

Harbor BioSciences, Inc.
Form DEF 14A
September 01, 2011
Table of Contents

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

(Rule 14a-101)

Proxy Statement Pursuant to Section 14(a) of the

Securities Exchange Act of 1934

(Amendment No.)

Filed by the Registrant
Check the appropriate box:

Filed by a Party other than the Registrant

Preliminary Proxy Statement

Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material under § 240.14a-12

Harbor BioSciences, Inc.

(Name of Registrant as Specified In Its Charter)

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

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4. Date Filed:

Table of Contents

HARBOR BIOSCIENCES, INC.

9191 Towne Centre Drive, Suite 409

San Diego, California 92122

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

TO BE HELD ON OCTOBER 26, 2011

TO THE STOCKHOLDERS OF HARBOR BIOSCIENCES, INC.:

You are cordially invited to attend the Annual Meeting of Stockholders (the Annual Meeting) of Harbor BioSciences, Inc., a Delaware corporation (the Company, we, us, or our), which will be held at the offices of Covington & Burling LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018 on October 26, 2011 at 10:00 a.m. Eastern time for the following purposes:

1. To consider and vote upon a proposal to approve an amendment to our Amended and Restated Certificate of Incorporation, as amended (the Restated Certificate), in order to add restrictions on the transfer of our common stock, par value \$0.01 per share (the Common Stock), to preserve our net operating losses for federal tax purposes.
2. To consider and vote upon an amendment to the Restated Certificate to eliminate the Board of Directors (the Board) classification provisions, pursuant to which our Board is divided into three separate classes, with each class having a three-year term, and to instead provide for a single class of directors, each elected to hold office until the next annual meeting of stockholders.
3. To consider and vote upon an amendment to the Restated Certificate to eliminate the provision that prevents stockholders from acting by written consent.
4. To consider and vote upon an amendment to the Restated Certificate to eliminate the restrictions on our stockholders ability to remove directors without cause.
5. To consider and vote upon an amendment to the Restated Certificate to permit our stockholders to fill vacancies on our Board.
6. To consider and vote upon an amendment to the Restated Certificate to permit our Amended and Restated Bylaws to be amended by the vote of a majority of the then-outstanding shares of voting stock, rather than two-thirds of such shares.
7. To consider and vote upon an amendment to the Restated Certificate to eliminate the provision that prohibits our stockholders from requesting that we hold a special meeting of our stockholders.
8. To consider and vote upon an amendment to the Restated Certificate to eliminate the provision that requires the vote of two-thirds of the then-outstanding shares of voting stock to modify certain provisions of the Restated Certificate.
9. To consider and vote upon an amendment to the Restated Certificate to authorize a 1-for-1,000 reverse stock split of the Common Stock (the Reverse Stock Split), as further described in the accompanying proxy statement.

10. To consider and vote upon an amendment to the Restated Certificate to authorize a 1,000-for-1 forward stock split of the Common Stock (the inverse ratio of the Reverse Stock Split) immediately following the Reverse Stock Split of the Common Stock (the Forward Stock Split), as further described in the accompanying proxy statement.

11. To elect three directors to serve as directors until the 2014 annual meeting of stockholders, or the 2012 annual meeting of stockholders in the event that the Company s stockholders approve the removal of the Board classification provisions from the Restated Certificate as contemplated by Proposal No. 2, or until their successors are duly elected and qualified.

Table of Contents

12. To approve anti-dilution protections afforded to the Common Stock Purchase Warrants (the Warrants) issued in our June 2010 registered direct offering of Common Stock and Warrants.

 13. To ratify the selection by the audit committee of the Board of BDO Seidman, LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2011.

 14. To consider and vote upon a proposal to adjourn the Annual Meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the Annual Meeting to approve any of the foregoing proposals.
- In addition, the Annual Meeting is being held to transact such other business as may properly come before the Annual Meeting or any adjournment or postponement thereof.

The foregoing items of business are more fully described in the proxy statement accompanying this Notice. We are not currently aware of any other matters that will come before the Annual Meeting.

The Board recommends that you vote FOR each of the proposals to be considered at the Annual Meeting.

Our Board has fixed the close of business on August 30, 2011, as the record date for the determination of Company stockholders entitled to notice of and to vote at the Annual Meeting and at any adjournment or postponement thereof.

Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting of Stockholders to be Held on October 26, 2011:

This Notice, along with the accompanying proxy statement, the enclosed proxy card, and our Annual Report on Form 10-K for the fiscal year ended December 31, 2010, is available on the Internet at www.harborbiosciences.com. Information included on our website, other than the proxy materials specifically referred to above, is not part of our proxy soliciting materials.

Your vote is important. Please take this opportunity to participate in our corporate affairs by voting on the important proposals being considered at the Annual Meeting. All of our stockholders are cordially invited to attend the Annual Meeting. Whether or not you expect to attend the Annual Meeting, please vote your shares as soon as possible in order to ensure your representation at the Annual Meeting and to minimize the cost of proxy solicitation. You may vote by mail by completing the attached proxy card and returning it, or you may vote over the Internet or by telephone by following the voting instructions provided in the accompanying proxy statement and the enclosed proxy card. Even if you have previously given your proxy, you may still attend the Annual Meeting and vote your shares in person for the matters to be acted upon at the Annual Meeting. Please note, however, that if your shares are held of record by a broker, bank, dealer or other nominee and you wish to vote at the Annual Meeting, you must obtain from the holder of record a proxy issued in your name.

By Order of the Board of Directors

SALVATORE J. ZIZZA
Chairman of the Board

San Diego, California

September 8, 2011

Table of Contents

NEITHER THE SECURITIES AND EXCHANGE COMMISSION (THE SEC) NOR ANY STATE SECURITIES COMMISSION OR AUTHORITY HAS APPROVED OR DISAPPROVED OF THE REVERSE STOCK SPLIT, THE FORWARD STOCK SPLIT OR THE OTHER TRANSACTIONS CONTEMPLATED BY THE ACCOMPANYING PROXY STATEMENT OR DETERMINED IF THE PROXY STATEMENT IS TRUTHFUL OR COMPLETE. THE SEC HAS NOT PASSED UPON THE FAIRNESS OR MERITS OF THE REVERSE STOCK SPLIT, THE FORWARD STOCK SPLIT OR THE OTHER TRANSACTIONS CONTEMPLATED BY THE ACCOMPANYING PROXY STATEMENT NOR UPON THE ACCURACY OR ADEQUACY OF THE INFORMATION CONTAINED IN THE PROXY STATEMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

Table of Contents**TABLE OF CONTENTS**

<u>GENERAL INFORMATION</u>	1
<u>Proposals to be Voted on at the Annual Meeting</u>	1
<u>Special Consideration of Certain Proposals</u>	3
<u>Purpose of the Stock Splits</u>	4
<u>Important Information Regarding Holders of Record and Beneficial Owners</u>	5
<u>SUMMARY OF THE STOCK SPLITS</u>	7
<u>QUESTIONS AND ANSWERS ABOUT THE ANNUAL MEETING AND THE STOCK SPLITS</u>	11
<u>What is the purpose of the Annual Meeting?</u>	11
<u>Where and when is the Annual Meeting?</u>	11
<u>Why am I receiving these proxy materials?</u>	11
<u>What am I being asked to vote on at the Annual Meeting?</u>	12
<u>How does the Board recommend that I vote on the proposals?</u>	12
<u>What vote is required to approve each proposal?</u>	13
<u>What is a broker non-vote?</u>	15
<u>Who can vote at the Annual Meeting?</u>	15
<u>How many shares were outstanding on the Record Date?</u>	16
<u>What is the quorum requirement for the Annual Meeting?</u>	16
<u>How can I vote my shares?</u>	16
<u>Can I change my vote after submitting my proxy?</u>	17
<u>What if I return a proxy card but do not make voting selections?</u>	17
<u>Who is paying for this proxy solicitation?</u>	18
<u>What does it mean if I receive more than one proxy card?</u>	18
<u>What if I share an address with another stockholder and only receive a single set of proxy materials?</u>	18
<u>How can I find out the results of the voting at the Annual Meeting?</u>	19
<u>When are stockholder proposals due for next year's annual meeting?</u>	19
<u>What is the main purpose of the Stock Splits?</u>	19
<u>Why is it important for the Company to reduce the number of holders of record of the Common Stock?</u>	19
<u>What will I receive in the Stock Splits?</u>	20
<u>How was the Cash Out Amount to be paid in the Reverse Stock Split determined?</u>	21
<u>How do we expect that our affiliates will vote with respect to the Stock Splits?</u>	21
<u>If the Stock Splits are approved, how will it affect the economic and voting rights of our affiliates?</u>	21
<u>What potential conflicts of interest are posed by the Stock Splits?</u>	21
<u>Why are only shares of certain stockholders being cashed out?</u>	22
<u>Why are we proposing to carry out the Forward Stock Split following the Reverse Stock Split?</u>	22
<u>What if I hold all of my shares of Common Stock in street name?</u>	22
<u>If I hold fewer than 1,000 shares of Common Stock, is there any way I can avoid having my shares be cashed out in the Stock Splits?</u>	23
<u>Is there anything I can do if I hold 1,000 or more shares of Common Stock, but would like to take advantage of the opportunity to receive cash for my shares as a result of the Stock Splits?</u>	24
<u>If the Stock Splits are approved by the Company's stockholders, can the Board determine not to proceed with the Stock Splits?</u>	24
<u>What will happen if the Stock Splits are not approved by our stockholders?</u>	24
<u>What are the federal income tax consequences of the Stock Splits to our stockholders?</u>	24
<u>What is the total cost of the Stock Splits to the Company?</u>	24
<u>Should I send in my stock certificates to the Company now?</u>	25
<u>Am I entitled to appraisal rights in connection with the Stock Splits?</u>	25
<u>SPECIAL FACTORS</u>	26
<u>Overview of the Reverse Stock Split and the Forward Stock Split</u>	26
<u>Recent Preferred Stock Financing</u>	27
<u>Purposes and Advantages of the Stock Splits</u>	33
<u>Disadvantages of the Stock Splits</u>	35
<u>Alternatives to the Stock Splits</u>	37
<u>Effects of the Stock Splits</u>	38
<u>Determination of Cash Out Amount</u>	42
<u>Conduct of Our Business After the Stock Splits</u>	42
<u>Material Federal Tax Consequences</u>	42
<u>Anticipated Accounting Treatment</u>	43
<u>Source of Funds and Expenses</u>	43
<u>Effective Date</u>	44
<u>Termination of the Stock Splits</u>	44
<u>Exchange of Shares: Process for Payment for Fractional Shares</u>	44
<u>Escheat Laws</u>	45

Regulatory Approvals

45

No Appraisal Rights

46

Recommendation of the Board

46

Table of Contents

<u>PROPOSAL NO. 1 ADOPTION OF AN AMENDMENT TO THE RESTATED CERTIFICATE TO ADD RESTRICTIONS ON THE TRANSFER OF COMMON STOCK TO PRESERVE NET OPERATING LOSSES</u>	47
<u>General</u>	47
<u>Annex Relating to Proposal No. 1</u>	47
<u>The Problem: Potential Limitations on Our NOLs</u>	47
<u>Reasons for the NOL Provision</u>	48
<u>Description and Effect of the NOL Provision</u>	48
<u>Authorization of Transfers of Stock</u>	49
<u>Implementation and Suspension of the NOL Provision</u>	49
<u>Effectiveness and Enforceability of the NOL Provision</u>	50
<u>Other Considerations</u>	50
<u>Vote Required for Approval of Proposal No. 1</u>	51
<u>PROPOSAL NO. 2 ADOPTION OF AN AMENDMENT TO THE RESTATED CERTIFICATE TO ELIMINATE THE BOARD CLASSIFICATION PROVISIONS</u>	52
<u>General</u>	52
<u>Annex Relating to Proposal No. 2</u>	52
<u>Eliminate Classified Board</u>	52
<u>Proposed Amendment</u>	52
<u>Vote Required for Approval of Proposal No. 2</u>	53
<u>PROPOSAL NO. 3 ADOPTION OF AN AMENDMENT TO THE RESTATED CERTIFICATE TO REMOVE THE PROVISION THAT PREVENTS OUR STOCKHOLDERS FROM ACTING BY WRITTEN CONSENT</u>	54
<u>General</u>	54
<u>Annex Relating to Proposal No. 3</u>	54
<u>Permit Stockholder Action by Written Consent</u>	54
<u>Proposed Amendment</u>	54
<u>Vote Required for Approval of Proposal No. 3</u>	54
<u>PROPOSAL NO. 4 ADOPTION OF AN AMENDMENT TO THE RESTATED CERTIFICATE TO ELIMINATE THE RESTRICTIONS ON OUR STOCKHOLDERS' ABILITY TO REMOVE DIRECTORS WITHOUT CAUSE</u>	56
<u>General</u>	56
<u>Annex Relating to Proposal No. 4</u>	56
<u>Permit Stockholders to Remove Directors Without Cause</u>	56
<u>Proposed Amendment</u>	56
<u>Vote Required for Approval of Proposal No. 4</u>	56
<u>PROPOSAL NO. 5 ADOPTION OF AN AMENDMENT TO THE RESTATED CERTIFICATE TO PERMIT OUR STOCKHOLDERS TO FILL VACANCIES ON THE BOARD</u>	57
<u>General</u>	57
<u>Annex Relating to Proposal No. 5</u>	57
<u>Permit Stockholders to Fill Vacancies on our Board</u>	57
<u>Proposed Amendment</u>	57
<u>Vote Required for Approval of Proposal No. 5</u>	57
<u>PROPOSAL NO. 6 ADOPTION OF AN AMENDMENT TO THE RESTATED CERTIFICATE TO PERMIT BYLAW AMENDMENTS BY A MAJORITY RATHER THAN A TWO-THIRDS VOTE OF OUR STOCKHOLDERS</u>	58
<u>General</u>	58
<u>Annex Relating to Proposal No. 6</u>	58
<u>Permit Bylaw Amendments by Majority Rather than Two-Thirds Vote of Stockholders</u>	58
<u>Proposed Amendment</u>	58
<u>Vote Required for Approval of Proposal No. 6</u>	58
<u>PROPOSAL NO. 7 ADOPTION OF AN AMENDMENT TO THE RESTATED CERTIFICATE TO ELIMINATE THE PROHIBITION ON STOCKHOLDER REQUESTS TO HOLD A SPECIAL MEETING</u>	59
<u>General</u>	59
<u>Annex Relating to Proposal No. 7</u>	59
<u>Eliminate Prohibition on Stockholder Requests for a Special Meeting</u>	59
<u>Proposed Amendment</u>	59
<u>Vote Required for Approval of Proposal No. 7</u>	60
<u>PROPOSAL NO. 8 ADOPTION OF AN AMENDMENT TO THE RESTATED CERTIFICATE TO ELIMINATE THE SUPERMAJORITY VOTING REQUIREMENTS</u>	61
<u>General</u>	61
<u>Annex Relating to Proposal No. 8</u>	61
<u>Elimination of Supermajority Voting Requirements</u>	61
<u>Proposed Amendment</u>	61
<u>Vote Required for Approval of Proposal No. 8</u>	62
<u>PROPOSAL NO. 9 APPROVAL OF AN AMENDMENT TO THE RESTATED CERTIFICATE TO AUTHORIZE THE REVERSE STOCK SPLIT</u>	63
<u>Annex Relating to Proposal No. 9</u>	63
<u>Additional Information Relating to Proposal No. 9</u>	63
<u>Votes Required for Approval of Proposal No. 9</u>	63

Table of Contents

<u>Annex Relating to Proposal No. 10</u>	64
<u>Additional Information Relating to Proposal No. 10</u>	64
<u>Votes Required for Approval of Proposal No. 10</u>	64
<u>PROPOSAL NO. 11 ELECTION OF DIRECTORS</u>	65
<u>Board Structure and Composition</u>	65
<u>Effect on Director Nominees of the Approval of Proposal No. 2</u>	65
<u>Vote Required for Approval of Proposal No. 10</u>	65
<u>Director Nominees</u>	66
<u>Directors Continuing in Office Until the 2012 Annual Meeting of Stockholders</u>	66
<u>Directors Continuing in Office Until the 2013 Annual Meeting of Stockholders</u>	67
<u>Executive Officers</u>	68
<u>Former Executive Officer</u>	69
<u>Legal Proceedings</u>	70
<u>Relationships Among Directors and Officers</u>	70
<u>Agreements with Directors</u>	70
<u>Independence of our Board of Directors</u>	70
<u>Board Governance and Leadership Structure</u>	70
<u>Board's Role in Risk Management</u>	71
<u>Nominating and Corporate Governance Committee</u>	71
<u>Compensation Committee</u>	73
<u>Audit Committee</u>	73
<u>Report of the Audit Committee</u>	73
<u>Stockholder Communications with the Board</u>	74
<u>Section 16(a) Beneficial Ownership Reporting Compliance</u>	75
<u>Code of Business Conduct and Ethics</u>	75
<u>Executive Compensation</u>	75
<u>Summary Compensation Table</u>	79
<u>Grants of Plan-Based Awards for Fiscal Year 2010</u>	80
<u>Outstanding Equity Awards at Fiscal Year End (2010)</u>	80
<u>Option Exercises and Stock Vested for Fiscal Year 2010</u>	82
<u>Qualified or Non-Qualified Defined Benefit Plans</u>	82
<u>Nonqualified Deferred Compensation</u>	82
<u>Potential Payments upon Termination or Change-In-Control</u>	82
<u>Director Compensation</u>	83
<u>Director Compensation for Fiscal Year 2010</u>	83
<u>PROPOSAL NO. 12 APPROVAL OF THE ANTI-DILUTION PROTECTIONS AFFORDED TO OUR COMMON STOCK PURCHASE WARRANTS</u>	84
<u>Overview</u>	84
<u>Reasons for the Common Stock Financing</u>	84
<u>No Requirement to Obtain Stockholder Approval Under NASDAQ Rules</u>	84
<u>Summary of the Terms of the Common Stock Financing</u>	85
<u>Impact of Amending the Minimum Price Provisions</u>	86
<u>Effect on Warrants of Reverse Stock Split</u>	86
<u>Votes Required for Approval of Proposal No. 12</u>	86
<u>PROPOSAL NO. 13 RATIFICATION OF THE SELECTION OF OUR INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM</u>	87
<u>Independent Registered Public Accounting Firm Fees</u>	87
<u>Audit Pre-Approval Policies</u>	87
<u>Votes Required for Approval of Proposal No. 13</u>	88
<u>PROPOSAL NO. 14 ADJOURNMENT OF THE ANNUAL MEETING</u>	89
<u>Votes Required for Approval of Proposal No. 14</u>	89
<u>SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT</u>	90
<u>EQUITY COMPENSATION PLAN INFORMATION</u>	92
<u>POLICIES AND PROCEDURES WITH RESPECT TO RELATED PERSON TRANSACTIONS</u>	93
<u>Policies and Procedures</u>	93
<u>Related Party Transactions</u>	93
<u>OTHER MATTERS</u>	94

ANNEXES

<u>Annex A</u>	Second Amended and Restated Certificate of Incorporation
<u>Annex B</u>	Certificate of Amendment to Effect the Reverse Stock Split
<u>Annex C</u>	Certificate of Amendment to Effect the Forward Stock Split

Table of Contents

HARBOR BIOSCIENCES, INC.

9191 Towne Centre Drive, Suite 409

San Diego, California 92122

PROXY STATEMENT

FOR THE 2011 ANNUAL MEETING OF STOCKHOLDERS

OCTOBER 26, 2011

GENERAL INFORMATION

This proxy statement is furnished in connection with the solicitation of proxies by the Board of Directors (the Board) of Harbor BioSciences, Inc., a Delaware corporation (the Company, we, us, or our), for use at the Annual Meeting of Stockholders of the Company (the Annual Meeting), which will be held at the offices of Covington & Burling LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018 on October 26, 2011 at 10:00 a.m. Eastern time, and any adjournments or postponements of the Annual Meeting, for the purposes set forth on the attached Notice of Annual Meeting of Stockholders and in this proxy statement.

This proxy statement and the accompanying proxy card were first made available to our stockholders on or about September 9, 2011.

This proxy statement contains important information for you to consider when deciding how to vote on the matters brought before the Annual Meeting. Our stockholders are encouraged to carefully read this proxy statement and each of the documents referred to herein before voting.

Proposals to be Voted on at the Annual Meeting

The Annual Meeting is being held for the following purposes:

1. To consider and vote upon a proposal to approve an amendment to our Amended and Restated Certificate of Incorporation, as amended (the Restated Certificate), in order to add restrictions on the transfer of our common stock, par value \$0.01 per share (the Common Stock), to protect our net operating losses for federal tax purposes by prohibiting and declaring void any proposed transfer of securities that would result in any stockholder becoming a five percent shareholder as such term is defined in Section 382 of the Internal Revenue Code, as amended (the NOL Provision).
2. To consider and vote upon an amendment to the Restated Certificate to eliminate the Board classification provisions, pursuant to which our Board is divided into three separate classes, with each class having a three-year term, and to instead provide for a single class of directors, each elected to hold office until the next annual meeting of stockholders.
3. To consider and vote upon an amendment to the Restated Certificate to eliminate the provision that prevents stockholders from acting by written consent.
4. To consider and vote upon an amendment to the Restated Certificate to eliminate the restrictions on our stockholders' ability to remove directors without cause.
5. To consider and vote upon an amendment to the Restated Certificate to permit our stockholders to fill vacancies on our Board.

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6. To consider and vote upon an amendment to the Restated Certificate to permit our Amended and Restated Bylaws to be amended by the vote of a majority of the then-outstanding shares of voting stock, rather than two-thirds of such shares.

Table of Contents

7. To consider and vote upon an amendment to the Restated Certificate to eliminate the provision that prohibits our stockholders from requesting that we hold a special meeting of our stockholders.
8. To consider and vote upon an amendment to the Restated Certificate to eliminate the provision that requires the vote of two-thirds of the then-outstanding shares of voting stock of the Company to modify certain provisions of the Restated Certificate. Each of [Proposal No. 1](#), [Proposal No. 2](#), [Proposal No. 3](#), [Proposal No. 4](#), [Proposal No. 5](#), [Proposal No. 6](#), [Proposal No. 7](#) and [Proposal No. 8](#), if adopted at the Annual Meeting, will result in amendments to the Restated Certificate. Attached as [Annex A](#) to this proxy statement is a proposed Second Amended and Restated Certificate of Incorporation of the Company (the "New Certificate"), which incorporates the various changes that would be implemented if [Proposal No. 1](#), [Proposal No. 2](#), [Proposal No. 3](#), [Proposal No. 4](#), [Proposal No. 5](#), [Proposal No. 6](#), [Proposal No. 7](#) and [Proposal No. 8](#) are adopted at the Annual Meeting and also consolidates the changes made as a result of several prior amendments to the Restated Certificate.
9. To consider and vote upon an amendment to the Restated Certificate to authorize a 1-for-1,000 reverse stock split of the Common Stock (the "Reverse Stock Split"), as further described in the accompanying proxy statement. Pursuant to the Reverse Stock Split, (i) each share of Common Stock held immediately prior to the effective time of the Reverse Stock Split by our stockholders of record holding fewer than 1,000 shares will be converted into the right to receive an amount in cash based on the average closing price per share of Common Stock for the ten trading days immediately prior to the effective date of the Reverse Stock Split (subject to any applicable U.S. federal, state and local withholding tax), without interest (the "Cash Out Amount"), per pre-split share, and (ii) each share of Common Stock held immediately prior to the effective time of the Reverse Stock Split by our stockholders of record (as identified in our records of security holders) holding 1,000 or more shares or by beneficial owners holding in street name (through a bank, broker, dealer or other nominee), regardless of the number of shares so held, will be converted into 1/1,000 of a share of Common Stock and the holder thereof will not be entitled to receive any cash for the fractional share resulting from the Reverse Stock Split, if any. The maximum number of shares that may be cashed out by any individual stockholder is 999 shares. Therefore, if the Reverse Stock Split had occurred on August 15, 2011, the maximum amount of money that may be payable to any stockholder as a result of the Reverse Stock Split would have been approximately \$173.83, based on the average closing price per share of Common Stock for the ten trading days immediately prior that date of \$0.174. If implemented, the Reverse Stock Split would reduce the risk that the Company will be required to file periodic reports with the Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), in the future and thereby potentially allow the Company to avoid the significant expenses associated with complying with SEC reporting obligations. We are also seeking to have our stockholders authorize the Reverse Stock Split and the Forward Stock Split because we may be required to effect them in order to comply with certain contractual obligations that we have to our largest investor as further described in this proxy statement. A copy of the proposed amendment to the Restated Certificate that would be used to effect the Reverse Stock Split is attached as [Annex B](#) to this proxy statement.
10. To consider and vote upon an amendment to the Restated Certificate to authorize a 1,000-for-1 forward stock split of the Common Stock (the inverse ratio of the Reverse Stock Split) immediately following the Reverse Stock Split of the Common Stock (the "Forward Stock Split"), the effect of which will be that each share of Common Stock held immediately prior to the effective time of the Reverse Stock Split by our stockholders that was not cashed out pursuant to the Reverse Stock Split will once again represent one share of Common Stock. A copy of the proposed amendment to the Restated Certificate that would be used to effect the Forward Stock Split is attached as [Annex C](#) to this proxy statement.

