

INVITROGEN CORP  
Form DEF 14A  
March 16, 2004  
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**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

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to §240.14a-11(c) or §240.14a-12

INVITROGEN CORPORATION

(Name of Registrant as Specified In Its Charter)

Payment of Filing Fee (Check the appropriate box):

No fee required

Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.

(1) Title of each class of securities to which transaction applies:

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- (2) Aggregate number of securities to which transaction applies:
- (3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):
- (4) Proposed maximum aggregate value of transaction:
- (5) Total fee paid:

.. Fee paid previously with preliminary materials.

.. Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

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

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March 24, 2004

Dear Stockholder:

This year's annual meeting of stockholders will be held on April 29, 2004, at 9:00 a.m. local time, at the Company's offices at 5781 Van Allen Way, Carlsbad, California 92008. You are cordially invited to attend.

The Notice of Annual Meeting of Stockholders and a Proxy Statement, which describe the formal business to be conducted at the meeting, follow this letter.

After reading the Proxy Statement, please promptly fill in, date, sign, and return the enclosed proxy card in the prepaid envelope to ensure that your shares will be represented. Your shares cannot be voted unless you date, sign, and return the enclosed proxy card, vote telephonically or electronically as described on page 1 of the enclosed Proxy Statement, or attend the annual meeting in person. Regardless of the number of shares you own, your careful consideration of, and vote on, the matters before our stockholders are important.

A copy of our 2003 Annual Report is also enclosed.

I look forward to seeing you at the annual meeting.

Very truly yours,

Gregory T. Lucier

*President and Chief Executive Officer*

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**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

**TO BE HELD APRIL 29, 2004**

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*To our Stockholders:*

The annual meeting of stockholders of Invitrogen Corporation (the Company), will be held on April 29, 2004, at 9:00 a.m. local time, at the Company's offices at 5781 Van Allen Way, Carlsbad, California 92008, for the following purposes:

1. To elect three Class II directors, each to hold office for a three-year term and until his respective successor is elected and qualified. The Board of Directors has nominated the following persons for election as Class II directors at the meeting: Bradley G. Lorimier, Raymond V. Dittamore, and David C. U Prichard, Ph.D.
2. To consider a proposal to ratify the appointment of Ernst & Young, LLP as the independent public accountants for the Company for the Company's fiscal year ending December 31, 2004.
3. To consider a proposal to approve the Company's 2004 Equity Incentive Plan and to reserve 5,700,000 shares of the Company's Common Stock for issuance under such plan.
4. To consider a proposal to amend the 1998 Employee Stock Purchase Plan to increase by 500,000 shares the maximum number of shares of the Company's Common Stock that may be issued under the Employee Stock Purchase Plan and to reserve such number of shares for issuance under the Employee Stock Purchase Plan.
5. To transact such other business as may properly come before the meeting or any adjournment or postponement thereof.

Stockholders of record at the close of business on February 27, 2004, are entitled to notice of, and to vote at, the annual meeting and any adjournments or postponements thereof. For ten days prior to the annual meeting, a complete list of the stockholders of record on February 27, 2004, will be available at our principal offices for examination during ordinary business hours by any stockholder for any purpose relating to the meeting.

By Order of the Board of Directors,

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John A. Cottingham

*Vice President, General Counsel & Secretary*

Carlsbad, California

March 24, 2004

**IMPORTANT:** Please promptly fill in, date, sign and return the enclosed proxy card in the accompanying pre-paid envelope to ensure that your shares are represented at the meeting. You may revoke your proxy before it is voted. If you attend the meeting, you may choose to vote in person even if you have previously sent in your proxy card.

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**Invitrogen Corporation**

**1600 Faraday Ave.**

**Carlsbad, California 92008**

**PROXY STATEMENT FOR ANNUAL MEETING OF STOCKHOLDERS**

The accompanying proxy is being solicited by the Board of Directors of Invitrogen Corporation and contains information related to the annual meeting of stockholders to be held April 29, 2004, at 9:00 a.m. local time, or any adjournment or postponement thereof, for the purposes described in the accompanying Notice of Annual Meeting. The annual meeting will be held at Invitrogen's offices at 5781 Van Allen Way, Carlsbad, California 92008. This Proxy Statement was filed with the SEC on March 15, 2004, and the approximate date on which the Proxy Statement and the accompanying form of proxy were first sent or given to stockholders was March 24, 2004.

Invitrogen will bear the cost of soliciting proxies. We may solicit stockholder proxies by mail through our regular employees, and may request banks and brokers, and other custodians, nominees and fiduciaries, to solicit their customers who have Invitrogen stock registered in their names and will reimburse them for their reasonable, out-of-pocket costs. We may use the services of our officers, directors, and others to solicit proxies, personally or by telephone, without additional compensation.

**ABOUT THE MEETING**

***What is the purpose of the annual meeting?***

At our annual meeting, stockholders will act upon the matters outlined in the Notice of Annual Meeting that is attached to this proxy statement. These matters include the election of directors, the ratification of the appointment of Ernst & Young, LLP as our independent public accountants, the approval of the 2004 Equity Incentive Plan, and the amendment of the Invitrogen Corporation 1998 Employee Stock Purchase Plan. In addition, management will report on Invitrogen's performance during 2003 and will respond to questions from our stockholders. An annual report for the fiscal year ended December 31, 2003, is enclosed with this proxy statement.

***Who is entitled to vote at the meeting?***

Only stockholders of record as of the close of business on the record date, February 27, 2004, will be entitled to vote the shares of Invitrogen stock they held on the record date at the annual meeting. As of the close of business on the record date, there were 52,019,062 shares of Invitrogen common stock outstanding and entitled to vote.

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Stockholders may vote in person or by proxy. Each holder of shares of Invitrogen common stock is entitled to one vote for each share of stock held on the proposals presented in this Proxy Statement. Invitrogen's bylaws provide that a majority of all of the outstanding shares of stock entitled to vote, whether present in person or represented by proxy, constitutes a quorum for the transaction of business at the annual meeting.

### ***How do I vote?***

*Voting by completing the proxy card.* If you properly complete and sign the enclosed proxy card and return it as instructed on the proxy card, it will be voted as you direct. If you hold your shares in your name and you attend the meeting, you may deliver your completed proxy card in person. If you hold your shares in street name through a brokerage or other nominee, you will need to obtain a proxy card from the institution that holds your shares.



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All shares represented by a proxy will be voted, and where a stockholder specifies a choice with respect to any matter to be acted upon, the shares will be voted in accordance with the specification so made. If you do not indicate a choice on the proxy card, the shares will be voted in favor of the election of the nominees for director contained in this proxy statement, in favor of ratifying Ernst & Young LLP as independent public accountants for the Company for 2004, in favor of approving the 2004 Equity Incentive Plan, in favor of amending the Invitrogen Corporation 1998 Employee Stock Purchase Plan, and in the discretion of the proxy holders on any other matter that comes before the meeting.

Once you have given your proxy, you may revoke it at any time prior to the time it is voted, by delivering to the Secretary of the Company at the Company's principal offices either a written document revoking the proxy or a duly executed proxy with a later date, or it may be revoked by attending the meeting and voting in person. Merely attending the annual meeting will not, by itself, revoke a proxy.

Abstentions and broker non-votes will be counted for purposes of determining the presence or absence of a quorum. Broker non-votes are shares held by brokers or nominees who are present in person or represented by proxy, but which are not voted on a particular matter because instructions have not been received from the beneficial owner. The effect of broker non-votes and abstentions on the specific items to be brought before the annual meeting of stockholders is discussed under each item.

*Voting via the Internet or by telephone.* If you vote via the Internet, you should be aware that there may be costs associated with electronic access, such as usage charges from Internet access providers and telephone companies, for which you will be responsible.

*Shares Registered Directly in the Name of the Stockholder.* If you hold shares that are registered in your name directly with EquiServe LP, the Company's transfer agent, you may vote telephonically by calling (877) 779-8683. Alternatively, you may vote via the Internet by visiting the following site on the Internet: [www.eproxyvote.com/ivgn](http://www.eproxyvote.com/ivgn) and following the instructions on your screen.

*Shares Registered in the Name of a Brokerage Firm or Bank.* A number of brokerage firms and banks are participating in a program provided through ADP Investor Communication Services that offers telephone and Internet voting options. This program is different from the program provided by EquiServe LP for shares registered in the name of the stockholder. If your shares are held in an account at a brokerage firm or bank participating in the ADP program, you may vote those shares telephonically by calling the telephone number referenced on the enclosed voting form. Alternatively, you may vote via the Internet by visiting the following site on the Internet: [www.proxyvote.com](http://www.proxyvote.com) and following the instructions on your screen.

### ***How do I vote my 401(k) shares?***

If you participate in the Invitrogen 401(k) Savings and Investment Plan you may vote the shares of the Company's common stock in your account as of the record date. If you wish to vote those shares, you must complete the enclosed proxy card and return it in the envelope provided by April 27, 2004.

If you do not complete and return your proxy card prior to April 27, 2004, Fidelity Management Trust Company, the Plan trustee, will vote the shares in your account. You may revoke instructions to the trustee by giving it written notice of revocation or a later dated written voting instruction by April 27, 2004.

**STOCK OWNERSHIP**

*How much stock is held by the Company's directors, executive officers and largest stockholders?*

The following table sets forth information as of March 1, 2004, regarding the beneficial ownership of the Company's common stock by (i) each person known by us to own beneficially more than five percent of our outstanding common stock; (ii) each director and nominee for election as a director; (iii) each executive officer named in the Summary Compensation Table; and (iv) all directors and executive officers as a group. Except as otherwise specified, the named beneficial owner has sole voting and investment power over the shares listed.

