

ZIOPHARM ONCOLOGY INC
Form DEF 14A
April 30, 2012

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549**

**SCHEDULE 14A
(Rule 14a-101)**

**INFORMATION REQUIRED IN PROXY STATEMENT
SCHEDULE 14A INFORMATION**

**Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934**

Filed by the Registrant
Filed by a Party other than the Registrant
Check the appropriate box:

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

ZIOPHARM Oncology, Inc.

(Name of Registrant as Specified in Its Charter)

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

Payment of Filing Fee (Check the appropriate box):

- No fee required.
 - Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.
- (1) Title of each class of securities to which transaction applies:

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

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

(4) Proposed maximum aggregate value of transaction:

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(1) Amount previously paid:

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

(3) Filing Party:

(4) Date Filed:

TABLE OF CONTENTS

**1180 Avenue of the Americas, 20th Floor
New York, New York 10036**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
To be Held on June 20, 2012**

To the stockholders of ZIOPHARM Oncology, Inc.:

Please take notice that the annual meeting of stockholders of ZIOPHARM Oncology, Inc. will be held, pursuant to due call by the board of directors, at the Grand Hyatt New York, 109 East 42nd Street at Grand Central Terminal, New York, New York, 10017, on Wednesday, June 20, 2012, at 7:30 a.m. Eastern time, or at any adjournment or adjournments thereof, for the purpose of considering and taking appropriate action with respect to the following:

1. To elect eight directors;
2. To adopt our 2012 Equity Incentive Plan;
3. To ratify the appointment of McGladrey & Pullen, LLP as our independent registered public accounting firm for 2012;
4. To approve, on an advisory basis, the compensation of our named executive officers as identified in the proxy statement for the annual meeting; and

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

Pursuant to action of the board of directors, stockholders of record on April 23, 2012 will be entitled to vote at the annual meeting or any adjournments thereof. Your attention is directed to the proxy statement accompanying this Notice for a more complete statement of the matters to be considered at the meeting. A copy of the Annual Report for the year ended December 31, 2011 also accompanies this Notice.

Whether or not you expect to attend the annual meeting, please complete, date, sign and return the enclosed proxy, or vote over the telephone or the internet as instructed in these materials, as promptly as possible in order to ensure your representation at the meeting. We have enclosed for your convenience a return envelope, which is postage prepaid if mailed in the United States. Even if you vote by proxy, you may still vote in person if you attend the meeting. If your shares are held of record by a broker, bank or other nominee and you wish to vote at the meeting, you must obtain a proxy issued in your name from the record holder.

By Order of the Board of Directors,

Richard Bagley
President, Chief Operating Officer and
Chief Financial Officer

New York, New York
April 30, 2012

Important Notice Regarding the Availability of Proxy Materials for Our Annual Meeting of Stockholders to be Held on June 20, 2012 at the Grand Hyatt New York, 109 East 42nd Street at Grand Central Terminal, New York, New York:

The proxy statement for the meeting and our 2011 Annual Report are available at

http://

www.amstock.com/ProxyServices/ViewMaterial.asp?CoNumber=14

TABLE OF CONTENTS

**PROXY STATEMENT
FOR
2012 ANNUAL MEETING OF STOCKHOLDERS**

Table of Contents

	Page
<u>QUESTIONS AND ANSWERS ABOUT THESE PROXY MATERIALS AND VOTING PROPOSALS</u>	1
<u>Proposal No. 1. Election of Directors</u>	5
<u>Proposal No. 2. Adoption of the 2012 Equity Incentive Plan</u>	11
<u>Proposal No. 3. Ratification of Appointment of Independent Registered Public Accounting Firm</u>	20
<u>Proposal No. 4. Advisory Vote on Executive Compensation</u>	21
<u>Other Matters</u>	22
<u>Stockholder Proposals for 2013 Annual Meeting</u>	22
<u>EXECUTIVE OFFICERS</u>	23
<u>EXECUTIVE COMPENSATION</u>	24
<u>Executive Compensation Tables</u>	24
<u>Compensation Discussion and Analysis</u>	27
<u>Employment and Change in Control Agreements</u>	39
<u>INFORMATION REGARDING THE BOARD OF DIRECTORS AND CORPORATE GOVERNANCE</u>	48
<u>Independence of the Board of Directors</u>	48
<u>Board Leadership Structure</u>	48
<u>Director Attendance at Board and Stockholder Meetings</u>	48
<u>Board Committees</u>	48
<u>Director Nomination Process</u>	50
<u>Risk Management and Oversight</u>	51
<u>Communicating with Directors</u>	51
<u>Compensation Committee Interlocks and Insider Participation</u>	51
<u>Code of Ethics and Business Conduct</u>	52
<u>Audit Committee Report</u>	52
<u>Compensation Committee Report</u>	53
<u>DIRECTOR COMPENSATION</u>	54
<u>Compensatory Arrangements with Outside Directors</u>	54
<u>2011 Non-Employee Director Compensation</u>	54
<u>LIMITATION OF LIABILITY AND INDEMNIFICATION</u>	56
<u>CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS</u>	57
<u>Related-Party Transaction Policy</u>	57
<u>Certain Related-Party Transactions</u>	58
<u>Employment and Indemnification Agreements</u>	59
<u>STOCK OWNERSHIP</u>	60
<u>Directors, Officers and Principal Stockholders</u>	60

<u>Section 16(a) Beneficial Ownership Reporting Compliance</u>	<u>61</u>
<u>INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FEES AND OTHER MATTERS</u>	<u>62</u>
<u>Audit and Related Fees</u>	<u>62</u>
<u>Audit Committee Pre-Approval Policy and Procedures</u>	<u>62</u>
<u>Changes in Certifying Accountant</u>	<u>62</u>
<u>HOUSEHOLDING OF PROXY MATERIALS</u>	<u>63</u>
<u>OTHER MATTERS</u>	<u>63</u>

APPENDIX A

2012 EQUITY INCENTIVE PLAN

i

TABLE OF CONTENTS

QUESTIONS AND ANSWERS ABOUT THESE PROXY MATERIALS AND VOTING

Why am I receiving these materials?

We have sent you these proxy materials because the board of directors of ZIOPHARM Oncology, Inc. is soliciting your proxy to vote at the 2012 Annual Meeting of Stockholders, including at any adjournments or postponements of the meeting. You are invited to attend the annual meeting to vote on the proposals described in this proxy statement.

You do not, however, need to attend the meeting to vote your shares. Instead, you may simply complete, sign and return the enclosed proxy card, or follow the instructions below to submit your proxy over the telephone or through the internet.

We intend to mail these proxy materials on or about May 4, 2012 to all stockholders of record entitled to vote at the annual meeting.

How do I attend the annual meeting?

The meeting will be held on Wednesday, June 20, 2012, at 7:30 a.m., Eastern time, at the Grand Hyatt New York, 109 East 42nd Street at Grand Central Terminal, New York, New York, 10017. Directions to the meeting location are available at the website of the Grand Hyatt New York at <http://grandnewyork.hyatt.com>. The Grand Hyatt New York website and the information contained therein are not incorporated into this proxy statement. Information on how to vote in person at the annual meeting is discussed below.

Who can vote at the annual meeting?

Only stockholders of record at the close of business on April 23, 2012, which we refer to as the Record Date, will be entitled to vote at the annual meeting. On the Record Date, there were 79,522,502 shares of common stock outstanding and entitled to vote.

Stockholder of Record - Shares Registered in Your Name: If on April 23, 2012 your shares were registered directly in your name with our transfer agent, American Stock Transfer & Trust Company, LLC, then you are a stockholder of record. As a stockholder of record, you may vote in person at the meeting or vote by proxy. Whether or not you plan to attend the meeting, we urge you to fill out and return the enclosed proxy card, or vote by proxy over the telephone or on the internet as instructed below, to ensure your vote is counted.

Beneficial Owner - Shares Registered in the Name of a Broker or Bank: If on April 23, 2012 your shares were not registered in your name, but instead are held in an account at a brokerage firm, bank, dealer or similar organization, then you are the beneficial owner of shares held in street name and these proxy materials are being forwarded to you by that organization. The organization holding your account is considered to be the stockholder of record for purposes of voting at the annual meeting. As a beneficial owner, you have the right to direct your broker or other agent regarding how to vote the shares in your account. You are also invited to attend the annual meeting. Since you are not the stockholder of record, however, you may not vote your shares in person at the meeting unless you request and obtain a valid proxy from your broker or other agent.

What am I voting on?

