

BRUSH ENGINEERED MATERIALS INC
Form S-3/A
September 14, 2009

As filed with the Securities and Exchange Commission on September 14, 2009

Registration No. 333-161260

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

AMENDMENT NO. 1
TO
FORM S-3
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

BRUSH ENGINEERED MATERIALS INC.
(Exact Name of Registrant as Specified in Its Charter)

Ohio

(State or Other Jurisdiction of Incorporation or
Organization)

34-1919973

(I.R.S. Employer Identification Number)

**6070 Parkland Blvd.
Mayfield Heights, Ohio 44124
(216) 486-4200**

(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive
Offices)

**Michael C. Hasychak
Vice President, Treasurer and Secretary
6070 Parkland Blvd.
Mayfield Heights, Ohio 44124
(216) 486-4200**

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent For Service)

Copies To:

**Michael J. Solecki
Jones Day
901 Lakeside Avenue
Cleveland, Ohio 44114
Phone: (216) 586-3939
Fax: (216) 579-0212**

Approximate date of commencement of proposed sale to the public: From time to time after this Registration
Statement becomes effective.

If the only securities being registered on this form are being offered pursuant to dividend or interest reinvestment
plans, please check the following box.

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If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, please check the following box.

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this form is a post-effective amendment to a registration statement pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company
 (Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Unit (1) (2)	Proposed Maximum Aggregate Offering Price (1) (3)	Amount of Registration Fee(1)
Common Shares, no par value (4)(11)				
Preferred Shares, no par value (5)(11)				
Depository Shares (6)(11)				
Warrants (7)(11)				
Subscription Rights (8)(11)				
Debt Securities (9)(11)				
Units (10)(11)				
Total	\$ 150,000,000	100%	\$ 150,000,000(12)	\$ 8,370(13)

(1) Not specified as to each class of securities to be registered pursuant to General Instruction II.D. to Form S-3.

- (2) The proposed maximum offering price per unit will be determined from time to time by the registrant in connection with the issuance by the registrant of the securities registered hereunder.
- (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o).
- (4) Subject to note (12) below, there is being registered an indeterminate number of common shares. Each common share includes a right (Right) to purchase one one-hundredth of a share of Series A Junior Participating Preferred Stock, no par value, on the terms and subject to the conditions set forth in the Rights Agreement, dated as of May 10, 2000 (the Rights Agreement), as amended by the First Amendment to

Rights
Agreement,
dated as of
December 7,
2004, and the
Second
Amendment to
Rights
Agreement,
dated as of
July 31, 2008,
by and between
the registrant
and Wells Fargo
Bank, N.A., as
rights agent.
The terms of the
Rights are
described in the
Rights
Agreement,
filed as Exhibit
4(a) to the
registrant s
Registration
Statement on
Form 8-A filed
with the
Securities and
Exchange
Commission
(the SEC) on
May 16, 2000,
as amended by
the First
Amendment to
Rights
Agreement,
filed as
Exhibit 4.1 to
the registrant s
Registration
Statement on
Form 8-A /A,
filed with the
SEC on
December 13,
2004, and the
Second
Amendment to
Right

Agreement,
filed as
Exhibit 4.1 to
the registrant's
Registration
Statement on
Form 8-A/A
filed with the
SEC on July 31,
2008.

(5) Subject to note
(12) below,
there is being
registered an
indeterminate
number of
preferred shares.

(6) Subject to note
(12) below,
there is being
registered an
indeterminate
number of
depository
shares to be
evidenced by
depository
receipts issued
pursuant to a
deposit
agreement. If
the registrant
elects to offer to
the public
fractional
interests in
preferred shares,
then depository
receipts will be
distributed to
those persons
purchasing the
fractional
interests and the
shares will be
issued to the
depository under

the deposit
agreement.

- (7) Subject to note (12) below, there is being registered hereunder an indeterminate amount and number of warrants. The warrants may represent the right to purchase common shares, preferred shares or debt securities.
- (8) Subject to note (12) below, there is being registered an indeterminate number of subscription rights that may represent a right to purchase common shares, preferred shares or debt securities.
- (9) Subject to note (12) below, there is being registered an indeterminate principal amount of debt securities.
- (10) Subject to note (12) below, there is being registered an indeterminate number of units.

Each unit will be issued under a unit agreement and will represent an interest in a combination of one or more of the securities registered hereunder.

- (11) Subject to note (12) below, this registration statement also covers an indeterminate amount of securities as may be issued in exchange for, or upon conversion or exercise of, as the case may be, the preferred shares, depositary shares, warrants or subscription rights registered hereunder. Any securities registered hereunder may be sold separately or as units with other securities registered hereunder. No separate consideration will be received for any securities registered hereunder that are issued in exchange for, or upon conversion

of, as the case may be, the preferred shares, depositary shares, warrants or subscription rights.

- (12) In no event will the aggregate initial offering price of all securities issued from time to time pursuant to the prospectus contained in this registration statement exceed \$150,000,000 or the equivalent thereof in one or more foreign currencies or foreign currency units. Such amount represents the offering price of any common shares, preferred shares and depositary shares, the principal amount of any debt securities issued at their stated principal amount, the issue price rather than the principal amount of any debt securities issued at an original issue discount, the issue price of any warrants,

the exercise price of any securities issuable upon the exercise of warrants and the issue price of any securities issuable upon the exercise of subscription rights. The aggregate principal amount of debt securities may be increased if any debt securities are issued at an original issue discount by an amount such that the offering price to be received by the registrant shall be equal to the above amount to be registered. Any offering of securities denominated other than in United States dollars will be treated as the equivalent of United States dollars based on the exchange rate applicable to the purchase of such securities at the time of initial offering. The securities registered hereunder may be sold

separately or as
units with other
securities
registered
hereunder.

(13) Previously paid.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Securities and Exchange Commission, acting pursuant to said Section 8(a), may determine.

The information in this preliminary prospectus is not complete and may be changed. We may not sell securities under this registration statement until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell any securities and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Subject To Completion, Dated September 14, 2009

PROSPECTUS

\$150,000,000

Common Shares

Preferred Shares

Depositary Shares

Warrants

Subscription Rights

Debt Securities

Units

We may offer and sell from time to time our common shares, preferred shares, depositary shares, warrants, subscription rights and debt securities, as well as units that include any of these securities. We may sell any combination of these securities in one or more offerings with an aggregate initial offering price of \$150,000,000 or the equivalent amount in other currencies or currency units.

We will provide the specific terms of the securities to be offered in one or more supplements to this prospectus. You should read this prospectus and the applicable prospectus supplement carefully before you invest in our securities. This prospectus may not be used to offer and sell our securities unless accompanied by a prospectus supplement describing the method and terms of the offering of those offered securities.

We may sell the securities directly or to or through underwriters or dealers, and also to other purchasers or through agents. The names of any underwriters or agents that are included in a sale of securities to you, and any applicable commissions or discounts, will be stated in an accompanying prospectus supplement. In addition, the underwriters, if any, may over-allot a portion of the securities.

Investing in any of our securities involves risk. Please read carefully the section entitled Risk Factors beginning on page 4 of this prospectus.

Our common shares are listed on the New York Stock Exchange under the symbol BW. The closing price of our common shares on the New York Stock Exchange on September 11, 2009 was \$23.86. None of the other securities that we may offer under this prospectus are currently publicly traded.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is _____, 2009

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the SEC using a shelf registration process. Under this shelf process, we may from time to time sell any combination of the securities described in this prospectus in one or more offerings up to a total dollar amount of \$150,000,000 or the equivalent amount in other currencies or currency units.

This prospectus provides you with a general description of the securities we may offer. Each time we sell securities, we will provide a prospectus supplement that will contain specific information about the terms of that offering. For a more complete understanding of the offering of the securities, you should refer to the registration statement, including its exhibits. The prospectus supplement may also add, update or change information contained in this prospectus. You should read both this prospectus and any prospectus supplement together with additional information under the heading **Where You Can Find More Information** and **Information We Incorporate By Reference**.

You should rely only on the information contained or incorporated by reference in this prospectus and in any prospectus supplement or in any free writing prospectus that we may provide you. We have not authorized anyone to provide you with different information. You should not assume that the information contained in this prospectus, any prospectus supplement, any document incorporated by reference or any free writing prospectus is accurate as of any date, other than the date mentioned on the cover page of these documents. We are not making offers to sell the securities in any jurisdiction in which an offer or solicitation is not authorized or in which the person making such offer or solicitation is not qualified to do so or to anyone to whom it is unlawful to make an offer or solicitation.

References in this prospectus to the terms **we**, **us** or **the Company** or other similar terms mean Brush Engineered Materials Inc. and its consolidated subsidiaries, unless we state otherwise or the context indicates otherwise.

WHERE YOU CAN FIND MORE INFORMATION

We are subject to the informational reporting requirements of the Securities Exchange Act of 1934. We file reports, proxy statements and other information with the SEC. Our SEC filings are available over the Internet at the SEC's web site at <http://www.sec.gov>. You may read and copy any reports, statements and other information filed by us at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call 1-800-SEC-0330 for further information on the Public Reference Room. You may also inspect our SEC reports and other information at the New York Stock Exchange, 20 Broad Street, New York, New York 10005, or at our web site at <http://www.beminc.com>. We do not intend for information contained on or accessible through our web site to be part of this prospectus, other than the documents that we file with the SEC that are integrated by reference into this prospectus.

INFORMATION WE INCORPORATE BY REFERENCE

The SEC allows us to incorporate by reference the information we file with them, which means:

incorporated documents are considered part of the prospectus;

we can disclose important information to you by referring you to those documents; and

information that we file with the SEC after the date of this prospectus will automatically update and supersede the information contained in this prospectus and incorporated filings.

We incorporate by reference the documents listed below that we filed with the SEC under the Exchange Act:

- our Annual Report on Form 10-K for the year ended December 31, 2008;

- our Quarterly Reports on Form 10-Q for the quarters ended April 3, 2009 and July 3, 2009;

- our Current Reports on Form 8-K filed on February 3, 2009 and February 6, 2009;

- the description of our capital stock contained in the registration statement on Form 8-A filed with the SEC on May 16, 2000, and all amendments and reports filed for the purpose of updating that description; and

the description of the Series A Junior Participating Preferred Stock purchase rights under the Rights Agreement filed as Exhibit 4(a) to the registration statement on Form 8-A filed on May 16, 2000, as amended by the registration statement on Form 8-A/A filed on December 13, 2004 and the registration statement on Form 8-A/A filed July 31, 2008, and any subsequently filed amendments and reports updating such description.

We also incorporate by reference each of the documents that we file with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act (1) after the date of the initial filing of the registration statement of which this prospectus forms a part, prior to the effectiveness of the registration statement, and (2) after the date of this prospectus until the offering of the securities terminates. We will not, however, incorporate by reference in this prospectus any documents or portions thereof that are not deemed filed with the SEC, including any information furnished pursuant to Item 2.02 or Item 7.01 of our current reports on Form 8-K after the date of this prospectus unless, and except to the extent, specified in such current reports.

We will provide you with a copy of any of these filings (other than an exhibit to these filings, unless the exhibit is specifically incorporated by reference into the filing requested) at no cost, if you submit a request to us by writing or telephoning us at the following address and telephone number:

Brush Engineered Materials Inc.
6070 Parkland Blvd.
Mayfield Heights, Ohio 44124
Telephone Number: (216) 486-4200
Attn: Secretary

Any statement contained or incorporated by reference in this prospectus shall be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained herein, or in any subsequently filed document which also is incorporated herein by reference, modifies or supersedes such earlier statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus. Any statement made in this prospectus concerning the contents of any contract, agreement or other document is only a summary of the actual contract, agreement or other document. If we have filed or incorporated by reference any contract, agreement or other document as an exhibit to the registration statement, you should read the exhibit for a more complete understanding of the document or matter involved. Each statement regarding a contract, agreement or other document is qualified by reference to the actual document.

THE COMPANY

Brush Engineered Materials Inc., through its wholly owned subsidiaries, is a manufacturer of high performance advanced enabling engineered materials serving the global telecommunications and computer, data storage, aerospace and defense, automotive electronics, industrial components (including oil and gas, heavy equipment and plastic mold tooling), appliance and medical markets.

Our businesses are organized under four reportable segments: Advanced Material Technologies and Services (AMTS); Specialty Engineered Alloys (SEA); Beryllium and Beryllium Composites; and Engineered Material Systems. AMTS consists of Williams Advanced Materials Inc. (WAM) and Zentrix Technologies, Inc. SEA consists of Alloy Products, which includes bulk and strip form products, and beryllium hydroxide produced by Brush Resources Inc. (BRI). The Beryllium and Beryllium Composites segment consists of Beryllium Products and Brush Ceramic Products Inc. while the Engineered Material Systems segment consists of Technical Materials, Inc. (TMI).

Our parent company, Brush Engineered Materials Inc., and other corporate expenses, as well as the operating results from BEM Services, Inc., a wholly owned subsidiary, are not part of any reportable segment and remain in All Other .

Advanced Material Technologies and Services

AMTS manufactures and fabricates precious, non-precious and specialty metal products for the data storage, medical and the wireless, photonics, semiconductor and hybrid segments of the microelectronics market. AMTS also has refining capabilities for the reclaim of precious and non-precious metals from internally or customer-generated scrap. In addition, AMTS provides chamber services for its customers to reclaim precious metals and refurbish reusable components used in its customers' vapor deposition systems. AMTS' major product lines include vapor deposition targets, clad and precious metals preforms, high temperature braze materials, ultra fine wire, sealing lids, optics, performance coatings, specialty inorganic materials and microelectronic packages. In February 2008, AMTS purchased the assets of Techni-Met, Inc. based in Windsor, Connecticut, which supplies a wide range of high end applications for advanced technology industries, including supporting downstream customers in developing more accurate diagnostic devices for diabetes management.

Specialty Engineered Alloys

SEA manufactures beryllium-containing and other high performance-based materials including copper-nickel-tin alloys that are metallurgically tailored to meet specific customer performance requirements. These products exhibit high electrical and thermal conductivities, high strength and hardness, good formability, lubricity, and excellent resistance to corrosion, wear and fatigue. These alloys, sold in strip and bulk form, are ideal choices for demanding applications in the telecommunications and computer, aerospace, industrial components (including oil and gas, heavy equipment and plastic mold tooling), appliance and medical markets. SEA, through BRI, manages our mine and milling operations. The milling operations produce beryllium hydroxide from mined bertrandite ore and purchased beryl ore. The beryllium hydroxide is used primarily as a raw material input by certain businesses within our company.

Beryllium and Beryllium Composites

Beryllium and Beryllium Composites manufactures products that include beryllium and AlBeMet®. Beryllium is a lightweight metal possessing unique mechanical and thermal properties. Its specific stiffness is much greater than other engineered structural materials such as aluminum, titanium and steel. Beryllium products are used in a variety of high performance applications in the defense, aerospace, industrial, scientific equipment, electronics (including acoustics), medical and optical scanning markets. Beryllium and Beryllium Composites also manufactures beryllia ceramics for electronic packaging and electro-optical applications including lasers. Electronic components utilizing beryllia are used in the telecommunications, medical, industrial and defense markets.

