

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

**FORM S-8
REGISTRATION STATEMENT**

*Under
THE SECURITIES ACT OF 1933*

PRO-PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

NEVADA
(State or other jurisdiction of
incorporation or organization)

04-3562325
(I.R.S. Employer
Identification Number)

189 Wells Avenue, Newton, Massachusetts 02459
(Address of registrant's principal executive offices)

**Pro-Pharmaceuticals, Inc. 2001 Stock Incentive Plan
Pro-Pharmaceuticals, Inc. 2003 Non-employee Director Stock Incentive Plan**
(Full titles of the plans)

David Platt, Ph.D.
President and Chief Executive Officer
Pro-Pharmaceuticals, Inc.
189 Wells Avenue
Newton, Massachusetts 02459
(617) 559-0033
(Name, address and telephone number, including area code, of agent for service)

with a copy to:

Jonathan C. Guest, Esq.
Perkins Smith & Cohen LLP
One Beacon Street
Boston, Massachusetts 02108
(617) 854-4000

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
Common Stock \$.001 par value	2,000,000 shares	\$ 3.91(2)	\$ 7,818,850.00(2)	\$ 632.54(2)
Common Stock \$.001 par value	1,000,000 shares	\$ 4.44(3)	\$ 4,440,000.00(3)	\$ 359.20(3)

- (1) This registration statement covers 2,000,000 shares of common stock that may be issued under the registrant's 2001 Stock Incentive Plan and 1,000,000 shares that may be issued under the registrant's 2003 Non-employee Director Stock Incentive Plan (collectively, the "Plans"). In addition, this registration statement covers an indeterminate number of additional shares of common stock that may be issued under said Plans as a result of a stock dividend, stock split or other recapitalization.
- (2) Estimated solely for the purpose of calculating the registration fee in accordance with Rules 457(c) and 457(h) under the Securities Act of 1933, as amended, based on the weighted average of (i) 445,000 shares underlying options granted and outstanding under the 2001 Stock Incentive Plan exercisable at \$3.50 per share, (ii) 50,000 shares underlying options granted and outstanding under the 2001 Stock Incentive Plan exercisable at \$2.97 per share, (iii) 50,000 shares underlying options granted and outstanding under the 2001 Stock Incentive Plan exercisable at \$2.92 per share, (iv) 1,265,000 shares underlying options granted and outstanding under the 2001 Stock Incentive Plan exercisable at \$4.05 per share, and (v) 190,000 shares underlying options remaining available for grant under the 2001 Stock Incentive Plan at an assumed per share exercise price of \$4.44 representing the average of the high and low prices per share of the registrant's common stock as reported on the American Stock Exchange on October 20, 2003.
- (3) Estimated solely for the purpose of calculating the registration fee in accordance with Rules 457(c) and 457(h) under the Securities Act of 1933, as amended, based on the average of the high and low prices per share of the registrant's common stock as reported on the American Stock Exchange on October 20, 2003.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

Item 1. Plan Information.

Not required to be filed with this registration statement.

Item 2. Registrant Information and Employee Plan Annual Information.

Not required to be filed with this registration statement.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The registrant is subject to the informational and reporting requirements of Sections 13(a), 14, and 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and in accordance therewith files reports, proxy statements and other information with the Securities and Exchange Commission (the “Commission”). The following documents filed with the Commission by the registrant (Exchange Act File No. 000-32877) are incorporated in this registration statement by reference:

- (a) The registrant’s Annual Report on Form 10-KSB for the year ended December 31, 2002.
- (b) The registrant’s Quarterly Reports on Form 10-QSB for the quarters ended March 31, 2003 and June 30, 2003.
- (c) The registrant’s Current Reports on Form 8-K filed on September 9, 2003, September 26, 2003 and October 10, 2003.

(d) The description of the securities contained in the registrant’s registration statement on Form 10-SB filed under the Exchange Act dated June 13, 2001, as amended July 26, 2001, including any amendments or reports filed for the purpose of updating such description. For the most recent description, please see “Description of Capital Stock” in the registrant’s registration statement on Form SB-2 (File No. 333-107112), as amended, as originally filed with the Commission on July 17, 2003.

(e) Matters disclosed under the heading “Recent Events” in the registrant’s registration statement on Form S-3 (File No. 333-109887) as filed with the Commission on October 22, 2003.

All documents subsequently filed by the registrant pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be part hereof from the date of the filing of such documents. Any statement contained in a document

incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for the purposes of this registration statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

Item 4. Description of Securities.

Not Applicable.

Item 5. Interests of Named Experts and Counsel.

Not Applicable.

Item 6. Indemnification of Directors and Officers.

The registrant's By-laws, as amended to date, provide for indemnification of officers and directors to the fullest extent permitted by Section 7502 of Chapter 78 of the Nevada Revised Statutes ("NRS") (as from time to time amended), provided such officer or director acts in good faith and in a manner which such person reasonably believes to be in or not opposed to the best interests of the registrant, and with respect to any criminal matter, had no reasonable cause to believe such person's conduct was unlawful.

