DAVITA INC
Form DEF 14A
April 27, 2011
Table of Contents

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a)

of the Securities Exchange Act of 1934

Filed by the registrant x

Filed by a party other than the registrant ¨

Check the appropriate box:

¨ Preliminary Proxy Statement

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

x Definitive Proxy Statement
¨ Definitive Additional Materials
¨ Soliciting Material pursuant to § 240.14a-12

DaVita Inc.

(Name of Registrant as Specified in its Charter)

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

Payment of filing fee (Check the appropriate box):

x No fee required

¨ Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11

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

(2) Aggregate number of securities to which transaction applies:

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined.):

(4) Proposed maximum aggregate value of transaction:

(5) Total fee paid:

¨ Fee paid previously with preliminary materials:

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

(1) Amount previously paid:

(2) Form, schedule, or registration statement no.:

(3) Filing party:

(4) Date filed:

Table of Contents

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

June 6, 2011

TO OUR STOCKHOLDERS:

We will hold our 2011 annual meeting of the stockholders of DaVita Inc., a Delaware corporation, on Monday, June 6, 2011 at 9:30 a.m., Mountain Time, at DaVita Inc., 1627 Cole Boulevard, Lakewood, Colorado 80401, for the following purposes, which are further described in the accompanying Proxy Statement:

(1) To vote upon the election of the ten directors identified in the attached Proxy Statement to the Board of Directors to serve for a term of one year or until their successors are duly elected and qualified;

(2) To approve the DaVita Inc. 2011 Incentive Award Plan;

(3) To ratify the appointment of KPMG LLP as our independent registered public accounting firm for fiscal year 2011;

(4) To hold an advisory vote on executive compensation;

(5) To hold an advisory vote on the frequency with which future advisory votes on executive compensation should be held;

(6) To consider a stockholder proposal, if properly presented at the annual meeting; and

(7) To transact such other business as may properly come before the annual meeting or any adjournment thereof.

The Board of Directors has fixed the close of business on April 15, 2011 as the record date for the determination of stockholders entitled to vote at the annual meeting or any meetings held upon adjournment of the annual meeting. Only holders of record of our common stock at the close of business on that day will be entitled to vote.

In accordance with rules and regulations adopted by the Securities and Exchange Commission, we are providing access to our proxy materials over the Internet. Accordingly, we will mail, on or about April 27, 2011, a Notice of Internet Availability of Proxy Materials to our stockholders of record and beneficial owners at the close of business on April 15, 2011. On the date of mailing of the Notice of Internet Availability of Proxy Materials, all stockholders of record and beneficial owners will have the ability to access the proxy materials on a website referred to in the Notice of Internet Availability of Proxy Materials. These proxy materials will be available free of charge.

The Notice of Internet Availability of Proxy Materials will also identify the date, time and location of the annual meeting; the matters to be acted upon at the annual meeting and the Board of Directors recommendation with regard to each matter; a toll-free telephone number, an e-mail address, and a website where stockholders can request a paper or e-mail copy of the Proxy Statement, our Annual Report to Stockholders and a form of proxy relating to the annual meeting; information on how to access the form of proxy over the Internet and how to vote over the Internet; and information on how to obtain directions to attend the annual meeting and vote in person.

We invite you to attend the annual meeting and vote in person. **If you cannot attend, to ensure that you are represented at the annual meeting, please vote, at your earliest convenience, by telephone or Internet, or request a proxy card to complete, sign and date and return by mail.** If you attend the annual meeting, you may vote in person, even if you previously used the telephone or Internet voting systems, or mailed your completed proxy card.

Please note that all votes cast via telephone or the Internet must be cast prior to 11:59 p.m., Eastern Time, on Sunday, June 5, 2011.

By order of the Board of Directors,

Kim M. Rivera
Vice President, General Counsel and
Secretary

April 27, 2011

Table of Contents

TABLE OF CONTENTS

GENERAL INFORMATION	1
Voting Information	2
Votes Required for Proposals	2
Proxy Solicitation Costs	3
Delivery of Proxy Statement and Annual Report	3
Admission to Annual Meeting	3
Electronic Availability of Proxy Materials for 2011 Annual Meeting	5
PROPOSAL NO. 1 ELECTION OF DIRECTORS	6
Information Concerning Members of the Board of Directors Standing for Reelection	6
CORPORATE GOVERNANCE	9
Director Independence	9
Leadership Structure and Meetings of Non-management Directors	9
Communications with the Board of Directors	10
Annual Meeting of Stockholders	10
Information Regarding the Board of Directors and its Committees	10
Risk Oversight	14
Risk Considerations in Our Compensation Program	14
Board of Directors Share Ownership Policy	14
Management Share Ownership Policy	15
Code of Ethics and Code of Conduct	15
Clawback Policy	15
PROPOSAL NO. 2 APPROVAL OF THE DAVITA INC. 2011 INCENTIVE AWARD PLAN	16
INTRODUCTION	16
Purpose	16
Size of the Share Pool	16
Stockholder Approval Requirement	17
Compensation and Governance Best Practices	17
ADMINISTRATION	18
ELIGIBILITY	18
LIMITATION ON AWARDS AND SHARES AVAILABLE	18
LIMITATION ON FULL VALUE AWARD VESTING	19
AWARDS	19
ADJUSTMENT PROVISIONS	25
AMENDMENT AND TERMINATION	25
FEDERAL INCOME TAX CONSEQUENCES	25
Equity Grants as of April 13, 2011	27
PROPOSAL NO. 3 RATIFICATION OF APPOINTMENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM	28
Independent Registered Public Accounting Firm	28
Pre-approval Policies and Procedures	28
PROPOSAL NO. 4 ADVISORY VOTE ON EXECUTIVE COMPENSATION	29
PROPOSAL NO. 5 ADVISORY VOTE ON THE FREQUENCY OF SAY-ON-PAY VOTES	31
PROPOSAL NO. 6 STOCKHOLDER PROPOSAL REGARDING STOCKHOLDER ACTION BY WRITTEN CONSENT	32
Stockholder s Statement Supporting Proposal No. 6	32
The Company s Statement in Opposition to Proposal No. 6	33
SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT	35
Information Concerning Our Executive Officers	36
Section 16(a) Beneficial Ownership Reporting Compliance	38
EQUITY COMPENSATION PLAN INFORMATION	39
EXECUTIVE COMPENSATION	40
Compensation Discussion and Analysis	40
EXECUTIVE SUMMARY	40
Pay-For-Performance	40
Stockholder Interest Alignment	42
Market Competitiveness	42

Good Governance and Best Practices 44
Stock Ownership Guidelines 44
ELEMENTS OF COMPENSATION 45
Base Salary 47
Annual Performance-Based Cash Compensation 47
Relocation Bonuses 51
Long-Term Equity Incentives 51
Personal Benefits and Perquisites 53
Deferred Compensation Programs 54
Severance and Change of Control Arrangements 54

Table of Contents

EXECUTIVE COMPENSATION PROCESS & GOVERNANCE	55
Management Share Ownership Policy	55
Role of Independent Compensation Committee	55
Role of Independent Compensation Consultant	55
Policy Regarding Clawback of Bonuses and Incentive Compensation	56
TAX AND ACCOUNTING CONSIDERATIONS	56
2010 Summary Compensation Table	57
Narrative to the Summary Compensation Table	58
2010 Grants of Plan-Based Awards	60
Narrative to the Grants of Plan-Based Awards Table	61
2010 Outstanding Equity Awards at Fiscal Year-End	62
2010 Option Exercises and Stock Vested	63
2010 Pension Benefits	63
2010 Nonqualified Deferred Compensation	64
Potential Payments Upon Termination or Change of Control	65
Compensation of Directors	72
2010 Director Compensation	72
COMPENSATION COMMITTEE REPORT	79
COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION	79
CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS	80
AUDIT COMMITTEE REPORT	81
STOCKHOLDER PROPOSALS FOR 2012 ANNUAL MEETING	82
OTHER MATTERS	82

Table of Contents

PROXY STATEMENT

GENERAL INFORMATION

We are delivering this Proxy Statement in connection with the solicitation of proxies by the Board of Directors, for use at our 2011 annual meeting of stockholders, which we will hold on Monday, June 6, 2011 at 9:30 a.m., Mountain Time, at DaVita Inc., 1627 Cole Boulevard, Lakewood, Colorado 80401. The proxies will remain valid for use at any meetings held upon adjournment of that meeting. The record date for the annual meeting is the close of business on April 15, 2011. All holders of record of our common stock on the record date are entitled to notice of the annual meeting and to vote at the annual meeting and any meetings held upon adjournment of that meeting. Our principal executive offices are located at 1551 Wewatta Street, 6th Floor, Denver, Colorado, 80202, and our telephone number is (303) 405-2100. This Proxy Statement is being initially distributed to stockholders on or about April 27, 2011. To obtain directions to our annual meeting, visit our website, located at *http://www.davita.com.*

In accordance with rules and regulations adopted by the Securities and Exchange Commission (the SEC), instead of mailing a printed copy of our proxy materials to each stockholder of record or beneficial owner, we are furnishing the proxy materials to our stockholders over the Internet, which include this Proxy Statement and the accompanying Notice of Meeting, Proxy Card, and Annual Report to Stockholders. Because you received a Notice of Internet Availability of Proxy Materials by mail, you will not receive a printed copy of the proxy materials, unless you have previously made a permanent election to receive these materials in paper copy. Instead, the Notice of Internet Availability of Proxy Materials instructs you as to how you may access and review all of the important information contained in the proxy materials, and how you may submit your vote by proxy on the Internet. If you received a Notice of Internet Availability of Proxy Materials by mail and would like to receive a printed copy of our proxy materials, you should follow the instructions for requesting such materials included in the Notice of Internet Availability of Proxy Materials.

The Notice of Internet Availability of Proxy Materials was first mailed on or about April 27, 2011 to all stockholders of record as of April 15, 2011.

Whether or not you plan to attend the annual meeting in person, please vote by telephone, Internet, or request a Proxy Card to complete, sign, date and return by mail to ensure that your shares will be voted at the annual meeting. You may revoke your proxy at any time prior to its use by filing with our secretary an instrument revoking it or a duly executed proxy bearing a later date or by attending the annual meeting and voting in person.

If you plan to attend the annual meeting in person, please so indicate when you submit your proxy by mail, by telephone or via the Internet and bring with you the items that are required pursuant to DaVita s admission process for the 2011 Annual Meeting. A description of the admission process can be found below in this Proxy Statement under the heading General Information Admission to Annual Meeting.

Unless you instruct otherwise in the proxy, any proxy that is given and not revoked will be voted at the annual meeting:

For each nominee to the Board of Directors identified in this Proxy Statement;

For the approval of the DaVita Inc. 2011 Incentive Award Plan;

1

Table of Contents

For the ratification of the appointment of KPMG LLP as our independent registered public accounting firm for fiscal year 2011;

For the approval, on an advisory basis, of the compensation of our named executive officers;

For the approval, on an advisory basis, of holding future advisory votes on executive compensation every year;

Against the stockholder proposal regarding stockholder action by written consent; and

As determined by the proxyholders named in the Proxy Card in their discretion, with regard to all other matters as may properly come before the annual meeting or any adjournment thereof.

Voting Information

Our only voting securities are the outstanding shares of our common stock. At the record date, we had approximately 95,871,454 shares of common stock outstanding. Each stockholder is entitled to one vote per share on each matter that we will consider at this meeting. Stockholders are not entitled to cumulate votes. Brokers holding shares of record for their customers generally are not entitled to vote on some matters unless their customers give them specific voting instructions. If the broker does not receive specific instructions, the broker will note this on the proxy form or otherwise advise us that it lacks voting authority. Recent regulatory changes were made to take away the ability of your bank, broker, or other nominee to vote your uninstructed shares in the election of directors on a discretionary basis. Thus, if you hold your shares in street name, meaning that your shares are registered in the name of your broker, bank or other nominee, and you do not instruct your bank, broker, or other nominee how to vote in the election of directors, the approval of the DaVita Inc. 2011 Incentive Award Plan, the proposals regarding the advisory vote on executive compensation and the frequency with which an advisory vote on executive compensation should be held or the stockholder proposal regarding stockholder action by written consent, no votes will be cast on your behalf. The votes that the brokers would have cast if their customers had given them specific instructions are commonly called broker non-votes. If the stockholders of record present in person or represented by their proxies at the annual meeting hold at least a majority of our shares of common stock outstanding as of the record date, a quorum will exist for the transaction of business at the annual meeting. Stockholders attending the annual meeting in person or represented by proxy at the annual meeting who abstain from voting and broker non-votes are counted as present for quorum purposes.

Votes Required for Proposals

Directors are elected by a majority of votes cast, which means that the number of shares voted for each of the ten nominees for election to the Board of Directors must exceed 50% of the number of votes cast with respect to each nominee s election. Abstentions and broker non-votes will not be counted as votes cast and therefore, will have no effect on the election of directors. In the event that the number of nominees exceeds the number of directors to be elected, which is a situation that we do not anticipate, directors will be elected by a plurality of the shares represented in person or by proxy at any such meeting and entitled to vote on the election of directors.

The approval of the DaVita Inc. 2011 Incentive Award Plan, the ratification of the appointment of KPMG LLP as our independent registered public accounting firm for fiscal year 2011, the approval of the proposal regarding the advisory vote on executive compensation and the approval of the stockholder proposal each requires the affirmative vote of a majority of the shares of common stock present at the annual meeting, in person or by proxy and entitled to vote thereon. Because your vote on executive compensation is advisory, it will not be binding on the company or the Board of Directors. However, the Board of Directors and the Compensation Committee will consider the voting results as appropriate when making future decisions regarding executive compensation. Abstentions are considered present and entitled to vote with respect to these proposals and will, therefore, be treated as votes against these proposals. Broker non-votes with respect to these proposals will not be considered as present and entitled to vote on these proposals, which will therefore reduce the number of affirmative votes needed to approve these proposals.

Table of Contents

The affirmative vote of at least a majority of the shares of common stock present at the annual meeting, in person or by proxy and entitled to vote thereon is required to approve, on an advisory basis, the frequency of the say-on-pay advisory vote every three years, two years or one year. If none of the frequency alternatives receives a majority vote, the frequency of the advisory vote on executive compensation receiving the greatest number of votes every three years, every two years or every one year will be considered the frequency that has been selected by the stockholders. However, the company will hold a similar vote no less frequently than once every six years. Because your vote is advisory, it will not be binding on the company or the Board of Directors. However, the Board of Directors and the Compensation Committee will consider the voting results as appropriate when adopting a policy on the frequency of future advisory votes on executive compensation. Abstentions and broker non-votes will not be counted as votes cast and therefore, will have no effect on such proposal.

Proxy Solicitation Costs

We will pay for the cost of preparing, assembling, printing and mailing of the Notice of Internet Availability of Proxy Materials, this Proxy Statement and the accompanying Notice of Meeting, Proxy Card, and Annual Report to Stockholders, to our stockholders, as well as the cost of soliciting proxies relating to the annual meeting. We may request banks and brokers to solicit their customers who beneficially own our common stock listed of record in names of nominees. We will reimburse these banks and brokers for their reasonable out-of-pocket expenses regarding these solicitations. We have also retained Georgeson Inc. (Georgeson) to assist in the distribution and solicitation of proxies and to verify records related to the solicitation at a fee of $8,500 plus reimbursement for all reasonable out-of-pocket expenses incurred during the solicitation. Georgeson and our officers, directors and employees may supplement the original solicitation by mail of proxies, by telephone, facsimile, e-mail and personal solicitation. We will pay no additional compensation to our officers, directors and employees for these activities. We agreed to indemnify Georgeson against liabilities and expenses arising in connection with the proxy solicitation unless caused by Georgeson s negligence or intentional misconduct.

Delivery of Proxy Statement and Annual Report

Beneficial owners, but not record holders, of our common stock who share a single address may receive only one copy of the Notice of Internet Availability of Proxy Materials and, as applicable, an Annual Report to Stockholders and Proxy Statement, unless their broker has received contrary instructions from any beneficial owner at that address. This practice, known as householding, is designed to reduce printing and mailing costs. If any beneficial owner at such an address wishes to discontinue householding and receive a separate copy of the Notice of Internet Availability of Proxy Materials and, if applicable, an Annual Report to Stockholders and Proxy Statement, they should notify their broker. Beneficial owners sharing an address to which a single copy of the Notice of Internet Availability of Proxy Materials and, if applicable, an Annual Report to Stockholders and Proxy Statement was delivered can also request prompt delivery of a separate copy of the Notice of Internet Availability of Proxy Materials and, if applicable, an Annual Report to Stockholders and Proxy Statement by contacting Investor Relations at the following address: Attn: Investor Relations, DaVita Inc., 1551 Wewatta Street, Denver, Colorado 80202, (888) 484-7505.

Admission to Annual Meeting

Admission to the annual meeting will be limited to stockholders of DaVita, family members accompanying stockholders of DaVita, persons holding executed proxies from stockholders who held DaVita stock as of the close of business on April 15, 2011 and such other persons as the chair of the annual meeting shall determine.

If you are a stockholder of DaVita, you must bring certain documents with you in order to be admitted to the annual meeting and in order to bring family members with you. The purpose of this requirement is to help us verify that you are actually a stockholder of DaVita. Please read the following procedures carefully, because they

Table of Contents

specify the documents that you must bring with you to the annual meeting in order to be admitted. The items that you must bring with you differ depending upon whether or not you were a record holder of DaVita stock as of the close of business on April 15, 2011. A record holder of stock is someone whose shares of stock are registered in his or her name in the records of DaVita s transfer agent. Many stockholders are not record holders because their shares of stock are held in street name, meaning that the shares are registered in the name of their broker, bank or other nominee, and the broker, bank or other nominee is the record holder instead. If you are unsure as to whether you were a record holder of DaVita common stock as of the close of business on April 15, 2011, please call DaVita s transfer agent, BNY Mellon Shareowner Services at (877) 889-2012.

If you were a record holder of DaVita common stock as of the close of business on April 15, 2011, then you must bring:

- valid personal photo identification (such as a driver s license or passport).

At the annual meeting, we will check your name for verification purposes against our list of record holders as of the close of business on April 15, 2011.

If a broker, bank or other nominee was the record holder of your shares of DaVita common stock as of the close of business on April 15, 2011, then you must bring:

- valid personal photo identification (such as a driver s license or passport); and
- proof that you owned shares of DaVita common stock as of the close of business on April 15, 2011.

Examples of proof of ownership include the following: (i) an original or a copy of the voting instruction from your bank or broker with your name on it, (ii) a letter from your bank or broker stating that you owned DaVita common stock as of the close of business on April 15, 2011, or (iii) a brokerage account statement indicating that you owned DaVita common stock as of the close of business on April 15, 2011.

If you acquired your shares of DaVita common stock at any time after the close of business on April 15, 2011, you do not have the right to vote at the Annual Meeting, but you may attend it if you bring:

- valid personal photo identification (such as a driver s license or passport); and
- proof that you own shares of DaVita common stock.

Examples of proof of ownership include the following:

- if a broker, bank or other nominee is the record holder of your shares of DaVita common stock: (i) a letter from your bank or broker stating that you acquired DaVita common stock after April 15, 2011, or (ii) a brokerage account statement as of a date after April 15, 2011 indicating that you own DaVita common stock; or
- if you are the record holder of your shares of DaVita common stock, a copy of your stock certificate or a confirmation acceptable to DaVita that you bought the stock after April 15, 2011.

If you are a proxy holder for a stockholder of DaVita who owned shares of DaVita common stock as of the close of business on April 15, 2011, then you must bring:

the executed proxy naming you as the proxy holder, signed by a stockholder of DaVita who owned shares of DaVita common stock as of the close of business on April 15, 2011;

valid personal photo identification (such as a driver s license or passport); and

if the stockholder whose proxy you hold was not a record holder of DaVita common stock as of the close of business on April 15, 2011, proof of the stockholder s ownership of shares of DaVita common stock as of the close of business on April 15, 2011, in the form of (i) an original or a copy

Table of Contents

of the voting instruction form from the stockholder s bank or broker with the stockholder s name on it, or (ii) a letter or statement from a bank, broker or other nominee indicating that the stockholder owned DaVita common stock as of the close of business on April 15, 2011.

No cameras, recording equipment, electronic devices, large bags, briefcases or packages will be permitted at the annual meeting. Shares may be voted in person at the annual meeting only by (a) the record holder as of the close of business on April 15, 2011 or (b) a person holding a valid proxy executed by such record holder.

Electronic Availability of Proxy Materials for 2011 Annual Meeting

Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting to Be Held on June 6, 2011. This Proxy Statement and the Annual Report to Stockholders and Form 10-K for fiscal year 2010 are available electronically at *www.proxyvote.com*.

Table of Contents

PROPOSAL NO. 1

ELECTION OF DIRECTORS

At the annual meeting, you will elect ten directors to serve until the 2012 annual meeting of stockholders or until their respective successors are elected and qualified. Our bylaws require that each director be elected by the majority of votes cast with respect to such director in uncontested elections. In a contested election, where the number of nominees for director exceeds the number of directors to be elected, directors are elected by a plurality of shares represented in person or by proxy at any such meeting and entitled to vote on the election of directors. If a nominee for director who was in office prior to the election is not elected by a majority of votes cast, the director must promptly tender his or her resignation from the Board of Directors, and the Nominating and Governance Committee of the Board of Directors will make a recommendation to the Board of Directors about whether to accept or reject the resignation, or whether to take other action. The Board of Directors, excluding the director in question, will act on the recommendation of the Nominating and Governance Committee and publicly disclose its decision and its rationale within 90 days from the date the election results are certified. If a nominee for director who was not already serving as a director does not receive a majority of votes cast at the annual meeting, the nominee is not elected to the Board of Directors. All 2011 nominees are currently serving on the Board of Directors.

Nine of the ten nominees for director have been determined to be independent under the listing standards of the New York Stock Exchange (NYSE). Please see the section titled Corporate Governance Director Independence below for more information. The Nominating and Governance Committee has recommended, and the Board of Directors has nominated, Pamela M. Arway, Charles G. Berg, Willard W. Brittain, Jr., Carol Anthony (John) Davidson, Paul J. Diaz, Peter T. Grauer, John M. Nehra, William L. Roper, Kent J. Thiry and Roger J. Valine for election as directors. Each nominee has consented to being named in this Proxy Statement as a nominee and has agreed to serve as a director if elected.

Unless the proxy indicates otherwise, the persons named as proxies in the accompanying proxy have advised us that at the meeting they intend to vote the shares covered by the proxies for the election of the nominees named above. If one or more of the nominees are unable or not willing to serve, the persons named as proxies may vote for the election of the substitute nominees that the Board of Directors may propose. The accompanying proxy contains a discretionary grant of authority with respect to this matter. The persons named as proxies may not vote for a greater number of persons than the number of nominees named above.

No arrangement or understanding exists between any nominee and any other person or persons pursuant to which any nominee was or is to be selected as a director or nominee. None of the nominees has any family relationship with any other nominee or with any of our executive officers.

The Board of Directors recommends a vote FOR the election of each of the named nominees as directors.

Information Concerning Members of the Board of Directors Standing for Reelection

Name	Age	Position
Pamela M. Arway	57	Director
Charles G. Berg	53	Director
Willard W. Brittain, Jr.	63	Director
Carol Anthony (John) Davidson	55	Director
Paul J. Diaz	49	Director
Peter T. Grauer	65	Lead Independent Director
John M. Nehra	62	Director
William L. Roper	62	Director
Kent J. Thiry	55	Chairman of the Board and Chief Executive Officer
Roger J. Valine	62	Director

Table of Contents

Pamela M. Arway has been one of our directors since May 2009. From 2005 to 2007, Ms. Arway served as the president of American Express International, Japan, Asia-Pacific, Australia region, a global payment services and travel company. Ms. Arway joined the American Express Company in 1987 after which she served in various capacities, including as chief executive officer of American Express Australia Limited from 2004 to 2005 and as executive vice president of Corporate Travel, North America from 2000 to 2004. Prior to her retirement in October 2008, she also served as advisor to the American Express Company s chairman and chief executive officer. Ms. Arway is an experienced business leader, with extensive management experience.

Charles G. Berg has been one of our directors since March 2007. Mr. Berg served as executive chairman and as a member of the board of directors of WellCare Health Plans, Inc. (WellCare), a provider of managed care services for government-sponsored healthcare programs from January 2008 to December 2010. Mr. Berg became non-executive chairman of the board of directors of WellCare in January 2011. From January 2007 to April 2009, Mr. Berg was a senior advisor to Welsh, Carson, Anderson & Stowe, a private equity firm. From April 1998 to July 2004, Mr. Berg held various executive positions with Oxford Health Plans, Inc. (Oxford) which included chief executive officer from November 2002 to July 2004 when Oxford was acquired by UnitedHealth Group, president and chief operating officer from March 2001 to November 2002 and executive vice president, medical delivery from April 1998 to March 2001. From July 2004 to September 2006, Mr. Berg served as an executive of UnitedHealth Group and was primarily responsible for integrating the Oxford business. Mr. Berg is an experienced business leader with significant experience in the healthcare industry and brings an understanding of the operational, financial and regulatory aspects of our industry and business.

Willard W. Brittain, Jr. has been one of our directors since March 2007. Mr. Brittain has served as chairman and chief executive officer of Preod Corporation, an executive search and business advisory company, since March 2003. From September 2000 to October 2002, Mr. Brittain served as chief operating officer of PwC Consulting and from July 1995 to September 2000, Mr. Brittain served as chief operating officer of PricewaterhouseCoopers LLP. Mr. Brittain was with PricewaterhouseCoopers LLP for 28 years before his retirement. Mr. Brittain serves on the boards of Convergys Corporation, Tutor Perini Corporation and Host Hotels & Resorts, Inc. and previously served on the board of Analysts International Corporation. Mr. Brittain is an experienced business leader and brings significant financial and operations expertise as well as strategic insight.

Carol Anthony (John) Davidson has been one of our directors since December 2010. Mr. Davidson has been senior vice president, controller and chief accounting officer of Tyco International Ltd. (Tyco), a provider of diversified industrial products and services, since January 2004. Prior to joining Tyco in January 2004, he spent six years at Dell Inc., a computer and technology services company, where he held various leadership roles, including vice president, audit, risk and compliance, and vice president, corporate controller. In addition, he previously spent 16 years at Eastman Kodak Company, a provider of imaging technology products and services, in a variety of accounting and financial leadership roles. Mr. Davidson is a CPA with more than 30 years of leadership experience across multiple industries. Mr. Davidson is a member of the Board of Trustees of the Financial Accounting Foundation which oversees financial accounting and reporting standards setting processes for the United States, including oversight of the Financial Accounting Standards Board (FASB). Mr. Davidson brings a strong track record of building and leading global teams and implementing governance and controls processes.

Paul J. Diaz has been one of our directors since July 2007. Mr. Diaz has been the president and chief executive officer of Kindred Healthcare, Inc. (Kindred), a provider of long-term healthcare services in the United States, since January 2004. Mr. Diaz joined Kindred in January 2002 as president and chief operating officer. Prior to joining Kindred, Mr. Diaz was the managing member of Falcon Capital Partners, LLC, a private investment and consulting firm, and from 1996 to July 1998, Mr. Diaz served in various executive capacities with Mariner Health Group, Inc., including as executive vice president and chief operating officer. Mr. Diaz serves on the board of Kindred and the board of visitors of Georgetown University Law Center and previously served on the board of PharMerica Corporation. Mr. Diaz is an experienced business leader with significant experience in the healthcare industry and brings an understanding of the operational, financial and regulatory aspects of our industry and business.

Table of Contents

Peter T. Grauer has been one of our directors since August 1994 and our lead independent director since 2003. Mr. Grauer has been chairman of the board of Bloomberg, Inc. since April 2001, and its chief executive officer and treasurer since March 2002. From November 2000 until March 2002, Mr. Grauer was a managing director of Credit Suisse First Boston. From September 1992 until November 2000, upon the merger of Donaldson, Lufkin & Jenrette (DLJ) into Credit Suisse First Boston, Mr. Grauer was a managing director and founding partner of DLJ Merchant Banking Partners. Mr. Grauer has significant experience as a business leader and brings a deep understanding of our business and industry through his over 15 years of service as a member of the Board of Directors.

John M. Nehra has been one of our directors since November 2000. Mr. Nehra has been affiliated with New Enterprise Associates (NEA), a venture capital firm, since 1989, including, since 1993, as general partner of several of its affiliated venture capital limited partnerships. Mr. Nehra has also been managing general partner of Catalyst Ventures, a venture capital firm, since 1989. Mr. Nehra serves on the boards of a number of NEA s portfolio companies. Mr. Nehra is an experienced business leader with approximately 35 years experience in investment banking, research and capital markets and he brings a deep understanding of our business and industry through his almost 10 years of service as a member of the Board of Directors as well as significant experience in the healthcare industry through his involvement with NEA s healthcare-related portfolio companies.

William L. Roper has been one of our directors since May 2001. Dr. Roper has been chief executive officer of the University of North Carolina (UNC) Health Care System, dean of the UNC School of Medicine and vice chancellor for medical affairs of UNC since March 2004. Dr. Roper also continues to serve as a professor of health policy and administration in the UNC School of Public Health and a professor of pediatrics and of social medicine in the UNC School of Medicine. From 1997 until March 2004, he was dean of the UNC School of Public Health. Before joining UNC in 1997, Dr. Roper served as senior vice president of Prudential Health Care. He also served as director of the Centers for Disease Control and Prevention from 1990 to 1993, on the senior White House staff in 1989 and 1990 and as the administrator of Centers for Medicare & Medicaid Services from 1986 to 1989. Dr. Roper is also chairman of the board of the National Quality Forum. Dr. Roper serves on the board of Medco Health Solutions, Inc. Dr. Roper brings substantial expertise in the medical field, an in-depth understanding of the regulatory aspects of our business as well as clinical, financial and operational experience.

Kent J. Thiry became our chairman of the Board of Directors and chief executive officer in October 1999. From June 1997 until he joined us, Mr. Thiry was chairman of the board and chief executive officer of Vivra Holdings, Inc., which was formed to operate the non-dialysis business of Vivra Incorporated (Vivra) after Gambro AB acquired the dialysis services business of Vivra in June 1997. From September 1992 to June 1997, Mr. Thiry was the president and chief executive officer of Vivra, a provider of renal dialysis and other healthcare services. From April 1992 to August 1992, Mr. Thiry was president and co-chief executive officer of Vivra, and from September 1991 to March 1992, he was president and chief operating officer of Vivra. From 1983 to 1991, Mr. Thiry was associated with Bain & Company, first as a consultant, and then as vice president. Mr. Thiry previously served on the board of Varian Medical Systems, Inc. As a member of management, Mr. Thiry provides significant industry-specific experience and unique expertise regarding the company s business and operations as well as executive leadership and management experience.

Roger J. Valine has been one of our directors since June 2006. From 1993 to his retirement in July 2006, Mr. Valine served as the chief executive officer of Vision Service Plan (VSP), the nation s largest provider of eyecare wellness benefits. From January 1993 to February 2006, Mr. Valine served as both the president and chief executive officer of VSP. Upon his retirement, Mr. Valine had worked for VSP for 33 years and provided consulting services to VSP through January 2008. Mr. Valine serves on the board of SureWest Communications and previously served on the board of American Specialty Health Incorporated. Mr. Valine is an experienced business leader with significant experience in the healthcare industry and brings an understanding of the operational, financial and regulatory aspects of our business as well as extensive management experience.

Table of Contents

CORPORATE GOVERNANCE

Director Independence

Under the listing standards of the NYSE, a majority of the members of the Board of Directors must satisfy the NYSE criteria for independence. No director qualifies as independent under the NYSE listing standards unless the Board of Directors affirmatively determines that the director has no material relationship with us (either directly or as a partner, stockholder or officer of an organization that has a relationship with us). In addition, the Board of Directors has adopted a formal set of standards used to determine director independence. The full text of our director independence standards is available under the Corporate Governance section of our website, located at *http://www.davita.com/about/corporate-governance*.

The Board of Directors evaluates the independence of our directors annually and will review the independence of individual directors on an interim basis to consider changes in employment, relationships and other factors. The Board of Directors has determined that all of the individuals currently serving, or who served at any time during 2010, as members of the Board of Directors, other than Mr. Thiry, are independent under the NYSE listing standards.

In making determinations of independence, the Board of Directors considered the following relationships and determined that none of such relationships was a material relationship that would impair the independence of any such individual:

(1) Mr. Thiry holds an ownership interest of less than 2% in NEA Partnerships, a venture capital firm. Mr. Nehra is a general partner of NEA Partnerships and Richard K. Whitney, our former chief financial officer and current special advisor to the chief executive officer, is a venture partner of New Enterprise Associates, an affiliate of NEA Partnerships.

(2) Mr. Berg is a director, the non-executive chairman and a stockholder of WellCare, which has made payments to us for services rendered in the ordinary course of business in the last three years which did not exceed the greater of $1 million or 2% of WellCare s consolidated gross revenue in any such year. For additional information, see Certain Relationships and Related Transactions.

(3) Mr. Diaz is a director, the president and chief executive officer and a stockholder of Kindred, which has made payments to us for services rendered in the ordinary course of business in the last three years which did not exceed the greater of $1 million or 2% of Kindred s consolidated gross revenue in any such year.

The Board of Directors also maintains a policy whereby the Board of Directors will evaluate the appropriateness of the director s continued service on the Board of Directors in the event that the director retires from their principal job, changes their principal job responsibility or experiences a significant event that could negatively affect their service to the Board of Directors. In such event, the affected director shall promptly submit his or her resignation to the chairman of the Board of Directors and the lead independent director. The members of the Board of Directors, excluding the affected director, will determine whether the affected director s continued service on the Board of Directors is in the best interests of our stockholders and will decide whether or not to accept the resignation of the director. In addition, prior to accepting an invitation to serve on the board of directors of another public company, a director must advise the chairman of the Board of Directors and the lead independent director so that the remaining members of the Board of Directors may evaluate any potential conflicts of interest.

Leadership Structure and Meetings of Non-management Directors

Mr. Thiry is our chief executive officer and chairman of the Board of Directors. Mr. Thiry brings over ten years of experience with our company and deep institutional knowledge and experience to the combined role. Our lead independent director, Mr. Grauer, plays a significant role in Board leadership and meetings of the

Table of Contents

independent directors. Mr. Grauer chairs our Nominating and Governance Committee, which is a committee composed of all directors other than Mr. Thiry. As lead independent director, Mr. Grauer reviews and provides input to the chairman on meeting agendas and information to be sent to the Board of Directors, consults with the chairman on meeting schedules to assure that there is sufficient time for discussion of agenda items, serves as the principal liaison between the chairman and the non-executive directors and presides over executive sessions of the Board of Directors, providing consolidated feedback, as appropriate, from those meetings to Mr. Thiry. Additionally, Mr. Grauer facilitates discussions outside of scheduled board meetings among the independent directors on key issues as required. We believe that Mr. Thiry s experience and knowledge, and the significant role of the lead independent director, make combination of the chairman and chief executive officer roles appropriate.

Non-management directors meet regularly in executive sessions without management. Executive sessions are held in conjunction with each regularly scheduled meeting of the Board of Directors.

Communications with the Board of Directors

Any interested party who desires to contact the lead independent director, Mr. Grauer, may do so by sending an email to *leaddirector@davita.com*. In addition, any interested party who desires to contact the Board of Directors or any member of the Board of Directors may do so by writing to: Board of Directors, c/o Corporate Secretary, DaVita Inc., 1551 Wewatta Street, Denver, Colorado 80202. Copies of any such written communications received by the Secretary will be provided to the full Board of Directors or the appropriate member depending on the facts and circumstances described in the communication unless they are considered, in the reasonable judgment of the Secretary, to be improper for submission to the intended recipient(s).

Annual Meeting of Stockholders

We do not have a policy requiring that directors attend the annual meeting of stockholders. Stockholders may contact our lead independent director and the Board of Directors as described above. At the last annual meeting of stockholders, our chairman, Mr. Thiry, attended the meeting.

Information Regarding the Board of Directors and its Committees

The Board of Directors met seven times during 2010. Each of our directors attended at least 75% of the total number of meetings of the Board of Directors and of the committees of the Board of Directors on which he or she served during 2010. The Board of Directors has established the following committees: the Audit Committee, the Compensation Committee, the Nominating and Governance Committee, the Compliance Committee, the Public Policy Committee and the Clinical Performance Committee.

Audit Committee

The current members of our Audit Committee are Mr. Berg, Mr. Davidson and Mr. Valine, with Mr. Valine serving as the chair. Mr. Davidson and Mr. Grauer joined the Audit Committee on December 2, 2010 and June 7, 2010, respectively. Mr. Grauer joined the Audit Committee on an interim basis upon the retirement of Mr. Vaughan from the Board of Directors and the Audit Committee and until a successor member of the Audit Committee could be appointed. After Mr. Davidson s appointment to the Audit Committee, Mr. Grauer ended his interim service on the Audit Committee on March 10, 2011. The Board of Directors has determined that Mr. Berg, Mr. Davidson and Mr. Valine each qualifies as an audit committee financial expert within the meaning of the rules of the SEC and that each of the members of our Audit Committee is independent and financially literate under the listing standards of the NYSE and the company s independence standards.

The Board of Directors has adopted a written charter for our Audit Committee. The charter is available under the Corporate Governance section of our website, located at *http://www.davita.com/about/corporate-*

Table of Contents

governance. The Audit Committee s primary responsibilities are to assist the Board of Directors with oversight of: (1) the integrity of our financial statements including the financial reporting and disclosure processes and the integrity and effectiveness of our system of internal controls over financial reporting; and (2) the independence, qualifications and performance of our independent registered public accounting firm, including a review of the scope and results of their audit, as well as our internal audit function. The Audit Committee, together with the Compliance Committee, assists the Board of Directors with oversight of compliance with legal and regulatory requirements. The Compliance Committee has primary responsibility for oversight of health care regulatory compliance requirements. The Audit Committee assists the Board of Directors with oversight of all other legal and regulatory requirements, including those that may have a material impact on the company s financial statements. The Audit Committee also appoints and engages our independent registered public accounting firm and is required to pre-approve the independent registered public accounting firm s annual audit services (including related fees), audit-related services, and all other services in accordance with our pre-approval policy. Our pre-approval policy is available under the Corporate Governance section of our website, located at *http://www.davita.com/about/corporate-governance*. The Audit Committee met nine times during 2010, including meetings held with the independent registered public accounting firm and management each quarter prior to the release of the company s financial results. The Audit Committee met with the independent registered public accounting firm without management present on five occasions in 2010.

Compensation Committee

The current members of our Compensation Committee are Mr. Grauer, Mr. Nehra and Mr. Valine, with Mr. Nehra serving as the chair. Each of the members of our Compensation Committee is independent in accordance with the listing standards of the NYSE and the company s independence standards. Each of the members of this committee is also a nonemployee director as that term is defined under Rule 16b-3 of the Securities Exchange Act of 1934 (the Exchange Act) and an outside director as that term is defined in Internal Revenue Service regulations.

Our Compensation Committee reviews the performance of our chief executive officer and other executives and makes decisions regarding their compensation, with the goal of ensuring that our compensation system for our chief executive officer and our other executives, as well as our philosophy for compensation for all employees and the Board of Directors, is aligned with the long-term interests of our stockholders. The Compensation Committee establishes policies relating to the compensation of our executive officers and other key employees that further this goal.

The Compensation Committee is responsible for determining the compensation of our chief executive officer. The Compensation Committee conducts an evaluation of our chief executive officer s performance and the company s performance and considers a self-assessment prepared by our chief executive officer. Periodically, the Compensation Committee engages an outside consultant to conduct an in-depth analysis of our chief executive officer s performance as a manager during the year. Neither the chief executive officer nor other members of management provide a recommendation to the Compensation Committee with regard to the chief executive officer s compensation. The compensation package for our chief executive officer is approved by the Compensation Committee, subject to ratification by the independent members of the Board of Directors. The Compensation Committee works closely with our chief executive officer to determine the compensation of our other executive officers. Our chief executive officer conducts a performance and compensation review of each other executive officer and reviews his detailed assessments of the performance of each of the other executive officers with the Compensation Committee. The Compensation Committee considers the recommendations of the chief executive officer when determining the compensation of the other executive officers.

