

GENTA INC DE/  
Form PRE 14A  
April 06, 2010

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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

SCHEDULE 14A

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

Filed by the Registrant   
Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement  Confidential, for use of the Commission only (as permitted by Rule 14a-6(e)(2))
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Under Rule 14a-12

Genta Incorporated  
(Name of Registrant as Specified In Its Charter)

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

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

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  - (2) Form, Schedule or Registration Statement No.:
  - (3) Filing Party:
  - (4) Date Filed:
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GENTA INCORPORATED

200 Connell Drive  
Berkeley Heights, NJ 07922  
908-286-9800

April 30, 2010

Dear Stockholder:

You are cordially invited to the Annual Meeting of Stockholders of Genta Incorporated on Tuesday June 15, 2010 at 9:00 a.m., local time, at The Madison Hotel, One Convent Road, Morristown, New Jersey 07960.

The accompanying notice of Annual Meeting of Stockholders outlines the matters to be brought before the meeting, and the accompanying Proxy Statement discusses these matters in greater detail. The notice and the Proxy Statement have been made a part of this invitation.

Whether or not you plan to attend the Annual Meeting, we urge you to complete, date and sign the enclosed proxy card and return it at your earliest convenience. No postage need be affixed if you use the enclosed envelope and it is mailed in the United States. You may also vote electronically via the Internet or by telephone. If you have any questions or need assistance in completing the proxy card, please contact Investor Relations at the telephone number above.

We are mailing this Proxy Statement and a form of proxy on or about May 7, 2010.

Our Board of Directors and management look forward to seeing you at the Annual Meeting.

Important notice regarding the availability of proxy materials for the Annual Meeting to be held on June 15, 2010.

In accordance with rules approved by the Securities and Exchange Commission, we are providing this notice to our stockholders to advise them of the availability on the Internet of our proxy materials related to our Annual Meeting. The new rules allow companies to provide access to proxy materials in one of two ways. Because we have elected to utilize the "full set delivery" option, we are delivering our proxy materials to our stockholders under the "traditional" method, by providing paper copies, as well as providing access to our proxy materials on a publicly accessible Web site.

Our Proxy Statement and proxy and Annual Report on Form 10-K for the fiscal year ended December 31, 2009 are enclosed. Our Proxy Statement and proxy and our Annual Report on Form 10-K are available on our Web site at <http://www.genta.com>.

Sincerely yours,

/s/ RAYMOND P.  
WARRELL, JR.,  
M.D.

Raymond P.  
Warrell, Jr., M.D.  
Chairman and  
Chief Executive  
Officer



GENTA INCORPORATED  
200 Connell Drive  
Berkeley Heights, NJ 07922  
908-286-9800

Notice of Annual Meeting of Stockholders

April 30, 2010

The Annual Meeting of stockholders of Genta Incorporated, a Delaware corporation, will be held on June 15, 2010 at 9:00 a.m., local time, at The Madison Hotel, One Convent Road, Morristown, New Jersey 07960 for the following purposes:

1. To elect four Directors;
2. To authorize our Board of Directors to effect a reverse stock split of our outstanding Common Stock at any ratio up to 1-for-100;
3. To approve an amendment and restatement of our 2009 Stock Incentive Plan to change the number of shares of Common Stock authorized for issuance under our plan
4. To ratify the appointment of Amper Politziner & Mattia, LLP as our independent registered public accounting firm for the year ended December 31, 2010; and
5. To transact such other business as may properly come before the Annual Meeting.

All stockholders are cordially invited to attend the Annual Meeting. Attendance at the Annual Meeting is limited to our stockholders and one guest. Only stockholders of record at the close of business on April 26, 2010, the Record Date, are entitled to notice of and to vote at the Annual Meeting.

Your Vote Is Important. Whether Or Not You Plan To Attend The Annual Meeting, We Urge You To Vote Electronically Via The Internet. You May Also Complete, Date And Sign The Enclosed Proxy Card And Return It Or Vote By Telephone.

