

CHESAPEAKE ENERGY CORP

Form 424B2

March 03, 2003

[Table of Contents](#)

Filed Pursuant to Rule 424(b)(2)

Registration No. 333-96863

PROSPECTUS SUPPLEMENT TO PROSPECTUS DATED AUGUST 1, 2002

20,000,000 Shares

## Chesapeake Energy Corporation

### Common Stock

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Our common stock is listed on the New York Stock Exchange under the symbol CHK. On February 27, 2003, the last reported sale price was \$8.20 per share.

The underwriters have an option to purchase a maximum of 3,000,000 additional shares from us to cover over-allotments of shares.

Investing in our common stock involves risks. See **Supplemental Risk Factors** beginning on page S-11 of this prospectus supplement and [Risk Factors](#) beginning on page 2 of the accompanying prospectus.

Price to

Underwriting

Proceeds to

Public

Discounts and

Chesapeake

		<u>Commissions</u>	
Per Share	\$8.10	\$0.3645	\$7.7355
Total	\$162,000,000	\$7,290,000	\$154,710,000

Delivery of the shares of common stock will be made on or about March 5, 2003.

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

*Joint Book-Running Managers*

**Credit Suisse First Boston Morgan Stanley Salomon Smith  
Barney**

*Co-Managers*

**Bear, Stearns & Co. Inc. Lehman Brothers**

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**CIBC World Markets Johnson Rice & Company L.L.C. RBC Capital Markets Simmons & Company**

**International**

The date of this prospectus supplement is February 27, 2003.

**Table of Contents**

**TABLE OF CONTENTS**

**PROSPECTUS SUPPLEMENT**

	<b>Page</b>
<u>PROSPECTUS SUPPLEMENT SUMMARY</u>	S-1
<u>SUPPLEMENTAL RISK FACTORS</u>	S-11
<u>FORWARD-LOOKING STATEMENTS</u>	S-15
<u>USE OF PROCEEDS</u>	S-16
<u>CAPITALIZATION</u>	S-17
<u>PRICE RANGE OF COMMON STOCK</u>	S-19
<u>DIVIDEND POLICY</u>	S-19

	<b>Page</b>
<u>MANAGEMENT</u>	S-20
<u>MATERIAL U.S. FEDERAL TAX CONSEQUENCES TO NON-U.S. HOLDERS</u>	S-24
<u>UNDERWRITING</u>	S-26
<u>NOTICE TO CANADIAN RESIDENTS</u>	S-28
<u>LEGAL MATTERS</u>	S-29
<u>EXPERTS</u>	S-29

**PROSPECTUS**

	<b>Page</b>
<u>ABOUT THIS PROSPECTUS</u>	1
<u>ABOUT CHESAPEAKE ENERGY CORPORATION</u>	1
<u>ABOUT THE SUBSIDIARY GUARANTORS</u>	1
<u>RISK FACTORS</u>	2
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	10
<u>FORWARD LOOKING STATEMENTS</u>	10
<u>USE OF PROCEEDS</u>	12

	<b>Page</b>
<u>RATIO OF EARNINGS TO FIXED CHARGES</u>	12
<u>DESCRIPTION OF DEBT SECURITIES</u>	13

<u>DESCRIPTION OF CAPITAL STOCK</u>	22
<u>PLAN OF DISTRIBUTION</u>	32
<u>LEGAL MATTERS</u>	34
<u>EXPERTS</u>	34

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**You should rely only on the information contained in this document or to which we have referred you. We have not authorized anyone to provide you with information that is different. This document may only be used where it is legal to sell these securities. The information in this document may only be accurate on the date of this document.**

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**Table of Contents**

**PROSPECTUS SUPPLEMENT SUMMARY**

*This summary highlights selected information from this prospectus supplement and the accompanying prospectus, but may not contain all information that may be important to you. This prospectus supplement and the accompanying prospectus include specific terms of this offering, information about our business and financial data. We encourage you to read this prospectus supplement and the accompanying prospectus in their entirety before making an investment decision. Unless otherwise indicated, this prospectus supplement assumes no exercise of the underwriters' over-allotment option.*

**Chesapeake**

We are among the ten largest independent natural gas producers in the United States, owning interests in approximately 13,400 producing oil and gas wells (which includes the 1,900 wells we recently acquired from ONEOK and is pro forma for the approximately 800 wells we expect to acquire in the pending El Paso and Vintage acquisitions described below). We estimate that our proved reserves were approximately 2.75 tcf as of December 31, 2002, pro forma for the two pending acquisitions described below and the ONEOK transaction that closed on January 31, 2003. Approximately 91% of our pro forma proved reserves are natural gas, and approximately 89% of our pro forma proved reserves are located in the Mid-Continent region of the United States, which includes Oklahoma, western Arkansas, southwestern Kansas and the Texas Panhandle. We have smaller operations in the Deep Giddings field in Texas, the Tuscaloosa Trend in Louisiana, the Permian Basin region of southeastern New Mexico and in the Williston Basin of North Dakota and Montana.

On February 24, 2003, we announced that we had entered into an agreement to acquire El Paso Corporation's Anadarko Basin assets in western Oklahoma and the Texas Panhandle for \$500 million, which, by our internal estimates, will add approximately 328 bcf to our estimated proved reserves and approximately 67 mmcf to our daily production. We believe we are acquiring a high-quality asset base from El Paso, distinguished by proved reserves that are 96% gas and 71% proved developed and with a reserve-to-production index of approximately 13 years. We believe these properties will provide substantial opportunities for additional drilling and improvement of operational efficiencies. The El Paso properties complement our existing Mid-Continent assets, with 96% of El Paso's proved reserves located in townships where we presently own properties. We expect to close the El Paso acquisition in March 2003. However, there is no assurance that this acquisition will be completed or that our estimates of the reserves being acquired will prove correct.

On February 24, 2003, we also announced that we had entered into an agreement to acquire Vintage Petroleum, Inc.'s assets in the Bray field in southern Oklahoma for \$30 million, which, by our internal estimates, will add approximately 22 bcf to our estimated proved reserves and approximately 3.5 mmcf to our daily production. We believe we are acquiring a high-quality asset base from Vintage, distinguished by proved reserves that are 97% gas and 56% proved developed and with a reserve-to-production index of approximately 17 years. We believe these properties will also provide substantial opportunities for additional drilling and improvement of operational efficiencies. The Vintage properties complement our existing Mid-Continent assets, with 88% of Vintage's proved reserves located in townships where we presently own properties. We expect to close the Vintage acquisition in March 2003. However, there is no assurance that this acquisition will be completed or that our estimates of the reserves being acquired will prove correct.

We intend to use the net proceeds from this offering, together with the net proceeds from the pending private placement of preferred stock and proposed private placement of senior notes described below, to finance the pending El Paso and Vintage acquisitions. Please read "Use of Proceeds."

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Our executive offices are located at 6100 North Western Avenue, Oklahoma City, Oklahoma 73118, and our telephone number is (405) 848-8000.

S-1

## **Table of Contents**

### **Business Strategy**

From our inception in 1989, our business goal has been to create value for our investors by building one of the largest onshore natural gas resource bases in the United States. Since 1998, our business strategy to achieve this goal has been to integrate our aggressive and technologically advanced Mid-Continent drilling program with a Mid-Continent focused producing property consolidation program. We believe this balanced business strategy enables us to achieve greater economies of scale, increase our undrilled acreage inventory and attract and retain talented and motivated land, geoscientific and engineering personnel. We are executing our strategy by:

*Consistently Making High-Quality Acquisitions.* Our acquisition program is focused on small- to medium-sized acquisitions of Mid-Continent natural gas properties that provide high-quality production and significant drilling opportunities. Since January 1, 2000, we have acquired or have signed agreements to acquire \$1.9 billion of such properties (primarily in 17 separate transactions of greater than \$10 million each) at an estimated average cost of \$1.23 per mcfe of proved reserves. Each of these acquisitions either increased our ownership in existing wells or fields or added additional drilling locations in our core Mid-Continent operating area. We believe we are acquiring high-quality assets from El Paso and Vintage, distinguished by proved reserves that are 96% gas and 70% proved developed. We believe these properties provide substantial opportunities for additional drilling and improvement of operational efficiencies. The El Paso and Vintage properties complement our existing Mid-Continent assets, with 96% and 88%, respectively, of their proved reserves located in townships where we presently own properties. Because the Mid-Continent region contains many small companies seeking market liquidity and larger companies seeking to divest non-core assets, we expect to find additional attractive acquisition opportunities in the future.

*Consistently Growing through the Drillbit.* One of our most distinctive characteristics is our ability to increase reserves through the drillbit. We are conducting one of the five most active drilling programs in the United States with our program focused on finding gas in the Mid-Continent region. We currently have 31 rigs drilling on Chesapeake-operated prospects, and we are participating in approximately 50 wells being drilled by others. Our Mid-Continent drilling program is the most active in the region and is supported by our ownership of an extensive land and 3-D seismic base.

*Consistently Focusing on the Mid-Continent.* In this region, we believe we are the largest natural gas producer, the most active driller and the most active acquirer of undeveloped leases and producing properties. We believe the Mid-Continent region, which trails only the Gulf Coast and Rocky Mountain basins in U.S. gas production, has many attractive characteristics. These characteristics include long-lived natural gas properties with relatively predictable decline curves; multi-pay geological targets that decrease drilling risk, resulting in our historical Mid-Continent drilling success rate of over 95%; relatively high natural gas prices, typically only 10 to 20 cents per mmbtu behind Henry Hub index prices; generally lower service costs than in more competitive or more remote basins; and a favorable regulatory environment with virtually no federal land ownership. In addition, we believe the location of our headquarters in Oklahoma City provides us with many competitive advantages over other companies that direct their activities in this region from district offices in Oklahoma City or Tulsa or from out-of-state headquarters.

*Consistently Focusing on Low Costs.* By minimizing operating costs, we have been able to deliver consistently attractive financial returns through all phases of the commodity price cycle. We believe our general and administrative costs and our lease operating expenses are among the lowest in the industry. We believe these low costs are the result of our management's effective cost-control programs, our high-quality asset base and the extensive and competitive services, gas processing and transportation infrastructures in the Mid-Continent. We believe the recent ONEOK acquisition, as well as the pending El Paso and Vintage acquisitions, should reduce our overall operating cost structure per mcfe because

## **Table of Contents**

our production costs per mcf for these properties are expected to be lower than our current production costs per mcf. We believe further operating efficiencies can be achieved through our acquisition of these properties.

*Consistently Improving our Capitalization.* We have made significant progress in improving our balance sheet since the beginning of 1999. Upon the completion of this offering and the pending private placement of preferred stock, we will have increased our stockholders' equity by \$1.5 billion through a combination of earnings and common and preferred equity issuances. As of December 31, 1999, our debt to total capitalization ratio was 129%. As of December 31, 2002, after giving pro forma effect for this offering, our pending private placement of preferred stock, our proposed private placement of senior notes and the application of the net proceeds herefrom and therefrom, this ratio would have been 61%. We plan to continue making the reduction of the debt to total capitalization ratio one of our primary financial goals.

Based on our view that natural gas has become the fuel of choice to meet growing power demand and increasing environmental concerns in the United States, we believe our Mid-Continent focused natural gas development strategy should provide substantial growth opportunities in the years ahead. Although U.S. gas production has declined in each of the past six quarters, we have increased our production in each of those quarters. Our goal is to increase our overall production by 10% to 15% per year, with approximately one-third of this growth projected to be generated through the drillbit and the remainder from acquisitions.

## **Company Strengths**

We believe the following six characteristics distinguish our past performance and future growth potential from other natural gas producers:

*High-Quality Asset Base.* Our producing properties are characterized by long-lived reserves, established production profiles and an emphasis on natural gas. Based upon current production and reserve levels (and pro forma for the El Paso and Vintage acquisitions), our proved reserves-to-production ratio, or reserve life, is approximately 11.8 years. We estimate the El Paso properties have a reserve life of approximately 13 years and the Vintage properties approximately 17 years. In each of our operating areas, our properties are concentrated in locations that enable us to establish substantial economies of scale in drilling and production operations and facilitate the application of more effective reservoir management practices. We intend to continue building our Mid-Continent asset base by concentrating both our drilling and acquisition efforts in this region.

*Low-Cost Producer.* Our high-quality asset base has enabled us to achieve a low operating cost structure. During 2002, our cash operating costs per unit of production were \$0.81 per mcf, which consisted of general and administrative expenses of \$0.10 per mcf, production expenses of \$0.54 per mcf and production taxes of \$0.17 per mcf. We believe this is one of the lowest operating cost structures among publicly traded independent oil and natural gas producers. We believe the El Paso and Vintage acquisitions should lower our cash operating costs because we project these properties will have production expenses of approximately \$0.25 per mcf. In addition, we believe the El Paso and Vintage acquisitions will lower our overall general and administrative expenses because we expect overhead recovery fees from third parties to more than offset any additional general and administrative expenses associated with managing the acquired assets. We currently operate approximately 77% of our proved reserves. This large percentage of operational control provides us with a high degree of operating flexibility and cost control. The El Paso and Vintage acquisitions will add 660 additional operated wells and will increase our ownership in 174 wells we presently operate.

*Successful Acquisition Program.* Our experienced asset acquisition team focuses on adding to our attractive resource base in the Mid-Continent region. This area is characterized by long-lived natural gas reserves, low lifting costs, multiple geological targets that provide substantial drilling potential, favorable basis differentials to benchmark commodity prices, a well-developed oil and gas



## **Table of Contents**

transportation infrastructure and considerable potential for further consolidation of assets. Since 1998 and following the completion of the El Paso and Vintage acquisitions, we will have completed \$2.7 billion in acquisitions at an average cost of \$1.12 per mcf of proved reserves. We believe we are well-positioned to continue this consolidation as a result of our large existing asset base, our corporate presence in Oklahoma, our knowledge and expertise in the Mid-Continent region and current trends in the industry. We believe the El Paso and Vintage acquisitions are examples of the application of our acquisition strategy. These properties have a large percentage of proved developed gas reserves with low operating costs, significant operating and undeveloped drilling upside and are located in areas where currently we have a substantial operating presence. We plan to pursue acquisitions of properties with similar characteristics in the future.