Engineered Material Systems

Engineered Material Systems manufactures clad inlay and overlay metals, precious and base metal electroplated systems, electron beam welded systems, contour profiled systems and solder-coated metals systems. These products are used in telecommunications and computer systems, data storage, automotive electronics, semi-conductors, energy, defense and medical applications.

Corporate Information

Brush Engineered Materials Inc. is an Ohio corporation. Our principal executive offices are located at 6070 Parkland Boulevard, Mayfield Heights, Ohio 44124. Our telephone number is (216) 486-4200. Our website is www.beminc.com. The information contained on or accessible through our website is not part of this prospectus, other than the documents that we file with the SEC that are incorporated by reference into this prospectus.

RISK FACTORS

Investing in our securities involves risk. Prior to making a decision about investing in our securities, you should carefully consider the specific factors discussed under the heading Risk Factors in our most recent Annual Report on Form 10-K and in our most recent Quarterly Reports on Form 10-Q, which are incorporated herein by reference and may be amended, supplemented or superseded from time to time by other reports we file with the SEC in the future. The risks and uncertainties we have described are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also affect our operations. If any of these risks actually occurs, our business, results of operations and financial condition could suffer. In that case, the trading price of our securities could decline, and you could lose all or part of your investment.

DISCLOSURE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus includes, and any prospectus supplement may include, forward-looking statements. Our actual future performance may materially differ from that contemplated by the forward-looking statements as a result of a variety of factors. These factors include, without limitation:

the global and domestic economies, including the uncertainties related to the impact of the current global economic crisis;

the condition of the markets in which we serve, whether defined geographically or by segment, with the major market segments being telecommunications and computer, data storage, aerospace and defense, automotive electronics, industrial components, appliance and medical;

changes in product mix and the financial condition of customers;

our success in developing and introducing new products and new product ramp-up rates, especially for media applications in the data storage market;

our success in passing through the costs of raw materials to customers or otherwise mitigating fluctuating prices for those materials, including the impact of fluctuating prices on inventory values;

our success in integrating newly acquired businesses;

our success in implementing our strategic plans and the timely and successful completion of any capital projects;

the availability of adequate lines of credit and the associated interest rates and/or fees;

other financial factors, including cost and availability of raw materials (both base and precious metals), tax rates, exchange rates, metal financing fees, pension costs and required cash contributions and other employee benefit costs, energy costs, regulatory compliance costs, the cost and availability of insurance, and the impact

of our stock price on the cost of incentive plans;

the uncertainties related to the impact of war and terrorist activities;

changes in government regulatory requirements and the enactment of new legislation that impacts our obligations and operations;

the conclusion of pending litigation matters in accordance with our expectation that there will be no material adverse effects; and

the risk factors referred to elsewhere in this prospectus.

USE OF PROCEEDS

Unless we inform you otherwise in the applicable prospectus supplement, we expect to use the net proceeds from the sale of securities for general corporate purposes. These purposes may include, but are not limited to: reduction or refinancing of outstanding indebtedness or other corporate obligations;

additions to working capital;

capital expenditures; and

acquisitions.

Pending any specific application, we may initially invest funds in short-term marketable securities or apply them to the reduction of short-term indebtedness.

RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth our ratio of consolidated earnings to fixed charges for the periods presented:

	Year ended December 31,				Six months ended
	2004	2005	2006	2007	July 3, 2009
	1.80x	1.81x	8.07x	27.12x	8.49x

Fixed charges are equal to interest expense (including amortization of deferred financing costs), plus the portion of rent expense estimated to represent interest.

Total earnings were insufficient to cover the fixed charges for the six months ended July 3, 2009 by \$14.3 million primarily due to operating losses. Accordingly, such ratio is not presented for such period.

DESCRIPTION OF CAPITAL STOCK

The following description is a general summary of the terms of the common shares and preferred shares that we may issue. The description below and in any prospectus supplement does not include all of the terms of the common shares and preferred shares and should be read together with our Amended and Restated Articles of Incorporation and Amended and Restated Code of Regulations, copies of which have been filed previously with the SEC. For more information on how you can obtain copies of our Amended and Restated Articles of Incorporation and Amended and Restated Code of Regulations, see [Where You Can Find More Information](#).

Our authorized capital stock consists of 65,000,000 shares of stock, including:

60,000,000 common shares, no par value; and

5,000,000 preferred shares, no par value.

Common Shares

Each outstanding common share is entitled to one vote on all matters submitted to a vote of shareholders. Pursuant to Ohio law, holders of our common shares have the right to cumulative voting. Our articles of incorporation provide for our board to be divided into three classes of directors, as nearly equal in number as possible, serving staggered terms. Approximately one-third of our board will be elected by the shareholders each year.

Subject to any superior rights of any holders of preferred shares, each outstanding common share will be entitled to such dividends as may be declared from time to time by our board of directors out of legally available funds. We have no current intention to declare dividends on our common shares in the near term. Our current policy is to retain all funds and earnings for use in the operation and expansion of our business. Additionally, the amount of dividends that we may pay is restricted by the terms of our credit facilities. In the event of our liquidation, dissolution or winding up, holders of our common shares will be entitled to their proportionate share of any assets remaining after payment of liabilities and any amounts due to the holders of preferred shares. Holders of our common shares have no preemptive rights and no right to convert or exchange their common shares into any other securities. No redemption or sinking fund provisions apply to our common shares.

Shareholder Rights Plan

Under the terms of our rights agreement, one preferred share purchase right is associated with each of our outstanding common shares. Until the occurrence of specified events described in the rights agreement, the preferred share purchase rights are not exercisable, are evidenced by the certificates for our common shares and may be transferred only with our common shares. The preferred share purchase rights will expire on May 16, 2010.

Each preferred share purchase right entitles the registered holder to purchase from us one one-hundredth of a share of Series A Junior Participating Preferred Stock, without par value, at a price of \$110.00 per one one-hundredth of a preferred share, subject to adjustment. The rights agreement also provides, subject to specified exceptions and limitations, that common shares issued or delivered from our treasury after the record date will be entitled to and accompanied by preferred share purchase rights. The preferred share purchase rights are in all respects subject to and governed by the provisions of the rights agreement.

Preferred Shares

Our board of directors is authorized, without shareholder approval, to issue up to 5,000,000 preferred shares in one or more series and to fix the rights, preferences, privileges and restrictions granted to or imposed upon the preferred shares, including voting rights, dividend rights, conversion rights, terms of redemption, liquidation preference, sinking fund terms and the number of shares constituting any series or the designation of a series. Our board of directors can, without shareholder approval, issue preferred shares with voting and conversion rights that could adversely affect the voting power of the holders of common shares. Any preferred shares issued would also rank senior to our common shares as to rights up on liquidation, winding-up or dissolution. The issuance of

convertible preferred shares could have the effect of delaying, deferring or preventing a change in control of our company. We have no present plan to issue any preferred shares.

Control Share Acquisitions

Section 1701.831 of the Ohio Revised Code provides that certain notice and informational filings and special shareholder meeting and voting procedures must be followed prior to consummation of a proposed control share acquisition. The Ohio Revised Code defines a control share acquisition as any acquisition of an issuer's shares which would entitle the acquirer, immediately after that acquisition, directly or indirectly, to exercise or direct the exercise of voting power of the issuer in the election of directors within any one of the following ranges of that voting power:

one-fifth or more but less than one-third of that voting power;

one-third or more but less than a majority of that voting power; or

a majority or more of that voting power.

Assuming compliance with the notice and information filings prescribed by the statute, the proposed control share acquisition may be made only if, at a special meeting of shareholders, the acquisition is approved by at least a majority of the voting power of the issuer represented at the meeting and at least a majority of the voting power remaining after excluding the combined voting power of the interested shares. Interested shares are the shares held by the intended acquirer and the employee-directors and officers of the issuer, as well as certain shares that were acquired after the date of the first public disclosure of the acquisition but before the record date for the meeting of shareholders and shares that were transferred, together with the voting power thereof, after the record date for the meeting of shareholders.

Business Combinations with Certain Persons

We are subject to Chapter 1704 of the Ohio Revised Code, which prohibits certain business combinations and transactions between an issuing public corporation and an Ohio law interested shareholder for at least three years after the Ohio law interested shareholder attains 10% ownership, unless the board of directors of the issuing public corporation approves the transaction before the Ohio law interested shareholder attains 10% ownership. An issuing public corporation is an Ohio corporation with 50 or more shareholders that has its principal place of business, principal executive offices, or substantial assets within the State of Ohio, and as to which no close corporation agreement exists. An Ohio law interested shareholder is a beneficial owner of 10% or more of the shares of a corporation. Examples of transactions regulated by Chapter 1704 include the disposition of assets, mergers and consolidations, voluntary dissolutions and the transfer of shares.

Subsequent to the three-year period, a transaction subject to Chapter 1704 may take place provided that certain conditions are satisfied, including:

prior to the interested shareholder's share acquisition date, the board of directors approved the purchase of shares by the interested shareholder;

the transaction is approved by the holders of shares with at least 66^{2/3}% of the voting power of the corporation (or a different proportion set forth in the articles of incorporation), including at least a majority of the outstanding shares after excluding shares controlled by the Ohio law interested shareholder; or

the business combination results in shareholders, other than the Ohio law interested shareholder, receiving a fair price plus interest for their shares.

Chapter 1704 is applicable to all corporations formed under Ohio law.

Transfer Agent and Registrar

Wells Fargo Bank, N.A. serves as the transfer agent and registrar for our common shares. We will select the transfer agent and registrar for a series of preferred shares, and each one will be described in the applicable prospectus supplement.

DESCRIPTION OF DEPOSITARY SHARES

We may offer depositary shares representing fractional shares of our preferred shares of any series. The following description sets forth certain general terms and provisions of the depositary shares that we may offer pursuant to this prospectus. The particular terms of the depositary shares, including the fraction of a preferred share that such depositary share will represent, and the extent, if any, to which the general terms and provisions may apply to the depositary shares so offered will be described in the applicable prospectus supplement.

The preferred shares represented by depositary shares will be deposited under a depositary agreement between us and a bank or trust company that meets certain requirements and is selected by us, which we refer to as the Bank Depository. Each owner of a depositary share will be entitled to all the rights and preferences of the preferred shares represented by the depositary share. The depositary shares will be evidenced by depositary receipts issued pursuant to the depositary agreement. Depositary receipts will be distributed to those persons purchasing the fractional preferred shares in accordance with the terms of the offering. The deposit agreement will also contain provisions relating to the manner in which any subscription or similar rights we offer to holders of the preferred shares will be made available to the holders of depositary shares.

The following description is a general summary of some common provisions of a depositary agreement and the related depositary receipts. The description below and in any prospectus supplement does not include all of the terms of the depositary agreement and the related depositary receipts. Copies of the forms of depositary agreement and the depositary receipts relating to any particular issue of depositary shares will be filed with the SEC each time we issue depositary shares, and you should read those documents for provisions that may be important to you. For more information on how you can obtain copies of the forms of the depositary agreement and the related depositary receipts, see [Where You Can Find More Information](#).

Dividends and Other Distributions

If we pay a cash distribution or dividend on a series of preferred shares represented by depositary shares, the Bank Depository will distribute these dividends to the record holders of these depositary shares. If the distributions are in property other than cash, the Bank Depository will distribute the property to the record holders of the depositary shares. However, if the Bank Depository determines that it is not feasible to make the distribution of property, the Bank Depository may, with our approval, sell this property and distribute the net proceeds from this sale to the record holders of the depositary shares.

Redemption of Depositary Shares

If we redeem a series of preferred shares represented by depositary shares, the Bank Depository will redeem the depositary shares from the proceeds received by the Bank Depository in connection with the redemption. The redemption price per depositary share will equal the applicable fraction of the redemption price per share of the preferred shares. If fewer than all the depositary shares are redeemed, the depositary shares to be redeemed will be selected by lot or pro rata as the Bank Depository may determine.

Voting the Preferred Shares

Upon receipt of notice of any meeting at which the holders of the preferred shares represented by depositary shares are entitled to vote, the Bank Depository will mail the notice to the record holders of the depositary shares relating to these preferred shares. Each record holder of these depositary shares on the record date (which will be the same date as the record date for the preferred shares) may instruct the Bank Depository as to how to vote the preferred shares represented by this holder's depositary shares. The Bank Depository will endeavor, insofar as practicable, to vote the amount of the preferred shares represented by such depositary shares in accordance with these instructions, and we will take all action which the Bank Depository deems necessary in order to enable the Bank Depository to do so. The Bank Depository will abstain from voting shares of the preferred shares to the extent it does not receive specific instructions from the holders of depositary shares representing these preferred shares.

Amendment and Termination of the Depositary Agreement

The form of depositary receipt evidencing the depositary shares and any provision of the depositary agreement may be amended by agreement between the Bank Depositary and us. However, any amendment that materially and adversely alters the rights of the holders of depositary shares will not be effective unless this amendment has been approved by the holders of at least a majority of the depositary shares then outstanding. The depositary agreement may be terminated by the Bank Depositary or us only if:

all outstanding depositary shares have been redeemed; or

there has been a final distribution in respect of the preferred shares in connection with any liquidation, dissolution or winding up of the Company and this distribution has been distributed to the holders of depositary receipts.

Charges of Bank Depositary

We will pay all transfer and other taxes and governmental charges arising solely from the existence of the depositary arrangements. We will pay charges of the Bank Depositary in connection with the initial deposit of the preferred shares and any redemption of the preferred shares. Holders of depositary receipts will pay other transfer and other taxes and governmental charges and any other charges, including a fee for the withdrawal of preferred shares upon surrender of depositary receipts, as are expressly provided in the depositary agreement to be for their accounts.

Withdrawal of Preferred Shares

Except as may be provided otherwise in the applicable prospectus supplement, upon surrender of depositary receipts at the principal office of the Bank Depositary, subject to the terms of the depositary agreement, the owner of the depositary shares may demand delivery of the number of whole preferred shares and all money and other property, if any, represented by those depositary shares. Fractional preferred shares will not be issued. If the depositary receipts delivered by the holder evidence a number of depositary shares in excess of the number of depositary shares representing the number of whole preferred shares to be withdrawn, the Bank Depositary will deliver to this holder at the same time a new depositary receipt evidencing the excess number of depositary shares. Holders of preferred shares thus withdrawn may not thereafter deposit those shares under the depositary agreement or receive depositary receipts evidencing depositary shares therefor.

Miscellaneous

The Bank Depositary will forward to holders of depositary receipts all reports and communications from us that are delivered to the Bank Depositary and that we are required to furnish to the holders of preferred shares.

Neither the Bank Depositary nor we will be liable if we are prevented or delayed by law or any circumstance beyond our control in performing our obligations under the depositary agreement. The obligations of the Bank Depositary and us under the depositary agreement will be limited to performance in good faith of our duties thereunder, and we will not be obligated to prosecute or defend any legal proceeding in respect of any depositary shares or preferred shares unless satisfactory indemnity is furnished. We may rely upon written advice of counsel or accountants, or upon information provided by persons presenting preferred shares for deposit, holders of depositary receipts or other persons believed to be competent and on documents believed to be genuine.