There are four matters scheduled for a vote:

1. Election of eight directors;
2. Adoption of our 2012 Equity Incentive Plan;
3. Ratification of the appointment of McGladrey & Pullen, LLP as our independent registered public accounting firm for 2012; and
4. Approval, on an advisory basis, of the compensation of our named executive officers as identified in this proxy statement.

What if another matter is properly brought before the meeting?

The board of directors knows of no other matters that will be presented for consideration at the annual meeting. If any other matters are properly brought before the meeting, it is the intention of the persons named in the accompanying proxy to vote on those matters in accordance with their best judgment.

TABLE OF CONTENTS

How do I vote?

With respect to Proposal No. 1, you may vote For all the nominees to the board of directors or you may Withhold your vote for any of the nominees you specify. With respect to Proposal No. 2, Proposal No. 3 and Proposal No. 4, you may vote For or Against, or you may abstain from voting.

We provide internet proxy voting to allow you to vote your shares online, with procedures designed to ensure the authenticity and correctness of your proxy vote instructions. Please be aware, however, that you must bear any costs associated with your internet access, such as usage charges from internet access providers and telephone companies.

Stockholder of Record Shares Registered in Your Name: If you are a stockholder of record, you may vote in person at the annual meeting, vote by proxy using the enclosed proxy card, vote by proxy over the telephone, or vote by proxy through the internet. Whether or not you plan to attend the meeting, we urge you to vote by proxy to ensure your vote is counted. You may still attend the meeting and vote in person even if you have already voted by proxy.

To vote in person, come to the annual meeting and we will give you a ballot when you arrive.

To vote using the proxy card, simply complete, sign and date the enclosed proxy card and return it promptly in the envelope provided. If you return your signed proxy card to us before the annual meeting, we will vote your shares as you direct.

To vote over the telephone from a location in the United States, dial toll-free 1-800-PROXIES (1-800-776-9437), or from a location outside the United States, dial toll-free 1-718-921-8500, using a touch-tone phone and follow the recorded instructions. You will be asked to provide the company number and control number from the enclosed proxy card. Your vote must be received by 11:59 p.m., Eastern time, on June 19, 2012 to be counted.

To vote through the internet, go to www.voteproxy.com to complete an electronic proxy card. You will be asked to provide the company number and account number from the enclosed proxy card. Your vote must be received by 11:59 p.m., Eastern time, on June 19, 2012 to be counted.

Beneficial Owner Shares Registered in the Name of a Broker or Bank: If you are a beneficial owner of shares registered in the name of your broker, bank, or other agent, you should have received a proxy card and voting instructions with these proxy materials from that organization rather than from us. Simply complete and mail the proxy card to ensure that your vote is counted. Alternatively, you may vote by telephone or over the internet as instructed by your broker or bank. To vote in person at the annual meeting, you must obtain a valid proxy from your broker, bank, or other agent. Follow the instructions from your broker or bank included with these proxy materials, or contact your broker or bank to request a proxy form.

How many votes do I have?

On each matter to be voted upon, you have one vote for each share of common stock you own as of April 23, 2012.

What if I return a proxy card or otherwise vote but do not make specific choices?

If you return a signed and dated proxy card or otherwise vote without marking voting selections, your shares will be voted, as applicable, For the election of all nominees for director, For the approval of our 2012 Equity Incentive Plan, For ratification of McGladrey & Pullen, LLP as our independent registered public accounting firm for 2012 and For the approval, on an advisory basis, of the compensation of our named executive officers as identified in this proxy statement. If any other matter is properly presented at the meeting, your proxyholder (one of the individuals named on

What if another matter is properly brought before the meeting?

your proxy card) will vote your shares using his best judgment.

2

TABLE OF CONTENTS

Who is paying for this proxy solicitation?

We will pay for the entire cost of soliciting proxies. In addition to these proxy materials, our directors and employees may also solicit proxies in person, by telephone, or by other means of communication. Directors and employees will not be paid any additional compensation for soliciting proxies. We may also reimburse brokerage firms, banks and other agents for the cost of forwarding proxy materials to beneficial owners.

What does it mean if I receive more than one set of proxy materials?

If you receive more than one set of proxy materials, your shares may be registered in more than one name or in different accounts. Please follow the voting instructions on the proxy cards in the proxy materials to ensure that all of your shares are voted.

Can I change my vote after submitting my proxy?

Yes. You can revoke your proxy at any time before the final vote at the meeting. If you are the record holder of your shares, you may revoke your proxy in any one of the following ways:

You may submit another properly completed proxy card with a later date.

You may grant a subsequent proxy by telephone or through the internet.

You may send a timely written notice that you are revoking your proxy to our Secretary at our principal executive offices at 1180 Avenue of the Americas, 20th Floor, New York, New York 10036.

You may attend the annual meeting and vote in person. Simply attending the meeting will not, by itself, revoke your proxy.

Your most current proxy card or telephone or internet proxy is the one that is counted.

If your shares are held by your broker or bank as a nominee or agent, you should follow the instructions provided by your broker or bank.

How are votes counted?

Votes will be counted by the inspector of election appointed for the meeting, who will separately count For and Withhold and, with respect to proposals other than the election of directors, Against votes, abstentions and broker non-votes. Abstentions will be counted towards the vote total for each proposal, and will have the same effect as Against votes. Broker non-votes have no effect and will not be counted towards the vote total for any proposal.

What are broker non-votes ?

Broker non-votes occur when a beneficial owner of shares held in street name does not give instructions to the broker or nominee holding the shares as to how to vote on matters deemed non-routine. Generally, if shares are held in street name, the beneficial owner of the shares is entitled to give voting instructions to the broker or nominee holding the shares. If the beneficial owner does not provide voting instructions, the broker or nominee can still vote the shares with respect to matters that are considered to be routine, but not with respect to non-routine matters.

Which ballot measures are considered routine or non-routine ?

The ratification of the appointment of McGladrey & Pullen, LLP as our independent registered public accounting firm for 2012 (Proposal Three) is a matter considered routine under applicable rules. A broker or other nominee may generally vote on routine matters, and therefore no broker non-votes are expected to exist in connection with Proposal Three.

The election of directors (Proposal One), the adoption of our 2012 Equity Incentive Plan (Proposal Two), the approval, on an advisory basis, of the compensation of our named executive officers (Proposal Four) are matters considered non-routine under applicable rules. A broker or other nominee cannot vote without instructions on non-routine matters, and therefore there may be broker non-votes on Proposals One, Two and Four.

3

TABLE OF CONTENTS

How many votes are needed to approve each proposal?

To be approved, Proposal No. 1, which relates to the election of directors, the eight nominees receiving the most For votes (from the holders of votes of shares present in person or represented by proxy and entitled to vote on the election of directors) will be elected. Only votes For or Withheld will affect the outcome.

To be approved, Proposal No. 2, which relates to the adoption of our 2012 Equity Incentive Plan, must receive For votes from the holders of a majority of shares present in person or represented by proxy and entitled to vote at the meeting. If you Abstain from voting, it will have the same effect as an Against vote. Broker non-votes will have no effect.

To be approved, Proposal No. 3, which relates to the ratification of McGladrey & Pullen, LLP as our independent registered public accounting firm for 2012, must receive For votes from the holders of a majority of shares present in person or represented by proxy and entitled to vote at the meeting. If you Abstain from voting, it will have the same effect as an Against vote. Broker non-votes will have no effect.

To be approved, Proposal No. 4, which relates to the approval, on an advisory basis, of the compensation of our named executive officers, must receive For votes from the holders of a majority of shares present in person or represented by proxy and entitled to vote at the meeting. If you Abstain from voting, it will have the same effect as an Against vote. Broker non-votes will have no effect.

What is the quorum requirement?

A quorum of stockholders is necessary to hold a valid meeting. A quorum will be present if stockholders holding at least a majority of the outstanding shares entitled to vote are present at the meeting in person or represented by proxy.

Your shares will be counted towards the quorum only if you submit a valid proxy (or one is submitted on your behalf by your broker, bank or other nominee) or if you vote in person at the meeting. Abstentions and broker non-votes will be counted towards the quorum requirement. If there is no quorum, the holders of a majority of shares present at the meeting in person or represented by proxy may adjourn the meeting to another date.

How can I find out the results of the voting at the annual meeting?

Preliminary voting results will be announced at the annual meeting. Final voting results will be filed on a current report on Form 8-K on or before June 26, 2012.

What proxy materials are available on the internet?

The notice, proxy statement and our 2011 Annual Report are available at <http://www.amstock.com/ProxyServices/ViewMaterial.asp?CoNumber=14373>.