In 2011, Compensia, a national compensation consulting firm engaged by the Compensation Committee, provided the Compensation Committee with an analysis of comparative market data on the cash and stock-based compensation for senior executives at a group of comparable companies within our industry. The Compensation Committee considered Compensia s analysis of the compensation of executives serving in similar positions at

Table of Contents

comparable companies to obtain a general understanding of current compensation practices in our industry and to provide context for compensation decisions. Compensation decisions are not directly related to or otherwise based upon the comparative data. The Compensation Committee uses this comparative data as one of many factors considered to set the compensation for our executive officers. The Compensation Committee has the sole authority to retain or replace Compensia in its discretion. Compensia does not provide consulting services to the company and may not provide such services without the approval of the chair of the Compensation Committee.

Our Non-Management Director Compensation Philosophy and Plan sets forth the terms of our director compensation. There is no discretionary decision-making involved in director compensation. The Compensation Committee and the Board of Directors periodically review director compensation. In 2010, Compensia provided the Compensation Committee with an analysis of comparative market data on the cash and stock-based compensation for directors at a group of comparable companies within our industry. The Compensation Committee considered Compensia s analysis of the compensation of directors at comparable companies to obtain a general understanding of current compensation practices in our industry. The Compensation Committee did not modify director compensation following this review. Please see Compensation of Directors beginning on page 72 of this Proxy Statement for more information regarding our director compensation program pursuant to the Non-Management Director Compensation Philosophy and Plan.

The Compensation Committee met five times during 2010. The charter of the Compensation Committee is available under the Corporate Governance section of our website, located at *http://www.davita.com/about/corporate-governance*.

Nominating and Governance Committee

The current members of our Nominating and Governance Committee are Ms. Arway, Mr. Berg, Mr. Brittain, Mr. Davidson, Mr. Diaz, Mr. Grauer, Mr. Nehra, Dr. Roper and Mr. Valine, representing all of our independent directors. Mr. Davidson joined the Nominating and Governance Committee on December 2, 2010. Our lead independent director, Mr. Grauer, is the chair of the Nominating and Governance Committee. The Board of Directors has adopted a set of corporate governance guidelines established to assist the Board of Directors and its committees in performing their duties and serving the best interests of the company and our stockholders. On March 10, 2011, the Board of Directors amended the corporate governance guidelines to, among other things, (a) provide for a mandatory retirement age, such that any director who has reached the age of 75 will not be nominated for reelection to the Board of Directors; (b) limit the number of public company boards that a director or director nominee may serve on, such that no director or director nominee may serve on more than four other public company boards; (c) require the completion of a written questionnaire with respect to the background and qualification of such director or director nominee in order to be eligible for election or reelection to the Board of Directors and a written representation and agreement from each director nominee that such nominee (i) is not and will not become a party to any voting agreement with respect to how such director will vote; (ii) is not and will not become a party to any agreement that provides the director with compensation, reimbursement or indemnification in connection with such director s service on the Board of Directors; (iii) owns the required amount of shares of common stock in accordance with our share ownership policy; (iv) will comply with all applicable corporate governance, conflict of interest, confidentiality, trading policies and corporate governance guidelines; and (v) if elected and renominated, will abide by the resignation provisions set forth in the bylaws to the extent such nominee does not receive a majority of votes cast. The charter of the Nominating and Governance Committee and our corporate governance guidelines are available under the Corporate Governance section of our website, located at *http://www.davita.com/about/corporate-governance*.

Our Nominating and Governance Committee reviews and makes recommendations to the Board of Directors about our governance processes, assists in identifying and recruiting candidates for the Board of Directors, reviews the performance of the individual members of the Board of Directors, proposes a slate of nominees for election at the annual meeting of stockholders and makes recommendations to the Board of Directors regarding the membership and chairs of the committees of the Board of Directors. The Nominating and

Table of Contents

Governance Committee does not have a specific set of minimum criteria for membership on the Board of Directors. In making its recommendations, however, it considers the mix of characteristics, experience, diverse perspectives and skills that is most beneficial to our company. The committee also considers continuing director tenure and takes steps as may be appropriate to ensure that the Board of Directors maintains an openness to new ideas and a willingness to re-examine the status quo. The company does not have a specific diversity policy. However, as noted in our corporate governance guidelines, when selecting nominees the committee considers diversity of skills, experience, perspective and background. The Nominating and Governance Committee will consider nominees for director recommended by stockholders upon submission in writing to our Secretary of the names and qualifications of such nominees at the following address: Corporate Secretary, DaVita Inc., 1551 Wewatta Street, Denver, Colorado 80202. The committee does not intend to alter the manner in which it evaluates candidates based on whether the candidate was recommended by a stockholder.

The Nominating and Governance Committee held five formal meetings during 2010. In March 2011, the Nominating and Governance Committee recommended the candidates standing for election at the 2011 annual meeting of stockholders. One of these candidates, Mr. Davidson, was appointed as a director by the Board of Directors outside of last year s annual meeting of stockholders to fill a vacancy. Mr. Davidson was identified as a potential member of the Board of Directors by a non-management member of the Board of Directors. The Nominating and Governance Committee then considered Mr. Davidson and recommended him for membership on the Board of Directors. Mr. Davidson was appointed unanimously to the Board of Directors by a vote at a regular meeting of the Board of Directors on December 2, 2010.

Compliance Committee

The current members of our Compliance Committee are Ms. Arway, Mr. Berg, Mr. Grauer and Dr. Roper, with Dr. Roper serving as the chair. Each of the members of our Compliance Committee is independent in accordance with the listing standards of the NYSE and the company s independence standards. Our Compliance Committee oversees and monitors the effectiveness of our health care regulatory compliance program, reviews significant health care regulatory compliance risk areas, and reviews the steps management is taking to monitor, control and report these risk exposures. The Compliance Committee, together with the Audit Committee, assists the Board of Directors with oversight of compliance with legal and regulatory requirements. The Compliance Committee has primary responsibility for oversight of health care regulatory requirements. The Compliance Committee meets regularly with our chief compliance officer. The Compliance Committee met four times during 2010. The charter of the Compliance Committee is available under the Corporate Governance section of our website, located at *http://www.davita.com/about/corporate-governance*.

Public Policy Committee

The current members of our Public Policy Committee are Mr. Brittain, Mr. Diaz and Dr. Roper, with Mr. Diaz serving as the chair. Each of the members of our Public Policy Committee is independent in accordance with the listing standards of the NYSE and the company s independence standards. Our Public Policy Committee advises the Board of Directors on public policy and makes recommendations to the Board of Directors as to policies and procedures relating to issues of public policy and government relations. The Public Policy Committee met three times during 2010. The charter of the Public Policy Committee is available under the Corporate Governance section of our website, located at *http://www.davita.com/about/corporate-governance*.

Clinical Performance Committee

The current members of our Clinical Performance Committee are Ms. Arway, Mr. Brittain, Mr. Nehra and Dr. Roper, with Dr. Roper serving as the chair. Each of the members of our Clinical Performance Committee is independent in accordance with the listing standards of the NYSE and the company s independence standards. Our Clinical Performance Committee advises the Board of Directors on clinical performance issues facing the company and makes recommendations to management and to the Board of Directors as to policies and

Table of Contents

procedures relating to issues of clinical performance. The Clinical Performance Committee met one time during 2010. The charter of the Clinical Performance Committee is available under the Corporate Governance section of our website, located at *http://www.davita.com/about/corporate-governance*.

Risk Oversight

The Board of Directors involvement in risk oversight involves the Audit Committee, the Compliance Committee and the full Board of Directors. The Audit Committee is responsible for legal and regulatory risk oversight and the Compliance Committee has primary responsibility for oversight of healthcare regulatory compliance requirements. The Audit Committee and the Compliance Committee meet regularly with our chief compliance officer. The Compliance Committee reviews significant healthcare regulatory compliance risk areas and the steps management has taken to monitor, control and report such compliance risk exposures. The Compliance Committee meets on a regular basis and reports directly to the Board of Directors on its findings. The Audit Committee receives materials on enterprise risk management on an annual basis. These materials include identification of top enterprise risks for the company, the alignment of management s accountability and reporting for these risks, and mapping of Board of Directors and Audit Committee s oversight responsibilities for key risks. In addition, the Audit Committee and the full Board of Directors periodically receive materials to address the identification and status of major risks to the company. The Audit Committee discusses significant risk areas and the actions management has taken to monitor, control, and report such exposures. The Audit Committee also reviews with the company s general counsel any legal matters that may have a material impact on the company s financial statements, the company s compliance with applicable laws and regulations, and material reports or inquiries received from governmental agencies, including such matters identified by the Compliance Committee or the chief compliance officer. At each meeting of the full Board of Directors, the chairman of the Audit Committee reports on the activities of the Audit Committee, including risks identified and risk oversight.

Risk Considerations in Our Compensation Program

The Compensation Committee, with the assistance of an independent compensation consultant, conducted a review of the company s material compensation policies and practices applicable to its employees, including its executive officers. Based on this review, the Compensation Committee concluded that these policies and practices do not create risks that are reasonably likely to have a material adverse effect on the company. The key features of the executive compensation program that support this conclusion include:

- a balance between cash and equity compensation;
- a balance between short-term and long-term performance focus;
- short-term incentive opportunities are capped and are not linked to any one specific goal;
- equity awards have meaningful vesting requirements and relatively short terms;
- a clawback policy that permits the Board of Directors to recover bonuses, incentive and equity-based compensation from executive officers and members of the Board of Directors whose fraud or intentional misconduct was a significant contributing factor to the company having to restate all or a portion of its financial statements; and
- significant independent Compensation Committee oversight.

Board of Directors Share Ownership Policy

We have a share ownership policy that applies to all non-management members of the Board of Directors. The purpose of the policy is to encourage the Board of Directors to have an ownership stake in the company by retaining a specified financial interest in our common stock.

Table of Contents

Both shares owned directly and shares underlying vested but unexercised stock options, stock appreciation rights (SARs), including stock-settled stock appreciation rights (SSARs), and restricted stock units (RSUs) are included in the determination of whether the share ownership guidelines have been met. The total net realizable share value retained must have a current market value of not less than the lower of:

25% of the total equity award value realized by the Board of Directors member to date in excess of $100,000; or

five times the annual Board of Directors retainer of $24,000, or $120,000.

Management Share Ownership Policy

In addition, we have a share ownership policy which applies to all members of our management team at the vice president level and above. See Executive Compensation Process & Governance Management Share Ownership Policy beginning on page 55 of this Proxy Statement for more information regarding our management share ownership policy.

Code of Ethics and Code of Conduct

We have a code of ethics that applies to our chief executive officer, chief financial officer, controller and chief accounting officer, general counsel, all vice presidents and all professionals involved in the accounting and financial reporting functions. We also have a code of conduct that applies to all of our teammates. The code of ethics and the code of conduct are available under the Corporate Governance section of our website, located at *http://www.davita.com/about/corporate-governance*.

Clawback Policy

We have a clawback policy that permits the Board of Directors to recover bonuses, incentive and equity-based compensation from executive officers and members of the Board of Directors whose fraud or intentional misconduct was a significant contributing factor to the company having to restate all or a portion of its financial statements. See Compensation Discussion and Analysis beginning on page 40 of this Proxy Statement for more information regarding our clawback policy.

Table of Contents

PROPOSAL NO. 2

APPROVAL OF THE DAVITA INC. 2011 INCENTIVE AWARD PLAN

We are asking you to vote for approval of the proposed DaVita Inc. 2011 Incentive Award Plan (the 2011 Plan). The 2011 Plan constitutes an amendment and restatement of the DaVita Inc. 2002 Equity Compensation Plan, as amended (the 2002 Plan or the Equity Compensation Plan).

The Board of Directors believes that an equity-based compensation award program is an important incentive tool for the employees and consultants of DaVita, its subsidiaries and affiliates and directors. As a result, the Board of Directors has adopted, subject to stockholder approval, the 2011 Plan to continue to provide a means by which the employees and consultants of DaVita, its subsidiaries and affiliates and members of the Board of Directors may be given an opportunity to benefit from the increases in the value of our common stock, and to attract and retain the services of such persons.

The 2011 Plan will become effective upon approval of the 2011 Plan by our stockholders at the Annual Meeting. If the stockholders do not approve the 2011 Plan, the 2002 Plan will continue in full force and effect only until February 8, 2012, when it will expire. After February 8, 2012, the company would no longer be able to grant equity-based compensation to its employees, consultants and directors, and would lose an important incentive tool for its employees, consultants and directors.

INTRODUCTION

Equity-based compensation has been a major component of our compensation programs. The Board of Directors believes that our capacity to grant equity-based compensation has been a significant factor in our ability to achieve our growth objectives and enhance stockholder value. The principal features of the 2011 Plan are summarized below, but the summary is qualified in its entirety by reference to the 2011 Plan itself. The 2011 Plan is attached to this Proxy Statement as **Appendix A**.

Purpose

The purpose of the 2011 Plan is to promote our success and enhance our value by linking the individual interests of the members of the Board of Directors and our employees to those of our stockholders and by providing such individuals with an incentive for outstanding performance to generate superior returns to our stockholders. The 2011 Plan is further intended to provide us flexibility in our ability to motivate, attract, and retain the services of members of the Board of Directors, our employees and our consultants upon whose judgment, interest, and special effort the successful conduct of our operation is largely dependent. The 2011 Plan is designed to enable us to grant performance-based equity and cash awards that qualify as performance-based compensation under Section 162(m) of the Internal Revenue Code (the Code).

Size of the Share Pool

The 2011 Plan does not increase the number of shares authorized under the 2002 Plan. As of December 31, 2010, there were 11,012,487 stock-settled stock appreciation rights and 501,564 restricted stock units outstanding, and 10,908,787 shares available for future grants, under the 2002 Plan. Since its inception in 2002, a cumulative aggregate of 34,178,338 shares have been reserved under the 2002 Plan, as hereby amended and restated by the 2011 Plan, including shares directly authorized under the plan, shares inherited from predecessor plans, and shares reserved under the plan from repurchases under a prior replenishment provision that was terminated in 2007. For more information regarding the shares available for issuance under the 2011 Plan, see Limitations on Awards and Shares Available below.

The Board of Directors committed and continues to commit to our stockholders that over the three-year period that commenced on April 1, 2010, it will not grant a number of shares subject to stock awards under the

Table of Contents

2002 Plan or 2011 Plan, including stock options, SARs, restricted stock units or other stock awards, at an average annual rate greater than 4.02% of the number of shares of our common stock that we believe will be outstanding over such three-year period. This 4.02% rate is the average of the 2009 and 2010 three-year average median grant rate plus one standard deviation for the Russell 3000 companies in the company s industry segment. Awards that are settled in cash, awards that are granted pursuant to stockholder approved exchange programs, awards sold under our Employee Stock Purchase Plan and awards assumed or substituted in business combination transactions will be excluded from our grant rate calculation. For purposes of calculating the number of shares granted, any Full Value Awards (i.e., restricted stock, restricted stock unit, performance share or any other award that does not have an exercise price per share at least equal to the per share fair market value of our common stock on the grant date) will count as equivalent to 3.0 shares. The company will publicly report its compliance with this three-year average annual grant rate commitment, and the data necessary to independently confirm it, in a public filing shortly after March 31, 2013.

Under the terms of the 2011 Plan, the pool of shares may be used for all types of awards under a fungible pool formula. Pursuant to this fungible pool formula, the authorized share limit will be reduced by one share of our common stock for every one share subject to an option or stock appreciation right and three shares of our common stock for every one share subject to a Full Value Award.

Stockholder Approval Requirement

In general, stockholder approval of the 2011 Plan is necessary in order for us to (1) continue to meet the stockholder approval requirements of the principal securities market on which shares of our common stock are traded and (2) continue to take tax deductions for certain compensation resulting from awards granted thereunder qualifying as performance-based compensation under Section 162(m) of the Code.

Compensation and Governance Best Practices

The 2011 Plan authorizes the Compensation and Management Development Committee (or Compensation Committee) of the Board of Directors (or, if the Board of Directors determines, another committee of the Board of Directors) to provide equity-based compensation in the form of stock options, stock appreciation rights, restricted stock units, restricted stock, performance-based awards, dividend equivalents, stock payments, deferred stock unit awards and deferred stock awards structured by the Compensation Committee within parameters set forth in the 2011 Plan, for the purpose of providing the members of the Board of Directors, our employees and our consultants and equity compensation, incentives and rewards for performance. The 2011 Plan reflects a broad range of compensation and governance best practices, with some of the key features of the 2011 Plan as follows:

Limitations on Grants. The maximum aggregate number of shares with respect to one or more awards that may be granted to any one person during any consecutive 12 month period is 2,250,000. However, this number may be adjusted to take into account equity restructurings and certain other corporate transactions as described below, the issuance of rights and certain other events described in the 2011 Plan, in addition to the share limitations described above under Size of the Share Pool.

No Repricing or Replacement of Options or Stock Appreciation Rights. The 2011 Plan prohibits, without stockholder approval: (i) the amendment of options or stock appreciation rights to reduce the exercise price, and (ii) the replacement of an option or stock appreciation right with cash or any other award when the price per share of the option or stock appreciation right exceeds the fair market value of the underlying shares, except with respect to any Substitute Award (as defined in Limitations on Awards and Shares Available below).

No In-the-Money Option or Stock Appreciation Right Grants. The 2011 Plan prohibits the grant of options or stock appreciation rights with an exercise or base price less than the fair market value, generally the closing price, of our common stock on the date of grant.

Table of Contents

Section 162(m) Qualification. The 2011 Plan is designed to allow awards made under the 2011 Plan, including equity awards and incentive cash bonuses, to qualify as performance-based compensation under Section 162(m) of the Code.

Independent Administration. The Compensation Committee of the Board of Directors, which consists of only non-employee directors generally will administer the 2011 Plan if it is approved by stockholders, and only the Compensation Committee may make grants of awards to persons who are subject to Section 16 of the Exchange Act and persons who are covered employees within the meaning of Section 162(m) of the Code. The Compensation Committee may delegate certain of its duties and authorities to a subcommittee for awards to certain non-executive employees.

ADMINISTRATION

The 2011 Plan will be administered by the Compensation Committee. Unless otherwise determined by the Board of Directors, the Compensation Committee shall consist solely of two or more directors appointed by the Board of Directors, each of whom is an outside director within the meaning of Section 162(m) of the Code, a non-employee director within the meaning of the rules under Section 16 of the Securities Exchange Act of 1934, as amended, and an independent director under the rules of the principal securities market on which shares of our common stock are traded. The Compensation Committee may delegate to a committee of one or more members of the Board of Directors or one or more of our officers the authority to grant or amend awards to participants other than our senior executives who are subject to Section 16 of the Exchange Act, employees who are covered employees within the meaning of Section 162(m) of the Code, and the regulations thereunder, or a member of the Board of Directors or an officer to whom authority has been delegated under the 2011 Plan to grant or amend awards.

The Board of Directors, acting by a majority of its members in office, will have authority to administer the 2011 Plan with respect to awards granted to non-employee members of the Board of Directors, and the Compensation Committee will have authority to administer the 2011 Plan to all other eligible individuals. References to Administrator in this Proposal No. 2 shall mean, as applicable, the full Board of Directors or the Compensation Committee as the entity to which the administration of the 2011 Plan has been delegated within the limits described in the 2011 Plan. Unless otherwise limited by the Board of Directors, the Administrator will have the authority to administer the 2011 Plan with respect to grants of equity awards, including the power to determine eligibility, the types and sizes of awards, the price and timing of awards and the acceleration or waiver of any vesting restriction, as well as the authority to delegate such administrative responsibilities.

ELIGIBILITY

Persons currently eligible to participate in the 2011 Plan are nine non-employee directors, approximately 34,000 employees and a non-significant number of consultants (e.g., less than 10) of DaVita and its subsidiaries and affiliates, as determined by the Administrator.

LIMITATION ON AWARDS AND SHARES AVAILABLE

As of December 31, 2010, there were 11,012,487 stock-settled stock appreciation rights and 501,564 restricted stock units outstanding, and 10,908,787 shares available for future grants, under the 2002 Plan. Since its inception in 2002, a cumulative aggregate of 34,178,338 shares have been reserved under the 2002 Plan, as hereby amended and restated by the 2011 Plan, including shares directly authorized under the plan, shares inherited from predecessor plans, and shares reserved under the plan from repurchases under a prior replenishment provision that was terminated in 2007. The shares of our common stock covered by the 2011 Plan may be shares in treasury, authorized but unissued shares, or shares purchased in the open market.

Table of Contents

If any shares subject to an award under the 2011 Plan that is not a Full Value Award are forfeited or expire or such award is settled for cash, then any shares subject to such award may, to the extent of such forfeiture, expiration or cash settlement, be used again for new grants under the 2011 Plan. To the extent that a Full Value Award is forfeited or expires or such award is settled for cash, the shares available under the 2011 Plan will be increased by 3.0 shares subject to such Full Value Award. However, any shares tendered or withheld to satisfy the grant or exercise price or tax withholding obligation pursuant to any award and any shares subject to a stock appreciation right that are not issued in connection with the stock settlement of the stock appreciation right on its exercise may not be used again for new grants.

The payment of dividend equivalents in cash in conjunction with any outstanding awards will not be counted against the shares available for issuance under the 2011 Plan.

Awards granted under the 2011 Plan upon the assumption of, or in substitution for, outstanding equity awards previously granted by an entity in connection with a corporate transaction, such as a merger, combination, consolidation or acquisition of property or stock (but not awards made in connection with the cancellation and repricing of an option or stock appreciation right) will not reduce the shares authorized for grant under the 2011 Plan. Additionally, in the event that a company acquired by us or any of our subsidiaries or affiliates or with which we or any of our subsidiaries or affiliates combines has shares available under a pre-existing plan approved by stockholders and not adopted in contemplation of such acquisition or combination, the shares available for grant pursuant to the terms of such pre-existing plan may be used for awards under the 2011 Plan and will not reduce the shares authorized for grant under the 2011 Plan, absent the acquisition or combination, and will only be made to individuals who were not employed by or providing services to us or any of our subsidiaries or affiliates immediately prior to such acquisition or combination.

The maximum number of shares of our common stock that may be subject to one or more awards granted to any one participant pursuant to the 2011 Plan during any 12 month period is 2,250,000 and the maximum amount that may be paid in cash to any one participant during any calendar year is $10,000,000.

LIMITATION ON FULL VALUE AWARD VESTING

Except as may be determined by the Administrator in the event of a consummation of a change of control, or the holder s death, disability, or retirement, a Full Value Award will not become fully vested earlier than three years from the grant date (two years in the case of an employee who is not an executive of the company or in the case of performance-based Full Value Awards, over a period of not less than one year); provided, however, that notwithstanding the foregoing, Full Value Awards (a) that do not exceed in the aggregate of 5% of the total number of shares available under the 2011 Plan will not be subject to the minimum vesting provisions and (b) the company may grant a Full Value Award to employees newly hired by the company or any of its subsidiaries without respect to such minimum vesting provisions.

AWARDS

The 2011 Plan provides for the grant of ISOs, nonqualified stock options, stock appreciation rights, restricted stock units, restricted stock, performance-based awards, dividend equivalents, stock payments, deferred stock unit awards and deferred stock awards. No determination has been made as to the types or amounts of awards that will be granted to specific individuals pursuant to the 2011 Plan.

Stock options, including ISOs, as defined under Section 422 of the Code, and nonqualified stock options may be granted pursuant to the 2011 Plan. The option exercise price of all stock options granted pursuant to the 2011 Plan will not be less than 100% of the fair market value of our common stock on the date of grant. In general, the fair market value shall be the closing sales price for a share of our common stock as quoted on the

Table of Contents

principal securities market on which shares of our common stock are traded on the date of grant, which as of April 13, 2011 was $86.70. Stock options may vest and become exercisable as determined by the Administrator, but in no event may a stock option have a term extending beyond the fifth anniversary of the date of grant. ISOs granted to any person who owns, as of the date of grant, stock possessing more than ten percent of the total combined voting power of all classes of our stock, however, shall have an exercise price that is not less than 110% of the fair market value of our common stock on the date of grant and may not have a term extending beyond the fifth anniversary of the date of grant. The aggregate fair market value of the shares with respect to which options intended to be ISOs are exercisable for the first time by an employee in any calendar year may not exceed $100,000, or such other amount as Section 422 of the Code provides.

Stock appreciation rights may be granted pursuant to the 2011 Plan. A stock appreciation right entitles its holder, upon exercise of all or a portion of the stock appreciation right (the number of shares of which are the base shares), to receive from us an amount determined by multiplying the difference obtained by subtracting the exercise or base price per share of the stock appreciation right from the fair market value at the time of exercise of the stock appreciation right by the number of shares with respect to which the stock appreciation right has been exercised (in the event the stock appreciation right is settled in shares, the shares obtained are the gain shares), subject to any limitations imposed by the Administrator. The exercise or base price per share subject to a stock appreciation right will be set by the Administrator, but may not be less than 100% of the fair market value on the date the stock appreciation right is granted. The Administrator determines the period during which the right to exercise the stock appreciation right vests in the holder, but in no event may a stock appreciation right have a term extending beyond the fifth anniversary of the date of grant. No portion of a stock appreciation right which is unexercisable at the time the holder s employment with us terminates will thereafter become exercisable, except as may be otherwise provided by the Administrator. Payment pursuant to the stock appreciation right awards may be in cash, shares, or a combination of both, as determined by the Administrator.

Restricted stock units may be granted pursuant to the 2011 Plan. A restricted stock unit award provides for the issuance of our common stock at a future date upon the satisfaction of specific conditions set forth in the applicable award agreement. The Administrator will specify the dates on which the restricted stock units will become fully vested and nonforfeitable, and may specify such conditions to vesting as it deems appropriate, including conditions based on achieving one or more of the performance criteria listed below, or other specific criteria, including service to us or any of our subsidiaries or affiliates. Restricted stock units may not be sold, or otherwise hypothecated or transferred, and a holder of restricted stock units will not have voting rights or dividend rights prior to the time when the vesting conditions are satisfied and the shares of common stock are issued. Restricted stock units generally will be forfeited and the underlying shares of our common stock will not be issued, if the applicable vesting conditions are not met. The Administrator will specify, or permit the restricted stock unit holder to elect, the conditions and dates upon which the shares underlying the vested restricted stock units will be issued (subject to compliance with the deferred compensation requirements of Section 409A of the Code). Restricted stock units may be paid in cash, shares, or both, as determined by the Administrator. On the distribution dates, we will transfer to the participant one unrestricted, fully transferable share of our common stock (or the fair market value of one such share in cash) for each restricted stock unit scheduled to be paid out on such date and not previously forfeited. Restricted stock units may constitute, or provide for a deferral of compensation, subject to Section 409A of the Code and there may be certain tax consequences if the requirements of Section 409A of the Code are not met.

Restricted stock may be granted pursuant to the 2011 Plan. A restricted stock award is the grant of shares of our common stock at a price determined by the Administrator, if any, to be paid by the holder to us with respect to any restricted stock award, with cash, services or any other consideration that the Administrator deems acceptable, subject to the requirements of law, and which is nontransferable and may be subject to substantial risk of forfeiture until specific conditions are met. Conditions may be based on continuing service to us or any of our subsidiaries or affiliates or achieving one or more of the performance criteria listed below, or other specific criteria. During the period of restriction, participants holding shares of restricted stock have full voting and dividend rights with respect to such shares unless otherwise provided by the Administrator. In addition, with

Table of Contents

respect to a share of restricted stock with performance-based vesting, dividends which are paid prior to vesting shall only be paid out to the holder to the extent that the performance-based vesting conditions are subsequently satisfied and the share of restricted stock vests. Restricted stock generally may be repurchased by us at the original purchase price, if any, or forfeited, if the vesting conditions and other restrictions are not met. The restrictions will lapse in accordance with a schedule or other conditions determined by the Administrator.

Dividend equivalents may be granted pursuant to the 2011 Plan, except that no dividend equivalents may be payable with respect to options or stock appreciation rights pursuant to the 2011 Plan. A dividend equivalent is the right to receive the equivalent value of dividends paid on shares. Dividend equivalents that are granted by the Administrator are credited as of dividend payments dates during the period between the date an award is granted and the date such award vests, is exercised, is distributed or expires, as determined by the Administrator. Such dividend equivalents will be converted to cash or additional shares of our common stock by such formula, at such time and subject to such limitations as may be determined by the Administrator. In addition, dividend equivalents with respect to an award with performance-based vesting that are based on dividends paid prior to vesting shall only be paid out to the holder to the extent that the performance-based vesting conditions are subsequently satisfied and the award vests.

Stock payments may be granted pursuant to the 2011 Plan. A stock payment is a payment in the form of shares of our common stock or an option or other right to purchase shares, as part of a bonus, deferred compensation or other arrangement. The number or value of shares of any stock payment will be determined by the Administrator and may be based on continuing service with us or any of our subsidiaries or affiliates or achieving one or more of the performance criteria listed below, or other specific criteria determined by the Administrator. Except as otherwise determined by the Administrator, shares underlying a stock payment which is subject to a vesting schedule or other conditions set by the Administrator will not be issued until those conditions have been satisfied. Stock payments may, but are not required to, be made in lieu of base salary, bonus, fees or other cash compensation otherwise payable to any individual who is eligible to receive awards.

Deferred stock units may be granted pursuant to the 2011 Plan. The number of deferred stock units will be determined by the Administrator and may be based on continuing service with us or any of our subsidiaries or affiliates or achieving one or more of the performance criteria listed below, or other specific criteria determined by the Administrator, in each case on a specified date or dates or over any period or periods determined by the Administrator. Each deferred stock unit entitles its holder to receive one share of common stock on the date the deferred stock unit becomes vested or upon a specified settlement date thereafter. Except as otherwise determined by the Administrator, shares underlying a deferred stock unit award which is subject to a vesting schedule or other conditions set by the Administrator will not be issued until those conditions have been satisfied. Unless otherwise provided by the Administrator, a holder of deferred stock units shall have no rights as a stockholder with respect to such deferred stock units until the award of deferred stock units has vested and any other applicable conditions and/or criteria have been satisfied and the shares of common stock underlying the award have been issued to the holder.

Deferred stock may be granted pursuant to the 2011 Plan. Deferred stock provides for the deferred issuance to the holder of shares of our common stock. The number of shares of deferred stock will be determined by the Administrator and may be based on continuing service with us or any of our subsidiaries or affiliates or achieving one or more of the performance criteria listed below, or other specific criteria determined by the Administrator, in each case on a specified date or dates or over any period or periods determined by the Administrator. Except as otherwise determined by the Administrator, shares underlying a deferred stock award which is subject to a vesting schedule or other conditions set by the Administrator will not be issued until those conditions have been satisfied. Deferred stock may constitute, or provide for a deferral of compensation, subject to Section 409A of the Code and there may be certain tax consequences if the requirements of Section 409A of the Code are not met.

Performance awards may also be granted pursuant to the 2011 Plan. Performance awards may be granted in the form of cash bonus awards, stock bonus awards, performance awards or incentive awards that are paid in

Table of Contents

cash, shares, equity awards or a combination of cash, shares or equity awards. The value of performance awards may be linked to any one or more of the performance criteria listed below, or other specific criteria determined by the Administrator, in each case on a specified date or dates or over any period or periods determined by the Administrator. Performance awards may be payable upon the attainment of pre-established performance goals based on one or more of the performance criteria listed below, or other specific criteria determined by the Administrator. The goals are established and evaluated by the Administrator and may relate to performance over any periods as determined by the Administrator. The Administrator will also determine whether performance awards are intended to be performance-based compensation within the meaning of Section 162(m) of the Code. Following is a brief discussion of the requirements for awards to be treated as performance-based compensation within the meaning of Section 162(m) of the Code.

Performance-based compensation under Section 162(m). The Compensation Committee may grant awards to employees who are or may be covered employees, as defined in Section 162(m) of the Code, that are intended to be performance-based compensation within the meaning of Section 162(m) of the Code in order to preserve the deductibility of these awards for federal income tax purposes. Under the 2011 Plan, these performance-based awards may be stock, equity, or cash awards or a combination. Participants are only entitled to receive payment for a Section 162(m) performance-based award for any given performance period to the extent that pre-established performance goals set by our Compensation Committee for the period are satisfied. These pre-established performance goals must be based on one or more of the following performance criteria:

net earnings (either before or after interest, taxes, depreciation and amortization);

gross or net sales or revenue;

net income (either before or after taxes);

adjusted net income;

operating earnings or profit;

cash flow (including, but not limited to, operating cash flow and free cash flow);

return on assets;

return on capital;

return on stockholders equity;

total stockholder return;

return on sales;

gross or net profit or operating margin;

costs;

funds from operations;

expenses;

working capital;

earnings per share;

adjusted earnings per share;

price per share of our common stock;

regulatory body approval for commercialization of a product;

implementation or completion of critical projects;

market share; and

economic value,

Table of Contents

any of which may be measured with respect to us, or any subsidiary, affiliate or other internal unit of ours, either in absolute terms, terms of growth or as compared to any incremental increase, or as compared to results of a peer group. The Compensation Committee will define in an objective fashion the manner of calculating the performance criteria it selects to use for such awards. With regard to a particular performance period, the Compensation Committee will have the discretion to select the length of the performance period, the type of performance-based awards to be granted, and the performance goals that will be used to measure the performance for the period. In determining the actual size of an individual performance-based award for a performance period, the Compensation Committee may reduce or eliminate (but not increase) the initial award. Generally, a participant will have to be employed by or providing services to us on the date the performance-based award is paid to be eligible for a performance-based award for any period.

Except as provided by the Compensation Committee, the achievement of each performance goal will be determined in accordance with U.S. generally accepted accounting principles, international financial reporting standards, or such other accounting principles or standards as may apply to our financial statements under the U.S. federal securities laws from time to time, to the extent applicable. At the time of grant, the Compensation Committee may provide that objectively determinable adjustments will be made for purposes of determining the achievement of one or more of the performance goals established for an award. Any such adjustments will be based on one or more of the following:

items related to a change in accounting principle;

items relating to financing activities;

expenses for restructuring or productivity initiatives;

other non-operating items;

items related to acquisitions;

items attributable to the business operations of any entity acquired by us during the performance period;

items related to the disposal of a business or segment of a business;

items related to discontinued operations that do not qualify as a segment of a business under applicable accounting standards;

items attributable to any stock dividend, stock split, combination or exchange of shares occurring during the performance period;

any other items of significant income or expense which are determined to be appropriate adjustments;

items relating to unusual or extraordinary corporate transactions, events or developments;

items related to amortization of acquired intangible assets;

items that are outside the scope of our core, on-going business activities;

items related to acquired in-process research and development;

items relating to changes in tax laws;

items relating to major licensing or partnership arrangements;

items relating to asset impairment charges;

items relating to gains or losses for litigation, arbitration and contractual settlements; or

items relating to any other unusual or nonrecurring events or changes in applicable laws, accounting principles or business conditions.

Table of Contents

Payment Methods. The Administrator will determine the methods by which payments by any award holder with respect to any awards granted under the 2011 Plan may be paid, the form of payment, including, without limitation: (1) cash or check; (2) shares of our common stock issuable pursuant to the award or held for such period of time as may be required by the Administrator in order to avoid adverse accounting consequences and having a fair market value at the time of delivery equal to the aggregate payments required; (3) other property acceptable to the Administrator (including through the delivery of a notice that the award holder has placed a market sell order with a broker with respect to shares of our common stock then issuable upon exercise or vesting of an award, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to us in satisfaction of the aggregate payments required; *provided* that payment of such proceeds is then made to us upon settlement of such sale); or (4) other form of legal consideration acceptable to the Administrator. However, no participant who is a member of the Board of Directors or an executive officer of DaVita within the meaning of Section 13(k) of the Exchange Act will be permitted to make payment with respect to any awards granted under the 2011 Plan, or continue any extension of credit with respect to such payment in any method which would violate the prohibitions on loans made or arranged by us as set forth in Section 13(k) of the Exchange Act. Only whole shares of common stock may be purchased or issued pursuant to an award. No fractional shares shall be issued and the Administrator shall determine, in its sole discretion, whether cash shall be given in lieu of fractional shares or whether such fractional shares shall be eliminated by rounding down.

Vesting and Exercise of an Award. The applicable award agreement governing an award will contain the period during which the right to exercise the award in whole or in part vests, including the events or conditions upon which the vesting of an award will occur or may accelerate. No portion of an award which is not vested at the holder s termination of service with us will subsequently become vested, except as may be otherwise provided by the Administrator in the agreement relating to the award or by action following the grant of the award.

Generally, an option or stock appreciation right may only be exercised while such person remains an employee or non-employee director of us or one of our subsidiaries or affiliates or for a specified period of time (up to the remainder of the award term) following the holder s termination of service with us or one of our subsidiaries or affiliates. An award may be exercised for any vested portion of the shares subject to such award until the award expires. Upon the grant of an award or following the grant of an award, the Administrator may provide that the period during which the award will vest or become exercisable will accelerate, in whole or in part, upon the occurrence of one or more specified events, including, a change in control or a holder s termination of employment or service with us or otherwise.

Transferability. No award under the 2011 Plan may be transferred other than by will or the then applicable laws of descent and distribution or, subject to the consent of the Administrator, pursuant to a domestic relations order, unless and until such award has been exercised or the shares underlying such award have been issued and all restrictions applicable to such shares have lapsed. No award shall be liable for the debts or contracts of the holder or his successors in interest or shall be subject to disposition by any legal or equitable proceedings. During the lifetime of the holder of an award granted under the 2011 Plan, only such holder may exercise such award unless it has been disposed of pursuant to a domestic relations order. After the holder s death, any exercisable portion of an award may be exercised by his personal representative or any person empowered to do so under such holder s will or the then applicable laws of descent and distribution until such portion becomes unexercisable under the 2011 Plan or the applicable award agreement. Notwithstanding the foregoing, the Administrator may permit an award holder to transfer an award other than an ISO to any family member of the holder, as defined under the instructions to use of the Form S-8 Registration Statement under the Securities Act of 1933, subject to certain terms and conditions. Further, an award holder may, in a manner determined by the Administrator, designate a beneficiary to exercise the holder s right and to receive any distribution with respect to any award upon the holder s death, subject to certain terms and conditions.

Forfeiture, Recoupment and Clawback Provisions. Pursuant to its general authority to determine the terms and conditions applicable to awards under the 2011 Plan, the Administrator shall have the right to provide, in an award agreement or otherwise, or to require a holder to agree by separate written instrument, that (a) (i) any

Table of Contents

economic benefit received by the holder upon any receipt or exercise of the award, or upon the receipt or resale of any shares of common stock underlying the award, must be paid to the company, and (ii) the award shall terminate and any unexercised portion of the award shall be forfeited, if (x) a termination of service occurs within a specific time period following receipt or exercise, (y) the holder at any time, or during a specified time period, engages in any activity in competition with the company, or which is contrary to the interests of the company, or (z) the holder incurs a termination of service for cause (as determined in the Administrator s discretion or as set forth in a written agreement between the company and the holder); and (b) all awards (including any economic benefit received by the holder upon any receipt or exercise of any award or upon the receipt or resale of any shares of common stock underlying the award) shall be subject to the provisions of any recoupment or clawback policies implemented by the company, including, without limitation, any recoupment or clawback policies adopted to comply with the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act and any rules or regulations promulgated thereunder, to the extent set forth in such recoupment or clawback policies and/or in the applicable award agreement.

ADJUSTMENT PROVISIONS

Certain transactions with our stockholders not involving our receipt of consideration, such as stock splits, spin-offs, stock dividends or certain recapitalizations may affect the shares or the share price of our common stock (which transactions are referred to collectively as equity restructurings). In the event that an equity restructuring occurs, the Administrator will equitably adjust the class of shares issuable and the maximum number and kind of shares of our common stock subject to the 2011 Plan, and will equitably adjust outstanding awards as to the class, number of shares and price per share of our common stock. The Administrator will also adjust the number and kind of shares for which automatic grants are subsequently to be made to new and continuing non-employee directors pursuant to the 2011 Plan. Other types of transactions may also affect our common stock, such as a dividend or other distribution, reorganization, merger or other changes in corporate structure. In the event that there is such a transaction, which is not an equity restructuring, and the Administrator determines that an adjustment to the 2011 Plan and any outstanding awards would be appropriate to prevent any dilution or enlargement of benefits under the 2011 Plan, the Administrator will equitably adjust the 2011 Plan as to the class of shares issuable and the maximum number of shares of our common stock subject to the 2011 Plan, as well as the maximum number of shares that may be issued to an employee during any calendar year, and will adjust any outstanding awards as to the class, number of shares, and price per share of our common stock in such manner as it may deem equitable.

