AEROGEN INC
Form PRE 14A
April 06, 2004

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SCHEDULE 14A INFORMATION

Proxy Statement Pursuant to Section 14(a) of
the Securities Exchange Act of 1934
(Amendment No.)

Filed by the Registrant ý

Filed by a Party other than the Registrant o

Check the appropriate box:

ý Preliminary Proxy Statement

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

o Definitive Proxy Statement

o Definitive Additional Materials

o Soliciting Material Pursuant to §240.14a-12

AEROGEN, 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)

ý No fee required.

o 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:

o Fee paid previously with preliminary materials.

o 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.

(6) Amount Previously Paid:

(7) Form, Schedule or Registration Statement No.:

(8) Filing Party:

(9) Date Filed:

Aerogen, Inc.
2071 Stierlin Court, Suite 100
Mountain View, CA 94043

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS
TO BE HELD MAY 10, 2004 AT 2:00 P.M.

To the Stockholders of Aerogen, Inc.:

NOTICE IS HEREBY GIVEN that an Annual Meeting of Stockholders of Aerogen, Inc. (the "Company") will be held at the Company's offices at 2071 Stierlin Court, Suite 100, Mountain View, California 94043, on Monday, May 10, 2004, at 2:00 p.m., local time, for the following purposes:

1. To approve the second closing of the Company's Series A-1 Preferred Stock financing, including the issuance of shares of the Company's Series A-1 Preferred Stock and the issuance of warrants to purchase shares of the Company's Common Stock;

2. To conduct the annual election of directors prescribed by the Company's Amended and Restated Certificate of Incorporation by electing two Class I directors to hold office for a term ending at the 2007 Annual Meeting of Stockholders or until their successors are elected and have qualified;

3. To approve an amendment to the Company's 2000 Equity Incentive Plan, as amended, to (i) increase the authorized number of shares of the Company's Common Stock authorized for issuance under the plan by 4,515,309 shares; and (ii) adjust the automatic increase provision of the plan to provide for a maximum automatic annual increase of 2,500,000 shares.

4. To approve an amendment to the Company's 2000 Employee Stock Purchase Plan, as amended, to (i) increase the authorized number of shares of the Company's Common Stock authorized for issuance under the plan by 1,589,752 shares; and (ii) adjust the automatic increase provision of the plan to provide for a maximum automatic annual increase of 400,000 shares.

5. To ratify the selection of PricewaterhouseCoopers LLP as the Company's independent auditors for the fiscal year ending December 31, 2004; and

6.

To transact such other business as may properly come before the meeting and any adjournments or postponements thereof.

These items of business are more fully described in the Proxy Statement accompanying this Notice.

The Board of Directors of the Company has fixed the close of business on April 15, 2004 as the record date for the determination of stockholders entitled to notice of and to vote at the Annual Meeting and at any adjournment or postponement thereof.

By Order of the Board of Directors,

/s/ Robert S. Breuil

Robert S. Breuil
Secretary

Mountain View, California
April 17, 2004

All stockholders are cordially invited to attend the meeting in person. Whether or not you expect to attend the meeting, please complete, date, sign and return the enclosed proxy as promptly as possible in order to ensure your representation at the meeting. A return envelope (which is postage prepaid if mailed in the United States) is enclosed for that purpose. Even if you have given your proxy, you may still vote in person if you attend the meeting. Please note, however, that if your shares are held of record by a broker, bank or other nominee and you wish to vote at the meeting, you must obtain from the record holder a proxy issued in your name.

Aerogen, Inc.
2071 Stierlin Court, Suite 100
Mountain View, CA 94043

PROXY STATEMENT
FOR AN ANNUAL MEETING OF STOCKHOLDERS

April 17, 2004

QUESTIONS AND ANSWERS ABOUT THIS PROXY MATERIAL AND VOTING

Why am I receiving these materials?

We sent you this proxy statement and the enclosed proxy card because the Board of Directors of Aerogen, Inc. (sometimes referred to herein as the "Company" or "Aerogen") is soliciting your proxy to vote at the Annual Meeting of Stockholders. You are invited to attend the annual meeting and we request that you vote on the proposals described in this proxy statement. However, you do not need to attend the meeting to vote your shares. Instead, you may simply complete, sign and return the enclosed proxy card.

The Company intends to mail this proxy statement and accompanying proxy card on or about April 17, 2004 to all stockholders of record entitled to vote at the Annual Meeting.

Who can vote at the annual meeting?

Only stockholders of record at the close of business on April 15, 2004 will be entitled to vote at the Annual Meeting. On this record date, there were [ ] shares of Common Stock and [ ] shares of Series A-1 Preferred Stock outstanding and entitled to vote.

Stockholder of Record: Shares Registered in Your Name

If, on April 15, 2004, your shares were registered directly in your name with Aerogen's transfer agent, Mellon Investor Services, LLC, then you are a stockholder of record. As a stockholder of record, you may vote in person at the meeting or vote by proxy. Whether or not you plan to attend the meeting, we urge you to fill out and return the enclosed proxy card to ensure that your vote is counted.

Beneficial Owner: Shares Registered in the Name of a Broker or Bank

If, on April 15, 2004, your shares were held in an account at a brokerage firm, bank, dealer, or other similar organization, then you are the beneficial owner of shares held in "street name" and these proxy materials are being forwarded to you by that organization. The organization holding your account is considered the stockholder of record for purposes of voting at the Annual Meeting. As a beneficial owner, you have the right to direct your broker or other agent on how to vote the shares in your account. You are also invited to attend the Annual Meeting. However, since you are not the stockholder of record, you may not vote your shares in person at the meeting unless you request and obtain a valid proxy from your broker or other agent.

Each holder of record of the Company's Series A-1 Preferred Stock (the "Series A-1 Preferred") on April 15, 2004 will be entitled to notice of the Annual Meeting and ten votes for each share of Series A-1 Preferred held. ***Holders of the Series A-1 Preferred are not entitled to vote with respect to Proposal 1.***

What am I voting on?

There are five matters scheduled for a vote:

1. Approve the second closing of the Company's Series A-1 Preferred Stock financing, including the sale and issuance of Series A-1 Preferred Stock and warrants to purchase shares of the Company's Common Stock;

2. To conduct the annual election of directors by electing two Class I directors to hold office until the 2007 Annual Meeting of Stockholders;

3. Proposed 4,515,309 share increase in the number of shares of common stock authorized for issuance under the Company's 2000 Equity Incentive Plan and adjustment to the automatic increase provision of the plan to provide for a maximum automatic annual increase of 2,500,000 shares;

4. Proposed 1,589,752 share increase in the number of shares of common stock authorized for issuance under the Company's 2000 Employee Stock Purchase Plan and adjustment to the automatic increase provision of the plan to provide for a maximum automatic annual increase of 400,000 shares; and

5. Ratification of PricewaterhouseCoopers LLP as independent auditors of the Company for its fiscal year ending December 31, 2004.

How do I vote?

You may either vote "For" all the nominees to the Board of Directors or you may abstain from voting for any nominee you specify. For each of the other matters to be voted on, you may vote "For" or "Against" or "Abstain" from voting. Abstaining will have the same effect as a "No" vote. The procedures for voting are fairly simple:

Stockholder of Record: Shares Registered in Your Name

If you are a stockholder of record, you may vote in person at the annual meeting or vote by proxy using the enclosed proxy card. Whether or not you plan to attend the meeting, we urge you to vote by proxy to ensure your vote is counted. You may still attend the meeting and vote in person if you have already voted by proxy.

To vote in person, come to the annual meeting and we will give you a ballot when you arrive.

To vote using the proxy card, simply complete, sign and date the enclosed proxy card and return it promptly in the envelope provided. If you return your signed proxy card to us before the annual meeting, we will vote your shares as you direct.

