for the eight nominees named below. All of the nominees named below are presently directors of the Company. Each of the nominees was elected to his present term by the shareholders of the Company, except for Carl A. Pelzel, James A. Schoeneck and Karen A. Dawes, who were appointed by the Board in August 2007, December 2007, and April 2008, respectively.

The present term of each of the directors continues until the Annual Meeting and until his successor has been elected and qualified. In the event that any nominee is unable or declines to serve as a director at the time of the Annual Meeting, the proxies will be voted for any nominee who will be designated by the present Board to fill the vacancy. The Board has no reason to believe that any of the persons named below will be unable or unwilling to serve as a director if elected.

The term of office of each person elected as a director will continue until the next annual meeting of shareholders or until his successor has been elected and qualified.

The Company's Articles of Incorporation and Bylaws contain provisions eliminating or limiting the personal liability of directors for violations of a director's fiduciary duty to the extent permitted by the California General Corporation Law.

The name of and certain other information regarding each nominee is set forth in the table below.

<u>Name of Nominee</u>	<u>Age</u>	<u>Principal Occupation</u>	<u>Director Since</u>
Craig R. Smith, M.D. ²	62	Chief Operating Officer, Algenol Biofuels, Inc. and President, Williston Consulting, LLC	2004
G. Steven Burrill ^{1,2,3}	64	Chief Executive Officer, Burrill & Company	1997
Karen A. Dawes	56	President, Knowledgeable Decisions, LLC	2008
Carl A. Pelzel	56	President and Chief Executive Officer, Depomed, Inc.	2007
James A. Schoeneck ¹	50	Chief Executive Officer, BrainCells Inc.	2007
Peter D. Staple ^{1,3}	56	Chief Executive Officer, Corium International, Inc.	2003
Julian N. Stern ³	83	Attorney	2001
David B. Zenoff, D.B.A. ^{2,3}	70	President, <u>David B. Zenoff Associates, Inc.</u>	2007

(1) Current member of the Audit Committee

(2) Current member of the Compensation Committee

(3) Current member of the Nominating and Corporate Governance Committee

Craig R. Smith, M.D. has served as a director of the Company since May 2004 and as Chairman of the Board of Directors since August 2007. Dr. Smith currently serves as Director, Executive Vice President, and Chief Operating Officer for Algenol Biofuels, Inc., a private industrial biotechnology company. Dr. Smith also serves as the President of Williston Consulting, LLC, an advisory firm to pharmaceutical and biotechnology companies. He is the former Chairman, President and Chief Executive Officer of Guilford Pharmaceuticals, Inc., which he co-founded in July 1993 and led until 2004. Prior to joining Guilford, Dr. Smith was Senior Vice President for Business and Market Development at Centocor, Inc., a biotechnology company. Dr. Smith joined Centocor in 1988 as Vice President of Clinical Research after serving on the faculty of the Department of Medicine at Johns Hopkins Medical School for 13 years. Dr. Smith received his M.D. degree from the State University of New York at Buffalo in 1972 and received training in Internal Medicine at Johns Hopkins Hospital from 1972 to 1975. Dr. Smith is also a director of Adams Express Company, Petroleum & Resources Corporation, and La Jolla Pharmaceutical Company.

G. Steven Burrill has served as a director of the Company since August 1997. He founded and has been Chief Executive Officer of Burrill & Company, a life sciences merchant bank, since 1997. Mr. Burrill served in the same capacity at Burrill & Company's predecessor firm, Burrill & Craves, between 1994 and 1996. Prior to starting Burrill & Craves, Mr. Burrill spent 28 years with Ernst & Young LLP, as Partner and as International Chairman of the firm's Manufacturing/High Technology/Life Sciences Industry Practice. Mr. Burrill currently serves as Chairman of the Board of Pharmasset, Inc., and is a director of Targacept, Inc. and several private companies.

Karen A. Dawes has served as a director of the Company since April 2008. Since 2003, Ms. Dawes has served as President of Knowledgeable Decisions, LLC, a pharmaceutical consulting firm that she founded. Between 1999 and 2003, Ms. Dawes served as Senior Vice President and U.S. Business Group Head for Bayer Corporation's U.S. Pharmaceuticals Group. Prior to joining Bayer, she served as Senior Vice President, Global Strategic Marketing for Wyeth, formerly known as American Home Products, where she held responsibility for worldwide strategic marketing. She also served as Vice President, Commercial Operations for Genetics Institute, Inc., which was acquired by Wyeth in 1997. Ms. Dawes began her pharmaceutical industry career at Pfizer, Inc. where, from 1984 to 1994, she held a number of positions in Marketing, serving most recently as Vice President, Marketing of the Pratt Division. Ms. Dawes is Chairman of the Board of Directors of PDL Biopharma, Inc., a biopharmaceutical

company, and also a member of the Board of Directors of Repligen Corporation, a biopharmaceutical company.

Carl A. Pelzel has served as a director of the Company since August 2007, when he was elected to the Board in conjunction with his appointment as the Company's President and Chief Executive Officer. Mr. Pelzel joined the Company in June 2005 as Vice President, Marketing and Commercial Development, and was promoted to Executive Vice President and Chief Operating Officer in September 2005. Before joining the Company, Mr. Pelzel served as Senior Vice President, Global Commercial Operations at Chiron Corporation from June 2003 to September 2004. Prior to joining Chiron, Mr. Pelzel was President and Chief Executive Officer of Invenux Inc., a privately-held biopharmaceutical company, from March 2001 to November 2002. Mr. Pelzel also spent 11 years with GlaxoSmithKline in senior-level sales, marketing and international operational positions, including Country Manager of Hong Kong and China. He spent 13 years with American Home Products, focused primarily on its antibiotics business. During his career, he directed the launch of five major pharmaceutical products, many on a global basis. Mr. Pelzel has a B.A. degree from Hartwick College of Oneonta, New York and a Masters degree in Natural Sciences from the University of Paris.

James A. Schoeneck has served as a director of the Company since December 2007. Since September 2005, Mr. Schoeneck has served as Chief Executive Officer of BrainCells Inc., a privately-held biopharmaceutical company. Before joining BrainCells Inc., Mr. Schoeneck served as Chief Executive Officer of ActivX BioSciences, a proteomics-based biotechnology company, from November 2003 until its acquisition in December 2004. Prior to ActivX, Mr. Schoeneck served as President, Chief Executive Officer, and Chief Operating Officer of Prometheus Laboratories Inc., a specialty pharmaceutical company, for three years. Before Prometheus, Mr. Schoeneck served as Vice President and General Manager, Immunology Business Unit and Vice President of Marketing and Commercial Development of Centocor, Inc., a subsidiary of Johnson & Johnson, for three years. Prior to Centocor, Mr. Schoeneck spent 13 years at Rhone-Poulenc Rorer, Inc. (now Aventis) serving in various commercial positions. Mr. Schoeneck holds a B.S. degree in Education from Jacksonville State University.

Peter D. Staple has served as a director of the Company since November 2003. Since March 2008, Mr. Staple has served as Chief Executive Officer and a director of Corium International, Inc., a privately-held biopharmaceutical company. From 2002 to March 2008 he served as director, and from 2002 to November 2007 as Chief Executive Officer, of BioSeek, Inc., a privately-held drug discovery company. From 1994 to 2002, Mr. Staple was a member of the senior executive team at ALZA Corporation, where he was most recently Executive Vice President, Chief Administrative Officer and General Counsel. Prior to joining ALZA, Mr. Staple held the position of Vice President, Associate General Counsel for biopharmaceutical company Chiron Corporation. Mr. Staple previously served as Vice President and Associate General Counsel for Cetus Corporation, a biotechnology company. Mr. Staple received his J.D. degree from Stanford Law School and his B.A. degree from Stanford University.

Julian N. Stern has served as a director of the Company since April 2001. Mr. Stern has served as the Company's Secretary since its founding. He is the sole shareholder of a professional corporation that was a partner of the predecessor of the law firm of Heller Ehrman LLP, and presently is Senior of Counsel to Heller Ehrman LLP. Mr. Stern is the Chairman of the Board of Pherin Pharmaceuticals, a privately held biopharmaceutical company.

David B. Zenoff, D.B.A. has served as a director of the Company since March 2007. Since 1973, Dr. Zenoff has been the President of David B. Zenoff and Associates, Inc., a strategic and management consulting firm. Dr. Zenoff has taught at various universities, including Stanford University Graduate School of Business, Columbia Graduate School of Business, and IMEDE in Lausanne, Switzerland. Dr. Zenoff holds a B.A. from Stanford University, and M.B.A. and doctorate

degrees from Harvard University. Dr. Zenoff is also a member of the board of directors of Williams-Sonoma, Inc., a specialty retailer.

There are no family relationships among any of the Company's directors or executive officers, except that John W. Shell, a former director of the Company who retired in October 2007, is the father of John N. Shell, the Company's Vice President, Manufacturing Technology.

CORPORATE GOVERNANCE

The Board met eleven times during fiscal 2007. The Audit Committee met six times, the Compensation Committee met three times, and the Nominating and Corporate Governance committee met one time during fiscal 2007. Each member of the Board attended 75% or more of the aggregate of (i) the total number of Board meetings held during the period of such member's service and (ii) the total number of meetings of Committees on which such member served, during the period of such member's service.

Board Independence

The Board has determined that Messrs. Burrill, Staple, Stern, Schoeneck, and Drs. Smith and Zenoff, are "independent" under the rules of the Nasdaq Global Market. Under applicable Securities and Exchange Commission ("SEC") and Nasdaq rules, the existence of certain "related party" transactions above certain thresholds between a director and the Company are required to be disclosed and preclude a finding by the Board that the director is independent. In addition to transactions required to be disclosed under SEC rules, the Board considered certain other relationships in making its independence determinations, including Mr. Stern's relationship with Heller Ehrman LLP, the Company's outside legal counsel, and certain consulting performed for the Company by Dr. Zenoff in January 2007, and determined in each case that such other relationships did not impair the director's ability to exercise independent judgment on behalf of the Company.

Board Committees

The Board has established three standing committees: an Audit Committee; a Compensation Committee; and a Nominating and Corporate Governance Committee.

Audit Committee. The Company's Audit Committee consists of Messrs. Burrill, Staple and Schoeneck. Mr. Schoeneck replaced Dr. Smith on the Audit Committee in December 2007. Mr. Burrill is the Chairman of the Audit Committee. The Audit Committee oversees the Company's corporate accounting and financial reporting process. The Audit Committee evaluates the independent registered public accounting firm's qualifications, independence and performance; determines the engagement of the Company's independent registered public accounting firm; approves the retention of the independent registered public accounting firm to perform any proposed permissible non-audit services; monitors the rotation of partners of the independent registered public accounting firm on the engagement team as required by law; reviews the Company's financial statements; reviews the Company's critical accounting policies and estimates; and discusses with management and the independent registered public accounting firm the results of the annual audit and the review of the Company's quarterly financial statements. The Board has determined that Mr. Burrill is the Company's Audit Committee financial expert under applicable SEC rules. The Company believes that the composition of the Audit Committee meets the requirements for independence under the current requirements of the Nasdaq Global Market and SEC rules and regulations.

Compensation Committee. The Company's Compensation Committee consists of Mr. Burrill, and Drs. Smith and Zenoff. Dr. Zenoff replaced Mr. Stern on the Compensation Committee in September 2007. Mr. Burrill is the Chairman of the Compensation Committee. The Compensation Committee reviews and recommends policies relating to compensation and benefits of the Company's officers and

employees, including reviewing and approving corporate goals and objectives relevant to compensation of the Chief Executive Officer, other executive officers and key employees, evaluating the performance of these officers in light of those goals and objectives, and setting compensation of these officers based on such evaluations. The Compensation Committee also administers the issuance of stock options and other awards under the Company's equity incentive plans. The composition of the Compensation Committee meets the requirement for independence under applicable requirements of the Nasdaq Global Market and the SEC.

Nominating and Corporate Governance Committee. The Company's Nominating and Corporate Governance Committee consists of Messrs. Staple, Stern and Burrill, and Dr. Zenoff. Dr. Zenoff joined the Nominating and Corporate Governance Committee in September 2007. Mr. Staple is the Chairman of the Nominating and Corporate Governance Committee. The Nominating and Corporate Governance Committee identifies and evaluates nominees for election as directors. The Company believes that the composition of the Nominating and Corporate Governance Committee meets the applicable independence requirements of the Nasdaq Global Market.

Charters for the Company's Nominating and Corporate Governance, Audit, and Compensation Committees are posted on the Company's website at: <http://www.depomedinc.com>.

DIRECTOR NOMINATIONS

The information below describes the criteria and process that the Nominating and Corporate Governance Committee uses to evaluate candidates to the Board.

Criteria for Nomination to the Board of Directors. The Nominating and Corporate Governance Committee considers the appropriate balance of experience, skills and characteristics required of the Board, and seeks to ensure that at least a majority of the directors are independent under the rules of the Nasdaq Global Market, and that members of the Audit Committee meet the financial literacy requirements under the rules of the Nasdaq Global Market and at least one of them qualifies as an "audit committee financial expert" under the rules of the SEC. Nominees for director are selected on the basis of their depth and breadth of experience, wisdom, integrity, ability to make independent analytical inquiries, understanding of the Company's business environment, and willingness to devote adequate time to Board duties.

Shareholder Proposals for Nominees. The Nominating and Corporate Governance Committee will consider written proposals from shareholders for nominees for director. Any such nominations should be submitted to the Nominating and Corporate Governance Committee c/o the Secretary of the Company and should include (at a minimum) the following information: (a) all information relating to such nominee that is required to be disclosed pursuant to Regulation 14A under the Securities Exchange Act of 1934 (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (b) the name(s) and address(es) of the shareholder(s) making the nomination and the number of shares of the Company's common stock which are owned beneficially and of record by such shareholder(s); and (c) appropriate biographical information and a statement as to the qualifications of the nominee, and should be submitted in the time frame described in the Bylaws of the Company and under the caption, "**SHAREHOLDER PROPOSALS**" below.

Process for Identifying and Evaluating Nominees. The process for identifying and evaluating nominees to the Board is initiated by identifying a slate of candidates who meet the criteria for selection as nominees and who have the specific qualities or skills being sought based on input from members of the Board and, if the Nominating and Corporate Governance Committee deems appropriate, a third-party search firm. Candidates are evaluated by the Nominating and Corporate Governance Committee by reviewing the candidates' biographical information and qualifications and checking the candidates' references or associates. Qualified nominees are interviewed by at least one member of the Nominating and Corporate Governance Committee. Serious candidates generally meet, either in person or by telephone, with all members of the Nominating and Corporate Governance Committee and as many other members of the Board as practicable, and using the input from such interviews and the information obtained by the Nominating and Corporate Governance Committee, the Nominating and Corporate Governance Committee evaluates which of the prospective candidates is qualified to serve as a director and whether the committee should recommend to the Board that the Board nominate, or elect to fill a vacancy, with one of the final prospective candidates. Candidates recommended by the Nominating and Corporate Governance Committee are presented to the Board for selection as nominees to be presented for the approval of the shareholders or for election to fill a vacancy.

The Nominating and Corporate Governance Committee expects that a similar process will be used to evaluate nominees recommended by shareholders. However, to date, the Company has not received any shareholder proposal to nominate a director.

Nominees to the Board of Directors for the Annual Meeting. The nominees for the Annual Meeting were recommended for selection by the Nominating and Corporate Governance Committee and were selected by the Board.

Board Nominees for the Annual Meeting. Each of the nominees listed in this Proxy Statement, other than Messrs. Pelzel, Schoeneck and Ms. Dawes, is a current director standing for re-election. Mr. Schoeneck was elected by the Board in December 2007. Ms. Dawes was elected by the Board in April 2008. Mr. Schoeneck and Ms. Dawes were initially identified as potential Board candidates by a third party search firm. The Company paid the third party search firm fees of approximately \$68,000 for their services during 2007. The Company expects to incur approximately \$50,000 for services performed in 2008 associated with the identification of Ms. Dawes as a Board candidate. Mr. Pelzel's election to the Board was made in connection with his appointment as President and Chief Executive Officer.

COMMUNICATIONS WITH DIRECTORS

Interested parties wishing to contact the directors of the Company may do so by writing to them at the following address: c/o General Counsel, 1360 O'Brien Drive, Menlo Park, CA 94025. All letters received will be categorized and processed by the Company's General Counsel. Comments or questions regarding the Company's accounting, internal controls or auditing matters will be referred to members of the Audit Committee. Comments or questions regarding the nomination of directors and other corporate governance matters will be referred to members of the Nominating and Corporate Governance committee. All other comments and questions will be referred to the entire Board.

The Company has a policy of encouraging all directors to attend the annual shareholder meetings. All of the Company's directors attended the 2007 Annual Meeting.

COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION

The Company's Compensation Committee consists of Mr. Burrill, and Drs. Smith and Zenoff. Dr. Zenoff replaced Mr. Stern on the Compensation Committee in September 2007. None of the members of the Compensation Committee is, or has ever been, an officer or employee of the Company

or any of its subsidiaries. None of these directors had any relationship requiring disclosure by the Company under Item 404 of Regulation S-K (Certain Relationships and Related Transactions). No interlocking relationship exists, or in the past fiscal year has existed, between any member of the Compensation Committee and any member of any other company's board of directors or compensation committee.

CODE OF ETHICS

The Board has adopted a Code of Business Conduct and Ethics that applies to all of the Company's employees, officers and directors, including its principal executive officer and its principal financial officer. A copy of the code is available on the Company's website at: <http://www.depomedinc.com>.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL HOLDERS AND MANAGEMENT

The following table sets forth information regarding ownership of the Company's common stock as of April 2, 2008 (or earlier date for information based on filings with the SEC) by (a) each person known to the Company to own more than 5% of the outstanding shares of the Company's common stock, (b) each director and nominee for director of the Company, (c) each person who served as the Company's Chief Executive Officer in 2007, each person who served as Chief Financial Officer or principal financial officer in 2007, and each other executive officer named in the compensation tables appearing later in this Proxy Statement and (d) all current directors and executive officers as a group. The information in this table is based solely on statements in filings with the SEC or other reliable information.