A copy of our 2011 Annual Report (including a copy of our annual report on Form 10-K for the fiscal year ended December 31, 2011, as filed with the SEC) is being furnished concurrently herewith. A stockholder may submit a written request for an additional copy of the 2011 Annual Report to ZIOPHARM Oncology, Inc., One First Avenue, Building 34, Navy Yard Plaza, Boston, Massachusetts 02129, Attention: Secretary or may contact

our Secretary at (617) 259-1970.

4

TABLE OF CONTENTS

PROPOSALS

Proposal No. 1. Election of Directors

Our board of directors currently consists of the eight directors identified below, each of whom was previously elected by the stockholders. If re-elected, each nominee has consented to serve as one of our directors, to hold office until the next annual meeting of stockholders, until his or her successor is elected and shall have qualified, or until his or her earlier death, resignation or removal. If any director nominee should withdraw or otherwise become unavailable to serve, the proxies which would have otherwise been voted for that director nominee may be voted for a substitute director nominee selected by our board. We are not aware of any reason that a nominee will be unable or unwilling to serve as a director.

Vacancies on the board may be filled only by persons elected by a majority of the remaining directors or may be elected by a plurality of the votes cast. A director elected by the board to fill a vacancy, including vacancies created by an increase in the number of directors, shall serve for the remainder of the full term or until the director's successor is duly elected and qualified.

Our nominating and corporate governance committee seeks to assemble a board that, as a whole, possesses the appropriate balance of professional and industry knowledge, financial expertise and management experience necessary to oversee and direct our business. To that end, the nominating and corporate governance committee has evaluated the board's current members in the broader context of the board's overall composition. The nominating and corporate governance committee maintains a goal of recruiting members who complement and strengthen the skills of other members and who also exhibit integrity, collegiality, sound business judgment and other qualities that the nominating and corporate governance committee views as critical to effective functioning of the board.

The following table contains biographical information, as of the date of this proxy statement, together with information about the specific and particular experience, qualifications, attributes or skills of each nominee for director that led the nominating and corporate governance committee to believe that the nominee should continue to serve on the board.

Jonathan Lewis, M.D., Ph.D.

Dr. Lewis is our Chief Executive Officer and one of our directors, serving in these capacities since our September 2005 acquisition of ZIOPHARM, Inc. Dr. Lewis previously served as Chief Executive Officer and a director of ZIOPHARM, Inc. since January 2004. He served as Chief Medical Officer and Chairman of the Medical Board at Antigenics, Inc. from June 2000 until November 2003. From July 1994 until June 2001, Dr. Lewis served as Professor of Surgery and Medicine at Memorial Sloan-Kettering Cancer Center. He has been actively involved in leading translational and clinical research in cancer, and is widely recognized by patient advocacy groups. He has received numerous honors and awards in medicine and science, including the American Society of Clinical Oncology young investigator award, the Yale University Ohse award, and the Royal College of Surgeons Trubshaw Medal. He serves as a director on the board of directors of the Police Organization Providing Peer Assistance of the New York City

Police Department, the Medical Advisory Board of the Sarcoma Foundation of America and as Chairman of the board of directors of the Hope Funds for Cancer Research. Dr. Lewis previously served as a director of Delcath Systems, Inc., a development stage, specialty pharmaceutical and medical device company focused on oncology, from June 2007 to December 2008. Dr. Lewis holds a MB.B.Ch. from Witwatersrand University School of Medicine (Johannesburg, South Africa) and a Ph.D. in molecular biology from Witwatersrand and Yale University School of Medicine. Dr. Lewis is 53 years old.

TABLE OF CONTENTS

Richard E. Bagley

The board believes that Dr. Lewis, in addition to Mr. Bagley, is an appropriate person to represent management on the board given his position as our principal executive officer, his tenure with us, which dates back to our inception, his professional credentials, his standing in the medical community and his clinical research experience. Mr. Bagley is our President, Chief Operating Officer, Chief Financial Officer, Treasurer and one of our directors, serving in these capacities since our September 2005 acquisition of ZIOPHARM, Inc. Mr. Bagley previously served ZIOPHARM, Inc. as its President and Chief Operating Officer since July 2004, and as a director since December 2004 and as Chief Financial Officer and Treasurer since March 2005. Mr. Bagley initiated a career in pharmaceuticals in 1968 with Smith Kline and French Laboratories, leaving in 1985 after launching Tagamet in the United States as Vice President for Product Management and serving as President in the over-the-counter/consumer group. From 1985 to 1990, Mr. Bagley served in several capacities at Squibb Corporation including as President of E. R. Squibb & Sons, U.S. in 1988 and 1989. He subsequently worked in the biotechnology industry as Chief Executive Officer and President and as a director of ImmuLogic Pharmaceutical Corporation from 1990 to 1994, as Chief Executive Officer and Chairman and as a director of ProScript, Inc. from 1994 to 1998, as President and Chief Executive Officer and as a director of AltaRex Corp. from 1998 to May 2003, and thereafter as a part time consultant and senior advisor. Mr. Bagley holds a B.S. in Biology from Trinity College and a MAT degree in biological sciences from the Harvard School of Education. Mr. Bagley is 68 years old.

Murray Brennan, M.D.

In addition to Dr. Lewis, the board believes that Mr. Bagley, as our President, Chief Operating Officer and Chief Financial Officer, is an appropriate person to represent management on the board given his positions and role with us, his tenure with us, which dates back to our inception, and his extensive experience with pharmaceutical development in an executive capacity.

Dr. Brennan, who currently serves as the board's non-executive Lead Director, has been one of our directors since our September 2005 acquisition of ZIOPHARM, Inc. and previously served as a director of ZIOPHARM, Inc. since December 2004. Dr. Brennan is Emeritus Chairman of Memorial Sloan-Kettering's Department of Surgery and previously served as its Chairman from 1985 to 2007. Dr. Brennan is the Benno C. Schmidt Chair in Clinical Oncology at the Memorial Sloan Kettering Cancer Center, continues to operate at this institution and currently serves as its Vice President for International Programs. Dr. Brennan also is a member of the Institute of Medicine of The National Academy of Sciences. He actively lectures at major institutions throughout the world and has authored or co-authored more than 1000 scientific papers. He previously served as a director of the American Board of Surgery, Chairman of the American College of Surgeons Commission on Cancer, President of the Society of Surgical Oncology,

President of the American Surgical Association, President of the Society of Clinical Surgery and Vice President of the American College of Surgeons. He is the recipient of numerous honors, honorary degrees and fellowships for his leadership role in surgery and oncology worldwide. Dr. Brennan serves as a director on the board of directors of Quality

TABLE OF CONTENTS

Systems, Inc., a medical information company, and as a member of its compensation committee. He also serves on the board of directors of the de Beaumont Foundation, a charitable foundation designed to support public health in the United States and elsewhere. Dr. Brennan is 72 years old.

Dr. Brennan's credentials and standing in the medical community worldwide, and the oncology community specifically, along with the leadership roles in which he has served at various esteemed organizations, provides experience and credibility that the board believes make him well suited to serve on the board and as its non-executive Lead Director.

James A. Cannon

James (Jim) Cannon has been one of our directors since our September 2005 acquisition of ZIOPHARM, Inc. and previously served as a director of ZIOPHARM, Inc. since December 2004. Mr. Cannon is currently Vice Chairman, Chief Financial Officer and a member of the board of directors of BBDO Worldwide, an advertising agency. In these capacities, he oversees the financial management of BBDO operations in 77 countries. Jim joined BBDO in 1967, was promoted to Chief Financial Officer of the agency in 1984, and was elected to its board of directors one year later. An integral member of the team that formed Omnicom via a unique three-agency merger of BBDO, DDB and Needham Harper & Steers, Jim became Comptroller of the new group (NYSE: OMC) and a member of its board of directors in 1986, a position he held through 2002. In 1987, he was appointed Director of Financial Operations of the Omnicom Group, serving in this capacity until early 1989 when he rejoined BBDO Worldwide as Executive Vice President and Chief Financial Officer. His return was concurrent with that of Allen Rosenshine who became Chairman and Chief Executive officer of BBDO after heading Omnicom. Jim was promoted to Vice Chairman of the agency in 1990. Mr. Cannon is a graduate of Pace University and served in the U.S. Marine Corps. Mr. Cannon is 73 years old.

Senator Wyche Fowler, Jr.

The board believes that Mr. Cannon is qualified to serve as one of our directors based on his financial skills and overall business judgment. In addition, the role played by Mr. Cannon at BBDO, where he oversees the financial management of that company's international operations, uniquely qualifies him to serve as Chair of the audit committee.