Beneficial Owner: Shares Registered in the Name of Broker or Bank

If you are a beneficial owner of shares registered in the name of your broker, bank, or other agent, you should have received a proxy card and voting instructions with these proxy materials from that organization rather than from Aerogen. Simply complete and mail the proxy card to ensure that your vote is counted. Alternatively, you may be able to vote by telephone or over the Internet as instructed by your broker or bank. To vote in person at the annual meeting, you must obtain a valid proxy from your broker, bank, or other agent. Follow the instructions from your broker or bank included with these proxy materials, or contact your broker or bank to request a proxy form.

How many votes do I have?

You have one vote for each share of common stock you own as of April 15, 2004. You have ten votes for each share of Series A-1 Preferred you own as of April 15, 2004.

What if I return a proxy card but do not make specific choices?

If you return a signed and dated proxy card without marking any voting selections, your shares will be voted: (i) "For" the approval of the second closing of the Series A-1 Preferred Stock financing of the Company, including the sale and issuance of Series A-1 Preferred and warrants to purchase the Company's Common Stock; (ii) "For" the election of the two nominees for director; (iii) "For" the increase in the number of shares of common stock authorized for issuance under the Company's 2000 Equity Incentive Plan; (iv) "For" the increase in the number of shares of common stock authorized for issuance under the Company's 2000 Employee Stock Purchase Plan; and (v) "For" the ratification of PricewaterhouseCoopers LLP as independent auditors of the Company for its fiscal year ending December 31, 2004. If any other matter is properly presented at the meeting, your proxy (one of the individuals named on your proxy card) will vote your shares using his or her best judgment.

Who is paying for this proxy solicitation?

We will pay for the entire cost of soliciting proxies. In addition to these mailed proxy materials, our directors and employees and Mellon Investor Services, LLC may also solicit proxies in person, by telephone, or by other means of communication. Directors and employees will not be paid any additional compensation for soliciting proxies, but Mellon Investor Services, LLC will be paid its customary fee of approximately $8,500 plus out-of-pocket expenses if it solicits proxies. We will also reimburse brokerage firms, banks and other agents for the cost of forwarding proxy materials to beneficial owners.

What does it mean if I receive more than one proxy card?

If you receive more than one proxy card, it is because your shares are registered in more than one name or are registered in different accounts. Please complete, sign and return each proxy card to ensure that all of your shares are voted.

Can I change my vote after submitting my proxy?

Yes. You can revoke your proxy at any time before the final vote at the meeting. You may revoke your proxy in any one of three ways:

You may submit another properly completed proxy card with a later date.

You may send a written notice that you are revoking your proxy to the Company's Secretary at 2071 Stierlin Court, Suite 100, Mountain View, CA 94043.

You may attend the special meeting and vote in person. Simply attending the meeting will not, however, by itself, revoke your proxy.

When are stockholder proposals due for next year's annual meeting?

To be considered for inclusion in next year's proxy materials, your proposal must be submitted in writing by December 18, 2004, to the Secretary of the Company, 2071 Stierlin Court, Suite 100, Mountain View, CA 94043. If you wish to bring a matter before the stockholders at next year's annual meeting and you do not notify Aerogen, Inc. before March 5, 2005, the Company's management will have discretionary authority to vote all shares for which it has proxies in opposition to the matter.

Stockholders are also advised to review the Company's Bylaws, which contain additional requirements with respect to advance notice of stockholder proposals and director nominations.

How are votes counted?

Votes will be counted by the inspector of election appointed for the meeting, who will separately count "For" and (with respect to proposals other than the election of directors) "Against" votes, abstentions and broker non-votes. Abstentions will be counted towards the vote total for each proposal, and will have the same effect as "Against" votes. Broker non-votes are counted towards a quorum, but are not counted for any purpose in determining whether a matter has been approved.

If your shares are held by your broker as your nominee (that is, in "street name"), you will need to obtain a proxy form from the institution that holds your shares and follow the instructions included on that form regarding how to instruct your broker to vote your shares. If you do not give instructions to your broker, your broker can vote your shares with respect to "discretionary" items, but not with respect to "non-discretionary" items. Discretionary items are proposals considered routine under the rules of the New York Stock Exchange on which your broker may vote shares held in street name in the absence of your voting instructions. On non-discretionary items for which you do not give your broker instructions, the shares will be treated as broker non-votes.

How many votes are needed to approve each proposal?

To be approved, Proposal No. 1, the proposed second closing of the Company's Series A-1 Preferred Stock financing, must receive a "For" vote from the majority of the shares present and entitled to vote either in person or by proxy held by stockholders who are not Investors in the Series A-1 Preferred Stock Financing. If you "Abstain" from voting, it will have the same effect as an "Against" vote. Broker non-votes will have no effect.

For the election of directors, the two nominees receiving the most "For" votes (among votes properly cast in person or by proxy) will be elected. Broker non-votes will have no effect.

To be approved, Proposal No. 3, the proposed increase in the number of shares of common stock authorized for issuance under the Company's 2000 Equity Incentive Plan, must receive a "For" vote from the majority of shares present and entitled to vote either in person or by proxy. If you "Abstain" from voting, it will have the same effect as an "Against" vote. Broker non-votes will have no effect.

To be approved, Proposal No. 4, the proposed increase in the number of shares of common stock authorized for issuance under the Company's 2000 Employee Stock Purchase Plan, must receive a "For" vote from the majority of shares present and entitled to vote either in person or by proxy. If you "Abstain" from voting, it will have the same effect as an "Against" vote. Broker non-votes will have no effect.

To be approved, Proposal No. 5, the ratification of PricewaterhouseCoopers LLP as independent auditors of the Company for its fiscal year ending December 31, 2004, must receive a "For" vote from the majority of shares present and entitled to vote either in person or by proxy. If you "Abstain" from voting, it will have the same effect as an "Against" vote. Broker non-votes will have no effect.

What is the quorum requirement?

A quorum of stockholders is necessary to hold a valid meeting. A quorum will be present if shares representing at least a majority of the outstanding voting power are represented by stockholders present at the meeting or by proxy. On the record date, shares representing a total of [ ] votes

were outstanding and entitled to vote. Thus shares representing at least [ ] votes must be present by votes at the meeting or by proxy to have a quorum.

Your shares will be counted towards the quorum only if you submit a valid proxy vote or vote at the meeting. Abstentions and broker non-votes will be counted towards the quorum requirement. If there is no quorum, a majority of the votes present at the meeting may adjourn the meeting to another date.

How can I find out the results of the voting at the special meeting?

Preliminary voting results will be announced at the special meeting. Final voting results will be published in the Company's quarterly report on Form 10-Q for the quarter ending June 30, 2004.

PROPOSAL 1
APPROVAL OF THE SECOND CLOSING OF
SERIES A-1 PREFERRED STOCK FINANCING

Introduction

The following description of the principal terms of the transaction and the securities already issued and to be issued is a summary only. The complete text of each of the agreements relating to this transaction are filed as exhibits to the Company's Current Report on Form 8-K filed with the SEC on March 26, 2004.

On March 11, 2004, the Company signed definitive documents for a $32.7 million equity financing (the "Financing") with Xmark Fund, L.P. and Xmark Fund, Ltd. (collectively, the "Lead Investor") and other investors. The Financing entails the sale and issuance, in two closings, of up to 1,142,067 shares of Series A-1 Preferred Stock (the "Series A-1 Preferred") initially convertible into approximately 11,420,670 shares of the Company's common stock, and warrants to purchase approximately 11,249,210 shares of common stock at an exercise price of $3.25 per share (the "Warrants").