By order of the  
Board of  
Directors,

/s/ GARY  
SIEGEL

Gary Siegel  
Interim Corporate  
Secretary

YOU CAN VOTE IN ONE OF THREE WAYS:

- (1) Visit the Web site noted on your proxy card to vote via the Internet,
- (2) Use the toll-free telephone number on your proxy card to vote by phone, or
- (3) Sign, date and return your proxy card in the enclosed envelope to vote by mail.



GENTA INCORPORATED  
200 Connell Drive  
Berkeley Heights, NJ 07922  
908-286-9800

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PROXY STATEMENT

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This Proxy Statement contains information related to an Annual Meeting of Stockholders of Genta Incorporated, a Delaware corporation, to be held on June 15, 2010 at 9:00 a.m., local time, at The Madison Hotel, One Convent Road, Morristown, New Jersey 07960 and at any postponements or adjournments thereof. This Proxy Statement and the enclosed proxy card are being mailed to our stockholders on or about May 7, 2010.

In this Proxy Statement, “Genta”, “Company”, “we”, “us” and “our” refer to Genta Incorporated.

The Annual Meeting will be held for the following purposes:

1. To elect four Directors;
2. To authorize our Board of Directors to effect a reverse stock split of our outstanding Common Stock at any ratio up to 1-for-100;
3. To approve an amendment and restatement of our 2009 Stock Incentive Plan to change the number of shares of Common Stock authorized for issuance under our plan;
4. To ratify the appointment of Amper Politziner & Mattia, LLP as our independent registered public accounting firm for the year ended December 31, 2010; and
5. To transact such other business as may properly come before the Annual Meeting.

VOTING AT THE ANNUAL MEETING

Revocability of Proxies

You can revoke your proxy at any time before it is exercised by timely delivery of a properly executed, later-dated proxy (including a telephone or Internet vote), by delivering a written revocation of your proxy to our Corporate Secretary, or by voting at the Annual Meeting. The method by which you vote by proxy will in no way limit your right to vote at the Annual Meeting if you decide to attend in person. If your shares are held in the name of a bank or brokerage firm, you must obtain a proxy, executed in your favor, from the bank or broker, to be able to vote at the Annual Meeting.

## Voting Rights

Only holders of record of our common stock at the close of business on the Record Date are entitled to notice of and to vote at the Annual Meeting. Each share of common stock is entitled to one vote on all matters to be voted upon at the Annual Meeting. The presence, in person or by proxy, of the holders of a majority of the shares of common stock outstanding on the Record Date will constitute a quorum for the transaction of business. Abstentions and broker non-votes will be counted as shares that are present for purposes of determining a quorum. Broker non-votes occur when a nominee holding shares for a beneficial owner does not have discretionary voting power on a matter and has not received instructions from the beneficial owner.

For Proposal 1, the election of a Director requires a plurality of the votes present, either in person or by proxy, at the Annual Meeting. For election of Directors, votes may be cast in favor of or withheld from a nominee; votes that are withheld will be excluded entirely from the vote and will have no effect. Brokers may not vote on this proposal without instructions from the beneficial owner of the shares being voted.

For Proposal 2, the authorization of our Board of Directors to effect a reverse stock split in any ratio up to 1-for-100 requires the affirmative vote of a majority of the outstanding shares of our Common Stock. Please note that the timing and ratio of any reverse stock split approved by our Board of Directors will require the prior approval of the holders of 66 2/3% of the combined principal amount of the then outstanding 2010 Notes (as defined below). Brokers may vote on this proposal; however, abstentions and broker non-votes will have the effect of a vote "against" this proposal, even if they do not receive instructions from the beneficial owner.

For Proposal 3, the approval of the amendment and restatement of the 2009 Stock Incentive Plan to change the number of shares authorized for issuance requires a majority of the votes present, either in person or by proxy at the Annual Meeting. Brokers may not vote on this proposal without instructions from the beneficial owner of the shares being voted.