*Large Inventory of Drilling Projects.* During the past 14 years, we believe we have been one of the ten most active drillers in the United States and the most active driller in the Mid-Continent. We believe we have developed a particular expertise in drilling deep vertical and horizontal wells in search of large natural gas accumulations in challenging reservoir conditions. We actively pursue deep drilling targets because of our view that most undiscovered gas reserves in the Mid-Continent will be found at depths below 12,500 feet. In addition, we believe that our large 3-D seismic inventory, much of which is proprietary to Chesapeake, provides us with an advantage over our competitors, which largely prefer to drill shallower development wells. As a result of our aggressive land acquisition strategies and Oklahoma's favorable forced-pooling regulations, we have been able to accumulate an onshore leasehold position of approximately 2.2 million net acres. In addition, our technical teams have identified over 1,500 exploratory and developmental drillsites, representing more than five years of future drilling opportunities at our current rate of drilling. The El Paso and Vintage acquisitions will add to our existing land inventory and we have identified more than 300 additional potential drillsites associated with the properties to be acquired in these pending acquisitions.

*Hedging Program.* We have historically used and intend to continue using hedging programs to reduce the risks inherent in producing oil and natural gas, commodities that are extremely volatile in price. We believe this volatility is likely to continue and may even accelerate in the years ahead. We believe that a producer can use this volatility to its benefit by taking advantage of prices when they exceed historical norms. Over the past two years, we increased our oil and gas revenues by \$201 million through hedging. We currently have gas hedging positions covering 116 bcf for 2003 at an average price of \$4.70 per mcf. In addition, we have 90% of our projected oil production hedged for 2003 at an average NYMEX price of \$27.78 per barrel of oil.

*Entrepreneurial Management.* Our management team formed Chesapeake in 1989 with an initial capitalization of \$50,000. Through the following years, this management team has guided our company through operational challenges and extremes of oil and gas prices to create one of the ten largest independent natural gas producers in the United States with an enterprise value of approximately \$4.0 billion (pro forma for this offering, our pending private placement of preferred stock and our proposed private placement of senior notes). The company's co-founders, Aubrey K. McClendon and Tom L. Ward, have been business partners in the oil and gas industry for 20 years and beneficially own approximately 11.1 million and 12.5 million of our common shares, respectively. Each of Messrs. McClendon and Ward plans to purchase \$2.0 million of common stock in this offering at the price offered to the public.

## **Other Developments**

*Pending Private Placement of Preferred Stock and Proposed Private Placement of Senior Notes.* On February 27, 2003, we priced a private placement of 4,000,000 shares of 6.00% Cumulative Convertible Preferred Stock (plus up to 600,000 additional shares subject to the initial purchasers' option to purchase) at an offering price of \$50 per share. We expect the preferred stock offering to close concurrently with this offering.

**Table of Contents**

and produce \$193.7 million in net proceeds (assuming no exercise of the initial purchasers' option). The closing of this offering is conditioned on the closing of our pending private placement of preferred stock.

On February 25, 2003, we announced a proposed private placement of \$300 million in aggregate principal amount of senior notes. The senior notes are being offered only to qualified institutional buyers in reliance on Rule 144A under the Securities Act and to non-U.S. persons in offshore transactions pursuant to Regulation S under the Securities Act. This prospectus supplement and the accompanying prospectus shall not be deemed to be an offer to sell or a solicitation of an offer to buy any securities offered in the pending preferred stock or proposed senior notes private placements. There is no assurance the senior notes private placement will be completed or, if it is completed, that it will be completed for the amount contemplated. This offering is not conditioned upon the consummation of the proposed private placement of senior notes.

*ONEOK Acquisition and Related Financings.* On January 31, 2003, we completed our acquisition of all the capital stock of ONEOK Resources Company, a wholly owned subsidiary of ONEOK, Inc., for \$300 million in cash. We estimate the ONEOK properties contained approximately 200 bcf of proved reserves as of December 31, 2002, 94% of which were gas and 88% of which were proved developed. The acquisition was funded with proceeds generated from our December 2002 offerings of 23,000,000 shares of common stock sold at \$7.50 per share and \$150 million aggregate principal amount of 7.75% Senior Notes due 2015. The net proceeds of these offerings were approximately \$309.6 million.

## Table of Contents

### **The Offering**

Common stock offered by Chesapeake 20,000,000 shares

Common stock outstanding after this offering 210,782,300 shares

Use of proceeds The net proceeds to us from the sale of the common stock offered hereby are estimated to be \$154.4 million, after deducting underwriting discounts and commissions and the estimated expenses of the offering. We intend to use the net proceeds from this offering, together with the net proceeds from the pending private placement of preferred stock and proposed private placement of senior notes, to finance the pending El Paso and Vintage acquisitions and to repay amounts outstanding under our revolving bank credit facility. Any remaining net proceeds will be used for general corporate purposes, including funding other possible future acquisitions. Please read Use of Proceeds.

New York Stock Exchange symbol CHK

The number of shares of our common stock shown above to be outstanding after this offering is based on 190,782,300 shares outstanding as of February 24, 2003, and excludes:

4,792,529 shares of treasury stock;

27,290,931 shares of common stock issuable upon the exercise of outstanding stock options at a weighted average exercise price of \$4.87 per share and warrants at a weighted average exercise price of \$14.55 per share;

19,467,532 shares of common stock issuable upon conversion of the 2,998,000 shares of our outstanding 6.75% Cumulative Convertible Preferred Stock at a conversion price of \$7.70;

19,442,014 shares of common stock issuable upon conversion of the 4,000,000 shares of our pending issue of 6.00% Cumulative Convertible Preferred Stock at a conversion price of \$10.287; and

4,268,837 shares of common stock reserved for additional grants under our stock option plans.

*Unless we indicate otherwise, the share information in this prospectus supplement assumes the underwriters' option to cover over-allotments is not exercised. See Underwriting.*

### **Risk Factors**

You should carefully consider all of the information in this prospectus supplement. In particular, you should evaluate the specific risk factors set forth in the section entitled "Supplemental Risk Factors" in this prospectus supplement and the section entitled "Risk Factors" in the accompanying prospectus for a discussion of risks relating to an investment in our common stock.

S-6

**Table of Contents****Summary Consolidated Financial Data**

The following tables set forth summary consolidated financial data as of and for each of the three years ended December 31, 2000, 2001 and 2002. These data were derived from our audited consolidated financial statements included in our annual report on Form 10-K for the year ended December 31, 2002, which is incorporated by reference herein. The financial data below should be read together with, and are qualified in their entirety by reference to, our historical consolidated financial statements and the accompanying notes and the Management's Discussion and Analysis of Financial Condition and Results of Operations which are set forth in our annual report on Form 10-K.

	Year Ended December 31,		
	2000	2001	2002
(in thousands, except ratios and per share data)			
<b>Statement of Operations Data:</b>			
Revenues:			
Oil and gas sales	\$ 470,170	\$ 735,529	\$ 655,454
Risk management income (loss)		84,789	(88,018)
Oil and gas marketing sales	157,782	148,733	170,315
<b>Total revenues</b>	<b>627,952</b>	<b>969,051</b>	<b>737,751</b>
Operating costs:			
Production expenses	50,085	75,374	98,191
Production taxes	24,840	33,010	30,101
General and administrative	13,177	14,449	17,618
Oil and gas marketing expenses	152,309	144,373	165,736
Oil and gas depreciation, depletion and amortization	101,291	172,902	221,189
Depreciation and amortization of other assets	7,481	8,663	14,009
<b>Total operating costs</b>	<b>349,183</b>	<b>448,771</b>	<b>546,844</b>
<b>Income from operations</b>	<b>278,769</b>	<b>520,280</b>	<b>190,907</b>
Other income (expense):			
Interest and other income	3,649	2,877	7,340
Interest expense	(86,256)	(98,321)	(111,280)
Loss on investment in Seven Seas			(17,201)
Loss on repurchases of debt			(2,626)
Impairments of investments in securities		(10,079)	
Gain on sale of Canadian subsidiary		27,000	
Gothic standby credit facility costs		(3,392)	
<b>Total other income (expense)</b>	<b>(82,607)</b>	<b>(81,915)</b>	<b>(123,767)</b>
<b>Income before income taxes and extraordinary item</b>	<b>196,162</b>	<b>438,365</b>	<b>67,140</b>
Provision (benefit) for income taxes	(259,408)	174,959	26,854
<b>Income before extraordinary item</b>	<b>455,570</b>	<b>263,406</b>	<b>40,286</b>
Extraordinary item:		(46,000)	

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Loss on early extinguishment of debt, net of applicable income taxes

Net income	455,570	217,406	40,286
Preferred stock dividends			

performance goals and other expectations for the position;

comparison to other executive officers within our company having similar levels of expertise and experience; and

uniqueness of industry skills.

Our Board of Directors has also authorized and implemented a quarterly and annual performance management program, under which quarterly and annual performance goals are determined and set forth in writing at the beginning of each calendar year for the corporation as a whole, and each individual employee. The compensation package components and structure was proposed by management and approved by the Board of Directors at the outset of its formation. These corporate goals specify the achievement of specific scientific, medical and clinical milestones. The Chief Executive Officer proposes goals which are closely tied to the annual corporate goals, the formation of which was approved by our Board of Directors. Annual goals focus on contributions which facilitate the achievement of specific corporate goals and are recognized during each quarter of the calendar year as appropriate. The Chief Executive Officer approves the goals proposed by our other executive officers. Any annual salary increases, quarterly and annual bonuses, and any annual stock option awards granted to our employees are tied to the achievement of the corporate goals, and each individual's contribution to the achievement of specific corporate goals.

## **Table of Contents**

Notwithstanding the above, all compensation decisions for employees, including our Chief Executive Officer, are made in the sole discretion of the Chief Executive Officer as authorized by our Board of Directors. This policy is being reviewed for the remainder of 2012 and going forward to ensure any bonuses and stock option grants are made with the consideration of commercial and operational performance milestones as well as peer company compensation data once a peer group of companies has been identified.

### **Compensation Components**

The components of our compensation package are as follows:

#### **Base Salary & Employment Agreements**

On July 1, 2011, we entered into executive employment agreements with each of H. Craig Dees, Ph.D., Peter R. Culpepper, Timothy C. Scott, and Ph.D., Eric A. Wachter, Ph.D., to serve as our Chief Executive Officer, Chief Financial Officer and Chief Operating Officer, President, and Executive Vice President, respectively. Each agreement provides that such named executive officer will be employed for a one-year term with automatic one-year renewals unless previously terminated pursuant to the terms of the agreement or either party gives notice that the term will not be extended. Each named executive officer's initial base salary is \$500,000 per year and is subject to adjustment by our Board of Directors. Named executive officers are also entitled to participate in any incentive compensation plan or bonus plan adopted by us without diminution of any compensation or payment under the agreement. Named executive officers are entitled to reimbursement for all reasonable out-of-pocket expenses incurred during their performance of services under the agreements. Our named executive officers will be entitled to the payments upon termination of their employment, with or without a change of control, as described under the heading "Potential Payments upon Termination or Change in Control" below. Prior to July 1, 2011, each of our named executive officers was a party to executive employment agreement with substantially similar terms as the agreements entered on July 1, 2011.

We pay salaries to provide fixed compensation for the daily responsibilities of our named executive officers.

#### **Bonus Awards**

Our Board of Directors has adopted a longevity bonus policy to recognize service on our behalf when we reach significant milestones and to award quarterly and annual bonuses at the discretion of our Chief Executive Officer. In 2011, 2010 and 2009, we awarded bonuses for services rendered culminating with continued clinical trial development progress, especially due to the progression of the oncology and dermatology drug product candidates and other development in the clinic, which we refer to as the achievement of specific scientific, medical and clinical milestones. This policy is being reviewed for the remainder of 2012 and going forward to ensure any bonuses and stock option grants are made with the consideration of commercial and operational performance milestones as well as peer company compensation data once a peer group of companies has been identified.

#### **Defined Benefit Plan and 401(k) Profit Sharing Plan and Other Benefits**

Our four employees, including our named executive officers, participated in the Provectus Pharmaceuticals, Inc. Cash Balance Defined Benefit Plan and Trust (the "Plan"), which was established in 2007. Employer contributions to the Plan were \$345,000 in 2009. In September 2010, we terminated the

## **Table of Contents**

Plan for our employees. We transferred approximately \$1,353,000 in assets from the Plan to our 401(k) Profit Sharing Plan, which was formed in the three months ended September 30, 2010. Contributions to the 401(k) Profit Sharing Plan by us are discretionary. Contributions made by us in 2010 totaled approximately \$497,000 and include the amounts originally contributed to the Plan in 2010. Contributions by us in 2011 totaled approximately \$130,000. We maintain broad-based benefits that are provided to all employees, including health insurance, life and disability insurance, dental insurance, and a vacation policy that requires a minimum amount of vacation time used but provides for cash compensation in lieu of vacation taken if appropriate.

## **Long-Term Incentives**

We believe that long-term performance is achieved through an ownership culture that encourages long-term participation by our executive officers in equity-based awards. Our Amended and Restated 2002 Stock Plan, or our 2002 Stock Plan, allowed the grant to employees of stock options, restricted stock, and other equity-based awards. The 2002 Stock Plan expired, by its terms, on April 22, 2012. At the 2012 annual meeting of stockholders, we are asking our stockholders to approve the 2012 Stock Plan, which will replace the 2002 Stock Plan if our stockholders approve the 2012 Stock Plan. If approved by stockholders, the 2012 Stock Plan will allow the grant to employees of stock options, restricted stock, and other equity-based awards. See Proposal 2 Adoption of the Provectus Pharmaceuticals, Inc. 2012 Stock Plan on page 22 of this proxy statement.

Periodic annual grants of options to all of our employees are approved by our Board of Directors, the timing of which is not coordinated with the public release of nonpublic material information.

Our practice is to make periodic annual stock option awards as part of our overall performance management program. Our Board of Directors believes that stock options provide management with a strong link to long-term corporate performance and the creation of stockholder value. We intend that the periodic annual aggregate cumulative total of these awards will not exceed 10% of our fully diluted outstanding common and preferred shares. As is the case when the amounts of base salary and equity awards are determined, a review of all components of the executive officer's compensation is conducted when determining annual option awards to ensure that an executive officer's total compensation conforms to our overall philosophy and objectives. A pool of options is reserved for members of our Board of Directors to receive their annual grant and the pool of options is only increased for employees when approved by our stockholders.