Although [Proposal No. 9](#) and [Proposal No. 10](#) are being voted on separately, our Board will not effect either the Forward Stock Split or the Reverse Stock Split unless our stockholders authorize both the Forward Stock Split and the Reverse Stock Split at the Annual Meeting.

Table of Contents

11. To elect three directors to serve as directors until the 2014 annual meeting of stockholders, or the 2012 annual meeting of stockholders in the event that the Company's stockholders approve the removal of the Board classification provisions from the Restated Certificate as contemplated by Proposal No. 2, or until their successors are duly elected and qualified.
12. To approve anti-dilution protections afforded to the Common Stock Purchase Warrants (the Warrants) issued in our June 2010 registered direct offering of Common Stock and Warrants.
13. To ratify the selection by the audit committee of the Board of BDO Seidman, LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2011.
14. To consider and vote upon a proposal to adjourn the Annual Meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the Annual Meeting to approve any of the foregoing proposals. In the event that a sufficient number of votes have been cast to approve some of the proposals (including Proposal No. 14), but not all of the proposals, the Company will deem those proposals approved and may implement the proposals so approved and may adjourn the Annual Meeting to continue to solicit votes for only those proposals that require more votes for approval.

In addition, the Annual Meeting is being held to transact such other business as may properly come before the Annual Meeting or any adjournment or postponement thereof. We are not currently aware of any other matters that will come before the Annual Meeting.

Special Consideration of Certain Proposals

Governance Amendments

While the Annual Meeting is being called so that our stockholders may consider and vote upon several important matters, certain of these matters are particularly important to our stockholders and require special consideration. Among the most significant matters that we are asking our stockholders to consider are the adoption of the NOL Provision (Proposal No. 1) and certain other amendments to the Restated Certificate that will eliminate the Board classification provisions (Proposal No. 2), eliminate the provision that prevents stockholders from acting by written consent (Proposal No. 3), eliminate the restrictions on our stockholders' ability to remove directors without cause (Proposal No. 4), permit our stockholders to fill vacancies on our Board (Proposal No. 5), permit our Amended and Restated Bylaws to be amended by the vote of a majority of the then-outstanding shares of voting stock, rather than two-thirds of such shares (Proposal No. 6), eliminate the provision that prohibits our stockholders from requesting that we hold a special meeting of our stockholders (Proposal No. 7) and eliminate the provision that requires the vote of two-thirds of the then outstanding shares of voting stock to modify certain provisions of the Restated Certificate (Proposal No. 8). Proposal No. 2, Proposal No. 3, Proposal No. 4, Proposal No. 5, Proposal No. 6, Proposal No. 7 and Proposal No. 8 are collectively referred to herein as the Governance Amendments.

We believe that the Governance Amendments are of particular importance to you as Proposal No. 1 will limit the ability of certain stockholders to sell shares of Common Stock, while Proposal No. 2, Proposal No. 3, Proposal No. 4, Proposal No. 5, Proposal No. 6, Proposal No. 7 and Proposal No. 8 will change the governance provisions applicable to the Company and significantly increase the influence that the Company's stockholders will have over our Board because, following the adoption of the Governance Amendments, each director will have to stand for election annually, our stockholders will not be prevented from acting by written consent, our stockholders will be able to remove directors without cause, our stockholders will be able to fill vacancies on our Board, a super-majority of the votes entitled to be cast will no longer be required to amend our Amended and Restated Bylaws, our stockholders will not be prevented from requesting special stockholder meetings and a super-majority of the votes entitled to be cast will no longer be required to change certain provisions of the Restated Certificate.

Table of Contents

Reverse Stock Split and Forward Stock Split

In addition, we are asking our stockholders to consider the adoption of amendments to the Restated Certificate to authorize the Reverse Stock Split and the Forward Stock Split. These proposals require our stockholders to consider and vote upon the adoption of two separate amendments to the Restated Certificate. The first such amendment would authorize a 1-for-1,000 reverse stock split of our Common Stock ([Proposal No. 9](#)). The second such amendment would authorize a 1,000-for-1 forward stock split of our Common Stock (the inverse ratio of the Reverse Stock Split) immediately following the Reverse Stock Split ([Proposal No. 10](#)). Although both the Reverse Stock Split and the Forward Stock Split will be voted on separately, our Board will not effect either the Forward Stock Split or the Reverse Stock Split unless our stockholders authorize both the Forward Stock Split and the Reverse Stock Split. The Forward Stock Split and the Reverse Stock Split are collectively referred to herein as the Stock Splits.

We believe that the Reverse Stock Split and the Forward Stock Split are of particular importance to you as their outcome may affect whether you will continue to be a stockholder of the Company following the Annual Meeting. To the extent you will no longer be a stockholder following the Annual Meeting, these proposals will determine the amount of cash you will receive for your fractional share. To the extent you continue to be a stockholder following the Annual Meeting, these proposals will, if adopted and implemented, reduce the number of our holders of record and thereby reduce the risk that the Company will be required to file periodic reports with the SEC under the Exchange Act in the future, which would allow the Company to continue to avoid the significant expenses associated with complying with SEC reporting obligations and the Sarbanes-Oxley Act.

Board Recommendation

It is important that our stockholders carefully review, consider and vote upon of the aforementioned proposals. Our Board recommends that our stockholders vote FOR each of the proposals to be considered at the Annual Meeting, including the proposal to approve the NOL Provisions ([Proposal No. 1](#)), the proposal to approve an amendment to the Restated Certificate to eliminate the Board classification provisions ([Proposal No. 2](#)), the proposal to approve an amendment to the Restated Certificate to eliminate the provision that prevents stockholders from acting by written consent ([Proposal No. 3](#)), the proposal to approve an amendment to the Restated Certificate to eliminate the restrictions on our stockholders' ability to remove directors without cause ([Proposal No. 4](#)), the proposal to approve an amendment to the Restated Certificate to permit our stockholders to fill vacancies on our Board ([Proposal No. 5](#)), the proposal to approve an amendment to the Restated Certificate to permit our Amended and Restated Bylaws to be amended by the vote of a majority of the then-outstanding shares of voting stock, rather than two-thirds of such shares ([Proposal No. 6](#)), the proposal to approve an amendment to the Restated Certificate to eliminate the provision that prohibits our stockholders from requesting that we hold a special meeting of our stockholders ([Proposal No. 7](#)), the proposal to approve an amendment to the Restated Certificate to eliminate the provision that requires the vote of two-thirds of the then outstanding shares of voting stock to modify certain provisions of the Restated Certificate ([Proposal No. 8](#)), the amendment to the Restated Certificate to authorize the Reverse Stock Split ([Proposal No. 9](#)), and the proposal to approve an amendment to the Restated Certificate to authorize the Forward Stock Split ([Proposal No. 10](#)).

Purpose of the Stock Splits

The main purpose of the Stock Splits is to give us the flexibility to reduce the number of the Company's record stockholders, or holders of record, to help ensure that we continue to have fewer than 300 holders of record, and thereby minimize the likelihood that we will be required to file periodic reports with the SEC under the Exchange Act in the future. Our Board has determined that the costs and other disadvantages associated with being an SEC-reporting company outweigh the advantages to the Company of being an SEC-reporting company. The cost of filing periodic reports with the SEC has become prohibitively expensive for us and we believe that it is in the best interests of the Company and our stockholders to take action to immediately suspend our obligation to file such reports. Our Board believes that the Stock Splits constitute the most expeditious, efficient and cost effective method for the Company to ensure that it will be able to continue to refrain from filing reports with the SEC under the Exchange Act once it has suspended this obligation.

Table of Contents

As determined in accordance with applicable SEC rules, our holders of record consist of our stockholders of record (as identified in our records of security holders) and the various banks, brokers, dealers and other nominees holding shares in street name accounts with Cede & Co. on behalf of beneficial owners (but not the beneficial owners themselves).

On August 15, 2011 we filed a Form 15 with the SEC certifying that there were fewer than 300 holders of record of the Common Stock and terminating the registration of the Common Stock under the Exchange Act, which is the first step in suspending our obligation to file periodic reports with the SEC. While our duty to file periodic reports with the SEC was not suspended immediately due to our existing registration statements filed under the Securities Act of 1933, as amended (the Securities Act), we have filed a no-action letter with the SEC to seek relief from our obligation to file such reports for the remainder of the fiscal year (including the Annual Report on Form 10-K for the fiscal year ended December 31, 2011 (the Annual Report)). In the event that the SEC grants the relief we are requesting (and we take certain additional actions as required by SEC rules), we would no longer be required by the Exchange Act to file periodic reports with respect to the fiscal year ending December 31, 2011 or thereafter. In the event that the SEC does not grant the relief we are requesting, we would be required by the Exchange Act to continue to file periodic reports with the SEC with respect to the fiscal year ended December 31, 2011 (including the Annual Report), but would then take certain actions required by SEC rules to ensure that we are not required by the Exchange Act to file periodic reports with the SEC with respect to the fiscal year ending December 31, 2012 or thereafter.

Once we have taken the appropriate steps to suspend our obligation under the Exchange Act to file periodic reports with the SEC, applicable SEC rules require that we continue to assess, as of the first day of each fiscal year, the number of our holders of record. We are seeking the approval of the Stock Splits by our stockholders in order to allow our Board to effect the Stock Splits in the event that it determines that it is necessary to further reduce the number of our holders of record so that it becomes even less likely that the number of holders of record will exceed 300 at any point in the future.

We are also seeking to have our stockholders authorize the Stock Splits because we may be required to effect the Stock Splits in order to comply with certain contractual obligations that we have to our largest investor as further described in this proxy statement.

Important Information Regarding Holders of Record and Beneficial Owners

Only shares of Common Stock held by those stockholders of record, or holders of record, identified in our records of security holders as holding less than 1,000 shares of Common Stock will be exchanged for cash in the Stock Splits. If you hold your shares in street name (through a bank, broker, dealer or other nominee), you are not considered to be the holder of record of those shares. Instead, you are the beneficial owner of those shares and your nominee is the holder of record. If your nominee is identified in our records of security holders as the holder of record of less than 1,000 shares of Common Stock in the aggregate, those shares will be exchanged for cash in the Stock Splits. However, your nominee may or may not be identified in our records of security holders as holding your shares. In most cases, your nominee will hold your shares in a street name account with Cede & Co. and Cede & Co. is listed on our records of security holders as holding those shares, in which case your shares will not be affected by the Stock Splits. The Stock Splits will not affect shares of Common Stock held in street name accounts with Cede & Co. regardless of the number of shares held by any beneficial owner. Each share of Common Stock held in accounts with Cede & Co. will continue to represent one share of Common Stock after completion of the Stock Splits. If you believe you may hold shares of Common Stock in street name, you should contact your nominee to determine how your shares are held and whether they will be affected by the Stock Splits.

We elected to structure the Stock Splits so that it would only affect those holders of record identified in our records of security holders to allow holders of record and beneficial owners some flexibility with respect to whether they will continue to hold shares of Common Stock after the Stock Splits and to reduce the cost of the

Table of Contents

Stock Splits to the Company. If you hold fewer than 1,000 shares of Common Stock in street name through a nominee holding shares in an account with Cede & Co. and prefer to have your shares exchanged for cash in the Stock Splits, you must instruct your nominee to transfer, prior to the effective time of the Reverse Stock Split, your shares into a record account in your name in a timely manner so that you will be considered the holder of record immediately prior to the Reverse Stock Split. If you hold fewer than 1,000 shares of Common Stock in your own name as a holder of record or in street name through a nominee not holding shares in an account with Cede & Co., and do not want to have your shares exchanged for cash in the Stock Splits, you may, prior to the effective time of the Reverse Stock Split, acquire sufficient additional shares so that you are the holder of record in your or such nominee's name a minimum of 1,000 shares or transfer your shares to a street name account with Cede & Co. If you are unable to transfer your shares to a street name account with Cede & Co., your shares will be cashed out and you will no longer remain a stockholder after the effective time of the Reverse Stock Split.

Table of Contents

SUMMARY OF THE STOCK SPLITS

As discussed above, we believe that the proposals relating to the Stock Splits (Proposal No. 9 and Proposal No. 10) are important to you as a stockholder because their outcome will affect whether you will continue to be a stockholder of the Company following the Annual Meeting and the consideration you will receive for your shares to the extent that you will not be a stockholder following the Annual Meeting. Accordingly, we are providing you with following summary of the Stock Splits to help you understand the terms, purpose and effect of the Stock Splits. This summary, together with the following Questions and Answers section, highlights certain information about the proposed Stock Splits, but may not contain all of the information that is important to you. For a more complete description of the Stock Splits, as well as the other proposals to be considered and voted upon at the Annual Meeting, we urge you to carefully read this proxy statement and each of the documents referred to herein before you vote.

Our Board has authorized the adoption, subject to the approval of our stockholders at the Annual Meeting, of an amendment to the Restated Certificate, if approved at the Annual Meeting to authorize a 1-for-1,000 reverse stock split of the Common Stock. Pursuant to the Reverse Stock Split, (i) each share of Common Stock held immediately prior to the effective time of the Reverse Stock Split by our stockholders of record holding fewer than 1,000 shares will be converted into the right to receive the Cash Out Amount per pre-split share, and (ii) each share of Common Stock held immediately prior to the effective time of the Reverse Stock Split by our stockholders of record (as identified in our records of security holders) holding 1,000 or more shares or by beneficial owners holding in street name (through a bank, broker, dealer or other nominee), regardless of the number of shares so held, will be converted into 1/1,000 of a share of Common Stock and the holder thereof will not be entitled to receive any cash for the fractional share resulting from the Reverse Stock Split, if any.

Our Board has further authorized the adoption, subject to the approval of our stockholders at the Annual Meeting, of an amendment to the Restated Certificate, if approved at the Annual Meeting, to authorize a 1,000-for-1 forward stock split (the inverse ratio of the Reverse Stock Split) of the Common Stock immediately following the Reverse Stock Split. Although both the Reverse Stock Split and the Forward Stock Split will be voted on separately, we will not effect either the Reverse Stock Split or the Forward Stock Split unless both of these proposals are approved by our stockholders.

The Reverse Stock Split and Forward Stock Split are each intended to take effect, subject to stockholder approval and the subsequent decision by our Board to effect the Stock Splits, on the date the Company files the amendments to the Restated Certificate that would effect the Reverse Stock Split and the Forward Stock Split with the Secretary of State of the State of Delaware, or on any later date that the Company may specify in such amendments, the forms of which are attached hereto as [Annex B](#) and [Annex C](#), respectively.

See SPECIAL FACTORS - Overview of the Reverse Stock Split and the Forward Stock Split below.

If you are a holder of record identified in our records of security holders (those stockholders holding shares in their own names) and hold fewer than 1,000 shares of Common Stock immediately prior to the effective time of the Reverse Stock Split, you will receive the Cash Out Amount for each pre-split share that you own. The maximum number of shares that may be cashed out by any individual stockholder is 999 shares. Therefore, if the Reverse Stock Split had occurred on August 15, 2011, the maximum amount of money that may be payable to any stockholder as a result of the Reverse Stock Split would have been approximately \$173.83, based on the average closing price per share of Common Stock for the ten trading days immediately prior that date of \$0.174. If you are a holder of record identified in our records of security holders and hold 1,000 or more shares of Common Stock immediately prior to the effective time of the Reverse Stock Split, you will not receive any cash payment for your shares in connection with the Reverse Stock Split and will instead receive 1/1,000 of a share of Common Stock for each share of Common Stock held immediately prior to the effective time of the Reverse Stock Split.

Table of Contents

Beneficial owners holding shares in street name through a bank, broker, dealer or other nominee which holds on an aggregated basis fewer than 1,000 shares of Common Stock immediately prior to the effective time of the Reverse Stock Split and does not hold such shares in an account with Cede & Co. will be converted into the right to receive the Cash Out Amount for each pre-split share that you beneficially own. Beneficial owners holding shares in street name through a nominee which holds on an aggregated basis 1,000 shares or more of Common Stock immediately prior to the effective time of the Reverse Stock Split will have each share of Common Stock converted into 1/1,000 of a share of Common Stock and the holder thereof will not be entitled to receive any cash for the fractional share resulting from the Reverse Stock Split, if any. Beneficial owners holding shares in street name through a nominee in an account with Cede & Co., regardless of the number of shares held immediately prior to the effective time of the Reverse Stock Split, will have each share of Common Stock converted into 1/1,000 of a share of Common Stock and the holder thereof will not be entitled to receive any cash for the fractional share resulting from the Reverse Stock Split, if any.

The net result of the Reverse Stock Split and the Forward Stock Split will be that each share of Common Stock outstanding immediately prior to the effective time of the Reverse Stock Split which is not cashed out in the Reverse Stock Split will continue to represent one share of Common Stock after completion of the Forward Stock Split.

The Stock Splits will not have any affect on the number of outstanding shares of our Series A Preferred Stock (the Preferred Shares), nor will it have any affect on the voting rights associated with the Preferred Shares, although the economic interest in the Company represented by the Preferred Shares will increase slightly from approximately 28.30% to approximately 28.32%, due to the decrease in the number of shares of Common Stock that will result from the Reverse Stock Split.

See SPECIAL FACTORS - Effects of the Stock Splits below.

Our Board based the Cash Out Amount to be received by the Company's stockholders who are cashed out in the Reverse Stock Split on the average closing price per share of Common Stock for the ten trading days immediately prior to the effective date of the Reverse Stock Split as it determined that calculating the Cash Out Amount on actual market prices was a reasonable basis on which to determine a fair value for the shares of Common Stock being cashed out in the Reverse Stock Split.

See SPECIAL FACTORS - Determination of Cash Out Amount below.

The principal purpose of the Stock Splits is to reduce the number of our holders of record to help ensure that we continue to have fewer than 300 holders of record, and thereby minimize the likelihood that we will be required to file periodic reports with the SEC under the Exchange Act in the future. Our Board has determined that the costs and other disadvantages associated with being an SEC reporting company outweigh the advantages to the Company from being an SEC reporting company. In particular, the cost of filing periodic reports with the SEC under the Exchange Act has become prohibitively expensive for us and we believe that it is in the best interests of the Company and our stockholders to take action to immediately suspend our obligation to file such reports. Our Board believes that the Stock Splits constitute the most expeditious, efficient and cost effective method for the Company to ensure that it will remain a non-reporting company once it has suspended its obligation to file such reports. We are also seeking to have our stockholders authorize the Stock Splits because we may be required to effect the Forward Stock Split and Reverse Stock Split in order to comply with certain contractual obligations that we have to our largest investor, as further described in this proxy statement.

See SPECIAL FACTORS - Purposes and Advantages of the Stock Splits below.

Approval of the amendment to the Restated Certificate to authorize the Reverse Stock Split (Proposal No. 9) and approval of the amendment to the Restated Certificate to authorize the Forward Stock Split (Proposal No. 10) each require the affirmative vote of a majority of the votes entitled to be cast at the Annual Meeting. Although Proposal No. 9 and Proposal No. 10 are being voted on separately, our

Table of Contents

Board will not effect either the Forward Stock Split or the Reverse Stock Split unless our stockholders authorize both the Forward Stock Split and the Reverse Stock Split at the Annual Meeting.

As of August 30, 2011, the record date for the Annual Meeting (the Record Date), our directors and executive officers collectively held 358,486 shares of Common Stock, representing approximately 1.0% of the votes entitled to be cast at the Annual Meeting, each of whom (other than the three directors who were nominated by the Investor) has indicated that they intend to vote all of their shares of Common Stock FOR each of the proposals to be voted upon at the Annual Meeting.

On July 28, 2011, we sold an aggregate of 2,000,000 Preferred Shares to Amun, LLC, a Delaware limited liability company (the Investor), pursuant to the terms of a Stock Purchase Agreement (the Purchase Agreement). The Preferred Shares represent approximately 28.30% of the economic interest in the Company and also entitle the Investor to a number of votes equal to 38.28% of the total number of votes entitled to be cast by holders of all shares of the Company's capital stock (including the Common Stock and the Preferred Shares) voting together as single class. Under the terms of the Purchase Agreement and other related agreements between the Company and the Investor, the Investor placed \$2.825 million in cash into an escrow account, which amount is available under certain circumstances to pay certain Company related expenses and to fund the Company's working capital needs. We refer to this transaction herein as the Preferred Stock Financing.

In connection with the sale and issuance of the Preferred Shares, we agreed to hold the Annual Meeting within thirty days after clearance of this proxy statement by the SEC. We also agreed to include certain proposals in this proxy statement and to recommend the adoption of the proposals to our stockholders. In response to this requirement, the Company has included, and our Board has recommended the adoption of, [Proposal No. 1](#), [Proposal No. 2](#), [Proposal No. 3](#), [Proposal No. 4](#), [Proposal No. 5](#), [Proposal No. 6](#), [Proposal No. 7](#), [Proposal No. 8](#), [Proposal No. 9](#) and [Proposal No. 10](#).

The Investor has indicated that it intends to vote all of the Preferred Shares FOR each of the proposals to be voted upon at the Annual Meeting, with the exception of the proposal to approve anti-dilution protections afforded to the Warrants issued in our June 2010 registered direct offering of Common Stock and Warrants ([Proposal No. 12](#)).

See SPECIAL FACTORS - Recent Preferred Stock Financing below.

Our Board has retained the authority to determine whether and when to file the amendments to the Restated Certificate with the Secretary of State of the State of Delaware to effect the Reverse Stock Split and the Forward Stock Split, notwithstanding the approval by our stockholders of the amendments to the Restated Certificate that authorize Reverse Stock Split and the Forward Stock Split.

In general, each stockholder whose fractional share is repurchased by us in connection with the Stock Splits should recognize gain or loss for federal income tax purposes measured by the difference between the stockholder's basis in the fractional share and the Cash Out Amount received for the fractional share. This gain or loss will be capital gain or loss if the share was held as a capital asset. Alternatively, each stockholder who does not receive cash for a fractional share as a result of the Stock Splits generally will not recognize any gain or loss for federal income tax purposes. **Our stockholders are advised to consult their own tax advisors as to the particular federal, state, local, foreign and other tax consequences resulting from the Reverse Stock Split and Forward Stock Split, in light of their particular circumstances.**

See SPECIAL FACTORS - Material Federal Tax Consequences below.

Under Delaware law, stockholders do not have appraisal rights nor do any similar rights exist under the Restated Certificate or Amended and Restated Bylaws in connection with the Stock Splits.

The total number of fractional shares to be repurchased in connection with the Reverse Stock Split is estimated to be equivalent to approximately 34,000 pre-split shares, which if the Reverse Stock Split had occurred on August 15, 2011 would have cost the

Company approximately \$6,000 (based on the

Table of Contents

average closing price per share of Common Stock for the ten trading days immediately prior that date of \$0.174). However, this is only an estimate and the exact number of shares that will be repurchased in connection with the Reverse Stock Split and the Cash Out Amount will be determined as of the effective time of the Reverse Stock Split. We intend that payments made to repurchase shares in connection with the Reverse Stock Split will be paid from cash that has been placed into escrow by the Investor in connection with the Preferred Stock Financing described below.