Senator Wyche Fowler, Jr. has been one of our directors since our September 2005 acquisition of ZIOPHARM, Inc. and previously served as a director of ZIOPHARM, Inc. since December 2004. Senator Fowler served for 16 years in the United States Congress representing the state of Georgia, from April 1977 to January 1993. In the U.S. Senate he served as assistant floor leader, helping mold a bipartisan consensus for major public policy issues. Senator Fowler was a member of the U.S. Senate Appropriations, Budget, Energy and Agriculture Committees. First elected to the U.S. House of Representatives, he was a member of the Ways and Means and Foreign Affairs Committees, as well as the

Select Committee on Intelligence. Following his service in the United States Congress, Senator Fowler served as U.S. Ambassador to the Kingdom of Saudi Arabia from 1996 through 2001. On his return, the FBI awarded him its highest civilian honor, The Jefferson Cup, for his assistance in combating terrorism and for helping solve terrorism crimes against the U.S. military in Saudi Arabia. He was named Lion of Judah by the State of Israel for successfully freeing Soviet Jew Yakov Gluzman. Senator Fowler is

7

TABLE OF CONTENTS

currently engaged in an international business and law practice, and serves as Chairman of the board emeritus of the Middle East Institute, a non-profit foundation in Washington, DC. Senator Fowler also serves on the board of directors of Shubert Theaters, the Shubert Foundation, Brandywine Realty Trust and Keryx Biopharmaceuticals, Inc., a biopharmaceutical company. Senator Fowler holds an A.B. in English from Davidson College and a J.D. from Emory University School of Law. Senator Fowler is 71 years old.

Senator Fowler's background and experience in the United States Congress, and the leadership qualities exemplified during and since his tenure in Congress, are attributes that the board believes benefit our overall board operations. In addition, his international business and law experience qualify him to serve on the board.

Randal J. Kirk has been one of our directors since January 2011. Mr. Kirk is the Senior Managing Director and Chief Executive Officer of Third Security, LLC, an investment management firm founded by Mr. Kirk. Additionally, Mr. Kirk founded and became Chairman of the board of directors of New River Pharmaceuticals Inc. (previously traded on NASDAQ prior to its acquisition by Shire plc in 2007), in 1996, and was President and Chief Executive Officer between October 2001 and April 2007. Mr. Kirk began his professional career in the private practice of law. Previously, Mr. Kirk served as a member of the board of directors of Scios, Inc. (previously traded on NASDAQ prior to its acquisition by Johnson & Johnson), between February 2000 and May 2002, and as a member of the board of directors of Clinical Data, Inc. (previously traded on NASDAQ Stock Market prior to its acquisition by Forest Laboratories, Inc. in April 2011) from September 2002 to April 2011, and was Chairman of the board of directors from December 2004 to April 2011. Mr. Kirk currently serves in a number of additional capacities, including as a member of the board of directors of Halozyme Therapeutics, Inc. (NASDAQ: HALO), since May 2007; as Chairman of the board of directors of Intrexon Corporation since February 2008 and Chief Executive Officer since April 2009; and as Chairman of the board of directors of Cyntellect, Inc. since September 2008. Mr. Kirk served on the Board of Visitors of Radford University from July 2003 to June 2009, was Rector of the board from September 2006 to September 2008, and has served on the board of directors of the Radford University Foundation, Inc. since September 1998. He has served on the Board of Visitors of the University of Virginia and Affiliated Schools since July 2009, on the Virginia Advisory Council on Revenue Estimates since July 2006, on the Governor's Economic Development and Jobs Creation Commission since April 2010, and served as a member of the board of directors of the Virginia University Research Partnership from July 2007 to November 2010. Mr. Kirk received a B.A. in business from Radford University and a J.D. from the University of Virginia. Mr. Kirk is 58 years old.

Randal J. Kirk

Mr. Kirk's extensive experience and record of achievement as an entrepreneur, investor, top executive and board member of numerous leading pharmaceutical and other health care companies qualifies him to serve on the board. Although we do not believe that share ownership qualifies any person to serve as one of our directors, we also believe that Mr. Kirk's direct and indirect ownership of our common stock

8

TABLE OF CONTENTS

(approximately 14.2% beneficial ownership as of the Record Date) aligns his interests with those of our stockholders and drives the board's focus on maximizing stockholder value.

Timothy McInerney

Timothy McInerney has been one of our directors since our September 2005 acquisition of ZIOPHARM, Inc. and previously served as a director of ZIOPHARM, Inc. since July 2005. In June of 2007, Mr. McInerney joined Riverbank Capital, which specializes in financing for the biotech and specialty pharmaceutical industry, as a Partner. From 1992 to March 2007, Mr. McInerney was a Managing Director of Paramount BioCapital, Inc. where he oversaw the overall distribution of Paramount's private equity product. Prior to 1992, Mr. McInerney was a research analyst focusing on the biotechnology industry at Ladenburg, Thalman & Co. Prior to that, Mr. McInerney held equity sales positions at Bear Sterns & Co. and Shearson Lehman Brothers, Inc. Mr. McInerney also worked in sales and marketing for Bristol-Myers Squibb. He received his B.S. in pharmacy from St. John's University at New York. He also completed a post-graduate residency at the New York University Medical Center in drug information systems. Mr. McInerney currently serves as Chairman of the board of directors of Insite Vision Inc., an ophthalmologic product development company, Emisphere Technologies, Inc., a biopharmaceutical company, and Edgemont Pharmaceuticals, LLC, a pharmaceutical company, and previously served on the board of directors of Manhattan Pharmaceuticals, Inc. a biopharmaceutical company. Mr. McInerney is 51 years old.

Mr. McInerney's experiences with investment banking firms that have specialized in forming and raising capital for pharmaceutical development companies makes him uniquely qualified to serve on the board. We have benefitted and continue to benefit from the various contacts that Mr. McInerney has in the investment community and his involvement with other biotechnology companies provides valuable context to board discussions.

Michael Weiser, M.D., Ph.D.

Dr. Weiser has been one of our directors since our September 2005 acquisition of ZIOPHARM, Inc. and previously served as a director of ZIOPHARM, Inc. since its inception in September 2003. Dr. Weiser is currently founder and co-chairman of Actin Biomed, a New York-based healthcare investment firm advancing the discovery and development of novel treatments for unmet medical needs. Prior to joining Actin Biomed in December 2006, Dr. Weiser was the Director of Research at Paramount BioCapital where he was responsible for the scientific, medical and financial evaluation of biomedical technologies and pharmaceutical products under consideration for development. In addition, Dr. Weiser has received awards for both academic and professional excellence and is published extensively in both medical and scientific journals. Dr. Weiser is a member of The National Medical Honor Society, Alpha Omega Alpha, American Society of Clinical Oncology, American Society of Hematology and Association for

Research in Vision and Ophthalmology. Dr. Weiser currently serves on the board of directors of Chelsea Therapeutics International and Emisphere Technologies, Inc., both biopharmaceutical companies, as well as on the board of directors of several privately held companies. Dr. Weiser previously served as a director of Hana Biosciences, Inc., Manhattan Pharmaceuticals, Inc. and Vioquest Pharmaceuticals, Inc. Dr. Weiser completed his Ph.D. in

9

TABLE OF CONTENTS

Molecular Neurobiology at Cornell University Medical College and received his M.D. from New York University School of Medicine. He performed his post-graduate medical training in the Department of Obstetrics and Gynecology at New York University Medical Center. Dr. Weiser also completed a Postdoctoral Fellowship in the Department of Physiology and Neuroscience at New York University School of Medicine and received his B.A. in Psychology from University of Vermont. Dr. Weiser is 49 years old.

Dr. Weiser's medical education and background coupled with his experiences as co-chairman of a healthcare investment firm and former Director of Research for a biotechnology investment banking firm, provide him with a unique background and skill set that have added and continue to add value to the board. In addition, Dr. Weiser's service on the boards of directors of various public biotechnology companies and his knowledge of compensation trends also makes him well suited to serve as a member of the compensation committee.

None of the director nominees is related by blood, marriage or adoption to any of our other director nominees or executive officers. Mr. Randal J. Kirk, as a designee of Intrexon Corporation, or Intrexon, has been nominated and recommended for re-election at the annual meeting in accordance with a Stock Purchase Agreement dated January 6, 2011 between us and Intrexon. Pursuant to that agreement, we agreed that at each stockholders' meeting at which directors are to be elected, we will nominate and recommend for election to the board an individual designated by Intrexon, provided that the board determines that he or she is a suitable candidate. We further agreed that if Intrexon's designee is not elected to the board by our stockholders, then, at Intrexon's election, such designee will be entitled to attend all board and committee meetings as an observer subject to certain conditions and limitations. Other than Mr. Kirk, no other the director nominee is party to an arrangement or understanding with any person pursuant to which the nominee is to be selected or nominated for election as a director.