## **Potential Payments upon Termination or Change in Control**

Each of the employment agreements with our named executive officers generally provides that if the named executive officer's employment is terminated prior to a change in control (as defined in the agreement) (1) due to expiration or non-extension of the term by us; or (2) by us for any reason other than for cause (as defined in the agreement), then such named executive officer shall be entitled to receive payments under the agreement as if the agreement were still in effect through the end of the period in effect as of the date of such termination. If the named executive officer's employment (1) is terminated by us at any time for cause, (2) is terminated by the named executive officer prior to, and not coincident with, a change in control or (3) is terminated by named executive officer's death, disability or retirement prior to a change in control, the named executive officer (or his estate, as the case may be) shall be entitled to receive payments under the agreement through the last date of the month of such termination, a pro-rata portion of any incentive or bonus payment earned prior to such termination, any benefits to which he is entitled under the terms and conditions of the pertinent plans in effect at termination and any reasonable expenses incurred during the performance of services under the agreement.



**Table of Contents**

Under each of the employment agreements with our named executive officers, in the event that coincident with or following a change in control, the named executive officer's employment is terminated or the agreement is not extended (1) by action of the named executive officer including his death, disability or retirement or (2) by action of us not for cause, the named executive officer (or his estate, as the case may be) shall be entitled to receive payments under the agreement through the last day of the month of such termination, a pro-rata portion of any incentive or bonus payment earned prior to such termination, any benefits to which he is entitled under the terms and conditions of the pertinent plans in effect at termination and any reasonable expenses incurred during the performance of services under the agreement. In addition, we shall pay to the named executive officer (or his estate, as the case may be), within 30 days following the date of termination or on the effective date of the change in control (whichever occurs later), a lump sum payment in cash in an amount equal to 2.90 times the base salary paid in the preceding calendar year, or scheduled to be paid to such named executive officer during the year of such termination, whichever is greater, plus an additional amount sufficient to pay United States income tax on the lump sum amount paid.

The following table shows the base salary compensation the named executive officers would have received under their employment agreements had a change in control occurred as of December 31, 2011 and had the named executive officers been terminated or their employment agreements not been extended.

<b>Name</b>	<b>Amount</b>
H. Craig Dees, Ph.D.	\$ 1,450,000
Timothy C. Scott, Ph.D.	1,450,000
Eric A. Wachter, Ph.D.	1,450,000
Peter R. Culpepper	1,450,000

Under the terms of our 2002 Stock Plan, which expired by its terms on April 22, 2012, and the proposed 2012 Stock Plan, prior to the occurrence of a change in control (as defined in the 2002 Stock Plan and 2012 Stock Plan), and unless otherwise determined by our Board of Directors, any stock options outstanding on the date such change in control is determined to have occurred that are not yet exercisable and vested on such date shall become fully exercisable and vested. In addition, unless otherwise determined by our Board of Directors, prior to the occurrence of the change in control, all stock options that are vested and exercisable will be terminated in exchange for a cash payment equal to the change in control price reduced by the exercise price of such stock options. As of December 31, 2011, none of our named executive officers had outstanding unvested stock options.

**Consideration and Effect of the Results of the Most Recent Stockholder Advisory Vote on Executive Compensation in Determining Compensation Policies and Decisions**

Our executive compensation policies and practices have remained substantially the same for several years. We believe our programs are effectively designed and working well in achieving our business strategy. In determining executive compensation for 2011, our Board of Directors considered our stockholders' approval of our executive compensation at our June 23, 2011 Annual Meeting of Stockholders. As a result, our Board of Directors continued to apply the same principles and philosophy it has used in previous years in determining executive compensation and will continue to consider stockholder feedback in the future. Nevertheless, in order to be as proactive as possible for the benefit of all stockholders, our compensation policies are being reviewed for the remainder of 2012 and going forward to ensure any bonuses and stock option grants are made with the consideration of commercial and operational performance milestones as well as peer company compensation data once a group of peer companies is identified, in addition to the achievement of specific scientific, medical and clinical milestones.

## **Table of Contents**

### **Compensation-Related Risk Assessment**

SEC regulations require that we assess our compensation policies and practices and determine whether those policies and practices are reasonably likely to result in a material adverse effect upon Provectus. Based upon a review by our Board of Directors and management of our compensation policies and practices, we have determined that our current compensation policies and practices are not reasonably likely to result in a material adverse effect on Provectus. In reaching this conclusion, we considered the multiple performance metrics in the annual incentive plan, combination of short-term and longer-term incentives, using periodic shareholder approved equity grants, stock ownership guidelines for executive officers, clawback of compensation in event of restatement of financial statements in cases of fraud, and a further review of our compensation policies in the future to maximize shareholder value.

### **Conclusion**

Our compensation policies are designed to retain and motivate our employees; namely, our executive officers, and to ultimately reward them for outstanding individual and corporate performance.

### **COMPENSATION COMMITTEE REPORT ON EXECUTIVE COMPENSATION**

Our Board of Directors, acting as the compensation committee, has reviewed and discussed with management the Compensation Discussion and Analysis appearing in this Proxy Statement. Based on the review and discussions noted above, our Board of Directors recommended that the Compensation Discussion and Analysis be included in this Proxy Statement and incorporated by reference into Provectus' Annual Report on Form 10-K for 2011.

H. Craig Dees

Timothy C. Scott

Eric A. Wachter

Kelly M. McMasters

Alfred E. Smith, IV

**Table of Contents****SUMMARY COMPENSATION TABLE**

The table below shows the compensation for services in all capacities we paid during the years ended December 31, 2011, 2010 and 2009 to our Chief Executive Officer, Chief Financial Officer (2011 only) and our two other executive officers (whom we refer to as named executive officers):

Name and Principal Position	Year	Salary	Bonus	Option Awards <sup>(1)</sup>	All Other Compensation <sup>(2)</sup>	Total
H. Craig Dees CEO	2011	\$ 500,000	\$ 1,600,000	\$ 821,022	\$ 57,692	\$ 2,978,714
		\$ 500,000				
	2010		\$ 1,600,000	\$ 927,205	\$ 57,692	\$ 3,084,897
	2009	\$ 500,000		\$ 46,187	\$ 43,269	\$ 1,107,975
			\$ 518,519			
Peter R. Culpepper CFO and COO	2011	\$ 500,000	\$ 1,600,000	\$ 777,546	\$ 57,692	\$ 2,935,238
Timothy C. Scott President	2011	\$ 500,000	\$ 1,600,000	\$ 821,022	\$ 57,692	\$ 2,978,714
		\$ 500,000				
	2010		\$ 1,600,000	\$ 927,205	\$ 57,692	\$ 3,084,897
	2009	\$ 500,000		\$ 46,187	\$ 43,269	\$ 1,107,975
			\$ 518,519			
Eric A. Wachter EVP - Pharmaceuticals	2011	\$ 500,000	\$ 1,600,000	\$ 821,022	\$ 57,692	\$ 2,978,714
		\$ 500,000				
	2010		\$ 1,600,000	\$ 927,205	\$ 57,692	\$ 3,084,897
	2009	\$ 500,000		\$ 46,187	\$ 43,269	\$ 1,107,975
			\$ 518,519			

<sup>(1)</sup> The amounts in the Option Awards column represent grant date fair values computed in accordance with Financial Accounting Standards Board Accounting Standards Codification Topic 718, *Stock Compensation* (FASB ASC Topic 718). The assumptions used in determining the values of option awards are provided in Note 5 to the Consolidated Financial Statements contained in our Form 10-K for the fiscal year ended December 31, 2011. Each named executive officer, other than Mr. Culpepper, is also a member of our Board of Directors. The fair value reflected in the Option Awards column for 2009 includes compensation for service in 2009 as a director of 50,000 stock options granted at an exercise price of \$1.04 on June 19, 2009, which was the fair market price on the date of issuance. The fair value reflected in the Option Awards column for 2010 includes compensation for service in 2010 as a director of 50,000 stock options granted at an exercise price of \$1.16 on June 18, 2010 and for service as an executive officer of 1,000,000 stock options granted at an exercise price of \$1.00 on July 22, 2010. The fair value reflected in the Option Awards column for 2011 includes, for Drs. Dees, Scott and Wachter, compensation for service in 2011 as a director of 50,000 stock options granted at an exercise price of \$1.04 on July 6, 2011 and for service as an executive officer of 1,000,000 stock options granted at an exercise price of \$0.93 on September 6, 2011, and for Mr. Culpepper for service as an executive officer of 1,000,000 stock options granted at an exercise price of \$0.93 on September 6, 2011. All the options vested immediately on the date of grant and expire ten years from the date of grant. For purposes of estimating the fair value of each stock option on the date of grant, we utilized the Black-Scholes option-pricing model which totaled \$43,476 in 2011, \$50,830 in 2010 and \$46,187 in 2009 for the 50,000 options and \$777,546 in 2011 and \$876,375 in 2010 for the 1,000,000 options.

<sup>(2)</sup> Amounts in this column represent unused vacation that was paid out.

**Table of Contents****OUTSTANDING EQUITY AWARDS AT 2011 FISCAL YEAR-END**

The following table shows the number of equity awards outstanding as of December 31, 2011 for our named executive officers. All the options were exercisable as of December 31, 2011.

Name	Number of Shares of Common Stock Underlying Unexercised Options Exercisable	Option Awards	
		Option Exercise Price	Option Expiration Date
H. Craig Dees	18,750	\$ 0.32	5/29/2013
	25,000	\$ 0.60	5/29/2013
	300,000	\$ 1.10	2/26/2014
	25,000	\$ 0.95	5/27/2014
	300,000	\$ 0.64	1/7/2015
	300,000	\$ 0.75	5/25/2015
	25,000	\$ 0.62	5/19/2015
	200,000	\$ 0.94	12/9/2015
	50,000	\$ 1.02	6/23/2016
	1,000,000	\$ 1.02	6/23/2016
	50,000	\$ 1.50	6/21/2017
	50,000	\$ 1.00	6/27/2018
	50,000	\$ 1.04	6/19/2019
	50,000	\$ 1.16	06/18/2020
	1,000,000	\$ 1.00	07/22/2020
	50,000	\$ 1.04	07/6/2021
Peter R. Culpepper	1,000,000	\$ 0.93	09/6/2021
	189,624	\$ 1.10	2/26/2014
	100,000	\$ 1.25	6/28/2014
	33,334	\$ 0.75	5/25/2015
	175,000	\$ 0.94	12/9/2015
	1,000,000	\$ 1.02	6/23/2016
	1,000,000	\$ 1.00	7/22/2020
Timothy C. Scott	1,000,000	\$ 0.93	09/6/2021
	300,000	\$ 1.10	2/26/2014
	25,000	\$ 0.95	5/27/2014
	300,000	\$ 0.64	1/7/2015
	300,000	\$ 0.75	5/25/2015
	25,000	\$ 0.62	5/19/2015
	200,000	\$ 0.94	12/9/2015
	50,000	\$ 1.02	6/23/2016
	1,000,000	\$ 1.02	6/23/2016
	50,000	\$ 1.50	6/21/2017
	50,000	\$ 1.00	6/27/2018
	50,000	\$ 1.04	6/19/2019
	50,000	\$ 1.16	06/18/2020
	1,000,000	\$ 1.00	07/22/2020
	50,000	\$ 1.04	07/6/2021
Eric A. Wachter	1,000,000	\$ 0.93	09/6/2021
	25,000	\$ 0.95	5/27/2014
	14,248	\$ 0.75	5/25/2015
	985,000	\$ 1.02	6/23/2016
	50,000	\$ 1.50	6/21/2017
	50,000	\$ 1.04	6/19/2019

50,000	\$	1.16	06/18/2020
50,000	\$	1.04	07/6/2021
600,000	\$	0.93	09/6/2021

**Table of Contents****OPTION EXERCISES AND STOCK VESTED**

The following table provides information, for our named executive officers, on stock option exercises during 2011, including the number of shares acquired upon exercise and the value realized before payment of any applicable withholding tax and broker commissions.

Name	Option Awards	
	Number of Shares Acquired on Exercise (#)	Value Realized on Exercise (\$)
Dr. Dees		
Mr. Culpepper	133,333	\$ 28,000
Dr. Scott	100,000	\$ 54,000
Dr. Wachter	1,083,333	\$ 26,583

**EQUITY COMPENSATION PLAN INFORMATION**

The following table summarizes share and exercise price information about our equity compensation plans as of December 31, 2011:

Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans <sup>(1)</sup>
Equity compensation plans approved by security holders	14,890,956	\$ 0.98	1,550,000
Equity compensation plans not approved by security holders			
Total	14,890,956	\$ 0.98	1,550,000

- (1) This amount represents shares of common stock available for issuance under the 2002 Stock Plan as of December 31, 2011. Awards available for grant under the 2002 Stock Plan include stock options, stock appreciation rights, restricted stock, long-term performance awards and other forms of equity awards. The 2002 Stock Plan expired by its terms on April 22, 2012. We are asking stockholders to approve the 2012 Stock Plan to replace the 2002 Stock Plan at the 2012 Annual Meeting. See Proposal 2 Adoption of the Provectus Pharmaceuticals, Inc. 2012 Stock Plan on page 22.

**DIRECTOR COMPENSATION**

Three of our five directors, Drs. Dees, Scott and Wachter, are also full-time employees. As discussed above under the heading COMPENSATION DISCUSSION AND ANALYSIS, they are compensated for their service in those roles. Other than the options described below, they are not separately compensated for their service as directors.

None of our directors received cash compensation for their service as a member of our Board of Directors, although each is reimbursed for expenses incurred in fulfilling his duties as a director, including attending meetings.

**Table of Contents**

On the date of each annual meeting of stockholders, each member of our Board of Directors receives options exercisable for shares of common stock. In 2011, each of our directors received 50,000 options.

**Director Compensation Table for 2011**

<b>Name<sup>(1)</sup></b>	<b>Fees Earned or Paid in Cash</b>	<b>Option Awards<sup>(2)</sup></b>	<b>All Other Compensation<sup>(3)</sup></b>	<b>Total</b>
Kelly McMasters	\$	\$ 43,476	\$ 59,000	\$ 102,476
Alfred E. Smith, IV	\$	\$ 41,386	\$ 75,000	\$ 116,386
Stuart Fuchs <sup>(4)</sup>	\$	\$ 43,476	\$ 105,000	\$ 148,476

(1) Our other three directors are also full-time employees whose compensation is discussed above under the heading COMPENSATION DISCUSSION AND ANALYSIS.

(2) A total of 50,000 stock options were granted to each of the above-named directors at an exercise price of \$1.04 for Dr. McMasters and Mr. Fuchs and \$0.99 for Mr. Smith, which was the fair market price on the date of issuance. The options vested immediately on the date of grant, July 6, 2011 for Dr. McMasters and Mr. Fuchs and July 12, 2011 for Mr. Smith and expire on July 6, 2021 for Dr. McMasters and Mr. Fuchs and July 12, 2021 for Mr. Smith. The amounts in the Option Awards column represent grant date fair values computed in accordance with FASB ASC Topic 718. The assumptions used in determining the values of option awards are provided in Note 5 to the Consolidated Financial Statements contained in our Form 10-K for the fiscal year ended December 31, 2011. For purposes of estimating the fair value of each stock option on the date of grant, we utilized the Black-Scholes option-pricing model.