Following the Effective Date, transmittal materials will be sent to those holders of record who are entitled to a cash payment that will describe how to exchange their share certificates and receive the cash payments. Those holders of record entitled to a cash payment should not send their share certificates to the Company or the transfer agent at this time.

The Board recommends that you vote FOR each of the proposals to be voted on at the Annual Meeting.

Table of Contents

QUESTIONS AND ANSWERS ABOUT THE ANNUAL MEETING AND THE STOCK SPLITS

The following questions and answers are intended to briefly address potential questions regarding the Annual Meeting and the Stock Splits. The first set of questions and answers relate to the Annual Meeting, and provide information about the proposals to be voted upon, the recommendations of the Board with respect to each proposal, the quorum requirements for the Annual Meeting, the voting requirements for each proposal, and other general information about the Annual Meeting. The second set of questions relate to the Stock Splits, and provide information about the purpose of the Stock Splits, the effect of the completion of the Stock Splits, and other matters that are particular to the Stock Splits. These questions and answers may not address all of the questions that may be important to you as a stockholder. Please refer to the more detailed information contained elsewhere in this proxy statement and each of the documents referred to herein.

Questions and Answers Relating to the Annual Meeting

What is the purpose of the Annual Meeting?

At the Annual Meeting, stockholders will be asked to consider and vote upon the matters listed in the accompanying Notice of Annual Meeting and any other matters that properly come before the Annual Meeting. While the Annual Meeting is being called so that our stockholders may consider and vote upon several important matters, certain of these matters are particularly important to our stockholders and require special consideration. The most significant matters that we are asking our stockholders to consider are the adoption of the NOL Provision ([Proposal No. 1](#)), the adoption of the Governance Amendments ([Proposal No. 2](#), [Proposal No. 3](#), [Proposal No. 4](#), [Proposal No. 5](#), [Proposal No. 6](#), [Proposal No. 7](#), and [Proposal No. 8](#)), the approval of the Reverse Stock Split ([Proposal No. 9](#)) and the approval of the Forward Stock Split ([Proposal No. 10](#)).

We believe that these proposals are of particular importance to you as [Proposal No. 1](#) will limit the ability of certain stockholders to sell shares of Common Stock, while [Proposal No. 2](#), [Proposal No. 3](#), [Proposal No. 4](#), [Proposal No. 5](#), [Proposal No. 6](#), [Proposal No. 7](#) and [Proposal No. 8](#) will change the governance provisions applicable to the Company and significantly increase the influence that our stockholders will have over our Board because, following the adoption of the Governance Amendments, each director will have to stand for election annually, our stockholders will not be prevented from acting by written consent, our stockholders will be able to remove directors without cause, our stockholders will be able to fill vacancies on our Board, a super-majority of the votes entitled to be cast will no longer be required to amend our Amended and Restated Bylaws, our stockholders will not be prevented from requesting special stockholder meetings and a super-majority of the votes entitled to be cast will no longer be required to change certain provisions of the Restated Certificate. In addition, we believe that [Proposal No. 9](#) and [Proposal No. 10](#) are of particular importance to you as a stockholder because their outcome will affect whether you will continue to be a stockholder of the Company following the Annual Meeting and the amount of cash you will receive for your shares to the extent that you will not be a stockholder following the Annual Meeting. In addition, if these proposals are adopted and implemented, it would reduce the number of our holders of record and thereby reduce the risk that the Company will be required to file periodic reports with the SEC under the Exchange Act in the future, which would allow the Company to avoid the significant expenses associated with complying with SEC reporting obligations and the Sarbanes-Oxley Act.

Where and when is the Annual Meeting?

The Annual Meeting will be held at the offices of Covington & Burling LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018 on October 26, 2011 at 10:00 a.m. Eastern time.

Why am I receiving these proxy materials?

This proxy statement and the enclosed proxy card was sent to you because our Board is soliciting your proxy to vote at the Annual Meeting, and any adjournments or postponements thereof. This proxy statement

Table of Contents

contains important information for you to consider when deciding how to vote on the matters brought before the Annual Meeting. You are invited to attend the Annual Meeting in person to vote on the proposals described in this proxy statement. However, you do not need to attend the Annual Meeting to vote your shares. Instead, you may vote your shares using one of the other voting methods described in this proxy statement. Please see "How can I vote my shares?" below. Whether or not you expect to attend the Annual Meeting, please vote your shares as soon as possible in order to ensure your representation at the Annual Meeting and to minimize the cost of proxy solicitation.

What am I being asked to vote on at the Annual Meeting?

The Annual Meeting is being held for the specific purposes described at the beginning of this proxy statement and on the accompanying Notice of Annual Meeting of Stockholders. Our stockholders are encouraged to carefully read each of the proposals, and the information that we have provided with respect to each of the proposals (including the annexes attached to this proxy statement and the other documents referred to herein), before voting their shares at the Annual Meeting.

How does the Board recommend that I vote on the proposals?

Our Board recommends that you vote **FOR** each of the proposals to be voted on at the Annual Meeting. Accordingly, our Board recommends that you vote your shares:

1. **FOR** the adoption of an amendment to the Restated Certificate in order to add restrictions on the transfer of the Common Stock to preserve our net operating losses for federal tax purposes.
2. **FOR** the adoption of an amendment to the Restated Certificate in order to eliminate the Board classification provisions, pursuant to which our Board is divided into three separate classes, with each class having a three-year term, and to instead provide for a single class of directors, each elected to hold office until the next annual meeting of stockholders.
3. **FOR** the adoption of an amendment to the Restated Certificate in order to eliminate the provision that prevents stockholders from acting by written consent.
4. **FOR** the adoption of an amendment to the Restated Certificate in order to eliminate the restrictions on our stockholders' ability to remove directors without cause.
5. **FOR** the adoption of an amendment to the Restated Certificate in order to permit our stockholders to fill vacancies on our Board.
6. **FOR** the adoption of an amendment to the Restated Certificate in order to permit our Amended and Restated Bylaws to be amended by the vote of a majority of the then-outstanding shares of voting stock, rather than two-thirds of such shares.
7. **FOR** the adoption of an amendment to the Restated Certificate in order to eliminate the provision that prohibits our stockholders from requesting that we hold a special meeting of our stockholders.
8. **FOR** the adoption of an amendment to the Restated Certificate in order to eliminate the provision that requires the vote of two-thirds of the then-outstanding shares of voting stock to modify certain provisions of the Restated Certificate.
9. **FOR** the adoption of an amendment to the Restated Certificate to authorize the Reverse Stock Split;

10. FOR the adoption of an amendment to the Restated Certificate to authorize the Forward Stock Split;

11. FOR the election of all three director nominees to serve as directors until the 2014 annual meeting of stockholders, or the 2012 annual meeting of stockholders in the event that the Company's stockholders approve the removal of the Board classification provisions from the Restated Certificate, or until their successors are duly elected and qualified;

12. FOR the approval of the anti-dilution protections afforded to the Warrants issued in our June 2010 registered direct offering of Common Stock and Warrants;

Table of Contents

13. FOR the ratification of the selection of BDO Seidman, LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2011; and

14. FOR the adoption of a proposal to adjourn the Annual Meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the Annual Meeting to approve any of the foregoing proposals.

What vote is required to approve each proposal?

Proposal No. 1: Approval of an amendment to the Restated Certificate in order to add restrictions on the transfer of the Common Stock to preserve our net operating losses for federal tax purposes, requires the affirmative vote of a majority of the votes entitled to be cast at the Annual Meeting. Abstentions will have the same effect as a vote against the proposal. Brokers are not permitted to vote on matters that alter the terms or conditions of an existing class of capital stock unless they receive instructions from the beneficial owner. Accordingly, broker non-votes will result for this proposal if brokers do not receive instructions from beneficial owners.

Broker non-votes will have the same effect as votes against the proposal. Please see the question and answer below for a discussion of broker non-votes.

Proposal No. 2: Approval of an amendment to the Restated Certificate in order to eliminate the Board classification provisions such that there will only be a single class of directors requires the affirmative vote of two-thirds of the votes entitled to be cast at the Annual Meeting. Abstentions will have the same effect as a vote against the proposal. Brokers are not permitted to vote on matters that alter the terms or conditions of an existing class of capital stock unless they receive instructions from the beneficial owner. Accordingly, broker non-votes will result for this proposal if brokers do not receive instructions from beneficial owners. Broker non-votes will have the same effect as votes against the proposal.

Proposal No. 3: Approval of an amendment to the Restated Certificate in order to eliminate the provision that prevents stockholders from acting by written consent requires the affirmative vote of two-thirds of the votes entitled to be cast at the Annual Meeting. Abstentions will have the same effect as a vote against the proposal. Brokers are not permitted to vote on matters that alter the terms or conditions of an existing class of capital stock unless they receive instructions from the beneficial owner. Accordingly, broker non-votes will result for this proposal if brokers do not receive instructions from beneficial owners. Broker non-votes will have the same effect as votes against the proposal.

Proposal No. 4: Approval of an amendment to the Restated Certificate in order to eliminate the restrictions on our stockholders ability to remove directors without cause requires the affirmative vote of two-thirds of the votes entitled to be cast at the Annual Meeting. Abstentions will have the same effect as a vote against the proposal. Brokers are not permitted to vote on matters that alter the terms or conditions of an existing class of capital stock unless they receive instructions from the beneficial owner. Accordingly, broker non-votes will result for this proposal if brokers do not receive instructions from beneficial owners. Broker non-votes will have the same effect as votes against the proposal.

Proposal No. 5: Approval of an amendment to the Restated Certificate in order to permit our stockholders to fill vacancies on our Board requires the affirmative vote of two-thirds of the votes entitled to be cast at the Annual Meeting. Abstentions will have the same effect as a vote against the proposal. Brokers are not permitted to vote on matters that alter the terms or conditions of an existing class of capital stock unless they receive instructions from the beneficial owner. Accordingly, broker non-votes will result for this proposal if brokers do not receive instructions from beneficial owners. Broker non-votes will have the same effect as votes against the proposal.

Proposal No. 6: Approval of an amendment to the Restated Certificate in order to permit our Amended and Restated Bylaws to be amended by a majority of the then-outstanding shares of voting stock, rather than two-thirds of such shares, requires the affirmative vote of two-thirds of the votes entitled to be cast at the Annual Meeting. Abstentions will have the same effect as a vote against the proposal. Brokers

Table of Contents

are not permitted to vote on matters that alter the terms or conditions of an existing class of capital stock unless they receive instructions from the beneficial owner. Accordingly, broker non-votes will result for this proposal if brokers do not receive instructions from beneficial owners. Broker non-votes will have the same effect as votes against the proposal.

Proposal No. 7: Approval of an amendment to the Restated Certificate in order to eliminate the provision that prohibits our stockholders from requesting that we hold a special meeting of our stockholders requires the affirmative vote of two-thirds of the votes entitled to be cast at the Annual Meeting. Abstentions will have the same effect as a vote against the proposal. Brokers are not permitted to vote on matters that alter the terms or conditions of an existing class of capital stock unless they receive instructions from the beneficial owner. Accordingly, broker non-votes will result for this proposal if brokers do not receive instructions from beneficial owners. Broker non-votes will have the same effect as votes against the proposal.

Proposal No. 8: Approval of an amendment to the Restated Certificate in order to eliminate the provision requiring the vote of two-thirds of the outstanding shares of voting stock to modify certain provisions of the Restated Certificate requires the affirmative vote of two-thirds of the votes entitled to be cast at the Annual Meeting. Abstentions will have the same effect as a vote against the proposal. Brokers are not permitted to vote on matters that alter the terms or conditions of an existing class of capital stock unless they receive instructions from the beneficial owner. Accordingly, broker non-votes will result for this proposal if brokers do not receive instructions from beneficial owners. Broker non-votes will have the same effect as votes against the proposal.

Proposal No. 9: Approval of an amendment to the Restated Certificate to authorize a reverse stock split of the issued and outstanding shares of Common Stock requires the affirmative vote of a majority of the votes entitled to be cast at the Annual Meeting. Abstentions will have the same effect as a vote against the proposal. Brokers are not permitted to vote on matters that alter the terms or conditions of an existing class of capital stock unless they receive instructions from the beneficial owner. Accordingly, broker non-votes will result for this proposal if brokers do not receive instructions from beneficial owners. Broker non-votes will have the same effect as votes against the proposal.

Proposal No. 10: Approval of the amendment to the Restated Certificate to authorize a forward stock split of the issued and outstanding shares of Common Stock requires the affirmative vote of a majority of the votes entitled to be cast at the Annual Meeting. Abstentions will have the same effect as a vote against the proposal. Brokers are not permitted to vote on matters that alter the terms or conditions of an existing class of capital stock unless they receive instructions from the beneficial owner. Accordingly, broker non-votes will result for this proposal if brokers do not receive instructions from beneficial owners. Broker non-votes will have the same effect as votes against the proposal.

Proposal No. 11: Directors are elected by a plurality of votes cast, so the three director nominees who receive the most votes will be elected. Abstentions and broker non-votes will not be taken into account in determining the election of directors. Under the rules applicable to brokers, brokers no longer possess discretionary authority to vote shares with respect to the election of directors. Accordingly, broker non-votes will result for this proposal if brokers do not receive instructions from beneficial owners. Broker non-votes will have the same effect as votes against the proposal.

Proposal No. 12: Approval of the anti-dilution protections afforded to the Common Stock Purchase Warrants issued in the Company shall require the affirmative vote of a majority of the votes cast on the proposal at the Annual Meeting. Abstentions and broker non-votes will not be taken into account in determining whether this proposal has been approved.

Proposal No. 13: Ratification of the appointment of BDO Seidman, LLP as our independent registered public accounting firm will require the affirmative vote of a majority of the shares present or represented by proxy at the Annual Meeting and entitled to vote on the matter. Abstentions will have

Table of Contents

the same effect as votes against the proposal. Because the ratification of the independent registered public accounting firm is a matter on which brokers have the discretion to vote, broker non-votes will not result for this item.

Proposal No. 14: Approval of the proposal to adjourn the Annual Meeting, if necessary or appropriate, to solicit additional proxies with respect to certain proposals, requires that the number of votes cast in favor of the proposal at the Annual Meeting must exceed the number of votes cast against the proposal, assuming a quorum is present. Abstentions and broker non-votes will not be taken into account in determining whether this proposal has been approved.

What is a broker non-vote?

Broker non-votes occur when shares held by a bank, broker, dealer or other nominee for a beneficial owner are not voted with respect to a particular proposal because (i) the nominee does not receive voting instructions from the beneficial owner, and (ii) the nominee lacks discretionary authority to vote the shares. Under the rules applicable to brokers and other nominees, such nominees no longer possess discretionary authority to vote shares with respect to the election of directors.

We will treat broker non-votes as follows:

broker non-votes will not be treated as shares present and entitled to vote for purposes of any matter requiring the affirmative vote of a majority (or some other percentage) of the votes entitled to be cast (even though the same shares may be considered present for quorum purposes and may be entitled to vote on other matters). Thus, a broker non-vote will not affect the outcome of the voting on a proposal the passage of which requires the affirmative vote of a plurality (or a majority or some other percentage) of (i) the votes cast, or (ii) the voting power present and entitled to vote on that proposal; and

broker non-votes will have the same effect as a vote against a proposal the passage of which requires an affirmative vote of the holders of a majority (or two-thirds in the case of Proposal No. 2, Proposal No. 3, Proposal No. 4, Proposal No. 5, Proposal No. 6, Proposal No. 7 and Proposal No. 8) of the votes entitled to be cast on such proposal.

Who can vote at the Annual Meeting?

Only stockholders of record at the close of business on August 30, 2011, the Record Date, will be entitled to vote at the Annual Meeting. On the Record Date, there were 35,465,838 shares of Common Stock outstanding and entitled to vote and 2,000,000 Preferred Shares outstanding and entitled to vote.

Holder of Record: Shares Registered in a Stockholder's Name

If, on the Record Date, your shares were registered directly in your name with our transfer agent, American Stock Transfer & Trust Company, then you are a holder of record. As a holder of record, you may vote in person at the Annual Meeting or vote by proxy. Whether or not you plan to attend the Annual Meeting, we urge you to vote your shares using one of the voting methods described in this proxy statement and the accompanying proxy card.

Beneficial Owner: Shares Registered in the Name of a Bank, Broker, Dealer or Other Nominee

If, on the Record Date, your shares were held in an account at a bank, broker, dealer, or other nominee, then you are the beneficial owner of shares held in street name and these proxy materials are being forwarded to you by that nominee. The nominee holding your account is considered the holder of record for purposes of voting at the Annual Meeting. As a beneficial owner, you have the right to direct your nominee on how to vote the shares in your account. You are also invited to attend the Annual Meeting. However, since you are not the holder of record, you may not vote your shares in person at the Annual Meeting unless you request and obtain a valid proxy from your nominee. Please contact your nominee directly for additional information.

Table of Contents

How many shares were outstanding on the Record Date?

At the close of business on August 30, 2011, the Record Date, there were 35,524,838 shares of Common Stock outstanding and 2,000,000 Preferred Shares outstanding. At the Annual Meeting, each of the outstanding shares of Common Stock will be entitled to one vote and the Preferred Shares will be entitled to cast a number of votes equal to 38.28% of the total number of votes entitled to be cast by holders of all shares of our capital stock (including Common Stock and Preferred Shares) voting as a single class.

What is the quorum requirement for the Annual Meeting?

A quorum of stockholders is necessary to hold a valid Annual Meeting. A quorum will be present if stockholders holding at least a majority of the outstanding voting power of our capital stock is present at the Annual Meeting in person or represented by proxy. At the close of business on the Record Date, there were 35,465,838 shares of Common Stock and 2,000,000 Preferred Shares outstanding and entitled to vote.

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

How can I vote my shares?

Holder of Record: Shares Registered in a Stockholder's Name

If you hold your shares in your own name as a holder of record, you may vote your shares either in person at the Annual Meeting or by proxy using one of the voting methods described below. Whether or not you plan to attend the Annual Meeting, we urge you to vote by proxy to ensure that your shares are represented at the Annual Meeting and to minimize the cost of proxy solicitation. Even if you have already submitted a proxy, you may still attend the Annual Meeting and vote in person. If you wish to vote by proxy, you must do one of the following:

Voting by Mail. To vote by mail, please complete, sign and return the proxy card in the enclosed prepaid and addressed envelope. In doing so, you will be authorizing the individuals named on the proxy card to vote your shares at the Annual Meeting in the manner you indicate. If you vote by mail, you do not need to vote over the Internet or over the telephone.

Voting over the Internet. To vote over the Internet, please follow the instructions included on your proxy card. If you vote over the Internet, you do not need to complete and mail your proxy card. The deadline for Internet voting is 11:59 p.m., Eastern time, on October 25, 2011.

Voting by Telephone. To vote by telephone, please follow the instructions included on your proxy card. If you vote by telephone, you do not need to complete and mail your proxy card. The deadline for telephone voting is 11:59 p.m., Eastern time, on October 25, 2011.

Voting in Person at the Annual Meeting. If you wish, you can vote your shares in person by attending the Annual Meeting. You will be given a ballot at the Annual Meeting to complete and return. Whether or not you expect to attend the Annual Meeting, please vote your shares as soon as possible in order to ensure your representation at the Annual Meeting. Even if you previously voted your shares by mail, over the Internet or by telephone, you will not be prevented from voting in person if you attend the Annual Meeting. Please see "Can I change my vote after submitting a proxy?" below.

Beneficial Owner: Shares Registered in the Name of a Bank, Broker, Dealer or Other Nominee

If you hold your shares in street name (through a broker, bank, dealer, or other nominee), please refer to the information on the voting instruction form forwarded to you by your nominee to see which voting options are

Table of Contents

available to you, or contact your nominee to obtain a voting instruction form. If you hold your shares in street name and plan to attend the Annual Meeting, you should bring either a copy of the voting instruction card provided by your nominee or a recent brokerage statement showing your ownership of shares as of the Record Date. Please contact your nominee directly for additional information.

Can I change my vote after submitting my proxy?

Yes. You may change your proxy instructions at any time before the final vote at the Annual Meeting. If you are the holder of record of your shares you may revoke your proxy in any one of three ways:

You may complete a new proxy using any of the voting methods discussed above. Accordingly, you may submit a new proxy over the Internet, by telephone, or by completing, signing and returning a new proxy card in the mail.

You may send a written notice that you are revoking your proxy to our Chief Financial Officer at 9191 Towne Centre Drive, Suite 409, San Diego, California 92122.

You may attend the Annual Meeting and vote in person. Simply attending the Annual Meeting will not, by itself, revoke your proxy. If your shares are held in street name, you should follow the instructions provided by your bank, broker, dealer or other nominee as to the method for revoking your vote prior to the Annual Meeting.

What if I return a proxy card but do not make voting selections?

If you provide a valid proxy without indicating specific voting selections, your shares will be voted FOR each of the proposals to be voted upon at the Annual Meeting. Accordingly, your shares will be voted:

1. FOR the adoption of the an amendment to the Restated Certificate in order to add restrictions on the transfer of the Common Stock to preserve our net operating losses for federal tax purposes.
2. FOR the adoption of an amendment to the Restated Certificate in order to eliminate the Board classification provisions, pursuant to which our Board is divided into three separate classes, with each class having a three-year term, and to instead provide for a single class of directors, each elected to hold office until the next annual meeting of stockholders.
3. FOR the adoption of an amendment to the Restated Certificate in order to eliminate the provision that prevents stockholders from acting by written consent.
4. FOR the adoption of an amendment to the Restated Certificate in order to eliminate the restrictions on our stockholders ability to remove directors without cause.
5. FOR the adoption of an amendment to the Restated Certificate in order to permit our stockholders to fill vacancies on our Board.
6. FOR the adoption of an amendment to the Restated Certificate in order to permit our Amended and Restated Bylaws to be amended by the vote of a majority of the then-outstanding shares of voting stock, rather than two-thirds of such shares.

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7. FOR the adoption of an amendment to the Restated Certificate in order to eliminate the provision that prohibits our stockholders from requesting that we hold a special meeting of our stockholders.
8. FOR the adoption of an amendment to the Restated Certificate in order to eliminate the provision that requires the vote of two-thirds of the then-outstanding shares of voting stock to modify certain provisions of the Restated Certificate.
9. FOR the adoption of an amendment to the Restated Certificate to authorize the Reverse Stock Split;
10. FOR the adoption of an amendment to the Restated Certificate to authorize the Forward Stock Split;

Table of Contents

11. FOR the election of all three director nominees to serve until the 2014 annual meeting of stockholders, or the 2012 annual meeting of stockholders in the event that the Company's stockholders approve the removal of the Board classification provisions from the Restated Certificate, or until their successors are duly elected and qualified;
 12. FOR the approval of the anti-dilution protections afforded to the Warrants issued in our June 2010 registered direct offering of Common Stock and Warrants;
 13. FOR the ratification of the selection of BDO Seidman, LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2011; and
 14. FOR the adoption of a proposal to adjourn the Annual Meeting, if necessary or appropriate, to solicit additional proxies if there are insufficient votes at the time of the Annual Meeting to approve any of the foregoing proposals.
- In addition, if any other matter is properly presented at the Annual Meeting, the proxies designated by you on your proxy card, or either of them individually, will vote your shares on such matter using their best judgment.

Who is paying for this proxy solicitation?

We have retained Phoenix Advisory Partners, a proxy solicitation firm, in order to assist us in soliciting proxies from our stockholders for the Annual Meeting. In connection with the execution of the Purchase Agreement, the Investor agreed, among other things, to reimburse our costs and expenses incurred in connection with the retention of a proxy solicitation firm to solicit proxies from our stockholders for the Annual Meeting, provided that such amount does not exceed \$50,000.

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

What does it mean if I receive more than one proxy card?

If you receive more than one proxy card, your shares are registered in more than one name or are registered in different accounts. In this case, to the extent that you vote your shares by mail, please complete, sign and return each proxy card to ensure that all of your shares are voted. Alternatively, to the extent that you choose to vote your shares over the Internet or by telephone, please make sure that you vote all of the shares that you own when you vote.