NRS 78.7502 states:

"1. A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, except an action by or in the right of the corporation, by reason of the fact that he is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with the action, suit or proceeding if he:

(a) Is not liable pursuant to NRS 78.138; or

(b) Acted in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the person is liable pursuant to NRS 78.138 or did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation, or that, with respect to any criminal action or proceeding, he had reasonable cause to believe that his conduct was unlawful.

2. A corporation may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the corporation to procure a judgment in its favor by reason of the fact that he is or was a director, officer,

employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses, including amounts paid in settlement and attorneys' fees actually and reasonably incurred by him in connection with the defense or settlement of the action or suit if he:

(a) Is not liable pursuant to NRS 78.138; or

(b) Acted in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the corporation.

Indemnification may not be made for any claim, issue or matter as to which such a person has been adjudged by a court of competent jurisdiction, after exhaustion of all appeals therefrom, to be liable to the corporation or for amounts paid in settlement to the corporation, unless and only to the extent that the court in which the action or suit was brought or other court of competent jurisdiction determines upon application that in view of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

3. To the extent that a director, officer, employee or agent of a corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections 1 and 2, or in defense of any claim, issue or matter therein, the corporation shall indemnify him against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense."

The registrant's By-laws also provide that to the fullest extent permitted by NRS 78.751 (as from time to time amended), the registrant shall pay the expenses of officers and directors of the Corporation incurred in defending a civil or criminal action, suit or proceeding, as they are incurred and in advance of the final disposition of such matter, upon receipt of an undertaking in form and substance acceptable to the Board of Directors for the repayment of such advances if it is ultimately determined by a court of competent jurisdiction that the officer or director is not entitled to be indemnified.

NRS 78.751 states:

"1. Any discretionary indemnification pursuant to NRS 78.7502, unless ordered by a court or advanced pursuant to subsection 2, may be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is proper in the circumstances. The determination must be made:

(a) By the stockholders;

(b) By the board of directors by majority vote of a quorum consisting of directors who were not parties to the action, suit or proceeding;

(c) If a majority vote of a quorum consisting of directors who were not parties to the action, suit or proceeding so orders, by independent legal counsel in a written opinion; or

(d) If a quorum consisting of directors who were not parties to the action, suit or proceeding cannot be obtained, by independent legal counsel in a written opinion.

2. The articles of incorporation, the bylaws or an agreement made by the corporation may provide that the expenses of officers and directors incurred in defending a civil or criminal action, suit or proceeding must be paid by the corporation as they are incurred and in advance of the final disposition of the action, suit or proceeding, upon receipt of an undertaking by or on behalf of the director or officer to repay the amount if it is ultimately determined by a court of competent jurisdiction that he is not entitled to be indemnified by the corporation. The provisions of this

subsection do not affect any rights to advancement of expenses to which corporate personnel other than directors or officers may be entitled under any contract or otherwise by law.

3. The indemnification pursuant to NRS 78.7502 and advancement of expenses authorized in or ordered by a court pursuant to this section:

(a) Does not exclude any other rights to which a person seeking indemnification or advancement of expenses may be entitled under the articles of incorporation or any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, for either an action in his official capacity or an action in another capacity while holding his office, except that indemnification, unless ordered by a court pursuant to NRS 78.7502 or for the advancement of expenses made pursuant to subsection 2, may not be made to or on behalf of any director or officer if a final adjudication establishes that his acts or omissions involved intentional misconduct, fraud or a knowing violation of the law and was material to the cause of action.

(b) Continues for a person who has ceased to be a director, officer, employee or agent and inures to the benefit of the heirs, executors and administrators of such a person.”

In addition, the registrant maintains directors’ and officers’ liability insurance which insures against liabilities that its directors and officers may incur in such capacities.

Reference is made to “Undertakings,” below, for the registrant’s undertakings in this registration statement with respect to indemnification of liabilities arising under the Securities Act of 1933, as amended (the “Securities Act”).

Item 7. Exemption from Registration Claimed.

Not Applicable.

Item 8. Exhibits.

The Exhibit Index immediately preceding the exhibits is incorporated herein by reference.

Item 9. Undertakings.

(a) The undersigned small business issuer will:

(1) File, during any period in which it offers or sells securities, a post-effective amendment to this registration statement to:

(i) Include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) Reflect in the prospectus any facts or events which, individually or together, represent a fundamental change in the information in the registration statement; and notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in the volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the “Calculation of Registration Fee” table in the effective registration statement; and

(iii) Include any additional or changed material information on the plan of distribution;

provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) above do not apply if the information required to be included in a post-effective amendment by those paragraphs is incorporated by reference from periodic reports filed by the small business issuer under the Exchange Act.

(2) For determining liability under the Securities Act, treat each post-effective amendment as a new registration statement of the securities offered, and the offering of the securities at that time to be the initial bona fide offering.