On March 23, 2004, the Company completed the first closing of the Financing, resulting in the sale and issuance of 499,981 shares of Series A-1 Preferred and warrants to purchase 4,999,810 shares of the Company's common stock, in exchange for gross proceeds of $14,999,430 (the "First Closing"). If the Company's stockholders approve this Proposal No. 1, we will issue an additional 642,086 shares of Series A-1 Preferred and Warrants to purchase 6,249,400 shares of common stock for anticipated gross proceeds of approximately $17.7 million in a second closing (the "Second Closing"), assuming the Second Closing occurs on May 10, 2004. The exact number of shares to be issued depends upon the date of the Second Closing because the outstanding principal and accrued interest on the secured convertible debentures held by SF Capital Partners, Ltd. ("SF Capital") and the Carpenter 1983 Family Trust UA ("Carpenter Trust") will be exchanged for shares of Series A-1 Preferred (and, in the case of SF Capital, Warrants) at the Second Closing. Excluding the SF Capital and Carpenter Trust debt exchange, we expect to issue 589,881 shares of Series A-1 Preferred and Warrants to purchase 5,898,810 shares of Common Stock at the Second Closing. The Company intends to use the proceeds of the First and Second Closings to fund general working capital requirements.

Reasons for the Financing

The Company is in need of additional funds to continue as a going concern. The First Closing provided us with funds to continue operations through approximately April 2005. The additional funds anticipated to be received at the Second Closing will allow the Company to continue operations through approximately June 2006, while we continue to pursue new partnerships and expand upon our existing sources of revenue. The Second Closing is critical to our ability to maintain and grow our business and to sustain the confidence of our customers, business partners and employees.

Why We Need Stockholder Approval

The Company's Common Stock is listed on The Nasdaq SmallCap Market and, as a result, we are subject to Nasdaq's rules. We are required to seek stockholder approval for the Second Closing to comply with Rule 4350 of the Nasdaq rules ("Nasdaq Rule 4350"). Nasdaq Rule 4350(i)(1)(D) requires stockholder approval prior to the issuance of securities under certain circumstances, including a transaction involving the sale and issuance of common stock at a price below the book value or market value of the issuer, where the amount of stock being issued is equal to 20% or more of the issuer's common stock outstanding before such issuance.

The conversion price of the Series A-1 Preferred and the exercise price of the Warrants was approximately 100% and 108%, respectively, of the average closing trading price of the Company's Common Stock during the 30-day period ending on February 10, 2004. The conversion price of the

Series A-1 Preferred and the exercise price of the Warrants was approximately 92.6% and 100.3%, respectively, of the closing trading price of the Company's Common Stock on March 23, 2004. It cannot be determined whether or not the shares issuable upon conversion of the Series A-1 Preferred or upon exercise of the Warrants will be issued at less than the greater of book or market value of the Common Stock at the time of the Second Closing. Additionally, the Company is not receiving any additional consideration for the Warrants. Even if the exercise price of the Warrants and conversion price of the Series A-1 Preferred was determined to be at or above the greater of book or market value of the Common Stock at the time of the First or Second Closings, the price for such securities still is deemed by Nasdaq to be lower than book or market value since no additional consideration for the Warrants was or will be received by the Company. For the above reasons, stockholder approval under Rule 4350(i)(1)(D) is required.

The issuance of the Preferred Stock and Warrants at the First Closing was subject to a waiver issued by Nasdaq under Rule 4350(i)(2). This rule provides that an exception to the stockholder approval requirements under Rule 4350(i) may be made upon application to Nasdaq when "the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise," and "reliance by the company on this exception is expressly approved by the audit committee or a comparable body of the board of directors." Rule 4350(i)(2) further requires the mailing to all stockholders not later than ten days prior to the issuance of the subject securities alerting them to the Company's omission to seek stockholder approval that would otherwise be required and indicating that the Company's Audit Committee has expressly approved the exception. Upon the Company's request, which was approved by the Company's Audit Committee, Nasdaq provided a waiver under Rule 4350(i)(2) for the First Closing. The Company provided the stockholder mailing required by Rule 4350(i)(2) on March 12, 2004. However, as a condition of the above waiver, stockholder approval is required as a condition to the Second Closing of the Financing. Such approval must be received from a majority of the votes cast by stockholders who are not participants in the Financing.

The stockholders therefore are being asked to approve the issuance and sale by Aerogen of approximately 642,086 additional shares of Series A-1 Preferred, initially convertible into 6,420,860 shares of our common stock, and Warrants to purchase approximately 6,249,400 shares of our common stock, at the Second Closing. The number of shares actually issued will depend upon the date of the Second Closing due to the exchange of the outstanding principal and accrued interest on the secured convertible debentures held by SF Capital and the Carpenter Trust into Series A-1 Preferred and, in the case of SF Capital, into Warrants.

Description of the Securities to be Issued in the Financing

Series A-1 Preferred Stock

Liquidation Rights

In the event of any liquidation, dissolution or winding up of the Company, the holders of Series A-1 Preferred shall be entitled to receive $30.00 per share (as adjusted for any stock splits, dividends, combinations or other recapitalizations) (the "Series A-1 Stated Value") plus any unpaid dividends, on a pro rata basis, in preference to any distribution made to the Common Stock (the "Liquidation Preference"). Once the Liquidation Preference has been paid in full, any remaining proceeds shall be distributed ratably between the holders of the Series A-1 Preferred and Common Stock, with the holders of Series A-1 Preferred deemed to hold that number of shares of Common Stock into which the shares of Series A-1 Preferred are then convertible. The holders of a majority in interest of the Series A-1 Preferred including the Lead Investor (so long as it owns at least 80,000 shares of Series A-1 Preferred) (the "Requisite Holders"), may elect to treat an acquisition of the Company as a liquidation.

Dividends

Each holder of Series A-1 Preferred is entitled to receive cumulative dividends in preference to any dividend on the Common Stock at the rate of 6% of the Series A-1 Stated Value per share, paid quarterly in arrears on the first day of January, April, July and October in each year (the "Preferred Dividends"). The Preferred Dividends will be paid, at the Company's election, out of legally available funds or through the issuance of shares of Common Stock.

Conversion; Anti-Dilution Protection

The holder of any share or shares of Series A-1 Preferred shall have the right, at its option at any time, to convert any such shares of Series A-1 Preferred into such number of fully paid and nonassessable shares of Common Stock as is obtained by: (i) multiplying the number of shares of Series A-1 Preferred to be converted by the Series A-1 Stated Value and adding to such product the amount of any accrued but unpaid dividends with respect to such shares of Series A-1 Preferred to be converted; and (ii) dividing the result obtained pursuant to clause (i) above by the Series A-1 Conversion Price then in effect. The "Series A-1 Conversion Price" shall initially be $3.00.

If the Company issues or sells any Common Stock, or is deemed to have issued or sold Common Stock by issuing or selling options or other convertible securities, for consideration per share less than the Series A-1 Conversion Price in effect immediately prior to the time of such issue or sale, then the then-existing Series A-1 Conversion Price shall be reduced to the lowest price per share at which any share of Common Stock was issued or sold or deemed to be issued or sold. However, the Company shall not be required to make any adjustment of the Series A-1 Conversion Price in the case of the following issuances of shares of Common Stock from and after March 23, 2004 (each an "Excluded Issuance"): (i) issuances upon the exercise of any options or convertible securities granted, issued and outstanding on March 23, 2004; (ii) issuances upon the grant or exercise of any stock or options which may hereafter be granted or exercised under any employee benefit plan, stock option plan or restricted stock plan of the Corporation in existence on March 23, 2004, so long as the issuance of such stock or options is approved by a majority of the independent members of the Board or a majority of the members of a committee of independent directors established for such purpose; (iii) issuances of securities as consideration for a merger or consolidation with, or purchase of assets from, a non-Affiliated third party or in connection with any strategic partnership or joint venture with a non-Affiliated third party with which the Company will enter into technology agreements (the primary purpose of any such action is not to raise equity capital); (iv) shares of Common Stock issuable upon conversion of Series A-1 Preferred or as payment-in-kind dividends on the Series A-1 Preferred; (v) shares of Common Stock issued or issuable as a result of any stock split, combination, dividend, distribution, reclassification, exchange or substitution for which an equitable adjustment is provided for; and (vi) shares of Common Stock issued (or issuable upon exercise, exchange or conversion of rights, options or warrants outstanding from time to time) which the Requisite Holders expressly elect in writing to treat as an Excluded Issuance.