Vote Required

Directors are elected by a plurality of the votes of the holders of shares present in person or represented by proxy and entitled to vote on the election of directors. The eight nominees receiving the highest number of affirmative votes will be elected. Shares represented by executed proxies will be voted, if authority to do so is not withheld, for the election of the eight nominees named above. If you do not vote for a particular nominee, or you withhold authority for one or all nominees, your vote will not count either for or against the nominee, although it will be counted for purposes of determining whether there is a quorum.

The board recommends that you vote FOR the election of each named nominee.

TABLE OF CONTENTS

Proposal No. 2. Adoption of the 2012 Equity Incentive Plan

The ZIOPHARM Oncology, Inc. 2012 Equity Incentive Plan, or the 2012 Equity Plan, was adopted by the board of directors on March 7, 2012, subject to stockholder approval. The 2012 Equity Plan is a new equity incentive plan that is separate from the ZIOPHARM Oncology, Inc. Amended and Restated 2003 Stock Option Plan, which we refer to as the 2003 Stock Option Plan.

If this proposal is approved by our stockholders, the 2012 Equity Plan will become effective upon the date of the annual meeting, and no additional stock awards will be granted under the 2003 Stock Option Plan (although all outstanding stock awards granted under the 2003 Stock Option Plan will continue to be subject to the terms and conditions as set forth in the agreements evidencing such stock awards and the terms of the 2003 Stock Option Plan). In the event that our stockholders do not approve this proposal, the 2012 Equity Plan will not become effective and the 2003 Stock Option Plan will continue in its current form.

The approval of the 2012 Equity Plan will allow us to continue to grant stock options and other awards at levels determined appropriate by our board of directors. The 2012 Equity Plan will also allow us to utilize a broad array of equity incentives and performance cash incentives in order to secure and retain the services of our employees, consultants and directors, and to provide long term incentives that align the interests of our employees, directors and consultants with the interests of our stockholders.

Approval of the 2012 Equity Plan by our stockholders will also constitute approval of terms and conditions set forth therein that will permit us to grant stock options and performance awards under the 2012 Equity Plan that may qualify as performance-based compensation within the meaning of Section 162(m) of the Internal Revenue Code of 1986, as amended, or the Code. Section 162(m) of the Code denies a deduction to any publicly held corporation and its affiliates for certain compensation paid to covered employees in a taxable year to the extent that compensation to a covered employee exceeds \$1 million. However, some kinds of compensation, including qualified performance-based compensation, are not subject to this deduction limitation, and we believe it is in our best interests and the best interests of our stockholders to preserve the ability to grant performance-based compensation under Section 162(m) of the Code. For the grant of awards under a plan to qualify as performance-based compensation under Section 162(m) of the Code, the plan must, among other things, (i) describe the employees eligible to receive such awards, (ii) provide a per-person limit on the number of shares subject to stock options and performance stock awards, and the amount of cash that may be subject to performance cash awards, granted to any employee under the plan in any year and (iii) include one or more pre-established business criteria upon which the performance goals for performance awards may be granted (or become vested or exercisable). These terms must be approved by the stockholders and, accordingly, our stockholders are requested to approve the 2012 Equity Plan, which includes terms regarding eligibility for awards, per-person limits on awards and the business criteria for performance awards granted under the 2012 Equity Plan (as described in the summary below).

Description of the 2012 Equity Incentive Plan

The material features of the 2012 Equity Plan are outlined below. This summary is qualified in its entirety by reference to the complete text of the 2012 Equity Plan, which is appended to this proxy statement as *Appendix A*. Stockholders are urged to read the actual text of the 2012 Equity Plan in its entirety.

Types of Awards

The terms of the 2012 Equity Plan provide for the grant of incentive stock options, nonstatutory stock options, restricted stock awards, restricted stock unit awards, stock appreciation rights, other stock awards and performance awards that may be settled in cash, stock or other property.

Shares Available for Awards

If this proposal is approved, the aggregate number of shares of our common stock reserved for issuance under the 2012 Equity Plan will not exceed 4,000,000 shares. This aggregate share reserve is the sum of (i) 3,920,164 newly requested shares, and (ii) the number of unallocated shares remaining available for the grant of new awards under the 2003 Stock Option Plan as of the effective date of the 2012 Equity Plan (which may not exceed 79,836 shares).

If a stock award granted under the 2012 Equity Plan (i) expires or otherwise terminates without all of the shares covered by such stock award having been issued, or (ii) is settled in cash, such expiration, termination

TABLE OF CONTENTS

or settlement will not reduce (or otherwise offset) the number of shares of common stock that may be available for issuance under the 2012 Equity Plan. If any shares of common stock issued pursuant to a stock award are forfeited back to or repurchased by us because of the failure to meet a contingency or condition required to vest such shares, then the shares that are forfeited or repurchased will revert to and again become available for issuance under the 2012 Equity Plan. In addition, any shares of common stock reacquired by us in satisfaction of tax withholding obligations on a stock award or as consideration for the exercise or purchase price of a stock award will again become available for issuance under the 2012 Equity Plan.

As of the Record Date, under our 2003 Stock Option Plan, which is our only active equity incentive plan, stock options to purchase approximately 5,139,253 shares were outstanding and awards other than stock options and stock appreciation rights covering an aggregate of 1,037,748 shares were outstanding. The weighted-average exercise price of all stock options outstanding as of the Record Date was \$4.07, and the weighted-average remaining term of such stock options was 6.86 years. As of the Record Date, the closing price of our common stock as reported on the NASDAQ Capital Market was \$4.82 per share and a total of 79,522,502 shares of our common stock were outstanding. As of the Record Date, no awards have been granted under the 2012 Equity Plan.

Eligibility

All of our approximately 71 employees, 6 non-employee directors and 0 consultants as of the Record Date are eligible to participate in the 2012 Equity Plan and may receive all types of awards other than incentive stock options. Incentive stock options may be granted under the 2012 Equity Plan only to our employees (including officers) and employees of our affiliates.

Section 162(m) Limits

Under the 2012 Equity Plan, a maximum of 2,000,000 shares of our common stock may be granted to any one participant during any one calendar year pursuant to stock options, stock appreciation rights and other stock awards whose value is determined by reference to an increase over an exercise price or strike price of at least 100% of the fair market value of our common stock on the date of grant. In addition, the maximum amount covered by performance awards that may be granted to any one participant in any one calendar year (whether the grant, vesting or exercise is contingent upon the attainment during a performance period of the performance goals described below) is 2,000,000 shares of our common stock in the case of performance stock awards and \$2,000,000 in the case of performance cash awards. Such limits are designed to allow us to grant awards that are exempt from the \$1,000,000 limitation on the income tax deductibility of compensation paid per covered employee imposed by Section 162(m) of the Code. If a performance stock award is in the form of an option, it will count only against the performance stock award limit. If a performance stock award could be paid out in cash, it will count only against the performance stock award limit.

Administration

The 2012 Equity Plan is administered by our board of directors, which may in turn delegate authority to administer the 2012 Equity Plan to a committee. Our board of directors has delegated authority to administer the 2012 Equity Plan to the compensation committee, but may, at any time, re-vest in itself some or all of the power previously delegated to this committee. Our compensation committee may make grants of cash and equity awards under the 2012 Equity Plan to facilitate compliance with Section 162(m) of the Code. The board of directors and the compensation committee are each considered to be a Plan Administrator for purposes of this proposal. Subject to the terms of the 2012 Equity Plan, the Plan Administrator may determine the recipients, numbers and types of awards to be granted, and the terms and conditions of the awards, including the period of their exercisability and vesting. Subject to the limitations set forth below, the Plan Administrator also determines the fair market value applicable to a stock award and the exercise price

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of stock options and stock appreciation rights granted under the 2012 Equity Plan.

12

TABLE OF CONTENTS

The Plan Administrator may also delegate to one or more of our officers the authority to designate employees who are not officers to be recipients of certain stock awards and the number of shares subject to such stock awards, provided that the board of directors must specify the total number of shares of our common stock that may be subject to the stock awards granted by such officer, and such officer may not grant a stock award to himself or herself.

Repricing; Cancellation and Re-Grant of Stock Awards

Under the 2012 Equity Plan, the board of directors does not have the authority to reprice any outstanding stock option or stock appreciation right by reducing the exercise price of the stock option or stock appreciation right or to cancel any outstanding stock option or stock appreciation right that has an exercise price or strike price in excess of the current fair market value in exchange for cash or other stock awards without obtaining the approval of our stockholders within 12 months prior to the repricing or cancellation and re-grant event.