For Proposal 4, the ratification of Amper Politziner & Mattia, LLP as our independent registered public accounting firm for the year ended December 31, 2010 requires a majority of the votes present, either in person or by proxy at the Annual Meeting. Brokers may vote on this proposal; however, abstentions and broker non-votes will have the effect of a vote "against" this proposal, even if they do not receive instructions from the beneficial owner.

Only stockholders of record at the close of business on April 26, 2010, the Record Date, are entitled to notice of and to vote at the Annual Meeting, and at any postponements or adjournments thereof. As of April 26, 2010, xxx,xxx,xxx of our common stock, par value \$.001 per share, were issued and outstanding, 7,700 shares of our convertible Series A Preferred Stock, par value \$.001 per share, were outstanding, and \$x.x million of June 2008 Senior Convertible Promissory Notes ("June 2008 Notes"), \$x.x million of April 2009 Senior Convertible Promissory Notes ("April 2009 Notes"), \$x.x million of July 2009 Unsecured Subordinated Convertible Promissory Notes ("July 2009 Notes"), \$x.x million of September 2009 Unsecured Subordinated Convertible Promissory Notes ("September 2009 Notes"), \$10.0 million of March 2010 Unsecured Senior Convertible B Notes ("B Notes"), \$10.0 million of March 2010 Unsecured Senior Convertible C Notes ("C Notes") and \$5.0 million of March 2010 Senior Secured Convertible D Notes ("D Notes") were outstanding. The June 2008 Notes, April 2009 Notes, July 2009 Notes and September 2009 Notes are collectively referred to as the "Prior Notes". The B Notes, C Notes and D Notes are collectively referred to as the "2010 Notes". Holders of our common stock are entitled to one vote per share for each proposal presented at the Annual Meeting. Holders of our Series A Preferred Stock are not entitled to vote at the Annual Meeting. Holders of all of the Prior Notes and the 2010 Notes are not entitled to vote at the Annual Meeting.





## How to Vote; How Proxies Work

Our Board of Directors is asking for your proxy. Whether or not you plan to attend the Annual Meeting, we urge you to vote by proxy as you can always change your vote at the Annual Meeting. Please complete the proxy card by voting on the Internet, calling the toll-free telephone number on the proxy card, or complete, date and sign the enclosed proxy card and return it at your earliest convenience. We will bear the costs incidental to the solicitation and obtaining of proxies, including the costs of reimbursing banks, brokers and other nominees for forwarding proxy materials to beneficial owners of our capital stock. Proxies may be solicited by our officers and employees, without extra compensation, by mail, telephone, telefax, personal interviews and other methods of communication. In addition, we have retained Bank of New York Mellon Shareowner Services to act as our proxy solicitor in connection with the Annual Meeting. We have agreed to pay that firm \$7,000 plus reasonable out of pocket expenses, for proxy solicitation services.

At the Annual Meeting, and at any postponements and adjournments thereof, all shares entitled to vote and represented by properly executed proxies received prior to the Annual Meeting and not revoked will be voted as instructed on those proxies. If no instructions are indicated on a properly executed proxy, the shares will be voted FOR Proposal 2 and Proposal 4. Brokers may only vote on Proposal 1 and Proposal 3 if instructions are indicated on a properly executed proxy.

## Questions and Answers

Q. What am I voting on?

- Election of four Directors (Raymond P. Warrell, Jr., M.D., Christopher P. Parios, Daniel D. Von Hoff, M.D. and Douglas G. Watson) for a term ending at the next Annual Meeting of Stockholders;
- Authorizing our Board of Directors to effect a reverse stock split of our outstanding Common Stock at any ratio up to 1-for-100, subject to the approval of holders of 66 2/3% of the combined principal amount of the then outstanding 2010 Notes;
  - Approval of a change in the number of shares authorized for our 2009 Stock Incentive Plan; and
  - Ratification of the appointment of Amper Politziner & Mattia, LLP as our independent registered public accounting firm for the year ended December 31, 2010.