What if I share an address with another stockholder and only receive a single set of proxy materials?

The SEC has adopted rules that permit companies and nominees to satisfy the delivery requirements for proxy statements and annual reports with respect to two or more stockholders sharing the same address by delivering a single proxy statement addressed to those stockholders. This process, which is commonly referred to as "householding," potentially means extra convenience for stockholders and cost savings for companies. This year, a number of nominees with account holders who are our stockholders will be "householding" our proxy materials. In these cases, a single proxy statement will be delivered to multiple stockholders sharing an address unless contrary instructions have been received from one or more of the affected stockholders. Once you have received notice from your nominee that they will be "householding" communications to your address, "householding" will continue until you are notified otherwise or until you revoke your consent. If, at any time, you no longer wish to participate in "householding" and would prefer to receive a separate proxy statement and annual report, please notify your nominee. Stockholders wishing to receive a separate proxy statement and annual report in the future may also direct such a request to our Chief Financial Officer, either in a written request sent

Table of Contents

to 9191 Towne Centre Drive, Suite 409, San Diego, California 92122, or by telephone at (858) 587-9333. Stockholders who currently receive multiple copies of the proxy statement at their address and would like to request householding of their communications should contact their nominee directly.

How can I find out the results of the voting at the Annual Meeting?

Preliminary voting results with respect to each proposal will be announced at the Annual Meeting. In accordance with SEC rules, final voting results will be published in a Current Report on Form 8-K within four business days following the Annual Meeting, unless final results are not known at that time in which case preliminary voting results will be published within four business days of the Annual Meeting and final voting results will be published once they are known by the Company.

When are stockholder proposals due for next year's annual meeting?

To be considered for inclusion in next year's proxy materials, your proposal must be submitted in writing by May 4, 2012 to our Chief Financial Officer at 9191 Towne Centre Drive, Suite 409, San Diego, California 92122. If you wish to submit a proposal that is not to be included in next year's proxy materials, your proposal generally must be submitted in writing to the same address no later than August 27, 2012 but no earlier than July 28, 2012.

Questions and Answers Relating to the Stock Splits

What is the main purpose of the Stock Splits?

The main purpose of the Stock Splits is to give us the flexibility to reduce the number of the Company's holders of record to help ensure that we continue to have fewer than 300 holders of record, and thereby minimize the likelihood that we will be required to file periodic reports with the SEC under the Exchange Act in the future. Our Board has determined that the costs and other disadvantages associated with being an SEC-reporting company outweigh the advantages to the Company of being an SEC-reporting company. In particular, the cost of filing periodic reports with the SEC has become prohibitively expensive for us and we believe that it is in the best interests of the Company and our stockholders to take action to immediately suspend our obligation to file such reports. Our Board believes that the Stock Splits constitute the most expeditious, efficient and cost effective method for the Company ensure that it will remain a non-reporting company once it has suspended its obligation to file such reports. We are also seeking to have our stockholders authorize the Stock Splits because we may be required to effect the Forward Stock Split and Reverse Stock Split in order to comply with certain contractual obligations that we have to our largest investor as further described in this proxy statement.

Why is it important for the Company to reduce the number of holders of record of the Common Stock?

On August 15, 2011 we filed a Form 15 with the SEC certifying that there were fewer than 300 holders of record of the Common Stock and terminating the registration of the Common Stock under the Exchange Act, which is the first step in suspending our obligation to file periodic reports with the SEC. Even once we have taken all action necessary to completely suspend our obligation to file periodic reports with the SEC, applicable SEC rules will require that we continue to assess, as of the first day of each fiscal year, the number of our holders of record. Assuming that we continue to have fewer than 300 holders of record as of each such date, our duty to file periodic reports with the SEC will continue to be suspended with respect to the entire fiscal year and we will be able to take advantage of the significant cost savings from not filing reports with the SEC or complying with the internal control audit and other requirements under the Sarbanes-Oxley Act. We are seeking the approval of the Stock Splits by our stockholders in order to allow our Board to effect the Stock Splits in the event that it determines that it is necessary to further reduce the number of our holders of record so that it becomes even less likely that the number of holders of record will exceed 300 at any point in the future.

Table of Contents

What will I receive in the Stock Splits?

Holder of Record: Shares Registered in a Stockholder's Name

If you are a holder of record identified in our records of security holders (those stockholders holding shares in their own names) and hold fewer than 1,000 shares of Common Stock immediately prior to the effective time of the Reverse Stock Split, you will receive the Cash Out Amount from us for each pre-split share that you own. The maximum number of shares that may be cashed out by any individual stockholder is 999 shares. Therefore, if the Reverse Stock Split had occurred on August 15, 2011, the maximum amount of money that may be payable to any stockholder as a result of the Reverse Stock Split would have been approximately \$173.3, based on the average closing price per share of Common Stock for the ten trading days immediately prior that date of \$0.174.

If you are a holder of record identified in our records of security holders and hold 1,000 or more shares of Common Stock immediately prior to the effective time of the Reverse Stock Split, you will not receive any cash payment for your shares in connection with the Stock Splits and will instead receive 1/1,000 of a share of Common Stock for each share of the Common Stock held immediately prior to the effective time of the Reverse Stock Split.

Immediately following the Reverse Stock Split, the Company will effect the Forward Stock Split, the effect of which will be that each share of Common Stock held immediately prior to the effective time of the Reverse Stock Split that is not cashed out in the Reverse Stock Split will represent one share of Common Stock after the completion of the Forward Stock Split.

Beneficial Owner: Shares Registered in the Name of a Bank, Broker, Dealer or Other Nominee

If you hold your shares in *street name* (through a bank, broker, dealer or other nominee), you are not considered to be the holder of record of those shares. Instead, you are the *beneficial owner* of those shares.

Beneficial owners holding shares in *street name* through a nominee which holds on an aggregated basis fewer than 1,000 shares of Common Stock immediately prior to the effective time of the Reverse Stock Split and does not hold such shares in an account with Cede & Co. will be converted into the right to receive the Cash Out Amount for each pre-split share that you beneficially own. Beneficial owners holding shares in *street name* through a nominee which holds on an aggregated basis 1,000 shares or more of Common Stock immediately prior to the effective time of the Reverse Stock Split will have each share of Common Stock converted into 1/1,000 of a share of Common Stock and the holder thereof will not be entitled to receive any cash for the fractional share resulting from the Reverse Stock Split, if any. Beneficial owners holding shares in *street name* through a nominee in an account with Cede & Co., regardless of the number of shares held immediately prior to the effective time of the Reverse Stock Split, will have each share of Common Stock converted into 1/1,000 of a share of Common Stock and the holder thereof will not be entitled to receive any cash for the fractional share resulting from the Reverse Stock Split, if any.

Immediately following the Reverse Stock Split, the Company will effect the Forward Stock Split, the effect of which will be that each share of Common Stock held immediately prior to the effective time of the Reverse Stock Split that is not cashed out in the Reverse Stock Split will represent one share of Common Stock after the completion of the Forward Stock Split.

If you believe you may hold shares of Common Stock in *street name*, you should contact your nominee to determine how your shares are held and whether they will be affected by the Reverse Stock Split or the Forward Stock Split.

Holders of Preferred Shares

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The Stock Splits will not have any affect on the number of outstanding Preferred Shares, nor will it have any affect on the voting rights associated with the Preferred Shares, although the economic

Table of Contents

interest in the Company represented by the Preferred Shares will increase slightly from approximately 28.30% to approximately 28.32%, due to the decrease in the number of shares of Common Stock that will result from the Reverse Stock Split.

How was the Cash Out Amount to be paid in the Reverse Stock Split determined?

If the Reverse Stock Split is approved by the Company's stockholders, then the amount that we will pay for fractional shares will be based on the average closing price per share of Common Stock for the ten trading days immediately prior to the effective date of the Reverse Stock Split. As of August 15, 2011, the Common Stock's ten day average closing price per share was \$0.174.

How do we expect that our affiliates will vote with respect to the Stock Splits?

As of August 30, 2011, the record date for the Annual Meeting (the Record Date), our directors and executive officers collectively held 358,486 shares of Common Stock, representing approximately 1.0% of the votes entitled to be cast at the Annual Meeting, each of whom (other than the three directors who were nominated by the Investor) has indicated that they intend to vote all of their shares of Common Stock FOR each of the proposals to be voted upon at the Annual Meeting.

On July 28, 2011, we sold an aggregate of 2,000,000 Preferred Shares to the Investor pursuant to the Purchase Agreement. The Preferred Shares represent approximately 28.30% of the economic interest in the Company and also entitle the Investor to a number of votes equal to 38.28% of the total number of votes entitled to be cast by holders of all shares of our capital stock (including the Common Stock and the Preferred Shares) voting together as single class. The Investor has indicated that it intends to vote all of the Preferred Shares FOR each of the proposals to be voted upon at the Annual Meeting, with the exception of the proposal to approve anti-dilution protections afforded to the Warrants issued in our June 2010 registered direct offering of Common Stock and Warrants ([Proposal No. 12](#)).

If the Stock Splits are approved, how will it affect the economic and voting rights of our affiliates?

Upon the effectiveness of the Stock Splits, the aggregate number of shares of Common Stock owned by our directors and executive officers will not change, although their beneficial ownership of shares of Common Stock will increase slightly from 6.41% to approximately 6.42%. This is based on our expectation that the outstanding number of shares of Common Stock will be reduced by approximately 34,000 shares due to the Stock Splits.

Upon the effectiveness of the Stock Splits, the economic interest in the Company represented by the Preferred Shares will increase slightly from approximately 28.30% to approximately 28.32%, due to the decrease in the number of shares of Common Stock discussed above. However, neither the voting power associated with the Preferred Shares nor the aggregate number of the Preferred Shares owned by the Investor will change as a result of the Stock Splits.

What potential conflicts of interest are posed by the Stock Splits?

Except as set forth below, none of our directors, executive officers or their affiliates has any interest, direct or indirect, in the Stock Splits other than interests arising from the ownership of securities. None of our directors, executive officers or their affiliates receive any extra or special benefit not shared on a pro rata basis by all other holders of our Common Stock.

As the Investor holds no shares of Common Stock, the Investor will not be participating in the Stock Splits, though as described above, upon the effectiveness of the Stock Splits, the economic interest in the Company represented by the Preferred Shares will increase slightly from approximately 28.30% to approximately 28.32%.

Table of Contents

due to the decrease in the number of shares of Common Stock discussed above. However, neither the voting power associated with the Preferred Shares nor the aggregate number of the Preferred Shares owned by the Investor will change as a result of the Stock Splits.

Messrs. Bartlett, Seslowe and Shaw were appointed to the Board by the Investor in connection with the Preferred Stock Financing and, collectively, through one or more affiliates beneficially own 100% of the equity interests of the Investor. Messrs. Bartlett, Seslowe and Shaw will be treated the same as each of the Company's other directors for all purposes, including in connection with the Stock Splits. As none of Messrs. Bartlett, Seslowe and Shaw own any shares of Common Stock, they will not participate in the Stock Splits.

As described in further detail below, the Investor has the right to put the Preferred Shares back to the Company in return for the cash and assets that the Investor placed into escrow in connection with the recent sale of the Preferred Shares in the event that the Company's stockholders do not approve the Stock Splits.

Why are only shares of certain stockholders being cashed out?

As discussed above, the main purpose of the Stock Splits is to give us the flexibility to reduce the number of our holders of record of the Common Stock so that we can reduce the risk that we will be required to file periodic reports with the SEC under the Exchange Act in the future. We elected to structure the Stock Splits so that they would only affect holders of record identified in our records of security holders (those stockholders holding shares in their own names and nominees of beneficial owners holding shares in street name where such nominee does not hold such shares in an account with Cede & Co.) to minimize the number of cashed out shares and, in turn, the cost of the Stock Splits, allowing us to preserve capital for use in connection with our business plan while still allowing holders of record and beneficial owners some flexibility with respect to whether they will continue to hold shares of Common Stock after the Stock Splits.

As permitted by the Delaware General Corporation Law, only those holders of record identified in our records of security holders who hold less than 1,000 shares will be cashed out as a result of the Stock Splits. Beneficial owners of our shares held by nominees in street name are not record holders for purposes of Delaware law and, thus, are not, for purposes of Delaware law, the legal owners of any shares that are combined as a result of the Stock Splits. While the Stock Splits result in disparate treatment of beneficial owners of our shares held by nominees in street name compared to holders of record of our shares, such a result is permitted under Delaware law because the Company is not required to look through the record ownership of Cede & Co. or any record holder nominee to the beneficial owners in implementing the Stock Splits. For example, as Cede & Co. is a holder of record for purposes of the Stock Splits under Delaware law and Cede & Co. holds more than 1,000 shares of Common Stock in the aggregate, the shares held by it are not affected by the Stock Splits, regardless of the number of shares held by any particular beneficial owner in an account held through Cede & Co.

Why are we proposing to carry out the Forward Stock Split following the Reverse Stock Split?

The Forward Stock Split is not necessary for us to reduce the number of holders of record of the Common Stock or to suspend our obligation to file periodic reports with the SEC. However, we have decided that it is in the best interests of our stockholders to effect the Forward Stock Split to avoid an unusually high stock price after the effective date of the Reverse Stock Split, facilitate trading of the shares by our continuing stockholders either in private transactions or in the Pink Sheets[®], to mitigate any loss of liquidity in our shares of Common Stock that may result from the Reverse Stock Split, and to avoid the administrative burden of having fractional shares outstanding.

What if I hold all of my shares of Common Stock in street name?

Beneficial owners holding shares in street name through a nominee which holds on an aggregated basis fewer than 1,000 shares of Common Stock immediately prior to the effective time of the Reverse Stock Split and does not hold such shares in an account with Cede & Co. will be converted into the right to receive the Cash Out

Table of Contents

Amount for each pre-split share that you beneficially own. Beneficial owners holding shares in street name through a nominee which holds on an aggregated basis 1,000 shares or more of Common Stock immediately prior to the effective time of the Reverse Stock Split will have each share of Common Stock converted into 1/1,000 of a share of Common Stock and the holder thereof will not be entitled to receive any cash for the fractional share resulting from the Reverse Stock Split, if any. Beneficial owners holding shares in street name through a nominee in an account with Cede & Co., regardless of the number of shares held immediately prior to the effective time of the Reverse Stock Split, will have each share of Common Stock converted into 1/1,000 of a share of Common Stock and the holder thereof will not be entitled to receive any cash for the fractional share resulting from the Reverse Stock Split, if any.

If you hold your shares of Common Stock in street name, we encourage you to contact your nominee. If you hold fewer than 1,000 shares of Common Stock in street name through a nominee and want to have your shares exchanged for cash in the Stock Splits, you must instruct your nominee to transfer your shares into a record account in your name in a timely manner so that you will be considered a holder of record immediately prior to the Reverse Stock Split.

If I hold fewer than 1,000 shares of Common Stock, is there any way I can avoid having my shares be cashed out in the Stock Splits?

Holder of Record: Shares Registered in a Stockholder's Name

If you are a holder of record identified in our records of security holders (those stockholders holding shares in their own names) and hold fewer than 1,000 shares of Common Stock immediately prior to the effective time of the Reverse Stock Split, you can avoid a cash out of your shares in the Reverse Stock Split by acquiring, prior to the effective time of the Reverse Stock Split, sufficient additional shares to cause you to hold a minimum of 1,000 shares immediately prior to the effective time of the Reverse Stock Split. However, given the historically limited liquidity in our stock, we cannot assure you that any shares will be available for purchase and thus there is a risk that you may not be able to acquire sufficient shares to meet or exceed the required 1,000 shares. In the alternative, you can also avoid a cash out of your shares in the Reverse Stock Split by transferring, prior to the effective time of the Reverse Stock Split, your shares to street name with a nominee holding shares in an account with Cede & Co.

Beneficial Owner: Shares Registered in the Name of a Bank, Broker, Dealer or Other Nominee

As discussed above, if you are a beneficial owner holding shares in street name through a nominee in an account with Cede & Co., regardless of the number of shares held immediately prior to the effective time of the Reverse Stock Split (including where the number of shares held is less than 1,000), will have each share of Common Stock converted into 1/1,000 of a share of Common Stock and the holder thereof will not be entitled to receive any cash for the fractional share resulting from the Reverse Stock Split, if any. However, if you are a beneficial owner holding shares in street name through a nominee which holds on an aggregated basis fewer than 1,000 shares of Common Stock immediately prior to the effective time of the Reverse Stock Split and does not hold such shares in an account with Cede & Co., your shares will be converted into the right to receive the Cash Out Amount for each pre-split share that you beneficially own. In this case, you can avoid a cash out of your shares in the Reverse Stock Split by acquiring, prior to the effective time of the Reverse Stock Split, sufficient additional shares to cause you to hold through your nominee a minimum of 1,000 shares immediately prior to the effective time of the Reverse Stock Split. However, given the historically limited liquidity in our stock, we cannot assure you that any shares will be available for purchase and thus there is a risk that you may not be able to acquire sufficient shares to meet or exceed the required 1,000 shares. In the alternative, you can also avoid a cash out of your shares in the Reverse Stock Split by transferring, prior to the effective time of the Reverse Stock Split, your shares to street name with a nominee holding shares in an account with Cede & Co.

Table of Contents

Is there anything I can do if I hold 1,000 or more shares of Common Stock, but would like to take advantage of the opportunity to receive cash for my shares as a result of the Stock Splits?

Holder of Record: Shares Registered in a Stockholder's Name

If you are a holder of record identified in our records of security holders (those stockholders holding shares in their own names) and hold 1,000 or more shares of Common Stock before the Reverse Stock Split, you can only receive cash for your shares in the Reverse Stock Split if, prior to the effective time of the Reverse Stock Split, you reduce your record stock ownership to fewer than 1,000 shares by selling or otherwise transferring shares. Given the historically limited liquidity in our stock, there can be no assurance that you will be able to sell sufficient shares to control whether you can reduce your record stock ownership to fewer than 1,000 shares.

Beneficial Owner: Shares Registered in the Name of a Bank, Broker, Dealer or Other Nominee

If you are a beneficial owner holding 1,000 or more shares of Common Stock in street name and desire to have shares exchanged for cash in the Stock Splits, you must instruct your nominee to transfer fewer than 1,000 shares into a record account in your name prior to the effective date of the Reverse Stock Split which will then be cashed out in the Stock Splits.

If the Stock Splits are approved by the Company's stockholders, can the Board determine not to proceed with the Stock Splits?

If the Stock Splits are approved by our stockholders, our Board may determine not to proceed with the Stock Splits if it believes that proceeding with the Stock Splits is not in our best interests or in the best interests of our stockholders, including our unaffiliated stockholders. If our Board determines not to proceed with the Stock Splits we will continue to operate our business as presently conducted and will continue to seek to suspend our obligation to file periodic reports with the SEC in accordance with applicable SEC rules.

What will happen if the Stock Splits are not approved by our stockholders?

If the Stock Splits are not approved by our stockholders, we will continue to operate our business as presently conducted and will continue to seek to suspend our obligation to file periodic reports with the SEC in accordance with applicable SEC rules. In addition, the Investor has the right to put the Preferred Shares back to the Company in return for the cash and assets that the Investor placed into escrow in connection with the recent sale of the Preferred Shares as further described in this proxy statement.

What are the federal income tax consequences of the Stock Splits to our stockholders?

In general, each stockholder whose fractional share is repurchased by the Company in connection with the Stock Splits, should recognize gain or loss for federal income tax purposes measured by the difference between the stockholder's basis in the fractional share and the Cash Out Amount received for the fractional share. This gain or loss will be capital gain or loss if the share was held as a capital asset. Alternatively, each stockholder who does not receive cash for a fractional share as a result of the Stock Splits generally will not recognize any gain or loss for federal income tax purposes.

What is the total cost of the Stock Splits to the Company?

Because we do not know how many shares of Common Stock will be cashed out in the Reverse Stock Split or the amounts to be paid for each pre-split share, we do not know the exact cost of the Stock Splits to the Company. However, based on information that we have received as of August 1, 2011 from our transfer agent, as well our estimates of other expenses associated with the Stock Splits, we believe that the total cash requirement of the Stock Splits to us will be approximately \$201,000. This amount includes approximately \$6,000 (based on the average closing price per share of Common Stock for the ten trading days immediately prior to August 15, 2011 of \$0.174) needed to cash-out fractional shares created as a result of the Reverse Stock Split, and approximately \$195,000 of legal and financial advisory fees and other costs to effect the Stock Splits. This total

Table of Contents

amount could be larger or smaller depending on, among other things, the number of shares that are actually cashed-out in the Reverse Stock Split, the average closing price per share of Common Stock for the ten trading days immediately prior to the effective date of the Reverse Stock Split or an increase in the costs and expenses of the Stock Splits. We intend that payments made to repurchase shares in connection with the Reverse Stock Split will be paid from cash that has been placed into escrow by the Investor in connection with the Preferred Stock Financing.

Should I send in my stock certificates to the Company now?

No. After the Stock Splits is completed, we will send instructions on how to receive any cash payments to which our stockholders may be entitled.

Am I entitled to appraisal rights in connection with the Stock Splits?

No. Under Delaware law, the Restated Certificate, and our Amended and Restated Bylaws, no appraisal rights are available to our stockholders who vote against the Stock Splits.

Table of Contents

SPECIAL FACTORS

Overview of the Reverse Stock Split and the Forward Stock Split

General Description

Following the unanimous recommendation of our Board, we are asking our stockholders to consider and vote upon several proposals to amend our Amended and Restated Certificate of Incorporation, as amended (the Restated Certificate), to authorize a 1-for-1,000 reverse stock split of the Common Stock, as described in greater detail below (the Reverse Stock Split), and to then immediately effect a 1,000-for-1 forward stock split of the Common Stock (the inverse ratio of the Reverse Stock Split) immediately following the Reverse Stock Split, as described in greater detail below (the Forward Stock Split). Although the Reverse Stock Split and the Forward Stock Split will be voted on separately, our Board will not effect either the Reverse Stock Split or the Forward Stock Split unless our stockholders authorize both the Reverse Stock Split and the Forward Stock Split at the Annual Meeting. Copies of the proposed amendments to the Restated Certificate to authorize the Reverse Stock Split and the Forward Stock Split are attached to this proxy statement as [Annex B](#) and [Annex C](#), respectively. The Reverse Stock Split and the Forward Stock Split are collectively referred to herein as the Stock Splits.

The Reverse Stock Split and Forward Stock Split are each intended to take effect, subject to stockholder approval and the subsequent decision by our Board to effect the Stock Splits, on the date the Company files the amendments to the Restated Certificate to effect the Reverse Stock Split and the Forward Stock Split with the Secretary of State of the State of Delaware, or on any later date that the Company may specify in such amendments.

The main purpose of the Stock Splits is to give us the flexibility to reduce the number of the Company's holders of record to help ensure that we continue to have fewer than 300 holders of record, and thereby minimize the likelihood that we will be required to file periodic reports with the SEC under the Exchange Act in the future. Our Board has determined that the costs and other disadvantages associated with being an SEC-reporting company outweigh the advantages to the Company of being an SEC-reporting company. The cost of filing periodic reports with the SEC under the Exchange Act has become prohibitively expensive for us and we believe that it is in the best interests of the Company and our stockholders to take action to immediately suspend our obligation to file such reports. Our Board believes that the Stock Splits constitute the most expeditious, efficient and cost effective method for the Company ensure that it will remain a non-reporting company once it has suspended its obligation to file such reports. We are also seeking to have our stockholders authorize the Stock Splits because we may be required to effect the Reverse Stock Split and Forward Stock Split in order to comply with certain contractual obligations that we have to our largest investor as further described in this proxy statement.

Our Board has concluded that the Stock Splits are fair to, and in the best interest of, the Company and its stockholders, including the unaffiliated stockholders of the Company. Accordingly, our Board unanimously recommends that you vote FOR each of the proposals relating to the Stock Splits ([Proposal No. 9](#) and [Proposal No. 10](#)).