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<b>Name of Beneficial Owner</b>	<b>Amount and Nature of Beneficial Ownership of Common Stock<sup>(1)</sup></b>	<b>Percentage of Common Stock</b>
FMR Corp. <sup>(2)</sup>	4,036,990	7.8%
James R. Glynn <sup>(3)</sup>	202,794	*
Daryl Faulkner <sup>(4)</sup>	137,122	*
Gregory T. Lucier <sup>(5)</sup>	75,760	*
C. Eric Winzer <sup>(6)</sup>	71,402	*
Jay M. Short, Ph.D. <sup>(7)</sup>	67,000	*
Donald W. Grimm <sup>(8)</sup>	53,000	*
Bradley G. Lorimier <sup>(9)</sup>	50,000	*
David E. McCarty <sup>(10)</sup>	46,654	*
Raymond B. Dittamore <sup>(11)</sup>	26,666	*
Balakrishnan S. Iyer <sup>(12)</sup>	26,666	*
Benjamin E. Bulkley <sup>(13)</sup>	25,262	*
Claude D. Benchimol <sup>(14)</sup>	25,000	*
William J. Mercer <sup>(15)</sup>	16,666	*
David C. U Prichard, Ph.D. All Directors and Executive Officers		*
as group (18 persons in total)	1,026,660	1.9%

\* Less than 1%.

- (1) Beneficial ownership is determined in accordance with the rules of the Securities and Exchange Commission (the SEC), based on factors including voting and investment power with respect to shares. Percentage of beneficial ownership is based on the number of shares of the Company's common stock outstanding as of March 1, 2004. Shares of common stock issuable upon conversion of convertible notes, or the exercise of options or warrants currently exercisable, or exercisable within 60 days after March 1, 2004, are deemed outstanding for the purpose of computing the percentage ownership of the person holding such options or warrants, but are not deemed outstanding for computing the percentage ownership of any other persons.
- (2) The address for FMR Corp. is 82 Devonshire Street, Boston, MA 02109.
- (3) Consists of 573 shares owned by a family trust in which Mr. Glynn has a beneficial interest and 202,221 shares Mr. Glynn may acquire upon the exercise of stock options.
- (4) Consists of 3,018 shares owned directly by Mr. Faulkner and 134,104 shares Mr. Faulkner may acquire upon the exercise of stock options.
- (5) Consists of 760 shares owned directly by Mr. Lucier and 75,000 shares of restricted stock held by Mr. Lucier which fully vest in 2007.
- (6) Consists of 2,078 shares owned directly by Mr. Winzer, 69,249 shares Mr. Winzer may acquire upon the exercise of stock options, and 75 shares held of record by the Invitrogen 401(k) Savings and Investment Plan for which Mr. Winzer is the beneficial owner.
- (7) Consists of 5,000 shares owned directly by Dr. Short and 62,000 shares Dr. Short may acquire upon the exercise of stock options.

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- (8) Consists of 3,000 shares owned by a family trust in which Mr. Grimm has a beneficial interest and 50,000 shares Mr. Grimm may acquire upon the exercise of stock options.
- (9) Consists of 50,000 shares Mr. Lorimier may acquire upon the exercise of stock options.
- (10) Consists of 6,586 shares owned directly by Mr. McCarty, 40,000 shares Mr. McCarty may acquire upon the exercise of stock options, and 68 shares held of record by the Invitrogen 401(k) Savings and Investment Plan for which Mr. McCarty is the beneficial owner.

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- (11) Consists of 26,666 shares that Mr. Dittamore may acquire upon the exercise of stock options.
- (12) Consists of 26,666 shares that Mr. Iyer may acquire upon the exercise of stock options.
- (13) Consists of 262 shares owned directly by Mr. Bulkley and 25,000 shares of restricted stock held by Mr. Bulkley, which fully vest in 2007.
- (14) Consists of 25,000 shares of restricted stock held by Mr. Benchimol which fully vest in 2007.
- (15) Consists of 16,666 shares that Mr. Mercer may acquire upon the exercise of stock options.

**Securities Authorized for Issuance Under Equity Compensation Plans**

Information about the Company's equity compensation plans at December 31, 2003 is as follows (shares in thousands<sup>(1)</sup>):

<b>Plan Category</b>	<b>Number of Shares to be Issued Upon Exercise of Outstanding Options</b>	<b>Weighted Average Exercise Price of Outstanding Options</b>	<b>Number of Shares Remaining Available for Future Issuance</b>	<b>Weighted Average Remaining Contractual Life in Years</b>
Equity compensation plans approved by stockholders <sup>(2)</sup>	6,756	\$ 49.33	3,334 <sup>(4)</sup>	8.0
Equity compensation plans not approved by stockholders <sup>(3)</sup>	905	35.10	1,967	8.9
<b>Total</b>	<b>7,661</b>	<b>\$ 47.65</b>	<b>5,301</b>	<b>8.1</b>

- (1) All active options plans, including the 1997 Invitrogen Corporation Stock Option Plan, the Invitrogen Corporation 2001 Stock Incentive Plan and the Invitrogen Corporation 2002 Stock Incentive Plan, will be frozen, and grants will no longer be made from such plans, effective upon the approval by the Company's stockholders of the 2004 Equity Incentive Plan described in Proposal 4. In addition, the disclosure in this table does not include grants of restricted stock awarded to certain of our employees under non-approved plans, which totaled 165,000 shares as of March 1, 2004.
- (2) Consists of the Invitrogen Corporation 1998 Employee Stock Purchase Plan and six stock option plans: the 1995 and 1997 Invitrogen Corporation Stock Option Plans, the 1996 and 1998 NOVEX Stock Option/Stock Issuance Plans, and the Life Technologies 1995 and 1997 Long-Term Incentive Plans.

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- (3) Represents the 2000 Invitrogen Corporation Stock Option Plan, the Invitrogen Corporation 2001 and 2002 Stock Incentive Plans, the stock options granted to the Company's Chief Executive Officer ( CEO ). Stock options under the Invitrogen Corporation 2001 and 2002 Stock Incentive Plans were assumed as part of the Molecular Probes acquisition in August 2003. At December 31, 2003, these two assumed plans collectively have 170,515 shares to be issued upon exercise of outstanding options at a weighted average exercise price of \$10.55, with 1,303,998 shares available for future issuance. In addition, the Company has granted, pursuant to an employment agreement entered into in May 2003 with its new Chief Executive Officer, (i) an option to purchase 675,000 shares of the Company's common stock (the CEO Option ) and (ii) an award of 75,000 restricted shares (the CEO Shares ). We have also granted 25,000 shares of restricted stock to its Senior Vice President, Research & Development, 25,000 shares of restricted stock to its Senior Vice President, Commercial Operations, 20,000 shares of restricted stock to its Senior Vice President, Human Resources, 10,000 shares of restricted stock to its Chief Information Officer, and 10,000 shares of restricted stock to three other executives.
- (4) Includes 317,650 shares reserved for issuance under the Invitrogen Corporation 1998 Employee Stock Purchase Plan. All options plans in this category, except the 1997, 2001 and 2002 Invitrogen Corporation plans, have been frozen, and grants will no longer be made from the frozen plans. The 1997 Invitrogen Corporation Stock Option Plan, the Invitrogen Corporation 2001 Stock Incentive Plan and the Invitrogen Corporation 2002 Stock Incentive Plan will be frozen, and grants will no longer be made from such plans, effective upon the approval by the Company's stockholders of the 2004 Equity Incentive Plan described in Proposal 4.

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The material features of the 2001 and 2002 Stock Incentive Plans are identical. Only employees, consultants or directors of the Company who were hired after the closing of the Molecular Probes acquisition in August of 2003, or any such individuals who were previously employed by Molecular Probes, are eligible to receive awards under the assumed plans. The assumed plans provide for the award of either stock options or restricted stock. The plans typically provide for 100% vesting after four years of service. The plans provide that options, other than incentive stock options, may be granted with exercise prices less than fair market value on the date of grant, although in operation the Company has never issued such below fair market value options. Upon a change in control, the vesting and exercisability of all outstanding awards under the plans are 100% accelerated only to the extent an acquiring entity does not assume such outstanding awards.

The material terms of the CEO Option include: (i) an exercise price of \$38.01, (ii) 1/4 of the option shares vest on the one year anniversary of the option grant and the remaining shares vest at a rate of 1/16 for each calendar quarter provided the CEO continues to provide services to the Company, (iii) upon a change in control the CEO Option fully vests, (iv) upon the CEO's death or disability the CEO Option shall become vested in an amount which would reflect an additional 12 months of service by the CEO, and (v) upon the CEO's termination without cause or termination for good reason, the CEO Option shall become vested in an amount which would reflect an additional 18 months of service by the CEO.

The material terms of the CEO Shares include: (i) no exercise price or other monetary payment is required to purchase the CEO Shares, (ii) 50% of the CEO Shares vest on the second anniversary of the date the CEO Shares were granted and the remaining 50% of the CEO Shares vest on the fourth anniversary of the date the CEO Shares were granted, (iii) upon the CEO's death or disability the CEO Shares shall become vested in an amount which would reflect an additional 12 months of service by the CEO, and (v) upon the CEO's termination without cause or termination for good reason, the CEO Shares shall become vested in an amount which would reflect an additional 18 months of service by the CEO, (iv) upon the CEO's termination for any reason or upon the attempted sale or transfer of any CEO Shares prior to vesting, the Company shall, without the need for any monetary payment to the CEO, automatically reacquire such unvested CEO Shares and (v) upon a change in control the CEO Shares become fully vested.

The material terms of the grant of restricted shares to our Senior Vice President of Research and Development are substantially the same as the CEO Shares above, with the exception that when these restricted shares were granted the trading price of the Company's Common Stock was \$58.76. All other grants of restricted stock were made pursuant to the 2002 Stock Incentive Plan described above.

## **ELECTION OF DIRECTORS**

The Company has a classified Board of Directors currently consisting of three Class I directors (Gregory T. Lucier, James R. Glynn and Donald W. Grimm), three Class II directors (Bradley G. Lorimier, Raymond V. Dittamore, and David E. McCarty) and three Class III directors (Jay M. Short, Ph.D., Balakrishnan S. Iyer, and William J. Mercer), who will serve until the annual meetings of stockholders to be held in 2006, 2004, and 2005, respectively, and until their respective successors are duly elected and qualified. Directors in a class are elected for a term of three years to succeed the directors in such class whose terms expire at such annual meeting, or a shorter term to fill a vacancy in another class of directors.