Q. Who is entitled to vote?

Only stockholders of record at the close of business on the Record Date of April 26, 2010 are entitled to vote shares held by such stockholders on that date at the Annual Meeting. Each outstanding share entitles its holder to cast one vote.

Q. How do I vote?

Vote By Internet: Visit the Web site noted on your proxy card to vote via the Internet.

Vote By Mail: Sign and date the proxy card you receive and return it in the enclosed stamped, self-addressed envelope.

**Vote By Telephone:** If you are a stockholder of record (that is, if you hold your stock in your own name), you may vote by telephone by following the instructions on your proxy card. The telephone number is toll-free, so voting by telephone is at no cost to you. If you vote by telephone, you do not need to return your proxy card.

**Vote in Person:** Sign and date the proxy you receive and return it in person at the Annual Meeting. If your shares are held in the name of a bank, broker or other holder of record (i.e., in “street name”), you will receive instructions from the holder of record that you must follow in order for your shares to be voted. Telephone and Internet voting will be offered to stockholders owning shares through most banks and brokers.

Q. Can I access the proxy materials electronically?

This Proxy Statement, the proxy card, and our Annual Report on Form 10-K for the period ended December 31, 2009 are available on our website at [www.genta.com](http://www.genta.com).

Q. Can I change my vote or revoke my proxy?

Yes. You may change your vote or revoke your proxy at any time before the proxy is exercised. If you submitted your proxy by mail, you must (a) file with the Corporate Secretary a written notice of revocation or (b) timely deliver a valid, later-dated proxy. If you submitted your proxy by telephone, you may change your vote or revoke your proxy with a later telephone proxy. Attendance at the Annual Meeting will not have the effect of revoking a proxy unless you give written notice of revocation to the Corporate Secretary before the proxy is exercised or you vote by written ballot at the Annual Meeting.

Q. What is the process for admission to the Annual Meeting?

If you are a record owner of your shares (i.e., your shares are held in your name), you must show government issued identification. Your name will be verified against the stockholder list. If you hold your shares through a bank, broker or trustee, you must also bring a copy of your latest bank or broker statement showing your ownership of your shares as of the Record Date.

Q. What constitutes a quorum?

The presence at the Annual Meeting, in person or by proxy, of the holders of a majority of the shares of common stock outstanding on the Record Date will constitute a quorum. As of April 26, 2010, there were xxx,xxx,xxx outstanding shares of common stock entitled to vote at the Annual Meeting.

Abstentions and broker non-votes are counted for purposes of determining whether a quorum is present at the Annual Meeting.

Q. What vote is required to approve each item?

For Proposal 1, the election of a Director requires a plurality of the votes present, either in person or by proxy, at the Annual Meeting. For election of Directors, votes may be cast in favor of or withheld from a nominee; votes that are withheld will be excluded entirely from the vote and will have no effect. Brokers may not vote on this proposal without instructions from the beneficial owner of the shares being voted.

For Proposal 2, the affirmative vote of a majority of our outstanding shares of our Common Stock is required to authorize our Board of Directors to effect a reverse stock split of our outstanding Common Stock at any ratio up to 1-for-100; however, please note that the timing and ratio of any reverse stock split approved by our Board of Directors will require the prior approval of the holders of 66 2/3% of the combined principal amount of the then outstanding 2010 Notes. Brokers may vote on this proposal; however, abstentions and broker non-votes will have the effect of a vote "against" this proposal, even if they do not receive instructions from the beneficial owner.

For Proposal 3, the approval of a change in the number of shares authorized for issuance by the 2009 Stock Incentive Plan requires a majority of the votes present, either in person or by proxy at the Annual Meeting. Brokers may not vote on this proposal without instructions from the beneficial owner of the shares being voted.

For Proposal 4, the ratification of Amper Politziner & Mattia, LLP as our independent registered public accounting firm for the year ended December 31, 2010 requires a majority of the votes present, either in person or by proxy at the Annual Meeting. Brokers may vote on this proposal; however, abstentions and broker non-votes will have the effect of a vote "against" this proposal, even if they do not receive instructions from the beneficial owner.