The Reverse Stock Split

Our Board has authorized the adoption, subject to the approval of our stockholders, of an amendment to the Restated Certificate, to authorize a 1-for-1,000 reverse stock split of the Common Stock. Pursuant to the Reverse Stock Split, (i) each share of Common Stock held immediately prior to the effective time of the Reverse Stock Split by our stockholders of record holding fewer than 1,000 shares will be converted into the right to receive the Cash Out Amount (as defined below) per pre-split share, and (ii) each share of Common Stock held immediately prior to the effective time of the Reverse Stock Split by our stockholders of record (as identified in our records of security holders) holding 1,000 or more shares or by beneficial owners holding in street name (through a bank, broker, dealer or other nominee), regardless of the number of shares so held, will be converted into 1/1000 of a

Table of Contents

share of Common Stock and the holder thereof will not be entitled to receive any cash for the fractional share resulting from the Reverse Stock Split. A copy of the proposed amendment to the Restated Certificate to authorize the Reverse Stock Split is attached to this proxy statement as Annex B.

The Forward Stock Split

Our Board has further authorized the adoption, subject to the approval of our stockholders, of an amendment to the Restated Certificate to authorize a 1,000-for-1 forward stock split of the Common Stock (the inverse ratio of the Reverse Stock Split) immediately following the Reverse Stock Split. Immediately following the Reverse Stock Split, we will further amend the Restated Certificate by filing the amendment to effect the Forward Stock Split. A copy of the proposed amendment to the Restated Certificate to authorize the Forward Stock Split is attached to this proxy statement as Annex C.

The Forward Stock Split is not necessary for us to reduce the number of holders of record of our shares of Common Stock. However, we have decided that it is in the best interests of our stockholders to effect the Forward Stock Split to avoid an unusually high stock price after the effectiveness of the Reverse Stock Split, to facilitate trading of the shares by our continuing stockholders, either in private transactions or in the Pink Sheets, to mitigate any loss of liquidity in our shares of Common Stock that may result from the Reverse Stock Split, and to avoid the administrative burden of having fractional shares outstanding.

Recent Preferred Stock Financing

Summary

On July 28, 2011, the Company sold an aggregate of 2,000,000 shares of its Series A Preferred Stock (the Preferred Shares) to Amun, LLC, a Delaware limited liability company (the Investor) pursuant to the terms of a Stock Purchase Agreement (the Purchase Agreement) and related Stockholders Agreement (the Stockholders Agreement). The Preferred Shares represented approximately 28.30% of the economic interest in the Company and in certain limited circumstances one Preferred Share can be converted into seven shares of the Common Stock. The Preferred Shares also entitle the Investor to a number of votes equal to 38.28% of the total number of votes entitled to be cast by holders of all shares of the Company's capital stock (including the Common Stock and the Preferred Shares) voting together as single class.

Under the terms of the Purchase Agreement, Stockholders Agreement and other related agreements between the Company and the Investor, the Investor placed \$2.825 million in cash into an escrow account, which amount is available under certain circumstances to pay certain Company related expenses and to fund the Company's working capital needs, in each case as more fully described below.

The Stockholders Agreement provides that the Investor will have the right to put the Preferred Shares acquired pursuant to the Purchase Agreement back to the Company in return for the remaining cash held in escrow at the time of the exercise of the Put Right (as defined below), if applicable, upon the occurrence of certain events, including an ownership change as such term is defined in Section 382 of the Internal Revenue Code, as amended, or in the event that the Company fails to take certain actions or our Board fails to recommend and approve or consummate a Qualifying Transaction (as defined below). The Investor will also have the right to put the Preferred Shares back to the Company if the Stock Splits are not approved at the Annual Meeting. The Company expects that the sale of the Preferred Shares and the closing of the Qualifying Transaction (as defined below) will provide financing for the Company and enable it to diversify its business.

As contemplated by the Purchase Agreement and the Stockholders Agreement, the Investor intends to bring to the Company an offer for the Company to acquire a controlling interest in a profitable entity, which transaction would provide to the Company at least \$5,000,000 in cash plus an amount equal to the costs and expenses incurred by the Company in connection with such transaction (not to exceed \$200,000), which amounts, together with any operating cash held by the Company immediately prior to closing such transaction,

Table of Contents

would be transferable, together with any and all (i) intellectual property and (ii) other assets of the Company related to the Company's biotechnology business, to a newly formed subsidiary of the Company, which subsidiary will assume all liabilities of the Company as of immediately prior to such closing (a Qualifying Transaction).

In connection with the acquisition of the Preferred Shares described above, our Board has adopted and declared advisable certain amendments to the Restated Certificate to: (i) include a provision that protects the Company's net operating losses for federal tax purposes by prohibiting and declaring void any proposed transfer of securities that would result in any stockholder of the Company becoming a five percent shareholder as such term is defined in Section 382 of the Internal Revenue Code, as amended (the NOL Provision) (Proposal No. 1), (ii) eliminate the Board classification provisions (Proposal No. 2), (iii) eliminate the provision that prevents stockholders from acting by written consent (Proposal No. 3), (iv) eliminate the restrictions on our stockholders' ability to remove directors without cause (Proposal No. 4), (v) permit our stockholders to fill vacancies on our Board (Proposal No. 5), (vi) permit our Amended and Restated Bylaws to be amended by the vote of a majority of the then-outstanding shares of voting stock, rather than two-thirds of such shares (Proposal No. 6), (vii) eliminate the provision that prohibits our stockholders from requesting that we hold a special meeting of our stockholders (Proposal No. 7), (viii) eliminate the provision that requires the vote of two-thirds of the then outstanding shares of voting stock to modify certain provisions of the Restated Certificate (Proposal No. 8), (ix) authorize the Company to effect the Reverse Stock Split (Proposal No. 9), and (x) authorize the Company to effect the Forward Stock Split (Proposal No. 10). Finally, the Stockholders Agreement also permitted the Investor to appoint three directors to the Board following the acquisition of the Preferred Shares, each of whom were appointed effective as of August 11, 2011.

Series A Preferred Stock Purchase Agreement

On July 28, 2011, the Company entered into the Purchase Agreement with the Investor, pursuant to which the Company sold the Investor an aggregate of 2,000,000 shares of its Preferred Shares, and the Investor placed \$2.825 million in cash into escrow, which, pursuant to the terms and conditions of the Purchase Agreement, will be released to the Company to pay certain Company related expenses and fund the Company's working capital needs under certain circumstances. The escrow account into which the \$2.825 million in cash has been deposited is governed by the terms of an escrow agreement (the Escrow Agreement) among the Company, the Investor and The Bank of New York Mellon, as escrow agent.

In connection with the execution of the Purchase Agreement, (i) the Company adopted and filed a Certificate of Designations, Preferences and Rights of Series A Preferred Stock (the Certificate of Designations), which sets forth the rights, preferences and privileges associated with the Preferred Shares, (ii) the Company and the Investor entered into the Stockholders Agreement and an expenses fee letter (the Expenses Fee Letter), and (iii) the Company, the Investor and the escrow agent entered into the Escrow Agreement. Certain additional terms of the Certificate of Designations, the Stockholders Agreement, the Expenses Fee Letter, as well as the Purchase Agreement, are described in greater detail below.

Certificate of Designations of Series A Preferred Stock

In connection with the execution of the Purchase Agreement and the authorization, issuance and delivery of the Preferred Shares, our Board approved, and on July 28, 2011 the Company filed with the Secretary of State of the State of Delaware, the Certificate of Designations, which provides that (i) any dividends or distributions made to the holders of Common Stock will also be made to the holders of Preferred Shares on a *pari passu* basis and based on the number of shares of Common Stock into which the Preferred Shares could then be converted; (ii) in any liquidation, dissolution or winding-up of the Company the entire assets and funds of the Company legally available for distribution will be distributed ratably among the holders of the Common Stock and Preferred Shares pro rata and on a *pari passu* basis provided that the holders of the Preferred Shares will be deemed to hold that number of shares of Common Stock into which such Preferred Shares are then convertible; (iii) the Preferred Shares outstanding together will (A) be entitled to a number of votes equal to 38.28% of the

Table of Contents

total number of votes entitled to be cast by holders of all shares of the Company's capital stock (including the Common Stock and the Preferred Shares) voting together as single class, (B) be entitled to vote on all matters on which the holders of Common Stock shall be entitled to vote, in the same manner and with the same effect as the holders of Common Stock, and (iv) provides that the Preferred Shares will be convertible into Common Stock in the event that the Investor elects to contribute shares of Common Stock to the Company pursuant to the Stockholders Agreement to avoid having the Company issue new shares of Common Stock to a stockholder other than the Investors (the initial conversion rate is set at seven shares of Common Stock to one Preferred Share).

Stockholders Agreement

In connection with the execution of the Purchase Agreement, the Company and the Investor entered into the Stockholders Agreement pursuant to which the Investor was granted certain rights which are summarized below.

Put Right. From July 29, 2011 until the later to occur of (x) July 28, 2012 and (y) in the event a Qualifying Transaction has not been consummated, forty-five calendar days following the Company's 2012 annual meeting of stockholders, the Investor may elect to put all (but not less than all) of the Preferred Shares held by it to the Company (the Put Right), and the Company will be obligated to purchase such Preferred Shares in exchange for \$1.00 and the return of all cash and any other property or assets that continues to be held in the escrow account, in the event of any of the following:

The Investor has requested in writing that the Company terminate the registration (the 12(g) Termination) of the Common Stock under Section 12(g) of the Exchange Act and within five days after such request the Company has not filed a Form 15 to effect the 12(g) Termination, or (ii) the Investor has requested in writing, at any time following the effective date, if any, of the Reverse Stock Split, that the Company effect a termination of the registration of the Common Stock under Section 12(g) of the Exchange Act and the suspension of the Company's reporting obligations under Section 15(d) of the Exchange Act (the Deregistration) and within five days after such request the Company has not effected the Deregistration (subject to any applicable waiting periods);

The stockholders of the Company fail to approve any of (i) the NOL Provision, (ii) the Reverse Stock Split, or (iii) the Forward Stock Split, in each case by November 5, 2011;

(i) The Investor shall have brought to our Board a Qualifying Transaction, and a majority of the Company's disinterested directors fail to recommend and approve the Qualifying Transaction within forty-five calendar days thereafter (a Qualifying Transaction Proposal) or (ii) such Qualifying Transaction is not consummated within seventy-five calendar days of the Investor having made a Qualifying Transaction Proposal, unless, in the case of clause (ii), the failure to consummate such Qualifying Transaction within such seventy-five calendar day period is due to the Investor's breach in any material respect of its obligations under the definitive agreements providing for the Qualifying Transaction;

The Company has not appointed to our Board three nominees of the Investor (the Stockholder Directors) within five calendar days of the receipt by the Company of a written request from the Investor with respect to such appointment;

Less than three Stockholder Directors are members of our Board following the Annual Meeting;

The Investor requests in writing, at any time following the approval of the Reverse Stock Split and the Forward Stock Split by the stockholders of the Company, that the Company effect the Reverse Stock Split and Forward Stock Split and within two business days after such request the Company shall not have filed the amendments to the Restated Certificate, relating to the Reverse Stock Split and the Forward Stock Split with the Secretary of State of the State of Delaware;

The occurrence of an ownership change as defined in Section 382 of the Internal Revenue Code, as amended;

Table of Contents

At any time following the Deregistration, the Company makes any filing with the SEC pursuant to Sections 13 and 15(d) of the Exchange Act on a voluntary basis; or

The Company breaches certain other provisions of the Stockholders Agreement as described therein.

Board Representation Rights. The Stockholders Agreement entitled the Investor to appoint three directors to fill vacancies on our Board, which were filled effective as of August 11, 2011.

Special Board Actions. For as long as the Investor continues to hold 50% of the Preferred Shares, the Company agreed not to take certain actions, and agreed not to permit any of its subsidiaries or affiliates (other than any business acquired by the Company in a Qualifying Transaction) to take any of the following actions, without first obtaining the approval (by vote or written consent) of two-thirds of the directors on our Board including:

amending any provision of the Company's governing documents, except in accordance with the terms of the Stockholders Agreement and the Purchase Agreement;

making or approving any voluntary bankruptcy or reorganization filing by, liquidation or other termination of the business or operations of, the Company or any of its subsidiaries or allow the Company or any subsidiary to make a general assignment, arrangement or composition for the benefit of its creditors or to admit its inability to pay its debts generally as they become due;

increasing the size of our Board to more than seven directors;

making any determination or otherwise taking any action with respect to net operating losses as contemplated by the terms of the NOL Provision;

except as required under options to purchase Common Stock and warrants to acquire Common Stock, in each case outstanding on the date of the Purchase Agreement, issuing any securities; and

registering any securities of the Company or filing any registration statement relating to securities of the Company with the SEC or listing any such securities on any stock exchange.

Standstill Obligations. Until the expiration of the Put Right, the Company agreed that neither it nor any of its subsidiaries or affiliates (other than any business acquired by the Company in a Qualifying Transaction) will:

enter into any agreement or amend any agreement with any officer, employee, director, stockholder, member, warrant holder or equity holder of the Company or any of its subsidiaries or any affiliate of such persons or otherwise incur any liabilities (other than as may be required by the express terms of outstanding warrants in connection with the redemption thereof by the Company in accordance with such warrants) and other than liabilities incurred in the ordinary course of business, in an amount greater than \$200,000;

incur more than \$200,000 in debt in the aggregate;

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incur or grant any lien other than with respect to assets relating to HE2000, HE2100, HE3413, HE3177, Apoptone or Triolex, having a value in excess of \$200,000;

extend any credit in an amount greater than \$200,000 in the aggregate at any one time outstanding;

acquire securities or other assets having an aggregate value in excess of \$200,000 except in connection with a Qualifying Transaction;

issue any guarantee with respect to the debts or other obligations except in connection with a Qualifying Transaction;

make any expenditure in excess of \$100,000; and

hire any employee, officer or director of or consultant to the Company and/or any of its subsidiaries that may result in the payment of compensation during any calendar year of more than \$150,000 to any one such person.

Table of Contents

Preemptive Right. For as long as the Investor continues to hold 50% of the Preferred Shares, the Company agreed that the Investor is entitled to purchase up to 100% of any securities offered by the Company by giving written notice to the Company within ten days (subject to certain exceptions).

Information Rights. For as long as the Company continues to hold 50% of the Preferred Shares, the Investor is entitled to receive quarterly unaudited and annual audited financial statements, and additional written reports, management letters or other detailed information concerning significant aspects of the Company's operations or financial affairs given to the Company by its accountants.

Annual Meeting of Stockholders

In connection with the sale and issuance of the Preferred Shares under the Purchase Agreement, the Company agreed to hold the Annual Meeting within thirty days after the clearance of this proxy statement by the SEC. In particular, the Company agreed to include one or more proposals in this proxy statement to effect certain changes to the Restated Certificate and to recommend the adoption of the proposals to our stockholders. In response to this requirement, the Company has included, and our Board has recommended the adoption of, [Proposal No. 1](#), [Proposal No. 2](#), [Proposal No. 3](#), [Proposal No. 4](#), [Proposal No. 5](#), [Proposal No. 6](#), [Proposal No. 7](#), [Proposal No. 8](#), [Proposal No. 9](#) and [Proposal No. 10](#). If each of these proposals is adopted by our stockholders at the Annual Meeting, the resulting amendments to the Restated Certificate will collectively result in the Company, among other things:

Adopting the NOL Provision to prevent transfers of the Common Stock in order to protect the Company's net operating losses for federal tax purposes ([Proposal No. 1](#));

Eliminating the Board classification provisions, pursuant to which our Board is divided into three separate classes, with each class having a three-year term, and to instead provide for a single class of directors, each elected to hold office until the next annual meeting of stockholders ([Proposal No. 2](#));

Removing the provision that prevents our stockholders from acting by written consent ([Proposal No. 3](#));

Eliminating the restrictions on our stockholders' ability to remove directors without cause ([Proposal No. 4](#));

Permitting our stockholders to fill vacancies on our Board ([Proposal No. 5](#));

Permitting the Amended and Restated Bylaws to be amended by the vote of a majority of the then-outstanding shares of voting stock, rather than two-thirds of such shares ([Proposal No. 6](#));

Eliminating a provision that prohibits our stockholders from requesting that we hold a special meeting of our stockholders ([Proposal No. 7](#));

Eliminating the provision that requires the vote of two-thirds of the then outstanding shares of voting stock to modify certain provisions of the Restated Certificate ([Proposal No. 8](#));

Authorizing the Reverse Stock Split ([Proposal No. 9](#)); and

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Authorizing the Forward Stock Split (Proposal No. 10).

Attached as Annex A to this proxy statement is a proposed Second Amended and Restated Certificate of Incorporation of the Company (the New Certificate), which incorporates the various changes that would be implemented if Proposal No. 1, Proposal No. 2, Proposal No. 3, Proposal No. 4, Proposal No. 5, Proposal No. 6, Proposal No. 7 and Proposal No. 8 are adopted at the Annual Meeting and also consolidates the changes made as a result of several prior amendments to the Restated Certificate.

Table of Contents

Disbursements from Escrow

Under the terms of the Purchase Agreement, we may be reimbursed from the escrow account for amounts required to purchase fractional shares held by record holders of Common Stock in connection with the Reverse Stock Split, if implemented. In addition, to the extent that certain of the holders of our warrants issued in connection with the Warrants are eligible to exercise their put right under Section 3(e) of the Warrants and elect to do so, the Company will be entitled to disbursement from the escrow account in accordance with the escrow agreement, in an amount equal to the amount required to repurchase the Warrants pursuant to the formula set forth in such section.

In addition, under the terms of the Purchase Agreement, beginning January 1, 2012 and on the first day of each month thereafter, we will be entitled to disbursements from the escrow account in the amount of \$200,000 (the Working Capital Amount) for so long as: (x) the Investor has not made a Qualifying Transaction Proposal to the Company, (y) for sixty calendar days following the Investor having made a Qualifying Transaction Proposal (provided that the sixty day period will be extended an additional fourteen calendar days in the event the sixty day period includes all or any part of the period from December 15 through December 31, 2011), and (z) in the event that a Qualifying Transaction has been presented and definitive documentation relating to such Qualifying Transaction has been executed, for so long as the Qualifying Transaction has not been consummated (unless the failure to consummate such Qualifying Transaction is due to the Company's breach in any material respect of its obligations under the definitive agreements providing for the Qualifying Transaction), and if and until the Put Right is exercised or the right to exercise the Put Right otherwise expires.

Expenses Fee Letter

In connection with the execution of the Purchase Agreement, we entered into the Expenses Fee Letter with the Investor, pursuant to which the Investor agreed to reimburse us for our costs and expenses incurred in connection with:

The closing of the sale and issuance of the Preferred Shares, such amount not to exceed \$120,000;

The preparation, filing and clearance of this proxy statement, the consummation of the actions proposed at the Annual Meeting, including the potential Reverse Stock Split and Forward Stock Split, and any stock transfer agent fees associated therewith, the Deregistration (as defined below) or any action, claim, suit, inquiry, notice of violation, proceeding or investigation arising in connection with the Purchase Agreement and the transactions contemplated thereby, such amount not to exceed \$105,000; and

The retention of a proxy solicitation firm to solicit proxies from our stockholders in connection with the Annual Meeting, such amount not to exceed \$50,000.

Effect on the Stock Splits

The Preferred Shares also entitle the Investor to a number of votes equal to 38.28% of the total number of votes entitled to be cast by holders of all shares of the Company's capital stock (including the Common Stock and the Preferred Shares) voting together as single class. The Investor has indicated that it intends to vote all of the Preferred Shares FOR each of the proposals to be voted upon at the Annual Meeting, with the exception of the proposal to approve anti-dilution protections afforded to the Warrants (Proposal No. 12).

As the Investor holds no shares of Common Stock, the Investor will not be participating in the Stock Splits, though as described above, upon the effectiveness of the Stock Splits, the economic interest in the Company represented by the Preferred Shares will increase slightly from approximately 28.30% to approximately 28.32%, due to the decrease in the number of shares of Common Stock discussed above. However, neither the voting power associated with the Preferred Shares nor the aggregate number of the Preferred Shares held by the Investor will change as a result of the Stock Splits.

Table of Contents

Purposes and Advantages of the Stock Splits

Reduce the Number of our Record Stockholders

The main purpose of the Stock Splits is to give us the flexibility to reduce the number of the Company's holders of record to help ensure that we continue to have fewer than 300 holders of record, and thereby minimize the likelihood that we will be required to file periodic reports with the SEC under the Exchange Act in the future. Our Board has determined that the costs and other disadvantages associated with being an SEC-reporting company outweigh the advantages to the Company of being an SEC-reporting company. The cost of filing periodic reports with the SEC under the Exchange Act has become prohibitively expensive for us and we believe that it is in the best interests of the Company and our stockholders to take action to immediately suspend our obligation to file such reports. Our Board believes that the Stock Splits constitute the most expeditious, efficient and cost effective method for the Company to ensure that it will remain a non-reporting company once it has suspended its obligation to file such reports. We are also seeking to have our stockholders authorize the Stock Splits because we may be required to effect the Forward Stock Split and Reverse Stock Split in order to comply with certain contractual obligations that we have to our largest investor as further described in this proxy statement.

As determined in accordance with applicable SEC rules, our holders of record consist of our stockholders of record (as identified in our records of security holders) and the various banks, brokers, dealers and other nominees holding shares in street name accounts with Cede & Co. on behalf of beneficial owners (but not the beneficial owners themselves).

On August 15, 2011 we filed a Form 15 with the SEC certifying that there were fewer than 300 holders of record of the Common Stock and terminating the registration of the Common Stock under the Exchange Act, which is the first step in suspending our obligation to file periodic reports with the SEC. While our duty to file periodic reports under the Exchange Act with the SEC was not suspended immediately due to our existing registration statements filed under the Securities Act, we filed a no-action letter with the SEC to seek relief from our obligation to file such reports for the remainder of the fiscal year (including the Annual Report). While there can be no assurance that the SEC will grant the relief we are seeking, in the event the SEC does grant us relief (and we take certain additional actions as required by SEC rules), we would no longer be required to file periodic reports with respect to the fiscal year ending December 31, 2011 or thereafter. Thus, upon the receipt of confirmation that receipt had been granted, we would immediately cease filing periodic reports with the SEC for the remainder of fiscal year 2011, including the Annual Report to be filed with respect to fiscal year 2011. In the event that the SEC does not grant the relief we are requesting, we would be required to continue to file periodic reports with the SEC with respect to fiscal year 2011, including the Annual Report to be filed with respect to fiscal year 2011. However, even if the SEC does not grant us the reporting relief we are seeking, we would still plan to take the actions required by SEC rules to ensure that we are not required to file periodic reports with the SEC with respect to the fiscal year ending on December 31, 2012 or thereafter. Thus, regardless of the SEC's response to our request for relief, we anticipate that we will not file periodic reports under the Exchange Act with the SEC beginning with the reports that would otherwise be required to be filed with respect to our financial results for fiscal year 2012.

In order to suspend our obligation to file periodic reports with the SEC we must take the appropriate steps to both terminate the registration of the Common Stock with the SEC, which we accomplished by the filing of the Form 15 on August 15, 2011 with the SEC, and suspend our obligation to file periodic reports with the SEC, which we will accomplish either during fiscal year 2011 by obtaining relief from the SEC through the no-action letter process discussed above or at the end of fiscal year 2011 if we continue to have fewer than 300 holders of record (and take certain additional actions as required by SEC rules). Even once we have taken all action necessary to completely suspend our obligation to file periodic reports with the SEC, applicable SEC rules will require that we continue to assess, as of the first day of each fiscal year, the number of our holders of record. Assuming that we continue to have fewer than 300 holders of record as of each such date, our duty to file periodic reports with the SEC will continue to be suspended with respect to the entire fiscal year and we will be

Table of Contents

able to take advantage of the significant cost savings from not filing reports with the SEC or complying with the internal control audit and other requirements under the Sarbanes-Oxley Act. We are seeking the approval of the Stock Splits by our stockholders in order to allow our Board to effect the Stock Splits in the event that it determines that it is necessary to further reduce the number of our holders of record so that it becomes even less likely that the number of holders of record will exceed 300 at any point in the future.