The nominees for election at the 2004 annual meeting of stockholders to fill three Class II positions on the Board of Directors are Bradley G. Lorimier, Raymond V. Dittamore and David C. U Prichard, Ph.D. If elected, the nominees for the Class II positions will serve as directors until the annual meeting of stockholders in 2007, and until their successors are elected and qualified.

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The following information relates to the nominees listed above and to the Company's other directors whose terms of office will extend beyond the 2004 annual meeting of stockholders.



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*Nominees for election at the 2004 Annual Meeting of Stockholders*

**Class II**

**(Term Ends 2007)**

Bradley G. Lorimier (age 58)	Chairman of the Board of Directors of Invitrogen since January 1, 2003, Mr. Lorimier has been a director of Invitrogen since November 1998. From March 1994 to June 1997, Mr. Lorimier served as Senior Vice President, Business Development and Director of Human Genome Sciences, Inc., a biotechnology company. He has been a Director of Matrix Pharmaceutical, Inc., from December 1997 to March 2002, as well as several private companies. Mr. Lorimier received his B.S. in Biology from the University of Illinois.
Raymond V. Dittamore (age 60)	Director of Invitrogen since July 2001. Mr. Dittamore is also a Director of Gen-Probe Incorporated, Digirad Corporation and Qualcomm Incorporated. In June 2001, Mr. Dittamore retired as a partner of Ernst & Young after 35 years of service. He brings to the Board of Directors over three decades of public accounting experience, primarily serving companies in the life sciences industry. Mr. Dittamore received his B.S. from San Diego State University.
David C. U Prichard, Ph.D. (age 56)	Director Nominee. Dr. U Prichard is a venture partner with Apax Partners, Ltd. and President, Druid Consulting LLC. From 1999-2003, Dr. U Prichard was Chief Executive Officer of 3-Dimensional Pharmaceuticals, Inc. From 1997 to 1999 Dr. U Prichard served as President, Research & Development of Smithkline Beecham Pharmaceuticals, plc., and from 1994 to 1997 as Executive VP and Director of Worldwide Research at Zeneca Pharmaceuticals plc. Dr. U Prichard holds a B.Sc. from the University of Glasgow, and a Ph.D. in Pharmacology from the University of Kansas. Dr. U Prichard completed a Post Doctoral fellowship with Professor Solomon Snyder at Johns Hopkins University in neuropharmacology, and held a tenured faculty position at Northwestern University before starting Nova Pharmaceutical Corp in Baltimore with Dr. Snyder, where he was head of R&D. In 1986, Dr. U Prichard joined ICI, subsequently AstraZeneca

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*Directors Continuing in Office*

**Class I**

**(Term Ends 2006)**

Gregory T. Lucier  (age 40)	President and Chief Executive Officer and a director of Invitrogen since May 2003. From June 2000 to May 2003, Mr. Lucier served as President and Chief Executive Officer of GE Medical Systems, Information Technologies. From August 1999 to June 2000, Mr. Lucier served as Vice President, Global Services of GE Medical Systems. From May 1995 to August 1999, Mr. Lucier served as President of GE-Harris Railway Electronics. Mr. Lucier received his B.S. in engineering from Pennsylvania State University and an M.B.A. from Harvard Business School.
James R. Glynn  (age 57)	Director of Invitrogen since June 1998, and Mr. Glynn has served in several positions at Invitrogen, including Chief Executive Officer, from June 1998 to August 2003. Mr. Glynn previously served as a Director of Invitrogen from May through November 1995. From July 1995 to May 1997, Mr. Glynn served as Senior Vice President and Chief Financial Officer and from May 1997 to July 1998, as Chief Operating Officer, Chief Financial Officer and Director of Matrix Pharmaceuticals, Inc. Mr. Glynn received his B.B.A. in Accounting from Cleveland State University.
Donald W. Grimm  (age 62)	Director of Invitrogen since June 1998. He has been a venture partner of HamiltonApex Technology Ventures since August 2001. Since June 1995 he has served as Chairman and President of Strategic Design LLC, a strategic planning and consulting company. Mr. Grimm retired from Eli Lilly & Company, a research-based pharmaceutical company, in December 1993 after 23 years of service. Mr. Grimm held positions at Eli Lilly as Director of Worldwide Pharmaceutical Pricing, Director of Pharmaceutical Market Research, and Director of Sales. Following these assignments, Mr. Grimm was President & CEO of Hybritech, Inc., a wholly owned subsidiary of Lilly. In addition, he has been a director of several private companies. Mr. Grimm received his B.S. in Pharmacy and his M.B.A. from the University of Pittsburgh.

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**Class III**

**(Term Ends 2005)**

Balakrishnan S. Iyer  (age 47)	Director of Invitrogen since July 2001. He is currently a Director of Conexant Systems, Inc., Skyworks Solutions, Inc., Qlogic Corporation, and Power Integrations. From October 1998 until June 2003, Mr. Iyer was Chief Financial Officer of Conexant Systems, Inc. Mr. Iyer previously served as Senior Vice President and Chief Financial Officer of VLSI Technology Inc., where he was responsible for all worldwide financial functions, information technology and strategic planning. During his career, he has held a variety of other key management positions, including Finance Director and Group Controller for a \$1 billion business at Advanced Micro Devices. Mr. Iyer received his B.S. in Mechanical Engineering from the Indian Institute of Technology, Madras and his M.S. in Industrial Engineering from the University of California, Berkeley. Mr. Iyer also received an M.B.A. in Finance from the Wharton School.
William J. Mercer  (age 55)	Director of Invitrogen since July 2001. Mr. Mercer is the Founder and Managing Member of Avocet Ventures, LLC, a private equity investment firm, since February 2000. Prior to his current position, Mr. Mercer was the President, Chief Executive Officer, and Director of ALARIS Medical Systems, Inc., a global leader in drug infusion systems, patient monitoring, and cardiac monitoring from November 1996 to October 1999. Prior to that position, Mr. Mercer was the President, Chief Executive Officer, and Director of IVAC Medical Systems, Inc. from May 1995 to November 1996. Mr. Mercer currently serves as a Director for Rotech Healthcare, Inc. Mr. Mercer received his B.S. in Zoology from North Carolina State University, and a certificate from the Advanced Management Program of Harvard Business School.
Jay M. Short, Ph.D.  (age 46)	Director of Invitrogen since February 1995. Dr. Short is a founding member of Diversa Corporation, and he has served as Chief Technology Officer and Director of the company since its inception in 1994. He assumed the additional roles of President in 1998 and Chief Executive Officer in 1999. Prior to joining Diversa Corporation, Dr. Short served as President of Stratacyte, Inc. and Vice President of Research and Development and Operations for Stratagene Cloning Systems, both molecular biology companies. Dr. Short serves as a Director for Stressgen Biotechnologies, focusing on the medical application of stress proteins. Dr. Short received his B.A. in Chemistry from Taylor University and his Ph.D. in Biochemistry from Case Western Reserve University.

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### ***How often did the Board meet during 2003?***

During the fiscal year ended December 31, 2003, the Board of Directors held sixteen meetings. Each director serving on the Board of Directors in fiscal year 2003 attended at least 75% of the meetings of the Board of Directors and the Committees on which he served, except for Mr. Mercer, who attended more than 75% of the meetings of the Board of Directors and 66% of the six meetings of the Compensation and Organization Committee.

### ***What is the Company's policy regarding attendance by the Board of Directors at the Annual Meeting of Stockholders?***

Members of the Board are strongly encouraged to attend the Annual Meeting of Stockholders. At the 2003 Annual Meeting of Stockholders, all 8 of the incumbent directors, including both incumbent director nominees, were present.

### ***What committees has the Board of Directors established?***

On February 11, 2004, the Board of Directors revised the structure of its standing committees to include an Audit Committee, a Compensation and Organizational Development Committee, and a Nominating and Corporate Governance Committee, and has adopted written charters for each. The charters of the Audit Committee, the Compensation and Organizational Development Committee, and the Nominating and Corporate Governance Committee are filed with the SEC as appendices to this proxy statement, and are available on the Company's website at <http://www.invitrogen.com>. The Audit Committee consists of Mr. Dittamore, Mr. Iyer, and Mr. Grimm, and Mr. Dittamore serves as the Chairman. The Compensation and Organizational Development Committee consists of Mr. Lorimier, Mr. Mercer, and Dr. Short, and Mr. Lorimier serves as the Chairman. The Nominating and Corporate Governance Committee consists of Mr. Grimm, Mr. Dittamore and Mr. Lorimier and Mr. Grimm serves as the Chairman.

***Audit Committee.*** The Audit Committee's function is to review with our independent public accountants and management the annual financial statements and independent public accountants' opinion, review and maintain direct oversight of the plan, scope and results of the audit by the independent public accountants, review and approve all professional services performed and related fees charged by the independent public accountants, be solely responsible for the retention or replacement of the independent public accountants, and monitor the adequacy of the Company's accounting and financial policies, controls, and reporting systems. During the fiscal year ending December 31, 2003, the Audit Committee held ten meetings.

The Board of Directors and the Audit Committee believe that the Audit Committee's current member composition satisfies the rule of the National Association of Securities Dealers, Inc. ( NASD ) that governs audit committee composition, including the requirement that audit committee members all be independent directors as that term is defined by NASD Rule 4200 (a)(15) and the definition of independent under the Sarbanes-Oxley Act of 2002. Additionally, the Company certifies that it has, and will continue to have, at least one member of the Audit Committee that is defined as a financial expert in accordance with Section 407 of the Sarbanes-Oxley Act with past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities. Currently, Raymond V. Dittamore and Balakrishnan S. Iyer are considered financial experts.

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*Compensation and Organizational Development Committee.* The Compensation and Organization Committee was renamed as the Compensation and Organizational Development Committee in February 2004. The functions of the Compensation and Organization Committee in 2003 included providing guidance to management and assisting the Board of Directors in matters relating to the compensation of the Chief Executive Officer and senior executives, the organizational structure of the Company, the Company's compensation and benefits programs, the Company's succession, retention and training programs; and such other matters that have a direct impact on the success of our human resources. During the year ended December 31, 2003, the Compensation and Organization Committee held six meetings.