The conversion of Series A-1 Preferred into Common Stock is limited so that no share may be converted that would cause the holder of such share (or such stockholder's affiliates) to beneficially own more than 4.99% of the Company's then-outstanding Common Stock, provided that such stockholder may waive the provision upon 61 days' written notice to the Company.

Voting Rights

The holders of Series A-1 Preferred are entitled to vote together with the holders of Common Stock as a single class. Each share of Series A-1 Preferred shall have the number of votes equal to the number of shares of Common Stock into which such share of Series A-1 Preferred is convertible.

As long as at least 200,000 shares of Series A-1 Preferred are outstanding, the consent of the Requisite Holders shall be required to take or agree to any of the following actions: (1) amend, alter or repeal any of the provisions of the Company's Amended and Restated Certificate of Incorporation, Bylaws or the Certificate of Designations, or in any way change the preferences, privileges, rights or powers with respect to the Series A-1 Preferred or reclassify any class of stock, including, without limitation, by way of merger or consolidation; (2) authorize, create, designate, issue or sell any (A) class or series of capital stock (including shares of treasury stock), (B) rights, options, warrants or other securities convertible into or exercisable or exchangeable for capital stock or (C) any debt security which by its terms is convertible into or exchangeable for any capital stock or has any other equity feature or any security that is a combination of debt and equity, which capital stock, in each case, is senior to or *pari passu* with the Series A-1 Preferred; (3) increase the number of authorized shares of Series A-1 Preferred or authorize the issuance of or issue any shares of Series A-1 Preferred (other than in connection with the payment of Preferred Dividends); (4) increase or decrease the number of authorized shares of any class of capital stock of the Company; (5) agree to any restriction on the Company's ability to satisfy its obligations hereunder to holders of Series A-1 Preferred or the Company's ability to honor the exercise of any rights of the holders of Series A-1 Preferred; (6) declare or pay any dividend or make any distribution on shares of capital stock of the Company (except with respect to shares of Series A-1 Preferred), or redeem, purchase or otherwise acquire for value, or set apart money or other property for any mandatory purchase or analogous fund for the redemption, purchase or acquisition of any shares of capital stock of the Company (except with respect to the

repurchase of shares of Common Stock held by employees, officers or directors of the Company, which has been approved by the Company's Board of Directors); (7) consummate an acquisition or enter into an agreement with respect to an acquisition; (8) materially change the nature or scope of the business of the Company to a business other than the manufacturing or formulation of devices or drugs for aerosol delivery; (9) consummate or agree to make any sale, transfer, assignment, pledge, lease, license or similar transaction by which the Company grants on an exclusive basis any rights to any of the Company's intellectual property other than intellectual property relating to the Company's insulin program or the licensing of any of the Company's intellectual property to a ventilator manufacturer for incorporation into such manufacturer's ventilator technology; (10) create, incur, assume or suffer to exist, any lien, charge or other encumbrance on any of its properties or assets, other than liens of carriers, warehousemen, artisans, bailees, mechanics and materialmen incurred in the ordinary course of business securing sums not overdue; or (11) agree to do any of the foregoing.

Right of First Refusal

In the event the Company desires to raise capital pursuant to any equity or debt financing transaction (other than pursuant to an Excluded Issuance) at any time prior to March 23, 2005 (a "Proposed Financing"), the Company shall, as long as at least two hundred thousand (200,000) shares of Series A-1 Preferred are outstanding (appropriately adjusted for any stock dividend, split, combination or other recapitalization), deliver to the then current holders of Series A-1 Preferred a comprehensive term sheet containing all of the significant business terms of the Proposed Financing (the "Proposed Financing Notice"). For a period of 30 days following receipt of the Proposed Financing Notice (the "Series A-1 Exercise Notice Period"), the holders of Series A-1 Preferred shall have the right to provide the entire Proposed Financing (but not less than the entire Proposed Financing) on the terms set forth in the Proposed Financing Notice, and each such holder shall have the right to purchase its pro rata share of the securities being issued and sold in the Proposed Financing, based on the aggregate Stated Value of the Series A-1 Preferred held by each such holder; *provided, however*, if any such holder shall decline to exercise these first refusal rights, then in determining the pro rata share of the other holders who are exercising their first refusal rights, the aggregate Stated Value of the Series A-1 Preferred held by each such declining holder shall be excluded

from such determination, and each exercising holder shall have the right of over-subscription to the extent of the declining holder's or holders' (as the case may be) pro rata share.

Warrants

The Warrants issued pursuant to the Financing are for the purchase of Common Stock, have a term of five years and have an exercise price of $3.25 per share, subject to proportional adjustment for stock splits, combinations, dividends and the like. The exercise price is also subject to the anti-dilution adjustment for certain issuances of securities below $3.00 per share, as described above regarding the Series A-1 Preferred. The exercisability of each Warrant is limited so that no Warrant may be exercised for a number of shares that would cause the holder or its affiliates to beneficially own more than 4.99% of the Company's then-outstanding Common Stock, provided that the holder of the Warrant may waive the provision upon 61 days' written notice to the Company. If after March 11, 2005, the price of the Company's Common Stock for each day during any 90 consecutive trading day period shall equal or exceed $7.00 per share, then upon written notice from the Company, the Warrants must be exercised to the fullest extent then permitted. The Warrants contain a cashless exercise feature, applicable only to forced exercise by the Company. The Common Stock underlying the Warrants are entitled to the benefits of the Registration Rights described below.

Registration Rights

The Company has agreed to register for resale the shares underlying the Series A-1 Preferred and Warrants. The Company will prepare and file a registration statement on Form S-3 (the "Registration Statement") for the resale of the shares of Common Stock issuable upon conversion of the Series A-1 Preferred and exercise of the Warrants (the "Registrable Securities") within the earlier of 10 days after the Second Closing or 65 days after the First Closing. The Company has agreed to use its best efforts to cause the Registration Statement to become effective no later than the earlier to occur of (x) the 180th day immediately following March 11, 2004, (y) the 90th day immediately following the Second Closing Date, or (z) five (5) Business Days following the Company's receipt of a no-review letter from the SEC relating to the Registration Statement. The Company has agreed to make such filings as are necessary to keep the Registration Statement effective until all shares covered by the Registration Statement have been sold. The Company is entitled to suspend the effectiveness of each Registration Statement for no more than 15 consecutive days and no more than a total of 30 days in any 24 month period without the consent of the Requisite Holders. Upon the written demand of the Lead Investor, and upon any change in the Series A-1 Conversion Price or the number of Warrant Shares purchasable under the Warrants such that additional shares of Common Stock become issuable upon conversion of the outstanding Series A-1 Preferred or exercise of such Warrants, the Company shall prepare and file with the SEC, within 10 days, one or more Registration Statements covering the resale of such additional shares to the extent they are not at the time covered by an effective Registration Statement. The Company will pay all expenses associated with any Registration Statement.

In the event that the Company fails to cause a Registration Statement to be timely filed or to be timely declared effected or remain effective (other than pursuant to the permissible suspension periods), it has agreed to pay each holder as liquidated damages an amount equal to 1.5% of the aggregate amount invested by such holder (the amount invested by a Holder shall include the purchase price of the Preferred Stock acquired by such holder and shall exclude any amount attributable to the Warrants acquired by such holder pursuant to the Purchase Agreement) for each 10-day period or pro rata for any portion thereof following the date by which such Registration Statement should have been filed.