<u>Name of Beneficial Owner¹</u>	<u>Aggregate Number of Shares of Common Stock²</u>	<u>Number Subject to Convertible Securities Exercisable Within 60 Days</u>	<u>Percentage of Common Stock (%)</u>
Third Point LLC ³	7,050,000 ⁴	–	14.73%
Tang Capital Partners, LP ⁵	5,114,600 ⁶	1,200,000	10.42%
JP Morgan Chase & Co. ⁷	4,653,034 ⁸	–	9.72%
Biovail Laboratories, Inc. ⁹	4,661,186 ¹⁰	419,154	9.65%
Polygon Global Opportunities Fund ¹¹	2,936,424 ¹²	2,936,424	5.78%
John W. Fara, Ph.D.	1,040,828	869,151	2.14%
John N. Shell	761,571	252,980	1.58%
Carl A. Pelzel	259,387	250,579	*
John F. Hamilton	205,644	–	*
Julian N. Stern	189,583	106,250	*
G. Steven Burrill	131,250	131,250	*
Peter D. Staple	61,250	61,250	*
Craig R. Smith, M.D.	61,250	61,250	*
Matthew M. Gosling	51,676	47,709	*
David B. Zenoff, D.B.A.	24,387	13,542	*
James A. Schoeneck	2,604	2,604	*
Karen A. Dawes	1,042	1,042	*
Tammy L. Cameron	–	–	*
All directors & executive officers as a group (12 persons)	2,584,828	1,797,607	5.20%

* Less than one percent

- (1) Except as otherwise indicated, the address of each beneficial owner listed in the table is Depomed, Inc., 1360 O'Brien Drive, Menlo Park, CA 94025.
- (2) Beneficial ownership of shares is determined in accordance with the rules of the SEC and generally includes any shares over which a person exercises sole or shared voting or investment power, or of which a person has the right to acquire ownership within 60 days after April 2, 2008. Except as otherwise noted, each person or entity has sole voting and investment power with respect to the shares shown. Unless otherwise noted, none of the shares shown as beneficially owned on this table are subject to pledge.
- (3) The address of Third Point LLC is 390 Park Ave., New York, New York 10022.
- (4) Includes (i) 7,050,000 shares of common stock as to which Third Point LLC has shared voting and shared dispositive power; (ii) 7,050,000 shares of common stock as to which Daniel S. Loeb has shared voting and shared dispositive power; and (iii) 4,315,000 shares of common stock as to which Third Point Offshore Fund, Ltd. has shared voting and shared dispositive power. This information was obtained from the Schedule 13G filed on February 13, 2008 with the SEC by Third Point LLC.
- (5) The address of Tang Capital Partners, LP is 4401 Eastgate Mall, San Diego, California 92121.
- (6) Includes (i) 4,909,600 shares of common stock as to which Tang Capital Partners, LP has shared voting and shared dispositive power; (ii) 4,909,600 shares of common stock as to which Tang Capital Management, LLC has shared voting and shared dispositive power; and (iii) 4,999,600 shares of common stock as to which Kevin C. Tang has shared voting and shared dispositive power, and 68,000 shares common stock as to which Kevin C. Tang has sole voting and sole dispositive power. This information was obtained from the Schedule 13G filed on January 28, 2008 with the SEC by Tang Capital Partners, LP.
- (7) The address of JP Morgan Chase & Co. is 270 Park Ave., New York, New York 10017.
- (8) Includes 4,653,034 shares of common stock to which JP Morgan Chase & Co. has sole voting power and sole dispositive power. This information was obtained from the Schedule 13G filed on February 11, 2008 with the SEC by JP Morgan Chase & Co.
- (9) The address of Biovail Laboratories Inc. is Chelston Park, Building 2, Ground Floor, Collymore Rock, St. Michael, Barbados, West Indies.
- (10) Includes 4,242,032 shares of common stock and 419,154 shares of common stock underlying warrants exercisable from and after July 21, 2003 held by Biovail Laboratories Inc.
- (11) The address of Polygon Global Opportunities Master Fund is 598 Madison Avenue, New York, New York 10022.
- (12) Includes 2,936,424 shares of common stock issuable to Kings Road Investment Ltd. upon exercise of a warrant. The following entities and individuals may be deemed to have shared voting and dispositive power with respect to such shares: Polygon Global Opportunities Master Fund; Kings Road Investments Ltd.; Polygon Investments Ltd.; Polygon Investment Management Limited; Polygon Investment

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

The Audit Committee of the Board is responsible for monitoring and reviewing issues involving potential conflicts of interest and reviewing and approving related party transactions. The Company has not engaged and does not propose to engage in any transaction or series of transactions in which the amount involved exceeded or exceeds \$120,000 and in which any of the Company's directors or executive officers, any holder of more than 5% of any class of the Company's voting securities or any member of the immediate family of any of the foregoing persons had or will have a direct or indirect material interest, nor was any director or executive officer or any of their family members indebted to the Company in any amount in excess of \$120,000 at any time, except as described below.

John W. Fara Consulting Arrangement

In August 2007, The Company entered into a consulting agreement with Dr. John W. Fara, its former President, Chief Executive Officer and Chairman, pursuant to which Dr. Fara will provide consulting services to the Company through December 31, 2009. From August 2007 through December 31, 2008, the Company will pay Dr. Fara \$20,833 per month for his consulting services, and will reimburse Dr. Fara for COBRA and life insurance premiums. Dr. Fara will be paid \$300 per hour for consulting services provided in 2009. For the year ended December 31, 2007, the Company incurred expense of approximately \$90,000 associated with this consulting agreement. During the period of his consultancy, Dr. Fara will continue to vest in all of his currently unvested stock options, and his vested stock options will remain exercisable. In the event of a change in control of the Company, as defined by the Company's 2004 Equity Incentive Plan, all of Dr. Fara's unvested options will fully vest, and any remaining monthly payments for consulting under the agreement will be accelerated.

John F. Hamilton Retirement Arrangements

The Company entered into a letter agreement with John F. Hamilton, its former Vice President, Finance and Chief Financial Officer, pursuant to which the Company made a \$190,000 lump sum payment to Mr. Hamilton. Options to purchase the Company's common stock held by Mr. Hamilton on retirement were cancelled in October 2007 and were exchanged for 100,000 fully vested shares of common stock pursuant to the Company's 2004 Equity Incentive Plan. The Company will also reimburse Mr. Hamilton for COBRA premiums through October 2008. The Company also entered into a consulting agreement with Mr. Hamilton, pursuant to which Mr. Hamilton will provide consulting services to the Company through October 10, 2008. From October 10, 2007 through October 10, 2008, the Company will pay Mr. Hamilton \$25,667 per month for his consulting services. In the event of a change in control of the Company, as defined by the Company's 2004 Equity Incentive Plan, any remaining monthly payments for consulting under the agreement will be accelerated.

The Company has entered into indemnification agreements with each of its current officers and directors pursuant to which the Company is obligated to indemnify such officers and directors for breaches of fiduciary duty to the fullest extent permitted by the California General Corporation Law. In addition, the Company has entered into management continuity agreements with each of its officers in the form described above under "**EXECUTIVE COMPENSATION—Potential Payments upon Termination or Change in Control**".

SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Under Section 16(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and SEC rules, the Company's directors, executive officers and beneficial owners of more than 10% of any class of equity security are required to file periodic reports of their ownership, and changes in that ownership, with the SEC. Based solely on its review of copies of these reports and representations of such

reporting persons, the Company believes that during fiscal year 2007, such SEC filing requirements were satisfied.

EXECUTIVE COMPENSATION

Compensation Discussion and Analysis

This compensation discussion and analysis describes the material elements of compensation awarded to, earned by, or paid in 2007, to each of the executive officers named below under "**Summary Compensation Table**" (the "named executive officers"). This compensation discussion and analysis focuses on the information contained below under this "**EXECUTIVE COMPENSATION**" section, and in the related footnotes and narrative.

General

The Company's compensation program is designed to attract, inspire, motivate and reward executives responsible for attaining the financial and strategic objectives essential to our long-term success and growth in shareholder value. The Company's Compensation Committee is responsible for overseeing our compensation program, including compensation awarded to our named executive officers. The Company seeks to provide a competitive level of total compensation that directly links incentive opportunities to the Company's performance and shareholder return, and represents a reasonable and responsible use of financial resources and equity capital. The premise underlying the program is that it is in the best interests of shareholders to reward executives when the Company's performance objectives are achieved, and to provide significantly less compensation when these objectives are not met. Therefore, "at risk" incentives comprise a significant portion of executive compensation. The key objectives of the compensation program are to:

attract and retain executives to lead and manage the Company who are talented, qualified, and capable of achieving the Company's business objectives;

inspire and motivate executives to achieve operating goals through an emphasis on performance-based compensation;

provide a strong, direct link between the Company's financial and strategic goals and executive compensation;

align the interests of the Company's executives and shareholders; and

fairly reward executives for their efforts on behalf of the Company.

The primary elements of the Company's executive compensation program are base salary, annual cash bonus, and stock options. The Company views these components as related but distinct. That is, it does not believe that significant compensation derived from one component of compensation should negate or reduce compensation from other components. The Company determines the appropriate level for each compensation component based in part, but not exclusively, on competitive benchmarking consistent with recruiting and retention goals, its view of internal equity and consistency, and individual performance. The Company believes that, as is common in the biotechnology and pharmaceutical industries, stock-based awards, salary and cash bonuses are all necessary to attract and retain employees. The Company has not adopted any formal or informal policies or guidelines for allocating compensation between long-term and short-term compensation, or between cash and non-cash compensation.

The Chief Executive Officer assists the Compensation Committee in its annual review of the base salaries and other compensation elements of other executive officers. Specifically, the Chief Executive Officer recommends for the committee's consideration base salary increases, option grant, and the level

of achievement of individual objectives for all other executive officers, and discusses with the committee his recommendations with the committee.

Review of Competitive Market

The Compensation Committee considers various sources of third party compensation information in connection with its compensation decisions. In particular, the committee considers compensation packages offered by its competitors for executive talent. In 2007, the Compensation Committee reviewed publicly available compensation information from 11 Bay Area pharmaceutical and biotechnology companies compiled by the Company's human resources department. The companies reviewed included, among others: Geron Corporation; Maxygen, Inc.; Nuvelo, Inc.; Onyx Pharmaceuticals, Inc.; Pain Therapeutics, Inc.; Telik, Inc.; and Xoma Ltd. The Compensation Committee also reviewed a custom survey prepared by Radford Surveys & Consulting, a business unit of Aon, that analyzed compensation results from approximately 25 publicly held Northern California biotech and pharmaceutical companies with between 50 and 150 employees, and revenues of up to \$100 million. The Compensation Committee does not engage in formal benchmarking relative to peer companies, and does not hire third party compensation consultants.

Compensation Elements

Base Salary. The Company seeks to provide its executive officers with competitive annual base salaries in order to attract and retain talented individuals. However, the Company seeks to ensure that a substantial portion of its executives' compensation depends on the achievement of corporate and individual goals. In determining appropriate salary levels for a given executive officer, the Compensation Committee considers the following factors:

individual performance;

level of responsibility;

breadth, scope, and complexity of the position;

executives' salaries relative to each other; and

salary levels for comparable positions at peer companies.

Based on the criteria above, in February 2007 and January 2008, the Compensation Committee increased the base salary levels of the named executive officers retroactive to January 1 of each such year, as follows:

Name and Principal Position	Base Salary (\$) and Increase (%)	
	2007	2008
Carl A. Pelzel President and Chief Executive Officer	351,000 / 8.0	425,000 / 6.3
Tammy L. Cameron Controller and Interim Principal Accounting and Financial Officer	n/a	195,000 / 5.4
Matthew M. Gosling Vice President and General Counsel	300,150 / 3.5	325,000 / 8.3
John N. Shell Vice President, Manufacturing Technology	275,100 / 5.0	275,100 / 0.0
John W. Fara, Ph.D. Former Chairman, President and Chief Executive Officer	520,000 / 4.0	n/a
John F. Hamilton Former Vice President, Finance and Chief Financial Officer	308,700 / 5.0	n/a

In addition to the salary actions set forth in the table above:

In August 2007, the Compensation Committee set Mr. Pelzel's annual base salary at \$400,000 in connection with his appointment as President and Chief Executive Officer;

In July 2007, Ms. Cameron's annual base salary was set at \$185,000 in connection with the commencement of her employment as Controller;

In December 2007, the Compensation Committee set the annual base salary of Dr. Michael Sweeney at \$310,000 in connection with the commencement of his employment as Vice President of Product Development.

Cash Bonus. The Company's executive officers participate in the Depomed, Inc. Bonus Plan (the "Bonus Plan"), which provides for annual cash bonuses based on the achievement of individual and corporate objectives. Executives' cash bonus target as a portion of base salary is 50% (in the case of the CEO), 40% (in the case of the COO) or 35% (in the case of all other executive officers). Payment of annual cash bonuses is designed to reward performance for achieving business goals, which the Company believes increases shareholder value.

Bonus payouts are tied in significant part to company-wide corporate objectives set by the Board, generally in the first quarter or early second quarter of the fiscal year. Corporate objectives are generally quantitative in nature, so that achievement can be objectively measured, and are weighted by relative importance. Following the completion of the fiscal year, the Compensation Committee assesses the Company's

performance relative to the corporate goals, and applies a "corporate multiplier" based on that assessment. A corporate multiplier of 100% reflects 100% achievement of corporate objectives. The weighting of the achievement of corporate objectives as a portion of an executive's total bonus payout is 80% (in the case of the CEO), 70% (in the case of the COO) or 60% (in the case of all

other executive officers). The Compensation Committee believes that the Company's corporate objectives are, on the whole, ambitious but achievable. The corporate multipliers established for 2005, 2006, and 2007 was 105%, 65% and 75%, respectively.

Corporate objectives for 2007 related to growth in shareholder value, product revenue, net loss, clinical development and marketing partnership activities related to the Company's Gabapentin GR® product candidate for postherpetic neuralgia, and clinical development of the Company's Gabapentin GR product candidate for menopausal hot flashes, among others. In January 2008, the Compensation Committee evaluated the Company's performance against the corporate objectives for the year. The committee determined that there had been significant achievement of many corporate goals for the year, including the goals related to revenue, net loss and clinical development of Gabapentin GR for menopausal hot flashes. The committee also determined that a number of important corporate goals, including those related to shareholder value and Gabapentin GR for postherpetic neuralgia, had not been achieved. The committee set the corporate multiplier for 2007 at 75%. The committee's determination of the corporate multiplier, which was ratified by the full Board, reflected an upward adjustment of 20%, from 55% to 75%, that the committee felt warranted in light of the Company's achievement of a number of objectives that were not specifically contemplated at the time the 2007 objectives were set. Those achievements include, among others: (i) the completion of a \$20 million equity financing in April 2007; (ii) the Company's receipt of \$17.5 million in connection with the termination of the Company's marketing arrangement with Esprit Pharma related to the Company's Proquin® XR product, and the establishment of a new Proquin XR marketing arrangement with Watson Pharma; (iii) the Company's receipt of approximately \$29.7 million in connection with the termination of the Company's marketing arrangement with King Pharmaceuticals related to Glumetza®; (iv) the advancement of the Company's pre-clinical product pipeline; and (v) the progress of the Company's patent litigation against IVAX Corporation.

In addition to corporate goals, the Compensation Committee sets individual goals for the CEO, and the CEO or COO sets individual goals for each of the other executive officers. The weighting of individual goals as a portion of an executive's total bonus payout is 20% (in the case of the CEO), 30% (in the case of the COO) or 40% (in the case of all other executive officers). Mr. Pelzel's bonus for 2007 was prorated for the period he served as COO (January 1, 2007–August 26, 2007) and the period he served as CEO (August 27, 2007–December 31, 2007). Individual objectives are generally quantitative in nature, weighted by relative importance, and linked with corporate goals. Following the completion of the year, the Compensation Committee (in the case of the CEO) and the Compensation Committee in consultation with the CEO (in the case of other executive officers) review the achievement of individual goals, and determine the extent to which each goal was achieved, where a rating of "1" indicates full achievement of a given goal. An executive may earn a rating of greater than "1" with respect to a particular goal if his performance in achieving the goal exceeds expectations. Based on each executive's achievement of his individual goals and the weighting of the goals, he receives an overall individual rating.

Each executive's total annual cash bonus is determined by applying the corporate multiplier to the portion of his bonus target tied to corporate objectives, and by applying his overall individual rating to the portion of his bonus target tied to individual goals. For their 2007 performance, the named executive officers received the cash bonuses set forth below under "**Summary Compensation Table**".

Stock Options and Equity Awards

Stock Options. The Company grants stock options to executive officers to aid in their retention, to motivate them to assist with the achievement of corporate objectives, and to align their interests with those of the Company's shareholders by providing executives with an equity stake. Stock options granted to executive officers have an exercise price equal to 100% of the fair market value of the Company's common stock (the closing sales price on the Nasdaq Global Market) on the date of grant,

so they have value only to the extent that the market price of the Company's common stock increases after the date of grant. Typically, stock options vest and become exercisable over four years. One-quarter of the shares subject to the option vesting after one year in the case of initial option grants. Options generally vest monthly in the case of annual "refresher" grants. The Compensation Committee makes stock option grants to executive officers.

Stock options typically are granted to executive officers when they join the Company, and often in connection with significant changes in responsibilities. In considering initial option grants for executives, the committee takes into account the total compensation package offered to the executive, equity grants to comparable executives at similarly situated companies, and the number of stock options granted to the new executive relative to the stock options held by or granted to the Company's other executives. In 2007, the committee granted to Tammy L. Cameron the options set forth below under "**Grants of Plan-Based Awards**" in connection with the commencement of her employment with the Company as Controller. The committee granted Michael Sweeney options to purchase 95,000 shares of Common Stock in connection with the commencement of his employment as the Company's Vice President, Product Development.

The Compensation Committee also considers annual "refresher" grants for executive officers based on the same factors it considers in making initial option grants, as well as the executive's performance, the Company's performance relative to corporate objectives, and recent growth or decline in shareholder value. Refresher grants are generally made in the first quarter of the fiscal year. The dates of meetings of the Compensation Committee vary, are not set in advance, and are not coordinated with the release of information concerning the Company's business. In March 2007, in connection with its determinations regarding executive compensation, the committee decided that given the relatively small size of the pool of Company stock options available for future grant, it would make refresher grants to Messrs. Pelzel (50,000 shares) and Gosling (25,000 shares) only. In choosing to make grants to Messrs. Pelzel and Gosling at that time, the committee considered their performance and the number of stock options held by Messrs. Pelzel and Gosling, as well as the exercise prices of those options, relative to other officers of the Company.