As of December 31, 2011, Mr. McMasters had a total of 200,000 stock options outstanding, and Mr. Smith had a total of 50,000 stock options outstanding.

(3) We paid Dr. McMasters \$59,000 for consulting services performed in 2011. We paid Mr. Smith \$75,000 for consulting services performed in 2011. We paid Mr. Fuchs \$105,000 for consulting services performed in 2011.

(4) Mr. Fuchs served on our Board of Directors until July 12, 2011. Mr. Fuchs was not independent in accordance with Nasdaq's listing standards.

**COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION**

Three members of our Board of Directors, which serves as our compensation committee, are officers of Provectus: Drs. Dees, Scott and Wachter. None of our executive officers has served on the board of directors or on the compensation committee of any other entity any of whose executive officers served on our Board.

## **Table of Contents**

### **PROPOSAL 1**

#### **ELECTION OF DIRECTORS**

##### **Director Nominees**

The persons listed below have been nominated by our Board of Directors to serve as directors for a one-year term expiring at the annual meeting of stockholders occurring in 2013. Each nominee has consented to serve on our Board of Directors. If any nominee were to become unavailable to serve as a director, our Board of Directors may designate a substitute nominee. In that case, the persons named as proxies on the accompanying proxy card will vote for the substitute nominee designated by our Board of Directors.

**H. Craig Dees, Ph.D.**, 60, has served as our Chief Executive Officer and as a member of our Board of Directors since we acquired Provectus Pharmaceuticals, Inc., a privately held Tennessee Corporation, on April 23, 2002. Before joining us, from 1997 to 2002 he served as senior member of the management team of Photogen Technologies, Inc., including serving as a member of our Board of Directors of Photogen from 1997 to 2000. Prior to joining Photogen, Dr. Dees served as a Group Leader at the Oak Ridge National Laboratory, and as a senior member of the management teams of LipoGen Inc., a medical diagnostic company which used genetic engineering technologies to manufacture and distribute diagnostic assay kits for auto-immune diseases, and TechAmerica Group Inc., now a part of Boehringer Ingelheim Vetmedica, Inc., the U.S. animal health subsidiary of Boehringer Ingelheim GmbH, an international chemical and pharmaceutical company headquartered in Germany. He earned a Ph.D. in Molecular Virology from the University of Wisconsin – Madison in 1984.

**Timothy C. Scott, Ph.D.**, 54, has served as our President and as a member of our Board of Directors since we acquired PPI on April 23, 2002. Prior to joining us, Dr. Scott was as a senior member of the Photogen management team from 1997 to 2002, including serving as Photogen's Chief Operating Officer from 1999 to 2002, as a director of Photogen from 1997 to 2000, and as interim CEO for a period in 2000. Before joining Photogen, he served as senior management of Genase LLC, a developer of enzymes for fabric treatment, and held senior research and management positions at Oak Ridge National Laboratory. Dr. Scott earned a Ph.D. in Chemical Engineering from the University of Wisconsin – Madison in 1985.

**Eric A. Wachter, Ph.D.**, 49, has served as our Executive Vice President – Pharmaceuticals and as a member of our Board of Directors since we acquired PPI on April 23, 2002. Prior to joining us, from 1997 to 2002 he was a senior member of the management team of Photogen, including serving as Secretary and a director of Photogen since 1997 and as Vice President and Secretary and a director of Photogen since 1999. Prior to joining Photogen, Dr. Wachter served as a senior research staff member with Oak Ridge National Laboratory. He earned a Ph.D. in Chemistry from the University of Wisconsin – Madison in 1988.

**Kelly M. McMasters, M.D., Ph.D.**, 51, has served as a member of our board of directors since June 9, 2008. Additionally, Dr. McMasters served as chairman of our scientific advisory board. Dr. McMasters received his undergraduate training at Colgate University prior to completing the MD/PhD program at the University of Medicine and Dentistry of New Jersey, Robert Wood Johnson Medical School and Rutgers University. He then completed the residency program in General Surgery at the University of Louisville, and a fellowship in Surgical Oncology at M.D. Anderson Cancer Center in Houston. He is currently the Sam and Lolita Weakley Professor of Surgical Oncology at the University of Louisville in Kentucky, a position he has held since 1996. Since 2005, he has chaired the Department of Surgery at the University of Louisville and also has been Chief of Surgery at University of Louisville Hospital. Since 2000, he has also been Director of the Multidisciplinary Melanoma Clinic of the James Graham Brown Cancer Center at the University of Louisville. His is an active member of the surgery staff



## **Table of Contents**

at the University of Louisville Hospital, Norton Hospital and Jewish Hospital in Louisville. He is on the editorial boards of the Annals of Surgical Oncology, Cancer Therapy and the Journal of Clinical Oncology as well as an ad hoc reviewer for 9 other publications. He holds several honors, chief among them is Physician of the Year awarded by the Kentucky Chapter of the American Cancer Society. He is the author and principal investigator (PI) of the Sunbelt Melanoma Trial, a multi-institutional study involving 3500 patients from 79 institutions across North America and one of the largest prospective melanoma studies ever performed. He has been a PI, Co-PI or local PI in over thirty clinical trials ranging from Phase 1 to Phase 3. For the past 12 years he has also directed a basic and translational science laboratory studying adenovirus-mediated cancer gene therapy funded by the American Cancer Society and the National Institutes of Health (NIH).

**Alfred E. Smith, IV**, 60, has served on our Board of Directors since July 12, 2011. Mr. Smith is currently a Senior Advisor for the Marwood Group, a healthcare advisory and financial services firm, is Senior Advisor for Next Health, is Senior Advisor for K2 Global Consulting, N.A., LLC, and serves on the Boards for the Tony Blair Faith Foundation and Mutual of America Capital Management Corporation, and formerly for Rica Foods, Inc. Smith began his career on Wall Street as an independent broker on the New York Stock Exchange in 1972. He subsequently joined Mitchell-Hutchins as Vice President, served as a Partner of CMJ Partners, and worked for Bear Wagner Specialists LLC as Senior Managing Director, until his retirement in 2006. Mr. Smith attended Villanova University.

## **Transactions with Director Nominees**

We paid Dr. McMasters \$59,000 for consulting services performed in 2011. We paid Mr. Smith \$75,000 for consulting services performed in 2011. We paid Stuart Fuchs, who served as a director until July 2011, \$105,000 for consulting services performed in 2011.

**OUR BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT THE STOCKHOLDERS VOTE FOR EACH OF THE NOMINEES FOR ELECTION TO OUR BOARD OF DIRECTORS NAMED ABOVE.** Each proxy solicited on behalf of our Board of Directors will be voted FOR each of the nominees for election to our Board of Directors unless the stockholder instructs otherwise in the proxy.

**Table of Contents**

**PROPOSAL 2**

**ADOPTION OF THE PROVECTUS PHARMACEUTICALS, INC. 2012 STOCK**

**PLAN**

Effective April 16, 2012, subject to approval of our stockholders, the Board of Directors (the "Board") adopted the 2012 Provectus Pharmaceuticals, Inc. 2012 Stock Plan (the "2012 Stock Plan") for the benefit of eligible officers, directors, employees, and consultants of Provectus. The 2012 Stock Plan replaces the Provectus Pharmaceuticals, Inc. 2002 Stock Plan (the "Prior Plan"). The principal provisions of the 2012 Stock Plan are summarized below. This summary is qualified in its entirety by reference to the full text of the 2012 Stock Plan, which is set forth in Appendix A to this proxy statement.

**General**

The 2012 Stock Plan authorizes our Board to grant the following types of equity-based awards: options to purchase common stock that qualify as incentive stock options under Section 422 of the Internal Revenue Code of 1986, as amended (the "Code"), options to purchase common stock that do not qualify as incentive stock options under Section 422 of the Code, which are referred to as non-qualified stock options, stock appreciation rights ("SARs"), stock purchase rights and long-term performance awards.

**Purpose**

The purpose of the 2012 Stock Plan is to enable us to provide an incentive to officers, directors, employees and consultants whose present and potential contributions are important to our continued success, to afford these individuals the opportunity to acquire a proprietary interest in Provectus, and to enable us to enlist and retain the best available talent for the successful conduct of our business. Upon adoption of the 2012 Stock Plan by our stockholders, no further grants will be made under the Prior Plan.

**Eligible Persons**

Subject to stockholder approval, six of our officers, directors and employees are eligible to participate in the 2012 Stock Plan, as well as consultants to us and our subsidiaries. Under the terms of the 2012 Stock Plan, incentive stock options may be granted only to employees, including those who serve as officers and directors.

**Shares Available for Issuance**

Subject to stockholder approval, we will be authorized to grant equity-based awards under the 2012 Stock Plan for up to 20,000,000 shares of common stock. If an award under the 2012 Stock Plan is forfeited or terminated for any reason, the shares of common stock that were subject to the award will again be available for future distribution under the 2012 Stock Plan. In addition, shares subject to SARs that are exercised for cash will again be available for distribution in connection with future grants of awards under the 2012 Stock Plan.

**Administration**

The 2012 Stock Plan may be administered by one or more administrators (the "Administrator") if our Board of Directors deems division of administration necessary or desirable in order to comply with applicable law. Because our Board of Directors has not appointed any committees and because we have so few employees, at present our Board of Directors is acting as the Administrator of the 2012 Stock Plan.

## **Table of Contents**

The Administrator has the authority to determine the employees, consultants and non-employee directors who may receive awards under the 2012 Stock Plan (the "Participants") and to determine the type, size and terms of each award, to modify the terms of awards, to determine when awards will be granted and paid, and to make all other determinations which it deems necessary or desirable in the interpretation and administration of the Plan.

### **Types of Equity-Based Awards**

**Options.** Options are rights to purchase a specified number of shares of common stock at a price fixed by the Administrator. Each option must be represented by an award agreement that identifies the option as either an "incentive stock option" within the meaning of Section 422 of the Code or a "non-qualified option," which does not satisfy the conditions of Section 422 of the Code. The award agreement also must specify the number of shares of common stock that may be issued upon exercise of the options and set forth the exercise price of the options. The exercise price for options that qualify as incentive stock options may not be less than 100% of the fair market value of the common stock as of the date of grant. The option exercise price may be satisfied in cash, by check, by exchanging shares of common stock owned by the Participant, delivery of a properly executed exercise notice along with sale or loan proceeds, other consideration permitted by applicable laws or by a combination of these methods. Options have a maximum term of ten years from the date of grant. To date, Provectus has not issued any options under the 2012 Stock Plan. The Administrator has broad discretion to determine the terms and conditions upon which options may be exercised, and the Administrator may determine to include additional terms in the award agreements.

**Stock Appreciation Rights.** SARs may be granted in connection with a previously or contemporaneously granted stock option or independently. SARs are rights to receive cash or shares of common stock, or a combination thereof, as the Administrator may determine. The Administrator may provide in the SAR agreement circumstances under which SARs will become immediately exercisable and may accelerate the exercisability of any SAR at any time. To date, Provectus has not issued any SARs under the 2012 Stock Plan.

SARs granted in connection with a stock option are exercisable only when and to the extent that the related stock option is exercisable and expire on the date on which the related stock option expires. If a SAR granted in connection with a stock option is exercised, the related stock option ceases to be exercisable. The amount of the payment for SARs granted in connection with stock options is equal to the excess of (i) the fair market value on the date of exercise of the SAR of the common stock covered by the surrendered portion of the related stock option over (ii) the exercise price of the stock option covered by the surrendered portion of the related stock option.

SARs granted independently of stock options are exercisable as specified in the award agreement. The amount of the payment for SARs granted independently of stock options is equal to the excess of (i) the fair market value of the common stock covered by the exercised portion of the SAR as of the date of such exercise over (ii) the fair market value of the common stock covered by the exercised portion of the SAR as of the last market trading date prior to the date on which the SAR was granted; provided, however, that the Administrator may place limits on the aggregate amount that may be paid upon exercise of a SAR.

**Stock Purchase Rights.** Stock purchase rights are rights to purchase a specified number of shares of common stock which may be restricted in accordance with the terms of the award agreement. The terms of stock purchase rights, including the restrictions and conditions of the offer, the number of shares of common stock that the offeree will be entitled to purchase, the price to be paid, and the time period in which the offeree must accept the offer, will be set forth in writing. Stock purchase rights must be exercised within thirty days from the date the stock purchase right is granted, unless the Administrator

## **Table of Contents**

specifies a shorter period. After a Participant exercises a stock purchase right, he or she will have the rights equivalent to those of a stockholder, including the right to vote such shares and to receive dividends and other distributions thereon, subject to the restrictions set forth in the 2012 Stock Plan and in the award agreement. If shares of common stock are issued as restricted stock, they will be legended and may not be sold, transferred, or disposed of until the restrictions have lapsed. The Administrator has broad discretion as to the specific terms and conditions of each award, including applicable rights upon certain terminations of employment and restrictions on the transferability of stock purchased pursuant to stock purchase rights. To date, Provectus has not issued any stock purchase rights under the 2012 Stock Plan.

**Long-Term Performance Awards.** Long-term performance awards entitle the grantee to future payments based upon the achievement of employment or pre-established long-term performance factors. The award agreement for a long-term performance award will establish maximum and minimum performance targets to be achieved and the period in which the targets must be achieved. Thereafter, the Participant will be entitled to a payment in cash or shares of common stock upon the achievement of the performance targets within the performance periods. The Administrator has discretion to determine the Participants to whom long-term performance awards are to be made, the times in which such awards are to be made, the size of such awards, and all other conditions of such awards, including any restriction, deferral periods, or performance requirements. To date, Provectus has not issued any long-term performance awards under the 2012 Stock Plan.

## **Adjustments upon Change of Capitalization, Dissolution, Merger, Asset Sale or Change of Control**

**Changes in Capitalization.** Subject to any required action by our stockholders, the number of shares of common stock covered by outstanding stock options, SARs, stock purchase rights or long-term performance awards, and the number of shares of common stock which have been authorized for issuance under the 2012 Stock Plan but as to which no award has been granted or which have been returned to the 2012 Stock Plan upon cancellation or expiration of an award, as well as the price per share of common stock covered by each such outstanding award, will be proportionately adjusted for any increase or decrease in the number of issued shares of common stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the common stock, or any other increase or decrease in the number of issued shares of common stock effected without receipt of consideration by us.