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The Board of Directors and the Compensation and Organizational Development Committee believe that the Compensation and Organizational Development Committee's current member composition satisfies the rule of the National Association of Securities Dealers, Inc. ( NASD ) that governs committee composition, including the requirement that committee members all be independent directors as that term is defined by NASD Rule 4200 (a)(15) and the definition of independent under the Sarbanes-Oxley Act of 2002.

*The Nominating and Corporate Governance Committee.* One of the Nominating and Corporate Governance Committee's functions is to lead any searches for new Board of Director candidates, and to make recommendations to the Board of Directors regarding director nominees to be put forth by the Board of Directors at each annual meeting of stockholders. This committee will consider for inclusion in its nominations of new Board of Director nominees proposed by stockholders who have held at least 1% of the outstanding voting securities of the Company for at least one year. Board candidates referred by such stockholders will be considered on the same basis as Board candidates referred from other sources. Any stockholder who wishes to recommend for the Nominating and Corporate Governance Committee's consideration a prospective nominee to serve on the Board of Directors may do so by giving the candidate's name and qualifications in writing to the Company's Secretary at the following address: 1600 Faraday Avenue, Carlsbad, CA 92008.

The Board of Directors and the Nominating and Corporate Governance Committee believe that the Nominating and Corporate Governance Committee's current member composition satisfies the rule of the National Association of Securities Dealers, Inc. ( NASD ) that governs committee composition, including the requirement that committee members all be independent directors as that term is defined by NASD Rule 4200 (a)(15) and the definition of independent under the Sarbanes-Oxley Act of 2002.

## **AUDIT COMMITTEE REPORT TO STOCKHOLDERS**

The following is a copy of the report made by the Audit Committee to the Board of Directors in February 2004.

To the Board of Directors of Invitrogen Corporation:

We have reviewed and discussed with management Invitrogen's audited financial statements as of and for the year ended December 31, 2003.

We have discussed with the independent auditors the matters required to be discussed by Statement on Auditing Standards No. 61, *Communications with Audit Committees*, as amended, by the Auditing Standards Board of the American Institute of Certified Public Accountants.

We have received and reviewed the written disclosures and letter from the independent auditors required by Independence Standard No. 1, *Independence Discussions with Audit Committees*, as amended, by the Independence Standards Board, and have discussed with the auditors the auditors' independence.

We have received and reviewed reports from the independent auditors regarding (1) all critical accounting policies used in connection with the audit of Invitrogen's financial statements as of and for the year ended December 31, 2003; (2) all alternative treatments of financial information

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within generally accepted accounting principles that have been discussed with management, the ramifications of the use of such alternative disclosures and treatments, and the treatment preferred by the independent auditors; and (3) all other material written communications between the independent auditors and management.

Based upon the reviews and discussions referred to above, the Audit Committee recommends to the Board of Directors, that the financial statements referred to above be included in Invitrogen's Annual Report on Form 10-K for the year ended December 31, 2003, for filing with the Securities and Exchange Commission.

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THE AUDIT COMMITTEE

Raymond V. Dittamore, Audit Committee Chair

Balakrishnan S. Iyer, Audit Committee Member

Bradley G. Lorimier, Audit Committee Member

**INFORMATION REGARDING CHANGE OF INDEPENDENT AUDITORS**

On April 5, 2002, the Board of Directors of the Company, upon the recommendation of its Audit Committee, dismissed Arthur Andersen LLP ( Arthur Andersen ) as the Company s independent public accountants and engaged Ernst & Young LLP to serve as the Company s independent public accountants for the fiscal year ending December 31, 2002.

Arthur Andersen s reports on the Company s consolidated financial statements for each of the years ended December 31, 2001 and 2000 did not contain an adverse opinion or disclaimer of opinion, nor were they qualified or modified as to uncertainty, audit scope or accounting principles. In connection with its audits for the Company s fiscal years ended December 31, 2001 and 2000, and through April 5, 2002, there were no disagreements between the Company and Arthur Andersen on any matter of accounting principle or practice, financial statement disclosure, or auditing scope or procedure which, if not resolved to Arthur Andersen s satisfaction, would have caused Arthur Andersen to make reference to the subject matter in connection with Arthur Andersen s report on the Company s consolidated financial statements for such years and interim period; and there were no reportable events as defined in Item 304(a)(1)(v) of Regulation S-K. The Company provided Arthur Andersen with a copy of the foregoing disclosures. Attached as Exhibit 16.1 to the Company s Current Report on Form 8-K filed with the SEC on April 9, 2002 is a copy of Arthur Andersen s letter, dated April 8, 2002, stating its agreement with such statements.

During the fiscal years ended December 31, 2001 and 2000, and through April 5, 2002, the Company did not consult Ernst & Young with respect to the application of accounting principles to a specified transaction, either completed or proposed, or the type of audit opinion that might be rendered on the Company s consolidated financial statements, or any other matters or reportable events listed in Items 304(a)(2)(i) and (ii) of Regulation S-K.

**PRINCIPAL ACCOUNTING FEES AND SERVICES**

The following table sets forth the aggregate fees agreed to by the Company for the annual and statutory audits for the fiscal years ended December 31, 2003 and 2002, and all other fees paid by the Company during 2003 and 2002 to its principal accounting firm, Ernst & Young LLP:

	For the Years Ended December 31,	
	2003	2002
<i>(in thousands)</i>		



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Audit Fees	\$ 869	\$ 680
Audit-Related Fees	294	213
Tax Fees	389	139
All Other Fees	86	130
	<u>\$ 1,638</u>	<u>\$ 1,162</u>

The Audit Committee has determined that the rendering of all non-audit services by Ernst & Young, LLP is compatible with maintaining the auditor's independence. The non-audit fees listed under "All other fees" above were incurred for advice related to a dispute between the Company and the U.S. Department of Veterans Affairs, which has recently been settled. The Audit Committee approves non-audit services by Ernst & Young LLP on an ad hoc basis, and has vested authority with Raymond V. Dittamore, the chairman of the Audit Committee, to approve non-audit services as needed.

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**COMPENSATION AND ORGANIZATION COMMITTEE REPORT TO STOCKHOLDERS**

*What are the Compensation and Organization Committee's responsibilities?*

In fiscal 2003, the Compensation and Organization Committee (referred to below as the "Committee") was responsible for setting and administering our overall compensation policies and the annual compensation of the CEO and other executive officers. The Company's executive compensation is designed to be closely linked to long-term corporate performance and returns to stockholders. To this end, we have developed an overall compensation strategy and specific compensation plans that tie a significant portion of executive compensation to the Company's success in meeting specified performance goals and to appreciation in our stock price over time. The overall objectives of this strategy are to attract and retain executive talent of the highest quality, to motivate these executives to achieve the goals inherent in our strategy, to link executive and stockholder interests through equity-based compensation and to provide a compensation package that recognizes individual contributions as well as overall business results.

The Committee reviews and determines the compensation of the officers of the Company who are subject to the reporting requirements of Section 16(a) of the Securities Exchange Act of 1934, including the individuals named in the Summary Compensation Table, and reviews the compensation policies and pay practices employed with respect to all of the Company's other executive-level employees. This practice is designed to ensure consistency throughout the executive compensation program. The key elements of our executive compensation program consist of base salary, cash bonuses, a long term incentive plan, stock options and restricted stock. The Committee's policies with respect to each of these elements, including the bases for the compensation awarded to Mr. Lucier and Mr. Glynn in 2003, are discussed below.

*How are the Company's executive officers compensated?*

*Salary.* The Company strives to offer salaries to its executive officers that are competitive in its industry and in its geographic regions for similar positions requiring similar qualifications. In determining executive officers' salaries, the Committee considers salary surveys of companies in similar industries, and of similar size and geographic location. Companies selected for salary comparisons are not necessarily the same companies used to compare stock performance in the chart under the heading "Comparison of Stockholder Return." In addition to competitive industry salaries, the Committee also takes into account the subjective assessment of the nature of the position; the contribution and experience of the officer, and the length of the officer's service.

Each year the Committee evaluates the performance and sets the salary of our executive officers subject to Section 16 of the Securities Exchange Act of 1934. Performance evaluations for individual executive officers are based on individual goals and accomplishments. The goals of executive officers are based on their individual management responsibilities. In addition to reviewing the results of the performance of the individuals and information concerning competitive salaries, the Committee considers the Company's financial condition and performance in evaluating salary adjustments. The salaries are evaluated by the Committee, with each member using his personal judgment and subjective factors to assess performance.

*Bonuses.* The Company seeks to provide additional incentives and rewards to executive officers who make contributions of outstanding value. For this reason, we may award incentive compensation which can comprise a substantial portion of the total compensation of executive officers when earned and paid. Cash bonuses are based on an evaluation of personal performance and existing salary as well as a formula-based evaluation of company performance.

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*Long-Term Incentive Plan.* The Company seeks to retain executives with outstanding performance over the long-term. Therefore the Committee has approved a long-term incentive plan to encourage executives to stay with the Company and continue to deliver stockholder value. Long Term Incentive Plan payments are made to executives who remain with the company for three years or more.

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*Stock Options and Restricted Stock.* The Committee believes that equity ownership provides significant additional incentive to executive officers to maximize value for the Company's stockholders, and therefore makes periodic grants of stock options under the Invitrogen Corporation 1997 Stock Option Plan to those officers (as well as other employees). Such options are granted at the prevailing market price, and will only have value if our stock price increases over the exercise price. Therefore, the Committee believes that stock options serve to align the interest of executive officers closely with other stockholders because of the direct benefit executive officers receive through improved stock performance.

In the fiscal year 2003, the Committee made determinations concerning the size and frequency of option grants for executive officers, after consideration of recommendations from the Chief Executive Officer. Option grants were based upon relative position and responsibilities of each executive officer, historical and expected contributions of each officer, and previous option grants to such executive officers. Options were granted with a goal to provide competitive equity compensation for executive officers compared to executive officers of similar rank in companies of our industry, geographic locations, and size. Generally, these option grants vest over four years. Option grants to executive officers for the fiscal year 2003 are set forth in the table entitled "Option Grants in Last Fiscal Year" in the section entitled "Executive Compensation and Other Matters."