In May 2007, following approval by the Company's shareholders of an increase in the size of the Company's option pool, and in light of the committee's view that the Company had made considerable progress through that point in the year, the committee made refresher grants to all of the Company's executive officers at 125% of the level the committee considered in March 2007. Dr. Fara received an option to purchase 93,750 shares, Mr. Pelzel received an option to purchase 12,500 shares (25% of the number he received in March 2007), Mr. Hamilton received an option to purchase 43,750 shares, Mr. Shell received an option to purchase 31,250 shares, and Mr. Gosling received an option to purchase 6,250 shares (25% of the number he received in March 2007).

In August 2007, at the time that Mr. Pelzel was appointed as President and CEO, the committee made stock option grants to all Company employees. One-half of the shares subject to the options vest in August 2008, and thereafter in 12 equal monthly installments, so that the options are fully vested on the second anniversary of the grant date. The committee felt that these special option grants were necessary to ensure that it would retain and properly motivate its employees during what the committee considers to be a critical period in the Company's development.

The Company's 2004 Equity Incentive Plan is described in detail below under "**Proposal 2—Approval of Amendment to the 2004 Equity Incentive Plan**".

CEO Compensation

In setting Mr. Pelzel's initial base salary and equity compensation as President and CEO, the Compensation Committee reviewed an analysis of 2006 compensation paid to Dr. Fara and 21 other CEOs of publicly-traded Bay Area pharmaceutical and biotechnology companies (including those identified above under "**Competitive Market Review**"). The analysis summarized base salary and bonus, stock option holdings as a percentage of outstanding shares, tenure in office, market capitalization, and revenue and earnings per share. The Compensation Committee set Mr. Pelzel's base salary at \$400,000 per year and agreed to grant him options to purchase 500,000 shares, or slightly over 1% of the Company's outstanding shares of Common Stock. Mr. Pelzel's base salary and equity compensation were in the bottom quartile of the peer group. The Compensation Committee felt that the overall compensation package was appropriate given the Company's relatively low market capitalization at that time (16th of the 22 companies reviewed), and the fact that Mr. Pelzel had not previously served as CEO of a publicly traded company.

Of the options to purchase 500,000 shares of Common Stock the Company agreed to grant Mr. Pelzel in connection with his appointment as President and CEO, 400,000 vest in equal monthly installments over four years, and 100,000 are performance vesting options that will vest in proportion to the Company's aggregate achievement of its 2008 corporate objectives. Shares that do not vest on the basis of 2008 performance will vest in August 2011. The Compensation Committee felt that the performance vesting options were an important reflection of the need to quickly make considerable progress toward the Company's strategic objectives.

Of the performance vesting options, 37,500 were granted in August 2007 and 62,500 were granted in January 2008. The grant of the performance vesting options was split between 2007 and 2008 due to an inconsistency in the Company's option plan regarding the treatment of a new CEO hired from outside the Company relative to a new CEO promoted from within the Company. The Company's 2004 Equity Incentive Plan has a 750,000 share limitation on option grants made to new hires, which was intended as a ceiling on the number of options that might be granted to a newly hired CEO at some point after the plan's adoption. However, because Mr. Pelzel was promoted from within the Company, rather than brought in from the outside, a separate 500,000 share annual limitation applied to option grants made to Mr. Pelzel made in 2007. As Mr. Pelzel had already been granted options to purchase 62,500 shares prior to August 2007 in connection with his service as the Company's COO, and because the committee and Mr. Pelzel had agreed that Mr. Pelzel should receive options to purchase 500,000 shares in connection with his appointment as CEO, the committee agreed to grant Mr. Pelzel the balance of 62,500 shares after January 1, 2008 at the same exercise price as the grant made to Mr. Pelzel in August 2007. When the Compensation Committee met in January 2008, it was clear that granting Mr. Pelzel shares at the agreed-upon \$1.98 exercise price would be impractical under the IRS's final deferred compensation regulations. As a result, in order to compensate Mr. Pelzel for the incrementally higher exercise price of the balance of 62,500 shares granted at \$3.60 rather than \$1.98 and as a reward for his performance in 2007, the committee agreed to issue Mr. Pelzel 30,000 shares in 2009, which the committee believed would have the effect of encouraging Mr. Pelzel to work to increase shareholder value throughout 2008.

In January 2008, the Compensation Committee awarded Mr. Pelzel a bonus for his 2007 performance of \$150,000. The bonus award reflected the committee's assessment of Mr. Pelzel's performance as COO through August 2007, and his performance as CEO thereafter. In particular, the committee considered (a) the substantial increase in the price of the Company's Common Stock subsequent to Mr. Pelzel's promotion, from \$1.98 on August 24, 2007 to \$3.60 on January 25, 2008 when the committee determined the bonus award, and (b) Mr. Pelzel's role in non-dilutive transactions described above under "**Cash Bonus**" that significantly enhanced the Company's financial reserves.

Severance Agreements

In May 2006, the Company adopted the management continuity agreements described below in the section entitled "**Potential Payments upon Termination or Change in Control**". The Company adopted the agreements in order to support its objectives of an overall executive compensation package that is competitive with the Company's peers, and the retention of qualified executives. As the Company sought to support those objectives without overcompensating executives in the event of a change in control, the Company adopted agreements that it believes contain terms, taken as a whole, that are somewhat less favorable to executives than similar arrangements among peer companies. In January 2008, the term of the agreements was extended by one year, to May 15, 2009.

Executive Consulting and Retirement Arrangements

The Compensation Committee approved the consulting arrangement with Dr. Fara (in August 2007), and the consulting and retirement arrangements with Mr. Hamilton (in October 2007), described above under "**CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS**". The Compensation Committee felt that those arrangements were appropriate because the consulting services of Dr. Fara and Mr. Hamilton were critical to ensuring a smooth transition to Mr. Pelzel and his senior management team, and in light of the long tenure of more than a decade of service to the Company that each of Dr. Fara and Mr. Hamilton had provided to the Company.

Other Benefits

Executive officers are eligible to participate in all of the Company's employee benefit plans, such as medical, dental, group life, disability, and accidental death and dismemberment insurance and 401(k) plan, in each case on the same basis as other employees, subject to applicable law. The Company also provides vacation and other paid holidays to all employees, including executive officers, all of which the Company believes to be comparable to those provided at peer companies.

Tax and Accounting Considerations

Deductibility of Executive Compensation. In making compensation decisions affecting the executive officers, the Compensation Committee considers the Company's ability to deduct under applicable federal corporate income tax law compensation payments made to executives. Specifically, the committee considers the requirements and impact of Section 162(m) of the Internal Revenue Code, which generally disallows a tax deduction for annual compensation in excess of \$1 million paid to our named executive officers. Certain compensation that qualifies under applicable tax regulations as "performance-based" compensation is specifically exempted from this deduction rule. The Compensation Committee cannot assure that the Company will be able to fully deduct all amounts of compensation paid to persons who are named executive officers in the future. Further, because the Compensation Committee believes it is important to preserve flexibility in designing its compensation programs, it has not adopted a policy that all compensation must qualify as deductible under Section 162(m). The Company does not believe that any amounts paid to the Company's named executive officers during fiscal year 2007 will be non-deductible under Section 162(m).

Accounting for Stock-Based Compensation. On January 1, 2006, the Company adopted the fair value recognition provisions of Statement of Financial Accounting Standards No. 123(R), "*Share-Based Payment*," to account for all stock grants under all of its stock plans.

Compensation Committee Report

The Compensation Committee has reviewed this compensation discussion and analysis, discussed it with management and recommended that it be included in this Proxy Statement.

COMPENSATION COMMITTEE

G. Steven Burrill, Chair
 Craig R. Smith, M.D.
 David B. Zenoff, D.B.A.

Note: Julian Stern participated in all Compensation Committee meetings and actions described above, other than those that occurred in 2008.

Notwithstanding anything to the contrary set forth in any of the Company's filings under the Securities Act of 1933 or the Securities Exchange Act of 1934 that might incorporate future filings, including this Proxy Statement, in whole in on part, the Compensation Committee Report shall not be deemed to be incorporated by reference into any such filings.

Summary Compensation Table

The following table sets forth information concerning compensation earned for services rendered to the Company by: (a) each individual who served as the Company's Chief Executive Officer during fiscal 2007; (b) each individual who served as Chief Financial Officer or principal accounting and financial officer during fiscal 2007; and (c) each of the Company's other executive officers who earned at least \$100,000 in salary and bonus in fiscal 2007 and were serving as executive officers at the end of the 2007 fiscal year.

<u>Name and Principal Position</u>	<u>Year</u>	<u>Salary (\$)</u>	<u>Share Awards (\$)</u>	<u>Option Awards (\$)¹</u>	<u>Non-Equity Incentive Plan Compensation (\$)</u>	<u>All Other Compensation (\$)²</u>	<u>Total (\$)</u>
Carl A. Pelzel President and Chief Executive Officer	2007	368,184	–	214,730	150,000	2,475	735,389
	2006	325,000	–	142,169	110,000	2,592	579,761
Tammy L. Cameron Controller and Interim Principal Financial and Accounting Officer	2007 ³	85,503	–	16,141	34,300	50,580 ⁴	186,524
Matthew M. Gosling Vice President and General Counsel	2007	300,150	–	95,839	97,700	2,192	495,881
	2006 ⁵	150,577	–	37,278	40,000	1,171	229,026
John N. Shell Vice President, Manufacturing Technology ⁶	2007	275,100	–	80,734	25,000	2,427	383,261
	2006	262,000	–	66,155	55,000	2,540	385,695
John W. Fara, Ph.D. Former President, Chief Executive Officer and Chairman	2007 ⁷	341,000	–	237,613 ⁸	–	153,060 ⁹	731,673
	2006	500,000	–	263,961	135,000	2,159	901,120
John F. Hamilton Former Vice President, Finance and Chief Financial Officer	2007 ¹⁰	243,398	364,463 ¹¹	90,120 ¹²	–	275,597 ¹³	973,578
	2006	294,000	–	100,253	70,000	2,159	466,412

- (1) Represents the amount of stock-based compensation expense recognized by the Company for the year ended December 31, 2007 under Statement of Financial Standards No. 123(R), "*Share-Based Payment*" (FAS 123(R)) on options granted in 2007 and in prior years to the named executive officers. The Company's stock-based compensation expense under FAS 123(R) includes estimates of expected forfeitures, which have not been

included in the amounts reported in this table. For more information, including a discussion of valuation assumptions, see Note 8 "Stock-Based Compensation" in the Notes to Consolidated Financial Statements contained in our Annual Report on Form 10-K filed with the SEC on March 12, 2008.

- (2) Except with respect to Dr. Fara and Mr. Hamilton, represents life insurance premiums paid by the Company on behalf of the named executive officers.
- (3) Ms. Cameron's employment with the Company began in July 2007. Compensation reported is for a partial year of employment.
- (4) Includes: (i) \$580 in life insurance premiums paid by the Company on behalf of Ms. Cameron and (ii) a \$50,000 sign-on bonus on commencement of employment with the Company.
- (5) Mr. Gosling's employment with the Company began in June 2006. Compensation reported for 2006 is for a partial year of employment.
- (6) Mr. Shell served as the Company's Vice President, Operations throughout 2006 and 2007.
- (7) Dr. Fara served as President, Chief Executive Officer and Chairman until August 27, 2007.
- (8) Includes: (i) \$170,617 in stock-based compensation expense recognized by the Company for Dr. Fara's services as an employee and (ii) \$66,996 in stock-based compensation expense recognized by the Company for Dr. Fara's services as a consultant pursuant to the consulting agreement between Dr. Fara and the Company described above under "**CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS**".
- (9) Includes: (i) \$6,418 in life insurance premiums paid by the Company on behalf of Dr. Fara; (ii) a \$53,411 accrued vacation payment made in connection with Dr. Fara's retirement; (iii) \$89,332 in consulting fees earned following Dr. Fara's retirement pursuant to the consulting agreement between Dr. Fara and the Company described above under "**CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS**"; and (iv) \$3,899 in COBRA benefits reimbursed by the Company.
- (10) Mr. Hamilton served as Vice President, Finance and Chief Financial Officer until October 10, 2007.
- (11) Upon Mr. Hamilton's retirement, options to purchase the Company's common stock held by Mr. Hamilton were cancelled and exchanged for a share award of 100,000 fully vested shares of the Company's common stock, as described above under "**CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS**". The fair market value of the shares on the date of grant was \$208,000. However, the Company treated the issuance of the share award as a modification of the terms of the cancelled options for accounting purposes and recognized \$364,463 of stock-based compensation expense related to this transaction.
- (12) These stock options were cancelled in connection with Mr. Hamilton's retirement, as described above under "**CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS**".

- (13) Includes: (i) \$1,859 in life insurance premiums paid by the Company on behalf of Mr. Hamilton; (ii) a \$19,574 accrued vacation payment made in connection with Mr. Hamilton's retirement; (iii) a \$190,000 lump sum payment made to Mr. Hamilton in connection with his retirement, as described above under "**CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS**"; and (iv) \$64,164 in consulting fees earned following Mr. Hamilton's retirement pursuant to the consulting agreement between Mr. Hamilton and the Company.

Grants of Plan-Based Awards

The following table sets forth information regarding grants of stock and option awards made to the named executive officers during the 2007 fiscal year:

Name	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards - Target (\$) ¹	Option	Stock Awards (#)	Exercise or Base Price of Option Awards (\$/Sh)	Grant Date Fair Value of Stock and Option Awards (\$) ²
			Awards: Number of Securities Underlying Options (#)			
Carl A. Pelzel	–	160,267	–	–	–	–
	3/02/07	–	50,000	–	3.31	91,790
	5/31/07	–	12,500	–	4.365	30,861
	8/24/07	–	400,000	–	1.98	480,640
	8/24/07	–	37,500	–	1.98	101,424 ³
Tammy Cameron ⁴	–	21,226	–	–	–	–
	7/09/07	–	30,000	–	4.93	83,448
	8/24/07	–	30,000	–	1.98	34,827
Matthew M. Gosling	–	105,053	–	–	–	–
	3/02/07	–	25,000	–	3.31	45,895
	5/31/07	–	6,250	–	4.365	15,431
John N. Shell	8/24/07	–	53,000	–	1.98	61,528
	–	96,285	–	–	–	–
	5/31/07	–	31,250	–	4.365	77,153
John W. Fara, Ph.D.	8/24/07	–	44,000	–	1.98	51,080
	5/31/07	–	93,750	–	4.365	231,459
	12/6/07	–	15,000	–	3.27	27,644
John F. Hamilton	5/31/07	–	43,750 ₅	–	4.365	108,014
	8/24/07	–	50,000 ₅	–	1.98	58,045
	10/10/07	–	–	100,000 ⁵	–	364,463 ⁵

- (1) Actual amounts paid in February 2008 based on the Compensation Committee's review of corporate performance and individual achievements under the Company's Bonus Plan have been reported above under "**Summary Compensation Table**".
- (2) Represents the grant date fair value under FAS 123(R) of options granted in 2007 to the named executive officers. For more information, including a discussion of valuation assumptions, see Note 8 "Stock-Based Compensation" in the Notes to Consolidated Financial Statements contained in our Annual Report on Form 10-K filed with the SEC on March 12, 2008.
- (3) The options were granted pursuant to the 2004 Equity Incentive Plan and vest upon the earlier of certain performance conditions or four years. The amount represents the grant date fair value under FAS 123(R) to the named executive officer.
- (4) Ms. Cameron's employment with the Company began in July 2007. Target bonus payout under the Company's Bonus Plan for Ms. Cameron is calculated based on partial year of employment.

- (5) In connection with a letter agreement between Mr. Hamilton and the Company, options to purchase the Company's common stock held by Mr. Hamilton on retirement were cancelled in October 2007 and were exchanged for 100,000 fully vested shares of common stock pursuant to the Company's 2004 Equity Incentive Plan. The fair market value of the shares on the date of grant was \$208,000. However, the Company treated the issuance of the share award as a modification of

the terms of the cancelled options for accounting purposes and recognized \$364,463 of stock-based compensation expense related to this transaction.

Outstanding Equity Awards at Fiscal Year-End

The following table sets forth information regarding outstanding equity awards held by the named executive officers at of December 31, 2007:

Name	Option Awards				
	Option Grant Date	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price (\$)	Option Expiration Date
Carl A. Pelzel	6/14/2005 ⁴	93,750	56,250	4.25	6/14/2015
	9/22/2005 ⁵	28,125	21,875	5.85	9/22/2015
	2/10/2006 ⁶	10,657	12,593	6.29	2/10/2016
	3/2/2007 ³	9,375	40,625	3.31	3/2/2017
	5/31/2007 ³	1,823	10,677	4.365	5/31/2017
	8/24/2007 ³	33,333	366,667	1.98	8/24/2017
	8/24/2007 ⁷	–	37,500	1.98	8/24/2017
Tammy L. Cameron	7/9/2007 ⁴	–	30,000	4.93	7/9/2017
	8/24/2007 ⁸	–	30,000	1.98	8/24/2017
Matthew M. Gosling	6/26/2006 ⁴	28,125	46,875	6.17	6/26/2016
	3/2/2007 ⁹	4,688	20,312	3.31	3/2/2017
	5/31/2007 ³	911	5,339	4.365	5/31/2017
	8/24/2007 ⁸	–	53,000	1.98	8/24/2017
John N. Shell	12/09/1998 ¹	25,000	–	7.63	12/09/2008
	7/16/1999 ¹	27,667	–	2.88	7/16/2009
	6/07/2000 ²	40,000	–	3.75	6/07/2010
	6/05/2001 ²	40,000	–	4.30	6/05/2011
	12/17/2001 ²	25,000	–	5.80	12/17/2011
	12/23/2002 ²	40,000	–	1.71	12/23/2012
	12/20/2004 ³	18,750	6,250	5.08	12/20/2014
	2/10/2006 ³	20,625	24,375	6.29	2/10/2016
	5/31/2007 ³	4,557	26,693	4.365	5/31/2017
8/24/2007 ⁸	–	44,000	1.98	8/24/2017	
John W. Fara, Ph.D	12/09/1998	75,000	–	7.63	12/09/2008
	7/16/1999 ¹	129,167	–	2.88	7/16/2009
	6/07/2000 ¹	125,000	–	3.75	6/07/2010
	6/05/2001 ²	100,000	–	4.30	6/05/2011
	12/17/2001 ²	65,000	–	5.80	12/17/2011
	12/23/2002 ²	175,000	–	1.71	12/23/2012
	12/20/2004 ²	50,625	16,875	5.08	12/20/2014
	2/10/2006 ³	91,781	108,469	6.29	2/10/2016
	5/31/2007 ³	13,672	78,493	4.365	5/31/2017
	5/31/2007 ³	–	1,585	4.365	5/31/2017
12/6/2007	–	15,000	3.27	12/6/2017	

- (1) The options were granted pursuant to the 1995 Stock Option Plan and vest over four years, with the first 25% vesting one year from the grant date, and the remainder vesting on a monthly basis in equal increments during the 36-month period following the initial vesting date.