AMENDMENT AND TERMINATION

The Board of Directors may terminate, amend or modify the 2011 Plan at any time; however, except to the extent permitted by the 2011 Plan in connection with certain changes in capital structure, stockholder approval must be obtained for any amendment to (i) increase the number of shares available under the 2011 Plan, (ii) reduce the per share exercise price of the shares subject to any option or stock appreciation right below the per share exercise price as of the date the option or stock appreciation right was granted, and (iii) cancel any option or stock appreciation right in exchange for cash or another award when the option or stock appreciation right price per share exceeds the fair market value of the underlying shares, except with respect to any Substitute Award.

FEDERAL INCOME TAX CONSEQUENCES

If an optionee is granted a non-qualified stock option under the 2011 Plan, the optionee should not have taxable income on the grant of the option. Generally, the optionee should recognize ordinary income at the time of exercise in an amount equal to the fair market value of a share of our common stock at such time, less the exercise price paid. The optionee s basis in the common stock for purposes of determining gain or loss on a

Table of Contents

subsequent sale or disposition of such shares generally will be the fair market value of our common stock at the time the optionee exercises such option. Any subsequent gain or loss will be taxable as a capital gain or loss. We or our subsidiaries or affiliates generally should be entitled to a federal income tax deduction at the time and for the same amount as the optionee recognizes ordinary income.

A participant receiving ISOs will not recognize taxable income upon grant. Additionally, if applicable holding period requirements are met, the participant will not recognize taxable income at the time of exercise. However, the excess of the fair market value of our common stock received over the exercise or base price is an item of tax preference income potentially subject to the alternative minimum tax. If stock acquired upon exercise of an ISO is held for a minimum of two years from the date of grant and one year from the date of exercise, the gain or loss (in an amount equal to the difference between the fair market value at the time of sale and the exercise or base price) upon disposition of the stock will be treated as a long-term capital gain or loss, and we will not be entitled to any deduction. If the holding period requirements are not met, the ISO will be treated as one that does not meet the requirements of the Code for ISOs and the tax consequences described for nonqualified stock options will apply.

The current federal income tax consequences of other awards authorized under the 2011 Plan generally follow certain basic patterns: stock appreciation rights are taxed and deductible in substantially the same manner as nonqualified stock options; nontransferable restricted stock subject to a substantial risk of forfeiture results in income recognition equal to the excess of the fair market value over the price paid, if any, only at the time the restrictions lapse (unless the recipient elects to accelerate recognition as of the date of grant); restricted stock units, stock-based performance awards, dividend equivalents and other types of awards are generally subject to tax at the time of payment based on the fair market value of the award at such time. Compensation otherwise effectively deferred is taxed when paid. In each of the foregoing cases, we will generally have a corresponding deduction at the time the participant recognizes income, subject to Section 162(m) of the Code with respect to covered employees.

Section 162(m) of the Code denies a deduction to any publicly held corporation for compensation paid to certain covered employees in a taxable year to the extent that compensation to such covered employee exceeds $1,000,000. It is possible that compensation attributable to awards under the 2011 Plan, when combined with all other types of compensation received by a covered employee from us, may cause this limitation to be exceeded in any particular year.

Qualified performance-based compensation is disregarded for purposes of the deduction limitation. In accordance with Treasury Regulations issued under Section 162(m), compensation attributable to stock awards will generally qualify as performance-based compensation if (1) the award is granted by a compensation committee composed solely of two or more outside directors, (2) the plan contains a per-employee limitation on the number of awards which may be granted during a specified period, (3) the plan is approved by the stockholders, and (4) under the terms of the award, the amount of compensation an employee could receive is based solely on an increase in the value of the stock after the date of the grant (which requires that the exercise or base price of the option is not less than the fair market value of the stock on the date of grant), and for awards other than options, established performance criteria that must be met before the award actually will vest or be paid.

The 2011 Plan is designed to meet the requirements of Section 162(m); however, awards other than options and stock appreciation rights granted under the 2011 Plan will only be treated as qualified performance-based compensation under Section 162(m) if the awards and the procedures associated with them comply with all other requirements of Section 162(m). There can be no assurance that compensation attributable to awards granted under the 2011 Plan will be treated as qualified performance-based compensation under Section 162(m) and thus be deductible to us.

Awards are subject to the discretion of the Administrator. Therefore, it is not possible to determine the benefits that will be received in the future by participants in the 2011 Plan or the benefits that would have been received by such participants if the 2011 Plan had been in effect in the year ended December 31, 2010.

Table of Contents

Equity Grants as of April 13, 2011

The following table sets forth summary information concerning the number of shares of our common stock subject to equity grants made under the 2002 Plan to our named executive officers, directors, director nominees and employees as of April 13, 2011.

Individual or Group	Number of Shares Underlying SSAR/Option Grants	Number of Shares Underlying Stock Unit Awards
Kent J. Thiry, Chairman of the Board of Directors and Chief Executive Officer	5,050,000	112,500
Dennis L. Kogod, Chief Operating Officer	1,180,000	42,500
Luis A. Borgen, Chief Financial Officer	60,000	15,000
Javier J. Rodriguez, Senior Vice President	969,000	30,000
David T. Shapiro, Chief Compliance Officer and Senior Vice President	110,000	4,750
Richard K. Whitney, Former Chief Financial Officer	593,000	16,750
All current executive officers as a group	8,747,500	240,750
All current non-employee directors as a group	681,578	68,579
Pamela M. Arway	27,000	1,981
Charles G. Berg	53,786	4,218
Willard W. Brittain, Jr.	53,153	3,204
Carol Anthony (John) Davidson	15,000	472
Paul J. Diaz	39,000	3,157
Peter T. Grauer	153,000	18,439
John M. Nehra	126,000	13,860
William L. Roper	153,000	18,413
Roger J. Valine	61,639	4,835
Each associate of any such directors, executive officers or nominees		
Each other person who received or is to receive 5% of such options, warrants or rights		
All employees, including current officers who are not executive officers, as a group	16,933,134	916,646

The Board of Directors recommends a vote FOR approval of our proposed 2011 Incentive Award Plan.

Table of Contents

PROPOSAL NO. 3

RATIFICATION OF APPOINTMENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Independent Registered Public Accounting Firm

The Audit Committee has appointed KPMG LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2011. Representatives of KPMG LLP are expected to attend the annual meeting in person or telephonically, and will be available to respond to appropriate questions and to make a statement if they so desire. If KPMG LLP should decline to act or otherwise become incapable of acting, or if KPMG LLP s engagement is discontinued for any reason, the Audit Committee will appoint another independent registered public accounting firm to serve as our independent registered public accounting firm for 2011. Although we are not required to seek stockholder ratification of this appointment, the Board of Directors believes that doing so is consistent with corporate governance best practices. If the appointment is not ratified, the Audit Committee will explore the reasons for stockholder rejection and will reconsider the appointment.

The following table sets forth the aggregate professional fees billed to us for the years ended December 31, 2010 and 2009 by KPMG LLP, our independent registered public accounting firm:

	2010	2009
Audit fees[1]	$ 1,748,129	$ 1,674,237
Audit-related fees[2]	427,742	728,821
Tax fees[3]	55,000	25,073
All other fees		
	$ 2,230,871	$ 2,428,131

(1) Includes aggregate fees for the audit of our consolidated financial statements and the effectiveness of our internal control over financial reporting and the three quarterly reviews of our reports on Form 10-Q and other SEC filings.

(2) Includes fees for assurance and related services that are reasonably related to the performance of the audit or review of our financial statements and are not reported as Audit Fees, including fees of $55,038 in 2010 and $482,898 in 2009, for KPMG LLP s services as an independent review organization for our subsidiary Gambro Healthcare, Inc., now known as DVA Renal Healthcare, Inc. The audit-related fees also include fees for audits of our employee benefit plans, an audit of one of our majority-owned joint ventures and audits of certain wholly-owned subsidiaries. In addition, the 2010 audit-related fees also include fees of $218,354 for due diligence services relating to potential acquisitions. The 2009 audit-related fees also include fees for agreed-upon procedures to review our initial XBRL tags.

(3) Includes fees for professional services rendered for tax advice and tax planning. None of these fees were for tax compliance or tax preparation services.

Pre-approval Policies and Procedures

The Audit Committee of the Board of Directors is required to pre-approve the audit, audit-related, tax and all other services provided by our independent registered public accounting firm in order to assure that the provision of such services does not impair the auditor s independence. The Audit Committee s pre-approval policy provides for pre-approval of all audit, audit-related, tax and all other services provided by the independent registered public accounting firm, KPMG LLP, and is available under the Corporate Governance section of our website, located at *http://www.davita.com/about/corporate-governance*. The Audit Committee pre-approved all such services in 2010 and concluded that such services performed by KPMG LLP were compatible with the maintenance of that firm s independence in the conduct of its auditing functions.

The affirmative vote of a majority of the shares of common stock present at the annual meeting, in person or by proxy and entitled to vote thereon, is required for the ratification of the appointment of KPMG LLP as our independent registered public accounting firm for fiscal year 2011.

The Board of Directors recommends a vote FOR the ratification of the appointment of KPMG LLP as our independent registered public accounting firm for fiscal year 2011.

Table of Contents

PROPOSAL NO. 4

ADVISORY VOTE ON EXECUTIVE COMPENSATION

Pursuant to recently enacted Section 14A of the Exchange Act, we are providing stockholders with a vote to approve, on an advisory basis, the compensation of our named executive officers as disclosed in this Proxy Statement in accordance with SEC rules. The advisory vote on executive compensation described in this proposal is commonly referred to as a say-on-pay vote.

As disclosed in the Compensation Discussion and Analysis, the company believes that its executive compensation program is reasonable, competitive and strongly focused on pay-for-performance principles. We design our compensation programs for executive officers to attract and retain outstanding leaders who possess the skills and talent necessary to achieve our business goals and objectives. Ultimately, our objective is to continue to create long-term stockholder value by generating strong overall revenue growth, market share increases, improvements in cost per treatment, operating income growth, operating margin growth, increases in earnings per share and improvement in our debt to equity ratio. In order to achieve this objective, we have established our compensation programs so they:

- reward strong company performance
- align our executives interests with our stockholders interests; and
- are competitive within the health care services, diagnostics and solutions market so that we can attract and retain outstanding executives.

The compensation of our named executive officers during fiscal 2010 is consistent with the following achievements and financial performance. As compared to 2009:

- we experienced a one-year total stockholder return (TSR) of 18.30%, compared to the median one-year TSR of 12.64% in our Global Industry Classification Standard group and the median one-year TSR of 11.94% in our comparator peer group;
- we returned approximately $618 million to our stockholders through our stock buy-back program;
- we experienced strong operating cash flow of $840 million, or an increase of approximately 26%;
- our consolidated revenue growth was approximately 6.0%;
- we experienced an increase of approximately 6.0% in the overall number of treatments that we provided; and
- our consolidated operating income growth was approximately 6.0%.

The Compensation Committee has developed and approved an executive compensation philosophy to provide a framework for the company s executive compensation program featuring the following policies and practices:

strong pay-for-performance alignment, with equity awards ranging from 23% to 73% of our named executive officers compensation in 2010;

equity incentive plans that prohibit repricing or replacing underwater stock options or stock appreciation rights without prior stockholder approval;

a stock ownership policy that requires our named executive officers to accumulate a meaningful ownership stake in the company over time to strengthen the alignment of our named executive officers and stockholders interests; and

a clawback policy that permits the Board of Directors to recover bonuses, incentive and equity-based compensation from executive officers and members of the Board of Directors whose fraud or intentional misconduct was a significant contributing factor to the company having to restate all or a portion of its financial statements.

Table of Contents

This proposal gives our stockholders the opportunity to express their views on the overall compensation of our named executive officers and the philosophy, policies and practices described in this Proxy Statement. For the reasons discussed above, we are asking our stockholders to indicate their support for our named executive officer compensation by voting FOR the following resolution at the Annual Meeting:

RESOLVED, that the company s stockholders approve, on an advisory basis, the compensation of the named executive officers, as disclosed in this Proxy Statement pursuant to the compensation disclosure rules of the Securities and Exchange Commission (which disclosure includes the Compensation Discussion and Analysis, the Summary Compensation Table and the other related tables and disclosure).

The say-on-pay vote is an advisory vote only, and therefore it will not bind the company or the Board of Directors. However, the Board of Directors and the Compensation Committee will consider the voting results as appropriate when making future decisions regarding executive compensation.

The Board of Directors recommends a vote FOR the approval of the advisory resolution relating to the compensation of our named executive officers as disclosed in this Proxy Statement.

Table of Contents

PROPOSAL NO. 5

ADVISORY VOTE ON THE FREQUENCY OF SAY-ON-PAY VOTES

Pursuant to recently enacted Section 14A of the Exchange Act, we are asking stockholders whether future say-on-pay votes should be held every three years, every two years or every year.

After careful consideration of this proposal, the Board of Directors has determined that the company should hold future say-on-pay votes every year for a number of reasons, including the following:

- An annual say-on-pay vote will allow us to obtain stockholder input on our executive compensation program on a more consistent basis which aligns more closely with our objective to engage in regular dialogue with our stockholders on corporate governance matters, including our executive compensation philosophy, policies and practices;

- The one-year frequency provides the highest level of accountability and communication by enabling the say-on-pay vote to correspond with the most recent executive compensation information presented in our proxy statement for the annual meeting;

- A longer approach may make it more difficult for the Compensation Committee to understand and respond to the voting results because it may be unclear whether the stockholder vote pertains to the most recent executive compensation information presented in our proxy statement or to pay practices from the previous two years or both; and

- Holding say-on-pay votes annually reflects sound corporate governance principles and is consistent with a majority of institutional investor policies.

Stockholders are not voting to approve or disapprove of the Board of Directors recommendation. Instead, the proxy card provides stockholders with four choices with respect to this proposal: one year, two years, three years or stockholders may abstain from voting on the proposal. For the reasons discussed above, we are asking our stockholders to vote for a ONE YEAR frequency when voting on the frequency of future say-on-pay votes.

This vote is an advisory vote only, and therefore it will not bind the company or the Board of Directors. However, the Board of Directors and the Compensation Committee will consider the voting results as appropriate when adopting a policy on the frequency of future say-on-pay votes. The affirmative vote of at least a majority of the shares of common stock present at the annual meeting, in person or by proxy and entitled to vote thereon is required to approve, on an advisory basis, the frequency of the say-on-pay advisory vote every three years, every two years or every year. If none of the frequency alternatives receives a majority vote, the frequency of the advisory vote on executive compensation receiving the greatest number of votes every three years, every two years or every year will be considered the frequency that has been selected by the stockholders. Nevertheless, the Board of Directors may decide that it is in the best interests of our stockholders and the company to hold say-on-pay votes more or less frequently than the option approved by our stockholders. Our stockholders, however, will be given the opportunity to vote on the frequency of say-on-pay votes at least once every six years.

The Board of Directors recommends a vote for holding future say-on-pay votes EVERY YEAR.

Table of Contents

PROPOSAL NO. 6

STOCKHOLDER PROPOSAL REGARDING STOCKHOLDER ACTION BY WRITTEN CONSENT

We expect the following proposal to be presented by a stockholder at the annual meeting. The Board of Directors has recommended a vote AGAINST this proposal for the reasons set forth following the proposal. The name, address and share holdings of the stockholder proponent and co-filer will be supplied promptly to a stockholder upon the company s receipt of an oral or written request. The Board of Directors disclaims any responsibility for the content of the proposal and the statement in support of the proposal, which are presented in the form received by the stockholder.

SHAREHOLDER ACTION BY WRITTEN CONSENT

RESOLVED, Shareholders hereby request that our board of directors undertake such steps as may be necessary to permit written consent by shareholders entitled to cast the minimum number of votes that would be necessary to authorize the action at a meeting at which all shareholders entitled to vote thereon were present and voting (to the fullest extent permitted by law).

Stockholder s Statement Supporting Proposal No. 6

We gave greater than 56%-support to a 2010 shareholder proposal on this same topic. Our 56%-support was all the more remarkable because our management used an argument twice as long as the complete shareholder proposal. The Council of Institutional Investors www.cii.org recommends that management adopt a shareholder proposal upon receiving its first 50%-plus vote. This 56%-plus support even translated into greater than 48% support from all shares outstanding.

This proposal topic also won majority shareholder support at 13 major companies in 2010. This included 67%-support at both Allstate and Sprint. Hundreds of major companies enable shareholder action by written consent.

Taking action by written consent in lieu of a meeting is a means shareholders can use to raise important matters outside the normal annual meeting cycle. A study by Harvard professor Paul Gompers supports the concept that shareholder dis-empowering governance features, including restrictions on shareholder ability to act by written consent, are significantly related to reduced shareholder value.

The merit of this Shareholder Action by Written Consent proposal should also be considered in the context of the need for additional improvement in our company s 2010 reported corporate governance status:

The Corporate Library www.thecorporatelibrary.com, an independent investment research firm downgraded DaVita to D with High Governance Risk and Very High Concern in Executive Pay $25 million for Kent Thiry. Mr. Thiry gained $25 million on the exercise of stock options in 2009 and $19 million on the exercise of options in 2007.

Mr. Thiry also continued to receive annual mega-grants of more and more market-priced stock options 650,000 in 2009 with a grant date value of nearly $8 million. Market priced options pose the risk for shareholders of providing rewards to our executives due only to a rising market, regardless of individual performance.

In fact, this was the only type of equity Mr. Thiry received over the past few years. Performance-based equity tied to actual company performance would better align our CEO s interests with shareholders.

Peter Grauer, with 16-years tenure (independence concerns), was our so-called Lead Director and was still allowed in his position after attracting our highest negative votes. This was compounded by Mr. Grauer also sitting on our Executive Pay Committee and chairing our Nomination Committee. Plus our Nomination Committee appears to be most of the board members rather than a committee of the board.

Table of Contents

It is important to have well-qualified new directors with continuing business experience. However, Pamela Arway, new to our board in 2009, was an early retiree. Please encourage our board to respond positively to this proposal to enable shareholder action by written consent Yes on 6.

The Company s Statement in Opposition to Proposal No. 6

The Board of Directors recommends that you vote AGAINST this proposal for the following reasons:

The proposal is unnecessary given that our stockholders have the right to call special meetings. Our stockholders have the ability to raise important matters outside the normal annual meeting cycle. We recently amended our bylaws to allow stockholders holding 10% or more of our outstanding common stock to call a special meeting to propose, debate and vote on matters outside the normal annual meeting cycle. Notably, our 10% threshold for calling a special meeting is lower than the threshold at many S&P 500 companies and is substantially lower than the majority that would be required to take action by written consent under this proposal.

Acting on matters at a meeting of stockholders is more democratic and transparent than doing so by written consent. The special meeting process provides a more meaningful opportunity for all stockholders to participate in our corporate governance and in actions taken on behalf of the company s stockholders. Addressing matters that are significant to the company at a meeting of the stockholders, rather than through the consent solicitation process, ensures that information about proposed stockholder actions will be disseminated to all stockholders and allows the transparent, public, orderly and deliberate consideration of issues facing the company. Requiring action to be taken at a stockholder meeting also allows all stockholders to express their views on a given matter with the opportunity to persuade other stockholders of the merits of a contrary position, rather than allowing a subset of the stockholder constituency to take action without the knowledge or participation by the rest of the company s stockholders. Action by written consent could lead to hasty decision-making and could be costly and disruptive for the company. The company has over 96 million outstanding shares. Different stockholders could act on different matters by written consent for any purpose, at any time, and as often as they wish, causing significant disruption and confusion. This could lead to a chaotic state of corporate affairs rather than the orderly stockholder meeting process currently in place.

We have a strong track record of sound corporate governance. We have had a long-standing commitment to sound corporate governance practices. We continually evaluate our business, stockholder sentiment, the competitive landscape and developments in corporate governance and implement changes to our corporate governance practices when they appear to be in the best interests of our business and stockholders. We have a number of corporate governance policies and practices that enhance the accountability of the Board of Directors to our stockholders, including:

- annual election of all directors (no staggered board or classified board);
- election of directors by majority vote;
- right of 10% of the voting power to call a special meeting of stockholders;
- limited anti-takeover defenses, including the early termination of our rights plan (poison pill) in March 2011;
- all members of the Board of Directors are removable with or without cause by stockholders;
- no supermajority approval requirements in our organization documents, except where required by Delaware law;
- all members of the Board of Directors, other than our CEO, are independent;

restriction on the number of other public company boards a member of the Board of Directors may serve on (currently no member of the Board of Directors serves on more than three outside boards);

Table of Contents

share ownership policy for members of the Board of Directors; and

a clawback policy for the recoupment under certain circumstances by the company of incentive compensation of Board members or executive officers if the company has to restate its financial statements.

The Board has undertaken a thorough evaluation of the company s corporate governance structure in light of shareholder sentiment and corporate governance trends. As a result, several of the enhancements listed above were added to already strong corporate governance policies and practices. We are committed to good corporate citizenship and accountability to our stockholders. Our continual process of evaluating and making appropriate changes as needed to our corporate governance structure underscores this commitment and, we believe, enhances stockholder value.

The affirmative vote of a majority of the shares of common stock present at the annual meeting, in person or by proxy and entitled to vote thereon, is required for the approval of this proposal.

For these reasons, the Board of Directors recommends that you vote AGAINST this proposal.

Table of Contents

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth information regarding the ownership of our common stock as of March 31, 2011 by (a) all persons known by us to own beneficially more than 5% of our common stock, (b) each of our directors and named executive officers, and (c) all of our directors, named executive officers and other executive officers as a group. We know of no agreements among our stockholders which relate to voting or investment power over our common stock or any arrangement the operation of which may at a subsequent date result in a change of control of the company.

Name and address of beneficial owner[1]	Number of shares beneficially owned	Percentage of shares beneficially owned
TimesSquare Capital Management, LLC[2] 1177 Avenue of the Americas, 39th Floor New York, NY 10036	7,010,669	7.3%
BlackRock, Inc.[3] 40 East 52nd Street New York, NY 10022	6,782,480	7.0%
The Vanguard Group, Inc.[4] 100 Vanguard Blvd. Malvern, PA 19355	5,033,331	5.2%
Kent J. Thiry[5]	1,531,710	1.6%
Dennis L. Kogod[6]	226,042	*
Luis A. Borgen[7]	2,500	*
Javier J. Rodriguez[8]	377,914	*
David T. Shapiro[9]	14,906	*
Richard K. Whitney[10]	266,603	*
Pamela M. Arway[11]	5,731	*
Charles G. Berg[12]	31,968	*
Willard W. Brittain, Jr.[13]	6,454	*
Carol Anthony (John) Davidson[14]	472	*
Paul J. Diaz[15]	26,407	*
Peter T. Grauer[16]	2,676	*
John M. Nehra[17]	108,756	*
William L. Roper[18]	45,892	*
Roger J. Valine[19]	47,859	*
All directors, named executive officers and other executive officers as a group (21 persons)[20]	2,860,245	2.9%

* Amount represents less than 1% of our common stock.

(1) Unless otherwise set forth in the following table, the address of each beneficial owner is 1551 Wewatta Street, 6th Floor, Denver, Colorado, 80202.

(2) Based on information contained in a Schedule 13G/A filed with the SEC on February 9, 2011, these securities are owned by investment advisory clients of TimesSquare Capital Management, LLC (Times Square). In its role as investment advisor, Times Square has sole voting power with respect to 5,007,969 shares and sole dispositive power with respect to 7,010,669 shares.

(3) Based upon information contained in a Schedule 13G/A filed with the SEC on February 4, 2011, BlackRock, Inc. may be deemed to be the beneficial owner of 6,782,480 shares with sole power to vote and sole power to dispose of all 6,782,480 shares as a result of being a parent holding company or control person.

(4) Based upon information contained in a Schedule 13G filed with the SEC on February 10, 2011, The Vanguard Group, Inc., an investment adviser, has sole voting power with respect to 126,243 shares, sole dispositive power with respect to 4,907,088 shares and shared dispositive power with respect to 126,243 shares.

Table of Contents

(5) Includes 117,127 shares held in a family trust and 1,395,833 shares issuable upon the exercise of SSARs and 18,750 RSUs, which are exercisable as of, or will become exercisable within 60 days after, March 31, 2011.

(6) Includes 216,667 shares issuable upon the exercise of SSARs and 9,375 RSUs, which are exercisable as of, or will become exercisable within 60 days after, March 31, 2011.

(7) Includes 2,500 shares issuable upon the exercise of SSARs, which are exercisable as of, or will become exercisable within 60 days after, March 31, 2011.

(8) Includes 346,249 shares issuable upon the exercise of SSARs, which are exercisable as of, or will become exercisable within 60 days after, March 31, 2011.

(9) Includes 14,416 shares issuable upon the exercise of SSARs, which are exercisable as of, or will become exercisable within 60 days after, March 31, 2011.

(10) Mr. Whitney stepped down from his position as chief financial officer in May 2010 and was no longer an executive officer of the company on March 31, 2011. Includes 262,416 shares issuable upon the exercise of SSARs and 4,187 RSUs which are exercisable as of, or will become exercisable within 60 days after, March 31, 2011.

(11) Includes 3,750 shares issuable upon the exercise of SSARs, which are exercisable as of, or will become exercisable within 60 days after, March 31, 2011, and 169 vested but unissued restricted stock units.

(12) Includes 3,750 and 24,000 shares issuable upon the exercise of options and SSARs, respectively, which are exercisable as of, or will become exercisable within 60 days after, March 31, 2011, and 169 vested but unissued restricted stock units.

(13) Includes 3,750 shares issuable upon the exercise of options, which are exercisable as of, or will become exercisable within 60 days after, March 31, 2011, and 169 vested but unissued restricted stock units.

(14) Includes 49 vested but unissued restricted stock units.

(15) Includes 11,250 and 12,000 shares issuable upon the exercise of options and SSARs, respectively, which are exercisable as of, or will become exercisable within 60 days after, March 31, 2011, and 169 vested but unissued restricted stock units.

(16) Includes 1,811 vested but unissued restricted stock units.

(17) Includes 34,945 shares held in a family trust and 36,000 and 36,000 shares issuable upon the exercise of options and SSARs, respectively, which are exercisable as of, or will become exercisable within 60 days after, March 31, 2011, and 1,811 vested but unissued restricted stock units.

(18) Includes 36,000 shares issuable upon the exercise of SSARs, which are exercisable as of, or will become exercisable within 60 days after, March 31, 2011, and 1,811 vested but unissued restricted stock units.

(19) Includes 18,739 and 24,000 shares issuable upon the exercise of options and SSARs, respectively, which are exercisable as of, or will become exercisable within 60 days after March 31, 2011, and 293 vested but unissued restricted stock units.

(20) Includes 73,489 and 2,520,979 shares issuable upon the exercise of options and SSARs, respectively, which are exercisable as of, or will become exercisable within 60 days after, March 31, 2011, and 6,451 vested but unissued restricted stock units.

Information Concerning Our Executive Officers

Name	Age	Position
Kent J. Thiry	55	Chairman of the Board of Directors and Chief Executive Officer
Luis A. Borgen	41	Chief Financial Officer
James K. Hilger	49	Chief Accounting Officer
Dennis L. Kogod	51	Chief Operating Officer
Laura A. Mildenberger	52	Chief People Officer
Allen R. Nissenson, MD, FACP	64	Chief Medical Officer
Kim M. Rivera	42	Vice President, General Counsel and Secretary
Javier J. Rodriguez	40	Senior Vice President
David T. Shapiro	41	Chief Compliance Officer and Senior Vice President
Thomas O. Usilton, Jr.	59	Senior Vice President and Chief Development Officer
LeAnne M. Zumwalt	52	Vice President

Table of Contents

Our executive officers are elected by, and serve at the discretion of, the Board of Directors. Set forth below is a brief description of the business experience of all executive officers other than Mr. Thiry, who is also a director and whose business experience is set forth above in the section of this Proxy Statement entitled Information Concerning Members of the Board of Directors Standing for Reelection.

Luis A. Borgen became our chief financial officer in May 2010 and prior to that, he served as our senior vice president beginning in March 2010. From February 2009 until joining us, Mr. Borgen served as senior vice president, finance for the U.S. retail division of Staples, an office products company, where he played a role in strategy development and business planning efforts. From June 2005 until January 2009, Mr. Borgen served as the vice president, finance for the U.S. retail division of Staples. From July 2002 to June 2005, Mr. Borgen served as vice president, corporate financial planning and analysis of Staples where he led the global business planning efforts. From February 1999 to June 2002, Mr. Borgen served in the corporate treasury department of Staples, including as vice president and assistant treasurer.

James K. Hilger became our chief accounting officer in April 2010, and has served as our vice president and controller since May 2006. Prior to that, he served as our vice president, finance beginning in September 2005. Mr. Hilger was our acting chief financial officer from November 2007 through February 2008. From September 2003 until joining us, Mr. Hilger served as vice president, finance and administration and chief financial officer of Pyramid Breweries, a brewer of specialty beverages. From December 1998 to July 2003, Mr. Hilger served in positions as chief executive officer and chief financial officer of WorldCatch, Inc., a seafood industry company. From 1987 until joining WorldCatch, Inc., Mr. Hilger held a variety of senior financial positions in the food industry. Mr. Hilger began his career in public accounting with Ernst & Whinney.

Dennis L. Kogod became our chief operating officer in January 2009 and prior to that, he served as our president-west beginning in October 2005. From January 2004 until joining us, Mr. Kogod served as president and chief operating officer-west of Gambro Healthcare, Inc., which we acquired in October 2005. From July 2000 to January 2004, Mr. Kogod served as president, west division of Gambro Healthcare, Inc. From June 1999 to July 2000, Mr. Kogod was president of Teleflex Medical Group, a medical original equipment manufacturer of medical delivery systems. From January 1996 to June 1999, Mr. Kogod was corporate vice president of Teleflex Surgical Group, a surgical device and service organization. Mr. Kogod served on the board of directors of Arbios Systems, Inc., a medical device and cell-based therapy company.

Laura A. Mildenberger became our chief people officer in July 2008, having joined us in October 2001 as vice president of operations. Prior to joining us, Ms. Mildenberger served as vice president of operations for the western U.S. for Matrix Rehabilitation, a physical therapy outpatient company, from March 2000 to October 2001. From 1993 to 2000, Ms. Mildenberger served as a general manager for NovaCare Outpatient Rehabilitation, a provider of physical and occupation therapy services. From 1988 to 1993, Ms. Mildenberger was the executive vice president/principal of Worker Rehabilitation Services, a multi-site physical rehabilitation company. Ms. Mildenberger began her career as an occupational therapist at the Mayo Clinic.

Allen R. Nissenson, MD, FACP, became our chief medical officer in August 2008. He is an emeritus professor of medicine at the David Geffen School of Medicine at UCLA, where he served as director of the dialysis program from 1977 to 2008 and associate dean from 2005 to 2008. Dr. Nissenson was the president of the Southern California End-Stage Renal Disease Network from 2005 to 2007. Dr. Nissenson was the president of the National Anemia Action Council from 2001 to 2007. Dr. Nissenson was the president of the Renal Physicians Association from 1999 to 2001.

Kim M. Rivera became our vice president, general counsel and secretary in January 2010. From February 2006 to November 2009, Ms. Rivera served as vice president and associate general counsel of The Clorox Company, a consumer products company. From August 2004 to February 2006, Ms. Rivera served as vice president law and chief litigation counsel to Rockwell Automation, Inc., a provider of industrial automation control and information solutions. From November 1999 to August 2004, she served as general counsel to Rockwell s Automation Control and Information Group. Prior to joining Rockwell, Ms. Rivera was an attorney at the law firm of Jones Day.

Table of Contents

Javier J. Rodriguez became our senior vice president in 2006. From 2004 to 2006, Mr. Rodriguez served as our vice president of operations. From 2000 to 2003, Mr. Rodriguez served as our vice president of payor contracting. From 1998 to 2000, Mr. Rodriguez served with us in various other director positions. Prior to joining DaVita, Mr. Rodriguez worked for Baxter Healthcare Corporation in Finance from 1995 to 1996. He also served as Director of Operations for CBS Marketing Inc. in Mexico City.

David T. Shapiro became our chief compliance officer and senior vice president in October 2008, having joined us in March 2008 as the deputy chief compliance officer. Prior to joining us, Mr. Shapiro was counsel at the Pepper Hamilton law firm from March 2007 through February 2008, during which time he represented health care clients in government investigations and compliance issues. From October 2003 through March 2007, Mr. Shapiro served as a trial attorney with the Civil Frauds Section of the United States Department of Justice. From June 1999 through October 2003, Mr. Shapiro was an attorney with the law firm Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. in Washington, DC.

Thomas O. Usilton, Jr. became our chief development officer in July 2010, and has served as our senior vice president since April 2006. Prior to that, he served as our group vice president beginning in August 2004. From February 2000 until joining us, Mr. Usilton served as president and chief executive officer of Digital Insurance Inc., a health and welfare brokerage and services company. From 1995 until founding Digital Insurance Inc. in 2000, Mr. Usilton was senior vice president of Vivra Specialty Partners, a national physicians practice management company. Prior to joining Vivra Specialty Partners, Mr. Usilton served as president and chief executive officer of Premier Asthma and Allergy, a disease management company specializing in asthma management. From 1986 to 1987, Mr. Usilton was general manager and executive vice president of CIGNA Corporation. Prior to his employment with CIGNA Corporation, from 1978 to 1985, he served as executive vice president for Health America Inc., a national leader in the Health Maintenance Organization medical insurance field.

LeAnne M. Zumwalt became our vice president in January 2000 and currently oversees our public policy regulatory efforts and our purchasing department. Ms. Zumwalt has served in various capacities with us and served as our vice president investor relations from January 2000 through October 2009. From 1997 to 1999, Ms. Zumwalt served as chief financial officer of Vivra Specialty Partners, a privately held health care service and technology firm. From 1991 to 1997, Ms. Zumwalt held various executive positions at Vivra Incorporated, a publicly held provider of dialysis services. Prior to joining Vivra Incorporated, Ms. Zumwalt was a senior manager at Ernst & Young, LLP. Ms. Zumwalt serves on the board of directors of The Advisory Board Company.

None of the executive officers has any family relationship with any other executive officer or with any of our directors.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Exchange Act requires insiders, including our executive officers, directors and beneficial owners of more than 10% of our common stock, to file reports of ownership and changes in ownership of our common stock with the SEC and the NYSE, and to furnish us with copies of all Section 16(a) forms they file. Based solely on our review of the copies of such forms received by us, or written representations from reporting persons, we believe that our insiders complied with all applicable Section 16(a) filing requirements during 2010, except that a Statement of Changes in Beneficial Ownership of Securities on Form 4 for each of Mr. Thiry, Mr. Grauer, Mr. Hilger, Mr. Kogod, Ms. Mildenberger, Mr. Rodriguez, Mr. Shapiro, Mr. Usilton, Mr. Whitney and Ms. Zumwalt was filed late.

Table of Contents

EQUITY COMPENSATION PLAN INFORMATION

The following table provides information about our common stock that may be issued upon the exercise of SSARs, stock options, restricted stock units and other rights under all of our existing equity compensation plans as of December 31, 2010, including our omnibus 2002 Equity Compensation Plan and our Employee Stock Purchase Plan, and the terminated 1999 Non-Executive Officer and Non-Director Equity Compensation Plan. The material terms of these plans are described in Note 17 to the consolidated financial statements, which are part of our Annual Report on Form 10-K for the year ended December 31, 2010. The 1999 Non-Executive Officer and Non-Director Equity Compensation Plan was not required to be approved by our stockholders.

Plan category	Number of shares to be issued upon exercise of outstanding options, warrants and rights (a)	Weighted-average exercise price of outstanding options, warrants and rights (b)	Number of shares remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (c)	Total of shares reflected in columns (a) and (c) (d)
Equity compensation plans approved by stockholders	11,597,916	$ 49.74	11,787,674	23,385,590
Equity compensation plans not requiring stockholder approval	1,000	$ 54.58		1,000
Total	11,598,916	$ 49.74	11,787,674	23,386,590

Table of Contents

EXECUTIVE COMPENSATION

Compensation Discussion and Analysis

This Compensation Discussion and Analysis (the CD&A) describes our executive compensation program for our named executive officers. As of December 31, 2010, our named executive officers consisted of Kent J. Thiry, our chairman of the Board of Directors and chief executive officer, Dennis L. Kogod, our chief operating officer, Luis A. Borgen, our chief financial officer, Javier J. Rodriguez, our senior vice president, David T. Shapiro, our chief compliance officer and senior vice president, and Richard K. Whitney, our former chief financial officer. Mr. Whitney stepped down from the position of chief financial officer effective May 4, 2010.

EXECUTIVE SUMMARY

DaVita is a leading provider of kidney dialysis services in the United States through a network of approximately 1,612 outpatient dialysis centers and approximately 750 hospitals, serving approximately 125,000 patients in 42 states. In 2010, our overall network of dialysis centers increased by 82 centers primarily as a result of opening new centers and acquisitions and the overall number of patients that we serve increased by approximately 6.0%. We believe our attention to these three stakeholders our patients, our business partners, and our employees represents the major driver of our long-term performance, although we are subject to the impact of external factors such as government reimbursement policies and physician practice patterns.

We design our compensation programs for executive officers to attract and retain outstanding leaders who possess the skills and talent necessary to achieve our business goals and objectives. Ultimately, our objective is to continue to create long-term stockholder value by generating strong overall revenue growth, market share increases, improvements in cost per treatment, operating income growth, operating margin growth, increases in earnings per share and improvement in our debt to equity ratio. In order to achieve this objective, we have established our compensation programs so they: (i) reward strong company performance; (ii) align our executives interests with our stockholders interests and (iii) are competitive within the health care services, diagnostics and solutions market so that we can attract and retain outstanding executives.

Pay-For-Performance

When establishing the compensation for our named executive officers for 2010, the Compensation Committee gave significant weight to our sustained record of strong operating performance, our improvement in strategic positioning and our continued strong clinical performance, particularly in light of general economic volatility and significant industry regulatory challenges and uncertainty.

Our overall financial, operating and TSR performance was strong for 2010 and we believe that the named executive officers were instrumental in achieving these results. As compared to 2009:

- we experienced a one-year TSR of 18.30%, compared to the median one-year TSR of 12.64% in our Global Industry Classification Standard group and the median one-year TSR of 11.94% in our comparator peer group;
- we returned approximately $618 million to our stockholders through our stock buy-back program;
- we experienced strong operating cash flow of $840 million, or an increase of approximately 26%;
- our consolidated revenue growth was approximately 6.0%;
- we experienced an increase of approximately 6.0% in the overall number of treatments that we provided; and
- our consolidated operating income growth was approximately 6.0%.

40

Table of Contents

In addition, we believe our clinical outcomes compare favorably with other dialysis providers in the United States and generally exceed the dialysis outcome quality indicators of the National Kidney Foundation. The Compensation Committee balanced its evaluation of our performance in 2010 by also considering the potential impact on DaVita and our industry of healthcare reform and other significant healthcare regulatory changes, including changes to government reimbursement policies. When establishing 2010 compensation for our named executive officers, the Compensation Committee considered these and other factors in the context of individual named executive officer performance.

Our compensation programs for our named executive officers emphasize compensation based on performance and are designed to align our named executive officers interests with those of our stockholders and to permit individuals who have performed well in creating significant long-term value for the company and its stockholders to share in the value generated. To this end, our compensation programs emphasize variable compensation in the form of cash and stock-based awards over fixed compensation. In light of this emphasis, the Compensation Committee determined to limit increases to fixed compensation amounts in 2010 such that the base salaries of our named executive officers, other than Mr. Kogod, were retained at 2009 levels (or, in the case of Mr. Whitney, reduced from 2009 levels). The following pie charts illustrate the allocation of the total direct compensation that the named executive officers earned for 2010 (not including Mr. Whitney, as he is not currently an executive officer of the company):

The Compensation Committee believes that the above compensation structure struck an appropriate balance by promoting long-term stockholder value without motivating or rewarding excessive risk-taking.