(3) File a post-effective amendment to remove from registration any of the securities that remain unsold at the end of the offering.

(b) The undersigned small business issuer hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the small business issuer's annual report pursuant to Section 13(a) or 15(d) of the Exchange Act that is incorporated by reference in this registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the small business issuer pursuant to the foregoing provisions, or otherwise, the small business issuer has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the small business issuer of expenses incurred or paid by a director, officer or controlling person of the small business issuer in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the small business issuer will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements of filing on Form S-8 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized in Newton, Massachusetts, on October 22, 2003.

PRO-PHARMACEUTICALS, INC.

Registrant

By: /s/ DAVID PLATT, Ph.D.

David Platt, Ph.D.
President and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints David Platt, Ph.D. his true and lawful attorney-in-fact and agent with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities to sign any or all amendments (including, without limitation, post-effective amendments) to this registration statement, any related registration statement filed pursuant to Rule 462(b) under the Securities Act of 1933 and any or all pre- or post-effective amendments thereto, and to file the same, with all exhibits thereto, and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully for all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or any substitute or substitutes therefor, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates stated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
/s/ DAVID PLATT, Ph.D. _____ David Platt, Ph.D.	President, Chief Executive Officer, Secretary and Director (Principal Executive Officer)	October 22, 2003
/s/ MAUREEN FOLEY _____ Maureen Foley	Acting Chief Financial Officer and Treasurer (Principal Financial and Accounting Officer), and Chief Operating Officer	October 22, 2003
/s/ JAMES C. CZIRR _____ James C. Czirr	Executive Vice President of Business Development and Director	October 22, 2003
/s/ BURTON C. FIRTEL _____ Burton C. Firtel	Director	October 22, 2003
/s/ DALE H. CONAWAY, D.V.M. _____ Dale H. Conaway, D.V.M.	Director	October 22, 2003

/s/ DAVID H. SMITH	Director	October 22, 2003
David H. Smith		
/s/ EDGAR BEN-JOSEF, M.D.	Director	October 22, 2003
Edgar Ben-Josef, M.D.		
/s/ STEVEN PRELACK	Director	October 22, 2003
Steven Prelack		
/s/ MILDRED S. CHRISTIAN, Ph.D.	Director	October 22, 2003
Mildred S. Christian, Ph.D.		

Exhibit Index

Exhibit Number	Description of Document	Page
4.1	Articles of Incorporation of the Registrant, dated January 26, 2001	*
4.2	Amended and Restated By-laws of the Registrant	*
5	Opinion of Perkins Smith & Cohen LLP (including the consent of such firm) regarding the legality of the securities being offered	
23.1	Consent of Perkins Smith & Cohen LLP (included as part of Exhibit 5 hereto)	
23.2	Consent of Deloitte & Touche LLP, independent auditors	
23.3	Consent of Scillia Dowling & Natarelli LLC, independent auditors	
24	Powers of Attorney (included on signature page)	
99.1	Pro-Pharmaceuticals, Inc. 2001 Stock Incentive Plan	**
99.2	Pro-Pharmaceuticals, Inc. 2003 Non-employee Director Stock Incentive Plan	
*	Incorporated by reference to the Registrant's Registration Statement on Form 10-SB, as filed with the Commission on June 13, 2001.	
**	Incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-QSB for the period ended September 30, 2001, as filed with the Commission on November 14, 2001.	

October 22, 2003

Pro-Pharmaceuticals, Inc.
189 Wells Avenue, Suite 200
Newton, Massachusetts 02458

Ladies and Gentlemen:

We have acted as counsel for Pro-Pharmaceuticals, Inc., a Nevada corporation (the “Company”), in connection with the preparation and filing with the Securities and Exchange Commission (the “Commission”) of a Registration Statement on Form S-8 (the “Registration Statement”), pursuant to which the Company is registering the issuance under the Securities Act of 1933, as amended (the “Securities Act”), of 3,000,000 shares (the “Shares”) of its common stock, par value \$.001 per share (the “Common Stock”), to be offered for sale by the Company from time to time under the Pro-Pharmaceuticals, Inc. 2001 Stock Incentive Plan and the Pro-Pharmaceuticals, Inc. 2003 Non-employee Director Stock Incentive Plan (collectively, the “Plans”). This opinion is being rendered in connection with the filing of the Registration Statement.

As counsel to the Company, in connection with this opinion, we have examined the Company’s Articles of Incorporation and Amended and Restated By-laws, both as currently in effect; such other records of the corporate proceedings of the Company as we deemed relevant; and the Registration Statement and the exhibits thereto.

In our examinations, we have assumed the genuineness of all signatures, the legal capacity of natural persons signing or delivering any instrument, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or photostatic copies and the authenticity of the originals of such latter documents.

Based upon the foregoing, we are of the opinion that (i) the Shares have been duly and validly authorized by the Company and (ii) the Shares, when issued in accordance with the terms of the applicable Plan and any applicable agreements thereto, will be duly and validly issued, fully paid and non-assessable shares of Common Stock.