- (2) The options were granted pursuant to the 1995 Stock Option Plan and vest on a monthly basis in equal increments during the 48-month period from the grant date.
- (3) The options were granted pursuant to the 2004 Equity Incentive Plan and vest on a monthly basis in equal increments during the 48-month period from the grant date.
- (4) The options were granted pursuant to the 2004 Equity Incentive Plan and vest over four years, with the first 25% vesting one year from the grant date, and the remainder vesting on a monthly basis in equal increments during the 36-month period following the initial vesting date.
- (5) The options were granted pursuant to the 2004 Equity Incentive Plan and vest over four years, with the first 16.67% vesting on June 14, 2006, and monthly thereafter with respect to 2.08% of the number of shares covered by such option beginning on June 20, 2006 and on the 20th day of each of the thirty-nine months thereafter.
- (6) The options were granted pursuant to the 2004 Equity Incentive Plan and vest over four years, with the first 8.33% vesting on June 14, 2006, and monthly thereafter with respect to 2.08% of the number of shares covered by such option beginning on July 10, 2006 and on the 10th day of each of the forty-three months thereafter.
- (7) The options were granted pursuant to the 2004 Equity Incentive Plan and vest upon the earlier of certain performance conditions or four years.
- (8) The options were granted pursuant to the 2004 Equity Incentive Plan and vest over two years, with the first 50% vesting one year after the grant date, and the remainder vesting on a monthly basis in equal increments during the 12-month period following the initial vesting date.
- (9) The options were granted pursuant to the 2004 Equity Incentive Plan and vest over four years, with the first 6.25% vesting on June 26, 2007, and monthly thereafter with respect to 2.08% of the number of shares covered by such option beginning on July 2, 2007 and on the 2nd day of each of the forty-four months thereafter.
- (10) The options were granted pursuant to the 2004 Equity Incentive Plan and vest on a monthly basis in equal increments during the 12-month period from the grant date.

Option Exercises

The following table sets forth information regarding options exercised by the named executive officers during the 2007 fiscal year.

Name	Number of Shares Acquired on Exercise (#)	Value Realized on Exercise (\$) ¹
Carl A. Pelzel	-	-

Tammy L. Cameron	-	-
Matthew M. Gosling	-	-
John N. Shell	8,333	8,666
John W. Fara, Ph.D.	66,667	52,000
John F. Hamilton	25,000	(23,500)

(1) Represents the excess of the market value of the shares exercised on the exercise date over the aggregate exercise price of such shares.

Potential Payments upon Termination or Change in Control

On May 15, 2006, the Compensation Committee of the Board approved a form of Management Continuity Agreement to be entered into with each of the Company's officers who serve as vice president, chief operating officer or chief executive officer. The Company subsequently entered into definitive Management Continuity Agreements with each such officer. The agreements were amended and restated in September 2007 to comply with regulations promulgated under Section 409A of the Internal Revenue Code, and were further amended in January 2008 to extend their term by one year, through May 15, 2009. The Management Continuity Agreement provides, among other things, that in the event that the executive officer suffers an involuntary termination within 12 months following a change of control the executive officer will receive: (i) 100% acceleration of such officer's unvested Company option shares; (ii) severance payments for a period of 24 months (if the officer is the chief executive officer), 18 months (if the officer is the chief operating officer) or 12 months (if the officer is not the chief executive officer or the chief operating officer) equal to the base salary which the officer was receiving immediately prior to the change of control; (iii) a lump sum payment equal to two times (if such officer is the chief executive officer), equal to one and one-half times (if such officer is the chief operating officer) or equal to one times (if the officer is not the chief executive officer or the chief operating officer) such officer's average annual bonus paid for the Company's three fiscal years immediately preceding the Company's fiscal year in which the termination occurs, and (iv) continuation of payment by the Company of its portion of the health insurance benefits provided to such officers immediately prior to the change of control through the earlier of the end of the severance period or until such officer is no longer eligible for such benefits under applicable law. The executive officer is not entitled to receive a "gross up" payment to account for any excise tax that might be payable Section 4999 of the Internal Revenue Code. Instead, the executive officer shall receive the greater of (i) the full severance benefits less any taxes, including excise taxes or (ii) the amount of severance benefits that would result in no excise tax having to be paid. These benefits are contingent upon the executive officer's release of any claims against the Company.

Mr. Pelzel's Management Continuity Agreement with the Company was amended in connection with his appointment as President and CEO to (a) increase, from 18 months to 24 months, the post-termination severance period during which Mr. Pelzel is eligible to receive continued payments of his base salary and COBRA benefits; and (b) modify the amount of the lump sum payment Mr. Pelzel is eligible to receive in respect of his pre-termination average annual bonus so that it is two times his average annual bonus determined under the agreement, and is based on bonuses paid to Mr. Pelzel in his capacity as President and CEO.

Ms. Cameron is eligible for severance benefits consistent with those provided to other vice presidents of the Company, except that the severance payment period applicable to Ms. Cameron is six months, and Ms. Cameron is eligible for a lump sum payment equal to one-half of her most recent annual bonus.

The following table sets forth potential payments to the Company's named executive officers under the Management Continuity Agreement that would have been made had a triggering event occurred as of December 31, 2007.

Name	Severance Payments (\$)	Bonus Payments (\$)	Health Insurance Benefit (\$)	Option Vesting Acceleration (\$) ¹
Carl A. Pelzel	800,000 ²	374,400 ³	34,500 ⁴	517,334
Tammy L. Cameron	92,500 ⁵	17,150 ⁶	8,625 ⁷	38,400
Matthew M. Gosling	300,150 ⁸	68,850 ⁹	17,250 ¹⁰	67,840
John N. Shell	275,100 ⁸	46,667 ⁹	5,735 ¹⁰	56,320

- (1) Accelerated equity value as if the change in control occurred on December 31, 2007. All options held by the named executive officer that would be subject to accelerated vesting had exercise prices in excess of the closing price of the Company's common stock as of December 31, 2007.
- (2) The amount reported represents total severance payments over 24 months.
- (3) The amount reported equals two times the average annual bonus paid to Mr. Pelzel in his capacity as President and CEO.
- (4) The amount reported represents total health and dental insurance premiums to be paid on behalf of the named executive officer for 24 months.
- (5) The amount reported represents total severance payments over 6 months.
- (6) The amount reported equals one-half the named executive officer's average annual bonus over the previous three years (or such fewer number of years as the executive has been employed by the Company).
- (7) The amount reported represents total health and dental insurance premiums to be paid on behalf of the named executive officer for 6 months.
- (8) The amount reported represents total severance payments over 12 months.
- (9) The amount reported equals the named executive officer's average annual bonus over the previous three years.
- (10) The amount reported represents health and dental insurance premiums to be paid on behalf of the named executive officer for 12 months.

Director Compensation

In 2007, each non-employee director was eligible to receive an annual cash retainer fee of \$30,000 per year. Any non-employee chairman of the Board is eligible for a additional annual cash retainer fee of \$20,000. The chairman of the Audit Committee was eligible to receive an additional annual cash retainer fee of \$10,000. The chairman of the Compensation Committee and the chairman of the Nominating and Corporate Governance Committee are each eligible to receive an additional annual cash retainer of \$5,000. Prior to his appointment as

chairman of the Board in August 2007, Dr. Smith was eligible for an additional annual cash retainer of \$5,000 for his service as the lead independent director of the Board.

The following table summarizes non-employee director compensation during the fiscal year. All cash and equity compensation paid to, or earned by, Dr. John Fara in 2007 is reflected in the executive compensation tables set forth above.

Name	Fees Earned or Paid in Cash (\$)	Option Awards (\$) ^{1,2}	Total (\$)
Craig R. Smith, M.D.	42,500	50,084	92,584
G. Steven Burrill	45,000	25,865	70,865
James A. Schoeneck	1,630	735	2,365
David B. Zenoff, D.B.A. ³	22,500	11,579	34,079
John W. Shell, Ph.D. ⁴	30,000	20,098	50,098
Peter D. Staple	35,000	25,865	60,865
Julian N. Stern	30,000	25,865	55,865

- (1) Represents the amount of stock-based compensation expense recognized by the Company for the year ended December 31, 2007 under FAS 123(R) on options granted in 2007 and in prior years to directors. The Company's stock-based compensation expense under FAS 123(R) includes estimates of expected forfeitures, which have not been included in the amounts reported in this table. For more information, including a discussion of valuation assumptions, see Note 8 "Stock-Based Compensation" in the Notes to Consolidated Financial Statements contained in our Annual Report on Form 10-K filed with the SEC on March 12, 2008. Additional details on the grant date fair value of stock options granted to directors during fiscal 2007 are as follows:

Name	Options	Grant Date Fair Value (\$)
Craig R. Smith, M.D.	15,000	27,644
G. Steven Burrill	15,000	27,644
James A. Schoeneck	25,000	51,163
David B. Zenoff, D.B.A.	40,000	77,321
Peter D. Staple	15,000	27,644
Julian N. Stern	15,000	27,644

- (2) The aggregate number of shares subject to outstanding stock options held by each director listed in the table above as of December 31, 2007 was as follows: 70,000 shares for Dr. Smith; 140,000 shares for Mr. Burrill; 25,000 shares for Mr. Schoeneck; 40,000 shares for Dr. Zenoff; 40,000 for Dr. Shell; 70,000 shares for Mr. Staple; and 115,000 shares for Mr. Stern.
- (3) In January 2007, prior to his appointment to the Board, the Company entered into a consulting agreement with David Zenoff. The agreement was terminated in March 2007. Dr. Zenoff received \$18,000 in compensation pursuant to the

consulting agreement, of which \$10,000 was paid in the form of the Company's common stock (2,845 shares).

- (4) Dr. Shell resigned from the Board effective October 12, 2007. Compensation earned is for a partial year of service.

REPORT OF THE AUDIT COMMITTEE

Under the guidance of a written charter adopted by the Board, the purpose of the Audit Committee is to oversee the accounting and financial reporting processes of the Company and audits of its financial statements. The responsibilities of the Audit Committee include appointing and providing for the compensation of the registered public accounting firm. Each of the members of the Audit Committee meets the independence requirements of Nasdaq.

Management has primary responsibility for the system of internal controls and the financial reporting process. The registered public accounting firm has the responsibility to express an opinion on the financial statements based on an audit conducted in accordance with generally accepted auditing standards.

In this context and in connection with the audited financial statements contained in the Company's Annual Report on Form 10-K, the Audit Committee:

reviewed and discussed the audited financial statements as of and for the fiscal year ended December 31, 2007 with the Company's management and the registered public accounting firm;

discussed with Ernst & Young LLP, the Company's registered public accounting firm, the matters required to be discussed by Statement of Auditing Standards No. 61, Communication with Audit Committees, as amended by Statement of Auditing Standards No. 90, Audit Committee Communications;

reviewed the written disclosures and the letter from Ernst & Young LLP required by the Independence Standards Board Standard No. 1, Independence Discussions with Audit Committees, and discussed with the auditors their independence:

based on the foregoing reviews and discussions, recommended to the Board that the audited financial statements be included in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2007 filed with the SEC; and

instructed the registered public accounting firm that the Audit Committee expects to be advised if there are any subjects that require special attention.

AUDIT COMMITTEE

G. Steven Burrill, Chair
James A. Schoeneck
Peter D. Staple

Relationship with Independent Registered Public Accounting Firm

General. Ernst & Young LLP has been the Company's independent registered public accounting firm since its inception. In accordance with standing policy and independence rules, Ernst & Young LLP periodically changes the personnel who work on the audit.

Audit Fees. Aggregate fees for audit services provided by Ernst & Young LLP totaled approximately \$578,000 for 2007 and approximately \$684,000 for 2006, including fees associated with the annual audit of the Company's consolidated financial statements, effectiveness of internal control over financial reporting and review of the interim consolidated financial statements included in quarterly reports.

Audit-Related Fees. There were no audit-related services billed by Ernst & Young LLP for 2007 and 2006.

Tax Fees. There were no tax compliance, tax advice and tax planning services billed by Ernst & Young LLP for 2007 and 2006.

There were no other services provided by Ernst & Young LLP for 2007 and 2006 other than those reported above.

Policy on Audit Committee Pre-Approval of Audit and Permissible Non-Audit Services of Independent Registered Public Accounting Firm

The Audit Committee's policy is to pre-approve all audit and permissible non-audit services provided by the independent registered public accounting firm. These services may include audit services, audit-related services, tax services and other services. Pre-approval is generally provided for up to one year and any pre-approval is detailed as to the particular service or category of services and is generally subject to a specific budget. The independent registered public accounting firm and management are required to periodically report to the Audit Committee regarding the extent of services provided by the independent registered public accounting firm in accordance with this pre-approval, and the fees for the services performed to date. The Audit Committee may also pre-approve particular services on a case-by-case basis.

Equity Compensation Plan Information

The following table sets forth certain information regarding securities authorized for issuance under the Company's equity incentive plans during the fiscal year ended December 31, 2007. The Company's equity compensation plans as of December 31, 2007 include the Company's 1995 Stock Option Plan, the Company's 2004 Equity Incentive Plan and the Company's 2004 Employee Stock Purchase Plan.

<u>Plan category</u>	<u>Number of securities to be issued upon exercise of outstanding options, warrants and rights</u>	<u>Weighted-average exercise price of outstanding options, warrants and rights</u>	<u>Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))</u>
	(a)	(b)	(c)
Equity compensation plans approved by security holders	5,046,826	\$ 3.91	1,956,553
Equity compensation plans not approved by security holders	—	—	—
	<u>5,046,826</u>	<u>\$ 3.91</u>	<u>1,956,553</u>

PROPOSAL 1–ELECTION OF DIRECTORS

At the Annual Meeting, the shareholders will vote on the election of eight directors to serve for a one-year term until the annual meeting of shareholders in 2009 and until their successors are elected and qualified, or until their earlier death, retirement, resignation or removal. The Board has unanimously nominated Craig R. Smith, G. Steven Burrill, Karen A. Dawes, Carl A. Pelzel, James A. Schoeneck, Peter D. Staple, Julian N. Stern, and David B. Zenoff for election to the Board. The nominees have indicated that they are willing and able to serve as directors. If any of the nominees becomes unable or unwilling to serve, the accompanying proxy may be voted for the election of such other person as shall be designated by the Board. The proxies being solicited will be voted for no more than eight nominees at the Annual Meeting. The directors will be elected by a plurality of the votes cast, in person or by proxy, at the Annual Meeting, assuming a quorum is present. Shareholders do not have cumulative voting rights in the election of directors.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE "FOR" EACH OF THE NOMINATED DIRECTORS.

PROPOSAL 2—APPROVAL OF AMENDMENT OF THE 2004 EQUITY INCENTIVE PLAN

At the Annual Meeting, the shareholders of the Company will be asked to approve the amendment of the 2004 Equity Incentive Plan (the "Plan") to increase the number of shares of common stock issuable under the Plan by an additional 1,750,000 shares (representing 3.6% of the Company's outstanding common stock as of April 2, 2008), to an aggregate of 6,750,000 shares. The Plan was adopted by the Board in May 2004, and it became effective on May 27, 2004, upon its approval by the Company's shareholders at the 2004 Annual Meeting.

On March 7, 2008, the Board approved an amendment of the Plan, subject to shareholder approval, to increase the number of shares of common stock authorized for issuance under the Plan by 1,750,000 shares, to a total of 6,750,000 shares. The Board adopted this amendment because it believes that:

additional shares are necessary to attract new employees and executives;

additional shares are needed to further the goal of retaining and motivating existing personnel; and

the issuance of options to employees is an integral component of the Company's compensation policy.

The Board also considered in connection with the adoption of the amendment that in 2007, options to purchase 1,242,083 shares had expired unexercised under the Company's 1995 Stock Option Plan. Those shares are not available for future grant under any of the Company's equity incentive. Accordingly, the proposed increase in the number of shares issuable under the Plan represents a net 507,917 share increase in the total size of the Company's equity incentive pool relative to 2007. Since the adoption of the Plan in 2004, options to purchase 2,226,859 have expired unexercised under the 1995 Stock Option Plan.

As of April 2, 2008, awards covering an aggregate of 4,167,776 shares of common stock (net of canceled awards) shares had been granted under the Plan, and there remained available for future grant awards covering 832,224 shares of common stock. As of April 2, 2008, options outstanding under the Plan have a weighted average exercise price of \$3.78. Shares subject to outstanding awards may be returned to the Plan as a result of cancellations or expiration of awards. The repurchase of shares by the Company shall not increase the maximum number of shares that may be issued under the Plan.

Summary of the Plan

General

The purpose of the Plan is to enhance the long-term shareholders' value of the Company by offering opportunities to eligible individuals to participate in the growth in value of the equity of the Company. Stock options and stock awards may be granted under the Plan (each an "Award"). Options granted under the Plan may be either "incentive stock options", as defined in Section 422 of the Internal Revenue Code of 1986, as amended (the "Code"), or non-statutory stock options.

Administration

The Plan is administered by the Compensation Committee of the Board. The Compensation Committee may delegate to the Chief Executive Officer or to another employee of the Company the authority to grant equity awards to non-executive level employees in accordance with guidelines established by the Board. Each of the Board, Compensation Committee, Chief Executive Officer or other designated employee, in its or his capacity as the administrator of the Plan, is referred to as the "Administrator".

Eligibility

Nonstatutory stock options and stock awards may be granted under the Plan to employees, directors and consultants of the Company, its affiliates and subsidiaries or to prospective employees, directors and consultants of the Company, its affiliates and subsidiaries conditioned on the beginning of their service. Incentive stock options may be granted only to employees of the Company or its subsidiaries. The Administrator, in its discretion, approves options and stock awards ("Awards"). As of April 2, 2008, the Company had approximately 80 officers, employees and consultants and eight non-employee directors eligible to participate in the Plan.