Resignation and Removal of Bank Depositary

The Bank Depositary may resign at any time by delivering to us notice of its election to do so, and we may at any time remove the Bank Depositary. Any such resignation or removal will take effect upon the appointment of a successor Bank Depositary and the successor's acceptance of this appointment. The successor Bank Depositary must be appointed within 60 days after delivery of the notice of resignation or removal and must be a bank or trust company meeting the requirements of the depositary agreement.

DESCRIPTION OF WARRANTS

We may issue warrants for the purchase of common shares, preferred shares, depositary shares or debt securities. The following description sets forth certain general terms and provisions of the warrants that we may offer pursuant to this prospectus. The particular terms of the warrants and the extent, if any, to which the general terms and provisions may apply to the warrants so offered will be described in the applicable prospectus supplement.

Warrants may be issued independently or together with other securities and may be attached to or separate from any offered securities. Each series of warrants will be issued under a separate warrant agreement to be entered into between us and a bank or trust company, as warrant agent. The warrant agent will act solely as our agent in connection with the warrants and will not have any obligation or relationship of agency or trust for or with any holders or beneficial owners of warrants.

A copy of the forms of the warrant agreement and the warrant certificate relating to any particular issue of warrants will be filed with the SEC each time we issue warrants, and you should read those documents for provisions that may be important to you. For more information on how you can obtain copies of the forms of the warrant agreement and the related warrant certificate, see [Where You Can Find More Information](#).

Debt Warrants

The prospectus supplement relating to a particular issue of warrants to issue debt securities will describe the terms of those warrants, including the following:

the title of the warrants;

the offering price for the warrants, if any;

the aggregate number of the warrants;

the designation and terms of the debt securities purchasable upon exercise of the warrants;

if applicable, the designation and terms of the debt securities that the warrants are issued with and the number of warrants issued with each debt security;

if applicable, the date from and after which the warrants and any debt securities issued with them will be separately transferable;

the principal amount of debt securities that may be purchased upon exercise of a warrant and the price at which the debt securities may be purchased upon exercise;

the dates on which the right to exercise the warrants will commence and expire;

if applicable, the minimum or maximum amount of the warrants that may be exercised at any one time;

whether the warrants represented by the warrant certificates or debt securities that may be issued upon exercise of the warrants will be issued in registered or bearer form;

information relating to book-entry procedures, if any;

the currency or currency units in which the offering price, if any, and the exercise price are payable;

if applicable, a discussion of material United States federal income tax considerations;

anti-dilution provisions of the warrants, if any;

redemption or call provisions, if any, applicable to the warrants;

any additional terms of the warrants, including terms, procedures and limitations relating to the exchange and exercise of the warrants; and

any other information we think is important about the warrants.

Stock Warrants

The prospectus supplement relating to a particular issue of warrants to issue common shares, preferred shares or depositary shares will describe the terms of the common share warrants and preferred shares warrants, including the following:

the title of the warrants;

the offering price for the warrants, if any;

the aggregate number of the warrants;

the designation and terms of the common shares, preferred shares or depositary shares that may be purchased upon exercise of the warrants;

if applicable, the designation and terms of the securities that the warrants are issued with and the number of warrants issued with each security;

if applicable, the date from and after which the warrants and any securities issued with the warrants will be separately transferable;

the number of common shares, preferred shares or depositary shares that may be purchased upon exercise of a warrant and the price at which the shares may be purchased upon exercise;

the dates on which the right to exercise the warrants commence and expire;

if applicable, the minimum or maximum amount of the warrants that may be exercised at any one time;

the currency or currency units in which the offering price, if any, and the exercise price are payable;

if applicable, a discussion of material United States federal income tax considerations;

anti-dilution provisions of the warrants, if any;

redemption or call provisions, if any, applicable to the warrants;

any additional terms of the warrants, including terms, procedures and limitations relating to the exchange and exercise of the warrants; and

any other information we think is important about the warrants.

Exercise of Warrants

Each warrant will entitle the holder of the warrant to purchase at the exercise price set forth in the applicable prospectus supplement the number of common shares, preferred shares or depositary shares or the principal amount of debt securities being offered. Holders may exercise warrants at any time up to the close of business on the expiration date set forth in the applicable prospectus supplement. After the close of business on the expiration date, unexercised warrants are void. Holders may exercise warrants as set forth in the prospectus supplement relating to the warrants being offered.

Until a holder exercises the warrants to purchase our common shares, preferred shares, depositary shares or debt securities, the holder will not have any rights as a holder of our common shares, preferred shares, depositary shares or debt securities, as the case may be, by virtue of ownership of warrants.

DESCRIPTION OF SUBSCRIPTION RIGHTS

We may issue to our shareholders subscription rights to purchase our common shares, preferred shares, depositary shares or debt securities. The following description sets forth certain general terms and provisions of the subscription rights that we may offer pursuant to this prospectus. The particular terms of the subscription rights and the extent, if any, to which the general terms and provisions may apply to the subscription rights so offered will be described in the applicable prospectus supplement.

Subscription rights may be issued independently or together with any other security offered by this prospectus and may or may not be transferable by the shareholder receiving the rights in the rights offering. In connection with any rights offering, we may enter into a standby underwriting agreement with one or more underwriters pursuant to which the underwriter will purchase any securities that remain unsubscribed for upon completion of the rights offering, or offer these securities to other parties who are not our shareholders. A copy of the form of subscription rights certificate will be filed with the SEC each time we issue subscription rights, and you should read that document for provisions that may be important to you. For more information on how you can obtain a copy of any subscription rights certificate, see [Where You Can Find More Information](#).

The applicable prospectus supplement relating to any subscription rights will describe the terms of the offered subscription rights, including, where applicable, the following:

the exercise price for the subscription rights;

the number of subscription rights issued to each shareholder;

the extent to which the subscription rights are transferable;

any other terms of the subscription rights, including terms, procedures and limitations relating to the exchange and exercise of the subscription rights;

the date on which the right to exercise the subscription rights will commence and the date on which the right will expire;

the extent to which the subscription rights include an over-subscription privilege with respect to unsubscribed securities; and

the material terms of any standby underwriting arrangement entered into by us in connection with the subscription rights offering.

Prepared a
dilution
analysis of
overall
company
equity use
compared to
overall
equity use
by
comparable
companies.

Provided the Compensation Committee with a proposal relating to the restricted and performance stock awards issued to the Named Executive Officer.

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Provided the Compensation Committee with a detailed analysis of the employment contracts of the Named Executive Officers, including termination, severance, change in control and parachute payments.

Prepared a financial performance analysis comparing our financial performance to the comparable companies.

Provided the Compensation Committee with a competitive assessment of compensation for members of the Board of Directors by comparing our director compensation programs to director compensation programs at comparable companies.

Prepared a retention analysis determining the aggregate level of wealth created and the proportion of unvested equity value compared to total equity value resulting from historical awards.

Assisted us with preparation of this compensation discussion and analysis and related compensation tables.

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Attended several Compensation Committee meetings and executive sessions as requested by the Compensation Committee.

Provided the Compensation Committee with market-based compensation recommendations.

Compensation Determinations

Salary

With respect to Fiscal 2007, in September 2006, the Compensation Committee made its base salary recommendations for the CEO and other Named Executive Officers to the Board of Directors, based on the CEO's suggestion that such salaries be increased by only the same amount as the rest of our employees. After discussion and requested adjustments, the directors approved a salary increase of 5.5% effective as of January 1, 2007 for all of the Named Executive Officers, including the CEO. This 5.5% was the increase being implemented for all of our employees. After giving effect to this increase, the CEO's base salary for Fiscal 2007 was approximately \$503,235. The Compensation Committee continues to maintain the CEO's base salary below the median of the market due to the CEO's desire to demonstrate leadership in keeping CEO pay reasonable and consistent with other Executive Officers. For Fiscal 2007, the CEO's base salary was slightly below the 50th percentile as compared to market data.

At the CEO's election, the CEO's salary for Fiscal 2008 remained at approximately \$503,235 even though the Compensation Committee had determined he was eligible for a salary increase following its salary review. In addition, for Fiscal 2008 the salaries for the Named Executive Officers (other than the Chief Scientific Officer and the Chief Business Officer) were not increased. For Fiscal 2008, the annual base salaries for the Chief Scientific Officer and the Chief Business Officer increased to \$375,000 and \$355,000 respectively, to ensure competitive alignment with their peers at comparable companies based on the Radford analysis indicating that the prior salaries of these executives were below the desired percentile.

With respect to Fiscal 2009, the Compensation Committee elected not to increase the salaries for the CEO and Named Executive Officers.

Bonus

A significant portion of the CEO's and other Named Executive Officers' compensation is paid only upon achieving specific results, which are set forth in our bonus plans as targets or goals. The Fiscal Year 2008 CEO Bonus Plan and the Fiscal Year 2008 Senior Executive Bonus Plan contain identical company performance goals. For Fiscal 2008, the Board determined, upon recommendation from the Compensation Committee and input from the CEO, that 67.5% of the pre-determined company goals set forth in the Fiscal Year 2008 CEO Bonus Plan and the Fiscal Year 2008 Senior Executive Bonus Plan were achieved.

In accordance with the Fiscal Year 2008 CEO bonus plan, the company goals represented 70% of the available bonus and the assessment of individual performance represented 30% of the available bonus. Based on the CEO assessment conducted by the N&G Committee, the Compensation Committee recommended that 75% of the subjective portion of the CEO bonus (30% of the total bonus) be paid to the CEO. The maximum available bonus was approximately \$327,103, or 65% of the CEO's base salary. Based on the achievement of performance targets and the subjective assessment of his performance, the CEO was awarded an annual performance bonus of approximately \$228,154 ($[(.70 \times \$327,103 \times .675)] + [.30 \times \$327,103 \times .75]$). Details of the CEO bonus for Fiscal 2008 (which was paid in September 2008) can be found in the Summary Compensation Table contained in this Compensation Discussion and Analysis.

In accordance with the Fiscal Year 2008 Senior Executive Bonus Plan, the company goals represented 70% of the available bonus and the assessment of individual performance represented 30% of the available bonus. Based on the assessment conducted by the CEO, the Compensation Committee recommended that 100% of the subjective portion of the senior executive bonus (30% of the total bonus) be paid to the Named Executive Officers. The CEO initially advised the Compensation Committee as to the achievement of the company goals

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and recommended to the Compensation Committee that the bonuses earned for the other Named Executive Officers for Fiscal 2008 be allocated equally among the other Named Executive Officers. The Compensation Committee made a recommendation to the full Board and the full Board approved the annual performance bonus for Fiscal 2008. As set forth in the Fiscal Year 2008 Senior Executive Bonus Plan, the maximum available bonus was 50% of the Named Executive Officer's base salary. Based on the achievement of performance targets and the subjective assessment of their performance, the other Named Executive Officers were awarded an annual performance bonus equal to 38.6% of their base salaries, or approximately (i) \$137,119 to Mr. Beerman ($[\.70 \times \$177,500 \times .675] + [.30 \times \$177,500 \times 1.0]$), (ii) \$144,844 to Dr. Sandage ($[\.70 \times \$187,500 \times .675] + [.30 \times \$187,500 \times 1.0]$), and approximately \$136,063 to each of Mr. Butler and Mr. Rogers ($[\.70 \times \$176,133 \times .675] + [.30 \times \$176,133 \times 1.0]$). Details of Named Executive Officer bonuses for Fiscal 2008 (which were paid in September 2008) can be found in the Summary Compensation Table contained in this Compensation Discussion and Analysis.

Long Term Incentives***Fiscal 2008***

In connection with the Compensation Committee's fiscal year end compensation review, in September 2008 we granted restricted stock and performance-based stock awards to the CEO and the other current Named Executive Officers. The number of shares of common stock subject to restricted stock awards granted in September 2008 to the CEO was 158,191 shares. The number of shares of common stock subject to restricted stock awards granted in September 2008 to each of the other Named Executive Officers was 55,918 shares. The awards are subject to transfer restrictions, forfeiture and acceleration and vest in equal annual installments such that the transfer restrictions are removed relating to the shares as follows: one-third annually for three years commencing one year from the date of grant. The shares subject to the restricted stock awards may be sold immediately upon their vesting, which is subject to automatic extension during a black-out period pursuant to the terms of the awards. Prior to vesting and satisfaction of any other required conditions, no dividends are payable with respect to the shares subject to the restricted stock awards.

In addition to the restricted stock awards, in September 2008, the CEO and each of the other Named Executive Officers were granted the right to receive shares of common stock subject to (i) achievement of certain milestones related to the market price of our common stock, and (ii) the recipient remaining employed by us on September 25, 2011, the three-year anniversary of the date of grant. The market prices to be achieved were set with a reasonable level of difficulty that requires that we and the Executive Officers perform at a high level in order to achieve the prices and the likelihood of attaining these prices is not assured. The number of shares the recipient is entitled to receive, if any, at such time is dependent on the market price at which our common stock trades for 20 consecutive business days at any time during the three-year period prior to the vesting date. Depending on such prices as may be attained, the CEO could receive either (i) 154,236, (ii) 205,648 or (iii) 257,060, or (iv) 0 shares, and each of the other Named Executive Officers could receive either (i) 54,520, (ii) 72,693 or (iii) 90,867, or (iv) 0 shares. Subject to certain acceleration events, if such market prices are not attained during such three-year period, the recipient will not receive any shares under these performance based stock awards.

Fiscal 2007

Due to the Compensation Committee's decision to review all elements of compensation at the end of the fiscal year, no such stock awards were made to the CEO or any of the other Named Executive Officers during Fiscal 2007 (except for the awards made to Thomas Farb in connection with his hiring) but in connection with our next annual review of overall executive compensation, we granted restricted stock and performance-based stock awards to the CEO and other Named Executive Officers in October 2007. The number of shares of common stock subject to restricted stock awards granted in October 2007 to the CEO was 42,000 shares. The number of shares of common stock subject to restricted stock awards granted in October 2007 to the other Named Executive Officers was 17,300 shares for Mr. Farb and 13,500 shares for each of the other Named

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Executive Officers (not including the CEO). The awards are subject to transfer restrictions, forfeiture and acceleration and vest in equal annual installments such that the transfer restrictions are removed relating to the shares as follows: one-third annually for three years commencing one year from the date of grant. The shares subject to the restricted stock awards may be sold immediately upon their vesting, which is subject to automatic extension during a black-out period pursuant to the terms of the awards. Prior to vesting and satisfaction of any other required conditions, no dividends are payable with respect to the shares subject to the restricted stock awards.