**Dissolution or Liquidation.** In the event of the proposed dissolution or liquidation of us, to the extent that stock options, SARs, stock purchase rights or long-term performance awards have not been previously exercised, they will terminate immediately prior to the consummation of such proposed action. Our Board of Directors may declare that any such award shall terminate as of a date fixed by our Board and give each Participant the right to exercise his or her award, including awards that would not otherwise be exercisable.

**Merger or Asset Sale.** Subject to the treatment of awards upon a change in control discussed below, in the event of a merger of Provectus with or into another corporation, or the sale of substantially all of our assets, each outstanding award will be assumed or an equivalent award will be substituted by the successor corporation or a parent or subsidiary of the successor corporation. In the event that the successor corporation does not agree to assume the award or to substitute an equivalent award, the Administrator will, in lieu of such assumption or substitution, provide for the Participant to have the right to exercise the award, awards that would not otherwise be exercisable.

**Change in Control.** In the event of a change in control (as defined in the 2012 Stock Plan) of Provectus, except as otherwise determined by our Board of Directors, (i) prior to the occurrence of the change in control, any outstanding awards on the date of such change in control that are not yet exercisable and vested on such date will become fully exercisable and vested, and (ii) prior to the occurrence of the change in control, all outstanding awards to the extent they are exercisable and vested, including accelerated awards will be terminated in exchange for a cash payment equal to the change in control price (as defined in the 2012 Stock Plan), reduced by the exercise price, if any, of such awards.

## **Table of Contents**

### **Transferability**

Awards may not be sold, pledged, assigned, hypothecated, transferred or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Participant, only by the Participant.

### **Amendment and Termination**

Our Board of Directors may amend, alter, suspend or terminate the 2012 Stock Plan at any time. Any amendment to the 2012 Stock Plan must be approved by the stockholders to the extent such approval is required by the terms of the 2012 Stock Plan, the rules and regulations of the Securities and Exchange Commission, or the rules and regulations of any exchange upon which Provectus stock is listed, if any. However, no amendment, alteration, suspension or termination of the 2012 Stock Plan may impair the rights of any Participant, unless mutually agreed in writing by the Participant and the Administrator.

### **Federal Income Tax Consequences**

The following is a summary of the material anticipated United States federal income tax consequences of the 2012 Stock Plan to Provectus and the Participants. The summary is based on current federal income tax law, which is subject to change, and does not address state, local, or foreign tax consequences or considerations.

**Stock Options.** The grant of a stock option that does not have a readily ascertainable value will not result in taxable income at the time of the grant for either Provectus or the Participant. Upon exercising an incentive stock option, the Participant will have no taxable income (except that the alternative minimum tax may apply) and Provectus will receive no deduction. Upon exercising a nonqualified stock option, the Participant will recognize ordinary income in the amount by which the fair market value of common stock at the time of exercise exceeds the option exercise price, and Provectus will be entitled to a deduction for the same amount. The Participant's income is subject to withholding tax as wages.

The tax treatment of the Participant upon a disposition of shares of common stock acquired through the exercise of an option is dependent upon the length of time that the shares have been held and on whether such shares were acquired by exercising an incentive stock option or a nonqualified stock option. If an employee exercises an incentive stock option and holds the shares for at least two years from the date of grant and at least one year after exercise, then any gain or loss realized based on the exercise price of the option will be treated as long-term capital gain or loss. Shares obtained upon exercise of an incentive stock option that are sold without satisfying these holding periods will be treated as shares received from the exercise of a nonqualified stock option. Generally, upon the sale of shares obtained by exercising a nonqualified stock option, the Participant will treat the gain realized on the sale as a capital gain. Generally, there will be no tax consequence to Provectus in connection with the disposition of shares of common stock acquired under a stock option, except that Provectus may be entitled to a deduction in the case of a disposition of shares acquired upon exercise of an incentive stock option before the applicable holding periods have been satisfied.

**Stock Appreciation Rights.** The grant of a SAR will not result in taxable income to the Participant at the time of the award. Upon exercising the SAR, the Participant will recognize ordinary income in the amount by which the fair market value of the common stock or the amount of cash, as the case may be, exceeds the SAR exercise price, if any. Provectus will be entitled to a deduction for the same amount.

## **Table of Contents**

The Participant's income is subject to withholding tax as wages. Upon a disposition of shares of common stock acquired through the exercise of the SAR, the Participant may recognize capital gain or loss, the character of which is dependent upon the length of time that the shares have been held. Generally, there will be no tax consequences to Provectus in connection with the disposition of shares of common stock acquired under a SAR.

**Stock Purchase Rights.** The federal income tax consequences of awards of stock purchase rights will depend on the facts and circumstances of each award, and in particular, the nature of the restrictions imposed with respect to the common stock which is the subject of the award. In general, if the common stock is subject to a substantial risk of forfeiture, i.e., limited in terms of transferability, a taxable event occurs only when the risk of forfeiture lapses. At that time, the Participant will recognize ordinary income to the extent of the excess of the fair market value of the common stock on the date the risk ceases over the amount that the Participant paid for the shares, if any, and Provectus will be entitled to a deduction in the same amount. Prior to the lapse of restrictions on the restricted stock, any dividends on such shares will be paid currently and will be treated as ordinary compensation income to the Participant, subject to withholding. Subsequent to the determination and satisfaction of the ordinary income tax consequences, any further gain or loss realized on the subsequent disposition of such stock will be a long- or short-term capital gain or loss depending upon the applicable holding period.

Alternatively, within thirty days after transfer of the restricted stock, a Participant may make an election under Section 83(b) of the Code, which would allow the Participant to include in income in the year that the restricted common stock is awarded an amount equal to the fair market value of the restricted stock on the date of such award determined as if the restricted common stock were not subject to restrictions. Provectus is then entitled to a compensation-paid deduction in the same amount. The election is required to be written and delivered to Provectus within that thirty-day period. The Participant is also required to confirm the election with the filing of the Participant's federal income tax return for the year in which the award is made. Failure to satisfy either of these requirements may invalidate the intended election. In the event of a valid Section 83(b) election, the Participant will not recognize income at the time that the restrictions actually lapse. In addition, any appreciation or depreciation in the value of the stock and any dividends paid on the stock after a valid Section 83(b) election are not deductible by Provectus as compensation paid. For purposes of determining the period of time that the Participant holds the restricted stock, the holding period begins on the award date when a Participant makes a Section 83(b) election. Further, any dividends received after the Section 83(b) election is made will constitute ordinary dividend income to the Participant and will not be deductible by Provectus. If the restricted stock subject to the Section 83(b) election is subsequently forfeited, however, the Participant is not entitled to a deduction or tax refund.

**Long-Term Performance Awards.** A Participant will realize ordinary compensation income upon receipt of a long-term performance award equaling the amount of cash or the current market value of the common stock received. Wage withholding rules will apply. Provectus will be entitled to a deduction at the time of payment in an amount equal to such income. Upon subsequent disposition of any shares of common stock received, any gain or loss will be a long- or short-term gain or loss, depending upon the applicable holding period.

## **New Plan Benefits**

Because the awards to Participants may vary from year to year at the Board's discretion and any grant of Long Term Performance Award is contingent on attaining the related performance objectives, the amount payable to eligible Participants under the 2012 Stock Plan for any calendar year during which the 2012 Stock Plan is in effect cannot be determined.

**Table of Contents**

**Award Grants**

The grant of awards under the 2012 Stock Plan is at the discretion of the Administrator. The Administrator has not yet determined any additional awards that will be granted under the 2012 Stock Plan to Participants. See EXECUTIVE COMPENSATION Summary Compensation Table and DIRECTOR COMPENSATION Director Compensation Table for 2011 for information regarding the stock options granted in 2011 to our named executive officers and directors.

**OUR BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT STOCKHOLDERS VOTE FOR THE APPROVAL OF PROPOSAL 2 TO ADOPT OUR 2012 STOCK PLAN.** Each proxy solicited on behalf of our Board of Directors will be voted FOR the approval of our 2012 Stock Plan unless the stockholder instructs otherwise in the proxy.

**Table of Contents**

**PROPOSAL 3**

**ADVISORY VOTE TO APPROVE THE COMPENSATION OF OUR  
NAMED EXECUTIVE OFFICERS**

As required pursuant to Section 14A of the Securities Exchange Act, we are submitting for stockholder advisory vote a resolution to approve the compensation paid to our named executive officers, as disclosed pursuant to the compensation disclosure rules of the Securities and Exchange Commission, including the compensation tables and related compensation discussion and analysis contained in this Proxy Statement.

At our 2011 annual meeting of stockholders, we provided our stockholders with the opportunity to cast an advisory vote to indicate if we should hold an advisory vote on the compensation of our named executive officers every one, two or three years, with our Board of Directors recommending an annual advisory vote. Because our Board of Directors views an annual vote as a good corporate governance practice and because more than 93% of the votes cast on the proposal at the 2011 annual meeting were in favor of an annual advisory vote, we are again asking our stockholders to approve the compensation of our named executive officers, as disclosed pursuant to the compensation disclosure rules of the Securities and Exchange Commission, including the compensation tables and related compensation discussion and analysis contained in this Proxy Statement.

Accordingly, the following resolution will be submitted for stockholder approval at the annual meeting:

RESOLVED, that the compensation paid to the Company's named executive officers, as disclosed as disclosed pursuant to the compensation disclosure rules of the Securities and Exchange Commission, including the compensation tables and related compensation discussion and analysis contained in this Proxy Statement, is hereby APPROVED .

The advisory vote on the compensation of our named executive officers is non-binding. The approval or disapproval of the resolution approving our executive compensation by our stockholders will not require our Board of Directors to take any action regarding our executive compensation practices. The final decision on the compensation and benefits of our named executive officers and whether, and if so, how, to address stockholder disapproval remains with our Board of Directors.

Our Board of Directors believes that it is in the best position to consider the extensive information and factors necessary to make independent, objective, and competitive compensation recommendations and decisions that are in our best interest and the best interest of our stockholders.

Our Board of Directors values the opinions of our stockholders as expressed through their votes and other communications. Although the resolution is non-binding, our Board of Directors will carefully consider the outcome of the advisory vote to approve the compensation of our named executive officers and those opinions when making future compensation decisions.

**OUR BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT YOU VOTE *FOR* THE APPROVAL OF THE COMPENSATION OF OUR NAMED EXECUTIVE OFFICERS.** Each proxy solicited on behalf of our Board of Directors will be voted *FOR* the approval of the compensation of our named executive officers unless the stockholder instructs otherwise in the proxy.



**Table of Contents****PROPOSAL 4****RATIFICATION OF SELECTION OF INDEPENDENT AUDITOR****General**

Our Board of Directors has selected BDO USA as the independent auditor to perform the audit of our consolidated financial statements for 2012. BDO USA has audited our consolidated financial statements since 2002. BDO USA is a registered public accounting firm.

Our Board of Directors is asking the stockholders to ratify the selection of BDO USA as our independent auditor for 2012. Although not required by law or our bylaws, our Board of Directors is submitting the selection of BDO USA to the stockholders for ratification as a matter of good corporate practice. Even if the selection is ratified, our Board of Directors, in its discretion, may select a different registered public accounting firm at any time during the year if it determines that such a change would be in the best interests of us and our stockholders.

Representatives of BDO USA are expected to be present at the annual meeting. They will have an opportunity to make a statement if they desire and will be available to respond to appropriate questions from our stockholders.

**OUR BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT YOU VOTE *FOR* THE RATIFICATION OF THE SELECTION OF BDO USA, LLP AS OUR INDEPENDENT AUDITOR FOR 2012.** Each proxy solicited on behalf of our Board of Directors will be voted *FOR* the ratification of the selection of BDO USA as our independent auditor for 2012 unless the stockholder instructs otherwise in the proxy. If the stockholders do not ratify the selection, the matter will be reconsidered by our Board of Directors.

**Audit and Non-Audit Services**

Our Board of Directors is directly responsible for the appointment, compensation, and oversight of our independent auditor. It is the policy of our Board of Directors to pre-approve all audit and non-audit services provided by our independent registered public accountants. Our Board of Directors has considered whether the provision by BDO USA of services of the varieties described below is compatible with maintaining the independence of BDO USA, LLP. In view of the fact that BDO USA provides no services to us other than audit services, our Board of Directors believes that such services do not jeopardize the independence of BDO USA.

The table below sets forth the aggregate fees we paid to BDO USA for audit and non-audit services provided to us in 2011 and 2010.

<b>Fees</b>	<b>2011</b>	<b>2010</b>
Audit Fees	\$ 203,000	\$ 208,000
Audit-Related Fees		
Tax Fees:		
All Other Fees		
<b>Total</b>	<b>\$ 203,000</b>	<b>\$ 208,000</b>

**Table of Contents**

In the above table, in accordance with the SEC’s definitions and rules, “audit fees” are fees for professional services for the audit of a company’s financial statements included in the annual report on Form 10-K, for the review of a company’s financial statements included in the quarterly reports on Form 10-Q, and for services that are normally provided by the accountant in connection with statutory and regulatory filings or engagements; “audit-related fees” are fees for assurance and related services that are reasonably related to the performance of the audit or review of a company’s financial statements; “tax fees” are fees for tax compliance, tax advice, and tax planning; and “all other fees” are fees for any services not included in the first three categories.

**Table of Contents**

**OTHER INFORMATION CONCERNING MANAGEMENT**

**Executive Officers**

Drs. Dees, Scott, and Wachter serve as our Chief Executive Officer, President, and Executive Vice President — Pharmaceuticals, respectively. Information about their business experience is set forth above under the heading, PROPOSAL 1 ELECTION OF DIRECTORS — Director Nominees.

In addition, Peter R. Culpepper, 52, serves as our Chief Financial Officer and Chief Operating Officer and was appointed in February 2004. Previously, Mr. Culpepper served as Chief Financial Officer for Felix Culpepper International, Inc. from 2001 to 2004; was a Registered Representative with AXA Advisors, LLC from 2002 to 2003; has served as Chief Accounting Officer and Corporate Controller for Neptec, Inc. from 2000 to 2001; has served in various Senior Director positions with Metromedia Affiliated Companies from 1998 to 2000; has served in various Senior Director and other financial positions with Paging Network, Inc. from 1993 to 1998; and has served in a variety of financial roles in public accounting and industry from 1982 to 1993. He earned a Masters in Business Administration in Finance from the University of Maryland — College Park in 1992. He earned an AAS in Accounting from the Northern Virginia Community College — Annandale, Virginia in 1985. He earned a BA in Philosophy from the College of William and Mary — Williamsburg, Virginia in 1982. He is a licensed Certified Public Accountant in both Tennessee and Maryland.