We express no opinion herein as to the laws of any state or jurisdiction other than Chapter 78 of the Nevada Revised Statutes. No opinion is expressed herein with respect to the qualification of the Shares under the securities or blue sky laws of any state or any foreign jurisdiction.

We understand that you wish to file this opinion as an exhibit to the Registration Statement, and we hereby consent thereto. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the General Rules and Regulations of the Commission thereunder.

Very truly yours,

/s/ PERKINS SMITH & COHEN LLP

Perkins Smith & Cohen LLP

INDEPENDENT AUDITORS' CONSENT

We consent to the incorporation by reference in this Registration Statement of Pro-Pharmaceuticals, Inc. (the "Company") on Form S-8 of our report dated March 24, 2003 (which expresses an unqualified opinion and includes an explanatory paragraph referring to the Company's ability to continue as a going concern), appearing in the Annual Report on Form 10-KSB of Pro-Pharmaceuticals for the year ended December 31, 2002.

/s/ Deloitte & Touche LLP
Deloitte & Touche LLP
Boston, Massachusetts

October 20, 2003

INDEPENDENT AUDITOR'S CONSENT

We consent to the incorporation by reference in this Registration Statement of Pro-Pharmaceuticals, Inc. (the "Company") on Form S-8, pertaining to the registration of an aggregate of 3,000,000 shares of common stock under the Pro-Pharmaceuticals, Inc. 2001 Stock Incentive Plan and the Pro-Pharmaceuticals, Inc. 2003 Non-employee Director Stock Incentive Plan, of our report dated April 10, 2002 with respect to the financial statements of the Company (which expresses an unqualified opinion), which appears in the Company's Annual Report on Form 10-KSB for the year ended December 31, 2002.

/s/ Scillia Dowling & Natarelli LLC

Scillia Dowling & Natarelli LLC
Hartford, Connecticut

October 20, 2003

PRO-PHARMACEUTICALS, INC.**2003 NON-EMPLOYEE
DIRECTOR STOCK INCENTIVE PLAN****1. Purposes of the Plan.**

The purpose of this 2003 Non-employee Director Stock Option Plan (the “Plan”) of Pro-Pharmaceuticals, Inc. (the “Company”) is to promote the interests of the Company and its stockholders by strengthening the Company’s ability to attract, motivate, and retain non-employee directors of exceptional ability and to provide a means to encourage stock ownership and a proprietary interest in the Company by them upon whose judgment, initiative, and efforts the financial success and growth of the business of the Company largely depend.

2. Definitions.

(a) “Accelerate,” “Accelerated,” and “Acceleration,” (i) when used with respect to an Option, mean that as of the relevant time of reference, such Option shall become fully exercisable with respect to the total number of shares of Common Stock subject to such Option and may be exercised for all or any portion of such shares and (ii) when used with respect to shares of Common Stock granted pursuant to a Restricted Stock Award, mean that as of the relevant time of reference, such shares shall become free of any reacquisition or repurchase rights in the Company with respect thereto.

(b) “Acquisition” means

(i) a merger or consolidation in which securities possessing more than 50% of the total combined voting power of the Company’s outstanding securities are transferred to a person or persons different from the persons who held those securities immediately prior to such transaction, or

(ii) the sale, transfer, or other disposition of all or substantially all of the Company’s assets to one or more persons (other than any wholly owned subsidiary of the Company) in a single transaction or series of related transactions.

(c) “Beneficial Ownership” means beneficial ownership determined pursuant to Securities and Exchange Commission Rule 13d-3 promulgated under the Exchange Act.

(d) “Board” means the Board of Directors of the Company.

(e) “Change in Control” means a change in ownership or control of the Company effected through either of the following transactions:

(i) any person or related group of persons (other than the Company or a person that directly or indirectly controls, is controlled by, or is under common control with the Company) directly or indirectly acquires Beneficial Ownership of

securities possessing more than 50% of the total combined voting power of the Company's outstanding securities pursuant to a tender or exchange offer made directly to the Company's stockholders that the Board does not recommend such stockholders to accept, or

(ii) over a period of 36 consecutive months or less, there is a change in the composition of the Board such that a majority of the Board members (rounded up to the next whole number, if a fraction) ceases, by reason of one or more proxy contests for the election of Board members, to be composed of individuals who either (A) have been Board members continuously since the beginning of such period, or (B) have been elected or nominated for election as Board members during such period by at least a majority of the Board members described in the preceding clause (A) who were still in office at the time such election or nomination was approved by the Board.

(f) "Code" means the Internal Revenue Code of 1986, as amended or replaced from time to time.

(g) "Committee" means the Compensation Committee of the Board; *provided*, that the Board by resolution duly adopted may at any time or from time to time determine to assume any or all of the functions of the Committee under the Plan, and during the period of effectiveness of any such resolution, references herein to the "Committee" shall mean the Board acting in such capacity. During any period in which there is no Committee or the Committee has disbanded, the Board shall be deemed to be the Committee and references herein to the "Committee" shall mean the Board acting in such capacity.