In addition to the restricted stock awards, in October 2007, the CEO and each of the other Named Executive Officers were granted the right to receive shares of common stock subject to (i) achievement of certain milestones related to the market price of our common stock, and (ii) the recipient remaining employed by us on October 31, 2010, the three-year anniversary of the date of grant. The market prices to be achieved were set with a reasonable level of difficulty that requires that we and the Executive Officers perform at a high level in order to achieve the prices, and the likelihood of attaining these prices is not assured. The number of shares the recipient is entitled to receive, if any, at such time is dependent on the market price at which our common stock trades for 20 consecutive business days at any time during the three-year period prior to the vesting date. Depending on such prices as may be attained, the CEO could receive either (i) 41,300, (ii) 55,000, (iii) 68,800, or (iv) 0 shares, and the other Named Executive Officers could receive either (i) 13,500, (ii) 18,000, (iii) 22,500, or (iv) 0 shares (except Mr. Farb who could have received, had he remained employed, either (i) 16,800, (ii) 22,400, (iii) 28,000, or (iv) 0 shares). Subject to certain acceleration events, if such market prices are not attained during such three-year period, the recipient will not receive any shares under these performance based stock awards.

Thomas F. Farb

Upon the termination of Mr. Farb's employment in July 2008, all of his performance based stock awards and any unvested portion of his restricted stock awards were forfeited and terminated.

Option Extensions

Pursuant to the Retention Agreements entered into in April 2008 with Mr. Beerman, Mr. Rogers, and Dr. Sandage, the Board of Directors agreed to extend the expiration dates of certain stock options held by the executives that were set to expire in calendar 2008 and 2009. Such approval was based on an assessment of the benefit of obtaining the Retention Agreements, as well as previous discussions and analysis of option extensions, related accounting charges, provisions of the underlying stock option plans and the appropriate time period for any extension. Such extensions extended the expiration date of (i) 375,000 options held by Mr. Rogers from February 23, 2009 to December 31, 2009, (ii) 375,000 options held by Mr. Rogers from October 5, 2008 to October 5, 2009, (iii) 720,000 options held by Dr. Sandage from June 10, 2009 to December 31, 2009, and (iv) 45,000 options held by Mr. Beerman from February 14, 2009 to February 14, 2010. The SEC has considered the extension of the expiration date of an option to be the cancellation of the old option and the granting of a new option for reporting purposes.

Impact of Accounting and Tax on the Form of Compensation

The Compensation Committee has considered the impact of the Statement of Financial Accounting Standard No. 123, or SFAS 123(R), as revised by the FASB (Financial Accounting Standards Board) in 2004, on our use of equity incentives as a key retention tool. The Compensation Committee has determined that the current estimated costs to us of continuing to use equity incentives relative to the benefits we believe these programs provide does not warrant any change to the our current equity incentive framework.

Section 162(m) of the Internal Revenue Code of 1986, as amended (the Code), limits the tax deduction for compensation paid to Named Executive Officers to \$1,000,000. This deduction limitation does not apply to compensation that constitutes qualified performance-based compensation within the meaning of Section 162(m) of the Code and regulations promulgated thereunder, including certain performance-based compensation that has been approved by the stockholders. Our stockholders have approved our 2004 Equity Incentive Plan and other stock option plans, which are designed to allow the deduction of income recognized in

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connection with stock options granted under such plan. We have in the past and may in the future award compensation that is not fully deductible under the Code when we view such compensation as consistent with our compensation policies and in the best interests of the Company and our stockholders. For Fiscal 2008, our Executive Officers did not receive compensation that exceeded the deductibility limits of Section 162(m).

The Named Executive Officers could be subject to excise tax liability by reason of payments made under their respective employment agreements. Under such employment agreements, any severance or other payments to be made to the Named Executive Officers shall be reduced to an amount (not less than zero) which shall not cause any portion of the payments to be subject to any excise taxes that may be imposed by Section 4999 of the Internal Revenue Code, provided that under certain circumstances as described in the employment agreements, each of the Named Executive Officers may be entitled to certain gross-up payments to cover the amount of any excise and related taxes that may be incurred due to severance and other payments made to the Named Executive Officer, provided further that any such gross-up payment shall not, under any circumstances, exceed \$1,250,000 for the Chief Executive Officer, and \$500,000 for the other Named Executive Officers.

Granting Practices Options and other Awards

We issue stock option and other equity awards at various times throughout the year. These grants include, among other things, stock options granted to directors; deferred stock units that may be granted to directors as part of their established annual compensation program; and restricted and performance stock and other equity awards that may be issued to Executive Officers as part of our long-term incentive programs or otherwise. All options are priced at the closing market price of our common stock on the date of the grant.

Below is a summary of our written policies with respect to the granting of stock options and other equity awards. The policies have been approved by the Board of Directors and all grants of stock options and other equity awards (Grants) are made in accordance with the policies and any applicable awards, and equity plans.

Grants generally require authorization by the Compensation Committee or the Board, except as the Board may specifically otherwise determine and delegate. All Grants to Executive Officers, directors, and other reporting persons under Section 16 of the Securities Exchange Act of 1934, as amended (collectively, Reporting Persons), require authorization by the Compensation Committee or the Board.

Grants requiring Compensation Committee or Board authorization shall be granted only pursuant to appropriate authorization by the Compensation Committee or the Board at a regularly-scheduled meeting, including any quarterly regular meeting or interim regular meeting, and not pursuant to written consents, provided that:

- (a) Grants to Executive Officers shall continue to be made as part of the overall annual compensation review, typically at the September regular meetings;
- (b) Grants to newly-hired or promoted Executive Officers shall be made at the first regularly-scheduled meeting of the Committee or the Board that occurs on or after the first day of such officer's employment or effective date of promotion, as applicable;
- (c) Grants to directors shall continue to be made on an annual basis following each annual meeting of our stockholders (except to a director who is initially elected to the Board at such annual meeting of stockholders and receives an initial Grant in accordance with (d) below); and
- (d) initial Grants to newly-elected directors shall be made at the first regularly-scheduled meeting of the Committee or the Board that occurs on or after the effective date of such director's election.

The written policies set forth above were established as part of a review conducted by the Compensation Committee and the Board in June 2007. During this review, the Compensation Committee and the Board determined it was in our best interest to implement best practices with respect to grants of options and other equity awards and adopt certain additional policies with respect to such grants by us as appropriate in light of industry and regulatory practices.

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The following table summarizes aggregate amounts of compensation paid or accrued by us for the years ended September 30, 2008 and September 30, 2007 for services rendered in all capacities by our Named Executive Officers.

Summary Compensation Table for Fiscal Years 2008 and 2007

Name and Principal Position(a)	Year (b)	Salary (\$) (c)	Stock Awards \$(1) (e)	Option Awards \$(2) (f)	Non-Equity Incentive Plan Compensation \$(3) (g)	All Other Compensation \$(4) (i)	Total \$((j)
Glenn L. Cooper, M.D. Chief Executive Officer and Chairman	2008	503,234	176,978		228,154	23,592	931,958
	2007	496,676			261,179	19,769	777,624
Michael W. Rogers Executive Vice President, Chief Financial Officer and Treasurer	2008	352,263	57,472		136,063	28,748	574,546
	2007	347,674			149,713	25,279	522,666
Noah D. Beerman Executive Vice President, Chief Business Officer	2008	355,000	57,472		137,119	27,230	576,821
	2007	322,787			138,996	23,799	485,582
Mark S. Butler Executive Vice President, Chief Administrative Officer and General Counsel, Assistant Secretary	2008	352,266	57,472		136,063	27,955	573,756
	2007	347,674			149,713	28,539	525,926
Bobby W. Sandage, Jr., Ph.D. Executive Vice President, Research and Development, Chief Scientific Officer	2008	375,000	57,472		144,844	29,850	607,166
	2007	347,674			149,713	24,531	521,918
Thomas F. Farb(5) President, Chief Operating Officer	2008	325,289	214,904	627,451		695,836	1,863,480
	2007	408,654	206,275	681,147	198,687	24,105	1,518,868

- (1) Fiscal 2008 includes (i) shares attributable to restricted stock and performance stock awards granted in October 2007 as part of long term compensation for Fiscal 2007, and (ii) except for Mr. Farb, shares attributable to restricted stock and performance stock awards granted in September 2008 as part of long term compensation for Fiscal 2008. These awards are discussed in further detail above.
- (2) Excludes certain options that were granted in prior periods to Mr. Rogers, Mr. Beerman and Dr. Sandage, the expiration dates of which were extended in April 2007 and April 2008. These extensions are discussed in further detail above.
- (3) Reflects bonus earned by the respective individual under the CEO Bonus Plan and the Senior Executive Bonus Plan, as applicable for the respective Fiscal year. Payments for bonuses earned in Fiscal 2007 were made during Fiscal 2008 in October and December 2007. Payments for bonuses earned in Fiscal 2008 were made in September 2008.

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(4) Amounts in this column include the following:

For Fiscal 2008:

- (a) disability insurance premiums, paid on behalf of the Named Executive Officers, in the following amounts: \$1,922 for Dr. Cooper, \$1,345 for Mr. Rogers, \$1,356 for Mr. Beerman, \$1,353 for Mr. Butler, \$1,437 for Dr. Sandage, and \$1,180 for Mr. Farb.
- (b) group term life insurance premiums, paid on behalf of the Named Executive Officers, in the following amounts: \$2,533 for Dr. Cooper, \$990 for Mr. Rogers, \$990 for Mr. Beerman, \$4,357 for Mr. Butler, \$2,533 for Dr. Sandage, and \$1,226 for Mr. Farb.
- (c) term life insurance premiums paid to or on behalf of the Named Executive Officers as follows: \$2,525 for Dr. Cooper; \$1,710 for Mr. Rogers; \$1,968 for Mr. Beerman, \$3,741 for Mr. Butler; and \$3,097 for Dr. Sandage.
- (d) payments made to or on behalf of a Named Executive Officer pursuant to our medical examination program in the following amounts: \$1,978 for Mr. Rogers and \$4,029 for Mr. Farb.
- (e) 401K matching benefits earned by the Named Executive Officers during Fiscal 2008 as follows: \$6,750 for Dr. Cooper, \$6,750 for Mr. Rogers, \$6,941 for Mr. Beerman, \$2,529 for Mr. Butler, and \$6,808 for Dr. Sandage.
- (f) payments made to or on behalf of each of the Named Executive Officers pursuant to our health and dental coverages as follows: \$9,862 for Dr. Cooper, \$12,144 for Mr. Farb and \$15,975 for each of the other Named Executive Officers. With respect to Mr. Farb, the amounts also include payments of \$658,750 of severance for salary and bonus and \$18,507 of continued health benefits pertaining to his termination of employment on July 3, 2008.

For Fiscal 2007:

- (a) disability insurance premiums, paid on behalf of the Named Executive Officers, in the following amounts: \$1,868 for Dr. Cooper, \$1,328 for Mr. Rogers, \$1,491 for Mr. Farb, \$1,227 for Mr. Beerman, \$1,328 for Mr. Butler, and \$1,324 for Dr. Sandage.
 - (b) group term life insurance premiums, paid on behalf of the Named Executive Officers, in the following amounts: \$1,781 for Dr. Cooper, \$1,028 for Mr. Rogers, \$1,401 for Mr. Farb, \$939 for Mr. Beerman, \$4,357 for Mr. Butler, and \$1,576 for Dr. Sandage.
 - (c) term life insurance premiums paid to or on behalf of the Named Executive Officers as follows: \$2,525 for Dr. Cooper; \$1,710 for Mr. Rogers; \$1,900 for Mr. Beerman, \$3,741 for Mr. Butler; and \$3,097 for Dr. Sandage.
 - (d) payments made to or on behalf of a Named Executive Officer pursuant to our medical examination program in the following amounts: \$3,297 for Mr. Butler.
 - (e) 401K matching benefits earned by the Named Executive Officers during Fiscal 2007 as follows: \$5,270 for Mr. Beerman, \$1,353 for Mr. Butler, \$4,071 for Dr. Sandage and \$6,750 for each of the other Named Executive Officers.
 - (f) payments made on behalf of the Named Executive Officers pursuant to our health and dental coverages (and travel benefit for Dr. Cooper) as follows: \$6,845 for Dr. Cooper and \$14,463 for each of the other Named Executive Officers.
- (5) Mr. Farb was employed as President and Chief Operating Officer from October 16, 2006 through July 3, 2008. Mr. Farb's salary in this table represents the amount he was paid during Fiscal 2007 and Fiscal 2008. For each Fiscal year, his comparable annual full-time equivalent salary would have been \$425,000. In addition, upon his hiring in October 2006, we granted Mr. Farb options to purchase 600,000 shares of our common stock, 50,000 shares of restricted common stock and a performance stock award under which, depending on such prices as may be attained and assuming he remained employed, Mr. Farb could in the aggregate have received either (i) 45,000, (ii) 60,000, (iii) 75,000, or (iv) no shares.

Table of Contents**Grants of Plan-Based Awards in 2008 Fiscal Year**

The following table sets forth information concerning grants of awards made to the Named Executive Officers pursuant to plans during the fiscal year ended September 30, 2008. Information concerning the bonus payments earned in Fiscal 2008 is set forth above in the Summary Compensation Table. This table includes shares attributable to restricted stock and a performance stock awards granted in October 2008 that were in fact part of long term compensation for Fiscal 2007. Further, this table excludes certain options that were granted in prior periods to Mr. Rogers, Mr. Beerman and Dr. Sandage, the expiration dates of which were extended in April 2008. These extensions are discussed in further detail above.