Reduce Costs

We expect to realize significant cost savings as a result of the suspension of our obligation to file reports with the SEC by the elimination of many of the expenses related to the disclosure, reporting and compliance requirements of the Exchange Act, the Sarbanes-Oxley Act, the Dodd-Frank Act and other federal securities laws. For example, as a public company, we are required to prepare and file with the SEC, among other filings, Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and proxy statements under Regulation 14A under the Exchange Act. The costs associated with these obligations constitute a significant overhead expense. These costs include professional fees for our auditors and corporate counsel, costs related to our Director and Officer insurance policy, printing and mailing costs, internal compliance costs and transfer agent costs. These SEC-related costs have been increasing over the years, and we believe that they will continue to increase, particularly as a result of the additional procedural, reporting, auditing and disclosure obligations imposed on public companies by the Sarbanes-Oxley Act and the Dodd-Frank Act.

The external costs associated with these reports and other filing obligations, as well as other external costs relating to public company status, comprise a significant overhead expense, made up principally of the following:

Fiscal Year Ended	2010	2009	2008	2007
Audit, Audit Related Fees, and Tax	\$ 97,000	\$ 95,000	\$ 97,000	\$ 103,000
Sarbanes-Oxley Act and Other Related SEC Compliance	\$ 30,000	\$ 30,000	\$ 70,000	\$ 136,000
Listing, Transfer Agent, D&O Insurance, Other Public Company Costs	\$ 342,000	\$ 581,000	\$ 1,431,000	\$ 993,000
Totals	\$ 469,000	\$ 705,000	\$ 1,598,000	\$ 1,312,000

The historical public company costs presented above are significant as a percentage of our total cost of administration. The reporting and filing costs primarily include professional fees for our auditors and corporate counsel and external compliance costs incurred in preparing and reviewing such filings. They do not include executive or administrative time involved in the process, which we also believe to be significant. The Company expects that the deregistration of our Common Stock will result in the elimination of approximately \$370,000 per year of the above historical public company costs. For example, we estimate that we will be able to save approximately (i) \$65,000 in accounting and audit fees, (ii) \$55,000 in fees which would otherwise be payable to our securities counsel, and (iii) \$250,000 on listing, transfer agent, D&O insurance and other public company costs.

While the Stock Splits will not result directly in the suspension of our SEC reporting obligation and, therefore, will not result directly in the realization of immediate cost savings, the Stock Splits will, if adopted and implemented, significantly reduce the risk that we will be required to file periodic reports under the Exchange Act with the SEC in the future. Accordingly, we believe that the Stock Splits will help to ensure we are able to continue to take advantage of the costs savings that we are able to realize as a result of terminating the registration of the Common Stock with the SEC and suspending our obligation to file periodic reports under the Exchange Act with the SEC. In other words, it is the separate suspension of our SEC reporting obligation that will result in significant cost savings to the Company, but the Stock Splits will help to ensure that the Company will be able to continue to benefit from that cost savings in the future and will limit the risk that the Company will again be required to incur SEC compliance and reporting costs.

Table of Contents

Management Time and Expense

The costs described above do not include the time expended by our management on the preparation of our SEC filings and compliance with other federal securities laws. We believe that this time could more effectively be devoted to other purposes, which is one of the reasons we are seeking to suspend our obligation to file SEC reports. We believe that the Stock Splits will, if adopted and implemented, significantly reduce the risk that we will be required to file periodic reports with the SEC in the future, which will help to ensure that management is able to continue to focus on operating the business and is not burdened by SEC compliance and reporting obligations.

Reduced Administrative Costs

In addition to the direct and indirect costs associated with the preparation of periodic reports under the Exchange Act and the additional reporting and compliance-related costs referenced above, the costs of administering and maintaining many small stockholder accounts is significant. The cost of administering each stockholder's account is essentially the same regardless of the number of shares held in that account. Therefore, our costs to maintain such small accounts are disproportionately high when compared to the total number of shares involved. We believe that the Stock Splits will have the added benefit of decreasing the administrative costs associated with servicing our smaller stockholder accounts since some of those share positions will be cashed out in the Stock Splits.

Increased Percentage Ownership for Continuing Stockholders

The percentage ownership of the outstanding shares of Common Stock by our stockholders who are not cashed-out in the Reverse Stock Split will increase slightly in light of the fact that shares of Common Stock will be repurchased in the Stock Splits, thereby reducing the aggregate number of outstanding shares of Common Stock. However, this increase will likely not be material due to the limited number of shares of Common Stock expected to be repurchased in the Stock Splits.

Compliance with Contractual Obligations

In connection with the sale and issuance of the Preferred Shares under the Purchase Agreement, we agreed to include one or more proposals in this proxy statement to effect certain changes to the Restated Certificate and to recommend the adoption of the proposals to our stockholders. In response to this requirement, our Board has adopted and declared advisable certain amendments to the Restated Certificate including to authorize the Company to effect the Reverse Stock Split ([Proposal No. 9](#)), and to authorize the Company to effect the Forward Stock Split ([Proposal No. 10](#)). Thus, the Company is ensuring that it will be able to comply with certain contractual obligations it may have to its largest stockholder by including [Proposal No. 9](#) and [Proposal No. 10](#) in this proxy statement. However, notwithstanding the contractual obligation, our Board has separately considered the advisability of adopting these proposals and unanimously recommends that you vote FOR each of the proposals relating to the Stock Splits.

Disadvantages of the Stock Splits

While our Board believes the Stock Splits are fair to the Company and our stockholders, including our unaffiliated stockholders, our Board recognizes that the Stock Splits may have certain disadvantages to the Company and to those holders of record that will have their shares cashed out in the Stock Splits.

Disadvantages of the Stock Splits to the Stockholders Who Will be Cashed Out

No Participation in Potential Future Appreciation. The stockholders of the Company who are cashed out in the Stock Splits will no longer own any equity interest in the Company and will have no opportunity to participate in or benefit from any potential future appreciation in our value. In addition, those stockholders will

Table of Contents

not have the opportunity to liquidate their shares at a time and for a price of their choosing. However, our Board believes that the Stock Splits provide an opportunity to realize the fair cash value of the shares without having to pay costly brokerage fees.

If you are a holder of record identified in our records of security holders (those stockholders holding shares in their own names) and hold fewer than 1,000 shares of Common Stock immediately prior to the effective time of the Reverse Stock Split, you may avoid a cash out of your shares in the Reverse Stock Split by acquiring, prior to the effective time of the Reverse Stock Split, sufficient additional shares to cause you to hold a minimum of 1,000 shares of record immediately prior to the effective time of the Reverse Stock Split. If you are a beneficial owner holding shares in street name through a nominee which holds on an aggregated basis fewer than 1,000 shares of Common Stock immediately prior to the effective time of the Reverse Stock Split and does not hold such shares in an account with Cede & Co., you can avoid a cash out of your shares in the Reverse Stock Split by acquiring, prior to the effective time of the Reverse Stock Split, sufficient additional shares to cause you to hold through your nominee a minimum of 1,000 shares immediately prior to the effective time of the Reverse Stock Split. However, given the historically limited liquidity in our stock, we cannot assure you that any shares will be available for purchase and thus there is a risk that you may not be able to acquire sufficient shares to meet or exceed the required 1,000 shares. If you were unable to do so, your shares would be cashed out and you would no longer remain a stockholder after the effective time of the Reverse Stock Split. Alternatively, you may avoid a cash out of your shares in the Reverse Stock Split by transferring, prior to the effective date of the Reverse Stock Split, your shares to street name with a nominee holding shares in an account with Cede & Co.

Disadvantages of the Stock Splits to the Stockholders Who Will Remain Stockholders

Reduced Liquidity. The Common Stock was traded on the NASDAQ Stock Market under the symbol HRBR until September 21, 2010. The Common Stock was traded on the Over-the-Counter Bulletin Board prior to the deregistration of the Common Stock with the SEC. The Common Stock currently only trades on the Pink Sheets or in privately negotiated sales. The Pink Sheets are maintained by Pink Sheets OTC Markets, Inc., a quotation service that collects and publishes market maker quotes for over-the-counter securities. The Pink Sheets is not a stock exchange or a regulated entity. Price quotations are provided by over-the-counter market makers and company information is provided by the over-the-counter companies. There is no assurance that there will be any Pink Sheets quotations after the Stock Splits or that, if such quotations begin, they will continue for any length of time. The Stock Splits will have the effect of reducing the number of outstanding shares of Common Stock as well as the number of holders of record of the Common Stock. As a result, the Stock Splits are likely to further reduce the liquidity of the Common Stock.

Reduced Public Information. Following the termination of the registration of the Common Stock with the SEC, and the suspension of our SEC reporting obligation, we will no longer be required by the Exchange Act to prepare and file periodic reports with the SEC under the Exchange Act, will no longer be subject to most provisions of the Sarbanes-Oxley Act, and our officers will no longer be required to certify the accuracy of our financial statements. As a result, there will be less information publicly available to our continuing stockholders regarding our business, financial condition and results of operations. However, stockholders will continue to have the right, upon written request to the Company, to receive certain information in appropriate circumstances, to the extent provided by the Delaware General Corporation Law, including, for example, the right to view and copy the Company's stock ledger, a list of its stockholders and other books and records, provided that the requesting party is a stockholder, makes the request in the form required by statute, and does so for a proper purpose.

Potential Loss of Value. Just as the stockholders of the Company who are cashed out in the Reverse Stock Split will no longer have an opportunity to participate in any potential future appreciation in our value, stockholders who remain stockholders after the Stock Splits will bear the risk of loss from any diminution in the value of the Common Stock.

Table of Contents

If you are a holder of record identified in our records of security holders (those stockholders holding shares in their own names) and hold 1,000 or more shares of Common Stock before the Reverse Stock Split, you can only receive cash for your shares in the Reverse Stock Split if, prior to the effective time of the Reverse Stock Split, you reduce your record stock ownership to fewer than 1,000 shares by selling or otherwise transferring shares. Alternatively, if you are a beneficial owner holding 1,000 or more shares of Common Stock in street name and desire to have shares exchanged for cash in the Stock Splits, you must instruct your nominee to transfer fewer than 1,000 shares into a record account in your name prior to the effective date of the Reverse Stock Split which will then be cashed out in the Stock Splits. Given the historically limited liquidity in our stock, there can be no assurance that you will be able to sell sufficient shares to control whether you can reduce your record stock ownership to fewer than 1,000 shares.

Disadvantages of the Stock Splits to the Company

Prior to recommending the approval of the Stock Splits, our Board also carefully considered the following potential adverse consequences of the Stock Splits to the Company:

Warrant Put Right. We issued Warrants to the investors in our June 2010 registered direct offering of Common Stock and Warrants. Pursuant to Section 3(e) of the Warrants, the holders may be eligible to exercise a put right under the Warrants in the event that we consummate a reverse stock split or certain other corporate actions, which would entitle them to receive a cash payment in an amount equal to the fair value of the Warrants determined by reference to a formula set forth in such section. In the event that the put right is exercised, we are entitled to disbursement from the escrow account in accordance with the terms of the Escrow Agreement, in an amount equal to the amount required to repurchase the Warrants.

Alternatives to the Stock Splits

In making its determination to recommend the Stock Splits, our Board considered other methods of effectively reducing the number of holders of record of the Common Stock, including an issuer tender offer, repurchases of shares in the open market or privately negotiated transactions, as well as not undertaking the Stock Splits at all. When considering the various alternatives to the Stock Splits, the primary focus was the level of assurance that the selected alternative would result in a significant reduction in the number of our holders of record of Common Stock, thus allowing us to achieve our objective of significantly reducing the risk that we will be required to file periodic reports with the SEC under the Exchange Act in the future, as well as the potential costs of the alternative transactions. We also considered our contractual obligations under the Purchase Agreement and the likelihood that a particular alternative would allow us to fully comply with the obligations we may have to our largest stockholder.

Issuer Tender Offer. In this alternative, we would offer to purchase a set number of shares within a specific timetable. The results of an issuer tender offer would be unpredictable, however, due to the fact that participation by stockholders in a tender offer is voluntary, and we would have no assurance that enough stockholders would tender all of their shares of the Common Stock to significantly reduce the number of holders of record of the Common Stock. In addition, if the number of tendered shares exceeded the number of shares sought in the offer, we may be required to accept shares ratably, which would not result in the reduction of our number of stockholders. Our Board considered that since they could not guarantee or predict with certainty how many shares would be tendered or the number of holders of record that would be eliminated, the possibility existed that such a transaction would not fulfill our main purpose of significantly reducing the number of holders of record. As a result of these disadvantages, our Board determined not to pursue this alternative.

Repurchase of Shares in the Open Market or Privately Negotiated Transactions. Our Board also considered making periodic repurchases of Common Stock in the open market or in privately negotiated transactions. However, our Board noted that this method would be time consuming and, because the participation by selling stockholders in a repurchase program is voluntary, there would be no assurance that we could significantly

Table of Contents

reduce the number of holders of record of the Common Stock. Accordingly, our Board decided this alternative would not be preferable to the Stock Splits because of the lack of assurance that the repurchases would produce the intended result.

Reverse Stock Split without a Forward Stock Split. Our Board indicated that this alternative would accomplish the objective of reducing the number of holders of record of the Common Stock, assuming approval of the Reverse Stock Split by our stockholders. In a reverse stock split without a subsequent forward stock split, we would acquire the interests of all holders of record who hold less than one whole share, but fractional shares would remain outstanding. Additionally, the resulting value of the outstanding shares would be unusually high, which would potentially adversely impact the trading of the remaining shares following the Reverse Stock Split. In addition, our Board was advised that the administration of fractional shares can be burdensome. As a result, our Board concluded that this alternative was less desirable than a reverse stock split followed by a forward stock split at the inverse ratio of the reverse stock split.

After carefully reviewing all of these alternatives, for the reasons discussed above, our Board determined that the Stock Splits were the most expeditious and economical way of significantly reducing the number of holders of record of the Common Stock while also allowing us to fully comply with the contractual obligations we may have to our largest stockholder.

Effects of the Stock Splits

Effect of the Stock Splits on the Company

Reduce the Number of our Record Stockholders. The Stock Splits are designed to further reduce the number of the Company's holders of record so that we can reduce the risk that we will be required to file periodic reports under the Exchange Act with the SEC in the future. The cost of filing periodic reports with the SEC has become prohibitively expensive for us and we believe that it is in the best interests of the Company and our stockholders to take action to immediately suspend our obligation to file such reports and to significantly reduce the likelihood that we will again be required to file such reports in the future. In determining the number of our holders of record as a result of the Stock Splits, we will count holders of record in accordance with Rule 12g5-1 under the Exchange Act. Rule 12g5-1 provides, with certain exceptions, that securities are considered to be held of record by each person who is identified as the owner of such securities on the respective records of security holders maintained by or on behalf of an issuer. However, institutional custodians such as Cede & Co. and other commercial depositories are not considered a single holder of record for purposes of these provisions. Rather, we are required to look through Cede & Co. and these depositories to the nominees named on accounts (such as banks, brokers, dealers and other nominees holding shares in street name for beneficial owners) which are treated as the holder of record of the shares. Based on information available to us as of the Record Date, we expect that as a result of the Stock Splits the number of our holders of record would be reduced to approximately 115. As a result of the significant reduction in the number of our holders of record following the Stock Splits, we believe that the risk that we will again be required to provide periodic reports to the SEC under the Exchange Act in the future will be mitigated. See SPECIAL FACTORS - Purposes and Advantages of the Stock Splits above.

Reduced Costs. We expect to realize significant cost savings as a result of the suspension of our obligation to file reports with the SEC by the elimination of many of the expenses related to the disclosure, reporting and compliance requirements of the Exchange Act, the Sarbanes-Oxley Act, the Dodd-Frank Act and other federal securities laws. The costs associated with these obligations constitute a significant overhead expense. The Company expects that the deregistration of our Common Stock will result in the elimination of approximately \$370,000 per year of historical public company costs. For example, we estimate that we will be able to save approximately (i) \$65,000 in accounting and audit fees, (ii) \$55,000 in fees which would otherwise be payable to our securities counsel and (iii) \$250,000 on listing, transfer agent, D&O insurance and other public company costs. We believe that the Stock Splits will help to ensure we are able to continue to take advantage of the costs savings that we are able to realize as a result of terminating the registration of the Common Stock with the SEC and suspending our obligation to file periodic reports with the SEC. See SPECIAL FACTORS - Purposes and Advantages of the Stock Splits above.

Table of Contents

Effect on Liquidity. The Common Stock was traded under the NASDAQ symbol HRBR until September 21, 2010. The Common Stock was traded on the Over-the-Counter Bulletin Board prior to the deregistration of the Common Stock with the SEC. The Common Stock currently only trades on the Pink Sheets or in privately negotiated sales. The Pink Sheets are maintained by Pink Sheets OTC Markets, Inc., a quotation service that collects and publishes market maker quotes for over-the-counter securities. The Pink Sheets is not a stock exchange or a regulated entity. Price quotations are provided by over-the-counter market makers and company information is provided by the over-the-counter companies. There is no assurance that there will be any Pink Sheets quotations after the Stock Splits or that, if such quotations begin, they will continue for any length of time. The Stock Splits will have the effect of reducing the number of outstanding shares of Common Stock as well as the number of holders of record of the Common Stock. As a result, the Stock Splits is likely to further reduce the liquidity of the Common Stock.

Financial Effect of the Stock Splits. Based on information we have received as of August 1, 2011 from our transfer agent, the Stock Splits are estimated to result in the retirement of approximately 34,000 shares at a cost of \$6,000 per share (based on the average closing price per share of Common Stock for the ten trading days immediately prior that date of \$0.174, which amount will be paid out of the escrow established by the Investor in connection with the recent sale of the Preferred Shares. Including expenses for the Stock Splits, the Company estimates that the total cost of the Stock Splits to us, including legal expenses and paying agent fees, will be approximately \$201,000. We expect to be reimbursed for these expenses up to \$156,000 by the Investor pursuant to the Expenses Fee Letter described above. Our stockholders' equity and cash balance will be reduced as a result of these payments.

Conduct of Our Business after the Stock Splits. The Stock Splits are not anticipated to have a material effect upon the conduct of our business. As contemplated by the Purchase Agreement, following the Stock Splits we expect to explore the possibility of acquiring a controlling interest in an entity in a transaction brought to us by the Investor that would constitute a Qualifying Transaction. We will otherwise continue to operate our existing business as we have done prior to the Stock Splits. We anticipate that we will realize significant direct and indirect cost savings as a result of the Stock Splits mainly as a result of the suspension of our reporting requirements under the Exchange Act and the elimination of the internal control audit and other requirements under the Sarbanes-Oxley Act.

Effect on Holders of Fewer than 1,000 Shares of Common Stock

Holder of Record: Shares Registered in a Stockholder's Name

Holders of record identified in our records of security holders (those stockholders holding shares in their own names) holding fewer than 1,000 shares of the Common Stock immediately prior to the effective time of the Reverse Stock Split will receive the Cash Out Amount per pre-split share, and will cease to be our stockholders. The maximum number of shares that may be cashed out by any individual stockholder is 999 shares. Therefore, if the Reverse Stock Split had occurred on August 15, 2011, the maximum amount of money that may be payable to any stockholder as a result of the Reverse Stock Split would have been approximately \$173.83, based on the average closing price per share of Common Stock for the ten trading days immediately prior that date of \$0.174. Such cashed-out Company stockholders will have no further financial interest in us with respect to their cashed-out shares and thus will not have the opportunity to participate in the potential appreciation in the value of such shares or our future growth, if any.

If you are a holder of record identified in our records of security holders and hold fewer than 1,000 shares of our Common Stock before the Reverse Stock Split and want to avoid a cash out of your shares in the Reverse Stock Split, you must acquire, prior to the effective time of the Reverse Stock Split, sufficient additional shares such that you hold a minimum of 1,000 shares of record registered in your name immediately prior to the effective time of the Reverse Stock Split. Given the historically limited liquidity in our stock, we cannot assure you that any shares will be available for purchase and thus there is a risk that you may not be able to acquire

Table of Contents

sufficient shares to meet or exceed the required 1,000 share threshold. In the alternative, you can also avoid a cash out of your shares in the Reverse Stock Split by transferring, prior to the effective time of the Reverse Stock Split, your shares to street name with a nominee holding shares in an account with Cede & Co.

Beneficial Owner: Shares Registered in the Name of a Bank, Broker, Dealer or Other Nominee

If you hold your shares in street name through a nominee (such as a bank, broker, dealer or other nominee), you are not considered to be the holder of record of those shares. Instead, you are the beneficial owner of those shares.

Beneficial owners holding shares in street name through a nominee in an account with Cede & Co., regardless of the number of shares held immediately prior to the effective time of the Reverse Stock Split (including where the number of shares held is less than 1,000), will have each share of Common Stock converted into 1/1,000 of a share of Common Stock and the holder thereof will not be entitled to receive any cash for the fractional share resulting from the Reverse Stock Split, if any. Each share of Common Stock held in this manner immediately prior to the effective time of the Reverse Stock Split will not be cashed out in the Reverse Stock Split and will continue to represent one share of Common Stock after completion of the Forward Stock Split.

However, nominees of beneficial owners holding shares in street name, where such nominee does not hold such shares in an account with Cede & Co., that hold fewer than 1,000 shares of the Common Stock immediately prior to the effective time of the Reverse Stock Split will receive the Cash Out Amount per pre-split share, and will cease to be our stockholders. As most nominees hold shares in accounts with Cede & Co., the Stock Splits will primarily affect those stockholders holding less than 1,000 shares as holders of record in their own names.

If you are a beneficial owner holding shares in street name through a nominee which holds on an aggregated basis fewer than 1,000 shares of our Common Stock immediately prior to the effective time of the Reverse Stock Split and does not hold such shares in an account with Cede & Co., you can avoid a cash out of your shares in the Reverse Stock Split by acquiring, prior to the effective time of the Reverse Stock Split, sufficient additional shares to cause you to hold through your nominee a minimum of 1,000 shares immediately prior to the effective time of the Reverse Stock Split. Given the historically limited liquidity in our stock, we cannot assure you that any shares will be available for purchase and thus there is a risk that you may not be able to acquire sufficient shares to meet or exceed the required 1,000 share threshold. In the alternative, you can also avoid a cash out of your shares in the Reverse Stock Split by transferring, prior to the effective time of the Reverse Stock Split, your shares to a street name with a nominee holding shares in an account with Cede & Co.

If you believe you may hold shares of Common Stock in street name, you should contact your nominee to determine how your shares are held and whether they will be affected by the Reverse Stock Split or the Forward Stock Split.

Effect on Holders of 1,000 or More Shares in Multiple Accounts

The number of shares held by a stockholder in two or more separate but identical record holder accounts will be combined to determine the number of shares of our Common Stock owned by that stockholder and, accordingly, whether the stockholder will be cashed-out in the Reverse Stock Split or will be a continuing stockholder. We will treat shares of Common Stock held of record in your name and those held in street name through a nominee (such as a bank, broker, dealer or other nominee) separately. This means that we will not combine the number of shares held of record in your name and those in street name accounts in determining which shares will be cashed out. As a result, a stockholder holding 1,000 or more shares of Common Stock in a combination of street name accounts and record ownership accounts may nevertheless have those shares held of record cashed-out.

Table of Contents

If you are in this situation and do not desire to have your shares cashed out in the Stock Splits, you must transfer to your record account sufficient additional shares such that you hold in your name a minimum of 1,000 shares of record immediately prior to the effective time of the Reverse Stock Split or transfer shares held of record in your name to street name with a nominee holding shares in an account with Cede & Co. prior to the effective time of the Reverse Stock Split. Given the historically limited liquidity in our stock, we cannot assure you that any shares will be available for purchase and thus there is a risk that you may not be able to acquire sufficient shares to meet or exceed the required 1,000 share threshold.

Effect on Record Stockholders Who Hold 1,000 or More Shares

Holder of Record: Shares Registered in a Stockholder's Name

Holders of record identified in our records of security holders (those stockholders holding shares in their own names) holding 1,000 or more shares immediately prior to the effective time of the Reverse Stock Split, will have each share of Common Stock converted into 1/1,000 of a share of Common Stock and the holder thereof will not be entitled to receive any cash for the fractional share resulting from the Reverse Stock Split, if any. Each share of Common Stock held in this manner immediately prior to the effective time of the Reverse Stock Split will not be cashed out in the Reverse Stock Split and will continue to represent one share of Common Stock after completion of the Forward Stock Split.