Stock Options

Stock options may be granted under the 2012 Equity Plan pursuant to stock option agreements. The 2012 Equity Plan permits the grant of stock options that qualify as incentive stock options, or ISOs, and nonstatutory stock options, or NSOs. Individual stock option agreements may be more restrictive as to any or all of the permissible terms described in this section.

The exercise price of NSOs may not be less than 100% of the fair market value of the common stock subject to the stock option on the date of grant. The exercise price of ISOs may not be less than 100% of the fair market value of the common stock subject to the stock option on the date of grant and, in some cases (see Limitations on Incentive Stock Options below), may not be less than 110% of such fair market value.

The term of stock options granted under the 2012 Equity Plan may not exceed ten years and, in some cases (see Limitations on Incentive Stock Options below), may not exceed five years. Unless the terms of an optionholder's stock option agreement or other agreement with us provide for earlier or later termination, if an optionholder's service relationship with us, or any affiliate of ours, ceases due to death or disability (or the optionholder dies within a certain period, if any, following cessation of service), the optionholder, or his or her beneficiary, as applicable, may exercise any vested stock options for up to 12 months after the date the service relationship ends due to the optionholder's disability or up to 18 months after the date the service relationship ends due to the optionholder's death. Except as otherwise provided in an applicable stock option agreement or other agreement with us, if an optionholder's service relationship with us, or any affiliate of ours, is terminated for cause, all stock options held by such optionholder will terminate upon the date of such optionholder's termination of service, and the optionholder will be prohibited from exercising any stock option from such termination date. Except as explicitly provided otherwise in an optionholder's stock option agreement or other agreement with us, if an optionholder's service relationship with us, or any affiliate of ours, ceases for any other reason, the optionholder may exercise any vested stock options for up to three months after the date the service relationship ends. Under the 2012 Equity Plan, the stock option term may be extended in the event that exercise of the stock option following termination of service is prohibited by applicable securities laws or if the sale of stock received upon exercise of a stock option would violate our insider trading policy. In no event may a stock option be exercised after its original expiration date.

Acceptable forms of consideration for the purchase of our common stock pursuant to the exercise of a stock option under the 2012 Equity Plan will be determined by our board of directors and may include (i) cash, check, bank draft or money order made payable to us, (ii) payment pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board, (iii) common stock previously owned by the optionholder, (iv) a net exercise feature (for NSOs only), or (v) other legal consideration approved by our board of directors.

Stock options granted under the 2012 Equity Plan may become exercisable in cumulative increments, or vest, as determined by our board of directors at the rate specified in the stock option agreement. Shares covered by different stock options granted under the 2012 Equity Plan may be subject to different vesting schedules as our board of directors may determine. The board of directors also has flexibility to provide for accelerated vesting of stock awards in certain events.

TABLE OF CONTENTS

Generally, an optionholder may not transfer a stock option other than by will or the laws of descent and distribution or a domestic relations order, official marital settlement agreement or other divorce or separation instrument as permitted under applicable law. However, to the extent permitted under the terms of the applicable stock option agreement, an optionholder may designate a beneficiary who may exercise the stock option following the optionholder's death.

Limitations on Incentive Stock Options

The aggregate fair market value, determined at the time of grant, of shares of our common stock with respect to ISOs that are exercisable for the first time by an optionholder during any calendar year under all of our stock plans may not exceed \$100,000. The stock options or portions of stock options that exceed this limit are treated as NSOs. No ISO may be granted to any person who, at the time of the grant, owns or is deemed to own stock possessing more than 10% of our total combined voting power or that of any affiliate unless the following conditions are satisfied:

the exercise price of the ISO must be at least 110% of the fair market value of the stock subject to the ISO on the date of grant; and

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

The aggregate maximum number of shares of common stock that may be issued pursuant to the exercise of ISOs granted under the 2012 Equity Plan is 9,000,000 shares.

Restricted Stock Awards

Restricted stock awards may be granted under the 2012 Equity Plan pursuant to restricted stock award agreements. A restricted stock award may be granted in consideration for cash, check, bank draft or money order payable to us, the recipient's services performed for us or an affiliate of ours, or any other form of legal consideration acceptable to the board of directors. Shares of our common stock acquired under a restricted stock award may be subject to forfeiture to us in accordance with a vesting schedule to be determined by our board of directors. Rights to acquire shares of our common stock under a restricted stock award may be transferred only upon such terms and conditions as are set forth in the restricted stock award agreement. Except as otherwise provided in the applicable restricted stock award agreement, restricted stock awards that have not vested will be forfeited upon the participant's termination of continuous service for any reason.

Restricted Stock Unit Awards

Restricted stock unit awards may be granted under the 2012 Equity Plan pursuant to restricted stock unit award agreements. Payment of any purchase price may be made in any legal form acceptable to the board of directors. We will settle a payment due to a recipient of a restricted stock unit award by delivery of shares of our common stock, by cash, by a combination of cash and stock, or in any other form of consideration determined by our board of directors and set forth in the restricted stock unit award agreement. Dividend equivalents may be credited in respect of shares of our common stock covered by a restricted stock unit award. Restricted stock unit awards may be subject to vesting in accordance with a vesting schedule to be determined by our board of directors. Except as otherwise provided in the applicable restricted stock unit award agreement, restricted stock units that have not vested will be forfeited upon the participant's termination of continuous service for any reason.

Stock Appreciation Rights

Stock appreciation rights may be granted under the 2012 Equity Plan pursuant to stock appreciation right agreements.

Each stock appreciation right is denominated in common stock share equivalents. The strike price of each stock appreciation right will be determined by our board of directors but will in no event be less than 100% of the fair

market value of the stock subject to the stock appreciation right at the time of grant. Our board of directors may also impose restrictions or conditions upon the vesting of stock appreciation rights that it deems appropriate. Stock appreciation rights may be paid in our common stock, in cash, in a combination of cash and stock, or in any other form of legal consideration approved by our board of directors and set forth in the stock appreciation right agreement. Stock appreciation rights will be subject to the same conditions upon termination and restrictions on transfer as stock options under the 2012 Equity Plan.

14

TABLE OF CONTENTS

Performance Awards

The 2012 Equity Plan allows us to grant cash and stock-based performance awards that may qualify as performance-based compensation that is not subject to the \$1 million limitation on the income tax deductibility of compensation paid per covered employee imposed by Section 162(m) of the Code. Performance awards may be granted, vest or be exercised based upon the attainment during a specified period of time of specified performance goals. The length of any performance period, the performance goals to be achieved during the performance period, and the measure of whether and to what degree such performance goals have been attained will be determined by the board of directors, and/or, to the extent consistent with Section 162(m) of the Code, the compensation committee or the board of directors.

In granting a performance award intended to qualify as performance-based compensation under Section 162(m) of the Code, the performance subcommittee will set a period of time, or a performance period, over which the attainment of one or more goals, or performance goals, will be measured. Within the time period prescribed by Section 162(m) of the Code, at a time when the achievement of the performance goals remains substantially uncertain (typically no later than the earlier of the 90th day of a performance period and the date on which 25% of the performance period has elapsed), the performance subcommittee will establish the performance goals, based upon one or more criteria, which we refer to as performance criteria, enumerated in the 2012 Equity Plan and described below. As soon as administratively practicable following the end of the performance period, the performance subcommittee will certify in writing whether the performance goals have been satisfied.

Performance goals under the 2012 Equity Plan will be based on any one or more of the following performance criteria: (i) earnings (including earnings per share and net earnings); (ii) earnings before interest, taxes and depreciation; (iii) earnings before interest, taxes, depreciation and amortization; (iv) total stockholder return; (v) return on equity or average stockholder's equity; (vi) return on assets, investment, or capital employed; (vii) stock price; (viii) margin (including gross margin); (ix) income (before or after taxes); (x) operating income; (xi) operating income after taxes; (xii) pre-tax profit; (xiii) operating cash flow; (xiv) sales or revenue targets; (xv) increases in revenue or product revenue; (xvi) expenses and cost reduction goals; (xvii) improvement in or attainment of working capital levels; (xviii) economic value added (or an equivalent metric); (xix) market share; (xx) cash flow; (xxi) cash flow per share; (xxii) share price performance; (xxiii) debt reduction; (xxiv) implementation or completion of projects or processes; (xxv) customer satisfaction; (xxvi) stockholders' equity; (xxvii) capital expenditures; (xxviii) debt levels; (xxix) operating profit or net operating profit; (xxx) workforce diversity; (xxxii) growth of net income or operating income; (xxxiii) billings; (xxxiii) achievement of drug development milestones; (xxxiv) regulatory achievements, including approval of a compound; (xxxv) progress of internal research or clinical programs; (xxxvi) progress of partner programs; (xxxvii) implementation or completion of projects and processes; (xxxviii) clinical progress, (xxxix) in-licensing; and (xl) to the extent that an Award is not intended to comply with Section 162(m) of the Code, other measures of performance selected by the board of directors.