(h) "Common Stock" means the authorized common stock, \$.001 par value per share, of the Company.

(i) "Company" means Pro-Pharmaceuticals, Inc., a Nevada corporation.

(j) "Eligible Person" means any person who is, at the time of the grant of an Option or Restricted Stock Award, an outside (non-employee) director to the Company or any Subsidiary.

(k) "Exchange Act" means the Securities Exchange Act of 1934, as amended and in effect from time to time.

(l) "Fair Market Value" means the value of a share of Common Stock as of the relevant time of reference, as determined as follows. If the Common Stock is then publicly traded, Fair Market Value shall be (i) the closing price of a share of Common Stock on the principal national securities exchange on which the Common Stock is traded, if the Common Stock is then traded on a national securities exchange; or (ii) the last sale price of the Common Stock reported in the NASDAQ National Market System, if the Common Stock is not then traded on a national securities exchange; or (iii) the average of the closing bid and asked prices for the Common Stock quoted by an established quotation service for over-the-counter securities, if the Common Stock is not then traded on a national securities exchange or reported in the NASDAQ

National Market System. If the Common Stock is not then publicly traded, Fair Market Value shall be the fair value of a share of the Common Stock as determined by the Board or the Committee, taking into consideration such factors as it deems appropriate, which may include recent sale and offer prices of Common Stock in arms'-length private transactions.

(m) "Nonqualified Stock Option" means a stock option granted hereunder that is not intended to be an incentive stock option, as defined by Section 422 of the Code.

(n) "Option" means a Nonqualified Stock Option.

(o) "Participant" means any Eligible Person selected to receive an Option or Restricted Stock Award pursuant to Section 5 or any Permitted Transferee to whom an Option or Restricted Stock has been transferred in accordance with Section 9(e).

(p) "Permitted Transferee" means any immediate family member of a person to whom an Option or Restricted Stock Award has been granted pursuant to Section 5 or a trust maintained exclusively for the benefit of, or partnership of all of the interests which are held by, one or more of such immediate family members.

(q) "Plan" means this 2003 Non-employee Director Stock Incentive Plan as set forth herein and as amended and/or restated from time to time.

(r) "Restricted Stock Award" means a right to the grant or purchase, at a price determined by the Committee, of Common Stock which is nontransferable, except in accordance with Section 9(e) and subject to substantial risk of forfeiture until specific conditions of continuing employment or performance, specified by the Committee, are met.

(s) "Subsidiary" means any subsidiary corporation (as defined in Section 424 of the Code) of the Company.

3. Shares of Common Stock Subject to the Plan.

(a) Subject to adjustment in accordance with the provisions of Section 3(c) and Section 8 of the Plan, the aggregate number of shares of Common Stock that may be issued or transferred pursuant to Options or Restricted Stock Awards under the Plan shall not exceed 1,000,000 shares.

(b) The shares of Common Stock to be delivered under the Plan will be made available, at the discretion of the Committee, from authorized but unissued shares of Common Stock and/or from previously issued shares of Common Stock reacquired by the Company and shall be issued subject to any and all restrictions on the Company's Common Stock in effect as of the time of the issuance.

(c) If shares covered by any Option cease to be issuable for any reason, and/or shares covered by Restricted Stock Awards are forfeited, such number of shares will no longer be

charged against the limitation provided in Section 3(a) and may again be made subject to Options or Restricted Stock Awards.

(s) All Options granted under the Plan shall be nonqualified options, which are not intended to meet the requirements of Section 422 of the Code.

4. Administration of the Plan.

(a) The Plan will be governed by and interpreted and construed in accordance with the internal laws of the Commonwealth of Massachusetts (without reference to principles of conflicts or choice of law). The captions of sections of the Plan are for reference only and will not affect the interpretation or construction of the Plan.

(b) The Plan will be administered by the Committee as determined and appointed by the Company's Board of Directors, which shall consist of two or more persons. The Committee has and may exercise such powers and authority of the Board as may be necessary or appropriate for the Committee to carry out its functions as described in the Plan. The Committee also has authority (i) to interpret the Plan, (ii) to determine the terms and provisions of the Option or Restricted Stock Award instruments, and (iii) to make all other determinations necessary or advisable for Plan administration. The Committee has authority to prescribe, amend, and rescind rules and regulations relating to the Plan. All interpretations, determinations, and actions by the Committee will be final, conclusive, and binding upon all parties.

(c) Grants of Options or Restricted Stock Awards under the Plan and the amount and nature of the such grants shall be automatic and non-discretionary in accordance with Section 5.

(d) No member of the Committee will be liable for any action taken or determination made in good faith by the Committee with respect to the Plan or any Option or Restricted Stock Award under it.