The following graph illustrates how cash performance bonuses over the past three years varied with changes in our operating income (not including Mr. Whitney, as he is not currently an executive officer of the company):

Table of Contents

To further illustrate our emphasis on compensation based on performance and our commitment to align the interests of our named executive officers with those of our stockholders, the following graph illustrates how our chief executive officer s compensation over the past three years varied with changes in our TSR for the same period (indexed to the commencement year of the graph, i.e., 2008):

Stockholder Interest Alignment

We believe that our equity awards further serve to align the interests of our executives with the long-term interests of our stockholders by providing our executives with an opportunity to benefit from the appreciation of our stock price, by providing for vesting over a period of time and by requiring executives to accumulate meaningful ownership through our stock ownership policy. Therefore, a primary objective of our executive compensation programs is to provide a significant portion of compensation in the form of stock-based awards. For 2010, equity awards ranged from 23% to 73% of our named executive officers compensation. Further, the equity awards that are granted for 2010 performance vest commencing on the third anniversary of the date of grant, such that the awards vest 50% on the third anniversary of the date of grant and the remaining 50% on the fourth anniversary of the date of grant. The vesting schedule was determined in order to assist in the long-term retention of such named executive officers and further align the interests of our executives with the long-term interests of our stockholders. Stock-based compensation creates an incentive for the named executive officer to contribute to the overall success of the company and to take actions that result in the creation of long-term stockholder value.

Market Competitiveness

We evaluate the overall competitiveness of our executives total direct compensation each year in order to assist in executive retention. The Compensation Committee commissions Compensia, an independent national compensation consulting firm, to perform a comprehensive market analysis of our executive compensation programs and pay levels. See Role of Independent Compensation Consultant beginning on page 55 of this Proxy Statement and Corporate Governance Information Regarding the Board of Directors and its Committees Compensation Committee beginning on page 11 of this Proxy Statement for detailed discussion of the Compensia services provided in 2010. In 2011, Compensia provided the Compensation Committee with an analysis of comparative market data on the cash, stock-based compensation and total compensation for senior executives at a group of comparable companies within our industry. In addition to published executive compensation survey data, the Compensation Committee reviewed the compensation practices of our comparator

Table of Contents

peer group, consisting of the following companies, which are all in the health care services, diagnostics and solutions markets:

Company	1-Year TSR	Market Capitalization (in millions)[1]	Net Income for Last 4 Quarters (in millions)[2]	Revenue for Last 4 Quarters (in millions)[2]
Community Health Systems, Inc.	4.97%	$ 3,790.8	$ 280.0	$ 12,986.5
Express Scripts, Inc.	25.09%	$ 29,700.1	$ 1,181.2	$ 45,057.2
HCA Holdings, Inc.	N/A	$ N/A	$ 1,375.0	$ 30,052.0
Health Management Associates, Inc.	31.22%	$ 2,517.7	$ 150.1	$ 5,115.0
HealthSouth Corporation	10.34%	$ 2,259.8	$ 899.0	$ 1,999.3
Kindred Healthcare, Inc.	-0.49%	$ 984.2	$ 56.5	$ 4,359.7
Laboratory Corporation of America Holdings	17.48%	$ 9,166.2	$ 558.2	$ 5,003.9
Lincare Holdings Inc.	10.00%	$ 2,824.4	$ 181.6	$ 1,669.2
Magellan Health Services, Inc.	16.08%	$ 1,586.1	$ 138.7	$ 2,969.2
Medco Health Solutions, Inc.	-4.13%	$ 24,930.7	$ 1,427.3	$ 65,968.3
MEDNAX Services, Inc.	11.94%	$ 3,115.6	$ 202.7	$ 1,401.6
Omnicare, Inc.	9.64%	$ 3,346.4	$ (106.1)	$ 6,146.2
Quest Diagnostics Incorporated	-9.95%	$ 9,713.6	$ 720.9	$ 7,368.9
Tenet Healthcare, Inc.	24.12%	$ 3,489.1	$ 1,119.0	$ 9,205.0
Universal Health Services, Inc.	43.02%	$ 4,447.8	$ 230.2	$ 5,568.2
WebMD Health Corp.	32.66%	$ 3,387.6	$ 54.1	$ 534.5
Summary Statistics:				
75th Percentile	25.09%	$ 6,807.0	$ 954.0	$ 10,150.4
50th Percentile	11.94%	$ 3,387.6	$ 255.1	$ 5,341.6
DaVita	18.30%	$ 7,619.5	$ 405.7	$ 6,447.4
DaVita Percentage Rank	65%	76%	56%	62%

(1) Data as of February 28, 2011.

(2) Data generally through December 31, 2010.

Our comparator peer group includes a diverse representation in various health care services, diagnostics and solutions markets because we compete in this broad industry group for executive talent. Our comparator peer companies are comparable to us in their size, as measured by market capitalization, net income and revenues. Compensation paid by this comparator peer group is representative of the compensation we believe is required to attract, retain and motivate our executive talent. The Compensation Committee, in conjunction with Compensia, reviews the makeup of this group annually and makes adjustments to the composition of the group as it deems appropriate. The majority of the companies in our comparator peer group have remained the same over the years. The group therefore provides a fairly consistent measure for comparing executive compensation. In addition to the 14 comparator peer group companies that were used in Compensia s 2010 analysis, HCA Holdings and Tenet Healthcare were added to provide further balance to DaVita s relative positioning among the peer group companies.

The Compensation Committee considered Compensia s analysis of the compensation of executives serving in similar positions at our comparable companies to obtain a general understanding of current compensation practices in our industry. The analysis provided by Compensia was used to provide context for the compensation decisions made in 2011 for 2010 performance, but the Compensation Committee s decisions were not directly related to or otherwise based upon the comparative data. Instead, the Compensation Committee used this comparative data as one of many factors considered to set the compensation for our named executive officers. The Compensation Committee also used the analysis as a tool to assess how well the company is implementing its core compensation objective of awarding compensation weighted heavily in favor of variable compensation tied to performance. The emphasis on stock-based awards as compared to cash compensation was reflected in the results of Compensia s analysis which showed that the percentage of overall average equity awards as compared to overall average cash awards for our named executive officers in 2010 was higher than the average for comparable companies.

Table of Contents

In its 2011 report, Compensia found that the total direct compensation for our named executive officers clusters above 75% of our 16-company comparator peer group. In approving executive compensation, the Compensation Committee considered that DaVita s market capitalization is at the 76th percentile of our comparator peer group and DaVita s size, in terms of net income and revenue, is greater than the median of our comparator peer group. Further, the Compensation Committee considered that DaVita s TSR was well above the median TSR against its industry peers (i.e., companies in the same Global Industry Classification Standards group as DaVita) and above the 60th percentile for one-year TSR and three-year compound average annual TSR against the comparator peer group companies. In addition, the Compensation Committee considered that DaVita s ten-year compound average annual TSR is above the 90th percentile against the comparator peer group companies. DaVita also has a record of sustained performance against the comparator peer group companies, posting above the 60th percentile for three-year operating margin, net margin and revenue growth against the comparator peer group companies and above the 60th percentile for five-year and above the 75th percentile for ten-year operating margin, net margin and revenue growth against the comparator peer group companies, notwithstanding the challenging environment in which the company operates. The Compensation Committee also considers each named executive officer s roles and responsibilities within the company, individual performance, company performance and internal pay equity in addition to the results of the competitive pay analysis.

Good Governance and Best Practices

Pursuant to our desire to maintain fair and responsible compensation programs while serving our retention objectives, we have entered into employment agreements with each of our named executive officers. Each agreement is individually negotiated and the terms vary; however, the employment agreements reflect current compensation practices and trends by, among other things: (i) not providing for any single trigger payments upon a change in control event of the company and (ii) limiting severance payments to not more than three times base salary and bonus. Further, in 2011, the Compensation Committee determined that the company will no longer enter into any new or materially amended agreements with its executives that include any excise tax gross-up provisions with respect to payments contingent upon a change in control.

In addition, our equity incentive plans prohibit repricing or replacing underwater stock options or stock appreciation rights without prior stockholder approval and our stock-based awards are designed so that in order to vest and earn the full benefit of the award the named executive officers must remain employed for a multi-year period. This reinforces a culture in which the company s long-term success takes precedence over volatile and unsustainable short-term results.

Further, approximately every other year, the Compensation Committee engages an outside independent consultant to conduct an in-depth analysis of our chief executive officer s performance as a manager during the year. The most recent assessment took place in 2010. The results of this assessment are reviewed by the Board of Directors and the Compensation Committee and is one of the many factors considered when making compensation decisions.

In 2010, the Board of Directors adopted a clawback policy that permits the Board of Directors to recover bonuses, incentive and equity-based compensation from executive officers and members of the Board of Directors whose fraud or intentional misconduct was a significant contributing factor to the company having to restate all or a portion of its financial statements. See Executive Compensation Process & Governance Policy Regarding Clawback of Bonuses and Incentive Compensation for additional details.

Stock Ownership Guidelines

We have a stock ownership policy that applies to all of our named executive officers to strengthen the alignment of our named executive officers and stockholders interests. The purpose of the policy is to ensure that our executive officers and other members of our senior management team accumulate a meaningful ownership stake in the company over time by retaining a specified financial interest in our common stock. As of

Table of Contents

December 31, 2010, all of the named executive officers are meeting our stock ownership policy and guidelines. See Management Share Ownership Policy beginning on page 55 of this Proxy Statement for more information regarding our stock ownership guidelines.

ELEMENTS OF COMPENSATION

We believe it is in the best interests of our stockholders to attract and retain talented leaders. In order to attract and retain executives who are not only outstanding leaders but who also embody our mission and values, we strive to provide compensation that is reasonable and provides the best value for our stockholders but that is also sufficient to achieve our recruitment and retention objectives. When recruiting new executives, the Compensation Committee and our chief executive officer evaluate the comparative compensation of executives within the company with similar levels of responsibility, the prior experience of the executive and expected contributions to company performance. Thereafter, each executive s compensation is reviewed annually by the Compensation Committee and chief executive officer, and considered for adjustment based on individual performance and other factors.

When evaluating performance, we base compensation decisions on an assessment of company and individual performance over the year, taking individual accomplishments into consideration in light of the totality of circumstances together with individual potential to contribute to the company s future growth. We believe that all of our named executive officers have the ability to influence overall company policies and performance and, accordingly, should be accountable for company-wide performance as well as the areas over which they have direct influence. The differences in total annual compensation levels among the named executive officers are based on their individual roles and responsibilities within the company and their relative individual performance. The Compensation Committee uses its judgment in awarding compensation to our named executive officers in accordance with the overall objectives of the company s compensation programs.

The Compensation Committee takes into consideration a number of factors when determining the elements and amounts of compensation awarded to our named executive officers, including individual performance, overall financial and non-financial performance of the company for the year, individual skill sets and experience relative to industry peers, readiness for promotion to a higher level, past and expected future performance, the importance and difficulty of achieving future company and individual objectives, the value of each executive s outstanding equity awards, aggregate historical compensation, levels of responsibility and performance relative to other executives within the company, importance to the company and difficulty of replacement. The Compensation Committee also gives significant weight to our clinical performance and quality of patient care. Accordingly, company-wide patient clinical outcomes and improvements in quality of patient care, and each named executive officer s contributions in those areas, can have a significant impact on named executive officer compensation.

The company-wide factors taken into consideration by the Compensation Committee include, but are not limited to, the following:

- overall revenue growth, which includes increases in our dialysis revenue per treatment and in our treatment volume, market share increases, improvements in cost per treatment, operating income growth, operating margin growth, increases in earnings per share and improvement in the company s debt to equity ratio,
- healthcare regulatory compliance initiatives,
- improved strategic positioning,
- improved positioning of the company for continued growth and diversification,
- improved organizational capabilities,

Table of Contents

patient growth,

relationships with private payors,

improved clinical outcomes, vaccination rates and fistula utilization,

relationships with medical directors,

selection and implementation of improved financial, operating and clinical information systems,

management performance in attracting and retaining high-performing employees throughout our organization and succession planning,

implementation of successful public policy efforts,

good corporate citizenship, and

advancement of strategic business initiatives supporting our mission to be the provider, partner and employer of choice.

The Compensation Committee considers the foregoing items subjectively. There is no formal weighting of the individual elements considered and no particular elements are required to be considered with respect to a given individual or in any particular year.

When determining annual compensation for our named executive officers, other than for our chief executive officer, the Compensation Committee works closely with our chief executive officer to review each individual s performance for the year and determine such named executive officer s compensation. Shortly following the end of each year, our chief executive officer provides his assessment of each named executive officer s performance during the year based on his personal experience with the individual, the named executive officer s achievement of success in areas determined to be significant to the company, and any changes in responsibility levels. The Compensation Committee also considers performance discussions that have taken place at the Board of Directors and Compensation Committee level regarding the named executive officers, retention objectives and the future growth potential of the individual executive. Our chief executive officer recommends to the Compensation Committee the amounts of cash and stock-based compensation for each of the named executive officers. The Compensation Committee considers the recommendations made by the chief executive officer regarding the other named executive officers but retains the discretion to deviate from those recommendations. Neither the chief executive officer nor other members of management provide a recommendation to the Compensation Committee with regard to the chief executive officer s compensation.

The Compensation Committee evaluates our chief executive officer s performance at the same time as it sets the compensation of the other named executive officers. When evaluating the performance of our chief executive officer and making decisions about his compensation, the Compensation Committee considers overall company performance as part of the assessment of our chief executive officer s performance but does not rely on the achievement of specific objectives to determine his compensation. The Compensation Committee also considers a self-assessment prepared by our chief executive officer. As part of this self-assessment, our chief executive officer reviews with the Compensation Committee the overall annual management objectives of the company and his participation in the attainment or level of responsibility for the shortfall of such objectives. Approximately every other year, the Compensation Committee engages an outside independent consultant to conduct an in-depth analysis of our chief executive officer s performance as a manager during the year. The most recent assessment took place in 2010. This evaluation involves a rigorous assessment of our chief executive officer s performance by members of the senior management team. The results of this assessment are reviewed by the Board of Directors and the Compensation Committee and is one of the many factors considered when making compensation decisions. The compensation package for our chief executive officer is approved by the Compensation Committee, subject to ratification by the independent members of the Board of Directors.

46

Table of Contents

Base Salary

Base salary is included in the compensation of our named executive officers because we believe it is appropriate that some portion of compensation be provided in a form that is liquid and assured. Base salaries are initially established at levels necessary to enable us to attract and retain highly qualified executives with reference to comparative pay within the company for executives with similar levels of responsibility, prior experience of the executive and expected contributions to company performance.

We do not guarantee salary adjustments on a yearly basis. During March of each year, the Compensation Committee considers adjustments to salary as part of the overall compensation assessment for our named executive officers. Our chief executive officer typically provides the Compensation Committee with his recommendation regarding merit-based increases for each named executive officer other than himself. The chief executive officer s base salary is determined by the Compensation Committee with input from Compensia and Compensia s analysis of CEO compensation of our comparator peer group.

In accordance with our emphasis on performance-based compensation and the Compensation Committee s decision to limit increases to fixed compensation amounts in 2010, the Compensation Committee retained the base salary of Messrs. Thiry, Rodriguez and Shapiro at 2009 levels. The Compensation Committee increased Mr. Kogod s base salary for 2010 pursuant to the Compensation Committee s review of his performance in the previous year and consideration of the salary level of Mr. Kogod s predecessor and the comparative market data provided by Compensia. Mr. Borgen commenced employment with us on March 22, 2010. Mr. Whitney stepped down from his position as our chief financial officer, effective May 4, 2010. The base salaries for 2009 and 2010 are shown in the table below.

Name	2009 Base Salary	2010 Base Salary
Kent J. Thiry	$ 1,050,000	$ 1,050,000
Dennis L. Kogod	$ 650,000	$ 800,000
Luis A. Borgen	N/A	$ 450,000
Javier J. Rodriguez	$ 550,000	$ 550,000
David T. Shapiro	$ 350,000	$ 350,000
Richard K. Whitney	$ 500,000	$ 400,000

For 2011, the Compensation Committee retained the base salary for Messrs. Thiry, Kogod, Borgen, Rodriguez and Whitney at 2010 levels. The Compensation Committee increased Mr. Shapiro s base salary for 2011 to $360,000, pursuant to the Compensation Committee s review and consideration of his performance in 2010 and the comparative market data provided by Compensia.

Annual Performance-Based Cash Compensation

Our 2010 annual performance-based cash compensation was paid to our named executive officers under our performance-based Executive Incentive Plan, other than Mr. Shapiro and Mr. Whitney, who stepped down from his position as our chief financial officer effective May 4, 2010. We believe that cash bonuses based on performance provide an incentive to consistently excel on an individual level as well as to contribute to the overall success of the company.

Executive Incentive Plan

We maintain an Executive Incentive Plan (EIP), in which our chief executive officer and other executives selected by the Compensation Committee may participate. For 2010, the Compensation Committee identified all of the named executive officers as eligible participants in the EIP, other than Mr. Shapiro (whose subject compensation was expected to be below $1 million for 2010) and Mr. Whitney (who stepped down from his position as our chief financial officer). The EIP is structured to satisfy the requirements of Section 162(m) of

Table of Contents

the Internal Revenue Code as described below, and individuals expected to receive compensation in excess of certain levels specified by Section 162(m) are selected to participate. When identifying potential participants for the plan, the Compensation Committee considers the projected total compensation for the eligible executive and the likelihood that such compensation will exceed $1 million for any one calendar year. The Compensation Committee has historically established an operating income target as the performance measure for participants in the EIP. The Compensation Committee uses operating income as the relevant performance measure because it believes that operating income provides the best measurement of our operating results, is a key measure of the financial strength and stability of our company, and can also be consistently measured by us and our stockholders against the operating results of other companies in our industry. From time to time, the Compensation Committee may establish different performance measures for individual participants in the EIP.

For 2010, the Compensation Committee established a fiscal year operating income target of not less than $826 million as the performance goal. When the Compensation Committee was determining the operating income target for 2010, it considered the uncertainties of the time period, including, among others, those relating to the healthcare reform and other significant healthcare regulatory changes, changes to government reimbursement policies, reduction in government payment rates and changes to the structure of payments under the Medicare ESRD program or other government-based programs, including, for example, the implementation of a bundled payment rate system, which will lower reimbursement for services we provide to Medicare patients. The Compensation Committee considered the company s estimates of 2010 budgeted operating income, as approved by the Board of Directors, when this target was established and attempted to establish a performance target at a level that can be characterized as stretch but attainable, meaning that based on historical performance and then-current economic and regulatory uncertainty, attainment of the performance target is uncertain but may be reasonably anticipated to be achieved. For 2010, the Compensation Committee established a maximum award amount of up to $10,000,000 for each of Messrs. Thiry and Kogod and a maximum award amount of up to $5,000,000 for each of Messrs. Rodriguez and Borgen. The Compensation Committee has the ability to apply only negative discretion in determining incentive compensation; and, historically, the Compensation Committee has applied such negative discretion in determining incentive compensation, resulting in cash-based incentive awards under the EIP over the last five years never greater than 25% of the maximum award amount. The Compensation Committee did not establish a target award amount for the eligible named executive officers under the EIP.

The company achieved operating income of $997 million for 2010, which exceeded the 2010 target performance goal. When determining the award amounts, the Compensation Committee considered the achievement of the target performance goal, as well as overall company and individual performance. With regard to the overall company performance, the Compensation Committee considered that, as compared to 2009, (i) we experienced a one-year TSR of 18.30%, compared to the median one-year TSR of 12.64% in our Global Industry Classification Standard group and the median one-year TSR of 11.94% in our comparator peer group; (ii) we experienced strong operating cash flow of $840 million, or an increase of approximately 26%; (iii) our consolidated revenue grew by approximately 6.0%; (iv) we experienced an increase of approximately 6.0% in the overall number of treatments that we provided and (v) our consolidated operating income grew by approximately 6.0%.

The Compensation Committee also considered that our three-year compound average annual TSR was 7.24%, compared to the median three-year compound average annual TSR of 5.19% and above the 60th percentile of our comparator peer group; our five-year compound average annual TSR was 6.53%, compared to the median five-year compound average annual TSR of 1.68% and at the 55th percentile of our comparator peer group; and our ten-year compound average annual TSR was 19.79%, compared to the median ten-year compound average annual TSR of 4.78% and above the 90th percentile of our comparator peer group.

In addition, the Compensation Committee considered that the company returned approximately $618 million to our stockholders through our stock buy-back program in 2010 (or 9.4% of our market capitalization) and approximately $1 billion to our stockholders in the three-year period from 2008 through 2010 (or 16.5% of our market capitalization), as compared to the median of our comparator peer group, at approximately

Table of Contents

$100 million to stockholders in 2010 (or 3.1% of market capitalization) and approximately $201 million to stockholders in the three-year period from 2008 through 2010 (or 7.9% of market capitalization). The Compensation Committee considered DaVita s record of sustained performance against the comparator peer group companies, posting above the 60th percentile for three-year operating margin, net margin and revenue growth against the comparator peer group companies and above the 60th percentile for five-year and above the 75th percentile for ten-year operating margin, net margin and revenue growth against the comparator peer group companies, notwithstanding general economic volatility and significant industry regulatory challenges and uncertainty.

The Compensation Committee also considered that our clinical outcomes compare very favorably with other dialysis providers in the United States and generally exceed the dialysis outcome quality indicators of the National Kidney Foundation. In addition to significant contributions to overall company performance, the Compensation Committee also considered individual performance, as listed for each named executive officer below.

Name	Individual Performance Factors Considered in Determining EIP Award
Kent J. Thiry, Chairman of the Board of Directors and Chief Executive Officer	succession planning efforts and his successful development of key members of senior management, assisting in the company being better prepared for managing future growth successful development of exceptionally high-caliber management team significant improvement in organizational capabilities over past years successful progress with respect to significant clinical initiatives leadership in public policy efforts that promote the interests of the company and the dialysis industry as a whole advancement of strategic business initiatives success with initiatives that position the company for successful continued growth and diversification successful working relationship with the Board of Directors, Board recruiting efforts and focus on Board diversity
Dennis L. Kogod, Chief Operating Officer	substantial contributions to the company s strong operational and clinical performance higher percentage of acquisitions closed improved vaccination rates, fistula utilization and first 90-day dialysis care lower rate of attrition for teammates in the field improved retention rate for high performance leaders maintained strong teammate organizational productivity and efficiency that contribute to operational cost management substantial contribution to developing international opportunities
Luis A. Borgen, Chief Financial Officer	successful integration into organization demonstrated expertise in evaluating international opportunities completed debt refinancing with favorable terms
Javier J. Rodriguez, Senior Vice President	succession planning for his position significant development as manager successfully secured major payor contracts demonstrated leadership in the areas of disease management and integrated care operations significant contributions to enterprise development and growth

Table of Contents

Our chief executive officer recommends to the Compensation Committee the performance bonus amount for our named executive officers, other than for himself, and the final performance bonus amounts are reviewed by the Compensation Committee and sometimes adjusted in consultation with our chief executive officer, prior to approval by the Compensation Committee. The Compensation Committee determines the performance bonus amount for our chief executive officer without recommendations from management. The award of amounts below the maximum amount was not a negative reflection on the performance of the eligible participants. In consideration of the company and individual performance listed above and in consultation with our chief executive officer with regard to performance bonuses for the named executive officers other than himself, the Compensation Committee awarded 2010 performance bonuses under the EIP to the eligible named executive officers, as follows:

Name	2010 EIP Award Amount
Kent J. Thiry	$ 3,125,000
Dennis L. Kogod	$ 1,500,000
Luis A. Borgen	$ 96,000
Javier J. Rodriguez	$ 1,000,000

For 2011, the Compensation Committee reduced the maximum cash award amount for Mr. Thiry from $10,000,000 to $5,000,000 (with a maximum aggregate cash and restricted stock units, or RSUs, award limit of $10,000,000) and maximum cash award amounts for the remaining named executive officers from $5,000,000 to $2,500,000 (with a maximum aggregate cash and RSUs award limit of $10,000,000 for Mr. Kogod and $5,000,000 for the remaining named executive officers). The Compensation Committee believes that the lowered maximum cash award amounts are more generally aligned with the market maximum cash incentive opportunities and past actual cash-based incentive awards given to our named executive officers under the EIP.

Other Performance-Based Bonuses

For the named executive officers who did not participate in the EIP, the Compensation Committee performs a similar review of overall company and individual performance throughout the year. The following table shows the individual performance factors considered in determining performance bonuses for Messrs. Shapiro and Whitney.

Name	Individual Performance Factors Considered in Determining Incentive Award
David T. Shapiro Chief Compliance Officer and Senior Vice President	substantially strengthened compliance team and process successfully integrated compliance policies and processes enterprise-wide developed exceptional compliance training programs for teammates and physicians managed the former Gambro corporate integrity agreement with regulators to a successful conclusion successful handling of complex litigation and compliance matters provided senior leadership during transition to new corporate headquarters
Richard K. Whitney, Former Chief Financial Officer	successfully completed transition of new chief financial officer oversaw capital markets decisions and strategy positioned the company for operating under new bundled reimbursement successfully renegotiated pharmaceutical supply contract

In consideration of the company and individual performance listed above and in consultation with our chief executive officer with regard to performance bonuses for Messrs. Shapiro and Whitney, the Compensation Committee awarded 2010 performance bonuses of $1,000,000 to Mr. Shapiro and $450,000 to Mr. Whitney.

Table of Contents

Relocation Bonuses

We moved our headquarters to Denver, Colorado and in order to support each of Messrs. Thiry s, Kogod s, Borgen s and Shapiro s relocation and transition to Denver, Colorado, the Company agreed to pay each executive relocation bonuses and/or reimburse certain relocation expenses. See the 2010 Summary Compensation Table in this Proxy Statement for more information relating to the relocation bonuses.

Long-Term Equity Incentives

While we emphasize stock-based compensation, we do not designate a target percentage of total compensation as stock-based. We instead maintain flexibility to use judgment to respond to changes in named executive officer and company performance and related objectives. The emphasis on stock-based compensation creates a commonality of interest between our named executive officers and our stockholders. Grants of stock-based awards also serve as an important tool for attracting and retaining our named executive officers. The majority of our grants of stock-based awards vest solely based on the passage of time, and vesting is contingent upon continued employment with us. To vest in stock-based awards and earn the full benefit of the award the named executive officers must remain employed for a multi-year period, typically over four years, which reinforces a culture in which the company s long-term success takes precedence over volatile and unsustainable short-term results.

Stock-based awards to our named executive officers are made pursuant to our Equity Compensation Plan. The Equity Compensation Plan permits the issuance of stock options, stock appreciation rights, restricted stock units, and other forms of stock-based awards. The majority of our stock-based awards to named executive officers are in the form of SSARs, which only derive value if the market value of our common stock increases. Each year, the Compensation Committee recommends to the full Board of Directors an aggregate equity award pool that will be available for grants to all eligible recipients of stock-based awards, based on (i) the historical amounts granted, (ii) the amount of equity that is currently in-the-money, (iii) the number of shares we expect to be forfeited due to anticipated departures, and (iv) the number of shares that will likely be required both to retain our highest-potential and highest-performing employees and to attract new executives we expect to hire during the coming year. The Compensation Committee may also recommend the establishment of special purpose share budgets for proposed interim grants. After considering such recommendations, the Board of Directors approves a budget and delegates authority to the Compensation Committee to make awards to our executive officers and other employees, and to the chair of the Compensation Committee to make grants to non-executive officer employees within the authorized budget.

The stock-based awards that are granted to our named executive officers are generally made annually (typically in the first half of the year). Discretionary interim awards to our named executive officers may be made during the year to address special circumstances, such as retention concerns, promotions and special performance recognition awards, and new hire awards. The timing of the annual grants is generally dictated by the timing of the completion of performance reviews and the timing of decisions regarding other forms of direct compensation. The timing of the interim grants depends upon individual circumstances. We do not have any program, plan or practice to time interim awards in coordination with the release of material non-public information; however, it is possible that awards may be granted at times when the company is in possession of material non-public information. Under the terms of the Equity Compensation Plan, awards are granted with an exercise or base price not less than the closing price of our common stock on the date of grant.

Stock Appreciation Rights

Since July 2006, we have primarily issued SSARs in lieu of stock options. The economic value and tax and accounting treatment of SSARs are comparable to those of stock options, but SSARs are less dilutive to our stockholders because only shares with a total value equal to the grantee s gain (the difference between the fair market value of the base shares and their base price) are ultimately issued. SSARs are granted with an exercise or base price not less than the closing price of our common stock on the date of grant and vest based on the passage of time. Prior to 2010, awards of SSARs and stock options generally vested at a rate of 25% after 12 months from

Table of Contents

the date of grant, 8.33% at the 20th month and 8.33% every four months thereafter until fully vested. In 2010, our standard vesting schedule for SSARs was changed to 25% after 12 months from the date of grant, then 6.25% every three months thereafter (a total of 25% per year) until fully vested, although alternative vesting schedules may be applied based on retention concerns, the future timing of value expected to vest from prior awards and other factors. The standard vesting for SSARs was changed to simplify the vesting schedule and to provide for a twelve-month period to exercise the fully vested award before expiration.

The SSAR awards that were granted to all named executive officers in 2011 for 2010 performance were granted with extended vesting schedules, such that the awards vest 50% on the third anniversary of the date of grant and the remaining 50% on the fourth anniversary of the date of grant. These SSAR awards were granted with extended vesting schedules to assist in the long-term retention of the named executive officers.

Restricted Stock Units

We also award restricted stock units, or RSUs, to our named executive officers from time to time as part of our compensation program. We award RSUs because full value share awards can more closely align the interests of executives with stockholder interests by providing better parity between total stockholder returns and the executive s gains or losses on the awards than is achievable with stock options or SSARs. In 2010, the Compensation Committee decided to increase the use of RSUs and permitted the named executive officers to elect to receive between one-third and two-thirds of the value of their allocated equity awards in the form of RSUs. One RSU was considered equivalent to four SSARs, based on the natural economic exchange ratio between the two award types implied by their respective fair values. The Compensation Committee increased the use of RSUs in 2010 to ensure that our named executive officers retain some durable equity value in light of the potential impact on the company and our industry of healthcare reform and other significant healthcare regulatory changes, including changes to government reimbursement policies. RSUs granted under the Equity Compensation Plan vest with the passage of time over a period of three years or more. Prior to 2010, RSUs vested generally at a rate of 33.33% after 36 months from the date of grant and 11.11% every four months thereafter until fully vested. In 2010, our standard vesting schedule for RSUs was changed to vest over a period of four years generally at a rate of 25% per year, although the Compensation Committee may approve alternative vesting schedules based on performance, timing of vesting of individual outstanding grants and other retention related factors. The standard vesting for RSUs was changed to simplify the vesting schedule and to create fewer forced taxation events for recipients. We currently do not award other forms of stock-based awards to employees.

Determining Award Amounts

The Compensation Committee reviews the annual grant recommendations for our named executive officers and other executives in advance of the grant date with the input of our chief executive officer. Based upon a review of equity award shares available, their dilutive effect on stockholders, long-term share budgeting restrictions and recommendations from management, the Compensation Committee recommends an aggregate equity award pool for the year for approval by the Board of Directors. In considering how to distribute the shares in the aggregate equity award pool, our chief executive officer, together with a team that includes our chief financial officer and our chief people officer, gives differential attention to high-potential individuals whom the company believes will be the future leaders of the company, and to other high-performing individuals whose performance in their current positions exceeded expectations.

Each such high-potential and/or high-performing employee is then individually reviewed, from a holistic perspective, starting with a review of such employee s historical compensation, including his or her initial base salary, any base salary increases during his or her tenure with the company and performance cash bonuses and equity award grants over his or her career at the company. A determination is then made as to the number of equity award shares that should be granted in order to retain and continue to motivate these high-quality, high-performing individuals. Our goal is to achieve fairness in compensation over the course of multiple years, which is the reason we take into account all compensation that has been awarded to such individuals over their respective careers at the company.

Table of Contents

For our named executive officers that participate in the EIP, RSU awards are also made pursuant to the EIP and after the Compensation Committee determines that the company has achieved the EIP performance target for such year. Since all equity awards granted on April 13, 2011 for 2010 performance to our named executive officers were made in the form of SSARs, such SSARs were granted outside of the EIP but pursuant to our Equity Compensation Plan. Similar to the analysis that the Compensation Committee makes in determining the annual performance-based cash compensation, the Compensation Committee considers overall company and individual performance. For the equity awards granted in 2011 for fiscal 2010 performance, the Compensation Committee reviews the findings and recommendations of the chief executive officer for named executive officers other than himself and considers each named executive officers individual performance throughout the year (which analysis is similar to the consideration of individual performance in determining the annual performance-based cash compensation). See Elements of Compensation Annual Performance-Based Cash Compensation Executive Incentive Plan of this Proxy Statement for detailed discussion of the overall company and individual performance factors considered.

The Compensation Committee also evaluates market competitiveness by analyzing the comparator peer group s executive equity award grants, as provided in the February 2011 Compensia report. After taking into account the elements as set forth above, the Compensation Committee approved equity award grants to our named executive officers on April 13, 2011.

The table below shows the SSAR awards granted to each named executive officer in 2011 for 2010 performance.

Name	Shares Subject to SSARs
Kent J. Thiry	500,000
Dennis L. Kogod	250,000
Luis A. Borgen	
Javier J. Rodriguez	130,000
David T. Shapiro	10,000
Richard K. Whitney	60,000

The Compensation Committee determined that these SSAR awards shall vest 50% on the third anniversary of the date of grant and the remaining 50% on the fourth anniversary of the date of grant, for all of the above named executive officers.

Interim discretionary grants are recommended by our chief executive officer and management and reviewed by the Compensation Committee as a part of mid-year performance evaluations, special projects participation, new hires and other factors. Mr. Borgen received grants of SSARs for 60,000 shares and RSUs for 15,000 shares, due to his commencing employment with us in 2010. Such grants were made pursuant to extensive negotiation between the company and Mr. Borgen and in order to induce him to join the company. The Board of Directors has delegated the authority to our chief executive officer, chief operating officer and chief financial officer to grant a limited number of stock-based awards to employees, other than our executive officers, between meetings of the Board of Directors in accordance with guidelines established by the Compensation Committee.

Personal Benefits and Perquisites

As described above, our compensation programs for named executive officers emphasize compensation based on performance and compensation which serves to align our named executive officers interests with those of our stockholders. As a result, the Compensation Committee has determined that the company should provide few perquisites to named executive officers. The perquisites and personal benefits that we do provide support important attraction and retention objectives. We also consider the extent to which the perquisite or personal benefit provided serves to enhance the performance of our named executive officers in light of the demands on these individuals time. The perquisites and personal benefits available to our named executive officers are reviewed annually by the Compensation Committee.

Table of Contents

The Compensation Committee has authorized the personal use of a fractionally-owned or chartered corporate aircraft by some of our named executive officers. The Compensation Committee believes that access to an aircraft for personal travel enables our named executive officers to maximize their work hours, particularly in light of their demanding business travel schedules. One of the Compensation Committee s objectives is to ensure that our named executive officers are afforded adequate flexibility to allow for sufficient personal time in light of the significant demands of the company. The Compensation Committee and our chief executive officer allocate a fixed number of hours for use by identified named executive officers and consider the allocated amount as part of the named executive officer s total compensation. The Compensation Committee and our chief executive officer use their discretion when determining the number of allocated hours and displace other forms of compensation that otherwise would have been awarded to the named executive officer.

Our chief executive officer is authorized by the Compensation Committee to use a fractionally-owned or chartered corporate aircraft for business purposes, including long-distance commuting, for a fixed number of hours per year for personal use instead of additional cash compensation that would have otherwise been paid. As part of our chief executive officer s aggregate compensation package, the Compensation Committee approves a fixed number of hours for personal use each year and unused hours from the prior year are available for use the following year. When determining the number of hours of personal use of aircraft to award, the Compensation Committee takes into consideration Mr. Thiry s overall compensation package. If Mr. Thiry were to exceed the fixed number of hours for personal use that is unrelated to business or long-distance commuting in a given year, the excess hours of personal use would offset the number of hours approved by the Compensation Committee the following year for personal use or Mr. Thiry would be required to compensate us directly, although historically he has not exceeded the hours authorized for personal use. The Compensation Committee reviews all business and personal use of the aircraft annually, including detailed passenger logs with special attention to mixed business and personal use and required reimbursements to the company. The company does not provide any gross-ups or reimbursements for income taxes for any perquisites or personal benefits of its executive officers.

Deferred Compensation Programs

Our deferred compensation programs permit certain employees, including our named executive officers, to defer compensation at the election of the participant or at the election of the company. We maintain a Voluntary Deferral Plan which allows certain employees, including our named executive officers, to defer a percentage of their base salary, cash bonus and other compensation as identified by the company. We do not utilize deferred compensation as a significant component of compensation.

Severance and Change of Control Arrangements

We have entered into employment agreements with each of our named executive officers. These agreements, among other things, provide for severance benefits in the event of a termination of employment in certain circumstances, including, with respect to certain named executive officers, the departure of the named executive officer following a change of control of our company. Each agreement is individually negotiated and the terms vary. When entering into employment agreements with our named executive officers, we attempt to provide severance and change of control benefits which strike a balance between providing sufficient protections for the named executive officer while still providing post-termination compensation that is reasonable and in the best interests of the company and our stockholders. We have also adopted the DaVita Inc. Severance Plan (the DaVita Severance Plan), which provides for severance benefits for our vice presidents and director-level employees in the event of termination in certain circumstances. See Potential Payments Upon Termination or Change of Control beginning on page 65 of this Proxy Statement for a description of the severance and change of control arrangements set forth in our employment agreements with the named executive officers and the DaVita Severance Plan.

In addition, our stock-based award agreements provide for accelerated vesting of stock-based awards in certain circumstances following a change of control of the company or in the case of a resignation for good reason. The terms of individual agreements vary but under our current stock-based award agreements

Table of Contents

accelerated vesting of stock-based awards is generally triggered when a change of control event occurs and either the acquiring entity fails to assume, convert or replace the stock-based award or the grantee s employment is terminated within the twenty-four-month period following a change of control or if the executive resigns for good reason as provided in his or her applicable employment agreement. For stock-based award agreements entered into prior to October 2006, accelerated vesting of stock-based awards is triggered when a change of control event occurs, even if there is no subsequent termination or resignation. Our stock-based award agreements further provide that a change of control shall not be deemed to have occurred if the person acting as chief executive officer for the six months prior to such transaction becomes the chief executive officer or executive chairman of the board of directors of the acquiring entity and remains in such position for at least one year following the transaction and a majority of the acquiror s board of directors immediately after such transaction consists of persons who were directors of the company immediately prior to such transaction. The additional acceleration provisions in our stock-based award agreements further serve to secure the continued employment and commitment of our named executive officers prior to or following a change of control. See Potential Payments Upon Termination or Change of Control beginning on page 65 of this Proxy Statement for more information regarding accelerated vesting under our stock-based award agreements.

EXECUTIVE COMPENSATION PROCESS & GOVERNANCE

We are committed to strong governance standards with respect to our compensation programs, procedures and practices. We believe that the following aspects of our compensation programs are indicative of this commitment.

Management Share Ownership Policy

We have a share ownership policy that applies to all full-time members of our management team at the vice president level and above and any part-time vice presidents who continue to receive stock-based awards under our equity compensation programs. The management share ownership policy is similar to our share ownership policy that applies to all non-management members of the Board of Directors beginning on page 14 of this Proxy Statement. The purpose of the policy is to ensure that our executive officers and other members of our senior management team accumulate a meaningful ownership stake in the company over time by retaining a specified financial interest in our common stock. Both shares owned directly and shares underlying vested but unexercised SSARs, stock options and restricted stock units are included in the determination of whether the share ownership guidelines are met. The total net realizable share value retained must have a current market value of not less than the lower of 25% of the total equity award value in excess of $100,000 realized to date by the executive (since promotion to VP); or a specific multiple of the executive s base salary. The salary multiple requirement is 5.0 for Mr. Thiry, 3.0 for Messrs. Kogod, Borgen and Rodriguez, 2.0 for Mr. Whitney and 1.0 for Mr. Shapiro.

Role of Independent Compensation Committee

Our executive compensation and benefits programs are designed and administered under the direction and control of the Compensation Committee. Our Compensation Committee is composed solely of independent directors, who review and approve our overall executive compensation programs, strategy and policies and sets the compensation of our executive officers.

Role of Independent Compensation Consultant

The Compensation Committee has selected and directly retains the services of Compensia, an independent compensation consulting firm. Compensia only provides compensation consulting services to the Compensation Committee, and works with the company s management only on matters for which the Compensation Committee is responsible. The Compensation Committee periodically seeks input from

Table of Contents

Compensia on a range of external market factors, including evolving compensation trends, appropriate peer companies and market survey data. Compensia also provides general observations on the company s compensation programs, but it does not determine or recommend the amount or form of compensation for the named executive officers. See Corporate Governance Information Regarding the Board of Directors and its Committees Compensation Committee beginning on page 11 of this Proxy Statement for detailed discussion of the Compensia services provided in 2010.