Cancellation of Awards

Generally, if the service of the holder of an Award (an "Awardee") to the Company as an employee, consultant or director terminates other than by reason of death, disability, retirement or for "cause," vested options will remain exercisable for a period of three months following the Awardee's termination, or if earlier, the expiration of the term of such Award. Unless otherwise provided for by the Administrator in the Award agreement, if an Awardee dies or becomes totally and permanently disabled while an employee or consultant or director, the Awardee's vested options will be exercisable for one year following the Awardee's death or disability, or if earlier, the expiration of the term of such Award. In the Administrator's discretion, in the event that an Awardee is terminated for "cause" all Awards to such Awardee will automatically terminate and cease to be exercisable at the time of termination and the Administrator may rescind any and all exercises of Awards that occurred after the first event that constituted "cause."

Nontransferability of Awards

Unless otherwise determined by the Administrator, Awards granted under the Plan are not transferable other than by will, a domestic relations order, or the laws of descent and distribution and may be exercised during the Awardee's lifetime only by the Awardee.

Stock Options

Exercise Price. The Administrator determines the exercise price of options at the time the options are granted. The exercise price of an incentive stock option or an option intended as "qualified incentive-based compensation" within the meaning of Section 162(m) of the Internal Revenue Code may not be less than 100% of the fair market value of the common stock on the date of grant of such option. The fair market value of common stock is generally the closing sales price as quoted on the Nasdaq Global Market. As of April 2, 2008, the closing sales price of the Company's common stock as quoted on the Nasdaq Global Market was \$3.43.

Exercise of Option; Form of Consideration. The Administrator determines when options become exercisable. The means of payment for shares issued on exercise of an option are specified in each award agreement and the Plan permits payment to be made by cash, check, wire transfer, full-recourse promissory note (in the case of awardees other than executive officers and directors), cancellation of debt owed by the Company, other shares of common stock (with some restrictions), broker assisted same day sales, or other forms of payment permitted by the Administrator and applicable law.

Term of Option. The term of an option may be no more than ten years from the date of grant. No option may be exercised after the expiration of its term.

Stock Awards

The Administrator may grant stock awards (restricted shares) as payment of a bonus, as payment of any other compensation obligation, upon the occurrence of a special event or as otherwise

determined by the Administrator. The terms and conditions of a stock award will be contained in an award agreement. Vesting and the lapse of restrictions on such stock awards may be conditioned upon the achievement of one or more Company goals, including those related to net order dollars, net profit dollars, net profit growth, net revenue dollars, revenue growth, individual performance, earnings per share, return on assets, return on equity, and other financial objectives, customer satisfaction indicators and efficiency measures, each with respect to the Company and/or an affiliate or individual business unit, as determined by the Administrator in its discretion. Recipients of restricted shares may have voting rights and may receive dividends on the granted shares prior to the time the restrictions lapse.

The maximum aggregate number of shares that may be issued pursuant to stock awards under the Plan shall not exceed 10% of the number of shares that may be issued under Plan.

Adjustments on Changes in Capitalization, Merger or Change in Control

Changes in Capitalization. In the event of any stock dividend, stock split, reverse stock split, recapitalization, combination, reclassification, spin-off or similar change to the Company's capital structure, appropriate adjustments will be made to: (i) the number and class of securities subject to the Plan; (ii) the number and class of securities that may be awarded to any individual under the Plan; and (iii) the exercise price and number and class of securities under each outstanding Award. Any such adjustments will be made by the Board in its discretion, and their decision will be final, binding and conclusive.

Merger or Change in Control. Generally, in the event of (a) a merger or consolidation in which the Company is not the surviving corporation, (b) a merger in which the Company is the surviving corporation but after which the Company's shareholders immediately prior to such merger cease to own their shares or other equity interest in the Company, (c) the sale of substantially all of the Company's assets, or (d) the acquisition, sale, or transfer of more than 50% of the Company's outstanding shares by tender offer or similar transaction (each, a "Fundamental Transaction"), any or all outstanding Awards may be assumed, converted, replaced or substituted. In the event such successor corporation (if any) does not assume or substitute Awards, the vesting with respect to such Awards will accelerate so that the Awards may be exercised before the closing or completion of the Fundamental Transaction but then terminate.

In addition, the Board may also specify that other transactions or events constitute a "change in control" and may provide for the accelerated vesting of shares which are the subject of Awards and take any one or more of the actions described for a merger transaction. The Board need not adopt the same rules for each Award under the Plan or for each holder of such Awards.

In the event of a proposed dissolution or liquidation of the Company, the Board may cause Awards to be fully vested and exercisable (but not after their expiration date) before the dissolution is completed but contingent on its completion.

Non-Discretionary Grants to Outside Directors

Under the Plan, outside directors receive a nonstatutory option to purchase 25,000 shares of common stock upon their initial election or appointment to the Board. The shares underlying these options vest in equal monthly installments over a 48-month period.

Outside directors who continue to serve on the Company's Board as of the last regularly scheduled meeting of the Board in each calendar year are automatically granted an option to purchase 15,000 shares of common stock, provided that the director has served on the Board for a period of at least six months. The shares underlying these options vest in equal monthly installments over a period of 12 months as measured from the grant date.

Generally, upon a change in the Company's ownership or control or a merger or sale of all or substantially all of the Company's assets, the vesting of options granted to outside directors, who are then serving on the Board, will accelerate, and become immediately exercisable.

In the event of an outside director's termination of service due to death or disability, options granted to outside directors will remain exercisable through the expiration of the term of the options.

Amendment and Termination of the Plan

The Board may amend, alter, suspend or terminate the Plan, or any part thereof, at any time and for any reason. However, the Company will solicit shareholder approval for any amendment to the Plan to the extent necessary and desirable to comply with applicable laws. Generally, no such action by the Board or shareholders may alter or impair any Award previously granted under the Plan without the written consent of the awardee. The Plan has a term of ten years, but it may be terminated by the Board at any time.

Federal Income Tax Consequences of Options and Stock Awards under the Plan

THE FOLLOWING IS A GENERAL SUMMARY OF THE TYPICAL FEDERAL INCOME TAX CONSEQUENCES UNDER CURRENT LAW OF THE ISSUANCE AND EXERCISE OF OPTIONS OR AWARDS OF RESTRICTED STOCK UNDER THE 2004 PLAN. IT DOES NOT DESCRIBE STATE OR OTHER TAX CONSEQUENCES OF THE ISSUANCE AND EXERCISE OF OPTIONS OR OF GRANT OF RESTRICTED STOCK.

Options. The grant of an incentive stock option has no federal income tax effect on the optionee. Upon exercise the optionee does not recognize income for "regular" tax purposes. However, the excess of the fair market value of the stock subject to an option over the exercise price of such option (the "option spread") is includible in the optionee's "alternative minimum taxable income" for purposes of the alternative minimum tax. If the optionee does not dispose of the stock acquired upon exercise of an incentive stock option until more than two years after the option grant date and more than one year after exercise of the option, any gain upon sale of the shares will be a long-term capital gain. If shares are sold or otherwise disposed of before both of these periods have expired (a "disqualifying disposition"), the option spread at the time of exercise of the option (but not more than the amount of the gain on the sale or other disposition) is ordinary income in the year of such sale or other disposition. If gain on a disqualifying disposition exceeds the amount treated as ordinary income, the excess is taxable as capital gain (which will be long-term capital gain if the shares have been held more than one year after the date of exercise of the option). The Company is not entitled to a federal income tax deduction in connection with incentive stock options, except to the extent that the optionee has taxable ordinary income on a disqualifying disposition (unless limited by Section 162(m) of the Internal Revenue Code).

The grant of a nonstatutory option has no federal income tax affect on the optionee. Upon the exercise of a nonstatutory option, the optionee has taxable ordinary income (and the Company is entitled to a corresponding deduction unless limited by Section 162(m) of the Internal Revenue Code) equal to the option spread on the date of exercise. Upon the disposition of stock acquired upon exercise of a nonstatutory option, the optionee recognizes either long-term or short-term capital gain or loss, depending on how long such stock was held, on any difference between the sale price and the exercise price, to the extent not recognized as taxable income on the date of exercise. The Company may allow nonstatutory options to be transferred subject to conditions and restrictions imposed by the Administrator; special tax rules may apply on such a transfer.

In the case of both incentive stock options and nonstatutory options, special federal income tax rules apply if the Company's common stock is used to pay all or part of the option price.

Stock Awards. Upon receipt of a stock award, a recipient generally has taxable income in the amount of the excess of the then fair market value of the common stock over any consideration paid for the common stock (the "spread"). However, if the common stock is subject to a "substantial risk of forfeiture" (such as a requirement that the recipient continue in the employ of the Company) and the recipient does not make an election under section 83(b) of the Internal Revenue Code, the recipient will have taxable income upon the lapse of the risk of forfeiture, rather than at receipt, in an amount equal to the spread on the date of lapse. If the recipient is an employee of the Company, the taxable income constitutes supplemental wages subject to income and employment tax withholding, and the Company receives a corresponding income tax deduction, unless limited by Section 162(m) of the Internal Revenue Code. If the recipient makes an election under section 83(b) of the Internal Revenue Code, the stock received by the recipient is valued as of the date of receipt (without taking the restrictions into account) and the recipient has taxable income equal to any excess of that value over the amount he or she paid for the stock. The Company would again have a deduction equal to the income to the recipient, unless limited by Section 162(m) of the Internal Revenue Code. If the recipient makes an election under section 83(b) of the Internal Revenue Code, the consequences upon sale or disposition (other than through forfeiture) of the shares awarded or sold generally are the same as for common stock acquired under a nonstatutory option as described above.

The American Jobs Creation Act of 2004 added Section 409A to the Internal Revenue Code, generally effective January 1, 2005. Section 409A covers most programs that defer the receipt of compensation to a succeeding year. There are significant penalties placed on the individual awardee for failure to comply with Section 409A. However, it does not impact the Company's ability to deduct deferred compensation.

Section 409A does not apply to incentive stock options, nonstatutory stock options that have an exercise price that is at least equal to the grant date fair market value and restricted stock provided there is no deferral of income beyond the vesting date.

Limitation on Deduction of Certain Compensation. A publicly-held corporation may not deduct compensation in excess of a certain amount that is paid in any year to its Chief Executive Officer or other four most highly compensated officers unless the compensation constitutes "qualified performance-based" compensation under Section 162(m) of the Internal Revenue Code. The Company generally attempts to ensure that any awards under the Plan meet these standards, but may not do so in every instance.

Accounting Treatment

In accordance with FAS 123(R), the Company recognizes compensation expense based on the grant-date fair value of awards granted under the Plan. The Company uses the Black-Scholes option valuation model to determine the fair value of the award, which is affected by the Company's stock price and the number of shares granted, as well as assumptions which include the Company's expected term of the award, the expected stock price volatility, risk-free interest rate and expected dividends over the expected term of the award. The expense associated with each award will generally be recognized over the award's vesting period.

New Plan Benefits

As of the date hereof, no options or other stock awards have been granted on the basis of the share increase for which shareholder approval is sought under this Proposal 2. Accordingly, future benefits or amounts received are not determinable. The following table presents information with

respect to options granted under the Plan to the named executive officers and named groups during the year ended December 31, 2007.

<u>Name</u>	<u>Number of Shares Granted¹</u>
Carl A. Pelzel	500,000
Tammy L. Cameron	60,000
Matthew M. Gosling	84,250
John N. Shell	75,250
John W. Fara, Ph.D.	108,750
John F. Hamilton	193,750
All current executive officers as a group (4 persons)	729,250
All directors who are not executive officers (7 persons)	125,000
All employees and consultants (including all current officers who are not executive officers) as a group (80 persons)	2,396,250

- (1) All options were granted with exercise prices equal to the closing price of the Company's common stock on the date of grant.

**THE BOARD OF DIRECTORS RECOMMENDS A VOTE "FOR"
THE AMENDMENT OF THE 2004 EQUITY INCENTIVE PLAN**

PROPOSAL 3—RATIFICATION OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Audit Committee has appointed Ernst & Young LLP, independent registered public accounting firm, to audit the financial statements, management's assessment of the effectiveness of internal control over financial reporting, and the effectiveness of internal control over financial reporting of the Company for the fiscal year ending December 31, 2008. A representative of Ernst & Young LLP is expected to be present at the Annual Meeting, will have the opportunity to make a statement if he or she desires to do so, and is expected to be available to respond to appropriate questions.

Selection of the Company's independent registered public accounting firm is not required to be submitted to a vote of the shareholders of the Company for ratification. The Sarbanes-Oxley Act of 2002 requires the Audit Committee to be directly responsible for the appointment, compensation and oversight of the audit work of the independent registered public accounting firm. However, the Board is submitting this matter to the shareholders as a matter of good corporate practice. If the shareholders fail to vote on an advisory basis in favor of the appointment, the Audit Committee will reconsider whether to retain Ernst & Young LLP, and may retain that firm or another without re-submitting the matter to the Company's shareholders. Even if shareholders vote on an advisory basis in favor of the appointment, the Audit Committee may, in its discretion, direct the appointment of a different independent registered public accounting firm at any time during the year if it determines that such a change would be in the best interests of the Company and the shareholders.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE "FOR" THE RATIFICATION OF THE APPOINTMENT OF ERNST & YOUNG LLP AS THE COMPANY'S INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FOR THE FISCAL YEAR ENDING DECEMBER 31, 2008.

OTHER MATTERS

As of the time of preparation of this Proxy Statement, neither the Board nor management intends to bring before the meeting any business other than the matters referred to in the Notice of Annual Meeting and this Proxy Statement. If any other business should properly come before the meeting, or any adjournment thereof, the persons named in the proxy will vote on such matters according to their best judgment.

SHAREHOLDERS SHARING THE SAME ADDRESS

In accordance with notices previously sent to many shareholders who hold their shares through a bank, broker or other holder of record (a "street-name shareholder") and share a single address, only one annual report and proxy statement is being delivered to that address unless contrary instructions from any shareholder at that address were received. This practice, known as "householding," is intended to reduce the Company's printing and postage costs. However, any such street-name shareholder residing at the same address who wishes to receive a separate copy of this Proxy Statement or accompanying Annual Report to Shareholders may request a copy by contacting the bank, broker or other holder of record, or the Company by telephone at: (650) 462-5900. The voting instruction sent to a street-name shareholder should provide information on how to request (1) householding of future Company materials or (2) separate materials if only one set of documents is being sent to a household. If it does not, a shareholder who would like to make one of these requests should contact the Company as indicated above.

FORM 10-K

The Company will mail without charge to any shareholder upon written request, a copy of the Company's Annual Report on Form 10-K for the year ended December 31, 2007 including the financial statements, schedules and a list of exhibits. Requests should be sent to Depomed, Inc., 1360 O'Brien Drive, Menlo Park, California 94025, Attn: Investor Relations.

SHAREHOLDER PROPOSALS

The Company's Bylaws, as amended, provide that advance notice of a shareholder's proposal must be delivered to the Secretary of the Company at the Company's principal executive offices not earlier than one hundred and fifty (150) days, and not later than one hundred and twenty (120) days, prior to the anniversary of the mailing date of the proxy materials for the previous year's annual meeting. However, the Bylaws also provide that in the event that no annual meeting was held in the previous year or the date of the annual meeting is advanced by more than 30 days or delayed by more than 60 days from the date contemplated at the time of the previous year's proxy statement, this advance notice must be received not earlier than the 120th day prior to such annual meeting and not later than the 10th day following the day on which public announcement of the date of such meeting is first made. Each shareholder's notice must contain the following information as to each matter the shareholder proposes to bring before the annual meeting: (a) as to each person whom the shareholder proposes to nominate for election or reelection as a director all information relating to such person that is required to be disclosed pursuant to Regulation 14A under the Exchange Act (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (b) as to any other business that the shareholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such shareholder and the beneficial owner, if any, on whose behalf the proposal is made; and (c) as to the shareholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such shareholder, as they appear on the Company's books, and of such beneficial owner, (ii) the number of shares of the Company's common stock which are owned beneficially and of record by such shareholder and such beneficial owner and (iii) whether such shareholder or beneficial owner intends to deliver a proxy statement and form of proxy to holders of, in the case of a proposal, at least the percentage of the Company's voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the Company's voting shares to elect such nominee or nominees.

A copy of the full text of the provisions of the Company's Bylaws dealing with shareholder nominations and proposals is available to shareholders from the Company's Investor Relations Department upon written request.

Under the rules of the SEC, shareholders who wish to submit proposals for inclusion in the Proxy Statement of the Board for the 2009 Annual Meeting of Shareholders must submit such proposals so as to be received by the Company at 1360 O'Brien Drive, Menlo Park, California 94025, on or before December 19, 2008. In addition, if the Company is not notified by December 19, 2008 of a proposal to be brought before the 2009 Annual Meeting by a shareholder, then proxies held by management may provide the discretion to vote against such proposal even though it is not discussed in the proxy statement for such meeting.

BY ORDER OF THE BOARD OF DIRECTORS



Julian N. Stern
Secretary

Menlo Park, California
April 18, 2008

**2004 Equity Incentive Plan
of
Depomed, Inc.**

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**2004 EQUITY INCENTIVE PLAN
OF
DEPOMED, INC.**

(As Amended through March 7, 2008)

1. Purpose of this Plan

The purpose of this 2004 Equity Incentive Plan is to enhance the long-term shareholder value of Depomed, Inc. by offering opportunities to eligible participants to share in the growth in value of the equity of Depomed, Inc. and to provide incentives to eligible Employees, Company Directors and Consultants to contribute to the success of the Company.

2. Definitions and Rules of Interpretation

2.1 Definitions. This Plan uses the following defined terms:

(a) **"Administrator"** means the Board, the Committee, or any officer or employee of the Company to whom the Board or the Committee delegates authority to administer this Plan.

(b) **"Affiliate"** means a "parent" or "subsidiary" (as each is defined in Section 424 of the Code) of the Company and any other entity that the Board or Committee designates as an "Affiliate" for purposes of this Plan.

(c) **"Applicable Law"** means any and all laws of whatever jurisdiction, within or without the United States, and the rules of any stock exchange or quotation system on which Shares are listed or quoted, applicable to the taking or refraining from taking of any action under this Plan, including the administration of this Plan and the issuance or transfer of Awards or Award Shares.