**Code of Ethics**

Our Board of Directors has adopted a code of ethics that applies to our principal executive officer and principal financial officer, or persons performing similar functions. The code of ethics contains written standards that are reasonably designed to deter wrongdoing and to promote: (1) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships; (2) full, fair, accurate, timely, and understandable disclosure in reports and documents that we file with, or submit to, the SEC and in other public communications made by us; (3) compliance with applicable governmental laws, rules and regulations; (4) the prompt internal reporting of violations of the code to an appropriate person or persons identified in the code; and (5) accountability for adherence to the code. The code of ethics is available without charge upon request from our Secretary, Provectus Pharmaceuticals, Inc., 7327 Oak Ridge Highway, Knoxville, TN 37931.

**OTHER MATTERS**

As of the date hereof, our Board of Directors knows of no business that will be presented at the meeting other than the proposals described in this Proxy Statement. If any other proposal properly comes before the stockholders for a vote at the meeting, the proxy holders will vote the shares of common stock represented by proxies that are submitted to us in accordance with their best judgment.

**Table of Contents**

**ADDITIONAL INFORMATION**

**Solicitation of Proxies**

We will solicit proxies on behalf of our Board of Directors by mail, telephone, facsimile, or other electronic means or in person. We have retained Morrow & Co., LLC to assist us in the solicitation of proxies for the annual meeting. Morrow & Co., LLC will receive a base fee of \$7,500, plus reasonable expenses and fees, for these services. We will pay the proxy solicitation costs. We will supply copies of the proxy solicitation materials to brokerage firms, banks, and other nominees for the purpose of soliciting proxies from the beneficial owners of the shares of common stock held of record by such nominees. We request that such brokerage firms, banks, and other nominees forward the proxy solicitation materials to the beneficial owners, and we will reimburse them for their reasonable expenses.

**Mailing Address of Principal Executive Office**

The mailing address of our principal executive office is Provectus Pharmaceuticals, Inc., 7327 Oak Ridge Highway, Knoxville, Tennessee 37931.

**Stockholder Proposals for Including in Proxy Statement for 2013 Annual Meeting of Stockholders**

To be considered for inclusion in our proxy statement for the 2013 Annual Meeting of Stockholders, a stockholder proposal must be received by us no later than the close of business on December 31, 2012. Stockholder proposals must be sent to Secretary, Provectus Pharmaceuticals, Inc., 7327 Oak Ridge Highway, Knoxville, Tennessee 37931. We will not be required to include in our proxy statement any stockholder proposal that does not meet all the requirements for such inclusion established by the SEC's proxy rules and Nevada corporate law.

**Other Stockholder Proposals for Presentation at 2013 Annual Meeting of Stockholders**

For any proposal that is not submitted for inclusion in our proxy statement for the 2013 Annual Meeting of Stockholders, but is instead sought to be presented directly at the meeting, the SEC's rules permit management to vote proxies in its discretion if: (i) we receive notice of the proposal before the close of business on March 16, 2013, and advise stockholders in the proxy statement about the nature of the matter and how management intends to vote on such matter; or (ii) we do not receive notice of the proposal prior to the close of business on March 16, 2013. Notices of intention to present proposals at the 2013 Annual Meeting of Stockholders should be sent to Secretary, Provectus Pharmaceuticals, Inc., 7327 Oak Ridge Highway, Knoxville, Tennessee 37931.

**By Order of our Board of Directors**

Knoxville, Tennessee  
April 30, 2012

**PETER R. CULPEPPER**

*Secretary*

**Table of Contents**

**APPENDIX A**

**PROVECTUS PHARMACEUTICALS, INC.**

**2012 STOCK PLAN**

**1. Purpose of the Plan**

The purpose of the Provectus Pharmaceuticals, Inc. 2012 Stock Plan is to enable the Corporation to provide an incentive to Officers, Directors, Employees, and Consultants whose present and potential contributions are important to the continued success of the Corporation, to afford these individuals the opportunity to acquire a proprietary interest in the Corporation, and to enable the Corporation to enlist and retain in its employment the best available talent for the successful conduct of its business. It is intended that this purpose will be affected through the granting of (a) Options, (b) Stock Appreciation Rights, (c) Stock Purchase Rights, and (d) Long-Term Performance Awards. No Award under this Plan (or modification thereof) shall provide for deferral of compensation that does not comply with Section 409A of the Code unless the Committee, at the time of grant, specifically provides that the Award is not intended to comply with Section 409A of the Code. Notwithstanding any provision of this Plan to the contrary, if one or more of the payments or benefits received or to be received by a Participant pursuant to an Award would cause the Participant to incur any additional tax or interest under Section 409A of the Code, the Committee may reform such provision to maintain to the maximum extent practicable the original intent of the applicable provision without violating the provisions of Section 409A of the Code.

**2. Definitions**

As used herein, the following definitions shall apply:

- (a) **Administrator** means the Board or such of its Committees as shall be administering the Plan, in accordance with Section 5 of the Plan.
- (b) **Applicable Laws** means the legal requirements relating to the administration of stock option plans under applicable securities laws, Nevada corporate law and the Code.
- (c) **Award Agreement** means a written agreement between the Corporation and a Participant that evidences the specific terms and conditions of an individual Option or Right, subject to the general terms and conditions of the Plan.
- (d) **Board** means the Board of Directors of the Corporation.
- (e) **Change in Control** means the occurrence of any of the following:
  - (i) When any person, as such term is used in Sections 13(d) and 14(d) of the Exchange Act (other than the Corporation, a Subsidiary or a Corporation employee benefit plan, including any trustee of such plan acting as trustee) is or becomes the beneficial owner (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Corporation representing fifty percent (50%) or more of the combined voting power of the Corporation's then outstanding securities entitled to vote generally in the election of directors; or
  - (ii) The stockholders of the Corporation approve a merger or consolidation of the Corporation with any other corporation, other than a merger or consolidation which would result in the voting securities of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least fifty

**Table of Contents**

percent (50%) of the total voting power represented by the voting securities of the Corporation or such surviving entity outstanding immediately after such merger or consolidation, or the stockholders of the Corporation approve an agreement for the sale or disposition by the Corporation of all or substantially all the Corporation's assets; or

(iii) A change in the composition of the Board of Directors of the Corporation, as a result of which fewer than a majority of the directors are Incumbent Directors.

(f) Change in Control Price means any one of the following, as determined by the Board:

(i) the highest Fair Market Value of a Share within the 60-day period immediately preceding the date of determination of the Change in Control Price by the Board (the "60-Day Period"); or

(ii) the highest price paid or offered per Share, as determined by the Board, in any bona fide transaction or bona fide offer related to the Change in Control of the Corporation, at any time within the 60-Day Period or such lower price as the Board, in its discretion, determines to be a reasonable estimate of the fair market value of a Share.

(g) Code means the Internal Revenue Code of 1986, as amended.

(h) Committee means a Committee appointed by the Board in accordance with Section 5 of the Plan.

(i) Common Stock means the common shares, \$.001 par value, of the Corporation.

(j) Corporation means Provectus Pharmaceuticals, Inc., a Nevada corporation.

(k) Consultant means any person, including an advisor, engaged by the Corporation or a Parent or Subsidiary to render services and who is compensated for such services, and which services are in no way related to a capital raising transaction.

(l) Continuous Status as an Employee or Consultant means that the employment or consulting relationship is not interrupted or terminated by the Corporation, any Parent or Subsidiary. Continuous Status as an Employee or Consultant shall not be considered interrupted in the case of: (i) any leave of absence approved by the Board, including sick leave, military leave, or any other personal leave; provided, however, that for purposes of Incentive Stock Options, any such leave may not exceed 90 days, unless reemployment upon the expiration of such leave is guaranteed by contract (including certain Corporation policies) or statute; or (ii) transfers between locations of the Corporation or between the Corporation, its Parent, its Subsidiaries or its successor.

(m) Director means a member of the Board.

(n) Disability means total and permanent disability as defined in Section 22(e)(3) of the Code.

(o) Employee means any person, including Officers and Directors, employed by the Corporation or any Parent or Subsidiary of the Corporation. Neither service as a Director nor payment of a director's fee by the Corporation shall be sufficient to constitute employment by the Corporation.

(p) Exchange Act means the Securities Exchange Act of 1934, as amended.

**Table of Contents**

(q) Fair Market Value means, as of any date, the value of Common Stock determined as follows:

(i) the average on the applicable date of the high and low prices of a share of Common Stock on the principal national securities exchange on which shares of Common Stock then are trading, or, if shares were not traded on such date, then on the next preceding date on which a trade occurred; or

(ii) if shares of Common Stock are not traded on a national securities exchange but are listed on the Nasdaq Stock Market ( Nasdaq ), the last reported sale price on such date as reported by Nasdaq; or

(iii) if shares of Common Stock are not traded on a national securities exchange and are not listed on Nasdaq, the closing bid price (or average bid prices) last quoted on such date by an established quotation service for over-the-counter securities; or

(iv) if shares of Common Stock are not traded on such date, the fair market value of a share of Common Stock as established by the Board acting in good faith and taking into consideration all factors which it deems appropriate, including recent sale or offer prices for Common Stock in private arm s-length transactions.

(r) Incentive Stock Option means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(s) Incumbent Directors means Directors who either (i) are Directors as of the date the Plan is approved by the stockholders of the Corporation, or (ii) are elected, or nominated for election, to the Board of Directors of the Corporation with the affirmative votes of at least a majority of the Incumbent Directors at the time of such election or nomination (but shall not include an individual whose election or nomination is in connection with an actual or threatened proxy contest relating to the election of directors to the Corporation).

(t) Long-Term Performance Award means an award under Section 9 of the Plan, evidenced by an Award Agreement, that permits the recipient to receive a cash or stock bonus (as determined by the Administrator) upon satisfaction of such Corporation, Subsidiary and/or individual performance factors or other criteria as the Administrator may deem appropriate and set out in the individual Award Agreement.

(u) Nonqualified Stock Option means any Option that is not an Incentive Stock Option.

(v) Officer means a person who is an officer of the Corporation within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(w) Option means a stock option granted pursuant to the Plan.

(x) Option Exchange Program means a program whereby outstanding options are surrendered in exchange for options with a lower exercise price.

(y) Optioned Stock means the Common Stock subject to an Option or Right.

(z) Parent means a parent corporation, whether now or hereafter existing, as defined in Section 424(e) of the Code.

(aa) Participant means an Officer, Director, Employee or Consultant who holds an outstanding Option or Right.

(bb) Plan means the Provectus Pharmaceuticals, Inc. Amended and Restated 2002 Stock Plan, as amended from time to time.

## **Table of Contents**

- (cc) Restricted Stock means shares of Common Stock acquired pursuant to a grant of Stock Purchase Rights under Section 8 of the Plan and subject to an Award Agreement.
- (dd) Right means and includes SARs, Long-Term Performance awards and Stock Purchase Rights granted pursuant to the Plan.
- (ee) Rule 16b-3 means Rule 16b-3 of the Exchange Act or any successor rule thereto, as in effect when discretion is being exercised with respect to the Plan.
- (ff) SAR means a stock appreciation right granted pursuant to Section 7.2 of the Plan.
- (gg) Share means a share of the Common Stock, as adjusted in accordance with Section 12 of the Plan.
- (hh) Stock Purchase Right means the right to purchase Common Stock pursuant to Section 8 of the Plan, as evidenced by an Award Agreement.
- (ii) Subsidiary means a subsidiary corporation, whether now or hereafter existing, as defined in Section 424(f) of the Code.

### **3. Eligibility**

Nonqualified Stock Options and Rights may be granted to Employees and Consultants, including Officers and Directors who are Employees or Consultants, and to Directors who are not Employees. Incentive Stock Options may be granted only to Employees. If otherwise eligible, an Employee, Consultant or Director who has been granted an Option or Right may be granted additional Options or Rights.

### **4. Stock Subject to the Plan**

The total number of Shares reserved and available for issuance under the Plan is 20,000,000 Shares. If any Shares that have been optioned under an Option cease to be subject to such Option (other than through exercise of the Option), or if any Option or Right granted hereunder is forfeited, or any such award otherwise terminates prior to the issuance of Common Stock to the participant, the Shares that were subject to such Option or Right shall again be available for distribution in connection with future Option or right grants under the Plan. In addition, Shares that have been subject to SARs exercised for cash, whether granted in connection with or independently of options, shall again be available for distribution under the Plan. Shares that have actually been issued under the Plan, whether upon exercise of an Option or Right, shall not in any event be returned to the Plan and shall not become available for future distribution under the Plan, except that if Shares of Restricted Stock were repurchased by the Corporation at their original purchase price, and the original purchaser of such Shares did not receive any benefits of ownership of such Shares, such Shares shall become available for future grant under the Plan. For purposes of the preceding sentence, voting rights shall not be considered a benefit of Share ownership.

### **5. Administration**

#### **5.1. Composition of Administrator**

(a) Multiple Administrative Bodies. If required or permitted by Rule 16b-3 and Applicable Laws, the Plan may (but need not) be administered by different administrative bodies with respect to (i) Directors who are employees, (ii) Officers who are not Directors and (iii) Employees who are neither Directors nor Officers.



**Table of Contents**

(b) Administration with respect to Directors and Officers. With respect to grants of Options and Rights to eligible participants who are Officers or Directors of the Corporation, the Plan shall be administered by (i) the Board, if the Board may administer the Plan in compliance with Rule 16b-3 as it applies to a plan intended to qualify thereunder as a discretionary grant or award plan, or (ii) a Committee designated by the Board to administer the Plan, which Committee shall be constituted (A) in such a manner as to permit the Plan to comply with Rule 16b-3 as it applies to a plan intended to qualify thereunder as a discretionary grant or award plan and (B) in such a manner as to satisfy the Applicable Laws.

(c) Administration with respect to Other Persons. With respect to grants of Options to eligible participants who are neither Directors nor Officers of the Corporation, the Plan shall be administered by (i) the Board or (ii) a Committee designated by the Board, which Committee shall be constituted in such a manner as to satisfy the Applicable Laws.