If you are a holder of record identified in our records of security holders and hold 1,000 or more shares of Common Stock before the Reverse Stock Split, you can receive cash for your shares in the Reverse Stock Split if, prior to the effective time of the Reverse Stock Split, you reduce your record stock ownership to fewer than 1,000 shares by selling or otherwise transferring shares. Given the historically limited liquidity in our stock, there can be no assurance that you will be able to sell sufficient shares to control whether you can reduce your record stock ownership to fewer than 1,000 shares.

Beneficial Owner: Shares Registered in the Name of a Bank, Broker, Dealer or Other Nominee

Beneficial owners holding shares in street name through a nominee in an account with Cede & Co., regardless of the number of shares held immediately prior to the effective time of the Reverse Stock Split (including where the number of shares held is 1,000 or more), will have each share of Common Stock converted into 1/1,000 of a share of Common Stock and the holder thereof will not be entitled to receive any cash for the fractional share resulting from the Reverse Stock Split, if any. Each share of Common Stock held in this manner immediately prior to the effective time of the Reverse Stock Split will not be cashed out in the Reverse Stock Split and will continue to represent one share of Common Stock after completion of the Forward Stock Split.

Nominees of beneficial owners holding shares in street name, where such nominee does not hold such shares in an account with Cede & Co., that hold 1,000 or more shares of the Common Stock immediately prior to the effective time of the Reverse Stock Split will have each share of Common Stock converted into 1/1,000 of a share of Common Stock and the holder thereof will not be entitled to receive any cash for the fractional share resulting from the Reverse Stock Split, if any. Each share of Common Stock held in this manner immediately prior to the effective time of the Reverse Stock Split will not be cashed out in the Reverse Stock Split and will continue to represent one share of Common Stock after completion of the Forward Stock Split.

If you are a beneficial owner holding 1,000 or more shares of Common Stock in street name and desire to have shares exchanged for cash in the Stock Splits, you must instruct your nominee to transfer fewer than 1,000 shares into a record account in your name prior to the effective date of the Reverse Stock Split which will then be cashed out in the Stock Splits. Given the historically limited liquidity in our stock, there can be no assurance that you will be able to sell sufficient shares to control whether you can reduce your record stock ownership to fewer than 1,000 shares.

Table of Contents

Effect on Affiliated Stockholders

Upon the effectiveness of the Stock Splits, the aggregate number of shares of Common Stock owned by our directors and executive officers will not change, although their beneficial ownership of shares of voting securities will increase slightly from 6.41% to approximately 6.42%. This is based on our expectation that the outstanding number of shares of Common Stock will be reduced by approximately 34,000 shares due to the Stock Splits.

Our directors, executive officers and the Investor will be treated the same as every other Company stockholder in connection with the Stock Splits. As the Investor owns no shares of Common Stock, they will not participate in the Stock Splits. Upon the effectiveness of the Stock Splits, the economic interest in the Company represented by the Preferred Shares will increase slightly from approximately 28.30% to approximately 28.32%, due to the decrease in the number of shares of Common Stock discussed above. However, neither the voting power associated with the Preferred Shares nor the aggregate number of the Preferred Shares owned by the Investor will change as a result of the Stock Splits.

Determination of Cash Out Amount

Our Board based the Cash Out Amount to be received by the Company's stockholders who are cashed out in the Reverse Stock Split on the average closing price per share of Common Stock for the ten trading days immediately prior to the effective date of the Reverse Stock Split as it determined that calculating the Cash Out Amount on actual market prices was a reasonable basis on which to determine a fair value for the shares of Common Stock being cashed out in the Reverse Stock Split.

Conduct of Our Business After the Stock Splits

The Stock Splits are not anticipated to have a material effect upon the conduct of our business. As contemplated by the Purchase Agreement, following the Stock Splits we expect to explore the possibility of acquiring a controlling interest in an entity in a transaction brought to us by the Investor that would constitute a Qualifying Transaction. We will otherwise continue to operate our existing business as we have done prior to the Stock Splits. We anticipate that we will realize significant direct and indirect cost savings as a result of the Stock Splits mainly as a result of the suspension of our reporting requirements under the Exchange Act and the elimination of the internal control audit and other requirements under the Sarbanes-Oxley Act.

Material Federal Tax Consequences

The following is a general discussion of the material United States federal income tax consequences of the Reverse Stock Split and the Forward Stock Split to the stockholders of the Company who are citizens or residents of the United States or that are domestic corporations. The discussion below does not address all aspects of federal income taxation that may affect particular stockholders in light of their particular circumstances. The following discussion assumes that shares of the Common Stock are held as capital assets. In addition, no information is provided in this document with respect to the tax consequences of the Stock Splits under foreign, state or local laws.

Tax matters are complicated and the tax consequences of the Stock Splits to each stockholder will depend on the facts of that stockholder's situation. The Company recommends that you consult your tax advisor for a full explanation of the tax consequences of the Stock Splits to you. The foregoing summary of material federal income tax consequences of the Stock Splits to our stockholders is based upon the Internal Revenue Code of 1986, as amended, applicable Treasury regulations thereunder, rulings and pronouncements of the Internal Revenue Service (IRS) and judicial decisions now in effect, all of which are subject to change at any time by legislative, judicial or administrative action. Any such changes may be applied retroactively in a manner that could adversely affect such stockholders and could affect the continuing validity of this summary. This summary does not purport to discuss all aspects of United States federal income taxation that may be relevant to each

Table of Contents

stockholder in light of their specific circumstances, or to certain types of stockholders subject to special treatment under United States federal income tax laws (for example, foreign persons, dealers in securities, banks and other financial institutions and tax-exempt organizations). No ruling from the IRS has been obtained (or will be sought) as to the United States federal income tax consequences of the Stock Splits. We cannot assure you that the IRS will not challenge one or more tax consequences described in this section, and we have not obtained, nor do we intend to obtain, a ruling from the IRS with respect to the U.S. federal tax consequences of the Stock Splits.

ALL STOCKHOLDERS ARE ADVISED TO CONSULT THEIR OWN TAX ADVISOR AS TO THE PARTICULAR FEDERAL, STATE, LOCAL, FOREIGN AND OTHER TAX CONSEQUENCES RESULTING FROM THE REVERSE STOCK SPLIT AND FORWARD STOCK SPLIT, IN LIGHT OF THEIR PARTICULAR CIRCUMSTANCES.

The Company believes that the Reverse Stock Split and Forward Stock Split will be treated as a tax-free recapitalization for federal income tax purposes.

Federal Income Tax Consequences for Stockholders Who Do Not Receive the Cash Out Amount

If a stockholder continues to hold Common Stock after the Reverse Stock Split and the Forward Stock Split and does not receive the Cash Out Amount, the Company believes that there will be no material federal tax consequences for those stockholders. Generally, their basis and holding period in their current shares should carry forward as their basis and holding period in the new shares they will hold after the Forward Stock Split.

Federal Income Tax Consequences for Stockholders Who Receive the Cash Out Amount

The Company believes that, for those stockholders who receive cash in exchange for fractions of shares of Common Stock and do not own (and are not deemed to own) Common Stock following the Reverse Stock Split, the Stock Splits will be treated as a taxable transaction for federal income tax purposes. Generally, stockholders receiving cash in the Stock Splits will recognize a gain or loss for federal income tax purposes based on the difference between the cost basis of such stockholder in the shares of Common Stock held immediately prior to the Reverse Stock Split and the amount of cash received. If shares of the Common Stock are held by a stockholder as capital assets, gain or loss recognized by the stockholder will be capital gain or loss, and will be long-term capital gain or loss if the stockholder's holding period for the shares of Common Stock exceeds 12 months. Under present law, long-term capital gains recognized by an individual stockholder generally will be taxed at a maximum marginal federal tax rate of 15%. In addition, under present law, the ability to use capital losses to offset ordinary income is generally limited for stockholders who are individuals to the amount of capital gains recognized during a tax year plus \$3,000.

THE PRECEDING DISCUSSION OF MATERIAL UNITED STATES FEDERAL INCOME TAX CONSEQUENCES IS FOR GENERAL INFORMATION PURPOSES ONLY AND IS NOT INTENDED TO BE TAX ADVICE. ACCORDINGLY, EACH STOCKHOLDER SHOULD CONSULT HIS OR HER OWN TAX ADVISOR AS TO THE PARTICULAR TAX CONSEQUENCES TO HIS OR HER PARTICULAR CIRCUMSTANCES.

Anticipated Accounting Treatment

The Company anticipates that it will account for the purchase of stock in the Reverse Stock Split as retired stock.

Source of Funds and Expenses

Based on information we have received as of August 1, 2011 from our transfer agent, reflecting the distribution of the accounts of our stockholders who hold shares in street name, as well our estimates of other

Table of Contents

expenses, we believe that the total cash requirement of the Stock Splits to us will be approximately \$201,000. This amount includes approximately \$6,000 (based on the average closing price per share of Common Stock for the ten trading days immediately prior to August 15, 2011 of \$0.174) needed to cash-out fractional shares pursuant to the Reverse Stock Split, and approximately \$195,000 of legal, accounting, and other costs to effect the Stock Splits as follows:

Legal Fees	\$ 85,000
Transfer Agent Fees	15,000
Fractional Shares	6,000
Printing, Mailing and Other Proxy Costs	45,000
Proxy Solicitor Costs	50,000
Total Expenses	\$ 201,000

The amounts set forth above could be larger or smaller depending on, among other things, the number of shares that are actually cashed-out in the Reverse Stock Split, the average closing price per share of Common Stock for the ten trading days immediately prior to the effective date of the Reverse Stock Split or an increase in the costs and expenses of the Stock Splits. We intend that payments made to repurchase shares in connection with the Reverse Stock Split will be paid from cash that has been placed into escrow by the Investor in connection with the Preferred Stock Financing.

Effective Date

The Stock Splits will become effective if and when we amend the Restated Certificate by the filing of Certificates of Amendment to the Restated Certificate with the Secretary of State of the State of Delaware to effect the Reverse Stock Split and the Forward Stock Split.

Termination of the Stock Splits

Although we are requesting your approval of the Reverse Stock Split and Forward Stock Split, our Board has reserved the right to rescind, abandon or change its recommendation at any time up to and until the vote of stockholders at the Annual Meeting. In addition, even if the Reverse Stock Split and Forward Stock Split are approved by our stockholders at the Annual Meeting, our Board may determine not to implement them if it subsequently determines that they are not in our best interests or in the best interests of our stockholders. If for any reason the Reverse Stock Split and Forward Stock Split are not approved, or if approved, are not implemented, we will not effect a Reverse Stock Split or a Forward Stock Split unless we subsequently seek the approval of our stockholders.

Exchange of Shares; Process for Payment for Fractional Shares

American Stock Transfer & Trust (AST) will act as our agent for purposes of paying for fractional shares in connection with the Stock Splits.

No service charge, brokerage commission, or transfer tax will be payable by any holder of a certificate evidencing shares of our Common Stock in connection with the cash-out of shares in the Stock Splits.

If any certificate evidencing shares of our Common Stock has been lost or destroyed, we may in our sole discretion accept in lieu thereof a duly executed affidavit and indemnity agreement in a form satisfactory to us. The holder of any shares of our Common Stock evidenced by any certificate that has been lost or destroyed must also submit the following:

the letter of transmittal sent by us;

the above-referenced affidavit;

Table of Contents

the above-referenced indemnity agreement; and

any other document required by us, which may include a bond or other security satisfactory to the us indemnifying us and our other persons against any losses incurred as a consequence of paying cash in lieu of issuing fractional shares of our Common Stock in exchange for the existing shares of our Common Stock evidenced or purported to be evidenced by such lost or destroyed certificate.

Additional instructions with respect to lost or destroyed certificates will be included with the letter of transmittal that we will send to stockholders after the effective date of the Stock Splits. In the event the Company is unable to locate certain stockholders or if a stockholder fails to properly complete, execute, and return the letter of transmittal and accompanying stock certificate(s) to AST, any funds payable to such holders pursuant to the Stock Splits will be held in escrow until a proper claim is made, subject to applicable unclaimed property and escheat laws.

Within approximately five (5) business days after the effective date of the Reverse Stock Split, we expect that AST will send to each holder of record of fewer than 1,000 shares of our Common Stock instructions for surrendering any certificates held thereby representing shares of our Common Stock which will be converted to a right to receive cash as a result of the Reverse Stock Split. Such instructions will include a letter of transmittal to be completed and returned to AST by the holder of such certificates, together with such certificates.

Within approximately five (5) business days after AST receives any surrendered certificate from a record holder of fewer than 1,000 shares of our Common Stock immediately prior to the Stock Splits, together with a duly completed and executed letter of transmittal with respect thereto and such other documents as we may require, AST will deliver to the person payment in an amount equal to the Cash Out Amount for each pre-split share. Therefore, the timing of receipt of payment for these stockholders is dependent upon their proper surrender of the certificates and the delivery of properly prepared and executed letters of transmittal. Our Common Stock acquired to be cashed-out in connection with the Stock Splits will be held either as treasury shares, or restored to the status of authorized but unissued shares.

There will be no differences between the respective rights, such as dividend, voting, liquidation or other rights, preferences or limitations of our Common Stock prior to the Stock Splits and our Common Stock after the Stock Splits.

DO NOT SEND SHARE CERTIFICATES TO AST UNTIL AFTER YOU HAVE RECEIVED A LETTER OF TRANSMITTAL AND ANY ACCOMPANYING INSTRUCTIONS.

Escheat Laws

The unclaimed property and escheat laws of each state provide that under circumstances defined in that state's statutes, holders of unclaimed or abandoned property must surrender that property to the state. Persons whose shares are cashed-out and whose addresses are unknown to us, or who do not return their stock certificates and request payment for their cashed-out shares, generally will have a certain period of years from the effective date of the Stock Splits in which to claim the cash payment payable to them. States may have abandoned property laws which call for such state to obtain either (i) custodial possession of property that has been unclaimed until the owner reclaims it; or (ii) escheat of such property to the state. If we do not have an address for the holder of record of the shares, then unclaimed cash-out payments would be turned over to our state of incorporation, the State of Delaware, in accordance with its escheat laws.

Regulatory Approvals

The Company is not aware of any material governmental or regulatory approval required for completion of the Stock Splits, other than compliance with the relevant federal and state securities laws and Delaware and California corporate laws.

Table of Contents

No Appraisal Rights

Stockholders who dissent from the Reverse Stock Split have no appraisal rights under the Delaware General Corporation Law, the Restated Certificate, or the Amended and Restated Bylaws in connection with the Stock Splits. Our Board determined that this proxy statement and the other publicly available information about the Company provide adequate information for unaffiliated stockholders to make an informed decision with respect to the Stock Splits.

Recommendation of the Board

At a meeting held on August 16, 2011, our Board unanimously determined that the Stock Splits are in the best interests of the Company and our stockholders and unanimously approved the Stock Splits. Our Board unanimously recommends that you vote **FOR** the approval of the proposals that relate to the Stock Splits, including the proposal to amend the Restated Certificate to authorize the Reverse Stock Split (Proposal No. 9), and the proposal to amend the Restated Certificate to authorize the Forward Stock Split (Proposal No. 10).

Table of Contents

PROPOSAL NO. 1

ADOPTION OF AN AMENDMENT TO THE RESTATED CERTIFICATE TO ADD RESTRICTIONS ON THE TRANSFER OF COMMON STOCK TO PRESERVE NET OPERATING LOSSES

General

At the Annual Meeting, you will be asked to consider and vote upon a proposal to adopt an amendment to the Restated Certificate, in order to void any proposed transfer of securities that would result in any stockholder of the Company becoming a Five Percent Stockholder as such term is defined in Section 382 of the Internal Revenue Code, as amended (the NOL Provision). The NOL Provision attempts to prevent certain future transfers of our capital stock that could adversely affect our ability to utilize our net operating loss carryforwards (NOLs) and certain income tax credits to reduce our federal income taxes.

Annex Relating to Proposal No. 1

Attached as Annex A to this proxy statement is a proposed Second Amended and Restated Certificate of Incorporation of the Company (the New Certificate), which incorporates the various changes that would be implemented if this Proposal No. 1 is adopted at the Annual Meeting. The New Certificate also incorporates the changes that would be implemented if Proposal No. 2, Proposal No. 3, Proposal No. 4, Proposal No. 5, Proposal No. 6, Proposal No. 7 and Proposal No. 8 are adopted at the Annual Meeting and consolidates the changes made as a result of several prior amendments to the Restated Certificate. The general description of the amendment proposed by this Proposal No. 1 is qualified in its entirety by reference to the full text of Annex A.

The adoption of Proposal No. 1 is not conditioned upon the adoption of any other proposal.

The Problem: Potential Limitations on Our NOLs

The Value of our NOLs. We estimate that we had approximately \$190 million of (pre-tax) federal NOLs as of December 31, 2010. Furthermore, our federal NOLs do not begin to expire until the year 2017, and are available to use at some level through 2029. To the extent we have future taxable income, and until the NOLs expire or are subject to limitation, they can be used to eliminate future ordinary tax on our income (we may still pay alternative minimum taxes). Because the amount and timing of our future taxable income, if any, cannot be accurately predicted, we cannot estimate the exact amount, if any, of our NOLs that we can ultimately use to reduce our income tax liability. Although we are unable to quantify an exact value, we believe our NOLs are a very valuable asset.

The Section 382 Limit on Use. Certain transfers of our stock between stockholders could result in our undergoing an ownership change as defined in Section 382 of the Internal Revenue Code, as amended, and the related treasury regulations (Section 382). If that were to happen, we would only be allowed to use a limited amount of our then existing NOLs and credits to reduce our current and future federal income taxes subsequent to the ownership change. The annual limit is obtained by multiplying (i) the aggregate value of our outstanding capital stock immediately prior to the ownership change (reduced by certain capital contributions made during the immediately preceding two years, any substantial non-business assets, including cash, and less certain other items) by (ii) the federal long-term tax-exempt interest rate in effect for the month of the ownership change. In calculating this annual limit, numerous special rules and limitations apply, including provisions dealing with built-in gains and losses. If we were to experience an ownership change at our current stock price levels, we believe we would be subject to an annual NOL limitation which would result in a material amount of our NOLs expiring unused, resulting in a significant diminution in the value of our NOLs.

Following a Section 382 Ownership Change. If we were to have taxable income in excess of the NOL limitations following a Section 382 ownership change, we would not be able to utilize all of our NOLs to reduce federal taxes on such excess. Consequently, we would make cash payments on corporate income tax on any

Table of Contents

taxable income during a given year for income earned in excess of the NOL limitation. While any loss carryforwards not used as a result of any Section 382 limitation would remain available to offset income in future years (again, subject to the Section 382 limitation) until the NOLs expire, any ownership change could significantly defer the utilization of the NOLs, accelerate payment of federal income taxes and could cause some of the NOLs to expire unused. Because the aggregate value of our outstanding stock and the federal long-term tax-exempt interest rate fluctuate, it is impossible to predict with any accuracy the annual limitation upon the amount of the federal taxes on our income that could be reduced by such tax NOLs and income tax credits were an ownership change to occur in the future, even under certain circumstances resulting in the complete loss of our NOLs and income tax credits.

The determination of whether an ownership change has occurred under Section 382 involves complex analysis, the details of which are beyond the scope of this discussion.

Reasons for the NOL Provision

Our \$190 million federal NOLs are a significant asset that could reduce federal income taxes on our income. At our current stock price, the value of our NOLs could be significantly impaired unless we avoid potential transfers that, individually or in the aggregate, could trigger an ownership change under Section 382. Furthermore, because our federal NOLs do not start expiring until 2017, we will need to continually manage our Section 382 risk for a significant period of time. Our Board believes that the provisions of the NOL Provision will be an important tool in avoiding potential adverse impacts from Section 382 limitations.

In connection with the Preferred Stock Financing transaction described above, our Board adopted a provision in the Company's bylaws prohibiting and declaring void any proposed transfer of securities that would result in any stockholder of the Company becoming a Five Percent Stockholder. While the Company believes that this provision provides some protection for these very valuable assets, our Board has decided that the Restated Certificate should also contain similar restrictions to increase the protection of the asset and to provide for a mechanism in the Restated Certificate that would have the potential to reverse the impact of the transfer on the ownership shift.

Description and Effect of the NOL Provision

The NOL Provision generally restricts any person or entity from attempting to transfer (which includes any direct or indirect acquisition, sale, transfer, assignment, conveyance, pledge or other disposition) any of our stock (or options, warrants or other rights to acquire our stock, or securities convertible or exchangeable into our stock), to the extent that transfer would (i) create or result in an individual or entity becoming a Five Percent Stockholder of our stock for purposes of Section 382 or (ii) increase the stock ownership percentage of any existing Five Percent Stockholder. The NOL Provision also prevents transfers or sales by a Five Percent Stockholder, which includes any person who was a Five Percent Stockholder at any time during the previous three years.

The NOL Provision provides that any transfer that violates the NOL Provision shall be null and void *ab initio* and shall not be effective to transfer any record, legal, beneficial or any other ownership of the number of shares which result in the violation of the NOL Provision (which are referred to as Excess Securities). The purported transferee shall not be entitled to any rights as our stockholder with respect to the Excess Securities. Instead, the purported transferee would be required, upon demand by the Company, to transfer the Excess Securities to an agent designated by us for the limited purpose of consummating an orderly arm's-length sale of such shares. The net proceeds of the sale will be distributed first to reimburse the agent for any costs associated with the sale, second to the purported transferee to the extent of the price it paid, and finally any additional amount will go to the purported transferor, or, if the purported transferor cannot be readily identified, to a charity designated by our Board. The NOL Provision also provides us with various remedies to prevent or respond to a purported transfer which violates its provisions. In particular, the NOL Provision provides that any person who

Table of Contents

knowingly violates the NOL Provision, together with any persons in the same control group with such person, are jointly and severally liable to us for such amounts as will put us in the same financial position as we would have been in had such violation not occurred.

Authorization of Transfers of Stock

Any Five Percent Stockholder that would like to acquire shares of our stock must make a written request to our Board prior to any such acquisition. The written request must be delivered to our Chief Financial Officer at the following address:

Harbor BioSciences, Inc.

9191 Towne Centre Drive, Suite 409

San Diego, California 92122

Attn: Chief Financial Officer

Re: NOL Provision

The request should include information such as (i) the name, address and telephone number of the Five Percent Stockholder, (ii) a description of the stock that the Five Percent Stockholder proposes to acquire, (iii) the date on which the proposed acquisition is expected to take place, (iv) the name of the proposed transferor of the stock that the Five Percent Stockholder proposes to acquire, and (v) a request that our Board (or a committee thereof) authorize, if appropriate, the acquisition.

Our Board may authorize an acquisition by a Five Percent Stockholder of stock that would otherwise violate the NOL Provision if our Board determines, in its sole discretion, that after taking into account the preservation of our NOLs and income tax credits, such acquisition would be in the best interests of the Company and its stockholders. In deciding whether to authorize such transaction, our Board may seek the advice of counsel and tax experts with respect to the preservation of our federal tax attributes pursuant to Section 382. In addition, our Board may request relevant information from the Five Percent Stockholders in order to determine compliance with the NOL Provision or the status of our NOLs and income tax credits. In considering whether to authorize such a proposed acquisition, we expect our Board to consider, among other things:

whether the person acquiring the shares is or would become a Five Percent Stockholder under Section 382 as a result of the proposed acquisition;

the impact of the proposed acquisition on our Section 382 shift in ownership percentage;

the then existing level of our Section 382 shift in ownership percentage;

the economic impact of any Section 382 limitation that might result, taking into account factors such as our market capitalization and cash position;

the impact on possible future issuances or purchases of our common stock by us;

any changes or expected changes in applicable tax law; and

other business and strategic matters that our Board determines are in the best interests of the Company and its stockholders.

If our Board decides to authorize any proposed acquisition, it may impose conditions on the Five Percent Stockholders. In addition, our Board may require the Five Percent Stockholder to make certain representations to the Company or require an opinion of counsel regarding the proposed acquisition. Likewise, any Five Percent Stockholder requesting authorization for a proposed acquisition may be required to reimburse the Company for any costs or expenses associated with our Board's review of the proposed acquisition.