Q. What happens if I do not instruct my broker how to vote on the proxy?

If you do not instruct your broker how to vote, your broker will vote your shares for you at his or her discretion on routine matters such as the approval of a reverse stock split or ratification of independent registered public accounting firm.

Q. What are the recommendations of the Board of Directors?

The Board of Directors unanimously recommends that the stockholders vote:

- FOR each of the nominees for our Board of Directors.
- FOR the authorization of our Board of Directors to effect a reverse stock split in any ratio up to 1-for-100.
  - FOR the approval of the amendment and restatement of our 2009 Stock Incentive Plan.
- FOR the ratification of Amper Politziner & Mattia, LLP as our independent registered public accounting firm for the year ended December 31, 2010.

With respect to any other matter that properly comes before the Annual Meeting, the proxies will vote as recommended by our Board of Directors or, if no recommendation is given, in their own discretion.

## PROPOSAL ONE

### Election Of Directors

At the 2010 Annual Meeting, four Directors will be elected to serve a one-year term expiring at the next Annual Meeting of stockholders and until each Director's successor shall have been elected and qualified.

Our Board has nominated Raymond P. Warrell, Jr., M.D., Christopher P. Parios, Daniel D. Von Hoff, M.D. and Douglas G. Watson for election as Directors to serve until the 2011 Annual Meeting of stockholders. All nominees are currently members of the Board.

Each nominee has expressed his or her willingness to serve as a Director if elected, and we know of no reason why any nominee would be unable to serve. If a nominee becomes unavailable before the election, the proxies may be voted for one or more substitute nominees designated by the Board, or the Board may decide to reduce the number of Directors.

Set forth below is certain information with respect to each nominee for Director.

#### Nominees for Election at the Annual Meeting

Raymond P. Warrell, Jr., M.D., 60, has been our Chief Executive Officer and a member of our Board since December 1999 and our Chairman since January 2001. From December 1999 to May 2003, he was also our President. From 1978 to 1999, Dr. Warrell was associated with the Memorial Sloan-Kettering Cancer Center in New York, where he held tenured positions as Member, Attending Physician, and Associate Physician-in-Chief, and with the Joan and Sanford Weill Medical College of Cornell University, where he was Professor of Medicine. Dr. Warrell also has more than 20 years of development and consulting experience in pharmaceuticals and biotechnology products. He was a co-founder and chairman of the scientific advisory board of PolaRx Biopharmaceuticals, Inc., which developed Trisenox®, a drug for the treatment of acute promyelocytic leukemia, which is now marketed by Cephalon, Inc. Dr. Warrell holds or has filed numerous patents and patent applications for biomedical therapeutic or diagnostic agents. He has published more than 100 peer-reviewed papers and more than 240 book chapters and abstracts, most of which are focused upon drug development in tumor-related diseases. Dr. Warrell is a member of the American Society of Clinical Investigation, the American Society of Hematology, the American Association for Cancer Research and the American Society of Clinical Oncology. Among many awards, he has received the U.S. Public Health Service Award for Exceptional Achievement in Orphan Drug Development from the FDA. He obtained a B.S. in Chemistry from Emory University, a M.D. from the Medical College of Georgia, and a M.B.A. from Columbia University Graduate School of Business. Dr. Warrell is married to Dr. Loretta M. Itri, President, Pharmaceutical Development and Chief Medical Officer of Genta.

The Board believes that Dr. Warrell's leadership of Genta since December 1999, extensive knowledge in the field of oncology and biotechnology products, as well as his educational and business background, position him to make valuable contributions to the Company as the Chairman of its Board of Directors.