Policy Regarding Clawback of Bonuses and Incentive Compensation

In 2010, the Board of Directors adopted a clawback policy that permits the Board of Directors to recover bonuses, incentive and equity-based compensation from executive officers and members of the Board of Directors whose fraud or intentional misconduct was a significant contributing factor to the company having to restate all or a portion of its financial statements. The policy allows for the recovery of any bonus or incentive compensation paid to those executive officers or directors, the cancellation of restricted or deferred stock awards and outstanding stock awards granted to those executive officers or directors, and the reimbursement of any gains realized that are attributable to such awards to the fullest extent permitted by law. The policy allows for the foregoing actions to the extent that the amount of incentive compensation was calculated based upon the achievement of certain financial results that were subsequently reduced due to a restatement; the executive officer or director engaged in any fraud or intentional misconduct that was a significant contributing factor to the company having to restate its financial statements; and where the amount of the bonus or incentive compensation that would have been awarded to the officer had the financial results been properly reported would have been lower than the amount actually awarded. The company will not seek to recover bonuses or incentive or equity-based compensation paid or that vests more than three years prior to the date the applicable restatement is disclosed.

TAX AND ACCOUNTING CONSIDERATIONS

When reviewing compensation matters, the Compensation Committee considers the anticipated tax and accounting treatment of various payments and benefits to the company and, when relevant, to its executives. Section 162(m) of the Internal Revenue Code generally disallows a tax deduction for compensation in excess of $1 million paid to the chief executive officer and the three other most highly compensated named executive officers employed at the end of the year (other than the chief financial officer), such executives hereinafter referenced as covered employees.

Certain compensation is specifically exempt from the deduction limit to the extent that it does not exceed $1 million during any fiscal year or is performance-based as defined in Section 162(m). Although we have plans that permit the award of deductible compensation under Section 162(m) of the Internal Revenue Code, the Compensation Committee does not necessarily limit executive compensation to the amount deductible under that provision. Rather, it considers the available alternatives and acts to preserve the deductibility of compensation to the extent reasonably practicable and consistent with its other compensation objectives. As a result, most of our compensation programs are intended to qualify for deductibility under Section 162(m), including our EIP.

Section 409A of the Internal Revenue Code requires programs that allow executives to defer a portion of their current income to meet certain requirements regarding risk of forfeiture and election and distribution timing (among other considerations).

Section 409A of the Internal Revenue Code requires that nonqualified deferred compensation be deferred and paid under plans or arrangements that satisfy the requirements of the statute with respect to the timing of deferral elections, timing of payments and certain other matters. Failure to satisfy these requirements can expose employees and other service providers to accelerated income tax liabilities and penalty taxes and

Table of Contents

interest on their vested compensation under such plans. Accordingly, as a general matter, it is our intention to design and administer our compensation and benefits plans and arrangements for all of our employees and other service providers, including our named executive officers, so that they are either exempt from, or satisfy the requirements of, Section 409A of the Internal Revenue Code.

DaVita accounts for stock-based compensation in accordance with FASB ASC Topic 718, which requires DaVita to recognize compensation expense for share-based payments (including SSARs, RSUs and other forms of equity compensation). FASB ASC Topic 718 is taken into account by the Compensation Committee in determining to use a portfolio approach to equity grants, awarding SSARs and RSUs on a value-equivalent basis considering the natural economic exchange ratios implied by their respective fair values.

2010 Summary Compensation Table

Name and Principal Position	Year	Salary ($)	Bonus[1] ($)	Stock Awards[2] ($)	Option Awards[3] ($)	Non-Equity Incentive Plan Compensation[4] ($)	All Other Compensation[5] ($)	Total ($)
Kent J. Thiry	2010	$ 1,020,000	$ 200,000[6]	$ 4,755,000	$ 4,729,560	$ 3,125,000	$ 291,483	$ 14,121,043
Chairman of the Board of	2009	$ 1,090,385			$ 7,856,160	$ 2,500,000	$ 225,597	$ 11,672,142
	2008	$ 1,023,076			$ 7,657,200	$ 2,000,000	$ 354,111	$ 11,034,387
Directors and Chief Executive Officer								
Dennis L. Kogod	2010	$ 727,075	$ 118,000[7]	$ 2,377,500	$ 2,364,780	$ 1,500,000	$ 17,095	$ 7,104,450
Chief Operating Officer	2009	$ 628,855	$ 250,000		$ 4,230,240	$ 950,000	$ 772	$ 6,059,867
	2008	$ 472,414	$ 150,000		$ 2,353,580	$ 750,000	$ 11,109	$ 3,737,103
Luis A. Borgen*	2010	$ 346,154	$ 262,976[8]	$ 962,850	$ 957,702	$ 96,000	$ 2,500	$ 2,628,182
Chief Financial Officer								
Javier J. Rodriguez	2010	$ 544,990		$ 665,700	$ 457,814	$ 1,000,000	$ 50,375	$ 2,718,879
Senior Vice President	2009	$ 571,143	$ 200,000		$ 776,445	$ 520,000	$ 28,632	$ 2,096,220
	2008	$ 492,300	$ 150,000		$ 1,176,790	$ 250,000	$ 26,738	$ 2,095,828
David T. Shapiro	2010	$ 348,571	$ 1,276,154[9]	$ 237,750	$ 245,258		$ 1,660	$ 2,109,393
Chief Compliance Officer and Senior Vice President								
Richard K. Whitney**	2010	$ 429,769	$ 450,000[10]	$ 1,061,950	$ 1,300,167		$ 330	$ 3,242,216
Former Chief Financial	2009	$ 519,231	$ 300,000		$ 1,208,640		$ 330	$ 2,028,201
Officer	2008	$ 423,077	$ 233,750		$ 1,843,222		$ 314	$ 2,500,363

* Mr. Borgen joined the company as our senior vice president as of March 22, 2010 and became our chief financial officer in May 2010. The amounts reported in the columns titled Salary and Non-Equity Incentive Plan Compensation reflect compensation earned by Mr. Borgen during the portion of 2010 that he was employed with the company.

** Mr. Whitney served as our chief financial officer on a part-time basis from February 2008 until May 2010.

(1) The amounts reported in this column represent discretionary bonuses, including relocation bonuses and signing bonuses, for the year with respect to which they were earned, regardless of when such bonuses are paid. Bonuses may be paid in cash, SSARs, restricted stock units or a combination of cash, SSARs, and restricted stock units. The cash component of a bonus is included in this column; however, the cash component of any bonus awarded under our EIP is included in the Non-Equity Incentive Plan Compensation column.

(2) The amounts shown in this column reflect restricted stock unit awards and represent the aggregate grant date fair value of all such awards granted to the executive during 2010 as estimated by the company for financial reporting purposes. See Note 17 to the Consolidated Financial Statements included in our Annual Report on Form 10-K for the year ended December 31, 2010 for a discussion of the relevant assumptions used in calculating these amounts pursuant to FASB ASC Topic 718.

(3) The amounts shown in this column reflect SSAR awards and represent the aggregate grant date fair value of all such awards granted to the executive during 2010 as estimated by the company for financial reporting purposes. See Note 17 to the Consolidated Financial Statements included in our Annual Report on Form 10-K for the year ended December 31, 2010 for a discussion of the relevant assumptions used in calculating these amounts pursuant to FASB ASC Topic 718.

(4) The amounts shown in this column constitute payments made under our EIP. Under our EIP, awards are reported for the year with respect to which they were earned, regardless of when the award is paid. Please see the Elements of Compensation Annual Performance-Based Cash Compensation Executive Incentive Plan in this Proxy Statement for a discussion of the performance criteria under the EIP.

57

Table of Contents

(5) Amounts included in this column are set forth by category below. The amounts disclosed, other than use of a fractionally-owned or chartered corporate aircraft, are the actual or share of actual costs to the company of providing these benefits. Because a fractionally-owned or chartered corporate aircraft is used primarily for business purposes, we do not include in incremental cost the fixed costs that do not change based on usage. The incremental cost to us of personal use of a fractionally-owned or chartered corporate aircraft, including use for commuting, is calculated based on the variable operating costs related to the operation of the aircraft, including fuel costs and landing fees, trip-related repairs and maintenance, catering and other miscellaneous variable costs. Fixed costs that do not change based on usage, such as pilot salaries, training, utilities, depreciation, management fees, taxes and general repairs and maintenance are excluded. The value of the personal use of a fractionally-owned or chartered corporate aircraft and the corporate residential property by our named executive officers is included in their personal income in accordance with applicable tax regulations.

Name and Principal Position	Year	Aircraft Usage[a] ($)	Corporate Residential Property Usage ($)	Life Insurance Premiums ($)	Total All Other Compensation ($)
Kent J. Thiry	2010	$ 287,398	$ 2,500	$ 1,585	$ 291,483
Dennis L. Kogod	2010	$ 16,323		*	$ 17,095
Luis A. Borgen	2010		$ 2,500		$ 2,500
Javier J. Rodriguez	2010	$ 49,715		*	$ 50,375
David T. Shapiro	2010		$ 1,000	*	$ 1,660
Richard K. Whitney	2010			*	$ 330

* Amount represents less than $1,000.

(a) For purposes of calculating the incremental costs to the company of each named executive officer s personal use of company aircraft, the total cost of the flight is allocated to personal use based upon the relative ratio of personal mileage to total mileage. Costs for fuel, ground costs, catering costs, landing fees, domestic passenger fees and federal excise tax charges are also included, if applicable.

(6) Amount represents a relocation bonus paid in 2010 to support Mr. Thiry s transition to Denver, Colorado.

(7) Amount represents a relocation bonus paid in 2010 to support Mr. Kogod s transition to Denver, Colorado.

(8) Amount represents a $250,000 signing bonus paid in 2010 and $12,976 in relocation expense reimbursements paid in 2010 to support Mr. Borgen s transition to Denver, Colorado.

(9) Amount represents a $1,000,000 discretionary bonus to Mr. Shapiro for his 2010 performance and contributions to the company and $276,154 in relocation bonus and related housing allowances paid in 2010 to support Mr. Shapiro s transition to Denver, Colorado.

(10) Amount represents a discretionary bonus to Mr. Whitney for his 2010 performance and contributions to the company.

Narrative to the Summary Compensation Table

Employment Agreements

On July 25, 2008, we entered into an employment agreement with Mr. Thiry which replaced his employment agreement that was entered into on October 18, 1999 (as amended on May 20, 2000, November 28, 2000 and March 20, 2005). The employment agreement provides for an initial term through July 25, 2011 and continues thereafter with no further action by either party for successive one-year terms. Mr. Thiry is eligible to receive a bonus based upon the achievement of performance goals as determined by the Compensation Committee and the independent directors in accordance with the Compensation Committee charter. His target incentive bonus under his employment agreement is his annual base salary in effect during the beginning of the applicable fiscal year, although his actual incentive bonus may exceed that amount in a particular year, and has exceeded that amount in recent years.

We entered into an employment agreement with Mr. Kogod effective October 24, 2005. This agreement was subsequently amended effective December 12, 2008. The agreement provides for employment at will, with either party permitted to terminate the agreement at any time, with or without cause, subject to notice requirements. Mr. Kogod is eligible to receive a discretionary performance bonus with the actual amount to be decided by our chief executive officer and/or the Board of Directors or the Compensation Committee.

We entered into an employment agreement with Mr. Borgen effective February 26, 2010. This agreement was subsequently amended effective March 18, 2010. The agreement provides for employment at will, with

Table of Contents

either party permitted to terminate the agreement at any time, with or without cause, subject to notice requirements. Mr. Borgen is eligible to receive a discretionary performance bonus with the actual amount to be decided by our chief executive officer and/or the Board of Directors or the Compensation Committee.

We entered into an employment agreement with Mr. Rodriguez effective March 17, 2010. The agreement provides for employment at will, with either party permitted to terminate the agreement at any time, with or without cause, subject to notice requirements. Mr. Rodriguez is eligible to receive a discretionary performance bonus with the actual amount to be decided by our chief executive officer and/or the Board of Directors or the Compensation Committee.

We entered into an employment agreement with Mr. Shapiro effective March 3, 2008. This agreement was subsequently amended effective December 4, 2008. The agreement provides for employment at will, with either party permitted to terminate the agreement at any time, with or without cause, subject to notice requirements. Mr. Shapiro is eligible to receive a discretionary performance bonus with the actual amount to be decided by our chief executive officer and/or the Board of Directors or the Compensation Committee.

We entered into an employment agreement with Mr. Whitney effective February 13, 2008. The agreement provides for employment at will, with either party permitted to terminate the agreement at any time, with or without cause, subject to notice requirements. Mr. Whitney is eligible to receive a discretionary performance bonus with the actual amount to be decided by our chief executive officer and/or the Board of Directors or the Compensation Committee. Mr. Whitney stepped from his position as chief financial officer of the company effective May 4, 2010. Mr. Whitney has remained with the company in an executive role, initially to assist with the management transition and currently, as a special advisor to the chief executive officer.

For a description of certain termination and change of control provisions included in the employment agreements for certain of our named executive officers, please see Potential Payments Upon Termination or Change of Control beginning on page 65 of this Proxy Statement.

Table of Contents

The following table sets forth information concerning awards made to each of the named executive officers under the company s EIP and equity compensation plans during 2010.

2010 Grants of Plan-Based Awards

Name	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards[1] Target ($)	Estimated Future Payouts Under Non-Equity Incentive Plan Awards[1] Maximum ($)	All Other Stock Awards: Number of Shares of Stock or Units (#)	All Other Options Awards: Number of Securities Underlying Options (#)	Exercise or Base Price of Option Awards ($/Sh)	Grant Date Fair Value of Stock and Option Awards ($)[2]
Kent J. Thiry	N/A	$ 1,050,000	$ 10,000,000				
	3/31/2010			75,000[3]			$ 4,755,000
	3/31/2010				300,000[4]	$ 63.40	$ 4,729,560
Dennis L. Kogod	N/A	$ 950,000	$ 10,000,000				
	3/31/2010			37,500[3]			$ 2,377,500
	3/31/2010				150,000[4]	$ 63.40	$ 2,364,780
Luis A. Borgen	N/A		$ 5,000,000				
	3/22/2010			15,000[5]			$ 962,850
	3/22/2010				60,000[6]	$ 64.19	$ 957,702
Javier J. Rodriguez	N/A	$ 520,000	$ 5,000,000				
	3/31/2010			10,500[7]			$ 665,700
	3/31/2010				28,000[8]	$ 63.40	$ 457,814
David T. Shapiro	N/A						
	3/31/2010			3,750[7]			$ 237,750
	3/31/2010				15,000[8]	$ 63.40	$ 245,258
Richard K. Whitney	N/A						
	3/31/2010			16,750[3]			$ 1,061,950
	3/31/2010				33,000[4]	$ 63.40	$ 520,252
	6/12/2010				50,000[9]	$ 64.72	$ 779,915

(1) Non-equity incentive awards to Messrs. Thiry, Kogod, Rodriguez and Borgen were made under the EIP. The maximum amounts shown in the table above reflect the largest possible payments under the EIP for the 2010 performance period for purposes of qualifying the plan under Section 162(m) of the Code. There are no thresholds or targets under the EIP; however, pursuant to Mr. Thiry s employment agreement, his target incentive bonus opportunity for each fiscal year shall be equal to 100% of his base salary in effect at the beginning of such fiscal year; provided, that the amount of his bonus may exceed 100% of his base salary if target performance goals for the fiscal year are exceeded. With respect to Messrs. Kogod and Rodriguez, because the Compensation Committee does not set a target amount under the EIP, the target amount reported is the cash bonus amount earned by each of them under the EIP in 2009. With respect to Mr. Borgen, no target amount is reported because he joined the company in March 2010 and therefore was not a participant of the EIP in 2009. The EIP provides that the Compensation Committee may use negative discretion to award any amount that does not exceed the maximum. The actual amounts awarded under the EIP are reported in the Non-Equity Incentive Plan Compensation column of the 2010 Summary Compensation Table. For a description of the EIP, see Compensation Discussion and Analysis Elements of Compensation Annual Performance-Based Compensation Executive Incentive Plan in this Proxy Statement.

(2) These amounts are the aggregate grant date fair values of each award determined pursuant to FASB ASC Topic 718. See Note 17 to the Consolidated Financial Statements included in our Annual Report on Form 10-K for the year ended December 31, 2010 for a discussion of the relevant assumptions used in calculating grant date fair value pursuant to FASB ASC Topic 718.

Table of Contents

(3) The awards shown are restricted stock units granted under the Equity Compensation Plan. These awards vest 25% on each of May 15, 2011, May 15, 2012, May 15, 2013 and May 15, 2014.

(4) This number represents SSARs awarded under the Equity Compensation Plan. These awards vest 25% on the first anniversary and 6.25% every three months thereafter (a total of 25% per year) from the grant date.

(5) The awards shown are restricted stock units granted under the Equity Compensation Plan. These awards vest 33.34% on the third anniversary and 11.11% every four months thereafter from the grant date.

(6) This number represents SSARs awarded under the Equity Compensation Plan. These awards vest 25% on the first anniversary, 8.33% on the 20th month and 8.33% every four months thereafter from the grant date.

(7) The awards shown are restricted stock units granted under the Equity Compensation Plan. These awards vest 33% on each of May 15, 2012, May 15, 2013 and May 15, 2014.

(8) This number represents SSARs awarded under the Equity Compensation Plan. These awards vest 33% on the second anniversary and 8.33% every three months thereafter from the grant date.

(9) This number represents SSARs awarded under the Equity Compensation Plan. These awards vest 25% on March 31, 2011, and 6.25% every three months thereafter (a total of 25% per year) from the grant date.

Narrative to the Grants of Plan-Based Awards Table

Awards

See Compensation Discussion and Analysis Elements of Compensation Annual Performance-Based Compensation Executive Incentive Plan, Compensation Discussion and Analysis Elements of Compensation Long-Term Equity Incentives in this Proxy Statement for a description of the EIP and grants of SSAR and RSU awards.

Salary and Cash Bonus in Proportion to Total Compensation

The following table sets forth the percentage of each named executive officer s total compensation as set forth in the Summary Compensation Table that we paid in the form of base salary and cash bonus. For a description of the objectives of our compensation programs and overall compensation philosophy, please see Compensation Discussion and Analysis beginning on page 40 of this Proxy Statement.

Name	Salary and Cash Bonus as Percentage of Total 2010 Compensation
Kent J. Thiry	31%
Dennis L. Kogod	33%
Luis A. Borgen	27%
Javier J. Rodriguez	57%
David T. Shapiro	77%
Richard K. Whitney	27%

Table of Contents

The following table sets forth information concerning outstanding stock options and SSARs and unvested stock awards held by each of the named executive officers at December 31, 2010.

2010 Outstanding Equity Awards at Fiscal Year-End

		Option Awards				Stock Awards	
Name	Grant Date	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price ($)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested[1] ($)
Kent J. Thiry	7/1/2006	215,000[2]		$ 49.70	7/1/2011		
	3/16/2007	500,000[2]	100,000[2]	$ 52.76	3/16/2012		
	3/11/2008	437,500[2]	312,500[2]	$ 43.70	3/11/2013		
	3/2/2009	216,666[2]	433,334[2]	$ 46.26	3/2/2014		
	3/31/2010		300,000[3]	$ 63.40	3/31/2015		
	3/31/2010					75,000[4]	$ 5,211,750
Dennis L. Kogod	10/11/2006	32,083[2]	2,917[2]	$ 56.38	10/11/2011		
	3/14/2007	41,666[2]	8,334[2]	$ 52.12	3/14/2012		
	3/14/2007	62,500[5]	37,500[5]	$ 52.12	3/14/2012		
	2/28/2008	116,666[2]	83,334[2]	$ 50.37	2/28/2013		
	3/2/2009	116,666[2]	233,334[2]	$ 46.26	3/2/2014		
	3/31/2010		150,000[3]	$ 63.40	3/31/2015		
	3/31/2010					37,500[4]	$ 2,605,875
Luis A. Borgen	3/22/2010		60,000[2]	$ 64.19	3/22/2015		
	3/22/2010					15,000[6]	$ 1,042,350
Javier J. Rodriguez	3/14/2007	45,000[7]	15,000[7]	$ 52.12	3/14/2012		
	3/14/2007	62,500[5]	37,500[5]	$ 52.12	3/14/2012		
	7/30/2007	112,500[2]	37,500[2]	$ 54.13	7/30/2012		
	2/28/2008	58,333[2]	41,667[2]	$ 50.37	2/28/2013		
	3/6/2009	21,666[2]	43,334[2]	$ 45.72	3/6/2014		
	3/31/2010		28,000[8]	$ 63.40	3/31/2015		
	7/30/2007					8,333[6]	$ 579,060
	3/31/2010					10,500[9]	$ 729,645
David T. Shapiro	3/17/2008	1,666[2]	8,334[2]	$ 42.48	3/17/2013		
	3/2/2009	5,666[2]	43,334[2]	$ 46.26	3/2/2014		
	3/31/2010		15,000[8]	$ 63.40	3/31/2015		
	3/17/2008					1,000[6]	69,490
	3/31/2010					3,750[9]	260,588
Richard K. Whitney	2/14/2008	70,000[10]		$ 50.50	8/14/2011		
	2/15/2008	50,000[11]		$ 50.99	8/15/2011		
	2/19/2008	30,000[12]		$ 50.82	8/19/2011		
	2/20/2008	30,000[13]		$ 50.42	8/20/2011		
	2/21/2008	20,000[14]		$ 50.84	8/21/2011		
	3/2/2009	33,333[2]	66,667[2]	$ 46.26	3/2/2014		
	3/31/2010		33,000[3]	$ 63.40	3/31/2015		
	6/12/2010		50,000[15]	$ 64.72	6/12/2015		
	3/31/2010					16,750[4]	$ 1,163,958

62

Table of Contents

(1) The market value of shares or units of stock that have not vested reflects the $69.49 closing price of our stock on December 31, 2010, as reported by the NYSE.
(2) These SSARs vest 25% on the first anniversary, 8.33% on the 20th month and 8.33% every four months thereafter from the grant date.
(3) These SSARs vest 25% on the first anniversary and 6.25% every three months thereafter (a total of 25% per year) from the grant date.
(4) These restricted stock units vest 25% on each of May 15, 2011, May 15, 2012, May 15, 2013 and May 15, 2014.
(5) These SSARs vest 50% on the third anniversary, 12.5% on the 45th month and 12.5% every three months thereafter from the grant date.
(6) These restricted stock units vest 33.34% on the third anniversary and 11.11% every four months thereafter from the grant date.
(7) These SSARs vest 25% on the second anniversary, 12.5% on the 32nd month and 12.5% every four months thereafter from the grant date.
(8) These SSARs vest 33% on the second anniversary and 8.33% every three months thereafter from the grant date.
(9) These restricted stock units vest 33% on each of May 15, 2012, May 15, 2013 and May 15, 2014.
(10) These SSARs vest in full on the first anniversary of the grant date.
(11) These SSARs vest 93% on the first anniversary and 7% on the 13th month from the grant date.
(12) These SSARs vest 12% on the 13th month, 23% on the 14th, 15th and 16th month and 19% on the 17th month from the grant date.
(13) These SSARs vest 5% on the 17th month, 23% on the 18th, 19th, 20th and 21st month and 3% on the 22nd month from the grant date.
(14) These SSARs vest 30% on the 22nd month and 35% on the 23rd and 24th month from the grant date.
(15) These SSARs vest 25% on March 31, 2011, and 6.25% every three months thereafter (a total of 25% per year) from the grant date.

The following table sets forth information concerning the exercise of stock options and SSARs and the vesting of stock awards held by each of the named executive officers during 2010.

2010 Option Exercises and Stock Vested

	Option Awards		Stock Awards	
Name	Number of Shares Acquired on Exercise (#)	Value Realized on Exercise ($)[1]	Number of Shares Acquired on Vesting (#)	Value Realized on Vesting ($)[2]
Kent J. Thiry	385,000	$ 6,258,734		
Dennis L. Kogod	36,667	$ 653,872		
Luis A. Borgen				
Javier J. Rodriguez	246,000	$ 5,078,355	6,667	$ 407,776
David T. Shapiro	26,000	$ 560,797		
Richard K. Whitney				

(1) Value realized on exercise is determined by subtracting the exercise or base price from the market price of our common stock at exercise, and multiplying the remainder by the number of shares exercised.
(2) Value realized on vesting is determined by multiplying the number of shares underlying restricted stock units by the closing price for our common stock on the date of vesting, as reported by the NYSE.

2010 Pension Benefits

The company does not have a defined benefit pension plan in which any employee, including the named executive officers, can participate to receive payments or other benefits at, following, or in connection with retirement.

Table of Contents

The following table sets forth information concerning the company s nonqualified deferred compensation plans.

2010 Nonqualified Deferred Compensation

Name	Executive Contributions in Last FY ($)	Registrant Contributions in Last FY ($)	Aggregate Earnings in Last FY ($)[1]	Aggregate Withdrawals/ Distributions ($)	Aggregate Balance at Last FYE ($)
Kent J. Thiry					
Voluntary Deferral Plan			$ 140,401		$ 1,358,714[2]
Dennis L. Kogod					
Executive Retirement Plan			$ 16,100		$ 193,487
Luis A. Borgen[3]					
Javier J. Rodriguez					
Voluntary Deferral Plan			$ 51,020		$ 417,470
David T. Shapiro[3]					
Richard K. Whitney[3]					

(1) Unless otherwise indicated, none of the earnings in this column are included in the Summary Compensation Table because they are not preferential or above market.

(2) Mr. Thiry deferred $772,596 and $255,769 into the Voluntary Deferral Plan that was reported in the Salary column for 2009 and 2008, respectively, in the Summary Compensation Table.

(3) Messrs. Borgen, Shapiro and Whitney did not participate in any of the company s nonqualified deferred compensation plans.

The 2010 Nonqualified Deferred Compensation Table presents amounts deferred under our Voluntary Deferral Plan. Under the Voluntary Deferral Plan, participants may defer (i) up to 50% of their base salary, (ii) all or a portion of their annual bonus payment that is earned in the same year as their base salary but payable in the following year and (iii) all or a portion of their other compensation as determined by the company. Deferred amounts are credited with earnings or losses based on the rate of return of one or more investment alternatives selected by the participant from among the investment funds selected by the company. Participants may change their investment elections daily. We do not make contributions to participants accounts under the Voluntary Deferral Plan. All participant contributions are irrevocably funded into a rabbi trust for the benefit of those participants. Assets held in the trust are subject to the claims of the company s general creditors in the event of the company s bankruptcy or insolvency until paid to the plan participants. Distributions are generally paid out in cash at the participant s election either in the first or second year following retirement or in a specified year at least three to four years after the deferral election was effective. Participants elect to receive distributions in the form of one, five, ten, fifteen or twenty annual installments. If the participant has not elected a specified year for payout and the participant becomes disabled, dies or has a separation from service, distributions generally will be paid in a lump sum cash distribution. In the event of an unforeseeable emergency, the plan administrator may, in its sole discretion, authorize the cessation of deferrals by a participant, provide for immediate distribution to a participant in the form of a lump sum cash payment or provide for such other payment schedule as the plan administrator deems appropriate.

The table also presents amounts deferred under our Executive Retirement Plan. The Executive Retirement Plan was assumed by the company from Gambro Healthcare, Inc. following our acquisition of Gambro Healthcare in October 2005. Amounts contributed to the plan were based on a percentage of an executive s annual base salary and such contributions were made prior to our assumption of the plan. We did not make any contributions to the Executive Retirement Plan following our assumption of the plan and effective February 1, 2006 we amended the plan to eliminate the obligation to make further contributions under the plan. Under the plan, amounts in a participant s deferred account vest 100% upon the earlier of: (i) two years of service following the date of contribution and (ii) the date the participant reaches the age of 60. All amounts contributed under this

Table of Contents

plan and currently in deferred accounts were contributed prior to February 1, 2006 and therefore are fully vested. Deferred amounts are credited with earnings or losses based on the rate of return of one or more investment alternatives selected by the participant from among the investment funds selected by the company. Participants may change their investment elections daily. All contributions are irrevocably funded into a rabbi trust for the benefit of plan participants. Assets held in the trust are subject to the claims of the company s general creditors in the event of the company s bankruptcy or insolvency until paid to the plan participants.

Potential Payments Upon Termination or Change of Control

General Terms and Definitions

For purposes of the employment agreements with each of our named executive officers and the table below:

Cause is defined in Mr. Thiry s employment agreement as any of the following: (i) conviction of a felony; (ii) any act of fraud or dishonesty resulting or intended to result directly or indirectly in personal enrichment at the expense of the company; (iii) repeated failure or refusal by the executive to follow policies established by the Board of Directors or written directives of the Board of Directors that goes uncorrected for a period of 30 consecutive days after notice of such failure or refusal, and that is material and willful and has a material adverse effect on the company s business; or (iv) a material breach of the executive s employment agreement that goes uncorrected for a period of 30 consecutive days after written notice has been provided to the executive.

Involuntary termination for Material Cause occurs if the company terminates employment for any of the following reasons: (i) conviction of a felony or plea of no contest to a felony; (ii) any act of fraud or dishonesty in connection with the performance of the executive s duties; (iii) repeated failure or refusal by the executive to follow lawful policies or directives reasonably established by the chief executive officer of the company or his designee that goes uncorrected for a period of 10 consecutive days after written notice has been provided to the executive; (iv) a material breach of the executive s employment agreement; (v) any gross or willful misconduct or gross negligence by the executive in performance of his duties; (vi) egregious conduct by the executive that brings the company or any of its subsidiaries or affiliates into public disgrace or disrepute; (vii) an act of unlawful discrimination, including sexual harassment; (viii) a violation of the duty of loyalty or of any fiduciary duty; or (ix) exclusion or notice of exclusion of the executive from participating in any federal health care program. Further, Mr. Borgen s employment agreement also includes the following reason for termination under the definition of Material Cause : the executive s failure to relocate to Denver, Colorado with his immediate family by September 6, 2010. Further, the definition of Material Cause in Mr. Shapiro s employment agreement includes the following additional language for (iv) above: that goes uncorrected for a period of 10 consecutive days after written notice has been provided to the executive.

Material Cause is defined in the employment agreement of Mr. Kogod as any of the following: (i) conviction of a felony or plea of no contest to a felony; (ii) the adjudication by a court of competent jurisdiction that the executive has committed any act of fraud or dishonesty resulting or intended to result directly or indirectly in personal enrichment at the expense of the company; (iii) repeated failure or refusal by the executive to follow policies or directives reasonably established by the chief executive officer of the company or his designee that goes uncorrected for a period of 30 consecutive days after written notice has been provided to the executive; (iv) a material breach of the executive s employment agreement that goes uncorrected for a period of 30 consecutive days after written notice has been provided to the executive; (v) any gross or willful misconduct or gross negligence by the executive in the performance of his duties; (vi) egregious conduct by the executive that brings the company or any of its subsidiaries or affiliates into public disgrace or disrepute; (vii) an act of unlawful discrimination, including sexual harassment; (viii) a violation of the duty of loyalty or of any fiduciary duty; or (ix) exclusion or notice of exclusion of the executive from participating in any federal health care program.

Except with respect to Mr. Thiry, as noted below, a Change of Control means (i) any transaction or series of transactions in which any person or group (within the meaning of Rule 13d-5 under the Exchange Act

Table of Contents

and Sections 13(d) and 14(d) of the Exchange Act) becomes the direct or indirect beneficial owner (as defined in Rule 13d-3 under the Exchange Act), by way of a stock issuance, tender offer, merger, consolidation, other business combination or otherwise, of greater than 50% of the total voting power (on a fully diluted basis as if all convertible securities had been converted and all warrants and options had been exercised) entitled to vote in the election of directors of the company (including any transaction in which the company becomes a wholly-owned or majority-owned subsidiary of another corporation), (ii) any merger or consolidation or reorganization in which the company does not survive, (iii) any merger or consolidation in which the company survives, but the shares of the company s common stock outstanding immediately prior to such merger or consolidation represent 40% or less of the voting power of the company after such merger or consolidation, and (iv) any transaction in which more than 40% of the company s assets are sold. However, despite the occurrence of any of the above-described events, a Change of Control will not have occurred if Mr. Thiry remains the chief executive officer of the company for at least one year after the Change of Control or becomes the chief executive officer or executive chair of the surviving company with which the company merged or consolidated and remains in that position for at least one year after the Change of Control.

Good Cause means the occurrence of the following events without the executive s express written consent: (i) the company materially diminishes the scope of the executive s duties and responsibilities; or (ii) the company materially reduces the executive s base compensation. Notwithstanding the above, the occurrence of any such condition shall not constitute Good Cause unless the executive provides notice to the company of the existence of such condition not later than 90 days after the initial existence of such condition, and the company shall have failed to remedy such condition within 30 days after receipt of such notice.

Good Reason is defined in Mr. Borgen s employment agreement as the occurrence of the following events without the executive s express written consent: (i) the company reduces the executive s annual base salary in a percentage greater than concurrent base salary reductions for similarly-situated executives; (ii) the company fails to pay compensation on a timely basis or continue benefits in accordance with the terms of the executive s employment agreement, as amended; (iii) the company assigns the executive to a new work location more than thirty-five miles from the executive s assignment to the company s current offices in Denver, Colorado; or (iv) any material breach by the company of the executive s employment agreement.

With respect to Mr. Thiry s employment agreement, Good Reason means during the employment period, without the written consent of the executive, any one or more of the following (provided that an isolated, insubstantial or inadvertent action not taken in bad faith or failure not occurring in bad faith which is remedied by the company promptly after receipt of notice thereof given by the executive shall not constitute Good Reason): (i) the assignment to the executive of any duties inconsistent in any material and adverse respect with the executive s then current duties and responsibilities; (ii) the material and adverse change in the executive s titles or positions; (iii) reduction in the executive s base salary or target annual incentive opportunity, unless such reductions are part of an across-the-board reduction that applies to all senior executives of the company and takes effect prior to a Change in Control (as defined below for Mr. Thiry); or (iv) any material breach by the company of the employment agreement, that is not corrected within 30 days after notice of such breach.

For purposes of the definition of Good Reason in Mr. Thiry s employment agreement above, a Change of Control means (i) any transaction or series of transactions in which any person or group (within the meaning of Rule 13d-5 under the Exchange Act and Sections 13(d) and 14(d) under the Exchange Act) becomes the direct or indirect beneficial owner (as defined in Rule 13d-3 under the Exchange Act), by way of a stock issuance, tender offer, merger, consolidation, other business combination or otherwise, of greater than 40% of the total voting power (on a fully diluted basis as if all convertible securities had been converted and all warrants and options had been exercised) entitled to vote in the election of directors of the company (including any transaction in which the company becomes a wholly-owned or majority-owned subsidiary of another corporation), (ii) consummation of any merger or consolidation in which the shares of the company s common stock outstanding immediately prior to such merger or consolidation represent 50% or less of the voting power of the corporation resulting from such merger or consolidation, or, if applicable, the ultimate parent corporation of such

Table of Contents

corporation, (iii) during any twenty-four month period, individuals who, as of the beginning of such period, constitute the Board (the Incumbent Board) cease for any reason to constitute at least a majority of such Board; provided that any individual who becomes a director of the company subsequent to the beginning of such period whose election, or nomination for election by the company s stockholders, was approved by the vote of at least a majority of the directors then comprising the Incumbent Board shall be deemed a member of the Incumbent Board; and provided further, that any individual who was initially elected as a director of the company as a result of an actual or threatened solicitation by a person other than the Board for the purpose of opposing a solicitation by any other person with respect to the election or removal of directors, or any other actual or threatened solicitation of proxies or consents by or on behalf of any person other than the Board shall not be deemed a member of the Incumbent Board, (iv) consummation of any transaction in which all or substantially all of the company s assets are sold, or (v) the approval by the company s shareholders of a plan of complete liquidation or dissolution of the company; provided, however, that no transaction contemplated by clauses (i) through (iv) above shall constitute a Change of Control if the person acting as the chief executive officer of the company for the twelve months prior to such transaction continues as the chief executive officer or executive chairman of the Board of Directors of the company or becomes the chief executive officer or executive chairman of the Board of Directors of the entity that has acquired control of the company as a result of such transaction (the Acquiror) immediately after such transaction and remains the chief executive officer or executive chairman of the Board of Directors for not less than twelve months following the transaction, and further provided, that in the event that the person acting as the chief executive officer of the company for the twelve months prior to such transaction ceases to be chief executive officer or executive chairman of the Board of Directors of the company or of the Acquiror during the twelve months following the transaction, a Change of Control shall be deemed to have occurred on the date on which such person ceases to be chief executive officer or executive chairman of the Board of Directors.

Table of Contents

Severance Payments and Benefits

The following tables and summary set forth the company s payment obligations pursuant to the terms of the employment agreements and/or the DaVita Severance Plan for each of our named executive officers, under the circumstances described below, assuming that their employment was terminated on December 31, 2010. For a description of the value of stock-based awards held by Messrs. Thiry, Kogod, Borgen, Rodriguez, Shapiro and Whitney that are subject to accelerated vesting upon a Change of Control, see Accelerated Vesting of Stock-Based Awards below.

	Payment of Base Salary (or multiple thereof) in effect at termination for a specified period following termination	Bonus[1]	Continued Health Benefits for a Specified Period Following Termination	Office and Secretarial Assistance	Tax Gross-Up	Total Value
Kent J. Thiry						
Death		$ 3,125,000[2]				$ 3,125,000
Disability		$ 3,125,000[2]				$ 3,125,000
Involuntary Termination without Cause	$ 9,900,000[3]	$ 3,125,000[4]	$ 53,504[5]	$ 371,189[6]		$ 13,449,694
Involuntary Termination without Cause (prior to age 62)[7]	$ 4,950,000[8]	$ 3,125,000[4]	$ 53,504[5]	$ 371,189[6]		$ 8,499,694
Resignation for Good Reason	$ 9,900,000[3]	$ 3,125,000[4]	$ 53,504[5]	$ 371,189[6]		$ 13,449,694
Dennis L. Kogod						
Death						
Disability						
Involuntary Termination for Other than Material Cause	$ 800,000[9]	$ 1,200,000[10]				$ 2,000,000
Resignation Following a Good Cause Event Unrelated to a Change of Control	$ 800,000[9]	$ 1,200,000[10]				$ 2,000,000
Resignation Following a Good Cause Event After a Change of Control	$ 1,600,000[11]	$ 1,200,000[10]				$ 2,800,000
Luis A. Borgen						
Death						
Disability						
Involuntary Termination for Other than Material Cause	$ 450,000[12]		$ 18,515[13]			$ 468,515
Resignation for Good Reason	$ 450,000[12]		$ 18,515[13]			$ 468,515
Javier J. Rodriguez						
Death						
Disability						
Involuntary Termination for Other than Material Cause	$ 825,000[14]	$ 520,000[15]				$ 1,345,000
Resignation for Good Cause	$ 825,000[14]	$ 520,000[15]				$ 1,345,000
Resignation Following a Good Cause Event After a Change of Control	$ 1,100,000[16]	$ 520,000[15]				$ 1,620,000
David T. Shapiro						
Death						
Disability						
Involuntary Termination for Other than Material Cause	$ 350,000[17]					$ 350,000

Table of Contents

(1) Does not include any amounts payable to Messrs. Thiry and Rodriguez pursuant to our Voluntary Deferral Plan which amounts are included in the 2010 Nonqualified Deferred Compensation Table. Such amounts are currently vested, but payment thereof may be accelerated in the event of death, disability or termination of employment.

(2) Mr. Thiry (or his estate) will be entitled to receive the amount of any bonus earned and payable but not yet paid for the fiscal year prior to the year in which the termination occurs. On December 31, 2010, Mr. Thiry had fully earned his bonus for 2010, so he would have received the full amount of his annual incentive bonus as reported in the Summary Compensation Table upon termination.

(3) Mr. Thiry will be entitled to receive a lump-sum payment equal to the product of (x) three, and (y) the sum of his base salary in effect as of the date of termination and the Prior Bonus. Prior Bonus means the average of the annual incentive bonus earned under the EIP (including any bonus earned and payable but not yet paid) for the last two fiscal years before the fiscal year in which Mr. Thiry s employment was terminated. The amount reported in the table above reflects the product of (x) three, and (y) the sum of Mr. Thiry s base salary as of December 31, 2010, which was $1,050,000, and the average of Mr. Thiry s 2009 annual incentive bonus in the amount of $2,500,000 and Mr. Thiry s 2008 annual bonus in the amount of $2,000,000.