Board Rights

Until the Lead Investor no longer owns at least 80,000 shares of Series A-1 Preferred (adjusted for any stock dividend, split, combination or the like), it shall have the right to designate two members to the Company's Board of Directors (the "Lead Investor Directors"). The Company shall use its best efforts to cause the Lead Investor Directors to be elected to the Company's Board of Directors. The Lead Investor shall have the right to remove or replace either of the Lead Investor Directors by giving notice to such Lead Investor Director and the Company, and the Company shall use its best efforts to effect the removal or replacement of any such Lead Investor Director.

Description of Common Stock

The Company's authorized capital stock consists of 95,000,000 shares of Common Stock, par value $0.001 per share, and 5,000,000 shares of Preferred Stock, par value $0.001 per share, with 1,572,585 shares designated Series A-1 Preferred, and 500,000 shares designated Series A Junior Participating Preferred Stock.

As of March 25, 2004, there were 9,780,005 shares of Common Stock outstanding, assuming full conversion of all outstanding shares of Series A-1 Preferred Stock, held of record by 164 stockholders. In addition, as of March 25, 2004, there were 452,650 shares of Common Stock subject to outstanding options, 5,686,216 shares of Common Stock subject to outstanding warrants and up to 508,298 shares issuable upon conversion of the outstanding convertible debentures held by SF Capital and the Carpenter Trust. SF Capital and the Carpenter Trust have agreed to exchange these debentures and the accrued interest thereon into Series A-1 Preferred at the Second Closing. There are no outstanding shares of Series A Junior Participating Preferred Stock.

Each share of Common Stock entitles its holder to one vote on all matters to be voted upon by stockholders. Holders of Common Stock may receive ratably any dividends that the Board of Directors may declare out of funds legally available for that purpose. In the event of the liquidation, dissolution or winding up of the Company, the holders of Common Stock are entitled to share ratably in all assets remaining after payment of liabilities and any liquidation preference of any preferred stock. The Common Stock has no preemptive rights, conversion rights, subscription rights or redemption or sinking fund provisions. All outstanding shares of Common Stock are fully paid and non-assessable.

Other Warrants

As of March 25, 2004, in addition to the Warrants issued at the First Closing, which are currently exercisable for 4,999,810 shares of common stock, there are warrants outstanding to purchase the following shares of Common Stock: (i) 271,429 shares at a per share exercise price of $1.75 expiring September 10, 2007, (ii) 328,515 shares at a per share exercise price of $3.044 expiring November 3, 2007, (iii) 82,129 shares at a per share exercise price of $3.044 per expiring January 26, 2008 and (iv) 4,333 shares at an exercise price of $15.00 expiring October 14, 2004.

Anti-Takeover Provisions

Delaware Law. The Company is subject to Section 203 of the Delaware General Corporation Law, which regulates acquisitions of some Delaware corporations. In general, Section 203 prohibits, with some exceptions, a publicly held Delaware corporation from engaging in a business combination with an interested stockholder for a period of three years following the date the person becomes an interested stockholder, unless:

the Board of Directors approved the business combination or the transaction in which the person became an interested stockholder prior to the date the person attained this status;

upon consummation of the transaction that resulted in the person becoming an interested stockholder, the person owned at least 85% of the Company's voting stock outstanding at the time the transaction commenced, excluding shares owned by persons who are directors and also officers and shares held by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

on or subsequent to the date that the person became an interested stockholder, the Board of Directors approved the business combination and the stockholders, other than the interested stockholder, authorized the transaction at a special meeting of stockholders by the affirmative vote of at least 66.67% of the outstanding stock not owned by the interested stockholder.

Section 203 defines a "business combination" to include:

any merger or consolidation involving the Company and the interested stockholder;

any sale, transfer, pledge or other disposition involving the interested stockholder of 10% or more of the Company's assets;

in general, any transaction that results in the issuance or transfer by the Company of any of the Company's stock to the interested stockholder;

any transaction involving the corporation that has the effect of increasing the proportionate share of the Company's stock owned by the interested stock holders; or

the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the Company.

In general, Section 203 defines an "interested stockholder" as any person who, together with the person's affiliates and associates, owns, or within three years prior to the determination of interested stockholder status did own, 15% or more of a corporation's voting stock.

Certificate of Incorporation and Bylaw Provisions

The Company's certificate of incorporation and bylaws include a number of provisions that may have the effect of deterring hostile takeovers or delaying or preventing changes in control or management of the Company. First, the certificate of incorporation provides that all stockholder actions must be effected at a duly called meeting of holders and not by a consent in writing. Second, the bylaws provide that special meetings of the stockholders may be called only by the Company's chairman of the Board of Directors, the Company's chief executive officer, the Company's Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors, or holders of 50% or more of the Common Stock. Third, the certificate of incorporation provides that the Company's Board of Directors can issue shares of preferred stock. Fourth, the certificate of incorporation and the bylaws provide for a classified Board of Directors, in which approximately one-third of the directors would be elected each year. Consequently, any potential acquiror would need to successfully complete two proxy contests in order to take control of the Board of Directors. Finally, the bylaws establish procedures, including advance notice procedures with regard to the nomination of candidates for election as directors and stockholder proposals. These provisions of the Company's certificate of incorporation and bylaws could discourage potential acquisition proposals and could delay or prevent a change in control or management of the Company.

Termination of Rights Plan

In connection with the Financing, the Board approved the amendment and termination of our Stockholder Rights Plan (the "Plan"). The Plan was terminated by an amendment that accelerated the expiration date of the Plan to March 19, 2004.

Consequence of Non-approval

If the Company fails to obtain the required stockholder approval for the Second Closing, such failure will prevent the Second Closing and the receipt by the Company of approximately $17,696,430 in cash proceeds and also prevent the conversion into Series A-1 Preferred of approximately $1,566,164 of indebtedness. Our Company's Board of Directors has determined that the issuance of the Series A-1 Preferred and Warrants in the Second Closing will further the best interests of the Company.

Incorporation by Reference of the Company's Annual Report on Form 10-K

Concurrently with this proxy statement, the Company is sending a copy of its Annual Report on Form 10-K for the fiscal year ended December 31, 2003 (the "Form 10-K") to its stockholders. This proxy statement incorporates by reference Items 7, 7A, 8, 9 and 9A of the Form 10-K, which contains important information about the Company and its financial condition that is not included in this proxy statement. A copy of the Form 10-K has also been filed with the SEC and may be accessed from the SEC's homepage (www.sec.gov).

Required Vote

The affirmative vote of a majority of all of the votes present or represented and entitled to vote at the Annual Meeting, excluding for this purpose any votes held by Investors in the First Closing of the Financing, is required to ratify and approve the Second Closing and the issuance of the Series A-1 Preferred and Warrants pursuant thereto.

THE BOARD OF DIRECTORS RECOMMENDS
A VOTE IN FAVOR OF PROPOSAL 1.

PROPOSAL 2
ELECTION OF DIRECTORS

Aerogen's Amended and Restated Certificate of Incorporation provides for three classes of directors: Class I, Class II and Class III. Only one class of directors is elected by the stockholders at each annual election, and each director to serve for a three-year term. In accordance with the Amended and Restated Certificate of Incorporation, Class I directors are to be elected at the 2004 Annual Meeting of Stockholders, Class II directors are to be elected at the 2005 Annual Meeting of Stockholders, and Class III directors are to be elected at the 2006 annual meeting. The Board is currently composed of seven directors, and the term of two of these directors expires in 2004.

Nominees

Two Class I directors are to be elected to the Board at the Annual Meeting, each to serve until the annual meeting of stockholders to be held in 2007 and until his or her successor has been elected and has qualified, or until his or her earlier death, resignation or removal. The nominees for election at the Annual Meeting are Dr. Phyllis I. Gardner and Philip M. Young. If any nominee is unable or unwilling to serve as a director, proxies may be voted for a substitute nominee designated by the present Board. The Board has no reason to believe that any nominee will be unable or unwilling to serve as a director if elected. Proxies received will be voted "**FOR**" the election of all nominees, unless marked to the contrary. Pursuant to applicable Delaware corporation law and assuming the presence of a quorum, two directors will be elected, from among those persons duly nominated for such positions, by a plurality of the votes actually cast by stockholders entitled to vote at the Annual Meeting who are present in person or by proxy. Thus, nominees who receive the first and second highest number of votes in favor of their election will be elected, regardless of the number of abstentions or broker non-votes.