Christopher P. Parios, 69, has been a member of our Board since September 2005. Mr. Parios has more than 37 years of pharmaceutical industry experience, including product development, marketing and promotion, strategy and tactic development, and managing pharmaco-economic and reimbursement issues. He has worked with many of the major companies in the pharmaceutical industry including Hoffmann-LaRoche, Ortho-McNeil, Pfizer, Novartis, Schering Plough, Janssen, Ortho Biotech, and Bristol-Myers Squibb. For the period 1997 to May of 2008, Mr. Parios was Executive Director of The Dominion Group, an independent healthcare consulting firm that specializes in market research, strategic planning, and competitive intelligence monitoring. In this role, he was responsible for the full range of market research, consulting, and business planning activities to facilitate informed business decisions for clients regarding product development, acquisitions, product positioning, and promotion. Mr. Parios continues to consult with the Dominion Group on a part-time basis. Previously, Mr. Parios was President and Chief Operating Officer of the Ferguson Communication Group, as well as Vice Chairman of the parent company, CommonHealth USA, a leading full-service communications resource for the healthcare industry. Mr. Parios was a partner in Pracon, Inc., a health-care marketing consulting firm from 1982 to 1991, and helped engineer the sale of that firm to Reed-Elsevier in 1989. Over a 20-year period, Mr. Parios held progressively senior positions at Hoffmann-LaRoche, Inc., most recently as Director of New Product Planning and Regulatory Affairs Management. This group established the project management system for drug development at Roche and coordinated developmental activities for such products as Versed®, Rocephin®, Roferon®, Accutane®, Rimadyl®, and Tegison®. Mr. Parios was also a member of the corporate team responsible for domestic and international product and technology licensing activities.

The Board believes that Mr. Parios' 37 years of pharmaceutical industry experience, including product development, marketing and promotion, strategy and tactic development, and managing pharmaco-economic and reimbursement issues, position him to make valuable contributions to the Company as a member of its Board of Directors.

Daniel D. Von Hoff, M.D., F.A.C.P., 62, has been a member of our Board since January 2000. Since February 2002, he has been Physician in Chief and Director of Translational Research at Translational Genomics Research Institute (TGen) in Phoenix, Arizona. He is also Chief Scientific Officer for US Oncology since January 2003 and he is also the Chief Scientific Officer, Scottsdale Clinical Research Institute since November 2005. Dr. Von Hoff's major interest is in the development of new anticancer agents, both in the clinic and in the laboratory. He and his colleagues were involved in the beginning of the development of many of the agents now used routinely, including: mitoxantrone, fludarabine, paclitaxel, docetaxel, gemcitabine, CPT-11, and others. At present, he and his colleagues are concentrating on the development of molecularly targeted therapies. Dr. Von Hoff's laboratory interests and contributions have been in the area of in vitro drug sensitivity testing to individualize treatment for the patient. He and his laboratory are now concentrating on discovery of new targets in pancreatic cancer. Dr. Von Hoff has published more than 531 papers, 129 book chapters, and more than 891 abstracts. Dr. Von Hoff was appointed to President Bush's National Cancer Advisory Board for June 2004 – March 2010. Dr. Von Hoff is the past President of the American Association for Cancer Research, a Fellow of the American College of Physicians, and a member and past board member of the American Society of Clinical Oncology. He is a founder of ILEX™ Oncology, Inc. (acquired by Genzyme). He is founder and the Editor Emeritus of Investigational New Drugs – The Journal of New Anticancer Agents; and, Editor-in-Chief of Molecular Cancer Therapeutics.

The Board believes that Dr. Von Hoff's background in the development of anti-cancer compounds, along with his extensive educational and business background, position him to make valuable contributions to the Company as a member of its Board of Directors.