5. Grant of Options and Restricted Stock Awards.

(a) *Option Grant Dates.* Options shall be granted automatically to all Eligible Persons as follows: (i) each person who becomes an Eligible Person after the date of shareholder approval of the Plan shall be granted an Option to purchase not more than ten thousand (10,000) shares of Common Stock on the close of business on the date of his or her initial election to the Board, and (ii) each Eligible Person shall be granted annually an Option to purchase that number of shares of Common Stock equal to (A) if the Board meets monthly the product of: 500 x (number of Board meetings attended), or if the Board commences to meet quarterly the product of: 1,500 x (number of Board meetings attended) plus (B) the product of: 500 x (number of special Board committee meetings (i.e., meetings other than regularly scheduled meetings) attended + number of Board committee meetings attended) for each fiscal year of the Company on the fifth business day following the end of the Company's preceding fiscal year, provided that he or she is an Eligible Person on the date of grant.

(b) *Restricted Stock Award Dates.* At the sole discretion of the Committee, the Committee may at any time and from time to time determine that it is advisable and in the best

interests of the Company to issue Restricted Stock Awards in place of Options to be granted pursuant to Section 5(a).

6. Terms and Conditions of Options.

Each Option granted under the Plan shall be evidenced by a written agreement in such form as the Committee shall from time to time approve, which agreement shall comply with and be subject to the following terms and conditions.

(a) *Option Exercise Price.* The price at which Common Stock may be purchased by a Participant under an Option shall be the closing price per share of the Company's Common Stock on the American Stock Exchange, or the principal exchange on which the Common Stock is then listed, on the date of grant (or if no such price is reported on such date, such price as reported on the nearest preceding date on which such price is reported).

(b) *Exercise Period; Vesting.* Each Option shall be exercisable at such time or times, during such periods, and for such numbers of shares as shall be determined by the Committee and set forth in the agreement or instrument evidencing the Option grant (subject to Acceleration by the Committee, in its discretion). In any event, the Option shall expire no later than the **seventh** anniversary of the date of grant.

(c) *Exercise and Payment.* Options may be exercised only by written notice to the Company at its principal office accompanied by payment in full consideration for the shares as to which they are exercised. Unless the Committee otherwise determines at the time of grant of any Option or thereafter, upon the exercise of an Option, the purchase price will be payable in full in cash.

(d) *Fractional Shares.* No fractional shares will be issued pursuant to the exercise of an Option, nor will any cash payment be made in lieu of fractional shares.

7. Terms and Conditions of Restricted Stock Awards.

Each Restricted Stock Award granted under the Plan shall be evidenced by a written agreement in such form as the Committee shall from time to time approve, which agreement shall comply with and be subject to the following terms and conditions.

(a) All shares of Common Stock subject to Restricted Stock Awards granted or sold pursuant to the Plan may be issued or transferred for such consideration (which may consist wholly of services) as the Committee may determine, and will be subject to the following conditions:

(i) The shares may not be sold, transferred, or otherwise alienated or hypothecated, except to the Company, until the conditions imposed pursuant to subsection (b) of this Section 7 have been met or are removed, unless the Committee determines otherwise in accordance with Section 9(d).

(ii) The Committee may provide in the agreement or instrument evidencing the grant of the Restricted Stock Awards that the certificates representing shares subject to Restricted Stock Awards granted or sold pursuant to the Plan will be held in escrow by the Company until the restrictions on the shares lapse in accordance with the provisions of subsection (b) of this Section 7.

(iii) Each certificate representing shares subject to Restricted Stock Awards granted or sold pursuant to the Plan will bear a legend making appropriate reference to the restrictions imposed.

(iv) The Committee may impose other conditions on any shares subject to Restricted Stock Awards granted or sold pursuant to the Plan as it may deem advisable, including without limitation, restrictions under the Securities Act of 1933, as amended, under the requirements of any stock exchange or securities quotations system upon which such shares or shares of the same class are then listed, and under any blue sky or other securities laws applicable to such shares.

(b) The restrictions imposed under subparagraph (a) above upon Restricted Stock Awards will lapse at such time or times, and/or upon the achievement of such predetermined performance objectives, as shall be determined by the Committee and set forth in the agreement or instrument evidencing the Restricted Stock Award grant. In the event a holder of a Restricted Stock Award ceases to be an outside director of the Company, all shares under the Restricted Stock Award that remain subject to restrictions at the time his or her directorship terminates will be returned to or repurchased by the Company at their initial price unless the Committee determines otherwise.

(c) Subject to the provisions of subparagraphs (a) and (b) above, the holder will have all rights of a shareholder with respect to the shares covered by Restricted Stock Awards granted or sold, including the right to receive all dividends and other distributions paid or made with respect thereto; *provided, however*, that the Committee may require that he or she shall execute an irrevocable proxy or enter into a voting agreement with the Company as determined by the Committee for the purpose of granting the Company or its nominee the right to vote all shares that remain subject to restrictions under this Section 7 in the same proportions (for and against) as the outstanding voting shares of the Company that are not subject to such restrictions are voted by the other shareholders of the Company on any matter, unless the Committee determines otherwise.