*Restricted Stock.* In addition, the Committee has made grants of restricted stock to certain of its officers under the Invitrogen Corporation 2002 Stock Incentive Plan (formerly the Molecular Probes, Inc. 2002 Stock Incentive Plan), and in the case of the CEO, under a Nonstatutory Stock Option Agreement. Such grants vest over four years, fifty percent upon the completion of two years of service following the grant, and the remaining fifty percent vests upon the completion of four years of service following the grant. Such grants will increase equity ownership by our executives and provides additional incentive for such executives to remain with the Company and continue to deliver exceptional performance.

In the fiscal year 2003, the Committee granted restricted stock to several of its executive officers to induce them to begin employment with the Company. The size of the grants were determined by the Committee with input from management based on the role of the executive officer, with a goal of providing competitive compensation for similar positions.

### ***How is the Company addressing the deductibility of executive compensation?***

Section 162(m) of the Internal Revenue Code of 1986 and the related regulations of the Internal Revenue Service limit the amount of compensation a corporation may deduct as a business expense paid to any of its Chief Executive Officer and its four other most highly compensated officers to \$1,000,000 each in any year, except to the extent that such compensation qualifies as "performance based" compensation. Although the Committee considers the net cost to the Company in making all compensation decisions (including, for this purpose, the potential limitation on deductibility of executive compensation), there is no assurance that compensation realized with respect to any particular award will qualify as "performance based" compensation or will otherwise be tax deductible by the Company. The Committee's policy is to qualify its executive compensation for deductibility under applicable tax laws as practicable.

### ***Conclusion***

The Committee believes that linking executive compensation to individual and company performance results in better alignment of compensation with corporate business goals and stockholder value. As performance goals are met or exceeded, resulting in increased value to stockholders, executives are rewarded commensurately. The Committee believes that compensation paid to its executives during 2003, including the Chief Executive Officer, reflects the Company's compensation goals and policy.

Members of the Compensation and Organization Committee:

Donald W. Grimm, Compensation and Organization Committee Chair

William J. Mercer, Compensation and Organization Committee Member

Jay M. Short, Ph.D., Compensation and Organization Committee Member

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**NOMINATING AND CORPORATE GOVERNANCE COMMITTEE**

***Who are the nominees for election at the 2004 Annual Meeting of Stockholders?***

The Nominating and Corporate Governance Committee recommended Bradley G. Lorimier, Raymond V. Dittamore and David C. U Prichard, Ph.D. to be nominated by the Board of Directors for election to Class II of the Board at the Annual Meeting of Stockholders. Dr. U Prichard, a non-incumbent nominee, was referred to the Nominating and Corporate Governance Committee by Spencer Stuart. Spencer Stuart is a search firm, which was paid \$62,500 plus travel and related expenses in connection with the search for a board candidate.

In selecting Dr. U Prichard, the Nominating and Corporate Governance Committee was searching for a candidate with extensive experience in research and development in the pharmaceutical industry. In selecting non-incumbent candidates and reviewing the qualifications of incumbent candidates for the Board of Directors, the Nominating and Corporate Governance Committee also considers the Company's corporate governance principles, which include the following:

Directors should possess the highest personal and professional ethics, integrity and values, and be committed to representing the long-term interests of the stockholders. They must also have an inquisitive and objective perspective, practical wisdom and mature judgment. They must be actively engaged in the pursuit of information relevant to the Company's business and must constructively engage their fellow Board members, the CEO, and other members of management in dialogue and decision making. The Board will represent diverse experience at policy-making levels in business and technology in areas that are relevant to the Company's global activities.

Directors must be willing to devote sufficient time to carrying out their duties and responsibilities effectively, and should be committed to serve on the Board for an extended period of time. Directors should offer their resignation in the event of any significant change in their personal circumstances, including a change in their principal job responsibilities.

A supermajority of at least 2/3 of the directors will be independent directors as defined in the NASD rules for companies listed on the Nasdaq National Market. Directors who do not meet the NASD Manual's independence standards also make valuable contributions to the Board and to the Company through their experience and wisdom.

In general, to be considered independent under the proposed NASD Manual rules, the Board must determine, among other things, that a director does not have any relationships that, in the Board's opinion, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The Board will make an affirmative finding with respect to the independence of directors not less frequently than annually.

In addition to the policy that a supermajority of the Board members satisfy the independence standards discussed in the section above, members of the Audit Committee must also satisfy additional NASD independence requirements. Specifically, they may not directly or indirectly receive any compensation from the Company other than their directors' compensation, must not have participated in preparing the financial statements of the Company or any of its subsidiaries during the past three years, and must not be affiliated with the Company except through their membership on the Board and its committees.

**CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS**

*Indemnification Agreements*

The Company has entered into indemnification agreements with each of its executive officers and directors containing provisions that may require the Company, among other things, to indemnify those officers and directors against liabilities that may arise by reasons of their status or service as officers or directors. The agreements also provide for the Company to advance to the officers and directors expenses that they expect to incur as a result of any proceeding against them as to which they could be indemnified. The Company also intends to execute such agreements with its future directors and executive officers.

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### *Employee Relocation Loans*

Prior to July 30, 2002, as part of the restructuring of the Company's operations in Maryland, the Company provided housing loans during 2002 and 2001 to certain employees, including two of its executive officers, C. Eric Winzer and John A. Cottingham, respectively, upon their relocation from Maryland to Carlsbad. The loans of \$150,000 each, are interest free, and the principal amount of the loans will be forgiven in equal one-third increments after the third, fourth, and fifth year of the loans if the executive officer's employment has not been terminated at such times. The loans will also be forgiven if the Company terminates the executive officer's employment without Cause (as defined in the related agreements) on or before the fifth anniversary of the loan or upon the death or permanent disability of the executive officer. The loans are secured by the underlying real property purchased by the executive officer. The Company also provided moving expenses, closing costs, and other relocation costs relating to these transfers. Mr. Winzer has since paid off his loan in full as of November 2003.

### *Settlement Agreement*

The Company entered into a Settlement Agreement effective September 9, 2002, with its Senior Vice President, Business Segment Management, Daryl J. Faulkner. Under the terms of this agreement, the Company agreed to pay Mr. Faulkner an aggregate of approximately \$157,000 in settlement payments in exchange for a mutual release between Mr. Faulkner and the Company releasing each other from all claims arising out of the Company's decision not to provide Mr. Faulkner with a relocation loan that was offered to Mr. Faulkner as part of his employment terms. The settlement payments consist of an initial payment of \$6,917.72, monthly payments of \$740.13 for a period of 56 months beginning on September 30, 2002 and three lump sum payments for an aggregate of \$108,663.09. If Mr. Faulkner's employment with the Company is terminated for cause, the Company has no further obligation to pay any remaining settlement payments. If Mr. Faulkner's employment with the Company is terminated for reasons other than cause, the Company will have to pay some, and in certain instances, all, of the remaining settlement payments.

### *Retirement Plans*

The Company's Senior Vice President of Corporate Development is eligible for certain benefits in connection with the Dexter Post Retirement Health Care and Supplemental Retirement Plan from Dexter Corporation.

### *Nonstatutory Stock Option Agreement*

The Company entered into a Nonstatutory Stock Option Agreement with its current President and Chief Executive Officer and Senior Vice President, Research and Development. Such grants vest over four years, fifty percent upon the completion of two years of service following the grant, and the remaining fifty percent vests upon the completion of four years of service following the grant. Such grants will increase equity ownership by our executives and provides additional incentive for such executives to remain with the Company and continue to deliver exceptional performance.

### *Restricted Stock Agreements*



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The Company entered into Restricted Stock Agreements with several of its executive officers to induce them to begin employment with the Company. The size of the grants were determined by the Committee with input from management based on the role of the executive officer, with a goal of providing competitive compensation for similar positions. Such grants vest over four years, fifty percent upon the completion of two years of service following the grant, and the remaining fifty percent vests upon the completion of four years of service following the grant. Such grants will increase equity ownership by our executives and provides additional incentive for such executives to remain with the Company and continue to deliver exceptional performance.

**Table of Contents***Change in Control Agreements*

The Company has executed agreements with certain of its officers that would provide benefits following a change in control of the Company. The officers would be provided with cash payments and other benefits under their change-in-control agreements if, within twenty-four months after a change in control, the officer's employment was involuntary terminated (for reasons other than disability or cause) or if the officer terminated his or her employment for good reason.

**EXECUTIVE COMPENSATION AND OTHER MATTERS***Executive Compensation Table*

The following table sets forth information for the fiscal years ended December 31, 2003, 2002, and 2001 concerning the compensation of the Chief Executive Officer of the Company and each of the four other most highly compensated executive officers as of December 31, 2003, whose total salary and bonus for the year ended December 31, 2003, exceeded \$100,000 for services rendered in all capacities to the Company.

**Summary Compensation Table**

Name and Principal Position	Annual Compensation			Long-Term Compensation	
	Year	Salary	Bonus	Securities	
				Underlying Options	All Other Compensation <sup>(1)</sup>
Gregory T. Lucier <sup>(2)</sup>					
President and Chief Executive Officer	2003	\$ 433,600	\$	675,000	\$ 4,699,189 <sup>(3)</sup>
	2002				
	2001				
James R. Glynn <sup>(4)</sup>	2003	291,666	52,500		
	2002	379,167	73,434	210,000	
Chief Executive Officer and Chief Executive Officer	2001	342,708	19,688	50,000	
Emeritus					
Daryl J. Faulkner	2003	322,692	50,164	50,000	439,074 <sup>(5)</sup>
	2002	280,975	33,967	100,000	847,190 <sup>(6)</sup>
Senior Vice President,	2001	253,150	78,224		60,904 <sup>(7)</sup>

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Business Segment

Management

Claude D. Benchimol	2003	113,076	35,000	100,000	1,949,844 <sup>(8)</sup>
	2002				
Senior VP, Research and	2001				

Development

Benjamin E. Bulkley	2003	77,307		100,000	1,918,092 <sup>(9)</sup>
	2002				
Senior VP,	2001				

Commercial Operations

C. Eric Winzer	2003	308,418	33,999	30,000	
	2002	267,417	26,510	150,000	307,142 <sup>(10)</sup>
Chief Financial Officer	2001	200,000	49,860		50,000 <sup>(11)</sup>

- 
- (1) Does not include perquisites paid to any of the listed executives that did not exceed the lesser of \$50,000 or 10% of the total salary and bonus reported for the officer.
- (2) Mr. Lucier served as President and Chief Executive Officer commencing May 30, 2003.
- (3) Consists of a sign-on bonus of \$750,000 as well as \$2,850,750 in restricted stock. Also includes a relocation bonus and relocation fringe pay of \$98,439.