Performance goals may be based on a company-wide basis, with respect to one or more business units, divisions, affiliates, or business segments, and in either absolute terms or relative to the performance of one or more comparable companies or the performance of one or more relevant indices. In establishing a performance goal, the performance subcommittee (and the Plan Administrator, if permitted) may provide that performance will be appropriately adjusted as follows: (1) to exclude restructuring and/or other nonrecurring charges; (2) to exclude exchange rate effects, as applicable, for non-U.S. dollar denominated performance goals; (3) to exclude the effects of changes to generally accepted accounting principles; (4) to exclude the effects of any statutory adjustments to corporate tax rates; and (5) to exclude the effects of any extraordinary items as determined under generally accepted accounting principles. In addition, the compensation committee (and the Plan Administrator, if permitted) retains the discretion to reduce or eliminate the compensation or economic benefit due upon attainment of performance goals and to define the manner

of calculating the performance criteria it selects to use for a performance period.

15

TABLE OF CONTENTS

Other Stock Awards

Other forms of stock awards valued in whole or in part with reference to our common stock may be granted either alone or in addition to other stock awards under the 2012 Equity Plan. Our board of directors will have sole and complete authority to determine the persons to whom and the time or times at which such other stock awards will be granted, the number of shares of our common stock to be granted and all other conditions of such other stock awards. Other forms of stock awards may be subject to vesting in accordance with a vesting schedule to be determined by our board of directors.

Clawback Policy

Awards granted under the 2012 Equity Plan will be subject to recoupment in accordance with any clawback policy that we are required to adopt pursuant to the listing standards of any national securities exchange or association on which our securities are listed or as is otherwise required by the Dodd-Frank Wall Street Reform and Consumer Protection Act, or the Dodd-Frank Act, or other applicable law. In addition, the board of directors may impose other clawback, recovery or recoupment provisions in an award agreement as the board of directors determines necessary or appropriate, including a reacquisition right in respect of previously acquired shares of our common stock or other cash or property upon the occurrence of cause.

Changes to Capital Structure

In the event of certain capitalization adjustments, the board of directors will appropriately adjust: (i) the class(es) and maximum number of securities subject to the 2012 Equity Plan; (ii) the class(es) and maximum number of securities that may be issued pursuant to the exercise of ISOs; (iii) the class(es) and maximum number of securities that may be awarded to any person pursuant to Section 162(m) limits; and (iv) the class(es) and number of securities and price per share of stock subject to outstanding stock awards.

Corporate Transactions

In the event of a corporate transaction (as defined in the 2012 Equity Plan and described below), the board of directors may have the discretion to take one or more of the following actions with respect to outstanding stock awards (contingent upon the closing or consummation of such transaction), unless otherwise provided in the stock award agreement or other written agreement with the participant or unless otherwise provided by the board of directors at the time of grant:

arrange for the surviving or acquiring corporation (or its parent company) to assume or continue the award or to substitute a similar stock award for the award (including an award to acquire the same consideration paid to our stockholders pursuant to the corporate transaction);

arrange for the assignment of any reacquisition or repurchase rights held by us with respect to the stock award to the surviving or acquiring corporation (or its parent company);

accelerate the vesting, in whole or in part, (and, if applicable, the exercisability) of the stock award and provide for its termination prior to the effective time of the corporate transaction;

arrange for the lapse, in whole or in part, of any reacquisition or repurchase rights held by us with respect to the award;

cancel or arrange for the cancellation of the stock award, to the extent not vested or exercised prior to the effective time of the corporate transaction, in exchange for such cash consideration, if any, as the board of directors may consider appropriate; and

cancel or arrange for the cancellation of the stock award, to the extent not vested or not exercised prior to the effective time of the corporate transaction, in exchange for a payment, in such form as may be determined by the board of directors, equal to the excess, if any, of (i) the value of the property the participant would have received upon the exercise of the stock award immediately prior to the effective time of the corporate transaction, over (ii) any exercise price payable in connection with such exercise.

The board of directors is not obligated to treat all stock awards or portions of stock awards in the same manner. The board of directors may take different actions with respect to the vested and unvested portions of a stock award.

TABLE OF CONTENTS

For purposes of the 2012 Equity Plan, a corporate transaction will be deemed to occur in the event of the consummation of (i) a sale or other disposition of all or substantially all of our consolidated assets, (ii) a sale or other disposition of more than 90% of our outstanding securities, (iii) a merger, consolidation or similar transaction following which we are not the surviving corporation, or (iv) a merger, consolidation or similar transaction following which we are the surviving corporation but the shares of our common stock outstanding immediately prior to such transaction are converted or exchanged into other property by virtue of the transaction.

Change in Control

Under the 2012 Equity Plan, a stock award may be subject to additional acceleration of vesting and exercisability upon or after a change in control (as defined in the 2012 Equity Plan) as may be provided in the stock award agreement or other written agreement with the participant, but in the absence of such provision, no such acceleration will occur.

Plan Amendments and Termination

Our board of directors will have the authority to amend or terminate the 2012 Equity Plan at any time. However, except as otherwise provided in the 2012 Equity Plan, no amendment or termination of the 2012 Equity Plan may materially impair any rights under awards already granted to a participant unless agreed to by the affected participant. We will obtain stockholder approval of any amendment to the 2012 Equity Plan as required by applicable law and listing requirements. No ISOs may be granted under the 2012 Equity Plan after the tenth anniversary of March 7, 2012, which was the date the 2012 Equity Plan was adopted by the board of directors.

U.S. Federal Income Tax Consequences

The information set forth below is a summary only and does not purport to be complete. The information is based upon current federal income tax rules and therefore is subject to change when those rules change. Because the tax consequences to any recipient may depend on his or her particular situation, each recipient should consult the recipient's tax adviser regarding the federal, state, local, and other tax consequences of the grant or exercise of an award or the disposition of stock acquired as a result of an award. The 2012 Equity Plan is not qualified under the provisions of Section 401(a) of the Code and is not subject to any of the provisions of the Employee Retirement Income Security Act of 1974. Our ability to realize the benefit of any tax deductions described below depends on our generation of taxable income as well as the requirement of reasonableness, the provisions of Section 162(m) of the Code and the satisfaction of our tax reporting obligations.

Nonstatutory Stock Options

Generally, there is no taxation upon the grant of an NSO if the stock option is granted with an exercise price equal to the fair market value of the underlying stock on the grant date. On exercise, an optionholder will recognize ordinary income equal to the excess, if any, of the fair market value on the date of exercise of the stock over the exercise price. If the optionholder is employed by us or one of our affiliates, that income will be subject to withholding taxes. The optionholder's tax basis in those shares will be equal to their fair market value on the date of exercise of the stock option, and the optionholder's capital gain holding period for those shares will begin on that date.

Subject to the requirement of reasonableness, the provisions of Section 162(m) of the Code and the satisfaction of a tax reporting obligation, we will generally be entitled to a tax deduction equal to the taxable ordinary income realized by the optionholder.

Incentive Stock Options

The 2012 Equity Plan provides for the grant of stock options that qualify as incentive stock options, as defined in Section 422 of the Code. Under the Code, an optionholder generally is not subject to ordinary income tax upon the grant or exercise of an ISO. If the optionholder holds a share received on exercise of an ISO for more than two years from the date the stock option was granted and more than one year from the date the stock option was exercised, which is referred to as the required holding period, the difference, if any, between the amount realized on a sale or other taxable disposition of that share and the holder's tax basis in that share will be long-term capital gain or loss.

TABLE OF CONTENTS

If, however, an optionholder disposes of a share acquired on exercise of an ISO before the end of the required holding period, which is referred to as a disqualifying disposition, the optionholder generally will recognize ordinary income in the year of the disqualifying disposition equal to the excess, if any, of the fair market value of the share on the date the ISO was exercised over the exercise price. However, if the sales proceeds are less than the fair market value of the share on the date of exercise of the stock option, the amount of ordinary income recognized by the optionholder will not exceed the gain, if any, realized on the sale. If the amount realized on a disqualifying disposition exceeds the fair market value of the share on the date of exercise of the stock option, that excess will be short-term or long-term capital gain, depending on whether the holding period for the share exceeds one year.