(d) General. Once a Committee has been appointed pursuant to Sections 5.1(b) and/or 5.1(c), such Committee shall continue to serve in its designated capacity until otherwise directed by the Board. From time to time the Board may increase the size of any Committee and appoint additional members thereof, remove members (with or without cause) and appoint new members in substitution therefor, fill vacancies (however caused) and remove all members of a Committee and thereafter directly administer the Plan, all to the extent permitted by the Applicable Laws and, in the case of a Committee appointed under Section 5.1(c), to the extent permitted by Rule 16b-3 as it applies to a plan intended to qualify thereunder as a discretionary grant or award plan.

(e) Powers of the Administrator. Subject to the provisions of the Plan, and in the case of a Committee, subject to the specific duties delegated by the Board to such Committee, the Administrator shall have the authority, in its discretion:

(i) to determine the Fair Market Value of the Common Stock, in accordance with Section 2(n) of the Plan;

(ii) to select the Consultants and Employees to whom Options and Rights may be granted hereunder;

(iii) to determine whether and to what extent Options and Rights or any combination thereof, are granted hereunder;

(iv) to determine the number of shares of Common Stock to be covered by each Option and Right granted hereunder;

(v) to approve forms of agreement for use under the Plan;

(vi) to determine the terms and conditions of any award granted hereunder, which shall not be inconsistent with the terms of the Plan and shall include, but not be limited to, the exercise price, the time or times when Options or Rights may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Option or Right or the shares of Common Stock relating thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine;

(vii) to construe and interpret the terms of the Plan;

(viii) to prescribe, amend and rescind rules and regulations relating to the Plan;

## **Table of Contents**

(ix) to determine whether and under what circumstances an Option or Right may be settled in cash instead of Common Stock or Common Stock instead of cash;

(x) to reduce the exercise price of any Option or Right;

(xi) to modify or amend each Option or Right (subject to Section 14 of the Plan);

(xii) to authorize any person to execute on behalf of the Corporation any instrument required to effect the grant of an Option or Right previously granted by the Administrator;

(xiii) to institute an Option Exchange Program;

(xiv) to determine the terms and restrictions applicable to Options and Rights and any Restricted Stock; and

(xv) to make all other determinations deemed necessary or advisable for administering the Plan.

(f) Effect of Administrator's Decision. The Administrator's decisions, determinations and interpretations shall be final and binding on all Participants and any other holders of Options or Rights.

### **6. Duration of the Plan**

The Plan shall remain in effect until terminated by the Board under the terms of the Plan; provided, that in no event may Incentive Stock Options be granted under the Plan later than 10 years from the date the Plan was adopted by the Board.

### **7. Options and SARs**

#### **7.1. Options**

The Administrator, in its discretion, may grant Options to eligible participants and shall determine whether such Options shall be Incentive Stock Options or Nonqualified Stock Options. Each Option shall be evidenced by an Award Agreement which shall expressly identify the Options as Incentive Stock Options or as Nonqualified Stock Options, and be in such form and contain such provisions as the Administrator shall from time to time deem appropriate.

Without limiting the foregoing, the Administrator may at any time authorize the Corporation, with the consent of the respective recipients, to issue new Options or Rights in exchange for the surrender and cancellation of outstanding Options or Rights. Option agreements shall contain the following terms and conditions:

(a) Exercise Price; Number of Shares. The per Share exercise price for the Shares issuable pursuant to an Option shall be such price as is determined by the Administrator; provided, however, that in the case of an Incentive Stock Option, the price shall be no less than 100% of the Fair Market Value of the Common Stock on the date the Option is granted, subject to any additional conditions set out in Section 7.1(d) of the Plan. The Award Agreement shall specify the number of Shares to which it pertains.

(b) Waiting Period and Exercise Dates. At the time an Option is granted, the Administrator will determine the terms and conditions to be satisfied before Shares may be purchased, including the dates on which Shares subject to the Option may first be purchased. The Administrator may specify that an Option may not be exercised until the completion of the service period specified at the time of grant. (Any such period is referred to herein as the "waiting period.") At the time an Option is granted, the Administrator shall fix the period within which the Option may be exercised, which shall not be earlier than the end of the waiting period, if any, nor, in the case of an Incentive Stock Option, later than 10 years from the date of grant.

**Table of Contents**

(c) Form of Payment. The consideration to be paid for the Shares to be issued upon exercise of an Option, including the method of payment, shall be determined by the Administrator (and, in the case of an Incentive Stock Option, shall be determined at the time of grant) and may consist entirely of:

(i) cash;

(ii) check;

(iii) other Shares which (A) in the case of Shares acquired upon exercise of an option, have been owned by the Participant for more than six months on the date of surrender, and (B) have a Fair Market Value on the date of surrender not greater than the aggregate exercise price of the Shares as to which said Option shall be exercised;

(iv) delivery of a properly executed exercise notice together with such other documentation as the Administrator and the broker, if applicable, shall require to effect an exercise of the Option and delivery to the Corporation of the sale or loan proceeds required to pay the exercise price;

(v) any combination of the foregoing methods of payment; or

(vi) such other consideration and method of payment for the issuance of Shares to the extent permitted by Applicable Laws.

(d) Special Incentive Stock Option Provisions. In addition to the foregoing, Options granted under the Plan which are intended to be Incentive Stock Options under Section 422 of the Code shall be subject to the following terms and conditions:

(i) Dollar Limitation. To the extent that the aggregate Fair Market Value of (A) the Shares with respect to which Options designated as Incentive Stock Options plus (B) the shares of stock of the Corporation, Parent and any Subsidiary with respect to which other incentive stock options are exercisable for the first time by a Participant during any calendar year under all plans of the Corporation and any Parent and Subsidiary exceeds \$100,000, such Options shall be treated as Nonqualified Stock Options. For purposes of the preceding sentence, (1) Options shall be taken into account in the order in which they were granted, and (2) the Fair Market Value of the Shares shall be determined as of the time the Option or other incentive stock option is granted.

(ii) 10% Stockholder. If any Participant to whom an Incentive Stock Option is to be granted pursuant to the provisions of the Plan is, on the date of grant, the owner of Common Stock (as determined under Section 424(d) of the Code) possessing more than 10% of the total combined voting power of all classes of stock of the Corporation or any Parent or Subsidiary of the Corporation, then the following special provisions shall be applicable to the Option granted to such individual:

(A) The per Share Option price of Shares subject to such Incentive Stock Option shall not be less than 110% of the Fair Market Value of Common Stock on the date of grant; and

(B) The Option shall not have a term in excess of 10 years from the date of grant. Except as modified by the preceding provisions of this Section 7.1(d) and except as otherwise limited by Section 422 of the Code, all of the provisions of the Plan shall be applicable to the Incentive Stock Options granted hereunder.

## **Table of Contents**

(e) Other Provisions. Each Option granted under the Plan may contain such other terms, provisions, and conditions not inconsistent with the Plan as may be determined by the Administrator.

(f) Buyout Provisions. The Administrator may at any time offer to buy out for a payment in cash or Shares, an Option previously granted, based on such terms and conditions as the Administrator shall establish and communicate to the Participant at the time that such offer is made.

### **7.2. Stock Appreciation Rights**

(a) In Connection with Options. At the sole discretion of the Administrator, SARs may be granted in connection with all or any part of an Option, either concurrently with the grant of the Option or at any time thereafter during the term of the Option. The following provisions apply to SARs that are granted in connection with Options:

(i) The SAR shall entitle the Participant to exercise the SAR by surrendering to the Corporation unexercised a portion of the related Option. The Participant shall receive in Exchange from the Corporation an amount equal to the excess of (A) the Fair Market Value on the date of exercise of the SAR of the Common Stock covered by the surrendered portion of the related Option over (B) the exercise price of the Common Stock covered by the surrendered portion of the related Option. Notwithstanding the foregoing, the Administrator may place limits on the amount that may be paid upon exercise of an SAR; provided, however, that such limit shall not restrict the exercisability of the related Option.

(ii) When an SAR is exercised, the related Option, to the extent surrendered, shall cease to be exercisable.

(iii) An SAR shall be exercisable only when and to the extent that the related Option is exercisable and shall expire no later than the date on which the related Option expires.

(iv) An SAR may only be exercised at a time when the Fair Market Value of the Common Stock covered by the related Option exceeds the exercise price of the Common Stock covered by the related Option.

(b) Independent of Options. At the sole discretion of the Administrator, SARs may be granted without related Options. The following provisions apply to SARs that are not granted in connection with Options:

(i) The SAR shall entitle the Participant, by exercising the SAR, to receive from the Corporation an amount equal to the excess of (A) the Fair Market Value of the Common Stock covered by the exercised portion of the SAR, as of the date of such exercise, over (B) the Fair Market Value of the Common Stock covered by the exercised portion of the SAR, as of the last market trading date prior to the date on which the SAR was granted; provided, however, that the Administrator may place limits on the aggregate amount that may be paid upon exercise of an SAR.

(ii) SARs shall be exercisable, in whole or in part, at such times as the Administrator shall specify in the Participant's SAR agreement.

(c) Form of Payment. The Corporation's obligation arising upon the exercise of an SAR may be paid in Common Stock or in cash, or in any combination of Common Stock and cash, as the Administrator, in its sole discretion, may determine. Shares issued upon the exercise of an SAR shall be valued at their Fair Market Value as of the date of exercise.

## **Table of Contents**

(d) Performance-Based Compensation Limitations. No Employee shall be granted, in any fiscal year of the Corporation, Options or SARs to receive more than 100,000 Shares of Common Stock, provided that the Corporation may make an additional one-time grant of up to 100,000 Shares to newly-hired Employees. The foregoing limitations shall adjust proportionately in connection with any change in the Corporation's recapitalization as described in Section 12.1.

### **7.3. Method of Exercise**

(a) Procedure for Exercise; Rights as a Stockholder. Any Option or SAR granted hereunder shall be exercisable at such times and under such conditions as determined by the Administrator and as shall be permissible under the terms of the Plan.

An Option may not be exercised for a fraction of a Share.

An Option or SAR shall be deemed to be exercised when written notice of such exercise has been given to the Corporation in accordance with the terms of the Option or SAR by the person entitled to exercise the Option or SAR and full payment for the Shares with respect to which the Option is exercised has been received by the Corporation. Full payment may, as authorized by the Administrator (and, in the case of an Incentive Stock Option, determined at the time of grant) and permitted by the Award Agreement consist of any consideration and method of payment allowable under Section 7.1(c) of the Plan. Until the issuance (as evidenced by the appropriate entry on the books of the Corporation or of a duly authorized transfer agent of the Corporation) of the stock certificate evidencing such Shares, no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date the stock certificate is issued, except as provided in Section 11 of the Plan.

Exercise of an Option in any manner shall result in a decrease in the number of Shares which thereafter shall be available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised. Exercise of an SAR in any manner shall, to the extent the SAR is exercised, result in a decrease in the number of Shares which thereafter shall be available for purposes of the Plan, and the SAR shall cease to be exercisable to the extent it has been exercised.

(b) Rule 16b-3. Options and SARs granted to individuals subject to Section 16 of the Exchange Act ( "Insiders" ) must comply with the applicable provisions of Rule 16b-3 and shall contain such additional conditions or restrictions as may be required thereunder to qualify for the maximum exemption from Section 16 of the Exchange Act with respect to Plan transactions.

(c) Termination of Employment or Consulting Relationship. In the event a Participant's Continuous Status as an Employee or Consultant terminates (other than upon the Participant's death or Disability), the Participant may exercise his or her Option or SAR, but only within such period of time as is determined by the Administrator at the time of grant, not to exceed six months (three months in the case of an Incentive Stock Option) from the date of such termination, and only to the extent that the Participant was entitled to exercise it at the date of such termination (but in no event later than the expiration of the term of such Option or SAR as set forth in the Option or Award Agreement). To the extent that Participant was not entitled to exercise an Option or SAR at the date of such termination, and to the extent that the Participant does not exercise such Option or SAR (to the extent otherwise so entitled) within the time specified herein, the Option or SAR shall terminate.

## **Table of Contents**

(d) Disability of Participant. In the event a Participant's Continuous Status as an Employee or Consultant terminates as a result of the Participant's Disability, the Participant may exercise his or her Option or SAR, but only within 12 months from the date of such termination, and only to the extent that the Participant was entitled to exercise it at the date of such termination (but in no event later than the expiration of the term of such Option or SAR as set forth in the Option or Award Agreement). To the extent that Participant was not entitled to exercise an Option or SAR at the date of such termination, and to the extent that the Participant does not exercise such Option or SAR (to the extent otherwise so entitled) within the time specified herein, the Option or SAR shall terminate.

(e) Death of Participant. In the event of a Participant's death, the Participant's estate or a person who acquired the right to exercise the deceased Participant's Option or SAR by bequest or inheritance may exercise the Option or SAR, but only within 12 months following the date of death, and only to the extent that the Participant was entitled to exercise it at the date of death (but in no event later than the expiration of the term of such Option or SAR as set forth in the Option or Award Agreement). To the extent that Participant was not entitled to exercise an Option or SAR at the date of death, and to the extent that the Participant's estate or a person who acquired the right to exercise such Option does not exercise such Option or SAR (to the extent otherwise so entitled) within the time specified herein, the Option or SAR shall terminate.

### **8. Stock Purchase Rights**

#### **8.1. Rights to Purchase**

Stock Purchase Rights may be issued either alone, in addition to, or in tandem with other awards granted under the Plan and/or cash awards made outside of the Plan. After the Administrator determines that it will offer Stock Purchase Rights under the Plan, it shall advise the offeree in writing of the terms, conditions and restrictions related to the offer, including the number of Shares that the offeree shall be entitled to purchase, the price to be paid, and the time within which the offeree must accept such offer, which shall in no event exceed 30 days from the date upon which the Administrator made the determination to grant the Stock Purchase Right. The offer shall be accepted by execution of an Award Agreement in the form determined by the Administrator.

#### **8.2. Repurchase Option**

Unless the Administrator determines otherwise, the Award Agreement shall grant the Corporation a repurchase option exercisable upon the voluntary or involuntary termination of the purchaser's employment with the Corporation for any reason (including death or Disability). The purchase price for Shares repurchased pursuant to the Restricted Stock purchase agreement shall be the original price paid by the purchaser and may be paid by cancellation of any indebtedness of the purchaser to the Corporation. The repurchase option shall lapse at such rate as the Administrator may determine.

#### **8.3. Other Provisions**

The Award Agreement shall contain such other terms, provisions and conditions not inconsistent with the Plan as may be determined by the Administrator in its sole discretion. In addition, the provisions of Award Agreements need not be the same with respect to each purchaser.