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- (4) Mr. Glynn served as President and Chief Operating Officer of the Company from December 5, 2002 to May 30, 2003. He then served as Chief Executive Officer Emeritus from May 30, 2003 to July 30, 2003.
- (5) Consists of tax equalization pay of \$439,074.
- (6) Consists of foreign service pay of \$35,527 and reimbursement for foreign tax liability of \$184,895. Also includes a relocation bonus and reimbursement of relocation expenses of \$248,568 in connection with Mr. Faulkner's relocation from the U.K. to Carlsbad, California, and a bonus of \$378,200 paid as partial consideration to Mr. Faulkner to terminate his change-in-control agreement with Life Technologies, Inc ( LTI ).
- (7) Consists of foreign service pay of \$24,400 and reimbursement for foreign tax liability of \$36,504.
- (8) Consists of sign-on bonus of \$350,000 as well as \$1,469,000 in restricted stock. Also includes a relocation bonus and relocation fringe pay of \$130,844.
- (9) Consists of sign-on bonus of \$350,000 as well as \$1,526,250 in restricted stock valued as of December 31, 2003. Also includes a relocation bonus and relocation fringe pay of \$41,842.
- (10) Consists of a relocation bonus and reimbursement of relocation expenses of \$105,954 in connection with Mr. Winzer's relocation from Rockville, Maryland to Carlsbad, California, and a bonus of \$201,188 paid as partial consideration to Mr. Winzer to terminate his change-in-control agreement with LTI.
- (11) Consists of a one-time retention bonus of \$50,000 paid in connection with the change of control of LTI.

**Option Grants in Fiscal Year 2003**

Name	Number of Securities Underlying Options Granted	% of Total Options Granted to Employees in Fiscal Year	Exercise or Base Price	Expiration Date	Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term	
					5%	10%
Gregory T. Lucier	675,000	27.1%	\$ 38.01	5/30/13	\$ 16,135,392	\$ 40,890,252
James R. Glynn		%				
Daryl J. Faulkner	50,000	2.0%	61.05	10/15/13	1,919,701	4,864,899
Claude D. Benchimol	100,000	4.0%	58.76	9/02/13	3,695,385	9,364,831
Benjamin E. Bulkley	100,000	4.0%	61.05	10/15/13	3,839,402	9,729,798
C. Eric Winzer	30,000	1.2%	61.05	10/15/13	1,151,821	2,918,939

**Option Exercises in Fiscal Year 2003 and Year-End Option Values**

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The table below provides information about stock options exercised during the year ended December 31, 2003 and the number and value of options held by the executive officers described above at December 31, 2003. The closing price of our common stock on December 31, 2003, was \$69.91 per share.

<u>Name</u>	Shares		Number of Securities Underlying Unexercised Options at December 31, 2003		Value of Unexercised In-The-Money Options at December 31, 2003	
	<u>Acquired on Exercise</u>	<u>Value Realized</u>	<u>Exercisable</u>	<u>Unexercisable</u>	<u>Exercisable</u>	<u>Unexercisable</u>
		\$				\$
Gregory T. Lucier		\$		675,000	\$	\$ 21,532,500
James R. Glynn	12,501	426,284	362,221		7,287,210	
Daryl J. Faulkner			118,062	152,292	2,756,522	3,327,517
Claude D. Benchimol				100,000		1,115,000
Benjamin E. Bulkley				100,000		886,000
C. Eric Winzer	50,000	1,138,166	47,165	142,084	1,357,608	4,073,846

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### ***Employment and Severance Arrangements***

#### ***Employment Agreement***

The Company entered into an Employment Agreement with its current President and Chief Executive Officer effective May 30, 2003. Under the terms of this agreement, upon termination of employment he could receive a payment totaling 1.5 times his annual salary plus 1.5 times an imputed bonus of 75% of his annual salary, and any Long Term Incentive Payments that he would have received within 18 months of the date of termination, which amount to \$250,000 payable in March of each year for employment during the prior calendar year. In addition, he could receive continuing health and welfare benefits for eighteen months. The executive would be eligible for these payments and benefits upon his separation from the Company under specified circumstances other than termination for cause. The Employment Agreement was filed as Exhibit 10.57 to the Company's Quarterly Report on Form 10-Q for the period ended June 30, 2003, filed with the SEC on August 13, 2003.

#### ***Executive Employment and Severance Agreement***

The Company entered into an Executive Employment and Severance Agreement effective December 5, 2002, with its former Chief Executive Officer, President and Chief Operating Officer, James R. Glynn. Under the terms of this agreement, upon termination of employment he could receive a consulting fee totaling two times his annual salary plus two times an imputed bonus of 35% of his annual salary, and continuing health and welfare benefits for two years. The executive would be eligible for this fee and these benefits upon his separation from the Company under specified circumstances other than termination for cause. The compensation is contingent upon several conditions, including the executive's remaining available for consulting for two years and executing a general release. The consulting fee would be payable over the two year consulting period. In addition, the Company agreed to accelerate the vesting (to the extent not already vested) of 212,221 stock options, which became effective January 29, 2003, and to extend the post-employment exercise period for such options. The Executive Employment and Severance Agreement was filed as Exhibit 10.51 to the Company's Annual Report on Form 10-K for 2002, filed with the SEC on March 7, 2003.

#### ***Change in Control Agreements***

When the Company acquired Life Technologies in September of 2000, C. Eric Winzer, Daryl J. Faulkner and John A Cottingham, as members of Life Technologies management, were covered by change-in-control agreements. These agreements provided for cash payments and other benefits upon a change in control of Life Technologies and other conditions. These former Life Technologies employees are now executive officers of the Company. These individuals were entitled to benefits under the change-in-control agreements, which were collectible upon separation from the Company. Wishing to retain these individuals and remove a substantial incentive to separate from the Company, the Company offered to exchange the rights under these change-in-control agreements for pay to stay contracts with four individuals in the second quarter of 2002. These three individuals and one other employee who was a member of Life Technologies management, but is not an executive officer of the Company, have relinquished their rights under the change-in-control agreements in exchange for payments totaling \$1.8 million, in the aggregate, of which \$0.9 million was paid in October, 2002, and \$0.9 million that will be paid in October, 2004, contingent upon continuing employment and other conditions.

#### ***Compensation of Directors***

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The Company pays its non-employee directors annual compensation as follows. The Chairman of the Board receives annual cash compensation of \$100,000. The Chairmen of the Audit Committee, the Compensation and Organizational Development Committee, and the Nominating and Corporate Governance Committee each receive annual cash compensation of \$75,000. Members of the Audit Committee, the Compensation and

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Organizational Development Committee, and the Nominating and Corporate Governance Committee other than the Chairmen receive annual cash compensation of \$62,500, and members of the Board of Directors who do not sit on the Audit Committee, the Compensation and Organizational Development Committee, or the Nominating and Corporate Governance Committee receive annual cash compensation of \$50,000. Each non-employee director receives the single highest compensation for which he is eligible. Employee directors do not receive any compensation for their participation on the Board of Directors. No employee director is a member of the Audit Committee, the Compensation and Organizational Development Committee, or the Nominating and Corporate Governance Committee.

### *Compensation Committee Interlocks and Insider Participation*

There were no interlocks or other relationships among the Company's executive officers and directors that are required to be disclosed under applicable executive compensation disclosure requirements.

## **SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE**

Section 16(a) of the Securities Exchange Act of 1934, as amended, requires our executive officers, directors and persons who beneficially own more than 10% of the Company common stock to file initial reports of ownership and reports of changes in ownership with the Securities and Exchange Commission ( SEC ). SEC regulations require these individuals to give us copies of all Section 16(a) forms they file.

Based solely on our review of forms that were furnished to us and written representations from reporting persons, we believe that the executive officers, directors and more than 10% stockholders complied with all filing requirements related to Section 16(a), except for the following:

On October 15, 2003 and November 14, 2003, the Board of Directors granted options to several of its executive officers. The Form 4's for these options as well as options granted to its Chief Accounting Officer were filed on November 12, 2003 and December 1, 2003, respectively, outside the two-day reporting requirement enacted under the Sarbanes-Oxley Act of 2002.

## **PROTOCOL**

We have adopted a code of ethics applicable to all of our employees, including the principal executive officer, principal financial officer, principal accounting officer, our controller, and all of our directors. The code of ethics is called the Invitrogen Protocol, and a copy is filed as Exhibit 14.1 to the Company's Annual Report on Form 10-K for the year ended December 31, 2003, filed on March 3, 2004. The Invitrogen Protocol is posted to our internet site at <http://www.invitrogen.com>.



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**COMPARISON OF STOCKHOLDER RETURN**

Below is a line graph comparing changes through December 31, 2003, in the cumulative total return on the Company common stock (traded under the symbol IVGN), a broad market index, namely the NASDAQ Stock Market-U.S. Index (the NASDAQ Index ) and an industry index, namely the NASDAQ Pharmaceutical Stocks Index (the Industry Index ). The NASDAQ Pharmaceutical Stocks Index, a published industry index, encompasses companies operating under the same 3-digit Standard Industry Code (SIC) as that of the Company. The comparison assumes that on February 26, 1999 (the first day of public trading for our common stock) \$100 was invested in the Company's common stock and in each of the indices and assumes the reinvestment of dividends, where applicable.