Name(a)	Grant Date(b)	Estimated Future Payouts Under Equity Incentive Plan Awards			Exercise or Base Price of Option Awards (\$/Sh) (k)	Grant Date Fair Value of Stock and Option Awards(6) (l)
		Threshold (#) (f)	Target (#) (g)	Maximum (#) (h)		
Glenn L. Cooper, M.D.	9/25/2008(1)		158,191		\$ 0.00	\$ 253,106
	9/25/2008(2)	154,236	205,648	257,060	\$ 0.00	\$ 337,263
	10/30/2007(1)		42,000		\$ 0.00	\$ 296,940
	10/30/2007(2)	41,300	55,000	68,800	\$ 0.00	\$ 308,000
Michael W. Rogers	9/25/2008(1)		55,918		\$ 0.00	\$ 89,469
	9/25/2008(3)	54,250	72,693	90,867	\$ 0.00	\$ 119,217
	10/30/2007(1)		13,500		\$ 0.00	\$ 95,445
	10/30/2007(3)	13,500	18,000	22,500	\$ 0.00	\$ 100,800
Noah D. Beerman	9/25/2008(1)		55,918		\$ 0.00	\$ 89,469
	9/25/2008(3)	54,250	72,693	90,867	\$ 0.00	\$ 119,217
	10/30/2007(1)		13,500		\$ 0.00	\$ 95,445
	10/30/2007(3)	13,500	18,000	22,500	\$ 0.00	\$ 100,800
Mark S. Butler	9/25/2008(1)		55,918		\$ 0.00	\$ 89,469
	9/25/2008(3)	54,250	72,693	90,867	\$ 0.00	\$ 119,217
	10/30/2007(1)		13,500		\$ 0.00	\$ 95,445
	10/30/2007(3)	13,500	18,000	22,500	\$ 0.00	\$ 100,800
Bobby W. Sandage, Jr., Ph.D.	9/25/2008(1)		55,918		\$ 0.00	\$ 89,469
	9/25/2008(3)	54,250	72,693	90,867	\$ 0.00	\$ 119,217
	10/30/2007(1)		13,500		\$ 0.00	\$ 95,445
	10/30/2007(3)	13,500	18,000	22,500	\$ 0.00	\$ 100,800
Thomas F. Farb(5)	10/30/2007(1)		17,300		\$ 0.00	\$ 122,311
	10/30/2007(4)	16,800	22,400	28,000	\$ 0.00	\$ 125,440

- (1) Represents a grant of restricted stock that is subject to transfer restrictions, forfeiture and acceleration. The grant vests in equal annual installments such that the transfer restrictions are removed relating to the shares as follows: one-third annually for three years commencing one year from that date of grant. The initial vesting of the awards granted on October 30, 2007 was scheduled to occur in October 2008 but has been delayed in accordance with the terms of such award as a result of black-out periods of the Company.
- (2) Represents a grant of the right to receive shares of common stock subject to (i) achievement of certain milestones related to the market price of our common stock, and (ii) recipient remaining employed by us on the three-year anniversary of the date of grant. The number of shares the recipient is entitled to receive, if any, at such time is dependent on the market price at which our common stock trades for 20 consecutive business days at any time during the three-year period prior to the vesting date. With respect to the awards granted on September 25, 2008, depending on such prices as may be attained, the recipient could receive either (i) 154,236, (ii) 205,648, (iii) 257,060, or (iv) no shares. With respect to the awards granted on October 30, 2007, depending on such prices as may be attained, the recipient could receive either (i) 41,300,

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- (ii) 55,000, (iii) 68,800, or (iv) no shares. Subject to certain acceleration events, if such market prices are not attained during such three-year period, the recipient will not receive any shares under these awards.
- (3) Represents a grant of the right to receive shares of common stock subject to (i) achievement of certain milestones related to the market price of our common stock, and (ii) recipient remaining employed by us on the three-year anniversary of the date of grant. The number of shares the recipient is entitled to receive, if any, at such time is dependent on the market price at which our common stock trades for 20 consecutive business days at any time during the three-year period prior to the vesting date. With respect to the awards granted on September 25, 2008, depending on such prices as may be attained, the recipient could receive either (i) 54,250, (ii) 72,693, (iii) 90,867, or (iv) no shares. With respect to the awards granted on October 30, 2007, depending on such prices as may be attained, the recipient could receive either (i) 13,500, (ii) 18,000, (iii) 22,500, or (iv) no shares. Subject to certain acceleration events, if such market prices are not attained during such three-year period, the recipient will not receive any shares under these awards.
- (4) Represents a grant of the right to receive shares of common stock subject to (i) achievement of certain milestones related to the market price of our common stock, and (ii) recipient remaining employed by us on the three-year anniversary of the date of grant. The number of shares the recipient is entitled to receive, if any, at such time is dependent on the market price at which our common stock trades for 20 consecutive business days at any time during the three-year period prior to the vesting date. Depending on such prices as may be attained, if Mr. Farb had remained employed with the company, the recipient could have received either (i) 16,800, (ii) 22,400, (iii) 28,000, or (iv) no shares. Subject to certain acceleration events, if such market prices are not attained during such three-year period, the recipient would not have received any shares under these awards.
- (5) Upon the termination of Mr. Farb's employment in July 2008, all of his performance based stock awards and any unvested portion of his restricted stock awards were forfeited and terminated.
- (6) The restricted stock awards were valued using the grant date intrinsic value of \$1.60, and \$7.07, for the September 25, 2008 and October 30, 2007 awards, respectively, which reflects a 4% forfeiture rate and 3 year annual vesting. The performance stock awards were valued at \$1.64, and \$5.60, for the September 25, 2008 and October 30, 2007 awards, respectively, using a Monte-Carlo simulation with a vesting period of 3 years, an expected volatility of 89.38% and 52.16%, a risk free rate of 2.42% and 3.85%, for the 9/25/08 and 10/30/07 awards, respectively.

Table of Contents**Outstanding Equity Awards at 2008 Fiscal Year-End**

The following table sets forth information concerning outstanding equity awards held by each Named Executive Officer as of September 30, 2008.

Name(a)	Option Awards		Equity Incentive Plan Awards:		Stock Awards	
	Number of Securities Underlying Unexercised Options (#) Exercisable (b)	Number of Securities Underlying Unexercised Options (#) Unexercisable (c)	Option Exercise Price (\$)(e)	Option Expiration Date (f)	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (1)(#)(i)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested (2)(\$)(j)
Glenn L. Cooper, M.D.	60,000		\$ 5.00	June 10, 2009	666,917(3)	\$ 2,234,172
	800,000		\$ 6.1875	June 10, 2009		
	360,000		\$ 4.15625	June 10, 2009		
	910,000		\$ 2.375	April 5, 2010		
	575,000		\$ 3.58	April 23, 2013		
	150,000		\$ 5.92	March 10, 2014		
	65,625	9,375(4)	\$ 3.70	March 9, 2015		
Michael W. Rogers	125,000		\$ 6.00	Oct. 5, 2009	239,285(5)	\$ 801,605
	250,000		\$ 4.00	Oct. 5, 2009		
	375,000		\$ 4.0625	Feb. 23, 2010		
	365,000		\$ 2.375	April 5, 2010		
	125,000		\$ 6.00	April 5, 2010		
	100,000		\$ 3.58	April 23, 2013		
	60,000		\$ 5.92	March 10, 2014		
	21,876	3,124(4)	\$ 3.70	March 9, 2015		
Noah D. Beerman	45,000		\$ 6.00	Feb. 14, 2010	239,285(5)	\$ 801,605
	198,484		\$ 2.0625	Aug. 14, 2010		
	10,417		\$ 1.22	June 14, 2012		
	200,000		\$ 6.93	Sept. 14, 2014		
	21,876	3,124(4)	\$ 3.70	March 9, 2015		
Mark S. Butler	60,000		\$ 5.00	June 10, 2009	239,285(5)	\$ 801,605
	550,000		\$ 6.1875	June 10, 2009		
	60,000		\$ 4.15625	June 10, 2009		
	349,000		\$ 2.375	April 5, 2010		
	100,000		\$ 3.58	April 23, 2013		
	60,000		\$ 5.92	March 10, 2014		
	21,876	3,124(4)	\$ 3.70	March 9, 2015		
Bobby W. Sandage, Jr., Ph.D.	434,500		\$ 2.375	April 5, 2010	239,285(5)	\$ 801,605
	60,000		\$ 5.00	June 10, 2010		
	500,000		\$ 6.1875	June 10, 2010		
	160,000		\$ 4.15625	June 10, 2010		
	100,000		\$ 4.15625	Nov. 26, 2011		
	100,000		\$ 3.58	April 23, 2013		

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	60,000		\$	5.92	March 10, 2014
	21,876	3,124(4)	\$	3.70	March 9, 2015
Thomas F. Farb(6)	31,644	0	\$	6.32	October 3, 2009
	193,356	0	\$	6.32	January 3, 2009

- (1) All awards under this column were granted under our 2004 Equity Incentive Plan. Includes shares underlying performance stock awards granted to the applicable Named Executive Officer as described in the footnotes below. The performance stock awards

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- represent a grant of the right to receive shares of common stock subject to (i) achievement of certain milestones related to the market price of our common stock, and (ii) recipient remaining employed by us on the three-year anniversary of the respective date of grant. The number of shares the recipient is entitled to receive, if any, at such time is dependent on the market price at which our common stock trades for 20 consecutive business days at any time during the three-year period prior to the vesting date. Subject to certain acceleration events, if such market prices are not attained during such three-year period, the recipient will not receive any shares under the awards. The maximum shares that could be granted under such awards are included in the above table. With respect to Mr. Farb, all unvested portions of stock awards were forfeited and terminated upon his termination of employment in July 2008.
- (2) The market value was computed by multiplying the closing market price of our common stock on September 30, 2008 (\$3.35) by the applicable number of shares or units.
- (3) Includes various awards granted under our 2004 Equity Incentive Plan. Includes (i) the remaining 23,966 shares of restricted stock granted on March 7, 2006 shares of the restricted stock award granted on March 7, 2006 that vest on March 7, 2009, (ii) 42,000 shares of restricted stock granted on October 30, 2007 that vest in three equal annual installments such that the transfer restrictions are removed relating to the shares one-third annually for three years commencing one year from that date of grant, and (iii) 158,191 shares of restricted stock granted on September 25, 2008 that vest in three equal annual installments such that the transfer restrictions are removed relating to the shares one-third annually for three years commencing one year from that date of grant. All restricted stock is subject to transfer restrictions, forfeiture and acceleration. Also includes shares underlying three performance stock awards granted on March 7, 2006, October 30, 2007 and September 25, 2008. As further described in footnote (1), depending on such prices as may be attained, the recipient could receive (A) either (i) 70,100, (ii) 93,500, (iii) 116,900 or (iv) no shares, under the March 7, 2006 grant, (B) either (i) 41,300, (ii) 55,000, (iii) 68,800 or (iv) no shares, under the October 30, 2007 grant, and (C) either (i) 154,236, (ii) 204,648, (iii) 257,060 or (iv) no shares, under the September 25, 2008 grant.
- (4) Fully vests on March 9, 2009.
- (5) Includes various awards granted under our 2004 Equity Incentive Plan. Includes (i) the remaining 9,600 shares of the restricted stock award granted on March 7, 2006 that vest on March 7, 2009, (ii) 13,500 shares of restricted stock granted on October 30, 2007 that vest in three equal annual installments such that the transfer restrictions are removed relating to the shares one-third annually for three years commencing one year from that date of grant, and (iii) 55,918 shares of restricted stock granted on September 25, 2008 that vest in three equal annual installments such that the transfer restrictions are removed relating to the shares one-third annually for three years commencing one year from that date of grant. All restricted stock is subject to transfer restrictions, forfeiture and acceleration. Also includes shares underlying three performance stock awards granted on March 7, 2006, October 30, 2007 and September 25, 2008. As further described in footnote (1), depending on such prices as may be attained, the recipient could receive (A) either (i) 28,100, (ii) 37,500, (iii) 46,900 or (iv) no shares, under the March 7, 2006 grant, (B) either (i) 13,500, (ii) 18,000, (iii) 22,500 or (iv) no shares, under the October 30, 2007 grant, and (C) either (i) 54,250, (ii) 72,693, (iii) 90,867 or (iv) no shares, under the September 25, 2008 grant.
- (6) As of July 3, 2008, Mr. Farb terminated his employment with the Company. At such time, all unvested portions of stock options and stock awards were forfeited and terminated and any vested portion of his stock options were exercisable for a period of six (6) months thereafter in accordance with our 2004 Equity Incentive Plan.

Option Exercises and Stock Vested in Fiscal Year 2008

The following table sets forth information concerning options exercised by, and stock awards that vested for, the Named Executive Officer in Fiscal 2008.

Name	Option Awards		Stock Awards	
	Number of Shares Acquired on Exercise	Value Realized Upon Exercise	Number of Shares Acquired on Vesting	Value Realized on Vesting
	(#)	(\$)	(#)	(\$)
(a)	(b)	(c)	(d)(1)	(e)(1)
Glenn L. Cooper, M.D.			47,934	245,896
Michael W. Rogers			19,200	98,496
Noah D. Beerman			19,200	98,496
Mark S. Butler	20,000	35,236	19,200	98,496
Bobby W. Sandage, Jr., Ph.D.			19,200	98,496
Thomas F. Farb			16,666	85,497

- (1) These amounts pertain to the vesting of a portion of restricted stock awards granted under our 2004 Equity Incentive Plan. The awards (except for those with respect to Mr. Farb) vest in equal annual installments such that the transfer restrictions are scheduled to be removed relating to the shares as follows: one-third that was scheduled to vest in March 2007 but was delayed until March 7, 2008 in accordance with the terms of such award as a result of black-out periods of the Company, one-third that vested on March 7, 2008 and the remainder on March 7, 2009. With respect to Mr. Farb, prior to the termination of his employment in July 2008, one third of the award he received upon becoming an employee in October 2006 was scheduled to vest in October 2007 but was delayed until March 7, 2008 in accordance with the terms of such award as a result of black-out periods of the Company. The full amount of the shares underlying the award were issued to the recipient following the grant date but until vesting the shares are subject to transfer restrictions, forfeiture and acceleration. On each vest date, the value of the then vested portion of the award is realized by the applicable recipient and the restrictions are removed relating to such portion.

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COMPENSATION COMMITTEE REPORT(1)

The Compensation Committee has reviewed the Compensation Discussion and Analysis and discussed that Analysis with management. Based on its review and discussions with management, the committee recommended to the Board of Directors of Indevus Pharmaceuticals, Inc. that the Compensation Discussion and Analysis be included in this Form 10-K. This report is provided by the following independent directors, who comprise the committee:

Michael E. Hanson, (Chairman)

Malcolm Morville, Ph.D.

Andrew Ferrara

- (1) Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, that might incorporate future filings, including this Form 10-K, in whole or in part, the Compensation Committee Report shall not be incorporated by reference into any such filings.

Table of Contents**Termination of Employment and Change-in-Control Agreements****I. Employment Agreements.**

Effective October 1, 2007, we entered into amended and restated employment agreements with each of our Named Executive Officers (the Employment Agreements). The Employment Agreements provide certain protections to the Named Executive Officers in the event of their termination as summarized in the following table (additional details and definitions can be found in the actual form of employment agreements, which have been filed with the SEC, and which are discussed in more detail below):

Key Elements(1)(2)	CEO	Other Executive Officers
Term	3 years, subject to automatic one-year renewal periods unless notice of termination is given within required timeframes.	3 years, subject to automatic one-year renewal periods unless notice of termination is given within required timeframes.
Severance	Base salary and bonuses accrued through termination.	Base salary and bonuses accrued through termination.
Termination due to (i) death or disability, (ii) by us for just cause or (iii) by executive without just cause		
Severance	18 months of base salary plus bonuses equal to the target bonus as if the targets had been achieved.	12 months of base salary plus bonuses equal to the target bonus as if the targets had been achieved.
Termination (i) by the executive for just cause not related to Change in Control, or (ii) by us without just cause		
Severance	24 months of base salary plus bonuses equal to the target bonus as if the targets had been achieved.	18 months of base salary plus bonuses equal to the target bonus as if the targets had been achieved.
Termination by the executive due to a Change in Control		
Benefit Continuation (health benefits only)	Health benefits coverage for (i) 24 months if terminated due to a Change in Control, (ii) 18 months if terminated by the executive for just cause not related to a Change in Control, and (iii) the longer of 18 months or remaining term of Employment Agreement if terminated by us without just cause.	Health benefits coverage for (i) 18 months if terminated due to a Change in Control, (ii) 12 months if terminated by the executive for just cause not related to a Change in Control, and (iii) the longer of 12 months or remaining term of Employment Agreement if terminated by us without just cause.
Equity Vesting Acceleration	The Employment Agreements do not provide for any acceleration of the vesting of equity upon a Change in Control, however our option and other equity incentive plans do provide for acceleration of vesting for all plan participants under certain circumstances.	