The following table provides the names and current ages of the nominees for election as directors and of each other director, and indicates the periods during which such persons have served as directors of Aerogen.

Name and Positions with Aerogen in Addition to Director	Age	Director Continuously Since
Nominees:		
Class I Directors		
Dr. Phyllis I. Gardner	53	2000

Name and Positions with Aerogen in Addition to Director	Age	Director Continuously Since
Philip H. Young	64	1994
Incumbents:		
Class II Directors		
Thomas R. Baruch	65	1994
Dr. Jane E. Shaw (Chairman and Chief Executive Officer)	65	1998
Class III Directors		
Jean-Jacques Bienaimé	50	1999
Yehuda Ivri (Chief Technical Officer)	52	1991
Bernard Collins	55	2002

Business Experience of Directors

Nominees (*Class I Directors*)

Phyllis I. Gardner, M.D., has served as a director of Aerogen since May 2000. Dr. Gardner is currently an Associate Professor of Medicine at Stanford University School of Medicine and has been with the university since 1984. Dr. Gardner was Vice President of Research and Principal Scientist of

ALZA Corporation and head of ALZA Technology Institute from 1996 to 1998. She was Principal Scientist and a consultant to ALZA from 1994 to 1996. Dr. Gardner received a B.S. in Biology from the University of Illinois and an M.D. from Harvard Medical School. Dr. Gardner also serves as a director of several privately held companies and is an adjunct partner of Essex Woodlands Health Ventures.

Philip M. Young has served as a director of Aerogen since 1994. Mr. Young has been a General Partner with U.S. Venture Partners, a venture capital firm, since 1990. Mr. Young was a Managing Director of Dillon Read & Co., a financial services company, and Concord Partners, a venture capital firm managed by Dillon Read, from 1986 to 1990. Mr. Young was President and CEO of Oximetrix, Inc., a privately held manufacturer of high technology medical instruments and sterile disposable products, from 1977 to 1985. Mr. Young received a B.M.E. from Cornell University, an M.S. from George Washington University and an M.B.A. from Harvard Business School, where he was a Baker Scholar. Mr. Young also serves as a director of Zoran Corporation, a digital solutions provider, and several privately held companies.

Directors Continuing in Office

Class II Directors

Thomas R. Baruch has served as a director of Aerogen since 1994. He has been a General Partner at CMEA Ventures, a venture capital firm (previously an affiliated fund of New Enterprise Associates), since 1988. Mr. Baruch was a special partner of New Enterprise Associates from 1990 to 1996. Mr. Baruch received a B.S. in Engineering from Rensselaer Polytechnic Institute and a J.D. from Capital University. Mr. Baruch serves as a director of Symyx Technologies, a technology research company, Physiometrix Inc., a medical products company, and Aclara Biosciences, Inc., a life sciences company.

Jane E. Shaw, Ph.D. has served as Chairman of the Board of Directors and as the Company's Chief Executive Officer since 1998. Dr. Shaw was the founder of The Stable Network, a consulting company focusing on improving the productivity and profitability of biopharmaceutical companies, from 1994 to 1998. Dr. Shaw held various scientific and management positions with ALZA Corporation, a pharmaceutical company, from 1970 to 1994, most recently as President and Chief Operating Officer from 1987 to 1994. Dr. Shaw received a B.Sc. and Ph.D. in Physiology from Birmingham University in England. Dr. Shaw also serves as a director of Boise Cascade Corporation, an office, wood and paper products company, Intel Corporation, a semiconductor manufacturer, and McKesson Corporation, a healthcare supply management company.

Class III Directors

Jean-Jacques Bienaimé has served as a director of Aerogen since 1999. Since November 2002, Mr. Bienaimé has been the President and Chief Executive Officer of Genencor International and Chairman of Genencor's Board of Directors since May 2003. Mr. Bienaimé has been President, Chief Executive Officer and a director of SangStat Medical Corporation, a biopharmaceutical company, since 1998, and Chairman of its Board of Directors since October 2000. Mr. Bienaimé held various positions at Rhône Poulenc Rorer Inc., a leading pharmaceutical company, from 1992 to 1998, most recently as Senior Vice President of Corporate Marketing and Business Development. Mr. Bienaimé is also on the Board of Directors of NeurogesX. Mr. Bienaimé received an M.B.A. from the Wharton School at the University of Pennsylvania and an undergraduate degree in economics from the Ecole Supérieure de Commerce de Paris.

Yehuda Ivri founded Aerogen in 1991 and has served as a member of the Board of Directors since its inception. Mr. Ivri has served as Aerogen's Chief Technical Officer since 1996 and previously was

Chief Scientist and Vice President. Mr. Ivri received an M.S. in Mechanical Engineering from the Technion-Israel Institute of Technology.

Bernard Collins joined the Board of Directors on March 12, 2002. Mr. Collins currently is a full time director of a number of life sciences companies. From 1994 to 2000, he was the Vice President, International Operations of Boston Scientific Corporation. Prior to that time he was a management consultant and held management positions in medical device/healthcare companies. Mr. Collins received a B.A. in Industrial Psychology from the National University of Cork.

THE BOARD OF DIRECTORS RECOMMENDS A VOTE IN FAVOR OF EACH OF THE NAMED NOMINEES.

Independence of The Board of Directors

As required under the Nasdaq Stock Market ("Nasdaq") listing standards, a majority of the members of a listed company's Board of Directors must qualify as "independent," as affirmatively determined by the Board of Directors. The Board consults with the Company's counsel to ensure that the Board's determinations are consistent with all relevant securities and other laws and regulations regarding the definition of "independent," including those set forth in pertinent listing standards of the Nasdaq, as in effect time to time.

Consistent with these considerations, after review of all relevant transactions or relationships between each director, or any of his or her family members, and the Company, its senior management and its independent auditors, the Board affirmatively has determined that all of the Company's directors except Jane Shaw and Yehuda Ivri, both of whom are officers of the Company, are independent directors within the meaning of the applicable Nasdaq listing standards.

Stockholder Communications With The Board Of Directors

Historically, the Company has not adopted a formal process for stockholder communications with the Board. Nevertheless, every effort has been made to ensure that the views of stockholders are heard by the Board or individual directors, as applicable, and that appropriate responses are provided to stockholders in a timely manner. We believe our responsiveness to stockholder communications to the Board has been excellent. Nevertheless, during the upcoming year the Nominating and Corporate Governance Committee will give full consideration to the adoption of a formal process for stockholder communications with the Board and, if adopted, publish it promptly and post it to the Company's website.

Code Of Conduct

We have adopted the Aerogen, Inc. Code of Business Conduct and Ethics (the "Code of Conduct") that applies to all of our officers, directors and employees. The Code of Conduct is available on our website at *www.aerogen.com*. If we make any substantive amendments to the Code of Conduct or grant any waiver from a provision of the Code to any of our executive officers or directors, we will promptly disclose the nature of the amendment or waiver on our website.

Information Regarding the Board of Directors and its Committees

There were five meetings of the full Board during the fiscal year ended December 31, 2003. All of the directors attended at least 75% of the meetings of the Board and the committees on which he or she served, held during the period in which he or she served. There are no family relationships among any directors or executive officers of the Company. Directors currently receive no cash compensation from Aerogen for their services as members of the Board, or for attendance at Board or committee

meetings. The Board has three standing committees: the Compensation Committee, the Audit Committee and the Nominating and Corporate Governance Committee.