**PERFORMANCE GRAPH**

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**ITEMS FOR STOCKHOLDER CONSIDERATION**

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**PROPOSAL 1**

*Election of Directors*

The Company has a classified Board of Directors currently consisting of three Class I directors (Gregory T. Lucier, James R. Glynn and Donald W. Grimm), three Class II directors (Bradley G. Lorimier, Raymond V. Dittamore, and David E. McCarty) and three Class III directors (Balakrishnan S. Iyer, William J. Mercer and Jay M. Short, Ph.D.), who will serve until the annual meetings of stockholders to be held in 2006, 2004, and 2005, respectively, and until their respective successors are duly elected and qualified. Directors in a class are elected for a term of three years to succeed the directors in such class whose terms expire at such annual meeting, or a shorter term to fill a vacancy in another class of directors.

The nominees for election at the 2004 Annual Meeting of Stockholders to serve as directors in Class II of the Board of Directors are Bradley G. Lorimier, Raymond V. Dittamore, and David C. U Prichard, Ph.D. If elected, these nominees will serve as directors until the annual meeting of stockholders in 2007, and until their successors are elected and qualified.

If a nominee declines to serve or becomes unavailable for any reason, or if a vacancy occurs before the election, the proxies may be voted for such substitute nominee as the proxy holders may designate.

If a quorum is present, either in person or by proxy, the three nominees for Class II who receive the greatest number of votes cast will be elected as Class II directors. Abstentions and broker non-votes will be counted for purposes of determining the presence or absence of a quorum. Neither abstentions nor broker non-votes will have any effect upon the outcome of voting with respect to the election of directors.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR

THE NOMINEES NAMED ABOVE.

**PROPOSAL 2**

*Ratification of Appointment of Independent Public Accountants*

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The Board of Directors has selected Ernst & Young LLP as the independent public accountants to audit our financial statements for the fiscal year ended December 31, 2004. Representatives of Ernst & Young LLP are expected to be present at the annual meeting of stockholders with the opportunity to make a statement if the representatives desire to do so, and are expected to be available to respond to appropriate questions.

### *Vote Required and Board of Directors Recommendation*

The affirmative vote of the holders of a majority of the shares of common stock cast at the meeting is required for adoption of this proposal. Abstentions and broker non-votes will be counted for purposes of determining the presence or absence of a quorum. Neither abstentions nor broker non-votes will have any effect upon the outcome of voting with respect to the ratification of independent public accountants.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE APPOINTMENT  
OF ERNST & YOUNG LLP AS THE COMPANY'S INDEPENDENT PUBLIC  
ACCOUNTANTS FOR THE FISCAL YEAR ENDING DECEMBER 31, 2004.

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**PROPOSAL 3**

***Adoption of the Invitrogen Corporation 2004 Equity Incentive Plan***

At the annual meeting, the stockholders will be asked to approve the Invitrogen Corporation 2004 Equity Incentive Plan (the 2004 Plan). The Compensation and Organization Committee of the Board of Directors adopted the 2004 Plan on February 10, 2004, subject to its approval by stockholders. The 2004 Plan is intended to replace our 1997 Stock Option Plan, 2000 Nonstatutory Stock Option Plan, 2001 Stock Incentive Plan (formerly the Molecular Probes, Inc. 2001 Stock Incentive Plan) and 2002 Stock Incentive Plan (formerly the Molecular Probes, Inc. 2002 Stock Incentive Plan) (collectively our Prior Plans), which will, after approval by the stockholders of the 2004 Plan, all be terminated and no new awards granted thereunder.

The Board of Directors believes that the Company must offer a competitive equity incentive program if it is to continue to successfully attract and retain the best possible candidates for positions of responsibility within the Company. The Board of Directors expects that the 2004 Plan will be an important factor in attracting, retaining and rewarding the high caliber employees, consultants and directors essential to our success and in motivating these individuals to strive to enhance our growth and profitability. The proposed 2004 Plan is intended to ensure that the Company will continue to have available a reasonable number of shares to meet these goals.

The 2004 Plan is also designed to preserve the Company's ability to deduct in full for federal income tax purposes the compensation recognized by its executive officers in connection with certain awards granted under the 2004 Plan. Section 162(m) of the Internal Revenue Code of 1986, as amended (the Code), generally denies a corporate tax deduction for annual compensation exceeding \$1 million paid to the chief executive officer or to any of the four other most highly compensated officers of a publicly held company. However, certain types of compensation, including performance-based compensation, are generally excluded from this deductibility limit. To enable compensation in connection with stock options, certain restricted stock grants, performance shares and performance units awarded under the 2004 Plan to qualify as performance-based within the meaning of Section 162(m), the 2004 Plan limits the sizes of such awards as further described below. While the Company believes that compensation in connection with such awards under the 2004 Plan generally will be deductible by the Company for federal income tax purposes, under certain circumstances, such as a change in control of the Company, compensation paid in settlement of performance share and performance unit awards may not qualify as performance-based. By approving the 2004 Plan, the stockholders will be approving, among other things, eligibility requirements for participation in the 2004 Plan, financial performance measures upon which specific performance goals applicable to certain awards would be based, limits on the numbers of shares or compensation that could be made subject to certain awards, and the other material terms of the awards described below.

***Summary of the 2004 Plan***

The following summary of the 2004 Plan is qualified in its entirety by the specific language of the 2004 Plan, a copy of which is available to any stockholder upon request.

**General.** The purpose of the 2004 Plan is to advance the interests of the Company by providing an incentive program that will enable the Company to attract and retain employees, consultants and directors upon whose judgment, interest and efforts the Company's success is dependent and to provide them with an equity interest in the success of the Company in order to motivate superior performance. These incentives are provided through the grant of stock options (including indexed options), stock appreciation rights, restricted stock purchase rights, restricted stock bonuses, restricted stock units, performance shares, performance units and deferred stock units.

*Authorized Shares.* Assuming the 2004 Plan is approved by the stockholders, all of our Prior Plans shall be terminated and a total of five million seven hundred thousand (5,700,000) shares of our Common Stock will have been reserved for the granting of new awards under the 2004 Plan. However, the actual 2004 Plan share reserve shall also include all of the options and other awards the Company has granted which are still outstanding as of

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April 29, 2004 (collectively the *Prior Awards* ) to the extent any such *Prior Award* expires, lapses or otherwise terminates for any reason without having been exercised or settled in full, or if any shares subject to forfeiture or repurchase are forfeited or repurchased by the Company. Consequently, the maximum number of shares which may be granted under the 2004 Plan, assuming all of the *Prior Awards* actually do expire, terminate or otherwise lapse unexercised and are returned to the 2004 Plan share reserve, shall equal thirteen million five hundred and sixteen thousand (13,516,000). If any award granted under the 2004 Plan expires, lapses or otherwise terminates for any reason without having been exercised or settled in full, or if shares subject to forfeiture or repurchase are forfeited or repurchased by the Company, any such shares that are reacquired or subject to such a terminated award will again become available for issuance under the 2004 Plan. Upon any stock dividend, stock split, reverse stock split, recapitalization or similar change in our capital structure, appropriate adjustments will be made to the shares subject to the 2004 Plan, to the award grant limitations and to all outstanding awards.

*Share Accounting.* Any shares of our Common Stock which are granted under the 2004 Plan in the form of stock options or stock appreciation rights shall be counted against the 2004 Plan share reserve as one share of our Common Stock for every one share subject to the stock option or stock appreciation right. However, any shares of our Common Stock, which are granted under the 2004 Plan in an award form other than stock options or stock appreciation rights, shall be counted against the 2004 Plan share reserve as 1.6 shares of our Common Stock for every one share subject to such award.

*Administration.* The 2004 Plan will be administered by the Compensation and Organizational Development Committee of the Board of Directors duly appointed to administer the 2004 Plan, or, in the absence of such committee, by the Board of Directors. In the case of awards intended to qualify for the performance-based compensation exemption under Section 162(m) of the Code, administration must be by a compensation committee comprised solely of two or more outside directors within the meaning of Section 162(m). (For purposes of this summary, the term *Committee* will refer to either such duly appointed committee or the Board of Directors.) Subject to the provisions of the 2004 Plan, the Committee determines in its discretion the persons to whom and the times at which awards are granted, the types and sizes of such awards, and all of their terms and conditions. The Committee may, subject to certain limitations on the exercise its discretion required by Section 162(m), amend, cancel, renew, or grant a new award in substitution for, any award, waive any restrictions or conditions applicable to any award, and accelerate, continue, extend or defer the vesting of any award. However, the 2004 Plan forbids, without stockholder approval, the repricing of any outstanding stock option and/or stock appreciation right. The 2004 Plan provides, subject to certain limitations, for indemnification by the Company of any director, officer or employee against all reasonable expenses, including attorneys' fees, incurred in connection with any legal action arising from such person's action or failure to act in administering the 2004 Plan. The Committee will interpret the 2004 Plan and awards granted thereunder, and all determinations of the Committee will be final and binding on all persons having an interest in the 2004 Plan or any award.

*Eligibility.* Awards may be granted to employees, directors and consultants of the Company or any present or future parent or subsidiary corporations of the Company. Incentive stock options may be granted only to employees who, as of the time of grant, are employees of the Company or any parent or subsidiary corporation of the Company. As of February 11, 2004, the Company had approximately 3800 employees, including ten executive officers, approximately 30 consultants, and nine directors who would be eligible under the 2004 Plan.

*Stock Options.* Each option granted under the 2004 Plan must be evidenced by a written agreement between the Company and the optionee specifying the number of shares subject to the option and the other terms and conditions of the option, consistent with the requirements of the 2004 Plan. The exercise price of each option may not be less than the fair market value of a share of Common Stock on the date of grant. However, any incentive stock option granted to a person who at the time of grant owns stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or any parent or subsidiary corporation of the Company (a *Ten Percent Stockholder* ) must have an exercise price equal to at least 110% of the fair market value of a share of Common Stock on the date of grant. The exercise price of each indexed stock option, and the terms and adjustments which may be made to such an option, will be determined by the Committee in its sole

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discretion at the time of grant. On March 10, 2004, the closing price of the Company's Common Stock on the Nasdaq National Market was \$68.52 per share. Subject to appropriate adjustment in the event of any change in the capital structure of the Company, no employee may be granted in any fiscal year of the Company options which in the aggregate are for more than one million (1,000,000) shares, provided however, that the Company may make an additional one-time grant to any newly-hired employee of a stock option for the purchase of up to an additional five hundred thousand (500,000) shares.