(d) **"Award"** means a Stock Award or Option granted in accordance with the terms of this Plan.

(e) **"Award Agreement"** means the document evidencing the grant of an Award.

(f) **"Award Shares"** means Shares covered by an outstanding Award or purchased under an Award.

(g) **"Awardee"** means: (i) a person to whom an Award has been granted, including a holder of a Substitute Award, (ii) a person to whom an Award has been transferred in accordance with all applicable requirements of Sections 6.5, 7(h), and 17, or (iii) a person who holds Award Shares subject to a right of repurchase under Section 16.2.

(h) **"Board"** means the board of directors of the Company.

(i) **"Change in Control"** means any transaction or event that the Board specifies as a Change in Control under Section 10.4.

(j) **"Code"** means the Internal Revenue Code of 1986.

(k) **"Committee"** means a committee composed of Company Directors appointed in accordance with the Company's charter documents and Section 4.

(l) **"Company"** means Depomed, Inc., a California corporation.

(m) **"Company Director"** means a member of the Board.

(n) **"Consultant"** means an individual who, or an entity or employee of any entity that, provides bona fide services to the Company or an Affiliate not in connection with the offer or sale of securities in a capital-raising transaction, but who is not an Employee.

(o) **"Director"** means a member of the board of directors of the Company or an Affiliate.

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(p) **"Divestiture"** means any transaction or event that the Board specifies as a Divestiture under Section 10.5.

(q) **"Domestic Relations Order"** means a "domestic relations order" as defined in, and otherwise meeting the requirements of, Section 414(p) of the Code, except that reference to a "plan" in that definition shall be to this Plan.

(r) **"Employee"** means a regular employee of the Company or an Affiliate, including an Officer or Director, who is treated as an employee in the personnel records of the Company or an Affiliate, but not individuals who are classified by the Company or an Affiliate as: (i) leased from or otherwise employed by a third party, (ii) independent contractors, or (iii) intermittent or temporary workers. The Company's or an Affiliate's classification of an individual as an "Employee" (or as not an "Employee") for purposes of this Plan shall not be altered retroactively even if that classification is changed retroactively for another purpose as a result of an audit, litigation or otherwise. An Awardee shall not cease to be an Employee due to transfers between locations of the Company, or between the Company and an Affiliate, or to any successor to the Company or an Affiliate that assumes the Awardee's Options under Section 10. Neither service as a Director nor receipt of a director's fee shall be sufficient to make a Director an "Employee."

(s) **"Exchange Act"** means the Securities Exchange Act of 1934.

(t) **"Executive"** means, if the Company has any class of any equity security registered under Section 12 of the Exchange Act, an individual who is subject to Section 16 of the Exchange Act or who is a "covered employee" under Section 162(m) of the Code, in either case because of the individual's relationship with the Company or an Affiliate. If the Company does not have any class of any equity security registered under Section 12 of the Exchange Act, "Executive" means any (i) Director or (ii) officer elected or appointed by the Board.

(u) **"Expiration Date"** means, with respect to an Award, the date stated in the Award Agreement as the expiration date of the Award or, if no such date is stated in the Award Agreement, then the last day of the maximum exercise period for the Award, disregarding the effect of an Awardee's Termination or any other event that would shorten that period.

(v) **"Fair Market Value"** means the value of Shares as determined under Section 18.2.

(w) **"Fundamental Transaction"** means any transaction or event described in Section 10.3.

(x) **"Grant Date"** means the date the Administrator approves the grant of an Award. However, if the Administrator specifies that an Award's Grant Date is a future date or the date on which a condition is satisfied, the Grant Date for such Award is that future date or the date that the condition is satisfied.

(y) **"Incentive Stock Option"** means an Option intended to qualify as an incentive stock option under Section 422 of the Code and designated as an Incentive Stock Option in the Award Agreement for that Option.

(z) **"Nonstatutory Option"** means any Option other than an Incentive Stock Option.

(aa) **"Non-Employee Director"** means any person who is a member of the Board but is not an Employee of the Company or any Affiliate of the Company and has not been an Employee of the Company or any Affiliate of the Company at any time during the preceding twelve months. Service as a Director does not in itself constitute employment for purposes of this definition.

(bb) **"Objectively Determinable Performance Condition"** shall mean a performance condition (i) that is established (A) at the time an Award is granted or (B) no later than the earlier of (1) 90 days after the beginning of the period of service to which it relates, or (2) before the elapse of 25% of the period of service to which it relates, (ii) that is uncertain of achievement at the time

it is established, and (iii) the achievement of which is determinable by a third party with knowledge of the relevant facts. Examples of measures that may be used in Objectively Determinable Performance Conditions include achievement of a Company goal, net order dollars, net profit dollars, net profit growth, net revenue dollars, revenue growth, individual performance, earnings per share, return on assets, return on equity, and other financial objectives, objective customer satisfaction indicators and efficiency measures, each with respect to the Company and/or an Affiliate or individual business unit.

(cc) "**Officer**" means an officer of the Company as defined in Rule 16a-1 adopted under the Exchange Act.

(dd) "**Option**" means a right to purchase Shares of the Company granted under this Plan.

(ee) "**Option Price**" means the price payable under an Option for Shares, not including any amount payable in respect of withholding or other taxes.

(ff) "**Option Shares**" means Shares covered by an outstanding Option or purchased under an Option.

(gg) "**Plan**" means this 2004 Equity Incentive Plan of Depomed, Inc.

(hh) "**Purchase Price**" means the price payable under a Stock Award for Shares, not including any amount payable in respect of withholding or other taxes.

(ii) "**Reverse Vesting**" means that an Option is or was fully exercisable but that, subject to a "reverse" vesting schedule, the Company has a right to repurchase the Option Shares as specified in Section 16.2(a), with the Company's right of repurchase expiring in accordance with a "forward" vesting schedule that would otherwise have applied to the Option under which the Option Shares were purchased or in accordance with some other vesting schedule described in the Award Agreement.

(jj) "**Rule 16b-3**" means Rule 16b-3 adopted under Section 16(b) of the Exchange Act.

(kk) "**Securities Act**" means the Securities Act of 1933.

(ll) "**Share**" means a share of the common stock of the Company or other securities substituted for the common stock under Section 10.

(mm) "**Stock Award**" means an offer by the Company to sell shares subject to certain restrictions pursuant to the Award Agreement as described in Section 8. A Stock Award does not include an option.

(nn) "**Substitute Award**" means a Substitute Option or Substitute Stock Award granted in accordance with the terms of this Plan.

(oo) "**Substitute Option**" means an Option granted in substitution for, or upon the conversion of, an option granted by another entity to purchase equity securities in the granting entity.

(pp) "**Substitute Stock Award**" means a Stock Award granted in substitution for, or upon the conversion of, a stock award granted by another entity to purchase equity securities in the granting entity.

(qq) "**Ten Percent Shareholder**" means any person who, directly or by attribution under Section 424(d) of the Code, owns stock possessing more than ten percent of the total combined voting power of all classes of stock of the Company or of any Affiliate on the Grant Date.

(rr) "**Termination**" means that the Awardee has ceased to be, with or without any cause or reason, an Employee, Director or Consultant. However, unless so determined by the Administrator, or otherwise provided in this Plan, "Termination" shall not include a change in

status from an Employee, Consultant or Director to another such status. An event that causes an Affiliate to cease being an Affiliate shall be treated as the "Termination" of that Affiliate's Employees, Directors, and Consultants.

2.2 Rules of Interpretation. Any reference to a "Section," without more, is to a Section of this Plan. Captions and titles are used for convenience in this Plan and shall not, by themselves, determine the meaning of this Plan. Except when otherwise indicated by the context, the singular includes the plural and vice versa. Any reference to a statute is also a reference to the applicable rules and regulations adopted under that statute. Any reference to a statute, rule or regulation, or to a section of a statute, rule or regulation, is a reference to that statute, rule, regulation, or section as amended from time to time, both before and after the effective date of this Plan and including any successor provisions.

3. Shares Subject to this Plan; Term of this Plan

3.1 Number of Award Shares. The Shares issuable under this Plan shall be authorized but unissued or reacquired Shares, including but not limited to Shares repurchased by the Company on the open market. Subject to adjustment under Section 10, the maximum number of Shares that may be issued under this Plan is 6,750,000. When an Award is granted, the maximum number of Shares that may be issued under this Plan shall be reduced by the number of Shares covered by that Award. However, if an Award later terminates or expires without having been exercised in full, the maximum number of shares that may be issued under this Plan shall be increased by the number of Shares that were covered by, but not purchased under, that Award. By contrast, the repurchase of Shares by the Company shall not increase the maximum number of Shares that may be issued under this Plan.

3.2 Term of this Plan.

(a) This Plan shall be effective on, and Awards may be granted under this Plan after, the date it has been both adopted by the Board and approved by the Company's shareholders (the "*Effective Date*").

(b) Subject to the provisions of Section 14, Awards may be granted under this Plan for a period of ten years from the earlier of the date on which the Board approves this Plan and the date the Company's shareholders approve this Plan. Accordingly, Awards may not be granted under this Plan after ten years from the earlier of those dates.

4. Administration

4.1 General.

(a) The Board shall have ultimate responsibility for administering this Plan. The Board may delegate certain of its responsibilities to a Committee, which shall consist of at least two members of the Board. The Board or the Committee may further delegate its responsibilities to any Employee of the Company or any Affiliate. Where this Plan specifies that an action is to be taken or a determination made by the Board, only the Board may take that action or make that determination. Where this Plan specifies that an action is to be taken or a determination made by the Committee, only the Committee may take that action or make that determination. Where this Plan references the "Administrator," the action may be taken or determination made by the Board, the Committee, or other Administrator. However, only the Board or the Committee may approve grants of Awards to Executives and such other participants as may be specifically designated by the Board, and an Administrator other than the Board or the Committee may grant Awards only within guidelines established by the Board or Committee. Moreover, all actions and determinations by any Administrator are subject to the provisions of this Plan.

(b) So long as the Company has registered and outstanding a class of equity securities under Section 12 of the Exchange Act, the Committee shall consist of Company Directors who are "Non-Employee Directors" as defined in Rule 16b-3 and, after the expiration of any transition period permitted by Treasury Regulations Section 1.162-27(h)(3), who are "outside directors" as defined in Section 162(m) of the Code.

4.2 Authority of the Administrator. Subject to the other provisions of this Plan, the Administrator shall have the authority to:

- (a) grant Awards, including Substitute Awards;
- (b) determine the Fair Market Value of Shares;
- (c) determine the Option Price and the Purchase Price of Awards;
- (d) select the Awardees;
- (e) determine the times Awards are granted;
- (f) determine the number of Shares subject to each Award;
- (g) determine the methods of payment that may be used to purchase Award Shares;
- (h) determine the methods of payment that may be used to satisfy withholding tax obligations;
- (i) determine the other terms of each Award, including but not limited to the time or times at which Awards may be exercised, whether and under what conditions an Award is assignable, and whether an Option is a Nonstatutory Option or an Incentive Stock Option;
- (j) modify or amend any Award;
- (k) authorize any person to sign any Award Agreement or other document related to this Plan on behalf of the Company;
- (l) determine the form of any Award Agreement or other document related to this Plan, and whether that document, including signatures, may be in electronic form;
- (m) interpret this Plan and any Award Agreement or document related to this Plan;
- (n) correct any defect, remedy any omission, or reconcile any inconsistency in this Plan, any Award Agreement or any other document related to this Plan;
- (o) adopt, amend, and revoke rules and regulations under this Plan, including rules and regulations relating to sub-plans and Plan addenda;
- (p) adopt, amend, and revoke special rules and procedures which may be inconsistent with the terms of this Plan, set forth (if the Administrator so chooses) in sub-plans regarding (for example) the operation and administration of this Plan and the terms of Awards, if and to the extent necessary or useful to accommodate non-U.S. Applicable Laws and practices as they apply to Awards and Award Shares held by, or granted or issued to, persons working or resident outside of the United States or employed by Affiliates incorporated outside the United States;
- (q) in the case of the Board, determine whether a transaction or event should be treated as a Change in Control, a Divestiture or neither;

(r) determine the effect of a Fundamental Transaction and, if the Board determines that a transaction or event should be treated as a Change in Control or a Divestiture, then the effect of that Change in Control or Divestiture; and

(s) make all other determinations the Administrator deems necessary or advisable for the administration of this Plan.

4.3 Scope of Discretion. Subject to the last sentence of this Section 4.3, on all matters for which this Plan confers the authority, right or power on the Board, the Committee, or other Administrator to make decisions, that body may make those decisions. Those decisions will be final, binding and conclusive. Moreover, but again subject to the last sentence of this Section 4.3, in making those decisions, the Board, Committee or other Administrator need not treat all persons eligible to receive Awards, all Awardees, all Awards or all Award Shares the same way. However, except as provided in Section 14.3, the discretion of the Board, Committee or other Administrator is subject to the specific provisions and specific limitations of this Plan, as well as all rights conferred on specific Awardees by Award Agreements and other agreements.

5. Participants Eligible to Receive Awards

5.1 Eligible Participants. Awards (including Substitute Awards) may be granted to, and only to, Employees, Directors and Consultants, including to prospective Employees, Directors and Consultants conditioned on the beginning of their service for the Company or an Affiliate. However, Incentive Stock Options may only be granted to Employees, as provided in Section 7(g).

5.2 Section 162(m) Limitation.

(a) **Options.** So long as the Company is a "publicly held corporation" within the meaning of Section 162(m) of the Code: (i) no Employee may be granted one or more Options within any fiscal year of the Company under this Plan to purchase more than 500,000 Shares under Options, subject to adjustment pursuant to Section 10, (ii) Options may be granted to an Executive only by the Committee (and, notwithstanding Section 4.1(a), not by the Board). If an Option is cancelled without being exercised or if the Option Price of an Option is reduced, that cancelled or repriced Option shall continue to be counted against the limit on Awards that may be granted to any participant under this Section 5.2. Notwithstanding anything herein to the contrary, in connection with his or her initial employment with the Company or an Affiliate, a new Employee or prospective Employee shall be eligible to receive up to a maximum of 750,000 Shares under Options (subject to adjustment pursuant to Section 10), which Shares shall not be counted toward the 500,000 limitation set forth in this Section 5.2(a).

(b) **Stock Awards.** Any Stock Award intended as "qualified performance-based compensation" within the meaning of Section 162(m) of the Code must vest or become exercisable contingent on the achievement of one or more Objectively Determinable Performance Conditions. The Committee shall have the discretion to determine the time and manner of compliance with Section 162(m) of the Code.

6. Terms and Conditions of Options

The following rules apply to all Options:

6.1 Price. No Option intended as "qualified incentive-based compensation" within the meaning of Section 162(m) of the Code may have an Option Price less than 100% of the Fair Market Value of the Shares on the Grant Date. In no event will the Option Price of any Option be less than the par value of the Shares issuable under the Option if that is required by Applicable Law. The Option Price of an Incentive Stock Option shall be subject to Section 7(f).

6.2 Term. No Option shall be exercisable after its Expiration Date. No Option may have an Expiration Date that is more than ten years after its Grant Date. Additional provisions regarding the term of Incentive Stock Options are provided in Sections 7(a) and 7(e).

6.3 Vesting. Options shall be exercisable: (a) on the Grant Date, or (b) in accordance with a schedule related to the Grant Date, the date the Awardee's directorship, employment or consultancy begins, or a different date specified in the Award Agreement. If so provided in the Award Agreement, an Option may be exercisable subject to the application of Reverse Vesting to the Option Shares. Additional provisions regarding the vesting of Incentive Stock Options are provided in Section 7(c). No Option granted to an individual who is subject to the overtime pay provisions of the Fair Labor Standards Act may be exercised before the expiration of six months after the Grant Date.

6.4 Form and Method of Payment.

- (a) The Administrator shall determine the acceptable form and method of payment for exercising an Option.
- (b) Acceptable forms of payment for all Option Shares are cash, check or wire transfer, denominated in U.S. dollars except as specified by the Administrator for non-U.S. Employees or non-U.S. sub-plans.
- (c) In addition, the Administrator may permit payment to be made by any of the following methods:
 - (i) other Shares, or the designation of other Shares, which (A) are "mature" shares for purposes of avoiding variable accounting treatment under generally accepted accounting principles (generally mature shares are those that have been owned by the Awardee for more than six months on the date of surrender), and (B) have a Fair Market Value on the date of surrender equal to the Option Price of the Shares as to which the Option is being exercised;
 - (ii) provided that a public market exists for the Shares, consideration received by the Company under a procedure under which a licensed broker-dealer advances funds on behalf of an Awardee or sells Option Shares on behalf of an Awardee (a "*Cashless Exercise Procedure*"), provided that if the Company extends or arranges for the extension of credit to an Awardee under any Cashless Exercise Procedure, no Officer or Director may participate in that Cashless Exercise Procedure;
 - (iii) subject to Section 6.4(e), one or more promissory notes meeting the requirements of Section 6.4(e) provided, however, that promissory notes may not be used for any portion of an Award which is not vested at the time of exercise;
 - (iv) cancellation of any debt owed by the Company or any Affiliate to the Awardee including without limitation waiver of compensation due or accrued for services previously rendered to the Company or an Affiliate; and
 - (v) any combination of the methods of payment permitted by any paragraph of this Section 6.4.
- (d) The Administrator may also permit any other form or method of payment for Option Shares permitted by Applicable Law.
- (e) The promissory notes referred to in Section 6.4(c)(iii) shall be full recourse. Unless the Administrator specifies otherwise after taking into account any relevant accounting issues, the promissory notes shall bear interest at a fair market value rate when the Option is exercised. Interest on the promissory notes shall also be at least sufficient to avoid imputation of interest under Sections 483, 1274, and 7872 of the Code. The promissory notes and their administration shall at all times comply with any applicable margin rules of the Federal Reserve. The promissory notes may also include such other terms as the Administrator specifies. Payment may not be made by promissory note by Officers or Directors if Shares are registered under Section 12 of the Exchange Act.

6.5 Assignability of Options. Except as determined by the Administrator, no Option shall be assignable or otherwise transferable by the Awardee except by will or by the laws of descent and distribution. However, Options may be transferred and exercised in accordance with a Domestic Relations Order and may be exercised by a guardian or conservator appointed to act for the Awardee. Incentive Stock Options may only be assigned in compliance with Section 7(h).