(4) Mr. Thiry will be entitled to receive the amount of any bonus earned and payable but not yet paid for the fiscal year prior to the year in which the termination occurs. Mr. Thiry will also be entitled to receive a prorated annual incentive bonus (based on the actual bonus earned under the objective standards set forth in the EIP for the fiscal year in which the termination occurs) through and including the date of termination. On December 31, 2010, Mr. Thiry had fully earned his annual incentive bonus for 2010, so he would have received the full amount of his annual incentive bonus as reported in the Summary Compensation Table upon termination.

(5) Mr. Thiry will continue to receive his health benefits for the three-year period following termination. The amount reported in the table above is the estimated actual cost of COBRA insurance premiums for Mr. Thiry for the three-year period following termination.

(6) Mr. Thiry will be entitled to the use of an office and services of an administrative assistant for three years or until he obtains other full-time employment. The amounts above reflect the estimated costs to us of providing the office and secretarial services for three years.

(7) Mr. Thiry will be entitled to receive the payments set forth in this row in the event that, prior to the date on which Mr. Thiry attains age 62, the Board of Directors gives Mr. Thiry written notice that the term of his employment agreement shall not be extended.

(8) Mr. Thiry will be entitled to receive a lump sum payment equal to the product of (x) one and one-half, and (y) the sum of his base salary in effect as of the date of termination and the Prior Bonus (as defined above). The amount reported in the table above reflects the product of (x) one and one-half, and (y) the sum of Mr. Thiry s base salary as of December 31, 2010, which was $1,050,000, and the average of Mr. Thiry s 2009 annual incentive bonus in the amount of $2,500,000 and Mr. Thiry s 2008 annual incentive bonus in the amount of $2,000,000.

(9) Mr. Kogod will be entitled to receive his salary for the one-year period following his termination or resignation. As of December 31, 2010, Mr. Kogod s base salary was $800,000.

(10) Mr. Kogod will be entitled to receive a lump-sum payment equivalent to the bonus that he had been paid in the year before the termination. The company interprets this severance provision to mean the severance is based on the bonus paid for the year prior to the year for which a bonus was most recently earned. Mr. Kogod had fully earned his bonus for 2010 on December 31, 2010. This severance amount is reported as the bonus paid to Mr. Kogod for 2009, which was $1,200,000.

(11) Mr. Kogod will be entitled to receive his salary for the two-year period following his resignation.

(12) Mr. Borgen will be entitled to receive his salary for the one-year period following his termination or resignation. As of December 31, 2010, Mr. Borgen s base salary was $450,000.

(13) Mr. Borgen will continue to receive his health benefits for the one-year period following termination. The amount reported in the table above is the estimated actual cost of COBRA insurance premiums for Mr. Borgen for the one-year period following termination.

(14) Mr. Rodriguez will be entitled to receive his salary for the 18-month period following his termination or resignation. As of December 31, 2010, Mr. Rodriguez s base salary was $550,000.

(15) If Mr. Rodriguez is terminated after April in a given year, he will be entitled to receive a lump-sum payment equal to the bonus paid in the year prior to the termination, pro-rated for the number of months served in the year his employment is terminated. The company interprets this severance provision to mean the severance is based on the bonus paid for the year prior to the year for which a bonus was most recently earned. Mr. Rodriguez had fully earned his bonus for 2010 on December 31, 2010. This severance amount is reported as the bonus paid to Mr. Rodriguez for 2009, which was $520,000.

(16) Mr. Rodriguez will be entitled to receive his salary for the two-year period following his resignation.

Table of Contents

(17) Under the terms of the DaVita Severance Plan, Mr. Shapiro will only be entitled to severance payment and benefits if approved by our Senior Vice President of People Services and our Assistant General Counsel-Labor. If such approval is obtained, Mr. Shapiro will be entitled to continue to receive his base salary for a period of 12 months following his termination. As of December 31, 2010, Mr. Shapiro s base salary was $350,000. Such payment obligation would be reduced dollar-for-dollar by the amount of any compensation received by Mr. Shapiro from another employer during the severance payment period, and Mr. Shapiro would be obligated to use reasonable efforts to find employment during such period.

Other Severance Payments and Benefits

In addition, Mr. Whitney will not receive severance payments upon any termination. For a description of the value of stock-based awards held by Mr. Whitney that are subject to accelerated vesting upon a Change of Control, see Accelerated Vesting of Stock-Based Awards below.

The company s obligation to provide continued health benefits under the circumstances set forth in the tables above is subject to earlier termination in connection with the executive accepting employment with another employer.

In the event of termination as a result of death, the estates of the named executive officers identified in the tables above will also receive the proceeds of the respective term life insurance policy for each named executive officer. The coverage amount for each named executive officer is as follows: $1,201,000 for Mr. Thiry, $585,000 for Mr. Kogod, $500,000 for Mr. Borgen, $500,000 for Mr. Rodriguez, $500,000 for Mr. Shapiro and $250,000 for Mr. Whitney.

Pursuant to the terms of his employment agreement, Mr. Thiry will be eligible to receive a gross-up payment to the extent that any payment or benefit received or to be received by him is reduced by tax obligations possibly imposed by Sections 280G or 4999 of the Internal Revenue Code.

To receive the severance payments and benefits described above, each named executive officer must execute the company s standard severance and general release agreement. In addition, the employment agreements with each of our named executive officers include confidentiality provisions that would apply until the confidential information becomes publicly available (other than through breach by the named executive officer). These employment agreements also include nonsolicitation provisions which prohibit each named executive officer from soliciting any patient or customer of the company to patronize a competing dialysis facility or from soliciting any patient, customer, supplier or physician to terminate their business relationship with the company, for a period of two years following the termination of the named executive officer s employment. However, with respect to Mr. Borgen, Mr. Kogod and Mr. Whitney, the nonsolicitation provision would apply for a period of one year following termination.

Accelerated Vesting of Stock-Based Awards

For grants and awards of SSARs, stock options and/or restricted stock units made to our named executive officers prior to October 2006, the stock-based award agreements provide that in the event of a change of control, their options or awards shall automatically vest and become immediately exercisable in their entirety, such vesting to be effective as of the effective date of such transaction.

For grants and awards of SSARs and/or restricted stock units made to our named executive officers after October 2006, the stock-based award agreements provide that in the event that either (i) in connection with a Change of Control (as defined below), the acquiring entity fails to assume, convert or replace the named executive officer s options or awards, or (ii) the named executive officer s employment is terminated within the twenty-four-month period following a Change of Control by the company (or the acquiring entity) other than for Cause (as defined below) or, if applicable, by the named executive officer in accordance with the termination for Good Reason provisions of the named executive officer s employment agreement, if any, then, in any such case,

Table of Contents

the options or awards shall automatically vest and become immediately exercisable in their entirety, such vesting to be effective as of immediately prior to the effective date of the Change of Control in the case of (i), and as of the date of termination of the named executive officer s employment in the case of (ii).

The table below sets forth the value of the company s obligations upon the automatic vesting of the stock-based awards of our named executive officers as described above and assumes that the triggering event took place on December 31, 2010, the last day of our most recent fiscal year.

Name	Value of Options/ SSARs[1]	Value of Stock Awards[2]	Tax Gross-Up
Kent J. Thiry[3] [4]	$ 21,625,724	$ 5,211,750	
Dennis L. Kogod	$ 8,761,573	$ 2,605,875	
Luis A. Borgen	$ 318,000	$ 1,042,350	
Javier J. Rodriguez	$ 3,485,167	$ 1,308,705	
David T. Shapiro	$ 1,323,100	$ 330,078	
Richard K. Whitney	$ 1,988,144	$ 1,163,958	

(1) Values are based on the aggregate difference between the respective exercise or base prices and the closing sale price of our common stock on December 31, 2010, which was $69.49 per share, as reported by the NYSE.

(2) Values are based on the aggregate number of shares underlying restricted stock units multiplied by the closing sale price of our common stock on December 31, 2010, which was $69.49 per share, as reported by the NYSE.

(3) Pursuant to the terms of his employment agreement entered into on July 25, 2008, Mr. Thiry would be entitled to receive a gross-up payment to the extent any benefit received is reduced by tax obligations possibly imposed by Sections 280G or 4999 of the Internal Revenue Code. Any such tax gross-up amount would be calculated using a 20% excise tax rate and an approximately 40% individual income tax rate and assumes that the base amount for purposes of Sections 280G and 4999 of the Internal Revenue Code has been allocated between the cash severance and equity components of the change of control benefits in proportion to the amounts of each component. Assuming a triggering event took place on December 31, 2010, there would not be any tax gross-up amount payable.

(4) After Mr. Thiry has been employed by the company at least ten years, 50% of any unvested SSARs, stock options and restricted stock units would vest upon any termination by Mr. Thiry without Cause or for Good Reason. Since Mr. Thiry has been employed for ten years as of December 31, 2010, the value of such accelerated vesting is equal to 50% of the amounts set forth in the table.

Definitions under Stock-Based Award Agreements

For purposes of the stock-based award agreements and the table above:

A Change of Control means (i) any transaction or series of transactions in which any person or group (within the meaning of Rule 13d-5 under the Exchange Act and Sections 13(d) and 14(d) of the Exchange Act) becomes the direct or indirect beneficial owner (as defined in Rule 13d-3 under the Exchange Act), by way of a stock issuance, tender offer, merger, consolidation, other business combination or otherwise, of greater than 50% of the total voting power (on a fully diluted basis as if all convertible securities had been converted and all warrants and options had been exercised) entitled to vote in the election of directors of the company (including any transaction in which the company becomes a wholly-owned or majority-owned subsidiary of another corporation), (ii) any merger or consolidation or reorganization in which the company does not survive, (iii) any merger or consolidation in which the company survives, but the shares of the company s common stock outstanding immediately prior to such merger or consolidation represent 50% or less of the voting power of the company after such merger or consolidation, and (iv) any transaction in which more than 50% of the company s assets are sold.

Table of Contents

No transaction will constitute a Change of Control under the stock-based award agreements if both (x) the person acting as the chief executive officer of the company for the six months prior to such transaction becomes the chief executive officer or executive chairman of the board of directors of the entity that has acquired control of the company as a result of such transaction immediately after such transaction and remains the chief executive officer or executive chairman of the board of directors for not less than one year following the transaction and (y) a majority of the acquiring entity s board of directors immediately after such transaction consist of persons who were directors of the company immediately prior to such transaction.

Cause means: (1) a material breach by the executive of those duties and responsibilities of the executive which do not differ in any material respect from the duties and responsibilities of the executive during the 90-day period immediately prior to a Change of Control (other than as a result of incapacity due to physical or mental illness) which is demonstrably willful and deliberate on the executive s part, which is committed in bad faith or without reasonable belief that such breach is in the best interests of the company and which is not remedied in a reasonable period of time after receipt of written notice from the company specifying such breach; (2) willful misconduct or gross negligence which results in material harm to the company; (3) the conviction of the executive of, or a plea of nolo contendere by the executive to, a felony or other crime involving fraud or dishonesty; or (4) willful violation of company policies which results in material harm to the company.

Compensation of Directors

The following table sets forth information concerning the compensation of our non-employee directors during 2010.

2010 Director Compensation

Name	Fees Earned or Paid in Cash ($)[1]	Stock Awards ($)[2] [3] [4]	Option Awards ($)[5] [6]	Total ($)
Pamela M. Arway	$ 16,000	$ 66,673	$ 188,272	$ 270,945
Charles G. Berg	$ 24,000	$ 80,005	$ 188,272	$ 292,277
Willard W. Brittain, Jr.	$ 19,500	$ 48,953	$ 188,272	$ 256,725
Carol Anthony (John) Davidson[7]	$ 978	$ 12,975	$ 256,344	$ 270,297
Paul J. Diaz	$ 14,000	$ 65,492	$ 188,272	$ 267,764
Peter T. Grauer	$ 35,500	$ 179,976	$ 282,407	$ 497,883
John M. Nehra	$ 24,000	$ 172,042	$ 282,407	$ 478,449
William L. Roper	$ 26,000	$ 175,542	$ 282,407	$ 483,949
Roger J. Valine	$ 44,346	$ 82,430	$ 188,272	$ 315,048
Richard C. Vaughan[8]	$ 20,291	$ 25,572		$ 45,863

(1) Consists of the amounts described below under Annual Retainer, Lead Independent Director and Committee Chair Fees, Meeting Fees, and Other Compensation; Reimbursement of Expenses. With respect to Messrs. Nehra, Roper and Grauer, includes $10,000 for service as chair of the Compensation Committee, Compliance Committee and as lead independent director, respectively. With respect to Messrs. Valine and Vaughan, includes $6,346 and $4,807, respectively, for service as chair of the Audit Committee.

(2) With respect to Messrs. Nehra, Roper and Grauer, includes $10,000 in restricted stock units and 1,500 restricted stock units for service as chair of the Compensation Committee, Compliance Committee and as lead independent director, respectively.

Table of Contents

(3) The amounts shown in this column reflect the aggregate grant date fair value of all common stock awards and restricted stock unit awards granted to our directors during 2010 as estimated by the company for financial reporting purposes pursuant to FASB ASC Topic 718. The grant date fair value of each such award is set forth below:

Name*		Stock Awards		
		Number of Shares of Stock or Units (#)	Grant Date	Grant Date Fair Value of Stock Awards ($)*
Pamela M. Arway		110	3/10/2010	$ 6,699
		128	3/11/2010	$ 8,031
		47	3/31/2010	$ 2,980
		126	5/13/2010	$ 8,006
		48	6/30/2010	$ 2,997
		66	7/27/2010	$ 3,994
		135	7/28/2010	$ 8,001
		159	9/30/2010	$ 10,975
		54	12/1/2010	$ 3,998
		108	12/2/2010	$ 8,004
		43	12/31/2010	$ 2,988
	Total	1,024		$ 66,673
Charles G. Berg		132	3/10/2010	$ 8,039
		128	3/11/2010	$ 8,031
		47	3/31/2010	$ 2,980
		126	5/13/2010	$ 8,006
		48	6/30/2010	$ 2,997
		132	7/27/2010	$ 7,989
		135	7/28/2010	$ 8,001
		58	9/29/2010	$ 3,999
		159	9/30/2010	$ 10,975
		108	12/1/2010	$ 7,996
		108	12/2/2010	$ 8,004
		43	12/31/2010	$ 2,988
	Total	1,224		$ 80,005
Willard W. Brittain, Jr.		47	3/31/2010	$ 2,980
		126	5/13/2010	$ 8,006
		48	6/30/2010	$ 2,997
		135	7/28/2010	$ 8,001
		36	9/29/2010	$ 2,482
		159	9/30/2010	$ 10,975
		142	12/2/2010	$ 10,524
		43	12/31/2010	$ 2,988
	Total	736		$ 48,953
Carol Anthony (John) Davidson		54	12/1/2010	$ 3,998
		108	12/2/2010	$ 8,004
		14	12/31/2010	$ 973
	Total	176		$ 12,975

Table of Contents

Name*		Stock Awards: Number of Shares of Stock or Units (#)	Stock Awards: Grant Date	Stock Awards: Grant Date Fair Value of Stock Awards ($)*
Paul J. Diaz		74	3/10/2010	$ 4,507
		128	3/11/2010	$ 8,031
		47	3/31/2010	$ 2,980
		126	5/13/2010	$ 8,006
		48	6/30/2010	$ 2,997
		135	7/28/2010	$ 8,001
		65	9/29/2010	$ 4,482
		159	9/30/2010	$ 10,975
		169	12/2/2010	$ 12,525
		43	12/31/2010	$ 2,988
	Total	994		$ 65,492
Peter T. Grauer		87	3/31/2010	$ 5,516
		126	5/13/2010	$ 8,006
		1,500	6/7/2010	$ 93,960
		88	6/30/2010	$ 5,495
		198	7/27/2010	$ 11,983
		135	7/28/2010	$ 8,001
		116	9/29/2010	$ 7,998
		196	9/30/2010	$ 13,529
		162	12/1/2010	$ 11,994
		108	12/2/2010	$ 8,004
		79	12/31/2010	$ 5,490
	Total	2,795		$ 179,976
John M. Nehra		66	3/10/2010	$ 4,019
		128	3/11/2010	$ 8,031
		87	3/31/2010	$ 5,516
		126	5/13/2010	$ 8,006
		1,500	6/7/2010	$ 93,960
		88	6/30/2010	$ 5,495
		66	7/27/2010	$ 3,994
		135	7/28/2010	$ 8,001
		58	9/29/2010	$ 3,999
		196	9/30/2010	$ 13,529
		54	12/1/2010	$ 3,998
		108	12/2/2010	$ 8,004
		79	12/31/2010	$ 5,490
	Total	2,691		$ 172,042

Table of Contents

Name*		Stock Awards: Number of Shares of Stock or Units (#)	Grant Date	Grant Date Fair Value of Stock Awards ($)*
William L. Roper		107	3/10/2010	$ 6,516
		128	3/11/2010	$ 8,031
		87	3/31/2010	$ 5,516
		126	5/13/2010	$ 8,006
		1,500	6/7/2010	$ 93,960
		88	6/30/2010	$ 5,495
		66	7/27/2010	$ 3,994
		135	7/28/2010	$ 8,001
		36	9/29/2010	$ 2,482
		196	9/30/2010	$ 13,529
		54	12/1/2010	$ 3,998
		142	12/2/2010	$ 10,524
		79	12/31/2010	$ 5,490
	Total	2,744		$ 175,542
Roger J. Valine		132	3/10/2010	$ 8,039
		128	3/11/2010	$ 8,031
		47	3/31/2010	$ 2,980
		126	5/13/2010	$ 8,006
		70	6/30/2010	$ 4,371
		132	7/27/2010	$ 7,989
		135	7/28/2010	$ 8,001
		116	9/29/2010	$ 7,998
		196	9/30/2010	$ 13,529
		108	12/1/2010	$ 7,996
		79	12/31/2010	$ 5,490
	Total	1,269		$ 82,430
Richard C. Vaughan		66	3/10/2010	$ 4,019
		128	3/11/2010	$ 8,031
		87	3/31/2010	$ 5,516
		126	5/13/2010	$ 8,006
	Total	407		$ 25,572

* See Note 17 to the Consolidated Financial Statements included in our Annual Report on Form 10-K for the year ended December 31, 2010 for a discussion of the relevant assumptions used in calculating grant date fair value pursuant to FASB ASC Topic 718.

(4) As of December 31, 2010, each non-employee director had the following number of restricted stock unit awards outstanding: Ms. Arway, 181; Mr. Berg, 181; Mr. Brittain, 181; Mr. Davidson, 14; Mr. Diaz, 181; Mr. Grauer, 1,834; Mr. Nehra, 1,834; Mr. Roper, 1,834; Mr. Valine, 276; and Mr. Vaughan, 87.

(5) The amounts shown in this column reflect the aggregate grant date fair value of all SSAR awards granted to our directors during 2010 as estimated by the company for financial reporting purposes pursuant to FASB ASC Topic 718. With respect to Messrs. Nehra, Roper and Grauer, includes 6,000 SSARs for service as chair of the Compensation Committee, Compliance Committee and as lead independent director, respectively.

Table of Contents

The grant date fair value of each such award is set forth below:

Name	Number of Shares Underlying SSARs (#)	Grant Date	Grant Date Fair Value of Awards ($)*
Pamela M. Arway	12,000	6/7/2010	$ 188,272
Charles G. Berg	12,000	6/7/2010	$ 188,272
Willard W. Brittain, Jr.	12,000	6/7/2010	$ 188,272
Carol Anthony (John) Davidson	15,000	12/2/2010	$ 256,344
Paul J. Diaz	12,000	6/7/2010	$ 188,272
Peter T. Grauer	18,000	6/7/2010	$ 282,407
John M. Nehra	18,000	6/7/2010	$ 282,407
William L. Roper	18,000	6/7/2010	$ 282,407
Roger J. Valine	12,000	6/7/2010	$ 188,272

* See Note 17 to the Consolidated Financial Statements included in our Annual Report on Form 10-K for the year ended December 31, 2010 for a discussion of the relevant assumptions used in calculating grant date fair value pursuant to FASB ASC Topic 718.

(6) As of December 31, 2010, each non-employee director had the following number of options and SSARs outstanding: Ms. Arway, 27,000; Mr. Berg, 53,786; Mr. Brittain, 15,750; Mr. Davidson, 15,000; Mr. Diaz, 39,000; Mr. Grauer, 18,000; Mr. Nehra, 90,000; Mr. Roper, 54,000; and Mr. Valine, 54,739. Mr. Vaughan did not have any outstanding options or SSARs as of December 31, 2010.

(7) Mr. Davidson joined the Board of Directors on December 2, 2010.

(8) Mr. Vaughan ceased being a member of the Board of Directors on June 7, 2010.

During 2010, our non-employee directors were entitled to compensation under the Non-Management Director Compensation Philosophy and Plan (the Director Compensation Plan). On April 13, 2011, we amended and restated the Director Compensation Plan (the Amended Director Compensation Plan). The following describes the compensation paid to our non-employee directors for service as a director during 2010 under the Director Compensation Plan as set forth in the table above. In addition, the following describes our current compensation structure for our non-employee directors under the Amended Director Compensation Plan. Directors who are our employees or officers do not receive compensation for service on the Board of Directors or any committee of the Board of Directors.

Annual Retainer

Pursuant to the Director Compensation Plan, each of our non-employee directors is entitled to receive an annual retainer of $24,000 per year, paid quarterly in arrears. The annual retainer is paid half in cash and half in restricted stock units which are 100% vested upon issuance, but under which receipt of shares is automatically deferred to one year from grant date. Under the Amended Director Compensation Plan, the amount and terms of the annual retainer are unchanged.

Annual Equity Grant

Under the Director Compensation Plan, each of our non-employee directors is entitled to receive SSARs on a base number of 12,000 shares of our common stock for total service of at least one year in such capacity on the Board of Directors, granted on, and priced as of close of the market on, the date of our annual stockholder meeting, vesting in full on the one year anniversary of the date of grant, with acceleration of vesting upon a Change of Control (as defined above under stock-based award agreements), and expiring five years after the date of grant. This award is not available for service of less than one year. The Board of Directors is permitted to issue options in lieu of SSARs in its discretion. Under the Amended Director Compensation Plan, the amount and terms of the annual equity grant are unchanged.

Table of Contents

Lead Independent Director and Committee Chair Fees

Under the Director Compensation Plan, the chairs of the Audit, Compensation and Compliance Committees and the lead independent director receive an additional retainer of $20,000 per year, paid quarterly in arrears. The retainer is paid half in cash and half in restricted stock units which are 100% vested upon issuance, but under which receipt of shares is automatically deferred to one year from the grant date.

The chairs of the Audit, Compensation and Compliance Committees and the lead independent director are also entitled to receive additional SSARs on a base number of 6,000 shares of our common stock for total service in such capacity of at least one year, or the pro rata equivalent for service of less than one year, granted on, and priced as of the close of the market on, the date of our annual meeting of stockholders, vesting in full on the one year anniversary of the date of grant, with acceleration of vesting upon a Change of Control, and expiring five years after the date of the grant. Vesting of these SSARs continues so long as the non-employee director continues to serve on the Board of Directors even if he or she is no longer a committee chair or lead independent director. The Board of Directors is permitted to issue stock options in lieu of SSARs in its discretion. Under the Amended Director Compensation Plan, the amount and terms of the additional retainer and additional SSARs are unchanged.

Under the Director Compensation Plan, each of the chairs of the Audit, Compensation and Compliance Committees and the lead independent director also receives additional restricted stock units of 1,500 shares, or the pro rata equivalent for services of less than one year, that are granted on the date of our annual meeting of stockholders and that vest 100% upon issuance, but under which receipt of shares is automatically deferred for one year from the grant date.

Under the Amended Director Compensation Plan, only the lead independent director is entitled to receive additional restricted stock units of 1,500 shares, or the pro rata equivalent for services of less than one year, that are granted on the date of our annual meeting of stockholders and that vest 100% upon issuance, but under which receipt of shares is automatically deferred for one year from the grant date.

With respect to the additional retainers and equity grants to the lead independent director and the chairs of the Audit, Compensation or Compliance Committee, if the lead independent director also serves as a chair of the Audit, Compensation or Compliance Committee, the lead independent director will not be entitled to receive the additional retainers and equity grants for serving as the chair of the Audit, Compensation or Compliance Committee, in addition to the retainers and equity grants he or she is entitled to receive as the lead independent director, unless the Compensation Committee determines otherwise.

Meeting Fees

Under the Director Compensation Plan, our non-employee directors are entitled to receive $8,000 in the form of common stock for each Board of Directors meeting attended in person. For committee meetings, additional compensation of $4,000 is paid in the form of common stock for each meeting attended in person. Additional compensation of $2,000 in cash is paid for each telephonic meeting that lasts more than one hour and for telephonic meetings of the Audit Committee related to quarterly earnings releases, except that the meeting fee for each meeting attended in person is $2,500 to be paid in stock for members of the Public Policy and Clinical Performance Committees and $4,500 to be paid in stock for the chairs of these two committees, and the meeting fee for telephonic meetings that last more than one hour is $1,500 in cash for members of these two committees and $2,500 in cash for the chairs of these two committees. Committee meeting fees are paid for all committee meetings held on the same day as regular Board of Directors meetings, other than meetings of the Nominating and Governance Committee. Under the Amended Director Compensation Plan, the meeting fees are unchanged.

New Directors

Under the Director Compensation Plan, each of our non-employee directors is entitled to receive SSARs on a base number of 15,000 shares of our common stock upon appointment to the Board of Directors, priced at

Table of Contents

the closing price on the date of grant, vesting 25% per year beginning on the first anniversary of the date of grant and expiring five years after the date of grant. The Board of Directors is permitted to issue stock options in lieu of SSARs in its discretion.

Under the Amended Director Compensation Plan, each of our non-employee directors is entitled to receive SSARs on a base number of 10,000 shares of our common stock upon appointment to the Board of Directors, priced at the closing price on the date of grant, vesting 25% per year beginning on the first anniversary of the date of grant and expiring five years after the date of grant.

Other Compensation; Reimbursement of Expenses

Under the Director Compensation Plan, we reimburse our directors for their reasonable out-of-pocket expenses in connection with their travel to and attendance at meetings of the Board of Directors or any committee thereof and other company business. In addition, we also compensate our non-employee directors on a per diem basis at a rate of $4,000 in cash per day for significant time spent outside of board or committee meetings or for meetings or activities outside the scope of normal board duties, including director training, meeting with company management or external auditors, interviewing director candidates or other activities deemed necessary by the chairman of the Board of Directors or the lead independent director. The per diem rate is paid on a pro rata basis for activities that do not require a full day of service. Under the Amended Director Compensation Plan, the reimbursement of expenses and other compensation are unchanged.

Table of Contents

COMPENSATION COMMITTEE REPORT

The Compensation Committee of the Board of Directors is currently composed of three independent, non-employee directors. The Compensation Committee oversees the company s compensation programs on behalf of the Board of Directors. The Compensation Committee reviewed and discussed the Compensation Discussion and Analysis set forth in this Proxy Statement with management.

Based on the Compensation Committee s review and discussion with management, the Compensation Committee recommended to the Board of Directors that the Compensation Discussion and Analysis be included in the company s Proxy Statement for the company s 2011 annual meeting of stockholders.

COMPENSATION COMMITTEE

John M. Nehra (Chairman)

Peter T. Grauer

Roger J. Valine

The information contained above under the caption Compensation Committee Report will not be considered soliciting material or to be filed with the SEC, nor will that information be incorporated by reference into any future filing under the Securities Act of 1933 or the Securities Exchange Act of 1934, except to the extent that we specifically incorporate it by reference into a filing.

COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION

No member of the Compensation Committee has served as one of our officers or employees at any time. During 2010, none of our executive officers served as a member of the compensation committee or board of directors of any other company whose executive officer(s) served as a member of our Compensation Committee or Board of Directors.

Table of Contents

CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

We or one of our subsidiaries may occasionally enter into transactions with certain related persons. Related persons include our executive officers, directors, nominees for directors, 5% or more beneficial owners of our common stock and immediate family members of these persons. We refer to transactions involving amounts in excess of $120,000 and in which the related person has a direct or indirect material interest as related person transactions. Each related person transaction must be approved or ratified in accordance with the company s written Related Person Transactions Policy by the Audit Committee of the Board of Directors or, if the Audit Committee of the Board of Directors determines that the approval or ratification of such related person transaction should be considered by all disinterested members of the Board of Directors, by the vote of a majority of such disinterested members.

The Audit Committee considers all relevant factors when determining whether to approve or ratify a related person transaction including, without limitation, the following:

- the size of the transaction and the amount payable to a related person;
- the nature of the interest of the related person in the transaction;
- whether the transaction may involve a conflict of interest; and
- whether the transaction involves the provision of goods or services to the company that are available from unaffiliated third parties and, if so, whether the transaction is on terms and made under circumstances that are at least as favorable to the company as would be available in comparable transactions with or involving unaffiliated third parties.

The company s Related Person Transactions Policy is available under the Corporate Governance section of our website, located at *http://www.davita.com/about/corporate-governance*.

Charles G. Berg, one of our directors, was appointed in January 2008 as a director and the executive chairman of WellCare, as well as director or manager of various related entities. In January 2011, Mr. Berg became the non-executive chairman of Wellcare. Mr. Berg has received restricted stock and option grants from WellCare. The company provides dialysis services for WellCare and various of its affiliates in the ordinary course of business for which it received approximately $6,320,000 in 2010. The company anticipates receiving payments from WellCare in 2011.

Table of Contents

AUDIT COMMITTEE REPORT

The Audit Committee of the Board of Directors is responsible for providing independent, objective oversight of the Company s accounting functions and internal controls. The Audit Committee is composed of three directors, each of whom is independent as defined by New York Stock Exchange listing standards. The Audit Committee operates under a written charter approved by the Board of Directors.

The Audit Committee is directly responsible for the appointment and compensation of the Company s independent registered public accounting firm, KPMG LLP, as well as monitoring the independence, qualifications and performance of KPMG LLP and the Company s internal audit function. In addition, the Audit Committee has considered whether the provision of non-audit services to the Company by KPMG LLP is compatible with maintaining KPMG LLP s independence.

Management is responsible for internal controls and the financial reporting process. The independent registered public accounting firm is responsible for performing an independent audit of the Company s consolidated financial statements in accordance with the standards of the Public Company Accounting Oversight Board (United States) and an audit of the effectiveness of internal control over financial reporting. The Audit Committee s responsibility is to monitor and oversee these processes.

The Audit Committee has met and held discussions with the Company s internal auditors and KPMG LLP, with and without management present, to discuss the scope of their audit plans, results of their examinations, their evaluations of the Company s internal controls, and the overall quality of the Company s financial reporting.

The Audit Committee engaged the independent registered public accounting firm to conduct the independent audit. The Audit Committee reviewed and discussed with management the December 31, 2010 audited consolidated financial statements. The Audit Committee also discussed with the independent registered public accounting firm the matters required to be discussed by Statement on Auditing Standards No. 61, as amended (Communication with Audit Committees), as adopted by the Public Company Accounting Oversight Board. In addition, the Audit Committee received the written disclosures and the letter from the independent registered public accounting firm required by applicable requirements of the Public Company Accounting Oversight Board regarding the independent registered public accounting firm s communications with the Audit Committee concerning independence and has discussed with the independent registered public accounting firm its independence.

Based upon the Audit Committee s reviews and discussions with management and the independent registered public accounting firm, referred to above, the Audit Committee recommended to the Board of Directors that the audited consolidated financial statements be included in the Company s Annual Report on Form 10-K for the year ended December 31, 2010 for filing with the Securities and Exchange Commission.

THE AUDIT COMMITTEE

Roger J. Valine (Chairman)

Charles G. Berg

Carol Anthony (John) Davidson

Table of Contents

STOCKHOLDER PROPOSALS FOR 2012 ANNUAL MEETING

If you wish to present a proposal for action at the 2012 annual meeting of stockholders and wish to have it included in the proxy statement and form of proxy that management will prepare, you must notify us no later than December 29, 2011 in the form required under the rules and regulations promulgated by the SEC. Otherwise, your proposal will not be included in management s proxy materials.

If you wish to present a proposal for action at the 2012 annual meeting of stockholders, even though it will not be included in management s proxy materials, our bylaws require that you must notify us no later than March 8, 2012, and no earlier than February 7, 2012. We advise you to review our bylaws, which contain these and other requirements with respect to advance notice of stockholder proposals, including certain information that must be included concerning the stockholder and each proposal. Our bylaws are available under the Corporate Governance section of our website, located at *http://www.davita.com/about/corporate-governance*.

OTHER MATTERS

The Board of Directors does not know of any other matters to be presented at the 2011 annual meeting of stockholders but, if other matters do properly come before the meeting, it is intended that the persons named as proxies in the proxy card will vote on them in accordance with their best judgment.

A copy of our 2010 Annual Report to Stockholders accompanies this Proxy Statement. The 2010 Annual Report to Stockholders includes our audited financial statements for the year ended December 31, 2010. Our Annual Report on Form 10-K includes these financial statements, as well as other supplementary financial information and certain schedules. The Annual Report on Form 10-K is not part of our proxy soliciting material. **Copies of the Annual Report on Form 10-K, without exhibits, can be obtained without charge by contacting Investor Relations at the following address: Attn: Investor Relations, DaVita Inc., 1551 Wewatta Street, Denver, Colorado 80202, (888) 484-7505 or through our website, located at *http://www.davita.com.***

By order of the Board of Directors,
Kim M. Rivera
Vice President, General Counsel and
Secretary

April 27, 2011

Table of Contents

APPENDIX A

DAVITA INC.

2011 INCENTIVE AWARD PLAN

(Effective upon stockholder approval)

Table of Contents

TABLE OF CONTENTS

		Page
ARTICLE 1 PURPOSE		A-1
ARTICLE 2 DEFINITIONS AND CONSTRUCTION		A-1
2.1	Administrator	A-1
2.2	Affiliate	A-1
2.3	Applicable Accounting Standards	A-1
2.4	Award	A-1
2.5	Award Agreement	A-1
2.6	Award Limit	A-1
2.7	Board	A-2
2.8	Code	A-2
2.9	Committee	A-2
2.10	Common Stock	A-2
2.11	Company	A-2
2.12	Consultant	A-2
2.13	Covered Employee	A-2
2.14	Deferred Stock	A-2
2.15	Deferred Stock Unit	A-2
2.16	Director	A-2
2.17	Director Compensation Policy	A-2
2.18	Dividend Equivalent	A-2
2.19	DRO	A-2
2.20	Effective Date	A-2
2.21	Eligible Individual	A-2
2.22	Employee	A-2
2.23	Equity Restructuring	A-2
2.24	Exchange Act	A-2
2.25	Fair Market Value	A-2
2.26	Full Value Award	A-3
2.27	Greater Than 10% Stockholder	A-3
2.28	Holder	A-3
2.29	Incentive Stock Option	A-3
2.30	Non-Employee Director	A-3
2.31	Non-Qualified Stock Option	A-3
2.32	Option	A-3
2.33	Option Term	A-3
2.34	Parent	A-3
2.35	Performance Award	A-3
2.36	Performance-Based Compensation	A-3
2.37	Performance Criteria	A-4
2.38	Performance Goals	A-4
2.39	Performance Period	A-4
2.40	Performance Stock Unit	A-4
2.41	Permitted Transferee	A-4
2.42	Plan	A-5
2.43	Program	A-5
2.44	Restricted Stock shall mean Common Stock awarded under Article 10 that is subject to certain restrictions and may be subject to risk of forfeiture or repurchase.	A-5
2.45	Restricted Stock Units	A-5

Table of Contents

		Page
2.46	Securities Act	A-5
2.47	Shares	A-5
2.48	Stock Appreciation Right	A-5
2.49	Stock Appreciation Right Term	A-5
2.50	Stock Payment	A-5
2.51	Subsidiary	A-5
2.52	Substitute Award	A-5
2.53	Termination of Service	A-5
ARTICLE 3 SHARES SUBJECT TO THE PLAN		A-6
3.1	Number of Shares.	A-6
3.2	Stock Distributed	A-7
3.3	Limitation on Number of Shares Subject to Awards	A-7
3.4	Full Value Award Vesting Limitations	A-7
ARTICLE 4 GRANTING OF AWARDS		A-7
4.1	Participation	A-7
4.2	Award Agreement	A-7
4.3	Limitations Applicable to Section 16 Persons	A-7
4.4	At-Will Employment; Voluntary Participation	A-8
4.5	Foreign Holders	A-8
4.6	Non-Employee Director Awards	A-8
4.7	Stand-Alone and Tandem Awards	A-8
ARTICLE 5 PROVISIONS APPLICABLE TO AWARDS INTENDED TO QUALIFY AS PERFORMANCE-BASED COMPENSATION		A-9
5.1	Purpose	A-9
5.2	Applicability	A-9
5.3	Types of Awards	A-9
5.4	Procedures with Respect to Performance-Based Awards	A-9
5.5	Payment of Performance-Based Awards	A-9
5.6	Additional Limitations	A-10
ARTICLE 6 AWARD OF OPTIONS		A-10
6.1	Grant of Options	A-10
6.2	Qualification of Incentive Stock Options	A-10
6.3	Option Exercise or Base Price	A-10
6.4	Option Term	A-10
6.5	Option Vesting	A-10
6.6	Substitute Awards	A-11
6.7	Substitution of Stock Appreciation Rights	A-11
ARTICLE 7 EXERCISE OF OPTIONS		A-11
7.1	Partial Exercise	A-11
7.2	Manner of Exercise	A-11
7.3	Notification Regarding Disposition	A-12
ARTICLE 8 AWARD OF STOCK APPRECIATION RIGHTS		A-12
8.1	Grant of Stock Appreciation Rights	A-12
8.2	Stock Appreciation Right Vesting	A-12
8.3	Manner of Exercise	A-13
8.4	Stock Appreciation Right Term	A-13
8.5	Payment	A-13
8.6	Substitution of Options	A-13

Table of Contents

		Page
ARTICLE 9 AWARD OF RESTRICTED STOCK UNITS		A-13
9.1	Grant of Restricted Stock Units	A-13
9.2	Term	A-14
9.3	Purchase Price	A-14
9.4	Vesting of Restricted Stock Units	A-14
9.5	Maturity and Payment	A-14
9.6	Payment upon Termination of Service	A-14
9.7	No Rights as a Stockholder	A-14
9.8	Dividend Equivalents	A-14
ARTICLE 10 AWARD OF RESTRICTED STOCK		A-14
10.1	Grant of Restricted Stock	A-14
10.2	Rights as Stockholders	A-15
10.3	Restrictions	A-15
10.4	Repurchase or Forfeiture of Restricted Stock	A-15
10.5	Certificates for Restricted Stock	A-15
10.6	Section 83(b) Election	A-16
ARTICLE 11 AWARD OF PERFORMANCE AWARDS, DIVIDEND EQUIVALENTS, STOCK PAYMENTS, DEFERRED STOCK, DEFERRED STOCK UNITS		A-16
11.1	Performance Awards	A-16
11.2	Dividend Equivalents	A-16
11.3	Stock Payments	A-16
11.4	Deferred Stock Units	A-17
11.5	Deferred Stock	A-17
11.6	Term	A-17
11.7	Purchase Price	A-17
11.8	Termination of Service	A-17
ARTICLE 12 ADDITIONAL TERMS OF AWARDS		A-17
12.1	Payment	A-17
12.2	Tax Withholding	A-18
12.3	Transferability of Awards	A-18
12.4	Conditions to Issuance of Shares	A-19
12.5	Forfeiture, Recoupment and Clawback Provisions	A-20
12.6	Prohibition on Repricing	A-20
ARTICLE 13 ADMINISTRATION		A-20
13.1	Administrator	A-20
13.2	Duties and Powers of Committee	A-21
13.3	Action by the Committee	A-21
13.4	Authority of Administrator	A-21
13.5	Decisions Binding	A-22
13.6	Delegation of Authority	A-22
ARTICLE 14 MISCELLANEOUS PROVISIONS		A-22
14.1	Amendment, Suspension or Termination of the Plan	A-22
14.2	Changes in Common Stock or Assets of the Company, Acquisition or Liquidation of the Company and Other Corporate Events	A-22
14.3	Approval of Plan by Stockholders	A-24
14.4	No Stockholders Rights	A-24
14.5	Paperless Administration	A-24
14.6	Effect of Plan upon Other Compensation Plans	A-24

Table of Contents

		Page
14.7	Compliance with Laws	A-25
14.8	Titles and Headings, References to Sections of the Code or Exchange Act	A-25
14.9	Governing Law	A-25
14.10	Section 409A	A-25
14.11	No Rights to Awards	A-25
14.12	Unfunded Status of Awards	A-25
14.13	Indemnification	A-26
14.14	Relationship to other Benefits	A-26
14.15	Expenses	A-26

Table of Contents

DaVita Inc.