Implementation and Suspension of the NOL Provision

If the NOL Provision is approved by our stockholders at the Annual Meeting, we intend to enforce the restrictions to preserve future use of our NOLs and income tax credits immediately thereafter. We expect to continue to enforce the restrictions for so long as our Board determines in good faith that it is in the best interests of the Company to prevent the possibility of an ownership change under Section 382.

Table of Contents

We believe allowing our Board to suspend enforcement of the transfer restrictions and other provisions of the NOL Provision, when appropriate, is a more effective alternative to setting a pre-determined termination date for the NOL Provision. Any automatic termination of the NOL Provision could expose our NOLs to future risk. In the future, we could experience a rapid ownership shift in a short period of time that could put our NOLs at risk again before our stockholders would have an opportunity to adopt a new NOL protective measure.

Effectiveness and Enforceability of the NOL Provision

Although the NOL Provision is intended to reduce the likelihood of an ownership change, we cannot eliminate the possibility that an ownership change will occur even if we adopt the NOL Provision. Likewise, we cannot guarantee that an ownership change will not have occurred prior to the adoption of the NOL Provision.

The NOL Provision also does not limit certain changes in relationships and other events which could cause us to undergo an ownership change.

Section 382 is an extremely complex provision with respect to which there are many uncertainties. We have not requested a ruling from the IRS regarding the effectiveness of the NOL Provision, and we cannot assure you that the IRS will agree that the NOL Provision is effective for purposes of limiting the applicability of Section 382.

Our Board can authorize a proposed acquisition by a Five Percent Stockholder that results in or contributes to an ownership change if it determines that such acquisition is in our best interests and the best interests of our stockholders.

Further, a court could find that some or all of the provisions of the NOL Provision are not enforceable, either in general or as to a particular fact situation. Under the laws of the State of Delaware, our jurisdiction of incorporation, a corporation may provide in its certificate of incorporation or bylaws for restrictions on the transfer of securities for the purpose of maintaining any tax advantage. Delaware law provides that transfer restrictions are effective against purported transferees if the transfer restriction is conspicuously noted on the certificate(s) representing the shares and against purported transferees with actual knowledge of the restriction (even absent such conspicuous notation). In connection with the NOL Provision, the shares of our existing common stock will be exchanged for, and reclassified into, new shares of common stock that provide for the transfer restrictions discussed above. These new common shares will contain a conspicuous legend on the back of the stock certificates that refers to transfer restrictions. We believe that this reclassification and exchange of shares will be sufficient to make the proposed transfer restrictions binding on all holders of our stock. Nonetheless, a court could find that either the reclassification or the transfer restrictions are unenforceable, either in general or under particular facts and circumstances.

As a result of these and other factors, the NOL Provision serves to reduce, but does not eliminate, the risk that we will undergo an ownership change.

Other Considerations

Our Board believes that attempting to safeguard our NOLs and income tax credits as described above is in our best interests. Nonetheless, the NOL Provision, if adopted, could have certain potentially negative consequences including the following:

Anti-Takeover Impact. Because some corporate takeovers occur through the acquirer's purchase, in the public market or otherwise, of sufficient stock to give it control of a company, any provision that restricts the transferability of shares can have the effect of preventing such a takeover. The NOL Provision, if adopted, could be deemed to have an anti-takeover effect because, among other things, it will restrict the ability of a person, entity or group to accumulate more than five percent of our common stock and the ability of persons, entities or groups now owning more than five percent of our common stock from acquiring additional shares of our

Table of Contents

common stock without the approval of our Board. As a result, our Board may be able to prevent any future takeover attempt. Therefore, the NOL Provision could discourage or prevent accumulations of substantial blocks of shares in which our stockholders might receive a substantial premium above market value and might tend to insulate management and our Board against the possibility of removal. However, these disadvantages are outweighed, in our opinion, by the fundamental importance of maintaining the availability of our NOLs and income tax credits. The anti-takeover effect of the proposed NOL Provision is not the reason for the NOL Provision. We are proposing the NOL Provision in an effort to reduce the risk that we may be unable to fully utilize the NOLs and income tax credits described above as a result of future transfers of our common stock.

Potential Effects on Liquidity. The NOL Provision will restrict a stockholder's ability to acquire, directly or indirectly, additional shares of our common stock in excess of the specified limitations. Furthermore, a stockholder's ability to dispose of our stock may be limited by reducing the class of potential acquirers for such stock and a stockholder's ownership of our stock may become subject to the NOL Provision upon actions taken by persons related to, or affiliated with, them.

Potential Impact on Value. Because certain buyers, including persons who wish to acquire more than 5% of our stock and certain institutional holders who may not be comfortable holding stock with transfer restrictions, may not purchase our stock, the NOL Provision could depress the value of our stock in an amount that might more than offset any value conserved as a result of the preservation of our NOLs and income tax credits.

Vote Required for Approval of Proposal No. 1

Approval of this proposal requires the affirmative vote of a majority of the votes entitled to be cast at the Annual Meeting. Abstentions will have the same effect as a vote against the proposal. Brokers are not permitted to vote on matters that alter the terms or conditions of an existing class of capital stock unless they receive instructions from the beneficial owner. Accordingly, broker non-votes will result for this proposal if brokers do not receive instructions from beneficial owners. Broker non-votes will have the same effect as votes against the proposal.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE APPROVAL OF AN AMENDMENT TO THE RESTATED CERTIFICATE TO ADD RESTRICTIONS ON THE TRANSFER OF COMMON STOCK TO PRESERVE NET OPERATING LOSSES

Table of Contents

PROPOSAL NO. 2

ADOPTION OF AN AMENDMENT TO THE RESTATED CERTIFICATE TO ELIMINATE THE BOARD CLASSIFICATION PROVISIONS

General

At the Annual Meeting, you will be asked to consider and vote upon a proposal to adopt an amendment to the Restated Certificate in order to eliminate the Board classification provisions, pursuant to which our Board is divided into three separate classes, with each class having a three-year term, and to instead provide for a single class of directors, each elected to hold office until the next annual meeting of stockholders, which amendment will be reflected in Article V of the Restated Certificate. The full text of the proposed amendment is provided below.

Annex Relating to Proposal No. 2

Attached as Annex A to this proxy statement is the New Certificate, which incorporates the various changes that would be implemented if this Proposal No. 2 is adopted at the Annual Meeting. The New Certificate also incorporates the changes that would be implemented if Proposal No. 1, Proposal No. 3, Proposal No. 4, Proposal No. 5, Proposal No. 6, Proposal No. 7 and Proposal No. 8 are adopted at the Annual Meeting and consolidates the changes made as a result of several prior amendments to the Restated Certificate. The general description of the amendment proposed by this Proposal No. 2 is qualified in its entirety by reference to the full text of Annex A.

The adoption of Proposal No. 2 is not conditioned upon the adoption of any other proposal.

Eliminate Classified Board

Article V.A., Section 2 of the Restated Certificate establishes that our Board shall be classified into three separate classes, as nearly equal in number as possible, with the directors in each class serving for staggered, three-year terms. Our Board has considered a stockholder recommendation to amend the Restated Certificate to eliminate the classified structure of our Board and to reorganize our Board into one class, with all directors being subject to election each year at the annual meeting of stockholders.

Proposed Amendment

In accordance with the requirements of the Stockholders Agreement, our Board has proposed that our stockholders approve the following resolution:

RESOLVED, that the Certificate of Incorporation of the Company shall be amended by deleting the provisions currently authorizing a classified Board and providing that Article V.A., Section 2 shall read as follows:

Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the directors shall be elected by the Company's stockholders at each annual meeting of stockholders (or any adjournment or continuation thereof) at which a quorum is present, to hold office until the next annual meeting of stockholders, but shall continue to serve despite the expiration of the director's term until their respective successors are duly elected and qualified. Each director shall serve until his successor is duly elected and qualified or until his death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

If the proposal is not approved, then the Restated Certificate will not be amended, and our Board will continue to be classified into its three existing classes as described above and the directors elected to each class will serve in accordance with the terms stated in the Restated Certificate.

Table of Contents

Vote Required for Approval of Proposal No. 2

Approval of this proposal requires the affirmative vote of two-thirds of the votes entitled to be cast at the Annual Meeting. Abstentions will have the same effect as a vote against the proposal. Brokers are not permitted to vote on matters that alter the terms or conditions of an existing class of capital stock unless they receive instructions from the beneficial owner. Accordingly, broker non-votes will result for this proposal if brokers do not receive instructions from beneficial owners. Broker non-votes will have the same effect as votes against the proposal.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE APPROVAL OF AN AMENDMENT TO THE RESTATED CERTIFICATE TO ELIMINATE THE BOARD CLASSIFICATION PROVISIONS

Table of Contents

PROPOSAL NO. 3

ADOPTION OF AN AMENDMENT TO THE RESTATED CERTIFICATE TO REMOVE THE PROVISION THAT PREVENTS OUR STOCKHOLDERS FROM ACTING BY WRITTEN CONSENT

General

At the Annual Meeting, you will be asked to consider and vote upon a proposal to adopt an amendment to the Restated Certificate in order to eliminate the provision that prevents stockholders from acting by written consent, which amendment will be reflected in Article V of the Restated Certificate. The full text of the proposed amendment is provided below.

Annex Relating to Proposal No. 3

Attached as Annex A to this proxy statement is the New Certificate, which incorporates the various changes that would be implemented if this Proposal No. 3 is adopted at the Annual Meeting. The New Certificate also incorporates the changes that would be implemented if Proposal No. 1, Proposal No. 2, Proposal No. 4, Proposal No. 5, Proposal No. 6, Proposal No. 7 and Proposal No. 8 are adopted at the Annual Meeting and consolidates the changes made as a result of several prior amendments to the Restated Certificate. The general description of the amendment proposed by this Proposal No. 3 is qualified in its entirety by reference to the full text of Annex A.

The adoption of Proposal No. 3 is not conditioned upon the adoption of any other proposal.

Permit Stockholder Action by Written Consent

Article V.B., Section 3 of the Restated Certificate establishes that no action shall be taken by the stockholders of the Company except at an annual or special meeting of stockholders called in accordance with our Amended and Restated Bylaws. Our Board has considered a stockholder recommendation to amend the Restated Certificate to eliminate this requirement, and in accordance with the default provisions of Section 228 of the Delaware General Corporation Law, thereby permit the stockholders to take action by written consent. Approval of this amendment would allow for stockholder action without the expense of holding a meeting of stockholders. Further, there may be instances where it would be inefficient to hold a stockholders meeting if the holders of a significant number of voting stock have already determined how a matter will be decided. The ability to obtain stockholder approval by written consent may facilitate transactions by the Company without the delays associated with calling a meeting and distributing meeting materials. Actions taken by written consent, however, would not relieve the stockholders or the Company of their duty to comply with federal and state securities laws with respect to the solicitation of written consents.

Proposed Amendment

In accordance with the requirements of the Stockholders Agreement, our Board has proposed that our stockholders approve the following resolution:

RESOLVED, that Article V.B., Section 3 of the Restated Certificate, which currently requires stockholder action be taken at an annual or special meeting of stockholders called in accordance with the Bylaws, shall be deleted in its entirety.

If this amendment is adopted, it would allow stockholders to act by written consent for all corporate actions, other than the election of directors.

Vote Required for Approval of Proposal No. 3

Approval of this proposal requires the affirmative vote of two-thirds of the votes entitled to be cast at the Annual Meeting. Abstentions will have the same effect as a vote against the proposal. Brokers are not permitted

Table of Contents

to vote on matters that alter the terms or conditions of an existing class of capital stock unless they receive instructions from the beneficial owner. Accordingly, broker non-votes will result for this proposal if brokers do not receive instructions from beneficial owners. Broker non-votes will have the same effect as votes against the proposal.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE APPROVAL OF AN AMENDMENT TO THE RESTATED CERTIFICATE TO ELIMINATE THE PROVISION THAT PREVENTS OUR STOCKHOLDERS FROM ACTING BY WRITTEN CONSENT

Table of Contents

PROPOSAL NO. 4

**ADOPTION OF AN AMENDMENT TO THE RESTATED CERTIFICATE TO ELIMINATE THE
RESTRICTIONS ON OUR STOCKHOLDERS ABILITY TO REMOVE DIRECTORS WITHOUT CAUSE**

General

At the Annual Meeting, you will be asked to consider and vote upon a proposal to adopt an amendment to the Restated Certificate in order to eliminate the restrictions on our stockholders' ability to remove directors without cause, which amendment will be reflected in Article V of the Restated Certificate. The full text of the proposed amendment is provided below.

Annex Relating to Proposal No. 4

Attached as Annex A to this proxy statement is the New Certificate, which incorporates the various changes that would be implemented if this Proposal No. 4 is adopted at the Annual Meeting. The New Certificate also incorporates the changes that would be implemented if Proposal No. 1, Proposal No. 2, Proposal No. 3, Proposal No. 5, Proposal No. 6, Proposal No. 7 and Proposal No. 8 are adopted at the Annual Meeting and consolidates the changes made as a result of several prior amendments to the Restated Certificate. The general description of the amendment proposed by this Proposal No. 4 is qualified in its entirety by reference to the full text of Annex A.

The adoption of Proposal No. 4 is not conditioned upon the adoption of any other proposal.

Permit Stockholders to Remove Directors Without Cause

Article V.A., Section 3 of the Restated Certificate provides that no director of the Company shall be removed without cause. In accordance with the requirements of the Stockholders' Agreement, our Board has proposed that our stockholders amend the Restated Certificate to eliminate this requirement, and in accordance with the default provisions of Section 141(k) of the Delaware General Corporation Law, permit the stockholders holding a majority of the votes entitled to be cast at an election of directors to remove one or more directors with or without cause.

Proposed Amendment

In accordance with the requirements of the Stockholders' Agreement, our Board has proposed that our stockholders approve the following resolution:

RESOLVED, that Article V.A., Section 3 of the Restated Certificate, which currently provides that no director shall be removed without cause, shall be deleted in its entirety.

If this amendment is adopted, it would allow stockholders holding a majority of the votes entitled to be cast at an election of directors to remove one or more directors with or without cause.

Vote Required for Approval of Proposal No. 4

Approval of this proposal requires the affirmative vote of two-thirds of the votes entitled to be cast at the Annual Meeting. Abstentions will have the same effect as a vote against the proposal. Brokers are not permitted to vote on matters that alter the terms or conditions of an existing class of capital stock unless they receive instructions from the beneficial owner. Accordingly, broker non-votes will result for this proposal if brokers do not receive instructions from beneficial owners. Broker non-votes will have the same effect as votes against the proposal.

**THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE APPROVAL OF AN AMENDMENT TO THE RESTATED
CERTIFICATE TO ELIMINATE THE RESTRICTIONS ON OUR STOCKHOLDERS ABILITY TO REMOVE DIRECTORS
WITHOUT CAUSE**

Table of Contents

PROPOSAL NO. 5

ADOPTION OF AN AMENDMENT TO THE RESTATED CERTIFICATE TO PERMIT OUR STOCKHOLDERS TO FILL VACANCIES ON THE BOARD

General

At the Annual Meeting, you will be asked to consider and vote upon a proposal to adopt an amendment to the Restated Certificate in order to permit our stockholders to fill vacancies on our Board, which amendment will be reflected in Article V of the Restated Certificate. The full text of the proposed amendment is provided below.

Annex Relating to Proposal No. 5

Attached as Annex A to this proxy statement is the New Certificate, which incorporates the various changes that would be implemented if this Proposal No. 5 is adopted at the Annual Meeting. The New Certificate also incorporates the changes that would be implemented if Proposal No. 1, Proposal No. 2, Proposal No. 3, Proposal No. 4, Proposal No. 6, Proposal No. 7 and Proposal No. 8 are adopted at the Annual Meeting and consolidates the changes made as a result of several prior amendments to the Restated Certificate. The general description of the amendment proposed by this Proposal No. 5 is qualified in its entirety by reference to the full text of Annex A.

The adoption of Proposal No. 5 is not conditioned upon the adoption of any other proposal.

Permit Stockholders to Fill Vacancies on our Board

Article V.A., Section 4 of the Restated Certificate provides that vacancies on our Board resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors, shall, unless our Board determines by resolution that any such vacancies or newly created directorships shall be filled by the Company's stockholders, except as otherwise provided by law, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of our Board, and not by the stockholders.

Proposed Amendment

In accordance with the requirements of the Stockholders Agreement, our Board has proposed that our stockholders approve the following resolution:

RESOLVED, that Article V.A., Section 4 of the Restated Certificate, which currently provides that vacancies on the Board may be filled only by the affirmative vote of a majority of the directors then in office, and not by the stockholders, shall be deleted in its entirety.

If this amendment is adopted, it would allow our stockholders to fill any vacancies or newly created directorships.

Vote Required for Approval of Proposal No. 5

Approval of this proposal requires the affirmative vote of two-thirds of the votes entitled to be cast at the Annual Meeting. Abstentions will have the same effect as a vote against the proposal. Brokers are not permitted to vote on matters that alter the terms or conditions of an existing class of capital stock unless they receive instructions from the beneficial owner. Accordingly, broker non-votes will result for this proposal if brokers do not receive instructions from beneficial owners. Broker non-votes will have the same effect as votes against the proposal.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE APPROVAL OF AN AMENDMENT TO THE RESTATED CERTIFICATE TO PERMIT OUR STOCKHOLDERS TO FILL VACANCIES ON THE BOARD

Table of Contents

PROPOSAL NO. 6

ADOPTION OF AN AMENDMENT TO THE RESTATED CERTIFICATE TO PERMIT BYLAW AMENDMENTS BY A MAJORITY RATHER THAN A TWO-THIRDS VOTE OF OUR STOCKHOLDERS

General

At the Annual Meeting, you will be asked to consider and vote upon a proposal to adopt an amendment to the Restated Certificate in order to permit our Amended and Restated Bylaws to be amended by the vote of a majority of the then-outstanding shares of voting stock, rather than two-thirds of such shares, which amendment will be reflected in Article V of the Restated Certificate. The full text of the proposed amendment is provided below.

Annex Relating to Proposal No. 6

Attached as Annex A to this proxy statement is the New Certificate, which incorporates the various changes that would be implemented if this Proposal No. 6 is adopted at the Annual Meeting. The New Certificate also incorporates the changes that would be implemented if Proposal No. 1, Proposal No. 2, Proposal No. 3, Proposal No. 4, Proposal No. 5, Proposal No. 7 and Proposal No. 8 are adopted at the Annual Meeting and consolidates the changes made as a result of several prior amendments to the Restated Certificate. The general description of the amendment proposed by this Proposal No. 6 is qualified in its entirety by reference to the full text of Annex A.

The adoption of Proposal No. 6 is not conditioned upon the adoption of any other proposal.

Permit Bylaw Amendments by Majority Rather than Two-Thirds Vote of Stockholders

Article V.B., Section 1 of the Restated Certificate provides that changes to our Amended and Restated Bylaws be adopted by the vote of at two-thirds of all of the then-outstanding shares of the voting stock entitled to vote at an election of directors.

Proposed Amendment

In accordance with the requirements of the Stockholders Agreement, our Board has proposed that our stockholders approve the following resolution:

RESOLVED, that Article V.B., Section 1 of the Restated Certificate, which currently provides that amendments to the Bylaws of the Company be adopted by the vote two-thirds of all of the then-outstanding shares of the voting stock of the Company entitled to vote at an election of directors, shall be amended to permit such amendments by the vote of a majority of all of the then-outstanding shares of voting stock of the Company.

If this amendment is adopted, it would allow the Company's stockholders to more easily amend the Bylaws.

Vote Required for Approval of Proposal No. 6

Approval of this proposal requires the affirmative vote of two-thirds of the votes entitled to be cast at the Annual Meeting. Abstentions will have the same effect as a vote against the proposal. Brokers are not permitted to vote on matters that alter the terms or conditions of an existing class of capital stock unless they receive instructions from the beneficial owner. Accordingly, broker non-votes will result for this proposal if brokers do not receive instructions from beneficial owners. Broker non-votes will have the same effect as votes against the proposal.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THE APPROVAL OF AN AMENDMENT TO THE RESTATED CERTIFICATE TO PERMIT BYLAW AMENDMENTS BY A MAJORITY RATHER THAN A TWO-THIRDS VOTE OF OUR STOCKHOLDERS

Table of Contents

PROPOSAL NO. 7

ADOPTION OF AN AMENDMENT TO THE RESTATED CERTIFICATE TO ELIMINATE THE PROHIBITION ON STOCKHOLDER REQUESTS TO HOLD A SPECIAL MEETING

General

At the Annual Meeting, you will be asked to consider and vote upon a proposal to adopt an amendment to the Restated Certificate in order to eliminate the provision that prohibits our stockholders from requesting that we hold a special meeting of our stockholders, which amendment will be reflected in Article V of the Restated Certificate. The full text of the proposed amendment is provided below.

Annex Relating to Proposal No. 7

Attached as Annex A to this proxy statement is the New Certificate, which incorporates the various changes that would be implemented if this Proposal No. 7 is adopted at the Annual Meeting. The New Certificate also incorporates the changes that would be implemented if Proposal No. 1, Proposal No. 2, Proposal No. 3, Proposal No. 4, Proposal No. 5, Proposal No. 6 and Proposal No. 8 are adopted at the Annual Meeting and consolidates the changes made as a result of several prior amendments to the Restated Certificate. The general description of the amendment proposed by this Proposal No. 7 is qualified in its entirety by reference to the full text of Annex A.

The adoption of Proposal No. 7 is not conditioned upon the adoption of any other proposal.

Eliminate Prohibition on Stockholder Requests for a Special Meeting

Article V.B. Section 4 of the Restated Certificate provides that special meetings of the stockholders may be called only by (i) the Chairman of the Board, (ii) the Chief Executive Officer, or (iii) pursuant to a resolution adopted by a majority of the total number of authorized directors (regardless of any vacancies) and shall be held at such place, on such date, and at such time as our Board shall fix. This section effectively prohibits our stockholders from calling special meetings.

Proposed Amendment

In accordance with the requirements of the Stockholders Agreement, our Board has proposed that our stockholders approve the following resolution:

RESOLVED, that Article V.B. Section 4 of the Restated Certificate, which currently provides that special meetings of the stockholders may be called only by (i) the Chairman of the Board, (ii) the Chief Executive Officer, or (iii) pursuant to a resolution adopted by a majority of the total number of authorized directors (regardless of any vacancies) and shall be held at such place, on such date, and at such time as our Board of Directors shall fix, shall be deleted in its entirety.

Our Amended and Restated Bylaws currently provide that special meetings of the stockholders may be called not only by the Chairman, the CEO and a majority of the directors, but also upon written request of the holders of at least twenty-five percent (25%) of the voting power of all of the then-outstanding shares of voting stock of the corporation, entitled to vote at an election of directors.

If this amendment is adopted, it would allow the stockholders to more easily amend our Amended and Restated Bylaws. In making this proposal, our Board carefully considered the advantages and disadvantages of allowing special meetings to be called at the request of stockholders. Although calling special meetings at the request of stockholders can enhance stockholder rights and Board accountability, if stockholders holding too few shares can request a special meeting, there is a risk that self-interested parties holding a small minority of shares will request a special meeting in order to serve their narrow purposes rather than those of the Company and the

Table of Contents

majority of its stockholders. The proposed amendments would preserve the ability of the majority of our Board to call a special meeting of stockholders. After weighing these considerations, our Board determined that the proposed deletion, in connection with the current Bylaw provision relating to calling special meetings is in the best interests of the Company and its stockholders.

Vote Required for Approval of Proposal No. 7

Approval of this proposal requires the affirmative vote of two-thirds of the votes entitled to be cast at the Annual Meeting. Abstentions will have the same effect as a vote against the proposal. Brokers are not permitted to vote on matters that alter the terms or conditions of an existing class of capital stock unless they receive instructions from the beneficial owner. Accordingly, broker non-votes will result for this proposal if brokers do not receive instructions from beneficial owners. Broker non-votes will have the same effect as a vote against the proposal.