- (1) Severance payments are paid by us in one lump sum within thirty (30) days of such termination, provided the executive may irrevocably elect to change the lump sum form of payment to an installment form of payment (to be paid in twenty-four (24) substantially equal monthly installments beginning thirty (30) days after the termination, provided that any installments designated hereunder are treated as a series of separate payments), provided that: (1) such election does not take effect until at least twelve (12) months after the date on which it is made; (2) payment is delayed at least five (5) years from the date such payment would have otherwise been paid; and (3) the election is made at least twelve (12) months before the first scheduled payment.

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- (2) With regards to any payments to be made following a Change in Control, the Employment Agreements each provide that the commencement of the cash payout will be governed by a standard double trigger mechanism. Under this mechanism, the payments commence on the second trigger (as defined in the Employment Agreements), provided further that if such second trigger does not occur no cash payout shall be due under the Employment Agreements. The first trigger is the actual change in control event, while the second trigger relates to the executive either (i) not being offered a comparable position and salary following the change in control, or (ii) being constructively terminated or terminated without just cause during a certain period of time after accepting the new position. Such period of time the executive must be retained is 24 months for the CEO and 12 months for the other Named Executive Officers.

Any severance or other payments to be made to the Named Executive Officers shall be reduced to an amount (not less than zero) which shall not cause any portion of the payments to be subject to any excise taxes that may be imposed by Section 4999 of the Internal Revenue Code, provided that under certain circumstances as described in the employment agreements, each of the Named Executive Officers may be entitled to certain gross-up payments to cover the amount of any excise and related taxes that may be incurred due to severance and other payments made to the Named Executive Officer, provided further that any such gross-up payment shall not, under any circumstances, exceed \$1,250,000 for the Chief Executive Officer, and \$500,000 for the other Named Executive Officers.

The Employment Agreements provide for Named Executive Officers to serve in the following capacities(1):

Name	Capacity	Salary
Glenn L. Cooper, M.D.	Chief Executive Officer	\$ 503,235
Michael W. Rogers	Executive Vice President and Chief Financial Officer	\$ 352,265
Noah D. Beerman	Executive Vice President and Chief Business Officer	\$ 355,000
Mark S. Butler	Executive Vice President, Chief Administrative Officer and General Counsel	\$ 352,265
Bobby W. Sandage, Jr., Ph.D.	Executive Vice President, Research and Development and Chief Scientific Officer	\$ 375,000

- (1) The employment agreement for Thomas F. Farb, who terminated his employment effective July 3, 2008, provided for Mr. Farb to serve as President and Chief Operating Officer at an annual salary of \$425,000.

The Employment Agreements also provide for the annual base salaries provided above, subject to an annual review, plus bonuses pursuant to our executive bonus plans and eligibility to receive grants of stock options, restricted stock and other awards pursuant to our incentive plans, as may be granted from time to time by the Compensation Committee or the Board of Directors. We also provide each Named Executive Officer with a \$1,000,000 life insurance policy payable to the beneficiary of their choice.

The Employment Agreements also contain customary confidentiality provisions and provide that the Named Executive Officer may not, during the term of the Employment Agreement and for one year from the date of termination of employment, engage in any business competitive with us or our research activities, unless such termination is by the Named Executive Officer for Just Cause, as such term is defined in the Employment Agreement.

II. Equity Plans

Our option and other equity incentive plans also contain provisions that could trigger benefits for the Named Executive Officers that may differ from salaried employees generally. Pursuant to such benefit plans, following retirement after reaching the age of 55 and having 10 years of service with us, each of the Named Executive Officers will have an extended option exercise period equal to the shorter of (x) the remaining term of the applicable option on the retirement date; or (y) three (3) years from the retirement date, to exercise non-statutory stock options.

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III. Retirement and Retention Agreements

During March 2008, as amended in June 2008, we entered into the Retirement Agreement with Dr. Cooper. Pursuant to the Retirement Agreement, Dr. Cooper agreed to serve as our Chief Executive Officer and Chairman until a future date to be mutually agreed upon between us and Dr. Cooper. At such agreed upon time, he will retire as Chief Executive Officer and Chairman and become an advisor to us for twelve (12) months thereafter. Pursuant to the Retirement Agreement, in the event that Dr. Cooper's employment is terminated due to death prior to his retirement, we shall pay to the estate of Dr. Cooper a pro-rated portion of the compensation which would otherwise be payable to Dr. Cooper up to the end of the month in which his death occurs. In the event that Dr. Cooper's employment is terminated due to disability, we shall pay to Dr. Cooper a pro-rated portion of the compensation which would otherwise be payable to Dr. Cooper up through the last calendar day of his actual employment by the Company prior to such disability. In the event that Dr. Cooper's employment is terminated due to resignation or retirement, or by us for cause, we shall pay to Dr. Cooper a pro-rated portion of his compensation and benefits otherwise payable to him through the last calendar day of his actual employment. In the event Dr. Cooper receives compensation and/or benefits in connection with a change in control under the terms of his Amended and Restated Employment Agreement, his right to compensation and benefits under the Retirement Agreement will cease immediately upon such change in control.

Following any such terminations as described above, as well as in the event that Dr. Cooper's employment is terminated by Dr. Cooper for cause, he will become an advisor to us for twelve (12) months thereafter. From March 3, 2008 until the date the Retirement Agreement expires or is terminated, Dr. Cooper will receive his salary, be eligible for a bonus under our bonus plans for Fiscal periods that he acted as CEO, and during his employment, be eligible to receive the health and dental benefits which are currently available to him under our plans and policies. In the event Dr. Cooper's advisor engagement is terminated by us following a breach by Dr. Cooper, or by Dr. Cooper following notice to us, we shall pay to Dr. Cooper a pro-rated portion of his compensation and benefits otherwise payable to him through the last calendar day of his services as an advisor.

We entered into Retention Agreements with Mr. Rogers, Mr. Beerman and Dr. Sandage in April 2008. Pursuant to such agreements, in the event that the executive's employment is terminated before September 30, 2009 by the executive for cause or by us without cause, then we are obligated to pay the executive an amount of compensation equal to twelve (12) months base salary for each of Mr. Beerman and Dr. Sandage, and six (6) months base salary for Mr. Rogers, all based on the salaries for each executive as of April 11, 2008, the effective date of the Retention Agreements. In the event that the executive is terminated due to death or disability prior to September 30, 2009, then we are obligated to pay the executive a portion of such payments pro-rated for time period the executive provided his services from April 11, 2008 until the date of termination. In the event that prior to September 30, 2009 the executive terminates his employment without cause, or is terminated by us for cause, we shall no longer be obligated to make any payments of the retention compensation to the respective executive.

IV. Quantitative Disclosure

The remainder of this section summarizes quantitative disclosures for each Named Executive Officer (except for Mr. Farb) regarding estimated payments and other benefits that would have been received by the Named Executive Officer or his estate if his employment terminated as of the last business day of the Fiscal year, September 30, 2008, under the following circumstances:

Termination due to (i) death or disability, (ii) by us for just cause or (iii) by executive without just cause .

Termination (i) by the executive for just cause not related to Change in Control, or (ii) by us without just cause .

Termination by the executive due to a Change in Control.

The quantitative disclosures provided for Mr. Farb set forth the applicable payments and other benefits received by Mr. Farb in connection with his termination of employment in July 2008.

Table of Contents**Payments to Glenn L. Cooper, M.D. Assuming a September 30, 2008 Termination(1)**

Circumstances of Termination:	Cash Severance				Equity		Benefits Continuation	Total
	Base Salary		Bonus		Value of Vested Equity	Value of Accelerated Unvested Equity(5)		
	Multiple	\$	Multiple	\$				
Termination due to (i) by us for just cause or (ii) by executive without just cause (2)	N/A	N/A	N/A	N/A	\$ 1,705,629	N/A	N/A	\$ 1,705,629
Termination due to death or disability(2)	N/A	N/A	N/A	N/A	\$ 1,705,629	\$ 1,516,355(6)	N/A	\$ 3,221,984
Termination due to retirement(2)	N/A	N/A	N/A	N/A	\$ 1,705,629	\$ 750,926(7)	N/A	\$ 2,456,555
Termination (i) by the executive for just cause not related to Change in Control, or (ii) by us without just cause (3)	1.5	\$ 754,853	1.5	\$ 490,655	\$ 1,705,629	N/A	\$ 0(9)	\$ 2,951,137
Termination by the executive due to a Change in Control(4)	2.0	\$ 1,006,470	2.0	\$ 654,206	\$ 1,705,629	\$ 1,516,355(8)	\$ 0(9)	\$ 4,882,660

- (1) The calculations in the table are based on the event occurring as of September 30, 2008 and are derived using the provisions of the current Employment Agreement of the executive that was effective as of October 1, 2007 as well as the provisions of the Fiscal Year 2008 CEO Bonus Plan.
- (2) Under this termination scenario, the executive has the right to receive only base salary and bonuses accrued through termination, except with respect to death in which case the salary is paid through the end of the month when the termination occurs.
- (3) Under these termination scenarios, the executive has a right to receive 18 months of base salary plus bonuses equal to the target bonus as if the targets had been achieved, the maximum of such bonus being 65% of base salary.
- (4) Under these termination scenarios, the executive has a right to receive 24 months of base salary plus bonuses equal to the target bonus as if the targets had been achieved, the maximum of such bonus being 65% of base salary.
- (5) See Outstanding Equity Awards as of Fiscal Year End table for the vesting status of each executive's equity awards as of 9/30/08.
- (6) Pursuant to the provisions of our 2004 Equity Incentive Plan, upon the death or disability of the executive, all then unvested awards issued under such plan automatically accelerate and become fully vested. The amount shown here represents the spread of the such accelerated awards assuming a \$3.35 fair market value of our stock (our closing stock price on 9/30/08).
- (7) Pursuant to the provisions of our 2004 Equity Incentive Plan and due to the executive having reached age 55 with ten (10) years of service with us, immediately upon the executive's retirement, his then unvested awards issued under such plan automatically accelerate and become fully vested for fifty percent (50%) of the number of shares covered by such unvested awards and for an additional ten percent (10%) of the number of shares covered by such unvested awards for every full year of employment by us beyond ten (10) years, up to the remaining amount of the unvested award. The amount shown here represents the spread of the such accelerated awards assuming a \$3.35 fair market value of our stock (our closing stock price on 9/30/08).
- (8) All unvested equity is assumed to have accelerated as of 9/30/08. The amount shown here represents the spread of the accelerated awards assuming a \$3.35 fair market value of our stock (our closing stock price on 9/30/08).
- (9) This is calculated based on the assumption that Dr. Cooper has elected not to carry the health and dental insurance.

Table of Contents**Payments to Michael W. Rogers Assuming a September 30, 2008 Termination(1)**

Circumstances of Termination:	Cash Severance				Equity		Benefits Continuation	Retention(10)	Total
	Base Salary		Bonus		Value of Vested Equity	Value of Accelerated Unvested Equity(5)			
	Multiple	\$	Multiple	\$					
Termination due to (i) by us for just cause or (ii) by executive without just cause (2)	N/A	N/A	N/A	N/A	\$ 831,782	N/A	N/A	N/A	\$ 831,782
Termination due to death or disability(2)	N/A	N/A	N/A	N/A	\$ 831,782	\$ 539,411(6)	N/A	\$ 55,743	\$ 1,426,936
Termination due to retirement(2)	N/A	N/A	N/A	N/A	\$ 831,782	\$ N/A(7)	N/A	N/A	\$ 831,782
Termination (i) by the executive for just cause not related to Change in Control, or (ii) by us without just cause (3)	1.0	\$ 352,265	1.0	\$ 176,133	\$ 831,782	N/A	\$ 17,659(9)	\$ 176,133	\$ 1,553,972
Termination by the executive due to a Change in Control(4)	1.5	\$ 528,398	1.5	\$ 264,200	\$ 831,782	\$ 539,411(8)	\$ 26,489(9)	\$ 176,133	\$ 2,366,413

- (1) The calculations in the table are based on the event occurring as of September 30, 2008 and are derived using the provisions of the current Employment Agreement of the executive that was effective as of October 1, 2007 as well as the Fiscal Year 2008 Senior Executive Bonus Plan.
- (2) Under this termination scenario, the executive has the right to receive only base salary and bonuses accrued through termination.
- (3) Under these termination scenarios, the executive has a right to receive 12 months of base salary plus bonuses equal to the target bonus as if the targets had been achieved, the maximum of such bonus being 50% of base salary.
- (4) Under these termination scenarios, the executive has a right to receive 18 months of base salary plus bonuses equal to the target bonus as if the targets had been achieved, the maximum of such bonus being 50% of base salary.
- (5) See Outstanding Equity Awards as of Fiscal Year End table for the vesting status of each executive's equity awards as of 9/30/08.
- (6) Pursuant to the provisions of our 2004 Equity Incentive Plan, upon the death or disability of the executive, all then unvested awards issued under such plan automatically accelerate and become fully vested. The amount shown here represents the spread of the such accelerated awards assuming a \$3.35 fair market value of our stock (our closing stock price on 9/30/08).
- (7) Mr. Rogers is not yet eligible under the provisions of our 2004 Equity Incentive Plan regarding acceleration of awards upon retirement.
- (8) All unvested equity is assumed to have accelerated as of 9/30/08. The amount shown here represents the spread of the accelerated awards assuming a \$3.35 fair market value of our stock (our closing stock price on 9/30/08).
- (9) Health benefits coverage is continued for (i) 18 months if terminated due to a Change in Control, (ii) 12 months if terminated by the executive for just cause not related to a Change in Control, and (iii) the longer of 12 months or remaining term of employment agreement if terminated by us without just cause. The benefits cost includes the employer cost of health and dental insurance only. The executives cost of benefits for months 19-24 of the benefit continuation period are assumed to be equal to the cost for months 1-18. In an actual termination situation, the cost of benefits may change in months 19-24 due to the expiration of Cobra benefits coverage as full group insurance rates may apply.
- (10) Represents cash payments that would be due to the executive pursuant to his Retention Agreement.