2011 Incentive Award Plan

(Effective upon stockholder approval)

ARTICLE 1

PURPOSE

The purpose of the DaVita Inc. 2011 Incentive Award Plan (as it may be amended or restated from time to time, the Plan) is to promote the success and enhance the value of DaVita Inc. (the Company) by linking the individual interests of the members of the Board, Employees and Consultants to those of Company stockholders and by providing such individuals with an incentive for outstanding performance to generate superior returns to Company stockholders. The Plan is further intended to provide flexibility to the Company in its ability to motivate, attract, and retain the services of members of the Board, Employees and Consultants upon whose judgment, interest, and special effort the successful conduct of the Company s operations is largely dependent. The Plan constitutes an amendment and restatement of the DaVita Inc. 2002 Equity Compensation Plan, as amended (the 2002 Plan).

ARTICLE 2

DEFINITIONS AND CONSTRUCTION

Wherever the following terms are used in the Plan they shall have the meanings specified below, unless the context clearly indicates otherwise. The singular pronoun shall include the plural where the context so indicates.

2.1 Administrator shall mean the entity that conducts the general administration of the Plan as provided in Article 13. With reference to the duties of the Committee under the Plan which have been delegated to one or more persons pursuant to Section 13.6, or as to which the Board has assumed, the term Administrator shall refer to such person(s) unless the Committee or the Board has revoked such delegation or the Board has terminated the assumption of such duties.

2.2 Affiliate shall mean (a) any Subsidiary; and (b) any domestic eligible entity that is disregarded, under Treasury Regulation Section 301.7701-3, as an entity separate from either (i) the Company or (ii) any Subsidiary.

2.3 Applicable Accounting Standards shall mean Generally Accepted Accounting Principles in the United States, International Financial Reporting Standards or such other accounting principles or standards as may apply to the Company s financial statements under United States federal securities laws from time to time.

2.4 Award shall mean an Option, a Restricted Stock award, a Restricted Stock Unit award, a Performance Award, a Dividend Equivalents award, a Deferred Stock award, a Deferred Stock Unit award, a Stock Payment award or a Stock Appreciation Right, which may be awarded or granted under the Plan (collectively, Awards).

2.5 Award Agreement shall mean any written notice, agreement, terms and conditions, contract or other instrument or document evidencing an Award, including through electronic medium, which shall contain such terms and conditions with respect to an Award as the Administrator shall determine consistent with the Plan.

2.6 Award Limit shall mean with respect to Awards that shall be payable in Shares or in cash, as the case may be, the respective limit set forth in Section 3.3.

Table of Contents

2.7 Board shall mean the Board of Directors of the Company.

2.8 Code shall mean the Internal Revenue Code of 1986, as amended from time to time, together with the regulations and official guidance promulgated thereunder.

2.9 Committee shall mean the Compensation Committee of the Board, or another committee or subcommittee of the Board, appointed as provided in Section 13.1.

2.10 Common Stock shall mean the common stock of the Company, par value $0.001 per share.

2.11 Company shall have the meaning set forth in Article 1.

2.12 Consultant shall mean any consultant or adviser engaged to provide services to the Company or any Affiliate that qualifies as a consultant under the applicable rules of the Securities and Exchange Commission for registration of shares on a Form S-8 Registration Statement.

2.13 Covered Employee shall mean any Employee who is, or could be, a covered employee within the meaning of Section 162(m) of the Code.

2.14 Deferred Stock shall mean a right to receive Shares awarded under Section 11.5.

2.15 Deferred Stock Unit shall mean a right to receive Shares awarded under Section 11.4.

2.16 Director shall mean a member of the Board, as constituted from time to time.

2.17 Director Compensation Policy shall have the meaning set forth in Section 4.6.

2.18 Dividend Equivalent shall mean a right to receive the equivalent value (in cash or Shares) of dividends paid on Shares, awarded under Section 11.2.

2.19 DRO shall mean a domestic relations order as defined by the Code or Title I of the Employee Retirement Income Security Act of 1974, as amended from time to time, or the rules thereunder.

2.20 Effective Date shall mean the date the Plan is approved by the Company s stockholders.

2.21 Eligible Individual shall mean any person who is an Employee, a Consultant or a Non-Employee Director, as determined by the Committee.

2.22 Employee shall mean any officer or other employee (as determined in accordance with Section 3401(c) of the Code and the Treasury Regulations thereunder) of the Company or of any Affiliate.

2.23 Equity Restructuring shall mean a nonreciprocal transaction between the Company and its stockholders, such as a stock dividend, stock split, spin-off, rights offering or recapitalization through a large, nonrecurring cash dividend, that affects the number or kind of shares of Common Stock (or other securities of the Company) or the share price of Common Stock (or other securities) and causes a change in the per share value of the Common Stock underlying outstanding Awards.

2.24 Exchange Act shall mean the Securities Exchange Act of 1934, as amended from time to time.

2.25 Fair Market Value shall mean, as of any given date, the value of a Share determined as follows:

(a) If the Common Stock is listed on any (i) established securities exchange (such as the New York Stock Exchange, the NASDAQ Global Market and the NASDAQ Global Select Market), (ii) national

market system or (iii) automated quotation system on which the Shares are listed, quoted or traded, its Fair Market Value shall be the closing sales price for a Share as quoted on such exchange or system for such date or, if there is no closing sales price for a Share on the date in question, the closing sales price for a Share on the last preceding date for which such quotation exists, as reported in The Wall Street Journal or such other source as the Administrator deems reliable;

(b) If the Common Stock is not listed on an established securities exchange, national market system or automated quotation system, but the Common Stock is regularly quoted by a recognized securities dealer, its Fair Market Value shall be the mean of the high bid and low asked prices for such date or, if there are no high bid and low asked prices for a Share on such date, the high bid and low asked prices for a Share on the last preceding date for which such information exists, as reported in The Wall Street Journal or such other source as the Administrator deems reliable; or

(c) If the Common Stock is neither listed on an established securities exchange, national market system or automated quotation system nor regularly quoted by a recognized securities dealer, its Fair Market Value shall be established by the Administrator in good faith.

2.26 Full Value Award shall mean any Award other than (i) an Option, (ii) a Stock Appreciation Right or (iii) any other Award for which the Holder does not pay the grant-date Fair Market Value of the Common Stock subject to such Award (whether directly or by forgoing a right to receive a payment of cash or Shares from the Company or any Affiliate).

2.27 Greater Than 10% Stockholder shall mean an individual then owning (within the meaning of Section 424(d) of the Code) more than 10% of the total combined voting power of all classes of stock of the Company or any subsidiary corporation (as defined in Section 424(f) of the Code) or parent corporation thereof (as defined in Section 424(e) of the Code).

2.28 Holder shall mean a person who has been granted an Award.

2.29 Incentive Stock Option shall mean an Option that is intended to qualify as an incentive stock option and conforms to the applicable provisions of Section 422 of the Code.

2.30 Non-Employee Director shall mean a Director of the Company who is not an Employee.

2.31 Non-Qualified Stock Option shall mean an Option that is not an Incentive Stock Option.

2.32 Option shall mean a right to purchase Shares at a specified exercise or base price, granted under Article 6. An Option shall be either a Non-Qualified Stock Option or an Incentive Stock Option; provided, however, that Options granted to Non-Employee Directors and Consultants shall only be Non-Qualified Stock Options.

2.33 Option Term shall have the meaning set forth in Section 6.4.

2.34 Parent shall mean any entity (other than the Company), whether domestic or foreign, in an unbroken chain of entities ending with the Company if each of the entities other than the Company beneficially owns, at the time of the determination, securities or interests representing at least fifty percent (50%) of the total combined voting power of all classes of securities or interests in one of the other entities in such chain.

2.35 Performance Award shall mean a cash bonus award, stock bonus award, performance award or incentive award that is paid in cash, Shares, Awards or a combination, awarded under Section 11.1.

2.36 Performance-Based Compensation shall mean any compensation that is intended to qualify as performance-based compensation as described in Section 162(m)(4)(C) of the Code.

Table of Contents

2.37 Performance Criteria shall mean the criteria (and adjustments) that the Committee selects for an Award for purposes of establishing the Performance Goal or Performance Goals for a Performance Period, determined as follows:

(a) The Performance Criteria that shall be used to establish Performance Goals are limited to the following: (i) net earnings (either before or after one or more of the following: (A) interest, (B) taxes, (C) depreciation and (D) amortization); (ii) gross or net sales or revenue; (iii) net income (either before or after taxes); (iv) adjusted net income; (v) operating earnings or profit; (vi) cash flow (including, but not limited to, operating cash flow and free cash flow); (vii) return on assets; (viii) return on capital; (ix) return on stockholders equity; (x) total stockholder return; (xi) return on sales; (xii) gross or net profit or operating margin; (xiii) costs; (xiv) funds from operations; (xv) expenses; (xvi) working capital; (xvii) earnings per share; (xviii) adjusted earnings per share; (xix) price per Share; (xx) regulatory body approval for commercialization of a product; (xxi) implementation or completion of critical projects; (xxii) market share; and (xxiii) economic value, any of which may be measured either in absolute terms or as compared to any incremental increase or decrease or as compared to results of a peer group or to market performance indicators or indices.

(b) The Administrator may, in its sole discretion, provide that one or more objectively determinable adjustments shall be made to one or more of the Performance Goals. Such adjustments may include one or more of the following: (i) items related to a change in accounting principle; (ii) items relating to financing activities; (iii) expenses for restructuring or productivity initiatives; (iv) other non-operating items; (v) items related to acquisitions; (vi) items attributable to the business operations of any entity acquired by the Company during the Performance Period; (vii) items related to the disposal of a business or segment of a business; (viii) items related to discontinued operations that do not qualify as a segment of a business under Applicable Accounting Standards; (ix) items attributable to any stock dividend, stock split, combination or exchange of stock occurring during the Performance Period; (x) any other items of significant income or expense which are determined to be appropriate adjustments; (xi) items relating to unusual or extraordinary corporate transactions, events or developments, (xii)items related to amortization of acquired intangible assets; (xiii) items that are outside the scope of the Company s core, on-going business activities; (xiv) items related to acquired in-process research and development; (xv) items relating to changes in tax laws; (xvi) items relating to major licensing or partnership arrangements; (xvii) items relating to asset impairment charges; (xviii) items relating to gains or losses for litigation, arbitration and contractual settlements; or (xix) items relating to any other unusual or nonrecurring events or changes in applicable laws, accounting principles or business conditions. For all Awards intended to qualify as Performance-Based Compensation, such determinations shall be made within the time prescribed by, and otherwise in compliance with, Section 162(m) of the Code.

2.38 Performance Goals shall mean, for a Performance Period, one or more goals established in writing by the Administrator for the Performance Period based upon one or more Performance Criteria. Depending on the Performance Criteria used to establish such Performance Goals, the Performance Goals may be expressed in terms of overall Company performance or the performance of a Subsidiary, division, business unit, or an individual. The achievement of each Performance Goal shall be determined, to the extent applicable, with reference to Applicable Accounting Standards.

2.39 Performance Period shall mean one or more periods of time, which may be of varying and overlapping durations, as the Administrator may select, over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Holder s right to, and the payment of, an Award.

2.40 Performance Stock Unit shall mean a Performance Award awarded under Section 11.1 which is denominated in units of value including dollar value of shares of Common Stock.

2.41 Permitted Transferee shall mean, with respect to a Holder, any family member of the Holder, as defined under the instructions to use the Form S-8 Registration Statement under the Securities Act, after taking into account any state, federal, local or foreign tax and securities laws applicable to transferable Awards.

Table of Contents

2.42 Plan shall have the meaning set forth in Article 1.

2.43 Program shall mean any program adopted by the Administrator pursuant to the Plan containing the terms and conditions intended to govern a specified type of Award granted under the Plan and pursuant to which such type of Award may be granted under the Plan.

2.44 Restricted Stock shall mean Common Stock awarded under Article 10 that is subject to certain restrictions and may be subject to risk of forfeiture or repurchase.

2.45 Restricted Stock Units shall mean the right to receive Shares awarded under Article 9.

2.46 Securities Act shall mean the Securities Act of 1933, as amended.

2.47 Shares shall mean shares of Common Stock.

2.48 Stock Appreciation Right shall mean a stock appreciation right granted under Article 8.

2.49 Stock Appreciation Right Term shall have the meaning set forth in Section 8.4.

2.50 Stock Payment shall mean (a) a payment in the form of Shares, or (b) an option or other right to purchase Shares, as part of a bonus, deferred compensation or other arrangement, awarded under Section 11.3.

2.51 Subsidiary shall mean any entity (other than the Company), whether domestic or foreign, in an unbroken chain of entities beginning with the Company if each of the entities other than the last entity in the unbroken chain beneficially owns, at the time of the determination, securities or interests representing at least fifty percent (50%) of the total combined voting power of all classes of securities or interests in one of the other entities in such chain.

2.52 Substitute Award shall mean an Award granted under the Plan upon the assumption of, or in substitution for, outstanding equity awards previously granted by a company or other entity in connection with a corporate transaction, such as a merger, combination, consolidation or acquisition of property or stock; provided, however, that in no event shall the term Substitute Award be construed to refer to an award made in connection with the cancellation and repricing of an Option or Stock Appreciation Right.

2.53 Termination of Service shall mean:

(a) As to a Consultant, the time when the engagement of a Holder as a Consultant to the Company or an Affiliate is terminated for any reason, with or without cause, including, without limitation, by resignation, discharge, death or retirement, but excluding terminations where the Consultant simultaneously commences or remains in employment or service with the Company or any Affiliate.

(b) As to a Non-Employee Director, the time when a Holder who is a Non-Employee Director ceases to be a Director for any reason, including, without limitation, a termination by resignation, failure to be elected, death or retirement, but excluding terminations where the Holder simultaneously commences or remains in employment or service with the Company or any Affiliate.

(c) As to an Employee, the time when the employee-employer relationship between a Holder and the Company or any Affiliate is terminated for any reason, including, without limitation, a termination by resignation, discharge, death, disability or retirement; but excluding terminations where the Holder simultaneously commences or remains in employment or service with the Company or any Affiliate.

The Administrator, in its sole discretion, shall determine the effect of all matters and questions relating to Terminations of Service, including, without limitation, the question of whether a Termination of Service resulted

Table of Contents

from a discharge for cause and all questions of whether particular leaves of absence constitute a Termination of Service; provided, however, that, with respect to Incentive Stock Options, unless the Administrator otherwise provides in the terms of the Program, the Award Agreement or otherwise, a leave of absence, change in status from an employee to an independent contractor or other change in the employee-employer relationship shall constitute a Termination of Service only if, and to the extent that, such leave of absence, change in status or other change interrupts employment for the purposes of Section 422(a)(2) of the Code and the then applicable regulations and revenue rulings under said Section. For purposes of the Plan, a Holder s employee-employer relationship or consultancy relations shall be deemed to be terminated in the event that the Affiliate employing or contracting with such Holder ceases to remain an Affiliate following any merger, sale of stock or other corporate transaction or event (including, without limitation, a spin-off).

ARTICLE 3

SHARES SUBJECT TO THE PLAN

3.1 Number of Shares.

(a) Subject to Section 14.2 and Section 3.1(b), the number of Shares authorized for issuance under the Plan is 34,178,338 (i.e., the same number that was authorized for issuance under the 2002 Plan immediately prior to the amendment and restatement of such plan, including Shares directly authorized under the 2002 Plan, Shares that were transferred to the 2002 Plan from prior plans pursuant to the terms of the 2002 Plan, Shares that subsequently became available under such prior plans pursuant to the terms of the 2002 Plan and Shares reserved under the 2002 Plan from repurchases under a prior replenishment provision that was terminated in 2007). Shares available for issuance under the Plan shall be reduced by 3.0 shares for each Share delivered in settlement of any Full Value Award. Further, subject to Section 14.2, the number of Shares authorized for grant as Incentive Stock Options shall be no more than seven million five hundred thousand (7,500,000).

(b) If any Shares subject to an Award granted under the Plan that is not a Full Value Award are forfeited or expire or such Award is settled for cash (in whole or in part), the Shares subject to such Award shall, to the extent of such forfeiture, expiration or cash settlement, again be available for future grants of Awards under the Plan. To the extent that a Full Value Award granted under the Plan is forfeited or expires or such Full Value Award is settled for cash (in whole or in part), the Shares available under the Plan shall be increased by 3.0 Shares subject to such Full Value Award that is forfeited, expired or settled in cash. Notwithstanding anything to the contrary contained herein, the following Shares shall not be added to the Shares authorized for grant under Section 3.1(a) and will not be available for future grants of Awards: (i) Shares tendered by a Holder or withheld by the Company in payment of the exercise or base price of an Option; (ii) Shares tendered by the Holder or withheld by the Company to satisfy any tax withholding obligation with respect to an Award; and (iii) Shares subject to a Stock Appreciation Right that are not issued in connection with the stock settlement of the Stock Appreciation Right on exercise thereof. Any Shares repurchased by the Company under Section 10.4 at the same price paid by the Holder so that such Shares are returned to the Company will again be available for Awards. The payment of Dividend Equivalents in cash in conjunction with any outstanding Awards shall not be counted against the shares available for issuance under the Plan. Notwithstanding the provisions of this Section 3.1(b), no Shares may again be optioned, granted or awarded if such action would cause an Incentive Stock Option to fail to qualify as an incentive stock option under Section 422 of the Code.

(c) Substitute Awards shall not reduce the Shares authorized for grant under the Plan. Additionally, in the event that a company acquired by the Company or any Affiliate or with which the Company or any Affiliate combines has shares available under a pre-existing plan approved by stockholders and not adopted in contemplation of such acquisition or combination, the shares available for grant pursuant to the terms of such pre-existing plan (as adjusted, to the extent appropriate, using the exchange ratio or other adjustment or valuation ratio or formula used in such acquisition or combination to determine the

consideration payable to the holders of common stock of the entities party to such acquisition or combination) may be used for Awards under the Plan and shall not reduce the Shares authorized for grant under the Plan; provided that Awards using such available shares shall not be made after the date awards or grants could have been made under the terms of the pre-existing plan, absent the acquisition or combination, and shall only be made to individuals who were not employed by or providing services to the Company or its Affiliates immediately prior to such acquisition or combination.

3.2 Stock Distributed. Any Shares distributed pursuant to an Award may consist, in whole or in part, of authorized but unissued Common Stock, Common Stock in treasury or Common Stock purchased on the open market in management s sole discretion in compliance with the Plan and applicable law.

3.3 Limitation on Number of Shares Subject to Awards. Notwithstanding any provision in the Plan to the contrary, and subject to Section 14.2, the maximum aggregate number of Shares with respect to one or more Awards that may be granted to any one person during (measured from the date of any grant) during any consecutive twelve (12) month period shall be two million two hundred fifty thousand (2,250,000) and the maximum aggregate amount of cash that may be paid in cash to any one person (measured from the date of any payment) during any calendar year with respect to one or more Awards payable in cash shall be ten million dollars ($10,000,000).

3.4 Full Value Award Vesting Limitations. Except as may be determined by the Administrator in the event of a consummation of a change of control of the Company, or the Holder s death, disability or retirement, notwithstanding any other provision of the Plan to the contrary, a Full Value Award shall not become fully vested earlier than three years from the grant date (two years in the case of Employees who are not executives of the Company (holding the title of vice president or an equivalent title and above), or, in the case of vesting based upon the attainment of performance-based objectives, over a period of not less than one year); provided, however, that notwithstanding the foregoing, Full Value Awards (a) that do not exceed in the aggregate 5% of the Shares available pursuant to Section 3.1(a) shall not be subject to such minimum vesting provisions and (b) the Company may grant a Full Value Award to Employees newly hired by the Company or any of its Subsidiaries without respect to such minimum vesting provisions.

ARTICLE 4

GRANTING OF AWARDS

4.1 Participation. The Administrator may, from time to time, select from among all Eligible Individuals, those to whom an Award shall be granted and shall determine the nature and amount of each Award, which shall not be inconsistent with the requirements of the Plan. Except as provided in Section 4.6 regarding the grant of Awards pursuant to the Director Compensation Policy, no Eligible Individual shall have any right to be granted an Award pursuant to the Plan.

4.2 Award Agreement. Each Award shall be evidenced by an Award Agreement that sets forth the terms, conditions and limitations for such Award, which may include the term of the Award, the provisions applicable in the event of the Holder s Termination of Service, and the Company s authority to unilaterally or bilaterally amend, modify, suspend, cancel or rescind an Award. Award Agreements evidencing Awards intended to qualify as Performance-Based Compensation shall contain such terms and conditions as may be necessary to meet the applicable provisions of Section 162(m) of the Code. Award Agreements evidencing Incentive Stock Options shall contain such terms and conditions as may be necessary to meet the applicable provisions of Section 422 of the Code.

4.3 Limitations Applicable to Section 16 Persons. Notwithstanding any other provision of the Plan, the Plan, and any Award granted or awarded to any individual who is then subject to Section 16 of the Exchange Act, shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the

Exchange Act (including Rule 16b-3 of the Exchange Act and any amendments thereto) that are requirements for the application of such exemptive rule. To the extent permitted by applicable law, the Plan and Awards granted or awarded hereunder shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

4.4 At-Will Employment; Voluntary Participation. Nothing in the Plan or in any Program or Award Agreement hereunder shall confer upon any Holder any right to continue in the employ of, or as a Director or Consultant for, the Company or any Affiliate, or shall interfere with or restrict in any way the rights of the Company and any Affiliate, which rights are hereby expressly reserved, to discharge any Holder at any time for any reason whatsoever, with or without cause, and with or without notice, or to terminate or change all other terms and conditions of employment or engagement, except to the extent expressly provided otherwise in a written agreement between the Holder and the Company or any Affiliate. Participation by each Holder in the Plan shall be voluntary and nothing in the Plan shall be construed as mandating that any Eligible Individual shall participate in the Plan.

4.5 Foreign Holders. Notwithstanding any provision of the Plan to the contrary, in order to comply with the laws in countries other than the United States in which the Company and its Affiliates operate or have Employees, Non-Employee Directors or Consultants, or in order to comply with the requirements of any foreign securities exchange, the Administrator, in its sole discretion, shall have the power and authority to: (a) determine which Affiliates shall be covered by the Plan; (b) determine which Eligible Individuals outside the United States are eligible to participate in the Plan; (c) modify the terms and conditions of any Award granted to Eligible Individuals outside the United States to comply with applicable foreign laws or listing requirements of any such foreign securities exchange; (d) establish subplans and modify exercise procedures and other terms and procedures, to the extent such actions may be necessary or advisable (any such subplans and/or modifications shall be attached to the Plan as appendices); provided, however, that no such subplans and/or modifications shall increase the share limitations contained in Sections 3.1 and 3.3; and (e) take any action, before or after an Award is made, that it deems advisable to obtain approval or comply with any necessary local governmental regulatory exemptions or approvals or listing requirements of any such foreign securities exchange. Notwithstanding the foregoing, the Administrator may not take any actions hereunder, and no Awards shall be granted, that would violate the Code, the Exchange Act, the Securities Act, any other securities law or governing statute, the rules of the securities exchange or automated quotation system on which the Shares are listed, quoted or traded or any other applicable law. For purposes of the Plan, all references to foreign laws, rules, regulations or taxes shall be references to the laws, rules, regulations and taxes of any applicable jurisdiction other than the United States or a political subdivision thereof.

4.6 Non-Employee Director Awards. The Administrator may, in its discretion, provide that Awards granted to Non-Employee Directors shall be granted pursuant to a written non-discretionary formula established by the Administrator or a broader body of the Board under the Non-Management Director Compensation Philosophy and Plan, or such successor plan or policy (the Director Compensation Policy), subject to the limitations of the Plan. The Director Compensation Policy shall set forth the type of Award(s) to be granted to Non-Employee Directors, the number of Shares to be subject to Non-Employee Director Awards, the conditions on which such Awards shall be granted, become exercisable and/or payable and expire, and such other terms and conditions as the Administrator shall determine in its discretion. The Director Compensation Policy may be modified by the Administrator from time to time in its discretion.

4.7 Stand-Alone and Tandem Awards. Awards granted pursuant to the Plan may, in the sole discretion of the Administrator, be granted either alone, in addition to, or in tandem with, any other Award granted pursuant to the Plan. Awards granted in addition to or in tandem with other Awards may be granted either at the same time as or at a different time from the grant of such other Awards.

Table of Contents

ARTICLE 5

PROVISIONS APPLICABLE TO AWARDS INTENDED TO QUALIFY AS

PERFORMANCE-BASED COMPENSATION

5.1 Purpose. The Committee, in its sole discretion, may determine at the time an Award is granted or at any time thereafter whether such Award is intended to qualify as Performance-Based Compensation. If the Committee, in its sole discretion, decides to grant such an Award to an Eligible Individual that is intended to qualify as Performance-Based Compensation, then the provisions of this Article 5 shall control over any contrary provision contained in the Plan. The Administrator may in its sole discretion grant Awards to other Eligible Individuals that are based on Performance Criteria or Performance Goals but that do not satisfy the requirements of this Article 5 and that are not intended to qualify as Performance-Based Compensation. Unless otherwise specified by the Administrator at the time of grant, the Performance Criteria with respect to an Award intended to be Performance-Based Compensation payable to a Covered Employee shall be determined on the basis of Applicable Accounting Standards, if applicable.

5.2 Applicability. The grant of an Award to an Eligible Individual for a particular Performance Period shall not require the grant of an Award to such Individual in any subsequent Performance Period and the grant of an Award to any one Eligible Individual shall not require the grant of an Award to any other Eligible Individual in such period or in any other period.

5.3 Types of Awards. Notwithstanding anything in the Plan to the contrary, the Committee may grant any Award to an Eligible Individual intended to qualify as Performance-Based Compensation, including, without limitation, Restricted Stock that has restrictions which lapse upon the attainment of specified Performance Goals, Restricted Stock Units that vest and become payable upon the attainment of specified Performance Goals and any Performance Awards described in Article 11 that vest or become exercisable or payable upon the attainment of one or more specified Performance Goals.

5.4 Procedures with Respect to Performance-Based Awards. To the extent necessary to comply with the requirements of Section 162(m)(4)(C) of the Code, with respect to any Award granted to one or more Eligible Individuals which is intended to qualify as Performance-Based Compensation, no later than 90 days following the commencement of any Performance Period or any designated fiscal period or period of service (or such earlier time as may be required under Section 162(m) of the Code), the Committee shall, in writing, (a) designate one or more Eligible Individuals, (b) select the Performance Criteria applicable to the Performance Period, (c) establish the Performance Goals, and amounts of such Awards, as applicable, which may be earned for such Performance Period based on the Performance Criteria, and (d) specify the relationship between Performance Criteria and the Performance Goals and the amounts of such Awards, as applicable, to be earned by each Covered Employee for such Performance Period. Following the completion of each Performance Period, the Committee shall certify in writing whether and the extent to which the applicable Performance Goals have been achieved for such Performance Period. In determining the amount earned under such Awards, the Committee shall have the right to reduce or eliminate (but not to increase) the amount payable at a given level of performance to take into account additional factors that the Committee may deem relevant, including the assessment of individual or corporate performance for the Performance Period.

5.5 Payment of Performance-Based Awards. Unless otherwise provided in the applicable Program or Award Agreement and only to the extent otherwise permitted by Section 162(m)(4)(C) of the Code, as to an Award that is intended to qualify as Performance-Based Compensation, the Holder must be employed by the Company or an Affiliate throughout the Performance Period. Unless otherwise provided in the applicable Performance Goals, Program or Award Agreement, a Holder shall be eligible to receive payment pursuant to such Awards for a Performance Period only if and to the extent the Performance Goals for such period are achieved.

Table of Contents

5.6 Additional Limitations. Notwithstanding any other provision of the Plan and except as otherwise determined by the Administrator, any Award which is granted to an Eligible Individual and is intended to qualify as Performance-Based Compensation shall be subject to any additional limitations set forth in Section 162(m) of the Code or any regulations or rulings issued thereunder that are requirements for qualification as Performance-Based Compensation, and the Plan, the Program and the Award Agreement shall be deemed amended to the extent necessary to conform to such requirements.

ARTICLE 6

AWARD OF OPTIONS

6.1 Grant of Options. The Administrator is authorized to grant Options to Eligible Individuals from time to time, in its sole discretion, on such terms and conditions as it may determine which shall not be inconsistent with the Plan.

6.2 Qualification of Incentive Stock Options. No Incentive Stock Option shall be granted to any person who is not an Employee of the Company or any subsidiary corporation (as defined in Section 424(f) of the Code) of the Company. No person who qualifies as a Greater Than 10% Stockholder may be granted an Incentive Stock Option unless such Incentive Stock Option conforms to the applicable provisions of Section 422 of the Code. Any Incentive Stock Option granted under the Plan may be modified by the Administrator, with the consent of the Holder, to disqualify such Option from treatment as an incentive stock option under Section 422 of the Code. To the extent that the aggregate Fair Market Value of stock with respect to which incentive stock options (within the meaning of Section 422 of the Code, but without regard to Section 422(d) of the Code) are exercisable for the first time by a Holder during any calendar year under the Plan, and all other plans of the Company and any subsidiary or parent corporation thereof (each as defined in Section 424(f) and (e) of the Code, respectively), exceeds $100,000, the Options shall be treated as Non-Qualified Stock Options to the extent required by Section 422 of the Code. The rule set forth in the preceding sentence shall be applied by taking Options and other incentive stock options into account in the order in which they were granted and the Fair Market Value of stock shall be determined as of the time the respective options were granted.

6.3 Option Exercise or Base Price. The exercise or base price per Share subject to each Option shall be set by the Administrator, but shall not be less than 100% of the Fair Market Value of a Share on the date the Option is granted (or, as to Incentive Stock Options, on the date the Option is modified, extended or renewed for purposes of Section 424(h) of the Code). In addition, in the case of Incentive Stock Options granted to a Greater Than 10% Stockholder, such price shall not be less than 110% of the Fair Market Value of a Share on the date the Option is granted (or the date the Option is modified, extended or renewed for purposes of Section 424(h) of the Code).

6.4 Option Term. The term of each Option (the Option Term) shall be set by the Administrator in its sole discretion; provided, however, that the Option Term shall not be more than a maximum of five (5) years from the date the Option is granted (and, five (5) years from the date an Incentive Stock Option is granted to a Greater Than 10% Stockholder). The Administrator shall determine the time period, including the time period following a Termination of Service, during which the Holder has the right to exercise the vested Options, which time period may not extend beyond the maximum Option Term. To the extent permitted by Section 409A or Section 422 of the Code and regulations and rulings thereunder and after due consideration to the possible tax, securities, and accounting consequences, the Administrator may extend the Option Term of any outstanding Option, and may extend the time period during which vested Options may be exercised, in connection with any Termination of Service of the Holder, and may amend any other term or condition of such Option relating to such a Termination of Service, which extensions may not exceed the maximum Option Term as described above.

6.5 Option Vesting.

(a) The period during which the right to exercise, in whole or in part, an Option vests in the Holder shall be set by the Administrator and the Administrator may determine that an Option may not be

exercised in whole or in part for a specified period after it is granted. Such vesting may be based on service with the Company or any Affiliate, any of the Performance Criteria, or any other criteria selected by the Administrator.

(b) No portion of an Option which is unexercisable at a Holder s Termination of Service shall thereafter become exercisable, except as may be otherwise provided by the Administrator either in the Program, the Award Agreement or by action of the Administrator following the grant of the Option.

6.6 Substitute Awards. Notwithstanding the foregoing provisions of this Article 6 to the contrary, in the case of an Option that is a Substitute Award, the price per share of the shares subject to such Option may be less than the Fair Market Value per share on the date of grant; provided that the excess of: (a) the aggregate Fair Market Value (as of the date such Substitute Award is granted) of the shares subject to the Substitute Award, over (b) the aggregate exercise or base price thereof does not exceed the excess of: (x) the aggregate fair market value (as of the time immediately preceding the transaction giving rise to the Substitute Award, such fair market value to be determined by the Administrator) of the shares of the predecessor entity that were subject to the grant assumed or substituted for by the Company, over (y) the aggregate exercise or base price of such shares.

6.7 Substitution of Stock Appreciation Rights. The Administrator may provide in the applicable Program or the Award Agreement evidencing the grant of an Option that the Administrator, in its sole discretion, shall have the right to substitute a Stock Appreciation Right for such Option at any time prior to or upon exercise of such Option; provided that such Stock Appreciation Right shall be exercisable with respect to the same number of Shares for which such substituted Option would have been exercisable, and shall also have the same exercise or base price, vesting schedule and remaining Option Term as the substituted Option.

ARTICLE 7

EXERCISE OF OPTIONS

7.1 Partial Exercise. An exercisable Option may be exercised in whole or in part. However, an Option shall not be exercisable with respect to fractional shares and the Administrator may require that, by the terms of the Option, a partial exercise must be with respect to a minimum number of shares.

7.2 Manner of Exercise. All or a portion of an exercisable Option shall be deemed exercised upon delivery of all of the following to the Secretary of the Company, the stock plan administrator of the Company or such other person or entity designated by the Administrator, or his, her or its office, as applicable:

(a) A written or electronic notice complying with the applicable rules established by the Administrator stating that the Option, or a portion thereof, is exercised. The notice shall include appropriately authorized instruction by the Holder or other person then entitled to exercise the Option or such portion of the Option;

(b) Such representations and documents as the Administrator, in its sole discretion, deems necessary or advisable to effect compliance with all applicable provisions of the Securities Act and any other federal, state or foreign securities laws or regulations, the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded or any other applicable law. The Administrator may, in its sole discretion, also take whatever additional actions it deems appropriate to effect such compliance including, without limitation, placing legends on share certificates and issuing stop-transfer notices to agents and registrars;

(c) In the event that the Option shall be exercised pursuant to Section 12.3 by any person or persons other than the Holder, appropriate proof of the right of such person or persons to exercise the Option, as determined in the sole discretion of the Administrator; and

(d) Full payment of the exercise or base price and applicable withholding taxes to the stock plan administrator of the Company for the shares with respect to which the Option, or portion thereof, is exercised, in a manner permitted by Section 12.1 and 12.2.

Table of Contents

7.3 Notification Regarding Disposition. The Holder shall give the Company prompt written or electronic notice of any disposition of Shares acquired by exercise of an Incentive Stock Option which occurs within (a) two years from the date of granting (including the date the Option is modified, extended or renewed for purposes of Section 424(h) of the Code) such Option to such Holder, or (b) one year after the transfer of such shares to such Holder.

ARTICLE 8

AWARD OF STOCK APPRECIATION RIGHTS

8.1 Grant of Stock Appreciation Rights.

(a) The Administrator is authorized to grant Stock Appreciation Rights to Eligible Individuals from time to time, in its sole discretion, on such terms and conditions as it may determine consistent with the Plan.

(b) A Stock Appreciation Right shall entitle the Holder (or other person entitled to exercise the Stock Appreciation Right pursuant to the Plan) to exercise all or a specified portion of the Stock Appreciation Right (e.g., the number of Shares of which are the base shares), to the extent then exercisable pursuant to its terms, and to receive from the Company an amount determined by multiplying the difference obtained by subtracting the exercise or base price per share (base price) of the Stock Appreciation Right from the fair market value at the time of exercise of the Stock Appreciation Right (e.g., in the event such Stock Appreciation Right is settled in Shares, the Shares obtained are the gain shares), determined according to such method as the Administrator may establish in its discretion, by the number of Shares with respect to which the Stock Appreciation Right shall have been exercised, subject to any limitations the Administrator may impose. Except as described in (c) below, the exercise or base price per Share subject to each Stock Appreciation Right shall be set by the Administrator, but shall not be less than 100% of the Fair Market Value on the date the Stock Appreciation Right is granted.

(c) Notwithstanding the foregoing provisions of Section 8.1(b) to the contrary, in the case of an Stock Appreciation Right that is a Substitute Award, the price per share of the shares subject to such Stock Appreciation Right may be less than 100% of the Fair Market Value per share on the date of grant; provided that the excess of: (i) the aggregate Fair Market Value (as of the date such Substitute Award is granted) of the shares subject to the Substitute Award, over (ii) the aggregate exercise or base price thereof does not exceed the excess of: (x) the aggregate fair market value (as of the time immediately preceding the transaction giving rise to the Substitute Award, such fair market value to be determined by the Administrator) of the shares of the predecessor entity that were subject to the grant assumed or substituted for by the Company, over (y) the aggregate exercise or base price of such shares.

8.2 Stock Appreciation Right Vesting.

(a) The period during which the right to exercise, in whole or in part, a Stock Appreciation Right vests in the Holder shall be set by the Administrator and the Administrator may determine that a Stock Appreciation Right may not be exercised in whole or in part for a specified period after it is granted. Such vesting may be based on service with the Company or any Affiliate, or any other criteria selected by the Administrator. At any time after grant of a Stock Appreciation Right, the Administrator may, in its sole discretion and subject to whatever terms and conditions it selects, accelerate the period during which a Stock Appreciation Right vests.

(b) No portion of a Stock Appreciation Right which is unexercisable at Termination of Service shall thereafter become exercisable, except as may be otherwise provided by the Administrator either in the applicable Program or Award Agreement or by action of the Administrator following the grant of the Stock Appreciation Right.

8.3 Manner of Exercise. All or a portion of an exercisable Stock Appreciation Right shall be deemed exercised upon delivery of all of the following to the stock plan administrator of the Company, or such other person or entity designated by the Administrator, or his, her or its office, as applicable:

(a) A written or electronic notice complying with the applicable rules established by the Administrator or by the Company and not objected to by the Administrator stating that the Stock Appreciation Right, or a portion thereof, is exercised. The notice shall include appropriately authorized instruction by the Holder or other person then entitled to exercise the Stock Appreciation Right or such portion of the Stock Appreciation Right;

(b) Such representations and documents as the Administrator, in its sole discretion, or Company management deems necessary or advisable to effect compliance with all applicable provisions of the Securities Act and any other federal, state or foreign securities laws or regulations. The Administrator may, in its sole discretion, also take whatever additional actions it deems appropriate to effect such compliance; and

(c) In the event that the Stock Appreciation Right shall be exercised pursuant to this Section 8.3 by any person or persons other than the Holder, appropriate proof of the right of such person or persons to exercise the Stock Appreciation Right.

8.4 Stock Appreciation Right Term. The term of each Stock Appreciation Right (the Stock Appreciation Right Term) shall be set by the Administrator in its sole discretion; provided, however, that the term shall not be more than a maximum of five (5) years from the date the Stock Appreciation Right is granted. The Administrator shall determine the time period, including the time period following a Termination of Service, during which the Holder has the right to exercise the vested Stock Appreciation Rights, which time period may not extend beyond the maximum Stock Appreciation Right Term. To the extent permitted by Section 409A of the Code and regulations and rulings thereunder, and after due consideration to the possible tax, securities, and accounting consequences, the Administrator may extend the Stock Appreciation Right Term of any outstanding Stock Appreciation Right, and may extend the time period during which vested Stock Appreciation Rights may be exercised, in connection with any Termination of Service of the Holder, and may amend any other term or condition of such Stock Appreciation Right relating to such a Termination of Service, which extensions may not exceed the maximum Stock Appreciation Right Term as described above.

8.5 Payment. Payment of the amounts payable with respect to Stock Appreciation Rights pursuant to this Article 8 shall be in cash, Shares (based on its fair market value as of the date the Stock Appreciation Right is exercised), or a combination of both, as determined by the Administrator.

8.6 Substitution of Options. The Administrator may provide in the applicable Program or the Award Agreement evidencing the grant of a Stock Appreciation Right that the Administrator, in its sole discretion, shall have the right to substitute an Option for such Stock Appreciation Right at any time prior to or upon exercise of such Stock Appreciation Right; provided that such Option shall be exercisable with respect to the same number of Shares for which such substituted Stock Appreciation Right would have been exercisable, and shall also have the same exercise or base price, vesting schedule and remaining Stock Appreciation Right Term as the substituted Stock Appreciation Right.

ARTICLE 9

AWARD OF RESTRICTED STOCK UNITS

9.1 Grant of Restricted Stock Units. The Administrator is authorized to grant Awards of Restricted Stock Units to any Eligible Individual selected by the Administrator in such amounts and subject to such terms and conditions as determined by the Administrator.