The 2004 Plan provides that the option exercise price may be paid in cash, by check, or in cash equivalent, by the assignment of the proceeds of a sale with respect to some or all of the shares being acquired upon the exercise of the option, to the extent legally permitted, by tender of shares of Common Stock owned by the optionee having a fair market value not less than the exercise price, by such other lawful consideration as approved by the Committee, or by any combination of these. Nevertheless, the Committee may restrict the forms of payment permitted in connection with any option grant. No option may be exercised unless the optionee has made adequate provision for federal, state, local and foreign taxes, if any, relating to the exercise of the option, including, if permitted or required by the Company, through the optionee's surrender of a portion of the option shares to the Company.

Options will become vested and exercisable at such times or upon such events and subject to such terms, conditions, performance criteria or restrictions as specified by the Committee. The maximum term of any option granted under the 2004 Plan is ten years, provided that an incentive stock option granted to a Ten Percent Stockholder must have a term not exceeding five years. The Committee will specify in each written option agreement, and solely in its discretion, the period of post-termination exercise applicable to each option.

Stock options are nontransferable by the optionee other than by will or by the laws of descent and distribution, and are exercisable during the optionee's lifetime only by the optionee. However, a nonstatutory stock option may be assigned or transferred to the extent permitted by the Committee in its sole discretion.

*Stock Appreciation Rights.* Each stock appreciation right granted under the 2004 Plan must be evidenced by a written agreement between the Company and the participant specifying the number of shares subject to the award and the other terms and conditions of the award, consistent with the requirements of the 2004 Plan.

A stock appreciation right gives a participant the right to receive the appreciation in the fair market value of Company Common Stock between the date of grant of the award and the date of its exercise. The Company may pay the appreciation either in cash or in shares of Common Stock. The Committee may grant stock appreciation rights under the 2004 Plan in tandem with a related stock option or as a freestanding award. A tandem stock appreciation right is exercisable only at the time and to the same extent that the related option is exercisable, and its exercise causes the related option to be canceled. Freestanding stock appreciation rights vest and become exercisable at the times and on the terms established by the Committee. A stock appreciation right may not be granted at less than the fair market value of a share of Company Common Stock on the date of grant. The maximum term of any stock appreciation right granted under the 2004 Plan is ten years. Subject to appropriate adjustment in the event of any change in the capital structure of the Company, no employee may be granted in any fiscal year of the Company stock appreciation rights which in the aggregate are for more than one million (1,000,000) shares, provided however, that the Company may make an additional one-time grant to any newly-hired employee of a stock appreciation right for the purchase of up to an additional five hundred thousand (500,000) shares.

Stock appreciation rights are generally nontransferable by the participant other than by will or by the laws of descent and distribution, and are generally exercisable during the participant's lifetime only by the participant.

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*Restricted Stock Awards.* The Committee may grant restricted stock awards under the 2004 Plan either in the form of a restricted stock purchase right, giving a participant an immediate right to purchase Common Stock, or in the form of a restricted stock bonus, for which the participant furnishes consideration in the form of services



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to the Company. The Committee determines the purchase price payable under restricted stock purchase awards, which may be less than the then current fair market value of our Common Stock. Restricted stock awards may be subject to vesting conditions based on such service or performance criteria as the Committee specifies, and the shares acquired may not be transferred by the participant until vested. Unless otherwise provided by the Committee, a participant will forfeit any shares of restricted stock as to which the restrictions have not lapsed prior to the participant's termination of service. Participants holding restricted stock will have the right to vote the shares and to receive any dividends paid, except that dividends or other distributions paid in shares will be subject to the same restrictions as the original award. Subject to appropriate adjustment in the event of any change in the capital structure of the Company, no employee may be granted in any fiscal year of the Company more than one hundred thousand (100,000) shares of restricted stock on which the restrictions are based on performance criteria, provided however, that the Company may make an additional one-time grant to any newly-hired employee of a restricted stock award of up to an additional fifty thousand (50,000) shares.

*Restricted Stock Units.* The Committee may grant restricted stock units under the 2004 Plan which represent a right to receive shares of Common Stock at a future date determined in accordance with the participant's award agreement. No monetary payment is required for receipt of restricted stock units or the shares issued in settlement of the award, the consideration for which is furnished in the form of the participant's services to the Company. The Committee may grant restricted stock unit awards subject to the attainment of performance goals similar to those described below in connection with performance shares and performance units, or may make the awards subject to vesting conditions similar to those applicable to restricted stock awards. Participants have no voting rights or rights to receive cash dividends with respect to restricted stock unit awards until shares of Common Stock are issued in settlement of such awards. However, the Committee may grant restricted stock units that entitle their holders to receive dividend equivalents, which are rights to receive additional restricted stock units for a number of shares whose value is equal to any cash dividends we pay. Subject to appropriate adjustment in the event of any change in the capital structure of the Company, no employee may be granted in any fiscal year of the Company more than one hundred thousand (100,000) restricted stock units on which the restrictions are based on performance criteria, provided however, that the Company may make an additional one-time grant to any newly-hired employee of restricted stock units of up to an additional fifty thousand (50,000) shares.

*Performance Awards.* The Committee may grant performance awards subject to such conditions and the attainment of such performance goals over such periods as the Committee determines in writing and sets forth in a written agreement between the Company and the participant. These awards may be designated as performance shares or performance units. Performance shares and performance units are unfunded bookkeeping entries generally having initial values, respectively, equal to the fair market value determined on the grant date of a share of Common Stock and \$100 per unit. Performance awards will specify a predetermined amount of performance shares or performance units that may be earned by the participant to the extent that one or more predetermined performance goals are attained within a predetermined performance period. To the extent earned, performance awards may be settled in cash, shares of Common Stock (including shares of restricted stock) or any combination thereof. Subject to appropriate adjustment in the event of any change in the capital structure of the Company, for each fiscal year of the Company contained in the applicable performance period, no employee may be granted performance shares that could result in the employee receiving more than six hundred thousand (600,000) shares of Common Stock or performance units that could result in the employee receiving more than four million dollars (\$4,000,000). A participant may receive only one performance award with respect to any performance period.

Prior to the beginning of the applicable performance period or such later date as permitted under Section 162(m) of the Code, the Committee will establish one or more performance goals applicable to the award. Performance goals will be based on the attainment of specified target levels with respect to one or more measures of business or financial performance of the Company and each parent and subsidiary corporation consolidated therewith for financial reporting purposes, or such division or business unit of the Company as may be selected by the Committee. The Committee, in its discretion, may base performance goals on one or more of the

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following such measures, which may be used individually or in tandem with other measures: revenue, gross margin, operating margin, operating income, pre-tax profit, earnings before interest, taxes, depreciation and/or amortization, net income, cash flow, expenses, stock price, earnings per share, return on stockholder equity, return on capital, return on net assets, economic value added, number of customers, market share, same store sales, return on investment, profit after tax and guest and/or customer satisfaction. The target levels with respect to these performance measures may be expressed on an absolute basis or relative to a standard specified by the Committee. The degree of attainment of performance measures will, according to criteria established by the Committee, be computed before the effect of changes in accounting standards, restructuring charges and similar extraordinary items occurring after the establishment of the performance goals applicable to a performance award.

Following completion of the applicable performance period, the Committee will certify in writing the extent to which the applicable performance goals have been attained and the resulting value to be paid to the participant. The Committee retains the discretion to eliminate or reduce, but not increase, the amount that would otherwise be payable to the participant on the basis of the performance goals attained. However, no such reduction may increase the amount paid to any other participant. In its discretion, the Committee may provide for the payment to a participant awarded performance shares of dividend equivalents with respect to cash dividends paid on the Company's Common Stock. Performance award payments may be made in lump sum or in installments. If any payment is to be made on a deferred basis, the Committee may provide for the payment of dividend equivalents or interest during the deferral period.

Unless otherwise provided by the Committee, if a participant's service terminates due to the participant's death, disability or retirement prior to completion of the applicable performance period, the final award value will be determined at the end of the performance period on the basis of the performance goals attained during the entire performance period but will be prorated for the number of months of the participant's service during the performance period. If a participant's service terminates prior to completion of the applicable performance period for any other reason, the 2004 Plan provides that, unless otherwise determined by the Committee, the performance award will be forfeited. No performance award may be sold or transferred other than by will or the laws of descent and distribution prior to the end of the applicable performance period.

*Deferred Stock Awards.* The 2004 Plan provides that certain participant's who are executives or members of a select group of highly compensated employees may elect to receive, in lieu of payment in cash or stock of all or any portion of such participant's cash and/or stock compensation, an award of deferred stock units. A participant electing to receive deferred stock units will be granted automatically, on the effective date of such deferral election, an award (a "Deferred Stock Unit Award") for a number of stock units equal to the amount of the deferred compensation divided by an amount equal to the fair market value of a share of our Common Stock as quoted by the national or regional securities exchange or market system on which the Common Stock is listed on the date of grant. A stock unit is an unfunded bookkeeping entry representing a right to receive one share of our Common Stock in accordance with the terms and conditions of the Deferred Stock Unit Award. Participant's are not required to pay any additional cash consideration in connection with the settlement of a Deferred Stock Unit Award. A participant's compensation not paid in the form of a Deferred Stock Unit Award will be paid in cash in accordance with the Company's normal payment procedures.

Each Deferred Stock Unit Award will be evidenced by a written agreement between the Company and the participant specifying the number of stock units subject to the award and the other terms and conditions of the Deferred Stock Unit Award, consistent with the requirements of the 2004 Plan. Deferred Stock Unit Awards are fully vested upon grant and will be settled by distribution to the participant of a number of whole shares of Common Stock equal to the number of stock units subject to the award terms and the participant's election. A holder of stock unit has no voting rights or other rights as a stockholder until shares of Common Stock are issued to the participant in settlement of the stock unit. However, participants holding stock units will be entitled to receive dividend equivalents with respect to any payment of cash dividends on an equivalent number of shares of Common Stock. Such dividend equivalents will be credited in the form of additional whole and fractional stock

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