8. Adjustment Provisions.

(a) All of the share numbers set forth in the Plan reflect the capital structure of the Company at the time of the effectiveness of the Plan. Subject to Section 8(b), if subsequent to such date the outstanding shares of Common Stock of the Company are increased, decreased, or exchanged for a different number or kind of shares or other securities, or if additional shares or new or different shares or other securities are distributed with respect to such shares of Common Stock or other securities, through merger, consolidation, sale of all or substantially all the property of the Company, reorganization, recapitalization, reclassification, stock dividend, stock split, reverse stock split, or other distribution with respect to such shares of Common Stock, or other

securities, an appropriate and proportionate adjustment shall be made in (i) the maximum numbers and kinds of shares provided in Sections 3 and 5, (ii) the numbers and kinds of shares or other securities subject to the then outstanding Options and Restricted Stock Awards, and (iii) the price for each share or other unit of any other securities subject to then outstanding Options (without change in the aggregate purchase price as to which such Options remain exercisable).

(b) Upon the occurrence of a Change in Control of the Company, the Committee shall have discretion to provide for the Acceleration of (i) one or more outstanding Options held by Participants and/or (ii) one or more shares of Common Stock held by Participants as Restricted Stock Awards. Such Acceleration may be conditioned on the subsequent termination of the affected optionee's directorship. Any Options Accelerated in connection with a Change in Control shall remain fully exercisable until the expiration or sooner termination of the term of such Option.

(c) In the event of an Acquisition, (i) to the extent that any shares of Common Stock held by Participants as Restricted Stock Awards are then subject to any rights in the Company with respect to the reacquisition or repurchase thereof, such reacquisition or repurchase rights shall be terminated immediately, except to the extent that such reacquisition or repurchase rights are to be assigned to the acquiring entity and (ii) all outstanding Options held by Participants will Accelerate to the extent not assumed by the acquiring entity or replaced by comparable options to purchase shares of the capital stock of the successor or acquiring entity or parent thereof (the determination of comparability to be made by the Committee, which determination shall be final, binding, and conclusive). The Committee shall have discretion, exercisable either in advance of an Acquisition or at the time thereof, to provide (upon such terms as it may deem appropriate) for the automatic Acceleration of (i) one or more outstanding Options held by Participants that are assumed or replaced and do not otherwise Accelerate by reason of the Acquisition, and/or (ii) one or more shares held by Participants as Restricted Stock Awards that are assigned in connection with the Acquisition and do not otherwise Accelerate at the time thereof, in the event that the directorship, as applicable, of the respective grantees of such Options or Restricted Stock Awards should subsequently terminate following such Acquisition.

(d) Each outstanding Option that is assumed in connection with an Acquisition, or is otherwise to continue in effect subsequent to such Acquisition, shall be appropriately adjusted, immediately after such Acquisition, to apply to the number and class of securities that would have been issued to the Option holder, in consummation of such Acquisition, had such holder exercised such Option immediately prior to such Acquisition. Appropriate adjustments shall also be made to the Option price payable per share, *provided*, that the aggregate Option price payable for such securities shall remain the same. The class and number of securities available for issuance under the Plan following the consummation of such Acquisition shall be appropriately adjusted.

(e) Adjustments under this Section 8 will be made by the Committee in accordance with the terms of such sections, whose determination as to what adjustments will be made and the extent thereof so as to effectuate the intent of such sections will be final, binding, and conclusive. No fractional shares will be issued under the Plan on account of any such adjustments.

9. General Provisions.

(a) Nothing in the Plan or in any instrument executed pursuant to the Plan will confer upon any Participant any right to continue as a director of the Company or any of its Subsidiaries, for any period of time, or affect the right of the Company or any Subsidiary to terminate its relationship with the Participant at any time, with or without cause.

(b) No shares of Common Stock will be issued or transferred pursuant to an Option or Restricted Stock Award unless and until all then applicable requirements imposed by federal and state securities and other laws, rules and regulations and by any regulatory agencies having jurisdiction, and by any stock exchanges or securities quotations systems upon which the Common Stock may be listed, have been fully met. As a condition precedent to the issuance of shares pursuant to the grant or exercise of an Option or Restricted Stock Award, the Company may require the Participant to take any reasonable action to meet such requirements.

(c) No Participant and no beneficiary or other person claiming under or through such Participant will have any right, title, or interest in or to any shares of Common Stock allocated or reserved under the Plan or subject to any Option, except as to such shares of Common Stock, if any, that have been issued or transferred to such Participant.

(d) Except as set forth in paragraph (f) below, no Option and no right under the Plan, contingent or otherwise, will be transferable or assignable or subject to any encumbrance, pledge, or charge of any nature except that, under such rules and regulations as the Committee may establish pursuant to the terms of the Plan, a beneficiary may be designated with respect to an Option in the event of death of a Participant. If such beneficiary is the executor or administrator of the estate of the Participant, any rights with respect to such Option may be transferred to the person or persons or entity (including a trust) entitled thereto under the will of the holder of such Option.