9.2 Term. Except as otherwise provided herein, the term of a Restricted Stock Unit award shall be set by the Administrator in its sole discretion.

9.3 Purchase Price. The Administrator shall specify the purchase price, if any, to be paid by the Holder to the Company with respect to any Restricted Stock Unit award, with cash, services or any other consideration that the Administrator shall determine acceptable, subject to any requirements of applicable law; provided, however, that value of the consideration shall not be less than the par value of a Share, unless otherwise permitted by applicable law.

9.4 Vesting of Restricted Stock Units. At the time of grant, the Administrator shall specify the date or dates on which the Restricted Stock Units shall become fully vested and nonforfeitable, and may specify such conditions to vesting as it deems appropriate, including, without limitation, vesting based upon the Holder s duration of service to the Company or any Affiliate, one or more Performance Criteria, Company performance, individual performance or other specific criteria, in each case on a specified date or dates or over any period or periods, as determined by the Administrator, subject to Section 3.4.

9.5 Maturity and Payment. At the time of grant, the Administrator shall specify the maturity date applicable to each grant of Restricted Stock Units which shall be no earlier than the vesting date or dates of the Award and may be determined at the election of the Holder (if permitted by the applicable Award Agreement); provided that, except as otherwise determined by the Administrator, set forth in any applicable Award Agreement, and subject to compliance with Section 409A of the Code, in no event shall the maturity date relating to each Restricted Stock Unit occur following the later of (a) the 15th day of the third month following the end of calendar year in which the Restricted Stock Unit vests; or (b) the 15th day of the third month following the end of the Company s fiscal year in which the Restricted Stock Unit vests. On the maturity date, the Company shall, subject to Section 12.4(e), transfer to the Holder one unrestricted, fully transferable Share for each Restricted Stock Unit scheduled to be paid out on such date and not previously forfeited, or in the sole discretion of the Administrator, an amount in cash equal to the fair market value of such shares on the maturity date or a combination of cash and Common Stock as determined by the Administrator.

9.6 Payment upon Termination of Service. An Award of Restricted Stock Units shall only be payable while the Holder is an Employee, a Consultant or a member of the Board, as applicable; provided, however, that the Administrator, in its sole and absolute discretion may provide (in an Award Agreement or otherwise) that a Restricted Stock Unit award may be paid subsequent to a Termination of Service in certain events, including a change of control, the Holder s death, retirement or disability or any other specified Termination of Service.

9.7 No Rights as a Stockholder. Unless otherwise determined by the Administrator, a Holder who is awarded Restricted Stock Units shall possess no incidents of ownership with respect to the Shares represented by such Restricted Stock Units, unless and until the same are transferred to the Holder pursuant to the terms of this Plan and the Award Agreement.

9.8 Dividend Equivalents. Subject to Section 11.2, the Administrator may, in its sole discretion, provide that Dividend Equivalents shall be earned by a Holder of Restricted Stock Units based on dividends declared on the Common Stock, to be credited as of dividend payment dates during the period between the date an Award of Restricted Stock Units is granted to a Holder and the maturity date of such Award.

ARTICLE 10

AWARD OF RESTRICTED STOCK

10.1 Grant of Restricted Stock.

(a) The Administrator is authorized to grant Restricted Stock to Eligible Individuals, and shall determine the terms and conditions, including the restrictions applicable to each award of Restricted Stock, which terms and conditions shall not be inconsistent with the Plan, and may impose such conditions on the issuance of such Restricted Stock as it deems appropriate.

Table of Contents

(b) The Administrator shall establish the purchase price, if any, to be paid by the Holder to the Company with respect to any Restricted Stock award, with cash, services or any other consideration that the Administrator shall determine acceptable, subject to any requirements of applicable law, and form of payment for Restricted Stock; provided, however, that if a purchase price is charged, such purchase price shall be no less than the par value, if any, of the Shares to be purchased, unless otherwise permitted by applicable law. In all cases, legal consideration shall be required for each issuance of Restricted Stock.

10.2 Rights as Stockholders. Subject to Section 10.4, upon issuance of Restricted Stock, the Holder shall have, unless otherwise provided by the Administrator, all the rights of a stockholder with respect to said shares, subject to the restrictions in the applicable Program or in each individual Award Agreement, including the right to receive all dividends and other distributions paid or made with respect to the shares; provided, however, that, in the sole discretion of the Administrator, any extraordinary distributions with respect to the Shares shall be subject to the restrictions set forth in Section 10.3. In addition, with respect to a share of Restricted Stock with performance-based vesting, dividends which are paid prior to vesting shall only be paid out to the Holder to the extent that the performance-based vesting conditions are subsequently satisfied and the share of Restricted Stock vests.

10.3 Restrictions. All shares of Restricted Stock (including any shares received by Holders thereof with respect to shares of Restricted Stock as a result of stock dividends, stock splits or any other form of recapitalization) shall, in the terms of the applicable Program or in each individual Award Agreement, be subject to such restrictions and vesting requirements as the Administrator shall provide. Such restrictions may include, without limitation, restrictions concerning voting rights and transferability and such restrictions may lapse separately or in combination at such times and pursuant to such circumstances or based on such criteria as selected by the Administrator, including, without limitation, criteria based on the Holder s duration of employment, directorship or consultancy with the Company, the Performance Criteria, Company performance, individual performance or other criteria selected by the Administrator. By action taken after the Restricted Stock is issued, the Administrator may, on such terms and conditions as it may determine to be appropriate, accelerate the vesting of such Restricted Stock by removing any or all of the restrictions imposed by the terms of the Program or the Award Agreement. Restricted Stock may not be sold or encumbered until all restrictions are terminated or expire.

10.4 Repurchase or Forfeiture of Restricted Stock. Except as otherwise determined by the Administrator at the time of the grant of the Award or thereafter, if no price was paid by the Holder for the Restricted Stock, upon a Termination of Service during the applicable restriction period, the Holder s rights in unvested Restricted Stock then subject to restrictions shall lapse, and such Restricted Stock shall be surrendered to the Company and cancelled without consideration. If a price was paid by the Holder for the Restricted Stock, upon a Termination of Service during the applicable restriction period, the Company shall have the right to repurchase from the Holder the unvested Restricted Stock then subject to restrictions at a cash price per share equal to the price paid by the Holder for such Restricted Stock or such other amount as may be specified in the Program or the Award Agreement. Notwithstanding the foregoing, except as otherwise provided by Section 3.4, the Administrator in its sole discretion may provide that in the event of certain events, including a change of control, the Holder s death, retirement or disability or any other specified Termination of Service or any other event, the Holder s rights in unvested Restricted Stock shall not lapse, such Restricted Stock shall vest and, if applicable, the Company shall not have a right of repurchase.

10.5 Certificates for Restricted Stock. Restricted Stock granted pursuant to the Plan may be evidenced in such manner as the Administrator shall determine. Certificates or book entries evidencing shares of Restricted Stock must include an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock. The Company may, in it sole discretion, (a) retain physical possession of any stock certificate evidencing shares of Restricted Stock until the restrictions thereon shall have lapsed and/or (b) require that the stock certificates evidencing shares of Restricted Stock be held in custody by a designated escrow agent (which may but need not be the Company) until the restrictions thereon shall have lapsed, and that the Holder deliver a stock power, endorsed in blank, relating to such Restricted Stock.

10.6 Section 83(b) Election. If a Holder makes an election under Section 83(b) of the Code to be taxed with respect to the Restricted Stock as of the date of transfer of the Restricted Stock rather than as of the date or dates upon which the Holder would otherwise be taxable under Section 83(a) of the Code, the Holder shall be required to deliver a copy of such election to the Company promptly after filing such election with the Internal Revenue Service.

ARTICLE 11

AWARD OF PERFORMANCE AWARDS, DIVIDEND EQUIVALENTS, STOCK

PAYMENTS, DEFERRED STOCK, DEFERRED STOCK UNITS

11.1 Performance Awards.

(a) The Administrator is authorized to grant Performance Awards, including Awards of Performance Stock Units, to any Eligible Individual and to determine whether such Performance Awards shall be Performance-Based Compensation. The value of Performance Awards, including Performance Stock Units, may be linked to any one or more of the Performance Criteria or other specific criteria determined by the Administrator, in each case on a specified date or dates or over any period or periods determined by the Administrator. Performance Awards, including Performance Stock Unit awards may be paid in cash, Shares, Awards or a combination of cash, Shares and/or Awards, as determined by the Administrator.

(b) Without limiting Section 11.1(a), the Administrator may grant Performance Awards to any Eligible Individual in the form of a cash bonus payable upon the attainment of objective Performance Goals, or such other criteria, whether or not objective, which are established by the Administrator, in each case on a specified date or dates or over any period or periods determined by the Administrator. Any such bonuses paid to a Holder which are intended to be Performance-Based Compensation shall be based upon objectively determinable bonus formulas established in accordance with the provisions of Article 5.

11.2 Dividend Equivalents.

(a) Dividend Equivalents may be granted by the Administrator based on dividends declared on the Common Stock, to be credited as of dividend payment dates during the period between the date an Award is granted to a Holder and the date such Award vests, is exercised, is distributed or expires, as determined by the Administrator. Such Dividend Equivalents shall be converted to cash or additional Shares by such formula and at such time and subject to such limitations as may be determined by the Administrator. In addition, Dividend Equivalents with respect to an Award with performance-based vesting that are based on dividends paid prior to the vesting of such Award shall only be paid out to the Holder to the extent that the performance-based vesting conditions are subsequently satisfied and the Award vests.

(b) Notwithstanding the foregoing, no Dividend Equivalents shall be payable with respect to Options or Stock Appreciation Rights.

11.3 Stock Payments. The Administrator is authorized to make Stock Payments to any Eligible Individual. The number or value of shares of any Stock Payment shall be determined by the Administrator and may be based upon one or more Performance Criteria or any other specific criteria, including service to the Company or any Affiliate, determined by the Administrator. Shares underlying a Stock Payment which is subject to a vesting schedule or other conditions or criteria set by the Administrator will not be issued until those conditions have been satisfied. Unless otherwise provided by the Administrator, a Holder of a Stock Payment shall have no rights as a Company stockholder with respect to such Stock Payment until such time as the Stock Payment has vested and the Shares underlying the Award have been issued to the Holder. Stock Payments may, but are not required to, be made in lieu of base salary, bonus, fees or other cash compensation otherwise payable to such Eligible Individual.

11.4 Deferred Stock Units. The Administrator is authorized to grant Deferred Stock Units to any Eligible Individual. The number of Deferred Stock Units shall be determined by the Administrator and may (but is not required to) be based on one or more Performance Criteria or other specific criteria, including service to the Company or any Affiliate, as the Administrator determines, in each case on a specified date or dates or over any period or periods determined by the Administrator. Each Deferred Stock Unit shall entitle the Holder thereof to receive one Share on the date the Deferred Stock Unit becomes vested or upon a specified settlement date thereafter (which settlement date may (but is not required to) be the date of the Holder s Termination of Service). Shares underlying a Deferred Stock Unit award which is subject to a vesting schedule or other conditions or criteria set by the Administrator will not be issued until on or following the date that those conditions and criteria have been satisfied. Unless otherwise provided by the Administrator, a Holder of Deferred Stock Units shall have no rights as a Company stockholder with respect to such Deferred Stock Units until such time as the Award has vested and any other applicable conditions and/or criteria have been satisfied and the Shares underlying the Award have been issued to the Holder.

11.5 Deferred Stock. The Administrator is authorized to grant Deferred Stock to any Eligible Individual. The number of shares of Deferred Stock shall be determined by the Administrator and may (but is not required to) be based on one or more Performance Criteria or other specific criteria, including service to the Company or any Affiliate, as the Administrator determines, in each case on a specified date or dates or over any period or periods determined by the Administrator. Shares underlying a Deferred Stock award which is subject to a vesting schedule or other conditions or criteria set by the Administrator will be issued on the vesting date(s) or date(s) that those conditions and criteria have been satisfied, as applicable. Unless otherwise provided by the Administrator, a Holder of Deferred Stock shall have no rights as a Company stockholder with respect to such Deferred Stock until such time as the Award has vested and any other applicable conditions and/or criteria have been satisfied and the Shares underlying the Award have been issued to the Holder.

11.6 Term. The term of a Performance Award, Dividend Equivalent award, Stock Payment award, Deferred Stock award and/or Deferred Stock Unit award shall be set by the Administrator in its sole discretion.

11.7 Purchase Price. The Administrator may establish the purchase price, if any, of a Performance Award, shares distributed as a Stock Payment award, shares of Deferred Stock award or shares distributed pursuant to a Deferred Stock Unit award, to be paid by the Holder to the Company with respect to any such award, with cash, services or any other consideration that the Administrator shall determine acceptable, subject to any requirements of applicable law; provided, however, that value of the consideration shall not be less than the par value of a Share, unless otherwise permitted by applicable law.

11.8 Termination of Service. A Performance Award, Stock Payment award, Dividend Equivalent award, Deferred Stock award and/or Deferred Stock Unit award is distributable only while the Holder is an Employee, Director or Consultant, as applicable. The Administrator, however, in its sole discretion may provide that the Performance Award, Dividend Equivalent award, Stock Payment award, Deferred Stock award and/or Deferred Stock Unit award may be distributed subsequent to a Termination of Service in certain events, including a change of control, the Holder s death, retirement or disability or any other specified Termination of Service.

ARTICLE 12

ADDITIONAL TERMS OF AWARDS

12.1 Payment. The Administrator shall determine the methods by which payments by any Holder with respect to any Awards granted under the Plan shall be made, including, without limitation: (a) cash or check, (b) Shares (including, in the case of payment of the exercise or base price of an Award, Shares issuable pursuant to the exercise of the Award) or Shares held for such period of time as may be required by the Administrator in order to avoid adverse accounting consequences, in each case, having a fair market value at the time of delivery

equal to the aggregate payments required, (c) delivery of a written or electronic notice that the Holder has placed a market sell order with a broker with respect to Shares then issuable upon exercise or vesting of an Award, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the aggregate payments required; provided that payment of such proceeds is then made to the Company upon settlement of such sale, or (d) other form of legal consideration acceptable to the Administrator. The Administrator shall also determine the methods by which Shares shall be delivered or deemed to be delivered to Holders. Notwithstanding any other provision of the Plan to the contrary, no Holder who is a Director or an executive officer of the Company within the meaning of Section 13(k) of the Exchange Act shall be permitted to make payment with respect to any Awards granted under the Plan, or continue any extension of credit with respect to such payment, with a loan from the Company or a loan arranged by the Company in violation of Section 13(k) of the Exchange Act.

12.2 Tax Withholding. The Company or any Affiliate shall have the authority and the right to deduct or withhold, or require a Holder to remit to the Company, an amount sufficient to satisfy federal, state, local and foreign taxes (including the Holder s FICA, employment tax or other social security contribution obligation) required by law to be withheld with respect to any taxable event concerning a Holder arising as a result of the Plan. The Administrator may in its sole discretion and in satisfaction of the foregoing requirement allow a Holder to elect to have the Company withhold Shares otherwise issuable under an Award (or allow the surrender of Shares). The number of Shares which may be so withheld or surrendered shall be limited to the number of shares which have a fair market value at the time of withholding or repurchase equal to the aggregate amount of such liabilities based on the minimum statutory withholding rates or such other withholding rates for federal, state, local and foreign income tax and payroll/employment tax purposes that are applicable to such taxable income and that have been determined by the Administrator to avoid adverse accounting consequences. The Administrator shall determine the fair market value of the Shares, consistent with applicable provisions of the Code and applicable foreign tax regulations, for tax withholding obligations due in connection with a broker-assisted cashless Option or Stock Appreciation Right exercise involving the sale of shares to pay the Option or Stock Appreciation Right exercise or base price or any tax withholding obligation.

12.3 Transferability of Awards.

(a) Except as otherwise provided in Section 12.3(b):

(i) No Award under the Plan may be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution or, subject to the consent of the Administrator, pursuant to a DRO, unless and until such Award has been exercised, or the shares underlying such Award have been issued, and all restrictions applicable to such shares have lapsed;

(ii) No Award or interest or right therein shall be liable for the debts, contracts or engagements of the Holder or his successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, hypothecation, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect, except to the extent that such disposition is permitted by the preceding sentence; and

(iii) During the lifetime of the Holder, only the Holder may exercise an Award (or any portion thereof) granted to him under the Plan, unless it has been disposed of pursuant to a DRO; after the death of the Holder, any exercisable portion of an Award may, prior to the time when such portion becomes unexercisable under the Plan or the applicable Program or Award Agreement, be exercised by his personal representative or by any person empowered to do so under the deceased Holder s will or under the then applicable laws of descent and distribution.

(b) Notwithstanding Section 12.3(a), the Administrator, in its sole discretion, may determine to permit a Holder to transfer an Award other than an Incentive Stock Option to any one or more Permitted Transferees, subject to the following terms and conditions: (i) an Award transferred to a Permitted

Transferee shall not be assignable or transferable by the Permitted Transferee other than by will or the laws of descent and distribution; (ii) an Award transferred to a Permitted Transferee shall continue to be subject to all the terms and conditions of the Award as applicable to the original Holder (other than the ability to further transfer the Award); (iii) any transfer of a Non-Qualified Stock Option to a Permitted Transferee shall be without consideration, except as required by applicable law and (iv) the Holder and the Permitted Transferee shall execute any and all documents requested by the Administrator, including, without limitation documents to (A) confirm the status of the transferee as a Permitted Transferee, (B) satisfy any requirements for an exemption for the transfer under applicable federal, state and foreign securities laws and (C) evidence the transfer.

(c) Notwithstanding Section 12.3(a), a Holder may, in the manner determined by the Administrator, designate a beneficiary to exercise the rights of the Holder and to receive any distribution with respect to any Award upon the Holder s death. A beneficiary, legal guardian, legal representative, or other person claiming any rights pursuant to the Plan is subject to all terms and conditions of the Plan and any Program or Award Agreement applicable to the Holder, except to the extent the Plan, the Program and the Award Agreement otherwise provide, and to any additional restrictions deemed necessary or appropriate by the Administrator. If the Holder is married and resides in a community property state, a designation of a person other than the Holder s spouse as his or her beneficiary with respect to more than 50% of the Holder s interest in the Award shall not be effective without the prior written or electronic consent of the Holder s spouse. If no beneficiary has been designated or survives the Holder, payment shall be made to the person entitled thereto pursuant to the Holder s will or the laws of descent and distribution. Subject to the foregoing, a beneficiary designation may be changed or revoked by a Holder at any time; provided that the change or revocation is filed with the Administrator prior to the Holder s death.

12.4 Conditions to Issuance of Shares.

(a) Notwithstanding anything herein to the contrary, the Company shall not be required to issue or deliver any certificates or make any book entries evidencing Shares pursuant to the exercise of any Award, unless and until the Board or the Committee has determined, with advice of counsel, that the issuance of such shares is in compliance with all applicable laws, regulations of governmental authorities and, if applicable, the requirements of any exchange on which the Shares are listed or traded, and the Shares are covered by an effective registration statement or applicable exemption from registration. In addition to the terms and conditions provided herein, the Board or the Committee may require that a Holder make such reasonable covenants, agreements, and representations as the Board or the Committee, in its discretion, deems advisable in order to comply with any such laws, regulations, or requirements.

(b) All Share certificates delivered pursuant to the Plan and all shares issued pursuant to book entry procedures are subject to any stop-transfer orders and other restrictions as the Administrator deems necessary or advisable to comply with federal, state, or foreign securities or other laws, rules and regulations and the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted, or traded. The Administrator may place legends on any Share certificate or book entry to reference restrictions applicable to the Shares.

(c) The Administrator shall have the right to require any Holder to comply with any timing or other restrictions with respect to the settlement, distribution or exercise of any Award, including a window-period limitation, as may be imposed in the sole discretion of the Administrator.

(d) No fractional Shares shall be issued and the Administrator shall determine, in its sole discretion, whether cash shall be given in lieu of fractional shares or whether such fractional shares shall be eliminated by rounding down.

(e) Notwithstanding any other provision of the Plan, unless otherwise determined by the Administrator or required by any applicable law, rule or regulation, the Company shall not deliver to any Holder certificates evidencing Shares issued in connection with any Award and instead such Shares shall be recorded in the books of the Company (or, as applicable, its transfer agent or stock plan administrator).

Table of Contents

12.5 Forfeiture, Recoupment and Clawback Provisions. Pursuant to its general authority to determine the terms and conditions applicable to Awards under the Plan, the Administrator shall have the right to provide, in an Award Agreement or otherwise, or to require a Holder to agree by separate written or electronic instrument, that:

(a)(i) Any proceeds, gains or other economic benefit actually or constructively received by the Holder upon any receipt or exercise of the Award, or upon the receipt or resale of any Shares underlying the Award, must be paid to the Company, and (ii) the Award shall terminate and any unexercised portion of the Award (whether or not vested) shall be forfeited, if (x) a Termination of Service occurs prior to a specified date, or within a specified time period following receipt or exercise of the Award, or (y) the Holder at any time, or during a specified time period, engages in any activity in competition with the Company, or which is inimical, contrary or harmful to the interests of the Company, as further defined by the Administrator or (z) the Holder incurs a Termination of Service for cause (as such term is defined in the sole discretion of the Administrator, or as set forth in a written agreement relating to such Award between the Company and the Holder); and

(b) All Awards (including any proceeds, gains or other economic benefit actually or constructively received by the Holder upon any receipt or exercise of any Award or upon the receipt or resale of any Shares underlying the Award) shall be subject to the written policies of the Board, Administrator or any recoupment or clawback policies implemented by the Company, including, without limitation, any recoupment or clawback policies adopted to comply with the requirements of the Dodd-Frank Wall Street Reform and Consumer Protection Act and any rules or regulations promulgated thereunder, to the extent set forth in such recoupment or clawback policies and/or in the applicable Award Agreement.

12.6 Prohibition on Repricing. Subject to Section 14.2, the Administrator shall not, without the approval of the stockholders of the Company, (i) authorize the amendment of any outstanding Option or Stock Appreciation Right to reduce its price per share, or (ii) cancel any Option or Stock Appreciation Right in exchange for cash or another Award when the Option or Stock Appreciation Right price per share exceeds the Fair Market Value of the underlying Shares. Subject to Section 14.2, the Administrator shall have the authority, without the approval of the stockholders of the Company, to amend any outstanding Award to increase the price per share or to cancel and replace an Award with the grant of an Award having a price per share that is greater than or equal to the price per share of the original Award.

ARTICLE 13

ADMINISTRATION

13.1 Administrator. The Committee (or another committee or a subcommittee of the Board assuming the functions of the Committee under the Plan) shall administer the Plan (except as otherwise permitted herein) and, unless otherwise determined by the Board, shall consist solely of two or more Non-Employee Directors appointed by and holding office at the pleasure of the Board, each of whom is intended to qualify as both a non-employee director as defined by Rule 16b-3 of the Exchange Act or any successor rule, an outside director for purposes of Section 162(m) of the Code and an independent director under the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded; provided that any action taken by the Committee shall be valid and effective, whether or not members of the Committee at the time of such action are later determined not to have satisfied the requirements for membership set forth in this Section 13.1 or otherwise provided in any charter of the Committee. Except as may otherwise be provided in any charter of the Committee, appointment of Committee members shall be effective upon acceptance of appointment. Committee members may resign at any time by delivering written or electronic notice to the Board. Vacancies in the Committee may only be filled by the Board. Notwithstanding the foregoing, (a) the full Board, acting by a majority of its members in office, shall conduct the general administration of the Plan with respect to Awards granted to Non-Employee Directors and, with respect to such Awards, the terms Administrator and Committee as used in the Plan shall be deemed to refer to the Board and (b) the Board or Committee may delegate its authority hereunder to the extent permitted by Section 13.6.

Table of Contents

13.2 Duties and Powers of Committee. It shall be the duty of the Committee to conduct the general administration of the Plan in accordance with its provisions. The Committee shall have the power to interpret the Plan, the Program and the Award Agreement, and to adopt such rules for the administration, interpretation and application of the Plan as are not inconsistent therewith, to interpret, amend or revoke any such rules and to amend any Program or Award Agreement; provided that the rights or obligations of the Holder of the Award that is the subject of any such Program or Award Agreement are not affected adversely by such amendment, unless the consent of the Holder is obtained or such amendment is otherwise permitted under Section 14.10. Any such grant or award under the Plan need not be the same with respect to each Holder. Any such interpretations and rules with respect to Incentive Stock Options shall be consistent with the provisions of Section 422 of the Code. In its sole discretion, the Board may at any time and from time to time exercise any and all rights and duties of the Committee under the Plan except with respect to matters which under Rule 16b 3 under the Exchange Act or any successor rule, or Section 162(m) of the Code, or any regulations or rules issued thereunder, or the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded are required to be determined in the sole discretion of the Committee.

13.3 Action by the Committee. Unless otherwise established by the Board or in any charter of the Committee, a majority of the Committee shall constitute a quorum and the acts of a majority of the members present at any meeting at which a quorum is present, and acts approved in writing by all members of the Committee in lieu of a meeting, shall be deemed the acts of the Committee. Each member of the Committee is entitled to, in good faith, rely or act upon any report or other information furnished to that member by any officer or other employee of the Company or any Affiliate, the Company s independent certified public accountants, or any executive compensation consultant or other professional retained by the Company to assist in the administration of the Plan.

13.4 Authority of Administrator. Subject to the Company s Bylaws, the Committee s Charter and any specific designation in the Plan, the Administrator has the exclusive power, authority and sole discretion to:

(a) Designate Eligible Individuals to receive Awards;

(b) Determine the type or types of Awards to be granted to each Eligible Individual;

(c) Determine the number of Awards to be granted and the number of Shares to which an Award will relate;

(d) Determine the terms and conditions of any Award granted pursuant to the Plan, including, but not limited to, the exercise or base price, grant price, or purchase price, any performance criteria, any restrictions or limitations on the Award, any schedule for vesting, lapse of forfeiture restrictions or restrictions on the exercisability of an Award, and accelerations or waivers thereof, and any provisions related to non-competition and recapture of gain on an Award, based in each case on such considerations as the Administrator in its sole discretion determines;

(e) Determine whether, to what extent, and pursuant to what circumstances an Award may be settled in, or the exercise or base price of an Award may be paid in cash, Shares, other Awards, or other property, or an Award may be canceled, forfeited, or surrendered;

(f) Prescribe the form of each Award Agreement, which need not be identical for each Holder;

(g) Decide all other matters that must be determined in connection with an Award;

(h) Establish, adopt, or revise any rules and regulations as it may deem necessary or advisable to administer the Plan;

(i) Interpret the terms of, and any matter arising pursuant to, the Plan, any Program or any Award Agreement;

(j) Make all other decisions and determinations that may be required pursuant to the Plan or as the Administrator deems necessary or advisable to administer the Plan; and

(k) Accelerate wholly or partially the vesting or lapse of restrictions of any Award or portion thereof at any time after the grant of an Award, subject to whatever terms and conditions it selects and Section 3.4.

Table of Contents

13.5 Decisions Binding. The Administrator s interpretation of the Plan, any Awards granted pursuant to the Plan, any Program, any Award Agreement and all decisions and determinations by the Administrator with respect to the Plan are final, binding, and conclusive on all parties.

13.6 Delegation of Authority. To the extent permitted by applicable law or the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded, the Board or Committee may from time to time delegate to a committee of one or more members of the Board or one or more officers of the Company the authority to grant or amend Awards or to take other administrative actions pursuant to Article 13; provided, however, that in no event shall an officer of the Company be delegated the authority to grant awards to, or amend awards held by, the following individuals: (a) individuals who are subject to Section 16 of the Exchange Act, (b) Covered Employees, or (c) officers of the Company (or Directors) to whom authority to grant or amend Awards has been delegated hereunder; provided, further, that any delegation of administrative authority shall only be permitted to the extent it is permissible under Section 162(m) of the Code and applicable securities laws or the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded. Any delegation hereunder shall be subject to the restrictions and limits that the Board or Committee specifies at the time of such delegation, and the Board may at any time rescind the authority so delegated or appoint a new delegatee. At all times, the delegatee appointed under this Section 13.6 shall serve in such capacity at the pleasure of the Board and the Committee.

ARTICLE 14

MISCELLANEOUS PROVISIONS

14.1 Amendment, Suspension or Termination of the Plan. Except as otherwise provided in this Section 14.1, the Plan may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Board or the Committee. However, without approval of the Company s stockholders given within twelve (12) months before or after the action by the Administrator, no action of the Administrator may, except as provided in Section 14.2, (a) increase the limits imposed in Section 3.1 on the maximum number of shares which may be issued under the Plan, or (b) reduce the price per share of any outstanding Option or Stock Appreciation Right granted under the Plan or take any action prohibited under Section 12.6, or (c) cancel any Option or Stock Appreciation Right in exchange for cash or another Award when the Option or Stock Appreciation Right price per share exceeds the Fair Market Value of the underlying Shares. Except as provided in Section 14.10, no amendment, suspension or termination of the Plan shall, without the consent of the Holder, impair any rights or obligations under any Award theretofore granted or awarded, unless the Award itself otherwise expressly so provides. No Awards may be granted or awarded during any period of suspension or after termination of the Plan, and in no event may any Award be granted under the Plan after the tenth (10th) anniversary of the Effective Date.

14.2 Changes in Common Stock or Assets of the Company, Acquisition or Liquidation of the Company and Other Corporate Events.

(a) In the event of any stock dividend, stock split, combination or exchange of shares, merger, consolidation or other distribution (other than normal cash dividends) of Company assets to stockholders, or any other change affecting the shares of the Company s Common Stock or the share price of the Company s Common Stock other than an Equity Restructuring, the Administrator shall make equitable adjustments, if any, to reflect such change with respect to (i) the aggregate number and kind of shares that may be issued under the Plan (including, but not limited to, adjustments of the limitations in Section 3.1 on the maximum number and kind of shares which may be issued under the Plan, adjustments of the Award Limit, and adjustments of the manner in which shares subject to Full Value Awards will be counted); (ii) the number and kind of Shares (or other securities or property) subject to outstanding Awards; (iii) the number and kind of Shares (or other securities or property) for which automatic grants are subsequently to be made to new and continuing Non-Employee Directors pursuant to Section 4.6;

Table of Contents

(iv) the terms and conditions of any outstanding Awards (including, without limitation, any applicable performance targets or criteria with respect thereto); and (v) the grant or exercise or base price per share for any outstanding Awards under the Plan. Any adjustment affecting an Award intended as Performance-Based Compensation shall be made consistent with the requirements of Section 162(m) of the Code.

(b) In the event of any transaction or event described in Section 14.2(a) or any unusual or nonrecurring transactions or events affecting the Company, any Affiliate of the Company, or the financial statements of the Company or any Affiliate, or of changes in applicable laws, regulations or accounting principles, the Administrator, in its sole discretion, and on such terms and conditions as it deems appropriate, either by the terms of the Award or by action taken prior to the occurrence of such transaction or event and either automatically or upon the Holder s request, is hereby authorized to take any one or more of the following actions whenever the Administrator determines that such action is appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan or with respect to any Award under the Plan, to facilitate such transactions or events or to give effect to such changes in laws, regulations or principles:

(i) To provide for either (A) termination of any such Award in exchange for an amount of cash, if any, equal to the amount that would have been attained upon the exercise of such Award or realization of the Holder s rights (and, for the avoidance of doubt, if as of the date of the occurrence of the transaction or event described in this Section 14.2 the Administrator determines in good faith that no amount would have been attained upon the exercise of such Award or realization of the Holder s rights, then such Award may be terminated by the Company without payment) or (B) the replacement of such Award with other rights or property selected by the Administrator in its sole discretion having an aggregate value not exceeding the amount that could have been attained upon the exercise of such Award or realization of the Holder s rights had such Award been currently exercisable or payable or fully vested;

(ii) To provide that such Award be assumed by the successor or survivor corporation, or a parent or subsidiary thereof, or shall be substituted for by similar options, rights or awards covering the stock of the successor or survivor corporation, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of shares and prices;

(iii) To make adjustments in the number and type of shares of the Company s stock (or other securities or property) subject to outstanding Awards, and in the number and kind of outstanding Restricted Stock or Deferred Stock and/or in the terms and conditions of (including the grant or exercise or base price), and the criteria included in, outstanding Awards and Awards which may be granted in the future;

(iv) To provide that such Award shall be exercisable or payable or fully vested with respect to all shares covered thereby, notwithstanding anything to the contrary in the Plan or the applicable Program or Award Agreement; and

(v) To provide that the Award cannot vest, be exercised or become payable after such event.

(c) In connection with the occurrence of any Equity Restructuring, and notwithstanding anything to the contrary in Sections 14.2(a) and 14.2(b):

(i) The number and type of securities subject to each outstanding Award and the exercise or base price or grant price thereof, if applicable, shall be equitably adjusted; and/or

(ii) The Administrator shall make such equitable adjustments, if any, as the Administrator in its discretion may deem appropriate to reflect such Equity Restructuring with respect to the aggregate number and kind of shares that may be issued under the Plan (including, but not limited to, adjustments of the limitations in Section 3.1 on the maximum number and kind of shares which may be issued under the Plan, adjustments of the Award Limit, and adjustments of the manner in which shares subject to Full Value Awards will be counted). The adjustments provided under this Section 14.2(c) shall be nondiscretionary and shall be final and binding on the affected Holder and the Company.

Table of Contents

(d) The Administrator may, in its sole discretion, include such further provisions and limitations in any Award, agreement or certificate, as it may deem equitable and in the best interests of the Company that are not inconsistent with the provisions of the Plan.

(e) With respect to Awards which are granted to Covered Employees and are intended to qualify as Performance-Based Compensation, no adjustment or action described in this Section 14.2 or in any other provision of the Plan shall be authorized to the extent that such adjustment or action would cause such Award to fail to so qualify as Performance-Based Compensation, unless the Administrator determines that the Award should not so qualify. No adjustment or action described in this Section 14.2 or in any other provision of the Plan shall be authorized to the extent that such adjustment or action would cause the Plan to violate Section 422(b)(1) of the Code. Furthermore, no such adjustment or action shall be authorized to the extent such adjustment or action would result in short-swing profits liability under Section 16 or violate the exemptive conditions of Rule 16b-3 unless the Administrator determines that the Award is not to comply with such exemptive conditions.

(f) The existence of the Plan, the Program, the Award Agreement and the Awards granted hereunder shall not affect or restrict in any way the right or power of the Company or the stockholders of the Company to make or authorize any adjustment, recapitalization, reorganization or other change in the Company s capital structure or its business, any merger or consolidation of the Company, any issue of stock or of options, warrants or rights to purchase stock or of bonds, debentures, preferred or prior preference stocks whose rights are superior to or affect the Common Stock or the rights thereof or which are convertible into or exchangeable for Common Stock, or the dissolution or liquidation of the Company, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise.

(g) No action shall be taken under this Section 14.2 which shall cause an Award to fail to comply with Section 409A of the Code or the Treasury Regulations thereunder, to the extent applicable to such Award.

(h) In the event of any pending stock dividend, stock split, combination or exchange of shares, merger, consolidation or other distribution (other than normal cash dividends) of Company assets to stockholders, or any other change affecting the shares of Common Stock or the share price of the Common Stock including any Equity Restructuring, for reasons of administrative convenience, the Company in its sole discretion may refuse to permit the exercise of any Award during a period of thirty (30) days prior to the consummation of any such transaction.

14.3 Approval of Plan by Stockholders. The Plan will be submitted for the approval of the Company s stockholders within twelve (12) months after the date of the Board s initial adoption of the Plan. If such approval has not been obtained at the end of said twelve (12) month period, the 2002 Plan shall continue according to its terms as in effect immediately prior to the adoption of this amendment and restatement of the 2002 Plan.

14.4 No Stockholders Rights. Except as otherwise provided herein, a Holder shall have none of the rights of a stockholder with respect to Shares covered by any Award until the Holder becomes the record owner of such Shares.

14.5 Paperless Administration. In the event that the Company establishes, for itself or using the services of a third party, an automated system for the documentation, granting or exercise of Awards, such as a system using an internet website or interactive voice response, then the paperless documentation, granting or exercise of Awards by a Holder may be permitted through the use of such an automated system.

14.6 Effect of Plan upon Other Compensation Plans. The adoption of the Plan shall not affect any other compensation or incentive plans in effect for the Company or any Affiliate. Nothing in the Plan shall be construed to limit the right of the Company or any Affiliate: (a) to establish any other forms of incentives or compensation for Employees, Directors or Consultants of the Company or any Affiliate, or (b) to grant or assume options or other rights or awards otherwise than under the Plan in connection with any proper corporate purpose

including without limitation, the grant or assumption of options in connection with the acquisition by purchase, lease, merger, consolidation or otherwise, of the business, stock or assets of any corporation, partnership, limited liability company, firm or association.

14.7 Compliance with Laws. The Plan, the granting and vesting of Awards under the Plan and the issuance and delivery of Shares and the payment of money under the Plan or under Awards granted or awarded hereunder are subject to compliance with all applicable federal, state, local and foreign laws, rules and regulations (including but not limited to state, federal and foreign securities law and margin requirements), the rules of any securities exchange or automated quotation system on which the Shares are listed, quoted or traded, and to such approvals by any listing, regulatory or governmental authority as may, in the opinion of counsel for the Company, be necessary or advisable in connection therewith. Any securities delivered under the Plan shall be subject to such restrictions, and the person acquiring such securities shall, if requested by the Company, provide such assurances and representations to the Company as the Company may deem necessary or desirable to assure compliance with all applicable legal requirements. To the extent permitted by applicable law, the Plan and Awards granted or awarded hereunder shall be deemed amended to the extent necessary to conform to such laws, rules and regulations.

14.8 Titles and Headings, References to Sections of the Code or Exchange Act. The titles and headings of the Sections in the Plan are for convenience of reference only and, in the event of any conflict, the text of the Plan, rather than such titles or headings, shall control. References to sections of the Code or the Exchange Act shall include any amendment or successor thereto.

14.9 Governing Law. The Plan and any agreements hereunder shall be administered, interpreted and enforced under the internal laws of the State of Delaware without regard to conflicts of laws thereof or of any other jurisdiction.

14.10 Section 409A. To the extent that the Administrator determines that any Award granted under the Plan is subject to Section 409A of the Code, the Program pursuant to which such Award is granted and the Award Agreement evidencing such Award shall incorporate the terms and conditions required by Section 409A of the Code. To the extent applicable, the Plan, the Program and any Award Agreements shall be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the Effective Date. Notwithstanding any provision of the Plan to the contrary, in the event that following the Effective Date the Administrator determines that any Award may be subject to Section 409A of the Code and related Department of Treasury guidance (including such Department of Treasury guidance as may be issued after the Effective Date), the Administrator may adopt such amendments to the Plan and the applicable Program and Award Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Administrator determines are necessary or appropriate to (a) exempt the Award from Section 409A of the Code and/or preserve the intended tax treatment of the benefits provided with respect to the Award, or (b) comply with the requirements of Section 409A of the Code and related Department of Treasury guidance and thereby avoid the application of any penalty taxes under such Section.

14.11 No Rights to Awards. No Eligible Individual or other person shall have any claim to be granted any Award pursuant to the Plan, and neither the Company nor the Administrator is obligated to treat Eligible Individuals, Holders or any other persons uniformly.

14.12 Unfunded Status of Awards. The Plan is intended to be an unfunded plan for incentive compensation. With respect to any payments not yet made to a Holder pursuant to an Award, nothing contained in the Plan or any Program or Award Agreement shall give the Holder any rights that are greater than those of a general creditor of the Company or any Affiliate.

Table of Contents

14.13 Indemnification. To the extent allowable pursuant to applicable law, each member of the Committee or of the Board shall be indemnified and held harmless by the Company from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by such member in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action or failure to act pursuant to the Plan and against and from any and all amounts paid by him or her in satisfaction of judgment in such action, suit, or proceeding against him or her; provided he or she gives the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled pursuant to the Company s Certificate of Incorporation or Bylaws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

14.14 Relationship to other Benefits. No payment pursuant to the Plan shall be taken into account in determining any benefits under any pension, retirement, savings, profit sharing, group insurance, welfare or other benefit plan of the Company or any Affiliate except to the extent otherwise expressly provided in writing in such other plan or an agreement thereunder.

14.15 Expenses. The expenses of administering the Plan shall be borne by the Company and its Affiliates.

Table of Contents

Table of Contents