Table of Contents**Payments to Noah D. Beerman Assuming a September 30, 2008 Termination(1)**

Circumstances of Termination:	Cash Severance		Bonus		Equity		Benefits Continuation	Retention(10)	Total
	Base Salary				Value of Vested Equity	Value of Accelerated Unvested Equity(5)			
	Multiple	\$	Multiple	\$					
Termination due to (i) by us for just cause or (ii) by executive without just cause (2)	N/A	N/A	N/A	N/A	\$ 350,255	N/A	N/A	N/A	\$ 350,255
Termination due to death or disability(2)	N/A	N/A	N/A	N/A	\$ 350,255	\$ 539,411(6)	N/A	\$ 112,351	\$ 1,002,017
Termination due to retirement(2)	N/A	N/A	N/A	N/A	\$ 350,255	\$ N/A(7)	N/A	N/A	\$ 350,255
Termination (i) by the executive for just cause not related to Change in Control, or (ii) by us without just cause (3)	1.0	\$ 355,000	1.0	\$ 177,500	\$ 350,255	N/A	\$ 17,659(9)	\$ 355,000	\$ 1,255,414
Termination by the executive due to a Change in Control(4)	1.5	\$ 532,500	1.5	\$ 266,250	\$ 350,255	\$ 539,411(8)	\$ 26,489(9)	\$ 355,000	\$ 2,060,905

- (1) The calculations in the table are based on the event occurring as of September 30, 2008 and are derived using the provisions of the current Employment Agreement of the executive that was effective as of October 1, 2007 as well as the Fiscal Year 2008 Senior Executive Bonus Plan.
- (2) Under this termination scenario, the executive has the right to receive only base salary and bonuses accrued through termination.
- (3) Under these termination scenarios, the executive has a right to receive 12 months of base salary plus bonuses equal to the target bonus as if the targets had been achieved, the maximum of such bonus being 50% of base salary.
- (4) Under these termination scenarios, the executive has a right to receive 18 months of base salary plus bonuses equal to the target bonus as if the targets had been achieved, the maximum of such bonus being 50% of base salary.
- (5) See Outstanding Equity Awards as of Fiscal Year End table for the vesting status of each executive's equity awards as of 9/30/08.
- (6) Pursuant to the provisions of our 2004 Equity Incentive Plan, upon the death or disability of the executive, all then unvested awards issued under such plan automatically accelerate and become fully vested. The amount shown here represents the spread of the such accelerated awards assuming a \$3.35 fair market value of our stock (our closing stock price on 9/30/08).
- (7) Mr. Beerman is not yet eligible under the provisions of our 2004 Equity Incentive Plan regarding acceleration of awards upon
- (8) All unvested equity is assumed to have accelerated as of 9/30/08. The amount shown here represents the spread of the accelerated awards assuming a \$3.35 fair market value of our stock (our closing stock price on 9/30/08).
- (9) Health benefits coverage is continued for (i) 18 months if terminated due to a Change in Control, (ii) 12 months if terminated by the executive for just cause not related to a Change in Control, and (iii) the longer of 12 months or remaining term of employment agreement if terminated by us without just cause. The benefits cost includes the employer cost of health and dental insurance only. The executives cost of benefits for months 19-24 of the benefit continuation period are assumed to be equal to the cost for months 1-18. In an actual termination situation, the cost of benefits may change in months 19-24 due to the expiration of Cobra benefits coverage as full group insurance rates may apply.
- (10) Represents cash payments that would be due to the executive pursuant to his Retention Agreement.

Table of Contents**Payments to Mark S. Butler Assuming a September 30, 2008 Termination(1)**

Circumstances of Termination:	Cash Severance				Equity		Benefits Continuation	Total
	Base Salary		Bonus		Value of Vested Equity	Value of Accelerated Unvested Equity(5)		
	Multiple	\$	Multiple	\$				
Termination due to (i) by us for just cause or (ii) by executive without just cause (2)	N/A	N/A	N/A	N/A	\$ 356,224	N/A	N/A	\$ 356,224
Termination due to death or disability(2)	N/A	N/A	N/A	N/A	\$ 356,224	\$ 539,411(6)	N/A	\$ 895,635
Termination due to retirement(2)	N/A	N/A	N/A	N/A	\$ 356,224	\$ 185,298(7)	N/A	\$ 541,522
Termination (i) by the executive for just cause not related to Change in Control, or (ii) by us without just cause (3)	1.0	\$ 352,265	1.0	\$ 176,133	\$ 356,224	N/A	\$ 17,659(9)	\$ 902,281
Termination by the executive due to a Change in Control(4)	1.5	\$ 528,398	1.5	\$ 264,200	\$ 356,224	\$ 539,411(8)	\$ 26,489(9)	\$ 1,714,722

- (1) The calculations in the table are based on the event occurring as of September 30, 2008 and are derived using the provisions of the current Employment Agreement of the executive that was effective as of October 1, 2007 as well as the Fiscal Year 2008 Senior Executive Bonus Plan.
- (2) Under this termination scenario, the executive has the right to receive only base salary and bonuses accrued through termination.
- (3) Under these termination scenarios, the executive has a right to receive 12 months of base salary plus bonuses equal to the target bonus as if the targets had been achieved, the maximum of such bonus being 50% of base salary.
- (4) Under these termination scenarios, the executive has a right to receive 18 months of base salary plus bonuses equal to the target bonus as if the targets had been achieved, the maximum of such bonus being 50% of base salary.
- (5) See Outstanding Equity Awards as of Fiscal Year End table for the vesting status of each executive's equity awards as of 9/30/08.
- (6) Pursuant to the provisions of our 2004 Equity Incentive Plan, upon the death or disability of the executive, all then unvested awards issued under such plan automatically accelerate and become fully vested. The amount shown here represents the spread of the such accelerated awards assuming a \$3.35 fair market value of our stock (our closing stock price on 9/30/08).
- (7) Pursuant to the provisions of our 2004 Equity Incentive Plan and due to the executive having reached age 55 with ten (10) years of service with us, immediately upon the executive's retirement, his then unvested awards issued under such plan automatically accelerate and become fully vested for fifty percent (50%) of the number of shares covered by such unvested awards and for an additional ten percent (10%) of the number of shares covered by such unvested awards for every full year of employment by us beyond ten (10) years, up to the remaining amount of the unvested award. The amount shown here represents the spread of the such accelerated awards assuming a \$3.35 fair market value of our stock (our closing stock price on 9/30/08).
- (8) All unvested equity is assumed to have accelerated as of 9/28/07. The amount shown here represents the spread of the accelerated awards assuming a \$3.35 fair market value of our stock (our closing stock price on 9/30/08).
- (9) Health benefits coverage is continued for (i) 18 months if terminated due to a Change in Control, (ii) 12 months if terminated by the executive for just cause not related to a Change in Control, and (iii) the longer of 12 months or remaining term of employment agreement if terminated by us without just cause. The benefits cost includes the employer cost of health and dental insurance only. The executives cost of benefits for months 19-24 of the benefit continuation period are assumed to be equal to the cost for months 1-18. In an actual termination situation, the cost of benefits may change in months 19-24 due to the expiration of Cobra benefits coverage as full group insurance rates may apply.

Table of Contents**Payments to Bobby W. Sandage, Jr., Ph.D. Assuming a September 30, 2008 Termination(1)**

Circumstances of Termination:	Cash Severance		Equity		Value of Vested Equity	Accelerated Unvested Equity(5)	Benefits Continuation	Retention (10)	Total
	Base Salary	Bonus	Base Salary	Bonus					
	Multiple	\$	Multiple	\$					
Termination due to (i) by us for just cause or (ii) by executive without just cause (2)	N/A	N/A	N/A	N/A	\$ 598,614	N/A	N/A	N/A	\$ 598,614
Termination due to death or disability(2)	N/A	N/A	N/A	N/A	\$ 598,614	\$ 539,411(6)	N/A	\$ 118,680	\$ 1,256,705
Termination due to retirement(2)	N/A	N/A	N/A	N/A	\$ 598,614	\$ 185,298(7)	N/A	N/A	\$ 783,912
Termination (i) by the executive for just cause not related to Change in Control, or (ii) by us without just cause (3)	1.0	\$ 375,000	1.0	\$ 187,500	\$ 598,614	N/A	\$ 17,659(9)	\$ 375,000	\$ 1,553,773
Termination by the executive due to a Change in Control(4)	1.5	\$ 562,500	1.5	\$ 281,250	\$ 598,614	\$ 539,411(8)	\$ 26,489(9)	\$ 375,000	\$ 2,383,264

- (1) The calculations in the table are based on the event occurring as of September 30, 2008 and are derived using the provisions of the current Employment Agreement of the executive that was effective as of October 1, 2007 as well as the Fiscal Year 2008 Senior Executive Bonus Plan.
- (2) Under this termination scenario, the executive has the right to receive only base salary and bonuses accrued through termination.
- (3) Under these termination scenarios, the executive has a right to receive 12 months of base salary plus bonuses equal to the target bonus as if the targets had been achieved, the maximum of such bonus being 50% of base salary.
- (4) Under these termination scenarios, the executive has a right to receive 18 months of base salary plus bonuses equal to the target bonus as if the targets had been achieved, the maximum of such bonus being 50% of base salary.
- (5) See Outstanding Equity Awards as of Fiscal Year End table for the vesting status of each executive's equity awards as of 9/30/08.
- (6) Pursuant to the provisions of our 2004 Equity Incentive Plan, upon the death or disability of the executive, all then unvested awards issued under such plan automatically accelerate and become fully vested. The amount shown here represents the spread of the such accelerated awards assuming a \$3.35 fair market value of our stock (our closing stock price on 9/30/08).
- (7) Pursuant to the provisions of our 2004 Equity Incentive Plan and due to the executive having reached age 55 with ten (10) years of service with us, immediately upon the executive's retirement, his then unvested awards issued under such plan automatically accelerate and become fully vested for fifty percent (50%) of the number of shares covered by such unvested awards and for an additional ten percent (10%) of the number of shares covered by such unvested awards for every full year of employment by us beyond ten (10) years, up to the remaining amount of the unvested award. The amount shown here represents the spread of the such accelerated awards assuming a \$3.35 fair market value of our stock (our closing stock price on 9/30/08).
- (8) All unvested equity is assumed to have accelerated as of 9/30/08. The amount shown here represents the spread of the accelerated awards assuming a \$3.35 fair market value of our stock (our closing stock price on 9/30/08).
- (9) Health benefits coverage is continued for (i) 18 months if terminated due to a Change in Control, (ii) 12 months if terminated by the executive for just cause not related to a Change in Control, and (iii) the longer of 12 months or remaining term of employment agreement if terminated by us without just cause. The benefits cost includes the employer cost of health and dental insurance only. The executive's cost of benefits for months 19-24 of the benefit continuation period are assumed to be equal to the cost for months 1-18. In an actual termination situation, the cost of benefits may change in months 19-24 due to the expiration of Cobra benefits coverage as full group insurance rates may apply.
- (10) Represents cash payments that would be due to the executive pursuant to his Retention Agreement.

Table of Contents**Payments to Thomas F. Farb Resulting from the July 3, 2008 Termination**

Circumstances of Termination:	Cash Severance		Bonus		Equity		Benefits Continuation	Total
	Base Salary				Value of Vested Equity(2)	Value of Accelerated Unvested Equity		
	Multiple	\$	Multiple	\$				
Termination by executive without just cause (1)	N/A	425,000	N/A	233,750	\$ 30,000	N/A	\$ 18,507	\$ 707,257

(1) These amounts reflect the benefits provided to Mr. Farb in connection with his termination of employment on July 3, 2008.

(2) The amount shown here assumes a \$1.80 fair market value of our stock (our closing stock price on 7/3/08, the date of termination).

DIRECTOR COMPENSATION

Dr. Cooper is the Chairman of the Board of Directors and is our Chief Executive Officer and, as a result, he receives no additional compensation for serving on the Board. No other director is an employee of ours.

As part of the review of our director compensation, the Compensation Committee periodically retains an independent compensation consultant to review whether our non-employee director compensation practices are competitive with those of other biotechnology, pharmaceutical, and comparable peer companies. Based on the consultant's analyses and recommendations, the Compensation Committee can recommend and the Board can approve changes to the directors' compensation in order to remain competitive with our peer companies. The last such consultant review occurred in August 2006, and certain modifications to the directors' compensation were approved by the Compensation Committee and the Board at that time. The discussion below reflects the current compensation terms for our non-employee directors.

Cash Compensation

We have established an annual role-based compensation program with respect to the cash component of compensation for members of the Board of Directors. Pursuant to such program, our non-employee directors receive the annualized fees listed below payable on a quarterly basis with respect to each position held. We do not compensate directors who are also our employees for their service as directors.

Role	Annual Cash Component (\$)
Board Member	40,000
Presiding Director	20,000 (in addition to Board member component)
Audit and Finance Committee Member	10,000
Audit and Finance Committee Chair	7,500 (in addition to Committee member component)
Compensation Committee Member	7,500
Compensation Committee Chair	5,000 (in addition to Committee member component)
Nominating and Governance Committee Member	5,000
Nominating and Governance Committee Chair	5,000 (in addition to Committee member component)

In September 2004, the Board of Directors approved a program under the 2004 Equity Incentive Plan to allow directors to elect to receive, in lieu of the cash compensation payable to Board members and Committee Chairman, deferred stock units. No such elections were made in Fiscal 2007.

Options and Deferred Stock Units

Upon becoming a director, each new director of ours is entitled to receive a one-time initial grant of an option to purchase 50,000 shares of common stock exercisable at a price equal to the fair market value of our Common Stock as determined on the date of grant.

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Subject to the discretion of the Compensation Committee, on the date following each annual meeting of the stockholders, each of our directors (except Dr. Cooper) may also receive annual grants of a number of deferred stock units determined by the Committee at the time of grant based on current market conditions and the fair market value of our common stock. In Fiscal 2008, an aggregate of 60,000 deferred stock units were issued to six directors in accordance with such policy.

We also provide director and officer insurance for all directors. Each non-employee director is also reimbursed for expenses actually incurred to attend meetings.

The following table summarizes all compensation paid to or earned by directors for fulfillment of their duties as our directors in Fiscal year 2008.

Director Compensation Paid for the 2008 Fiscal Year

Name (a)	Fees Earned or Paid in Cash	Option Awards	All Other Compensation	Total
	\$(1) (b)	\$(2) (d)	\$(3) (g)	\$((h)
Andrew Ferrara	55,000		28,735	83,735
James C. Gale	50,000	62,422	9,508	121,930
Michael E. Hanson	62,500		28,735	91,235
Stephen C. McCluski	57,500		28,735	86,235
Cheryl P. Morley	70,000		28,735	98,735
Malcolm Morville, Ph.D.	52,500		28,735	81,235

- (1) Reflects cash compensation paid or earned in Fiscal year 2008.
- (2) Pertains to an initial option grant of 50,000 shares made by us to Mr. Gale when he became a Director in April 2007. The total grant date fair value was \$235,065 or \$4.7013 per option, derived under the Black-Scholes model with the assumptions of: volatility 56%, risk-free rate 4.98%, dividend yield 0%, and expected term 8 years.
- (3) Pertains to 10,000 and 8,000 deferred stock units issued to the non-employee directors during Fiscal 2008 and Fiscal 2007 (except Mr. Gale who was not then a director) at the intrinsic value at the date of grant of \$4.89 and \$7.21, respectively, vesting annually over three years from the date of grant.

Table of Contents**Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters**

The following table sets forth certain information regarding the beneficial ownership of our common stock and preferred stock as of January 21, 2009 for the following:

each of our Named Executive Officers;

each of our directors;

all of our directors and Named Executive Officers as a group; and

all persons known by us to beneficially own more than 5% of our common stock or preferred stock.