Douglas G. Watson, 65, has been a member of our Board since April 2002 and was appointed Vice Chairman of our Board and Lead Director in March 2005. From 1999 through the present, Mr. Watson is the founder and has served as Chief Executive Officer of Pittencrieff Glen Associates, a leadership and management-consulting firm. Prior to taking early retirement in 1999, Mr. Watson spent 33 years with Geigy/Ciba-Geigy/Novartis, during which time he held a variety of positions in the United Kingdom, Switzerland and the United States. From 1986 to 1996, he was President of Ciba U.S. Pharmaceuticals Division, and in 1996 he was appointed President & Chief Executive Officer of Ciba-Geigy Corporation. During this ten-year period, Mr. Watson was an active member of the Pharmaceutical Research & Manufacturers Association board in Washington, DC. Mr. Watson became President & Chief Executive Officer of Novartis Corporation in 1997 when the merger of Ciba-Geigy & Sandoz was approved by the Federal Trade Commission. Mr. Watson is currently Chairman of the Board of OraSure Technologies Inc., and Chairman of the Board of Javelin Pharmaceuticals Inc. He also serves on the boards of Dendreon Corporation and BioMimetic Therapeutics Inc.

The Board believes that Mr. Watson's 33 years of experience at Geigy/Ciba-Geigy/Novartis, including being President of Ciba US Pharmaceuticals Division and President & Chief Executive Officer of Ciba-Geigy Corporation, including his experience as a director on several other biopharmaceutical companies position him to make valuable contributions to the Company as a member of its Board of Directors.

#### Recommendation of the Board of Directors

The Board unanimously recommends that you vote "FOR" the election of each nominee as Director.

## PROPOSAL TWO

### Board Authorization To Effect Reverse Stock Split

Our Board of Directors is proposing that our stockholders approve a proposal to authorize our Board of Directors to effect a reverse stock split of all outstanding shares of our Common Stock, at any ratio up to 1-for-100; however, please note that the timing and ratio of any reverse stock split approved by our Board of Directors will require the prior approval of the holders of 66 2/3% of the combined principal amount of the then outstanding 2010 Notes. If this proposal is approved, our Board of Directors would have the authority to effect a reverse stock split at any time before our 2011 annual meeting, subject to the approval of the holders of the 2010 Notes described above. Our Board of Directors believes that approval of a proposal providing the Board of Directors with this generalized grant of authority with respect to setting the split ratio, rather than mere approval of a pre-defined reverse stock split, will give the Board of Directors the flexibility to set the ratio in accordance with current market conditions and therefore allow the Board of Directors to act in the best interests of the Company and our stockholders.

If our stockholders grant the Board of Directors the authority to effect a reverse stock split, we would file a Certificate of Amendment to the Company's Restated Certificate of Incorporation, as amended, with the Delaware Secretary of State to effect the proposed reverse stock split, in substantially the form attached to this proxy statement as Annex A, the text of which may be altered for any changes required by the Delaware Secretary of State and changes deemed necessary or advisable by the Board of Directors. Our Board of Directors has approved and declared advisable the proposed Certificate of Amendment. If the proposed reverse stock split is implemented, then the number of issued and outstanding shares of our Common Stock would be reduced.

### Purpose of Proposed Reverse Stock Split

According to the terms of the Securities Purchase Agreement dated as of March 5, 2010 (the "March 2010 Purchase Agreement") under which we issued and sold the 2010 Notes, if we do not effect a reverse stock split on or prior to September 17, 2010, we will be obligated to pay each investor who is a signatory to the March 2010 Purchase Agreement a cash payment equal to 0.75% of the principal amount of all B Notes and C Notes purchased by such investor for each day from September 18, 2010 until the reverse stock split is effected; provided, however, that we are not obligated to make any such payments in excess of 100% of the principal amount of the B Notes and C Notes purchased by the investors in the March 2010 Financing (as defined below).

Under the March 2010 Purchase Agreement we agreed to issue \$25 million of units (the "2010 Units"), each 2010 Unit consisting of (i) 40% of a B Note, (ii) 40% of a C Note and (iii) 20% of a D Note. The March 2010 Financing closed on March 9, 2010. In connection with the sale of the 2010 Units, we also agreed to issue warrants (the "Debt Warrants") to purchase senior unsecured convertible notes (the "E Notes") in an amount equal to 40% of the purchase price paid for each such 2010 Unit. The issuance of the 2010 Units and Debt Warrants in exchange for \$25 million is referred to herein as the "March 2010 Financing". In addition, in connection with the March 2010 Financing, the holders of two