The current members of the Compensation Committee are Mr. Bienaimé, Dr. Gardner and Mr. Young. The Compensation Committee, which met two times during 2003, approves all of the Company's compensation plans, including grants of stock options under Company's stock plans and the compensation arrangements for the Company's executives. All members of the Company's Compensation Committee are "independent" as (independence is currently defined in Rule 4200(a)(15) of the Nasdaq listing standards).

The current members of the Audit Committee are Messers. Collins, Young and Bienaimé. On March 25, 2004, Mr. Baruch resigned from the Audit Committee and Mr. Bienaimé was appointed to the Audit Committee. The Audit Committee, which met seven times during 2003, is responsible for assisting the Board in its responsibilities of overseeing the Company's financial affairs. In this capacity, the Audit Committee reviews the Company's consolidated financial statements and quarterly earnings with management and with the Company's independent accountants, and consults with the Company's independent accountants concerning their audit plan, the results of their audit, the appropriateness of accounting principles used by the Company, the adequacy of the Company's internal controls and the independence of the accountants. The duties of the Audit Committee are set forth in more detail in its report at page [18] of this Proxy Statement. All members of the Audit Committee are independent as independence is defined in Rule 4200(a)(14) of the NASD listing standards. The Audit Committee has adopted a written Audit Committee Charter that is attached as Appendix A to these proxy materials. The Board has determined that Jean-Jacques Bienaimé qualifies as an "audit committee financial expert," as defined in applicable SEC rules. The Board made an assessment of Mr. Bienaimé's level of knowledge and experience based on a number of factors, including his formal education and experience as the president and chief executive of a publicly-traded biotechnology company.

The current members of the Nominating and Corporate Governance Committee are Mr. Baruch, Dr. Gardner and Mr. Collins. The Nominating and Corporate Governance Committee, which was created during March 2004, is responsible for identifying, reviewing and evaluating candidates to serve as directors of the Company (consistent with criteria approved by the Board), reviewing and evaluating incumbent directors, recommending to the Board candidates for election to the board of directors, making recommendations to the Board regarding the membership of the committees of the Board, and assessing the performance of management and the Board. All members of the Nominating and Corporate Governance Committee are independent (as independence is currently defined in Rule 4200(a)(15) of the Nasdaq listing standards). The charter of the Nominating and Corporate Governance Committee is available on our website at *www.aerogen.com*.

The Nominating and Corporate Governance Committee believes that candidates for director should have certain minimum qualifications, including being able to read and understand basic financial statements, being over 21 years of age and having the highest personal integrity and ethics. The Committee also intends to consider such factors as possessing relevant expertise upon which to be able to offer advice and guidance to management, having sufficient time to devote to the affairs of the Company, demonstrated excellence in his or her field, having the ability to exercise sound business judgment and having the commitment to rigorously represent the long-term interests of the Company's stockholders. However, the Committee retains the right to modify these qualifications from time to time. Candidates for director nominees are reviewed in the context of the current composition of the Board, the operating requirements of the Company and the long-term interests of stockholders. In conducting this assessment, the Committee considers diversity, age, skills, and such other factors as it deems appropriate given the current needs of the Board and the Company, to maintain a balance of knowledge, experience and capability. In the case of incumbent directors whose terms of office are set to expire, the Nominating and Corporate Governance Committee reviews such directors' overall service to the Company during their term, including the number of meetings attended, level of participation,

quality of performance, and any other relationships and transactions that might impair such directors' independence. In the case of new director candidates, the committee will determine whether the nominee must be independent for Nasdaq purposes, which determination is based upon applicable Nasdaq listing standards, applicable SEC rules and regulations and the advice of counsel, if necessary. The committee will conduct appropriate and necessary inquiries into the backgrounds and qualifications of possible candidates after considering the function and needs of the Board. To date, the Nominating and Corporate Governance Committee has not paid a fee to any third party to assist in the process of identifying or evaluating director candidates. To date, the Nominating and Corporate Governance Committee has not rejected a timely director nominee from a stockholder or stockholders holding more than 5% of our voting stock.

The Nominating and Corporate Governance Committee will consider director candidates recommended by stockholders. The Committee does not intend to alter the manner in which it evaluates candidates, including the minimum criteria set forth above, based on whether the

candidate was recommended by a stockholder or not. Stockholders who wish to recommend individuals for consideration by the Nominating and Corporate Governance Committee to become nominees for election to the Board may do so by delivering a written recommendation to the Nominating and Corporate Governance Committee at the following address: 2071 Stierlin Court, Suite 100, Mountain View, California, 94043 at least 120 days prior to the anniversary date of the mailing of the Company's proxy statement for the last Annual Meeting of Stockholders. Submissions must include the full name of the proposed nominee, a description of the proposed nominee's business experience for at least the previous five years, complete biographical information, a description of the proposed nominee's qualifications as a director and a representation that the nominating stockholder is a beneficial or record owner of the Company's stock. Any such submission must be accompanied by the written consent of the proposed nominee to be named as a nominee and to serve as a director if elected.

AUDIT COMMITTEE REPORT[1]

The current members of the Audit Committee are Jean-Jacques Bienaimé, Bernard Collins and Philip M. Young. On March 25, 2004, Mr. Baruch resigned from the Audit Committee and Mr. Bienaimé was appointed to the Audit Committee. Each member of the Audit Committee is independent, as defined under the National Association of Securities Dealers' listing standards. The Audit Committee, which was first appointed by the Board in August 2000, operates under a written charter first adopted by the Board in August 2000 and amended in July 2002 and March 2004.

The primary function of the Audit Committee is to assist the Board in fulfilling its oversight responsibility by serving as an independent and objective party to monitor the Company's financial reporting process and internal control systems; reviewing and appraising the audit efforts of the Company's independent accountants and any internal auditing department; and providing an open avenue of communication among the independent accountants, management, the internal finance department and the Board.

Management is responsible for the Company's internal controls and financial reporting process. PricewaterhouseCoopers LLP is responsible for performing an independent audit of the Company's consolidated financial statements in accordance with auditing standards generally accepted in the United States and to issue a report on those financial statements. The Audit Committee is responsible for monitoring and overseeing these activities.

In this context, the Audit Committee has met and held discussions with management and the independent auditors concerning the audited consolidated financial statements of the Company for the year ended December 31, 2003. The Audit Committee has discussed with PricewaterhouseCoopers LLP the matters required to be discussed by Statement on Auditing Standards No. 61 (Communication with Audit Committees), has received the written disclosures and the letter from the independent auditors

required by Independence Standards Board Standard No. 1, and has discussed the independence of PricewaterhouseCoopers LLP with that firm.

Based on the Audit Committee's review and discussions described above, the Audit Committee recommended to the Board, and the Board approved, that the Company's audited consolidated financial statements for the year ended December 31, 2003 be included in the Company's Annual Report on Form 10-K for the year ended December 31, 2003, for filing with the Securities and Exchange Commission. The Audit Committee and the Board have also selected, subject to stockholder ratification, PricewaterhouseCoopers, LLP as the Company's independent auditors for the year ending December 31, 2004.

AUDIT COMMITTEE
Jean-Jacques Bienaimé
Bernard Collins
Philip M. Young

[1] The material in this report is not "soliciting material," is not deemed "filed" with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933 or the Securities Exchange Act of 1934, whether made before or after the date hereof and irrespective of any general incorporation language contained in such filing.

EQUITY COMPENSATION PLAN INFORMATION

The following table provides certain information with respect to all of the Company's equity compensation plans in effect as of December 31, 2003.

Equity Compensation Plan Information

Plan Category	Number of securities 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 securities remaining available for issuance under equity compensation plans (excluding securities reflected in column (a)) (c)
Equity compensation plans approved by security holders(1)(2)(3)	477,180	$ 13.27	562,334
Equity compensation plans not approved by security holders	0	0	0
Total	477,180	$ 13.27	562,334

(1) Consists of Aerogen's 2000 Equity Incentive Plan, 2000 Non-Employee Directors' Stock Option Plan, 2000 Employee Stock Purchase Plan, 1996 Amended and Restated Stock Plan and 1994 Amended and Restated Stock Plan.