#### **8.4. Rule 16b-3**

Stock Purchase Rights granted to Insiders, and Shares purchased by Insiders in connection with Stock Purchase Rights, shall be subject to any restrictions applicable thereto in compliance with Rule 16b-3. An Insider may only purchase Shares pursuant to the grant of a Stock Purchase Right, and may only sell Shares purchased pursuant to the grant of a Stock Purchase Right, during such time or times as are permitted by Rule 16b-3.

## **Table of Contents**

### 8.5. Rights as a Stockholder

Once the Stock Purchase Right is exercised, the purchaser shall have the rights equivalent to those of a stockholder, and shall be a stockholder when his or her purchase is entered upon the records of the duly authorized transfer agent of the Corporation. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Stock Purchase Right is exercised, except as provided in Section 12 of the Plan.

### 8.6. Withholding Taxes

In accordance with any applicable administrative guidelines it establishes, the Committee may allow a purchaser to pay the amount of taxes required by law to be withheld as a result of a purchase of Shares or a lapse of restrictions in connection with Shares purchased pursuant to a Stock Purchase Right, by withholding from any payment of Common Stock due as a result of such purchase or lapse of restrictions, or by permitting the purchaser to deliver to the Corporation, Shares having a Fair Market Value, as determined by the Committee, equal to the amount of such required withholding taxes.

### 9. Long-Term Performance Awards

#### 9.1. Administration

Long-Term Performance Awards are cash or stock bonus awards that may be granted either alone or in addition to other awards granted under the Plan. Such awards shall be granted for no cash consideration. The Administrator shall determine the nature, length and starting date of any performance period (the Performance Period) for each Long-Term Performance Award, and shall determine the performance or employment factors, if any, to be used in the determination of Long-Term Performance Awards and the extent to which such Long-Term Performance Awards are valued or have been earned. Long-Term Performance Awards may vary from participant to participant and between groups of participants and shall be based upon the achievement of Corporation, Subsidiary, Parent and/or individual performance factors or upon such other criteria as the Administrator may deem appropriate. Performance Periods may overlap and participants may participate simultaneously with respect to Long-Term Performance Awards that are subject to different Performance Periods and different performance factors and criteria. Long-Term Performance Awards shall be confirmed by, and be subject to the terms of, an Award Agreement. The terms of such awards need not be the same with respect to each participant.

At the beginning of each Performance Period, the Administrator may determine for each Long-Term Performance Award subject to such Performance Period the range of dollar values or number of shares of Common Stock to be awarded to the participant at the end of the Performance Period if and to the extent that the relevant measures of performance for such Long-Term Performance Award are met. Such dollar values or number of shares of Common Stock may be fixed or may vary in accordance with such performance or other criteria as may be determined by the Administrator. Payment of any Long-Term Performance Award shall be made no later than 2 1/2 months after the end of the calendar year in which the Performance Period ends.

#### 9.2. Adjustment of Awards

The Administrator may adjust the performance factors applicable to the Long-Term Performance Awards to take into account changes in legal, accounting and tax rules and to make such adjustments as the Administrator deems necessary or appropriate to reflect the inclusion or exclusion of the impact of extraordinary or unusual items, events or circumstances in order to avoid windfalls or hardships.

### 10. Performance Goals for Certain Section 162(m) Awards

## **Table of Contents**

### 10.1 Definitions

For purposes of this Section 10, the following definitions shall apply:

(a) **Award** means any form of Option, SAR, Stock Purchase Right, Restricted Stock, Long-Term Performance Award or other incentive award granted under the Plan, whether singly, in combination, or in tandem, to a Participant by the Committee pursuant to terms, conditions, restrictions and limitations, if any, as the Administrator may establish by the Award Notice or otherwise.

(b) **Covered Employee** means an individual who is, with respect to the Company, an individual defined in Code Section 162(m)(3).

### 10.2 Section 162(m) Exemption

This Plan shall be operated to ensure that all Options and SARs granted hereunder to any Covered Employee qualify for the Section 162(m) Exemption.

### 10.3 Qualified Performance-Based Awards

When granting any Award other than Options or SARs, the Administrator may designate the Award as a Qualified Performance-Based Award, based upon a determination that the recipient is or may be a Covered Employee with respect to that Award, and the Administrator wishes the Award to qualify for the Section 162(m) Exemption. If an Award is so designated, the Administrator shall establish performance goals for the Award within the time period prescribed by Section 162(m) of the Code based on one or more of the following Qualified Performance Measures, which may be expressed in terms of Company-wide objectives or in terms of objectives that relate to the performance of a Subsidiary or a division, region, department or function within the Company or a Subsidiary:

- (1) return on capital, equity, or assets (including economic value created),
- (2) productivity or operating efficiencies,
- (3) cost improvements,
- (4) cash flow,
- (5) sales revenue growth,
- (6) net income, earnings per share, or earnings from operations,
- (7) quality,
- (8) customer satisfaction,
- (9) comparable store sales,
- (10) stock price or total shareholder return,
- (11) EBITDA or EBITDAR,
- (12) after tax operating income,
- (13) book value per Share,



## **Table of Contents**

(14) debt reduction,

(15) strategic business objectives, consisting of one or more objectives based on meeting specified cost targets, business expansion goals and goals relating to acquisitions or divestitures, or

(16) any combination of the foregoing.

Each goal may be expressed on an absolute and/or relative basis, may be based on or otherwise employ comparisons based on internal targets, the past performance of the Company or any Subsidiary, operating unit, business segment or division of the Company and/or the past or current performance of other companies, and in the case of earnings-based measures, may use or employ comparisons relating to capital, shareholders equity and/or Common Stock outstanding, or to assets or net assets. The Administrator may appropriately adjust any evaluation of performance under criteria set forth in this Section 10.3 to exclude any of the following events that occurs during a performance period: (i) asset write-downs, (ii) litigation or claim judgments or settlements, (iii) the effect of changes in tax law, accounting principles or other such laws or provisions affecting reported results, (iv) accruals for reorganization and restructuring programs and (v) any extraordinary non-recurring items as described in Accounting Principles Board Opinion No. 30 and/or in management's discussion and analysis of financial condition and results of operations appearing in the Company's annual report to stockholders for the applicable year. Measurement of the Company's performance against the goals established by the Administrator shall be objectively determinable, and to the extent goals are expressed in standard accounting terms, performance shall be measured according to generally accepted accounting principles as in existence on the date on which the performance goals are established and without regard to any changes in those principles after that date.

### **10.4 Performance Goal Conditions**

Each Qualified Performance-Based Award (other than an Option or SAR) shall be earned, vested and payable (as applicable) only upon the achievement of performance goals established by the Administrator based upon one or more of the Qualified Performance Measures, together with the satisfaction of any other conditions, such as continued employment, the Administrator may determine to be appropriate; however, (i) the Administrator may provide, either in connection with the grant of an Award or by later amendment, that achievement of the performance goals will be waived upon the death or Disability of the Participant, and (ii) the provisions of Section 12.4 shall apply notwithstanding this sentence.

### **10.5 Certification of Goal Achievement**

Any payment of a Qualified Performance-Based Award granted with performance goals shall be conditioned on the written certification of the Administrator in each case that the performance goals and any other material conditions were satisfied. Except as specifically provided in Section 10.4, no Qualified Performance-Based Award may be amended, nor may the Administrator exercise any discretionary authority it may otherwise have under the Plan with respect to a Qualified Performance-Based Award, in any manner to waive the achievement of the applicable performance goal based on Qualified Performance Measures or to increase the amount payable under, or the value of, the Award, or otherwise in a manner that would cause the Qualified Performance-Based Award to cease to qualify for the Section 162(m) Exemption.

## **Table of Contents**

### 11. Non-Transferability of Options

Options and Rights may not be sold, pledged, assigned, hypothecated, transferred or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Participant, only by the Participant.

### 12. Adjustments Upon Changes in Capitalization, Dissolution, Merger, Asset Sale or Change of Control

#### 12.1. Changes in Capitalization

Subject to any required action by the stockholders of the Corporation, the number of shares of Common Stock covered by each outstanding Option and Right, and the number of shares of Common Stock which have been authorized for issuance under the Plan but as to which no Options or Rights have yet been granted or which have been returned to the Plan upon cancellation or expiration of an Option or Right, as well as the price per share of Common Stock covered by each such outstanding Option or Right, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock, or any other increase or decrease in the number of issued shares of Common Stock effected without receipt of consideration by the Corporation; provided, however, that conversion of any convertible securities of the Corporation shall not be deemed to have been effected without receipt of consideration. Such adjustment shall be made by the Board, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Corporation of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of shares of Common Stock subject to an Option or Right.

#### 12.2. Dissolution or Liquidation

In the event of the proposed dissolution or liquidation of the Corporation, to the extent that an Option or Right has not been previously exercised, it will terminate immediately prior to the consummation of such proposed action. The Board may, in the exercise of its sole discretion in such instances, declare that any Option or Right shall terminate as of a date fixed by the Board and give each Participant the right to exercise his or her Option or Right as to all or any part of the Optioned Stock, including Shares as to which the Option or Right would not otherwise be exercisable.

#### 12.3. Merger or Asset Sale

Subject to the provisions of Section 12.4, in the event of a merger of the Corporation with or into another corporation, or the sale of substantially all of the assets of the Corporation, each outstanding Option and Right shall be assumed or an equivalent Option or Right substituted by the successor corporation or a Parent or Subsidiary of the successor corporation. In the event that the successor corporation does not agree to assume the Option or to substitute an equivalent option, the Administrator shall, in lieu of such assumption or substitution, provide for the Participant to have the right to exercise the Option or Right as to all or a portion of the Optioned Stock, including Shares as to which it would not otherwise be exercisable. If the Administrator makes an Option or Right exercisable in lieu of assumption or substitution in the event of a merger or sale of assets, the Administrator shall notify the Participant that the Option or Right shall be exercisable for a period of 15 days from the date of such notice, and the Option or Right will terminate upon the expiration of such period. For the purposes of this paragraph, the Option or Right shall be considered assumed if, immediately following the merger or sale of assets, the Option or Right confers the right to purchase, for each Share of Optioned Stock subject to the Option or Right immediately prior to the merger or sale of assets, the consideration (whether stock, cash, or other securities or property) received in the merger or sale of assets by holders of Common Stock for each Share held on the effective date of the transaction (and if holders were offered a choice of consideration,

## **Table of Contents**

the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the merger or sale of assets was not solely common stock of the successor corporation or its Parent, the Administrator may, with the consent of the successor corporation and the participant, provide for the consideration to be received upon the exercise of the Option or Right, for each Share of Optioned Stock subject to the Option or Right, to be solely common stock of the successor corporation or its Parent equal in Fair Market Value to the per share consideration received by holders of Common Stock in the merger or sale of assets.

### **12.4. Change in Control**

In the event of a Change in Control of the Corporation, then the following acceleration and valuation provisions shall apply:

(a) Except as otherwise determined by the Board, in its discretion, prior to the occurrence of a Change in Control, any Options and Rights outstanding on the date such Change in Control is determined to have occurred that are not yet exercisable and vested on such date shall become fully exercisable and vested.

(b) Except as otherwise determined by the Board, in its discretion, prior to the occurrence of a Change in Control, all outstanding Options and Rights, to the extent they are exercisable and vested (including Options and Rights that shall become exercisable and vested pursuant to subparagraph (i) above), shall be terminated in exchange for a cash payment equal to the Change in Control Price, (reduced by the exercise price, if any, applicable to such Options or Rights). These cash proceeds shall be paid to the Participant or, in the event of death of a Participant prior to payment, to the estate of the Participant or to a person who acquired the right to exercise the Option or Right by bequest or inheritance. All such payments made under this Section 12.4 shall be made no more than 2 1/2 months after the end of the calendar year in which the Change in Control occurs.

### **13. Date of Grant**

The date of grant of an Option or Right shall be, for all purposes, the date on which the Administrator makes the determination granting such Option or Right, as reflected on the Award Agreement. Notice of the determination shall be provided to each Participant within a reasonable time after the date of such grant.

### **14. Amendment and Termination of the Plan**

#### **14.1. Amendment and Termination**

The Board may amend, alter, suspend or terminate the Plan at any time.

#### **14.2. Effect of Amendment or Termination**

No amendment, alteration, suspension or termination of the Plan shall impair the rights of any Participant, unless mutually agreed otherwise between the Participant and the Administrator, which agreement must be in writing and signed by the Participant and the Corporation.

### **15. Conditions Upon Issuance of Shares**

## **Table of Contents**

### 15.1. Legal Compliance

Shares shall not be issued pursuant to the exercise of an Option or Right unless the exercise of such Option or Right and the issuance and delivery of such Shares shall comply with all relevant provisions of law, including, without limitation, the Securities Act of 1933, as amended, the Exchange Act, the rules and regulations promulgated thereunder, Applicable Laws, and the requirements of any stock exchange or quotation system upon which the Shares may then be listed or quoted, and shall be further subject to the approval of counsel for the Corporation with respect to such compliance.

### 15.2. Investment Representations

As a condition to the exercise of an Option or Right, the Corporation may require the person exercising such Option or Right to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Corporation, such a representation is required.

### 16. Liability of Corporation

#### 16.1. Inability to Obtain Authority

The inability of the Corporation to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Corporation s counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Corporation of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

#### 16.2. Grants Exceeding Allotted Shares

If the Optioned Stock covered by an Option or Right exceeds, as of the date of grant, the number of Shares which may be issued under the Plan without additional stockholder approval, such Option or Right shall be void with respect to such excess Optioned Stock, unless stockholder approval of an amendment sufficiently increasing the number of Shares subject to the Plan is timely obtained in accordance with Section 18(a) of the Plan.

### 17. Reservation of Shares

The Corporation, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

### 18. Stockholder Approval

(a) The Corporation shall obtain stockholder approval of any Plan amendment to the extent necessary and desirable to comply with Rule 16b-3 or with Section 422 of the Code (or any successor rule or statute or other applicable law, rule or regulation, including the requirements of any exchange or quotation system on which the Common Stock is listed or quoted). Such stockholder approval, if required, shall be obtained in such a manner and to such a degree as is required by the applicable law, rule or regulation.

(b) Continuance of the Plan shall be subject to approval by the stockholders of the Corporation within twelve (12) months before or after the date the Plan is adopted. Such stockholder approval shall be obtained in the manner and to the degree required under applicable federal and state law.

### 19. Effect on Prior Plan

Any Options or Rights granted under the Provectus Pharmaceuticals, Inc. 2002 Stock Plan (the Prior Plan ) shall remain outstanding and hereafter shall be governed by the terms of the Prior Plan.

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**Table of Contents**

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**Table of Contents**