6.6 Substitute Options. The Board may cause the Company to grant Substitute Options in connection with the acquisition by the Company or an Affiliate of equity securities of any entity (including by merger, tender offer, or other similar transaction) or of all or a portion of the assets of any entity. Any such substitution shall be effective on the effective date of the acquisition. Substitute Options may be Nonstatutory Options or Incentive Stock Options. Unless and to the extent specified otherwise by the Board, Substitute Options shall have the same terms and conditions as the options they replace, except that (subject to the provisions of Section 10) Substitute Options shall be Options to purchase Shares rather than equity securities of the granting entity and shall have an Option Price determined by the Board.

7. Incentive Stock Options

The following rules apply only to Incentive Stock Options and only to the extent these rules are more restrictive than the rules that would otherwise apply under this Plan. With the consent of the Awardee, or where this Plan provides that an action may be taken notwithstanding any other provision of this Plan, the Administrator may deviate from the requirements of this Section, notwithstanding that any Incentive Stock Option modified by the Administrator will thereafter be treated as a Nonstatutory Option.

(a) The Expiration Date of an Incentive Stock Option shall not be later than ten years from its Grant Date, with the result that no Incentive Stock Option may be exercised after the expiration of ten years from its Grant Date.

(b) No Incentive Stock Option may be granted more than ten years from the date this Plan was approved by the Board.

(c) Options intended to be incentive stock options under Section 422 of the Code that are granted to any single Awardee under all incentive stock option plans of the Company and its Affiliates, including incentive stock options granted under this Plan, may not vest at a rate of more than \$100,000 (or such other amount that may be hereafter specified in the applicable section of the Code) in Fair Market Value of stock (measured on the grant dates of the options) during any calendar year. For this purpose, an option vests with respect to a given share of stock the first time its holder may purchase that share, notwithstanding any right of the Company to repurchase that share. Unless the administrator of that option plan specifies otherwise in the related agreement governing the option, this vesting limitation shall be applied by, to the extent necessary to satisfy this \$100,000 (or other amount) rule, by treating certain stock options that were intended to be incentive stock options under Section 422 of the Code as Nonstatutory Options. The stock options or portions of stock options to be reclassified as Nonstatutory Options are those with the highest option prices, whether granted under this Plan or any other equity compensation plan of the Company or any Affiliate that permits that treatment. This Section 7(c) shall not cause an Incentive Stock Option to vest before its original vesting date or cause an Incentive Stock Option that has already vested to cease to be vested.

(d) In order for an Incentive Stock Option to be exercised for any form of payment other than those described in Section 6.4(b), that form of payment must be stated at the time of grant in the Award Agreement relating to that Incentive Stock Option.

(e) Any Incentive Stock Option granted to a Ten Percent Shareholder must have an Expiration Date that is not later than five years from its Grant Date, with the result that no such Option may be exercised after the expiration of five years from the Grant Date.

(f) The Option Price of an Incentive Stock Option shall never be less than the Fair Market Value of the Shares at the Grant Date. The Option Price for the Shares covered by an Incentive Stock Option granted to a Ten Percent Shareholder shall never be less than 110% of the Fair Market Value of the Shares at the Grant Date.

(g) Incentive Stock Options may be granted only to Employees. If an Awardee changes status from an Employee to a Consultant, that Awardee's Incentive Stock Options become Nonstatutory Options if not exercised within the time period described in Section 7(i) (determined by treating that change in status as a Termination solely for purposes of this Section 7(g)).

(h) No rights under an Incentive Stock Option may be transferred by the Awardee, other than by will or the laws of descent and distribution. During the life of the Awardee, an Incentive Stock Option may be exercised only by the Awardee. The Company's compliance with a Domestic Relations Order, or the exercise of an Incentive Stock Option by a guardian or conservator appointed to act for the Awardee, shall not violate this Section 7(h).

(i) An Incentive Stock Option shall be treated as a Nonstatutory Option if it remains exercisable after, and is not exercised within, the three-month period beginning with the Awardee's Termination for any reason other than the Awardee's death or disability (as defined in Section 22(e) of the Code). In the case of Termination due to death, an Incentive Stock Option shall continue to be treated as an Incentive Stock Option if it remains exercisable after, and is not exercised within, the three-month period after the Awardee's Termination provided it is exercised before the Expiration Date. In the case of Termination due to disability, an Incentive Stock Option shall be treated as a Nonstatutory Option if it remains exercisable after, and is not exercised within, one year after the Awardee's Termination.

(j) An Incentive Stock Option may only be modified by the Board or the Committee.

8. Stock Awards

8.1 General. The specific terms and conditions of a Stock Award applicable to the Awardee shall be provided for in the Award Agreement. The Award Agreement shall state the number of Shares that the Awardee shall be entitled to receive or purchase, the terms and conditions on which the Shares shall vest, the price to be paid and, if applicable, the time within which the Awardee must accept such offer. The offer shall be accepted by execution of the Award Agreement. The Administrator may require that all Shares subject to a right of repurchase or risk of forfeiture be held in escrow until such repurchase right or risk of forfeiture lapses. The grant or vesting of a Stock Award may be made contingent on the achievement of Objectively Determinable Performance Conditions.

8.2 Right of Repurchase. If so provided in the Award Agreement, Award Shares acquired pursuant to a Stock Award may be subject to repurchase by the Company or an Affiliate if not vested in accordance with the Award Agreement.

8.3 Form of Payment for Stock Awards. The Administrator shall determine the acceptable form and method of payment for exercising a Stock Award. Acceptable forms of payment for all Award Shares are cash, check or wire transfer, denominated in U.S. dollars except as specified by the Administrator for non-U.S. Employees or non-U.S. sub-plans. In addition, the Administrator may permit payment to be made by any of the methods permitted with respect to the exercise of Options pursuant to Section 6.4.

8.4 Nonassignability of Stock Awards. Except as determined by the Administrator, no Stock Award shall be assignable or otherwise transferable by the Awardee except by will or by the laws of descent and distribution (including without limitation Section 17).

Notwithstanding anything to the contrary herein, Stock Awards may be transferred and exercised in accordance with a Domestic Relations Order.

8.5 Substitute Stock Award. The Board may cause the Company to grant Substitute Stock Awards in connection with the acquisition by the Company or an Affiliate of equity securities of any entity (including by merger, tender offer, or other similar transaction) or of all or a portion of the assets of any entity. Any such substitution shall be effective on the effective date of the acquisition. Unless and to the extent specified otherwise by the Board, Substitute Stock Awards shall have the same terms and conditions as the stock awards they replace, except that (subject to the provisions of Section 10) Substitute Stock Awards shall be Stock Awards to purchase Shares rather than equity securities of the granting entity and shall have a Purchase Price that, as determined by the Board in its sole and absolute discretion, properly reflects the substitution.

8.6 Maximum Number of Stock Awards. The maximum aggregate number of Shares that may be issued pursuant to Stock Awards under this Plan shall not exceed ten percent (10%) of the number of Shares that may be issued pursuant to this Plan under Section 3.1.

9. Exercise of Awards

9.1 In General. An Award shall be exercisable in accordance with this Plan and the Award Agreement under which it is granted.

9.2 Time of Exercise. Options and Stock Awards shall be considered exercised when the Company receives: (a) written notice of exercise from the person entitled to exercise the Option or Stock Award, (b) full payment, or provision for payment, in a form and method approved by the Administrator, for the Shares for which the Option or Stock Award is being exercised, and (c) with respect to Nonstatutory Options, payment, or provision for payment, in a form approved by the Administrator, of all applicable withholding taxes due upon exercise. An Award may not be exercised for a fraction of a Share.

9.3 Issuance of Award Shares. The Company shall issue Award Shares in the name of the person properly exercising the Award. If the Awardee is that person and so requests, the Award Shares shall be issued in the name of the Awardee and the Awardee's spouse. The Company shall endeavor to issue Award Shares promptly after an Award is exercised. Until Award Shares are actually issued, as evidenced by the appropriate entry on the stock register of the Company or its transfer agent, the Awardee will not have the rights of a shareholder with respect to those Award Shares, even though the Awardee has completed all the steps necessary to exercise the Award. No adjustment shall be made for any dividend, distribution, or other right for which the record date precedes the date the Award Shares are issued, except as provided in Section 10.

9.4 Termination.

(a) **In General.** Except as provided in an Award Agreement or in writing by the Administrator, and as otherwise provided in Sections 9.4(b), (c), (d) and (e) after an Awardee's Termination, the Awardee's Awards shall be exercisable to the extent (but only to the extent) they are vested on the date of that Termination and only during the three months after the Termination, but in no event after the Expiration Date. To the extent the Awardee does not exercise an Award within the time specified for exercise, the Award shall automatically terminate.

(b) **Leaves of Absence.** Unless otherwise provided in the Award Agreement or in writing by the Administrator, no Award may be exercised more than three months after the beginning of a leave of absence, other than a personal or medical leave approved by an authorized representative

of the Company with employment guaranteed upon return. Awards shall not continue to vest during a leave of absence, unless otherwise determined in writing by the Administrator with respect to an approved personal or medical leave with employment guaranteed upon return.

(c) **Death or Disability.** Unless otherwise provided in the Award Agreement or in writing by the Administrator, if an Awardee's Termination is due to death or disability (as determined by the Administrator with respect to all Awards other than Incentive Stock Options and as defined by Section 22(e) of the Code with respect to Incentive Stock Options), all Awards of that Awardee to the extent exercisable at the date of that Termination may be exercised for one year after that Termination, but in no event after the Expiration Date. In the case of Termination due to death, an Award may be exercised as provided in Section 17. In the case of Termination due to disability, if a guardian or conservator has been appointed to act for the Awardee and been granted this authority as part of that appointment, that guardian or conservator may exercise the Award on behalf of the Awardee. Death or disability occurring after an Awardee's Termination shall not cause the Termination to be treated as having occurred due to death or disability. To the extent an Award is not so exercised within the time specified for its exercise, the Award shall automatically terminate.

(d) **Divestiture.** If an Awardee's Termination is due to a Divestiture, the Board may take any one or more of the actions described in Section 10.3 or 10.4 with respect to the Awardee's Awards.

(e) **Termination for Cause.** In the discretion of the Administrator, which may be exercised on the date of grant, or at a date later in time, if an Awardee's Termination is due to Cause, all of the Awardee's Awards shall automatically terminate and cease to be exercisable at the time of Termination. "Cause" means employment-related dishonesty, fraud, misconduct or disclosure or misuse of confidential information, or other employment-related conduct that is likely to cause significant injury to the Company, an Affiliate, or any of their respective employees, officers or directors (including, without limitation, commission of a felony or similar offense whether or not employment-related), in each case as determined by the Administrator. "Cause" shall not require that a civil judgment or criminal conviction have been entered against or guilty plea shall have been made by the Awardee regarding any of the matters referred to in the previous sentence. Accordingly, the Administrator shall be entitled to determine "Cause" based on the Administrator's good faith belief. If the Awardee is criminally charged with a felony or similar offense, that shall be a sufficient, but not a necessary, basis for such a belief.

(f) **Administrator Discretion.** Notwithstanding the provisions of Section 9.4 (a)-(e), the Administrator shall have complete discretion, exercisable either at the time an Award is granted or at any time while the Award remains outstanding, to:

(i) Extend the period of time for which the Award is to remain exercisable, following the Awardee's Termination, from the limited exercise period otherwise in effect for that Award to such greater period of time as the Administrator shall deem appropriate, but in no event beyond the Expiration Date; and/or

(ii) Permit the Award to be exercised, during the applicable post-Termination exercise period, not only with respect to the number of vested Shares for which such Award may be exercisable at the time of the Awardee's Termination but also with respect to one or more additional installments in which the Awardee would have vested had the Awardee not been subject to Termination.

(g) **Consulting or Employment Relationship.** Nothing in this Plan or in any Award Agreement, and no Award or the fact that Award Shares remain subject to repurchase rights, shall: (A) interfere with or limit the right of the Company or any Affiliate to terminate the employment

or consultancy of any Awardee at any time, whether with or without cause or reason, and with or without the payment of severance or any other compensation or payment, (B) interfere with the application of any provision in any of the Company's or any Affiliate's charter documents or Applicable Law relating to the election, appointment, term of office, or removal of a Director or (C) interfere with the Company's right to terminate any consultancy.

10. Certain Transactions and Events

10.1 In General. Except as provided in this Section 10, no change in the capital structure of the Company, merger, sale or other disposition of assets or a subsidiary, change in control, issuance by the Company of shares of any class of securities or securities convertible into shares of any class of securities, exchange or conversion of securities, or other transaction or event shall require or be the occasion for any adjustments of the type described in this Section 10. Additional provisions with respect to the foregoing transactions are set forth in Section 14.3.

10.2 Changes in Capital Structure. In the event of any stock split, reverse stock split, recapitalization, combination or reclassification of stock, stock dividend, spin-off, or similar change to the capital structure of the Company (not including a Fundamental Transaction or Change in Control), the Board shall make whatever adjustments it concludes are appropriate to: (a) the number and type of Awards that may be granted under this Plan, (b) the number and type of Options that may be granted to any participant under this Plan, (c) the Purchase Price and number and class of securities issuable under each outstanding Stock Award, (d) the Option Price and number and class of securities issuable under each outstanding Option, and (e) the repurchase price of any securities substituted for Award Shares that are subject to repurchase rights. The specific adjustments shall be determined by the Board. Unless the Board specifies otherwise, any securities issuable as a result of any such adjustment shall be rounded down to the next lower whole security. The Board need not adopt the same rules for each Award or each Awardee.

10.3 Fundamental Transactions. Except for grants to Non-Employee Directors pursuant to Section 11, in the event of (a) a merger or consolidation in which the Company is not the surviving corporation (other than a merger or consolidation with a wholly-owned subsidiary, a reincorporation of the Company in a different jurisdiction, or other transaction in which there is no substantial change in the shareholders of the Company or their relative stock holdings and the Awards granted under this Plan are assumed, converted or replaced by the successor corporation, which assumption shall be binding on all participants under this Plan), (b) a merger in which the Company is the surviving corporation but after which the shareholders of the Company immediately prior to such merger (other than any shareholder that merges, or which owns or controls another corporation that merges, with the Company in such merger) cease to own their shares or other equity interest in the Company, (c) the sale of all or substantially all of the assets of the Company, or (d) the acquisition, sale, or transfer of more than 50% of the outstanding shares of the Company by tender offer or similar transaction (each, a "**Fundamental Transaction**"), any or all outstanding Awards may be assumed, converted or replaced by the successor corporation (if any), which assumption, conversion or replacement shall be binding on all participants under this Plan. In the alternative, the successor corporation may substitute equivalent Awards or provide substantially similar consideration to participants as was provided to the Company's shareholders (after taking into account the existing provisions of the Awards). The successor corporation may also issue, in place of outstanding Shares held by participants, substantially similar shares or other property subject to repurchase restrictions no less favorable to the participants. In the event such successor corporation (if any) does not assume or substitute Awards, as provided above, pursuant to a transaction described in this Section 10.3, the vesting with respect to such Awards shall fully and immediately accelerate or the repurchase rights of the Company shall fully and immediately terminate, as the case may be, so that the Awards may be exercised or the repurchase rights shall terminate before, or otherwise in connection with the closing or completion of the Fundamental

Transaction or event, but then terminate. Notwithstanding anything in this Plan to the contrary, the Board may, in its sole discretion, provide that the vesting of any or all Award Shares subject to vesting or a right of repurchase shall accelerate or lapse, as the case may be, upon a transaction described in this Section 10.3. If the Board exercises such discretion with respect to Options, such Options shall become exercisable in full prior to the consummation of such event at such time and on such conditions as the Board determines, and if such Options are not exercised prior to the consummation of the Fundamental Transaction, they shall terminate at such time as determined by the Board. The Board need not adopt the same rules for each Award or each Awardee. Subject to any greater rights granted to participants under the foregoing provisions of this Section 10.3, in the event of the occurrence of any Fundamental Transaction, any outstanding Awards shall be treated as provided in the applicable agreement or plan of merger, consolidation, dissolution, liquidation, or sale of assets.

10.4 Changes in Control. The Board may also, but need not, specify that other transactions or events constitute a "**Change in Control**". The Board may do that either before or after the transaction or event occurs. Examples of transactions or events that the Board may treat as Changes in Control are: (a) any person or entity, including a "group" as contemplated by Section 13(d)(3) of the Exchange Act, acquires securities holding 50% or more of the total combined voting power or value of the Company, or (b) as a result of or in connection with a contested election of Company Directors, the persons who were Company Directors immediately before the election cease to constitute a majority of the Board. In connection with a Change in Control, notwithstanding any other provision of this Plan, the Board may, but need not, take any one or more of the actions described in Section 10.3. In addition, the Board may extend the date for the exercise of Awards (but not beyond their original Expiration Date). The Board need not adopt the same rules for each Award or each Awardee.

10.5 Divestiture. If the Company or an Affiliate sells or otherwise transfers equity securities of an Affiliate to a person or entity other than the Company or an Affiliate, or leases, exchanges or transfers all or any portion of its assets to such a person or entity, then the Board may specify that such transaction or event constitutes a "**Divestiture**". In connection with a Divestiture, notwithstanding any other provision of this Plan, the Board may, but need not, take one or more of the actions described in Section 10.3 or 10.4 with respect to Awards or Award Shares held by, for example, Employees, Directors or Consultants for whom that transaction or event results in a Termination. The Board need not adopt the same rules for each Award or each Awardee.

10.6 Dissolution. If the Company adopts a plan of dissolution, the Board may cause Awards to be fully vested and exercisable (but not after their Expiration Date) before the dissolution is completed but contingent on its completion and may cause the Company's repurchase rights on Award Shares to lapse upon completion of the dissolution. The Board need not adopt the same rules for each Award or each Awardee. However, to the extent not exercised before the earlier of the completion of the dissolution, Awards shall terminate immediately prior to the dissolution.

11. Automatic Option Grants to Non-Employee Directors.

11.1 Automatic Option Grants to Non-Employee Directors.

(a) **Annual Grant.** On the date of the last regular meeting of directors during each calendar year each individual who is serving as a Non-Employee Director shall automatically be granted a Nonstatutory Option to purchase 15,000 Shares (the "**Annual Grant**"), provided, however, that such individual has served as a Non-Employee Director for at least six months.

(b) **Initial Grant.** Upon the first appointment or election of an individual as a Non-Employee Director, such individual shall automatically be granted a Nonstatutory Option to purchase 25,000 Shares (the "**Initial Grant**").