Applicable percentage ownership is based on 78,323,044 shares of common stock outstanding as of January 21, 2009, together with applicable options for each stockholder. Beneficial ownership is determined in accordance with the rules of the SEC, based on factors including voting and investment power with respect to shares. Common stock subject to options currently exercisable, or exercisable within 60 days after January 21, 2009, are deemed outstanding for the purpose of computing the percentage ownership of the person holding those options, but are not deemed outstanding for computing the percentage ownership of any other person. For information relating to beneficial owners of greater than 5% of our common stock who are not insiders, we rely upon the reports filed by such persons or entities on Schedule 13G, Form 4 and other filings made with the SEC. Unless otherwise noted, the address for each stockholder is 33 Hayden Avenue, Lexington, MA 02421-7966.

Beneficial Holder	Amount and Nature of Beneficial Ownership(1)	Percent of Outstanding Common Stock Owned(2)
Glenn L. Cooper, M.D.	3,397,091(2)	4.2%
Noah D. Beerman	579,418(3)	*
Mark S. Butler	1,282,528(4)	1.6%
Michael W. Rogers	1,645,535(5)	2.1%
Bobby W. Sandage, Jr., Ph.D.	1,570,101(6)	2.0%
Thomas F. Farb	16,667(7)	*
Andrew Ferrara	25,000(8)	*
James C. Gale	2,241,433(9)	2.9%
Michael E. Hanson	76,249(10)	*
Stephen C. McCluski	91,249(11)	*
Cheryl P. Morley	91,249(12)	*
Malcolm Morville, Ph.D.	171,749(13)	*
All Directors and Named Executive Officers as a group (12 persons)	11,188,269(14)	13.0%
SAC Capital Advisers, LLC, SAC Capital Management, LLC	3,900,800(15)	5.0%
CR Intensive Investors, Steven A. Cohen 72 Cummings Point Road Stamford, CT 06902		
Joseph Edelman c/o First New York Securities, LLC	4,509,185(16)	5.5%
850 Third Avenue, 8th Floor New York, NY 10022		
Visium Asset Management, LP, JG Asset, LLC Jacob Gottlieb	4,781,349(17)	6.1%

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950 Third Avenue

New York, NY 10022

OrbiMed Advisors LLC, OrbiMed Capital LLC,

5,388,000(18)

6.9%

Samuel D. Isaly

767 Third Avenue, 30th Floor

New York, New York 10017

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Beneficial Holder	Amount and Nature of Beneficial Ownership(1)	Percent of Outstanding Common Stock Owned(21)
Quogue Capital LLC, M.D.K. Foundation Inc. and Wayne P. Rothbaum	5,595,408(19)	6.9%
c/o Quogue Capital LLC		
1285 Avenue of the Americas, 35th Floor		
New York, New York 10019		
Peter Brawn	7,925,640(20)	10.2%
525 Caroline Street		
Key West, FL 33040		

* Less than one percent.

- (1) Beneficial ownership is defined in accordance with the rules of the Securities and Exchange Commission (SEC) and generally means the power to vote and/or to dispose of the securities regardless of any economic interest therein. Share amounts include options which are exercisable within sixty (60) days.
- (2) Includes (i) 467,091 shares, 224,157 of which are shares of restricted stock subject to vesting, transfer restrictions, forfeiture and acceleration, and (ii) 2,930,000 shares issuable upon exercise of options exercisable within 60 days, but excludes 110,000 shares issuable upon exercise of options held by Dr. Cooper's spouse, an employee of the Company, as to all of which shares Dr. Cooper disclaims beneficial ownership.
- (3) Includes (i) 100,517 shares, 79,018 of which are shares of restricted stock subject to vesting, transfer restrictions, forfeiture and acceleration, and (ii) 478,901 shares issuable upon exercise of options exercisable within 60 days.
- (4) Includes (i) 83,528 shares, 79,018 of which are shares of restricted stock subject to vesting, transfer restrictions, forfeiture and acceleration, and (ii) 1,199,000 shares issuable upon exercise of options exercisable within 60 days.
- (5) Includes (i) 220,535 shares, 79,018 of which are shares of restricted stock subject to vesting, transfer restrictions, forfeiture and acceleration, and (ii) 1,425,000 shares issuable upon exercise of options exercisable within 60 days.
- (6) Includes (i) 130,601 shares, 79,018 of which are shares of restricted stock subject to vesting, transfer restrictions, forfeiture and acceleration, and (ii) 1,439,500 shares issuable upon exercise of options exercisable within 60 days.
- (7) Includes 16,667 shares.
- (8) Consists of 25,000 shares issuable upon exercise of options exercisable within 60 days.
- (9) Based on information filed with the SEC, includes (i) 2,437 shares (ii) 12,500 shares issuable upon exercise of options exercisable within 60 days, and (iii) 2,226,496 shares beneficially owned by SMH Capital Inc., or SMH. The shares beneficially owned by SMH are directly held by SMH Hydro Med, LLC; SMH Hydro Med II, LLC; SMH Valera, LLC; Corporate Opportunities Fund, L.P.; Corporate Opportunities Fund (Institutional), L.P.; Life Sciences Opportunities Fund, L.P.; and Life Sciences Opportunities Fund (Institutional), L.P.; each an affiliate of SMH. Mr. Gale is a Managing Director of SMH and a manager and chief investment officer of Signet Healthcare Partners, LLC, an affiliate of SMH that manages the investments of the referenced entities. Prior to April 18, 2007, Mr. Gale exercised sole voting and dispositive power over the shares held by SMH. Effective April 18, 2007, Mr. Gale transferred sole voting and dispositive power over the shares held by SMH to Don A. Sanders. Mr. Gale disclaims beneficial ownership of these shares held by SMH except to the extent of his pecuniary interest in the funds described above.
- (10) Consists of 76,249 shares issuable upon exercise of options exercisable within 60 days.
- (11) Consists of 91,249 shares issuable upon exercise of options exercisable within 60 days.
- (12) Consists of 91,249 shares issuable upon exercise of options exercisable within 60 days.
- (13) Includes (i) 27,000 shares and (ii) 144,749 shares issuable upon exercise of options exercisable within 60 days.

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- (14) Includes (i) 3,274,872 shares, 540,229 of which are shares of restricted stock subject to transfer restrictions, forfeiture and acceleration, and (ii) 7,913,397 shares issuable upon options exercisable within 60 days.
- (15) Based on information filed with the SEC, comprised of (i) 3,097,100 Shares beneficially owned by S.A.C. Capital Associates, LLC and (ii) 803,700 Shares beneficially owned by CR Intrinsic Investments, LLC (CR Intrinsic Investments). SAC Capital Advisors, SAC Capital Management, CR Intrinsic Investors and Steven A. Cohen have entered into a Joint Filing Agreement with respect to such Shares.
- (16) Based on information filed with the SEC, comprised of (i) 6.25% Convertible Senior Notes due 2009 (the Notes) convertible into 300,480 shares held by Mr. Edelman, (ii) 1,141,185 shares and Notes convertible into 3,046,875 shares held by Perceptive Life Sciences Master Fund Ltd. (Master Fund), a Cayman Islands company of which the investment manager is Perceptive Advisors LLC, a Delaware limited liability company of which Mr. Edelman is the managing member, and (iii) 40,672 shares held in an account of First New York Trading, LLC, of which Mr. Edelman has sole voting and dispositive power.
- (17) Based on information filed with the SEC, (i) by virtue of its position as investment manager to pooled investment funds, Visium Asset Management, LP, or VAM, may be deemed to beneficially own the 4,781,349 Shares beneficially owned by the pooled investment vehicles, (ii) by virtue of its position as General Partner to VAM, JG Asset may be deemed to beneficially own the 4,781,349 Shares and (iii) by virtue of his position as the Managing Member of JG Asset, Mr. Gottlieb may be deemed to beneficially own the 4,781,349 Shares. VAM, JG Asset and Mr. Gottlieb have disclaimed beneficial ownership as to such Shares, except to the extent of his or its pecuniary interests therein.
- (18) Based on information filed with the SEC, comprised of (i) 2,205,500 shares held by OrbiMed Advisors LLC, and (ii) 3,182,500 held by OrbiMed Capital LLC, and holders are holding the securities on behalf of other persons who have the right to receive or the power to direct the receipt of dividends from, or proceeds from sale of, such securities, as follows: (i) OrbiMed Advisors LLC and OrbiMed Capital LLC hold shares on behalf of Caduceus Capital Master Fund Limited (1,475,000 shares), Caduceus Capital II, L.P. (880,000 shares), UBS Eucalyptus Fund, LLC (900,000 shares), PW Eucalyptus Fund, Ltd. (116,000 shares), Summer Street Life Sciences Hedge Fund Investors LLC (390,000 shares), Knightsbridge Post Venture IV, L.P. (71,500 shares), Knightsbridge Integrated Holdings, V, LP (104,700 shares), Knightsbridge Netherlands II, L.P. (26,000 shares), Knightsbridge Netherlands III L.P. (38,900 shares), Knightsbridge Venture Capital VI, L.P. (68,400 shares), Biotech Growth Trust plc (667,500 shares) and Stichting Pensioenfond ABP (650,000 shares).
- (19) Based on information filed with the SEC, comprised of (i) 2,215,000 shares and (ii) 3,380,408 shares issuable upon conversion of \$22,500,000 in principal amount of the Notes. Wayne P. Rothbaum is the managing member of Quogue Capital LLC and so may be deemed to beneficially own such shares of Common Stock. Mr. Rothbaum disclaims such beneficial ownership. The total amount of shares also includes 65,000 shares owned by M.D.K. Foundation Inc. Mr. Rothbaum is the president of M.D.K. Foundation Inc. and is the individual with sole voting and dispositive power over such shares. Thus, Mr. Rothbaum may be deemed to beneficially own such shares. Mr. Rothbaum disclaims such beneficial ownership.
- (20) Based on information filed with the SEC and provided to us by the stockholder.
- (21) The percent of class in this column is calculated on the basis of 78,187,842 shares outstanding, representing the number of shares outstanding and entitled to vote for the election of Directors of the Company, plus options exercisable within 60 days and shares to be issued upon conversion of our outstanding convertible notes.

Table of Contents**Item 13. Certain Relationships and Related Transactions, and Director Independence**

James C. Gale, one of our directors, is Chief Investment Officer of the Corporate Opportunities Funds and Life Sciences Opportunity Fund, affiliates of Sanders Morris Harris, referred to herein as SMH, and former shareholders of Valera Pharmaceuticals, Inc. Mr. Gale is also manager of SMH Hydro Med, LLC, SMH Hydro Med II, LLC, SMH Valera, LLC, affiliates of SMH and former shareholders of Valera Pharmaceuticals, Inc. Mr. Gale is a Managing Director of SMH. In connection with our merger with Valera Pharmaceuticals, Inc. that was approved by us and our Board of Directors, we granted registration rights covering the shares of our common stock acquired by SMH in connection with the merger for resale under the Securities Act on a Registration Statement on Form S-3.

Pursuant to our Audit and Finance Committee Charter, the Audit and Finance Committee is responsible for reviewing and approving or disapproving of proposed related party transactions or courses of dealings with respect to which executive officers or directors or members of their immediate families have an interest. In reviewing and approving any related party transaction or any material amendment thereto, the Audit Committee shall satisfy itself that it has been fully informed as to the related party's relationship and interest and as to the material facts of the proposed related party transaction or material amendment, and shall determine that the related party transaction or material amendment thereto is fair to the Company.

Item 14. Principal Accounting Fees and Services**RELATIONSHIP WITH INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

PricewaterhouseCoopers LLP was our independent registered public accounting firm for Fiscal 2008 and has no direct or indirect financial interest in us.

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S FEES

During the last two fiscal years, PricewaterhouseCoopers LLP billed us the following fees for its services:

	Fiscal year ended September 30, 2007	Fiscal year ended September 30, 2008
Audit Fees(a)	\$ 750,200	\$ 786,350
Audit-Related Fees(b)	292,000	0
Tax Fees(c)	142,800	225,600
All Other Fees(d)	355,234	58,945
Total	\$ 1,540,234	\$ 1,070,895

- (a) Includes fees for professional services provided in connection with the annual audit of our financial statements, audits of internal control over financial reporting (Sarbanes-Oxley Section 404), quarterly reviews of our financial statements, consents required to complete the year-end audits of the financial statements and SEC filings.
- (b) Includes fees for SEC filings associated with equity offerings and related comfort letter work.
- (c) Includes fees for tax consulting, compliance, planning and advice.
- (d) Includes fees for accounting and SEC reference materials, due diligence related to the April 2007 Valera acquisition and our private placement of the Non-recourse Notes in August 2008.

The Audit and Finance Committee of our Board of Directors has considered whether the provision of the above services other than audit services by PricewaterhouseCoopers LLP is compatible with maintaining such public accounting firm's independence and the Audit and Finance Committee has satisfied itself as to the public accounting firm's independence. See also Report of Audit and Finance Committee.

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**POLICY ON AUDIT AND FINANCE COMMITTEE PRE-APPROVAL OF AUDIT AND
PERMISSIBLE NON-AUDIT SERVICES OF INDEPENDENT REGISTERED
PUBLIC ACCOUNTING FIRM**

Consistent with policies of the SEC regarding auditor independence and the Audit and Finance Committee charter, the Audit and Finance Committee has responsibility for appointing, setting compensation and overseeing the work of the independent registered public accounting firm. The Audit and Finance Committee's policy is to pre-approve all audit and permissible non-audit services provided or proposed to be taken by the independent registered public accounting firm, except where such services are determined to be *de minimis*. Pre-approval is detailed as to the particular service or category of services and is generally subject to a specific budget. The Audit and Finance Committee may also pre-approve particular services on a case-by-case basis. In assessing requests for services by the independent registered public accounting firm, the Audit and Finance Committee considers whether such services are consistent with the public accounting firm's independence; whether the independent registered public accounting firm is likely to provide the most effective and efficient service based upon their familiarity with us; and whether the service could enhance our ability to manage or control risk or improve audit quality.

All of the audit, audit-related, tax and other services provided by PricewaterhouseCoopers LLP in Fiscal 2008 (described in the footnotes to the table above) and related fees were approved in advance by the Audit and Finance Committee.

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PART IV

ITEM 15. Exhibits, Financial Statement Schedules

A) Documents filed as a part of this report:

(3) Exhibits. The following is a list of exhibits filed as part of this Annual Report on Form 10-K/A.

- 31.1 - Certification of Principal Executive Officer required by Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002(1)
- 31.2 - Certification of Principal Financial Officer required by Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002(1)
- 32.1 - Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, by Glenn L. Cooper, Chief Executive Officer(1)
- 32.2 - Certification pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, by Michael W. Rogers, Chief Financial Officer(1)
- 99.1 - Charter Audit and Finance Committee(1)

(1) Filed with this report.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereto duly authorized on this 26th day of January 2009.

INDEVUS PHARMACEUTICALS, INC.

By: /s/ GLENN L. COOPER, M.D.
 Glenn L. Cooper, M.D.
 Chief Executive Officer and Chairman

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EXHIBIT INDEX

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