For purposes of the alternative minimum tax, the amount by which the fair market value of a share of stock acquired on exercise of an ISO exceeds the exercise price of that stock option generally will be an adjustment included in the optionholder's alternative minimum taxable income for the year in which the stock option is exercised. If, however, there is a disqualifying disposition of the share in the year in which the stock option is exercised, there will be no adjustment for alternative minimum tax purposes with respect to that share. In computing alternative minimum taxable income, the tax basis of a share acquired on exercise of an ISO is increased by the amount of the adjustment taken into account with respect to that share for alternative minimum tax purposes in the year the stock option is exercised.

We are not allowed an income tax deduction with respect to the grant or exercise of an ISO or the disposition of a share acquired on exercise of an ISO after the required holding period. If there is a disqualifying disposition of a share, however, we are allowed a deduction in an amount equal to the ordinary income includible in income by the optionholder, subject to Section 162(m) of the Code and provided that amount constitutes an ordinary and necessary business expense for us and is reasonable in amount, and either the employee includes that amount in income or we timely satisfy our reporting requirements with respect to that amount.

Restricted Stock Awards

Generally, the recipient of a restricted stock award will recognize ordinary income at the time the stock is received equal to the excess, if any, of the fair market value of the stock received over any amount paid by the recipient in exchange for the stock. If, however, the stock is not vested when it is received (for example, if the employee is required to work for a period of time in order to have the right to sell the stock), the recipient generally will not recognize income until the stock becomes vested, at which time the recipient will recognize ordinary income equal to the excess, if any, of the fair market value of the stock on the date it becomes vested over any amount paid by the recipient in exchange for the stock. A recipient may, however, file an election with the Internal Revenue Service, within 30 days following his or her receipt of the stock award, to recognize ordinary income, as of the date the recipient receives the award, equal to the excess, if any, of the fair market value of the stock on the date the award is granted over any amount paid by the recipient for the stock.

The recipient's basis for the determination of gain or loss upon the subsequent disposition of shares acquired from stock awards will be the amount paid for such shares plus any ordinary income recognized either when the stock is received or when the stock becomes vested.

Subject to the requirement of reasonableness, the provisions of Section 162(m) of the Code and the satisfaction of a tax reporting obligation, we will generally be entitled to a tax deduction equal to the taxable ordinary income realized by the recipient of the stock award.

Restricted Stock Unit Awards

Generally, the recipient of a restricted stock unit structured to conform to the requirements of Section 409A of the Code or an exception to Section 409A of the Code will recognize ordinary income at the time the stock is delivered equal to the excess, if any, of the fair market value of the shares of our common stock received over any amount paid by the recipient in exchange for the shares of our common stock. To conform to the requirements of Section 409A of the Code, the shares of our common stock subject to a restricted stock unit award may generally only be delivered upon one of the following events: a fixed calendar date (or dates), separation from service, death, disability or a change in control. If delivery occurs on another date, unless the restricted stock units otherwise comply with or qualify for an exception to the requirements of

TABLE OF CONTENTS

Section 409A of the Code, in addition to the tax treatment described above, the recipient will owe an additional 20% federal tax and interest on any taxes owed.

The recipient's basis for the determination of gain or loss upon the subsequent disposition of shares acquired from restricted stock units will be the amount paid for such shares plus any ordinary income recognized when the stock is delivered.

Subject to the requirement of reasonableness, the provisions of Section 162(m) of the Code and the satisfaction of a tax reporting obligation, we will generally be entitled to a tax deduction equal to the taxable ordinary income realized by the recipient of the restricted stock unit award.

Stock Appreciation Rights

We may grant under the 2012 Equity Plan stock appreciation rights separate from any other award or in tandem with other awards under the 2012 Equity Plan.

Where the stock appreciation rights are granted with a strike price equal to the fair market value of the underlying stock on the grant date, the recipient will recognize ordinary income equal to the fair market value of the stock or cash received upon such exercise. Subject to the requirement of reasonableness, the provisions of Section 162(m) of the Code, and the satisfaction of a tax reporting obligation, we will generally be entitled to a tax deduction equal to the taxable ordinary income realized by the recipient of the stock appreciation right.

Securities Authorized for Issuance under Equity Compensation Plans

The following table provides certain information with respect to all of our equity compensation plans in effect as of December 31, 2011:

	Number of securities to be issued upon exercise of outstanding options, warrants and rights ⁽¹⁾ (a)	Weighted-average exercise price of outstanding options, warrants and rights ⁽¹⁾ (b)	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column(a)) (c)
Equity compensation plans approved by security holders ⁽²⁾	6,177,001	\$ 4.08	79,836
Equity compensation plans not approved by security holders ⁽³⁾			

Total	6,177,001	\$ 4.08	79,836
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- (1) There are no warrants outstanding under the 2003 Stock Option Plan.
- (2) The 2003 Stock Option Plan is our only stockholder-approved equity compensation plan.
- (3) We do not maintain any equity compensation plans that are not approved by our stockholders.

New Plan Benefits

Awards under the 2012 Equity Plan are discretionary and are not subject to set benefits or amounts, and we have not approved any awards that are conditioned on stockholder approval of the 2012 Equity Plan. Accordingly, we cannot currently determine the benefits or number of shares subject to awards that may be granted in the future to executive officers, directors or employees under the 2012 Equity Plan.

Vote Required

The affirmative vote of the holders of a majority of the shares present in person or represented by proxy and entitled to vote at the annual meeting will be required to adopt the 2012 Equity Plan. Abstentions will be counted toward the tabulation of votes cast on proposals presented to the stockholders and will have the same effect as negative votes. Broker non-votes are counted towards a quorum, but are not counted for any purpose in determining whether this matter has been approved.

The board recommends that you vote FOR the adoption of the 2012 Equity Plan.

TABLE OF CONTENTS

Proposal No. 3. Ratification of Appointment of Independent Registered Public Accounting Firm

The board of directors and management are committed to the quality, integrity and transparency of the financial reports. Independent auditors play an important part in our system of financial control. In accordance with the duties set forth in its written charter, the audit committee of the board has appointed McGladrey & Pullen, LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2012. A representative of McGladrey & Pullen, LLP is expected to attend the annual meeting. He or she will have an opportunity to make a statement if he or she so desires and will be available to respond to appropriate questions from stockholders.

We are not required by statute or our by-laws or other governing documents to obtain stockholder ratification of the appointment of McGladrey & Pullen, LLP as our independent registered public accounting firm. The audit committee has submitted the appointment of McGladrey & Pullen, LLP to the stockholders for ratification as a matter of good corporate practice. If the stockholders do not ratify the appointment, the audit committee may reconsider its selection. Notwithstanding the proposed ratification of the appointment of McGladrey & Pullen, LLP by the stockholders, the audit committee, in its discretion, may direct the appointment of a new independent registered public accounting firm at any time during the year without notice to, or the consent of, the stockholders, if the audit committee determines that such a change would be in our best interests and the best interests of our stockholders.

Vote Required

The affirmative vote of the holders of a majority of the shares present in person or represented by proxy and entitled to vote at the annual meeting will be required to ratify the appointment of McGladrey & Pullen, LLP. Abstentions will be counted toward the tabulation of votes cast on proposals presented to the stockholders and will have the same effect as negative votes. Broker non-votes are counted towards a quorum, but are not counted for any purpose in determining whether this matter has been approved.

The board recommends that you vote FOR the ratification of the appointment of McGladrey & Pullen, LLP as our independent registered public accounting firm for 2012.

TABLE OF CONTENTS

Proposal No. 4. Advisory Vote on Executive Compensation

Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, or the Dodd-Frank Act, our stockholders are entitled to vote to approve, on an advisory basis, the compensation of our named executive officers as disclosed in this proxy statement in accordance with the rules of the Securities and Exchange Commission, or SEC. This vote is not intended to address any specific item of compensation, but rather the overall compensation of our named executive officers and the philosophy, policies and practices described in this proxy statement. We currently intend to conduct this advisory vote annually, with the next such vote to occur at next year's Annual Meeting.

The compensation of our named executive officers is disclosed in the section entitled "Executive Compensation" below, including the tabular and narrative disclosures set forth in such section under the headings "Executive Compensation Tables" and "Compensation Discussion and Analysis." As discussed in those disclosures, we believe that our compensation policies and decisions are focused on pay-for-performance principles and strongly aligned with our stockholders' interests. Compensation of our named executive officers is designed to enable us to attract, motivate and retain talented and experienced executives to lead our company successfully in a competitive environment.

We are asking our stockholders to indicate their support for the compensation of our named executive officers as described in this proxy statement by casting a non-binding advisory vote