(c) **Exercise Price.**

(i) The Option Price shall be equal to one hundred percent (100%) of the Fair Market Value of the Shares on the Option grant date.

(ii) The Option Price shall be payable in one or more of the alternative forms authorized pursuant to Section 6.4. Except to the extent the sale and remittance procedure specified thereunder is utilized, payment of the Option Price must be made on the date of exercise.

(d) **Option Term.** Each Option shall have a term of ten (10) years measured from the Option grant date.

(e) **Exercise and Vesting of Options.** The Shares underlying each Option issued pursuant to each Initial Grant shall vest and be exercisable in a series of forty-eight (48) successive equal monthly installments at the end of each full month from the date of grant, for so long as the Non-Employee Director continuously remains a Director. The Shares underlying each Option issued pursuant to each Annual Grant shall vest and be exercisable in a series of twelve (12) successive equal monthly installments at the end of each full month from the date of grant, for so long as the Non-Employee Director continuously remains a Director.

(f) **Termination of Board Service.** The following provisions shall govern the exercise of any Options held by the Awardee at the time the Awardee ceases to serve as a Non-Employee Director:

(i) **In General.** Except as otherwise provided in Section 11.3, after cessation of service as a Director (the "Cessation Date"), the Awardee's Options shall be exercisable to the extent (but only to the extent) they are vested on the Cessation Date and only during the three months after such Cessation Date, but in no event after the Expiration Date. To the extent the Awardee does not exercise an Option within the time specified for exercise, the Option shall automatically terminate.

(ii) **Death or Disability.** If an Awardee's cessation of service on the Board is due to death or disability (as determined by the Board), all Non-Employee Director Options of that Awardee, whether or not exercisable upon such Cessation Date, may be exercised at any time on or prior to the Expiration Date. In the case of a cessation of service due to death, an Option may be exercised as provided in Section 17. In the case of a cessation of service due to disability, if a guardian or conservator has been appointed to act for the Awardee and been granted this authority as part of that appointment, that guardian or conservator may exercise the Option on behalf of the Awardee. Death or disability occurring after an Awardee's cessation of service shall not cause the cessation of service to be treated as having occurred due to death or disability. To the extent an Option is not so exercised within the time specified for its exercise, the Option shall automatically terminate.

11.2 Certain Transactions and Events.

(a) In the event of a Fundamental Transaction while the Awardee remains a Non-Employee Director, the Shares at the time subject to each outstanding Option held by such Awardee pursuant to Section 11, but not otherwise vested, shall automatically vest in full so that each such Option shall, immediately prior to the effective date of the Fundamental Transaction, become exercisable for all the Shares as fully vested Shares and may be exercised for any or all of those vested Shares. Immediately following the consummation of the Fundamental Transaction, each Option shall terminate and cease to be outstanding, except to the extent assumed by the successor corporation (or Affiliate thereof).

(b) In the event of a Change in Control while the Awardee remains a Non-Employee Director, the Shares at the time subject to each outstanding Option held by such Awardee pursuant to Section 11, but not otherwise vested, shall automatically vest in full so that each such

Option shall, immediately prior to the effective date of the Change in Control, become exercisable for all the Shares as fully vested Shares and may be exercised for any or all of those vested Shares. Each such Option shall remain exercisable for such fully vested Shares until the expiration or sooner termination of the Option term in connection with a Change in Control.

(c) Each Option which is assumed in connection with a Fundamental Transaction shall be appropriately adjusted, immediately after such Fundamental Transaction, to apply to the number and class of securities which would have been issuable to the Awardee in consummation of such Fundamental Transaction had the Option been exercised immediately prior to such Fundamental Transaction. Appropriate adjustments shall also be made to the Option Price payable per share under each outstanding Option, provided the aggregate Option Price payable for such securities shall remain the same.

(d) The grant of Options pursuant to Section 11 shall in no way affect the right of the Company to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

(e) The remaining terms of each Option granted pursuant to Section 11 shall, as applicable, be the same as terms in effect for Awards granted under this Plan. Notwithstanding the foregoing, the provisions of Section 9.4 and Section 10 shall not apply to Options granted pursuant to Section 11.

11.3 Limited Transferability of Options. Each Option granted pursuant to Section 11 may be assigned in whole or in part during the Awardee's lifetime to one or more members of the Awardee's family or to a trust established exclusively for one or more such family members or to an entity in which the Awardee is majority owner or to the Awardee's former spouse, to the extent such assignment is in connection with the Awardee's estate or financial plan or pursuant to a Domestic Relations Order. The assigned portion may only be exercised by the person or persons who acquire a proprietary interest in the Option pursuant to the assignment. The terms applicable to the assigned portion shall be the same as those in effect for the Option immediately prior to such assignment and shall be set forth in such documents issued to the assignee as the Administrator may deem appropriate. The Awardee may also designate one or more persons as the beneficiary or beneficiaries of his or her outstanding Options under Section 11, and those Options shall, in accordance with such designation, automatically be transferred to such beneficiary or beneficiaries upon the Awardee's death while holding those Options. Such beneficiary or beneficiaries shall take the transferred Options subject to all the terms and conditions of the applicable Award Agreement evidencing each such transferred Option, including without limitation, the limited time period during which the Option may be exercised following the Awardee's death.

12. Withholding and Tax Reporting

12.1 Tax Withholding Alternatives.

(a) **General.** Whenever Award Shares are issued or become free of restrictions, the Company may require the Awardee to remit to the Company an amount sufficient to satisfy any applicable tax withholding requirement, whether the related tax is imposed on the Awardee or the Company. The Company shall have no obligation to deliver Award Shares or release Award Shares from an escrow or permit a transfer of Award Shares until the Awardee has satisfied those tax withholding obligations.

(b) **Method of Payment.** The Awardee shall pay any required withholding using the forms of consideration described in Section 6.4(b), except that, in the discretion of the Administrator, the Company may also permit the Awardee to use any of the forms of payment described in Section 6.4(c). The Administrator, in its sole discretion, may also permit Award Shares to be

withheld to pay required withholding. If the Administrator permits Award Shares to be withheld, the Fair Market Value of the Award Shares withheld, as determined as of the date of withholding, shall not exceed the amount determined by the applicable minimum statutory withholding rates.

12.2 Reporting of Dispositions. Any holder of Option Shares acquired under an Incentive Stock Option shall promptly notify the Administrator, following such procedures as the Administrator may require, of the sale or other disposition of any of those Option Shares if the disposition occurs during: (a) the longer of two years after the Grant Date of the Incentive Stock Option and one year after the date the Incentive Stock Option was exercised, or (b) such other period as the Administrator has established.

13. Compliance with Law

The grant of Awards and the issuance and subsequent transfer of Award Shares shall be subject to compliance with all Applicable Law, including all applicable securities laws. Awards may not be exercised, and Award Shares may not be transferred, in violation of Applicable Law. Thus, for example, Awards may not be exercised unless: (a) a registration statement under the Securities Act is then in effect with respect to the related Award Shares, or (b) in the opinion of legal counsel to the Company, those Award Shares may be issued in accordance with an applicable exemption from the registration requirements of the Securities Act and any other applicable securities laws. The failure or inability of the Company to obtain from any regulatory body the authority considered by the Company's legal counsel to be necessary or useful for the lawful issuance of any Award Shares or their subsequent transfer shall relieve the Company of any liability for failing to issue those Award Shares or permitting their transfer. As a condition to the exercise of any Award or the transfer of any Award Shares, the Company may require the Awardee to satisfy any requirements or qualifications that may be necessary or appropriate to comply with or evidence compliance with any Applicable Law.

14. Amendment or Termination of this Plan or Outstanding Awards

14.1 Amendment and Termination. Subject to Section 14.2 and 14.3, the Board may at any time amend, suspend, or terminate this Plan.

14.2 Shareholder Approval. The Company shall obtain the approval of the Company's shareholders for any amendment to this Plan if shareholder approval is necessary or desirable to comply with any Applicable Law or with the requirements applicable to the grant of Awards intended to be Incentive Stock Options. The Board may also, but need not, require that the Company's shareholders approve any other amendments to this Plan.

14.3 Effect. No amendment, suspension, or termination of this Plan, and no modification of any Award even in the absence of an amendment, suspension, or termination of this Plan, shall impair any existing contractual rights of any Awardee unless the affected Awardee consents to the amendment, suspension, termination, or modification. However, no such consent shall be required if the Board determines, in its sole and absolute discretion, that the amendment, suspension, termination, or modification: (a) is required or advisable in order for the Company, this Plan or the Award to satisfy Applicable Law, to meet the requirements of any accounting standard or to avoid any adverse accounting treatment, or (b) in connection with any transaction or event described in Section 10, is in the best interests of the Company or its shareholders. The Board may, but need not, take the tax or accounting consequences to affected Awardees into consideration in acting under the preceding sentence. Those decisions shall be final, binding and conclusive. Termination of this Plan shall not affect the Administrator's ability to exercise the powers granted to it under this Plan with respect to (i) Awards granted before the termination of this Plan or (ii) Award Shares issued under such Awards even if those Award Shares are issued after the termination of this Plan.

15. Reserved Rights

15.1 Nonexclusivity of this Plan. This Plan shall not limit the power of the Company or any Affiliate to adopt other incentive arrangements including, for example, the grant or issuance of stock options, stock, or other equity-based rights under other plans.

15.2 Unfunded Plan. This Plan shall be unfunded. Although bookkeeping accounts may be established with respect to Awardees, any such accounts will be used merely as a convenience. The Company shall not be required to segregate any assets on account of this Plan, the grant of Awards, or the issuance of Award Shares. The Company and the Administrator shall not be deemed to be a trustee of stock or cash to be awarded under this Plan. Any obligations of the Company to any Awardee shall be based solely upon contracts entered into under this Plan, such as Award Agreements. No such obligations shall be deemed to be secured by any pledge or other encumbrance on any assets of the Company. Neither the Company nor the Administrator shall be required to give any security or bond for the performance of any such obligations.

16. Special Arrangements Regarding Award Shares

16.1 Escrow of Stock Certificates. To enforce any restrictions on Award Shares, the Administrator may require their holder to deposit the certificates representing Award Shares, with stock powers or other transfer instruments approved by the Administrator endorsed in blank, with the Company or an agent of the Company to hold in escrow until the restrictions have lapsed or terminated. The Administrator may also cause a legend or legends referencing the restrictions to be placed on the certificates. Any Awardee who delivers a promissory note as partial or full consideration for the purchase of Award Shares will be required to pledge and deposit with the Company some or all of the Award Shares as collateral to secure the payment of the note. However, the Administrator may require or accept other or additional forms of collateral to secure the note and, in any event, the Company will have full recourse against the maker of the note, notwithstanding any pledge or other collateral.

16.2 Repurchase Rights.

(a) **General.** If an Option is subject to Reverse Vesting or a Stock Award is subject to vesting conditions, the Company shall have the right, during the seven months after the Awardee's Termination, to repurchase any or all of the Award Shares that were unvested as of the date of that Termination. If the Award Shares were purchased with a promissory note, the repurchase price shall be the lower of: (a) the Purchase Price for the Award Shares (minus the amount of any cash dividends paid or payable with respect to the Award Shares for which the record date precedes the repurchase) and (b) the Fair Market Value at the date of Termination. In all other cases, the repurchase price shall be determined by the Administrator in accordance with this Section 16.2 which shall be either (i) the Purchase Price for the Award Shares (minus the amount of any cash dividends paid or payable with respect to the Award Shares for which the record date precedes the repurchase) or (ii) the lower of (A) the Option Price or Purchase Price for the Award Shares or (B) the Fair Market Value of those Award Shares as of the date of the Termination. The repurchase price shall be paid in cash or if the Award Shares were purchased in whole or in part with a promissory note, cancellation in whole or in part of indebtedness under that note, or a combination of those means. The Company may assign this right of repurchase.

(b) **Procedure.** The Company or its assignee may choose to give the Awardee a written notice of exercise of its repurchase rights under this Section 16.2. However, the Company's failure to give such a notice shall not affect its rights to repurchase Award Shares. The Company must, however, tender the repurchase price during the period specified in this Section 16.2 for exercising its repurchase rights in order to exercise such rights.

16.3 Market Standoff. If requested by the Company or a representative of its underwriters in connection with a registration of any securities of the Company under the Securities Act, Awardees or certain Awardees shall be prohibited from selling some or all of their Award Shares during a period not to exceed 180 days after the effective date of the Company's registration statement. This restriction shall not apply to any registration statement on Form S-8, Form S-4 or an equivalent registration statement.

17. Beneficiaries

An Awardee may file a written designation of one or more beneficiaries who are to receive the Awardee's rights under the Awardee's Awards after the Awardee's death. Such designation shall be accompanied by a signed acknowledgment from the Awardee's spouse, if any, consenting to such designation. An Awardee may change such a designation at any time by written notice. If an Awardee designates a beneficiary, the beneficiary may exercise the Awardee's Awards after the Awardee's death. If an Awardee dies when the Awardee has no living beneficiary designated under this Plan, the Company shall allow the executor or administrator of the Awardee's estate to exercise the Award or, if there is none, the person entitled to exercise the Option under the Awardee's will or the laws of descent and distribution. In any case, no Award may be exercised after its Expiration Date.

18. Miscellaneous

18.1 Governing Law. This Plan, the Award Agreements and all other agreements entered into under this Plan, and all actions taken under this Plan or in connection with Awards or Award Shares, shall be governed by the laws of the State of California.

18.2 Determination of Value. Fair Market Value shall be determined as follows:

(a) **Listed Stock.** If the Shares are traded on any established stock exchange or quoted on a national market system, Fair Market Value shall be the closing sales price for the Shares as quoted on that stock exchange or system for the date the value is to be determined (the "*Value Date*") as reported by such stock exchange or national market system, or, if not reported by such stock exchange or national market system, as reported in *The Wall Street Journal* or a similar publication. If no sales are reported as having occurred on the Value Date, Fair Market Value shall be that closing sales price for the last preceding trading day on which sales of Shares are reported as having occurred. If no sales are reported as having occurred during the five trading days before the Value Date, Fair Market Value shall be the closing bid for Shares on the Value Date. If Shares are listed on multiple exchanges or systems, Fair Market Value shall be based on sales or bid prices on the primary exchange or system on which Shares are traded or quoted.

(b) **Stock Quoted by Securities Dealer.** If Shares are regularly quoted by a recognized securities dealer but selling prices are not reported on any established stock exchange or quoted on a national market system, Fair Market Value shall be the mean between the high bid and low asked prices on the Value Date. If no prices are quoted for the Value Date, Fair Market Value shall be the mean between the high bid and low asked prices on the last preceding trading day on which any bid and asked prices were quoted.

(c) **No Established Market.** If Shares are not traded on any established stock exchange or quoted on a national market system and are not quoted by a recognized securities dealer, the Board or Committee will determine Fair Market Value in good faith. The Board or Committee will consider the following factors, and any others it considers significant, in determining Fair Market Value: (i) the price at which other securities of the Company have been issued to purchasers other than Employees, Directors, or Consultants, (ii) the Company's shareholder's equity, prospective earning power, dividend-paying capacity, and non-operating assets, if any, and (iii) any other relevant factors, including the economic outlook for the Company and the Company's industry, the

Company's position in that industry, the Company's goodwill and other intellectual property, and the values of securities of other businesses in the same industry.

18.3 Reservation of Shares. During the term of this Plan, the Company shall at all times reserve and keep available such number of Shares as are still issuable under this Plan.

18.4 Electronic Communications. Any Award Agreement, notice of exercise of an Award, or other document required or permitted by this Plan may be delivered in writing or, to the extent determined by the Administrator, electronically. Signatures may also be electronic if permitted by the Administrator.

18.5 Notices. Unless the Administrator specifies otherwise, any notice to the Company under any Award Agreement or with respect to any Awards or Award Shares shall be in writing (or, if so authorized by Section 18.4, communicated electronically), shall be addressed to the Company, and shall only be effective when received by the Company.

Adopted by the Board on: March 19, 2004

Approved by the shareholders on: May 27, 2004 and May 31, 2007

Effective date of this Plan: May 27, 2004

Amended by the Board on: March 23, 2006, March 22, 2007 and March 7, 2008

Depomed, Inc.

**Proxy Solicited by the Board of Directors
for the Annual Meeting of Shareholders
to be Held May 23, 2008**

The undersigned hereby appoints Carl A. Pelzel and Matthew M. Gosling, or any one of them with full power of substitution, proxies to vote at the Annual Meeting of Shareholders of Depomed, Inc. (the "Company") to be held on May 23, 2008 at 9:00 a.m., local time, and at any adjournment thereof, hereby revoking any proxies heretofore given, to vote all shares of common stock of the Company held or owned by the undersigned as directed on the reverse side of this proxy card, and in their discretion upon such other matters as may come before the meeting.

1. To elect as directors, to hold office until the next meeting of shareholders and until their successors are elected, the eight (8) nominees listed below:

NOMINEES: Craig R. Smith, M.D., G. Steven Burrill, Karen A. Dawes, Carl A. Pelzel, James A. Schoeneck, Peter D. Staple, Julian N. Stern, and David B. Zenoff, D.B.A.

- FOR
- WITHHELD
- _____
For all nominees except as noted above

2. To approve the amendment of the 2004 Equity Incentive Plan to increase the number of shares of common stock issuable under the plan by 1,750,000 shares.

- FOR
- AGAINST
- ABSTAIN

3. To ratify the appointment of Ernst & Young LLP as the independent registered public accounting firm of the Company for the fiscal year ending December 31, 2008.

- FOR
- AGAINST
- ABSTAIN

The Board recommends that you vote FOR the above proposals. This proxy, when properly executed, will be voted in the manner directed above. WHEN NO CHOICE IS INDICATED, THIS PROXY WILL BE VOTED FOR THE ABOVE PROPOSALS. This proxy may be revoked by the undersigned at any time, prior to the time it is voted by any of the means described in the accompanying proxy statement.

Signature(s) of Shareholder(s)

Date and sign exactly as name(s) appear(s) on this proxy. If signing for estates, trusts, corporations or other entities, title or capacity should be stated. If shares are held jointly, each holder should sign.

Date: _____, _____

**PLEASE COMPLETE, DATE AND SIGN THIS PROXY
AND RETURN IT PROMPTLY IN THE ENCLOSED ENVELOPE.**

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