(e) The Committee may, upon the grant of a Nonqualified Stock Option or a Restricted Stock Award or by amendment to any written agreement or instrument evidencing such Nonqualified Stock Option or Restricted Stock Award, provide that such Nonqualified Stock Option or Restricted Stock Award be transferable by the person to whom such Nonqualified Stock Option or Restricted Stock Award was granted, without payment of consideration, to a Permitted Transferee of such person; *provided, however*, that no transfer of a Nonqualified Stock Option or Restricted Stock Award shall be valid unless first approved by the Committee, acting in its sole discretion.

(f) The Committee may cancel, with the consent of the Participant, all or a portion of any Option granted under the Plan to be conditioned upon the granting to the Participant of a new Option for the same or a different number of shares as the Option surrendered, or may require such voluntary surrender as a condition to a grant of a new Option to such Participant. Subject to the provisions of Section 6(d), such new Option shall be exercisable at such time or time, during such periods, and for such numbers of shares, and in accordance with any other terms or conditions, as are specified by the Committee at the time the new Option is granted, all determined in accordance with the provisions of the Plan without regard to the price, period of exercise, or any other terms or conditions of the Option surrendered.

(g) The written agreements or instruments evidencing Restricted Stock Awards or Options granted under the Plan may contain such other provisions as the Committee may deem advisable. Without limiting the foregoing, and if so authorized by the Committee at the date of grant or thereafter in the case of any Nonqualified Stock Option, the Company may, with the consent of the Participant and at any time or from time to time, cancel all or a portion of any Option granted under the Plan then subject to exercise and discharge its obligation with respect to the Option either by payment to the Participant of an amount of cash equal to the excess, if any, of the Fair Market Value, at such time, of the shares subject to the portion of the Option so canceled over the aggregate purchase price specified in the Option covering such shares, or by issuance or transfer to the Participant of shares of Common Stock with a Fair Market Value at such time, equal to any such excess, or by a combination of cash and shares. Upon any such payment of cash or issuance of shares, (i) there shall be charged against the aggregate limitations set forth in Section 3(a) a number of shares equal to the number of shares so issued plus the number of shares purchasable with the amount of any cash paid to the Participant on the basis of the Fair Market Value as of the date of payment, and (ii) the number of shares subject to the portion of the Option so canceled, less the number of shares so charged against such limitations, shall thereafter be available for other grants.

10. Withholding.

The Committee shall adopt rules regarding the withholding of federal, state, or local taxes of any kind required by law to be withheld with respect to payments and delivery of shares to Participants under the Plan. Whenever shares of Common Stock are to be issued upon exercise of an Option, the Committee shall have the right to require the Optionee to remit to the Company an amount sufficient to satisfy federal, state, local or other withholding tax requirements (whether so required to secure for the Company an otherwise available tax deduction or otherwise) if and to the extent required by law prior to the delivery of any certificate for such shares. With respect to any Nonqualified Stock Option, the Committee, in its discretion, may permit the Participant to satisfy, in whole or in part, any tax withholding obligation that may arise in connection with the exercise of the Nonqualified Stock Option by electing to have the Company withhold shares of Common Stock having a Fair Market Value equal to the amount of the tax withholding.

11. Amendment and Termination.

(a) The Board shall have the power, in its discretion, to amend, modify, suspend, or terminate the Plan at any time, subject to the rights of holders of outstanding Options and Restricted Stock Awards on the date of such action, and to the approval of the stockholders of the Company if an amendment or modification would change the eligibility requirements of the Plan, extend the term of the Plan, increase the number of shares of Common Stock subject to grant as Options or Restricted Stock Awards under the Plan, or is required by applicable law or regulation.

(b) The Committee may, with the consent of a Participant, make such modifications in the terms and conditions of an Option or Restricted Stock Award held by such Participant as it deems advisable.

(c) No amendment, suspension or termination of the Plan will, without the consent of the Participant, alter, terminate, impair, or adversely affect any right or obligation under any Option or Restricted Stock Award previously granted to such Participant under the Plan.

12. Effective Date and Duration of the Plan.

(a) *Effective Date.* The Plan shall become effective upon its adoption by the Board, subject to approval by the Company's shareholders. Options and Restricted Stock Awards may be granted under the Plan at any time after its adoption by the Board, and before the date fixed for termination of the Plan. Any Option or Restricted Stock Award granted prior to shareholder approval shall be subject to such approval.

(b) *Termination.* Unless earlier terminated pursuant to Section 11, the Plan shall terminate on the earlier of (i) the tenth anniversary of the effective date at 12:01 AM, or (ii) the date on which all shares available for issuance under the Plan shall have been issued pursuant to Restricted Stock Awards or the exercise of Options granted under the Plan.