(2) The 2000 Equity Incentive Plan has a provision for increasing the number of shares available for the grant of options on an annual basis by a number of shares equal to the least of (i) 4.5% of the then outstanding shares of common stock on a fully diluted basis, (ii) 400,000 shares, or (iii) a lesser number of shares determined by Aerogen's Board of Directors.

(3) The 2000 Employee Stock Purchase Plan has a provision for increasing the number of shares available for purchase under the plan on an annual basis by a number equal to the least of (i) 1.0% of the then outstanding shares of common stock on a fully diluted basis, (ii) 50,000 shares, or (iii) a lesser number of shares determined by Aerogen's Board of Directors.

PROPOSAL 3
APPROVAL OF 2000 EQUITY INCENTIVE PLAN, AS AMENDED

In August 2000, the Board adopted and the stockholders subsequently approved, the Company's 2000 Equity Incentive Plan ("Incentive Plan"). There are 571,958 shares of the Company's common stock authorized for issuance under the Incentive Plan (the "Reserved Shares"). As of the date of each annual stockholder meeting, beginning with the annual stockholder meeting held in 2001, and continuing through and including the annual stockholder meeting to be held in 2010, the number of shares in this reserve has been and will automatically be increased under the automatic increase provision of the Incentive Plan. Subsequent to the 5 to 1 reverse stock split approved by the Board in October 2003, this provision calls for an automatic increase in the number of Reserved Shares under the Incentive Plan by the least of (i) 400,000 shares, (ii) 4.5% of the outstanding common stock of the Company on a fully-diluted basis or (iii) a lesser number as determined by the Company's Board. There was no automatic increase in the number of Reserved Shares at the 2003 annual meeting of stockholders. If stock awards granted under the Incentive Plan expire, are repurchased or otherwise terminate without being exercised in full, the shares of common stock not acquired, or repurchased will again become available for issuance under the Incentive Plan. As of March 25, 2004, options (net of canceled or expired awards) representing an aggregate of 254,499 shares of the Company's common stock had been granted under the Incentive Plan. Only 317,176 shares of common stock remain available for future grant under the Incentive Plan not counting any shares that might in the future be returned to the Incentive Plan as a result of cancellations or expiration of awards or the reacquisition by the Company of issued shares. At the Annual Meeting of Stockholders on May 10, 2004, the number of shares reserved under the Incentive Plan is expected to automatically increase by 400,000 shares.

In March 2004, the Board approved an amendment to the Incentive Plan, subject to stockholder approval, to increase the total number of shares of the Company's common stock authorized for issuance under the Incentive Plan by an additional 4,515,309 shares, so that after the 400,000 share automatic increase described above, the total share reserve under the Incentive Plan will be 5,486,984 shares, approximately 15% of the Company's fully-diluted common stock and common stock equivalents, assuming full exercise of all outstanding warrants and full issuance of all shares reserved under the Incentive Plan.

In addition, the Board approved an amendment to the Incentive Plan, subject to stockholder approval, to provide that the maximum amount of the automatic annual share reserve increase will be 2,500,000 shares. As a result of this amendment, as of the date of each annual stockholder meeting beginning in 2005 through and including the annual stockholder meeting to be held in 2010, the number of shares reserved for issuance under the Incentive Plan will automatically increase by the least of (i) 2,500,000 shares, (ii) 4.5% of the outstanding common stock of the Company on a fully diluted basis, or (iii) a lesser number as determined by the Company's Board of Directors.

The Board adopted these amendments to ensure that the Company can grant stock options to officers, directors and key employees at levels determined appropriate by the Board. During the last fiscal year, the Company did not grant any options under the Incentive Plan because the plan had not been qualified with the California Department of Corporations. However, to retain its key people and further the interests of stockholders of the Company, the Board believes it is crucial to have the capability of granting stock options at levels that are competitive in the marketplace. In addition, the Board believes that the proposed increase to the Reserved Shares under the Incentive Plan is crucial because the Company's Non-Employee Directors' Plan was terminated in April 2004 and, going forward, the Board will grant options to non-employee directors, in addition to employees and officers, under the Incentive Plan. If approved, this Proposal would result in an a current aggregate reserve under the Company's equity compensation plans of approximately 15% of the fully-diluted Common Stock equivalents, which, together with the provision for an automatic annual increase, the Board

believes would be sufficient to meet its objectives in retaining and attracting key employees, officers and directors for the foreseeable future.

Stockholders are requested in this Proposal 3 to approve the Incentive Plan, as amended. The affirmative vote of the holders of at least a majority of the shares present in person or represented by proxy and entitled to vote at the meeting will be required to approve the Incentive Plan. Abstentions will be counted toward the tabulation of votes cast on proposals presented to the stockholders and will have the same effect as negative votes. Broker non-votes are counted toward a quorum, but are not counted for any purpose in determining whether this matter has been approved.

THE BOARD OF DIRECTORS RECOMMENDS
A VOTE IN FAVOR OF PROPOSAL 3.

The essential features of the Incentive Plan are outlined below:

General

The Incentive Plan provides for the grant of incentive stock options, nonstatutory stock options, stock bonuses and restricted stock purchase awards. Incentive stock options granted under the Incentive Plan are intended to qualify as "incentive stock options" within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the "Code"). Nonstatutory stock options granted under the Incentive Plan are not intended to qualify as incentive stock options under the Code. See "Federal Tax Information" for a discussion of the tax treatment of options.

Purpose

The Board adopted the Incentive Plan to provide a means by which selected employees (including officers), directors and consultants of the Company and its affiliates may be given an opportunity to purchase stock in the Company, to assist in retaining the services of such person, to secure and retain the services of persons capable of filling such positions and to provide incentives for such persons to exert maximum efforts for the success of the Company and its affiliates. All of the approximately 64 current employees, directors and consultants of the Company and its affiliates are eligible to participate in the Incentive Plan.

Administration

The Incentive Plan is administered by our Board. Subject to the provisions of the Incentive Plan, the Board has the power to construe and interpret the Incentive Plan and to determine the persons to whom, and the dates on which, awards will be granted, the number of shares of common stock to be subject to each award, the time or times during the term of each award within which all or a portion of such award may be

exercised, the exercise price, the type of consideration and other terms of the award.

The Board has the power to delegate administration of the Incentive Plan to a committee composed of one or more members of the Board. In the discretion of the Board, a committee may consist solely of two or more outside directors in accordance with Section 162(m) of the Code or solely of two or more non-employee directors in accordance with Rule 16b-3 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The Board may abolish such committee at any time and revest in the Board the administration of the Incentive Plan. The Board has delegated administration of the Incentive Plan to the Compensation Committee of the Board. As used herein with respect to the Incentive Plan, the "Board" refers to the Compensation Committee as well as to the Board itself.

The regulations under Section 162(m) of the Code require that the directors who serve as members of the committee must be "outside directors." The Incentive Plan provides that, in the Board's discretion, directors serving on the committee may be "outside directors" within the meaning

of Section 162(m) of the Code. This limitation would exclude from the committee directors who are (i) current employees of the Company or an affiliate, (ii) former employees of the Company or an affiliate receiving compensation for past services (other than benefits under a tax-qualified pension plan), (iii) current or former officers of the Company or an affiliate, (iv) directors currently receiving direct or indirect remuneration from the Company or an affiliate in any capacity (other than director) and (v) any other person who is otherwise considered an "outside director" for purposes of Section 162(m) of the Code. The definition of an "outside director" under Section 162(m) is generally narrower than the definition of a "non-employee director" under Rule 16b-3 of the Exchange Act.

Eligibility

Incentive stock options may be granted under the Incentive Plan only to employees (including officers) of the Company and its affiliates. Nonstatutory stock options, stock bonuses and restricted stock purchase awards may be granted to employees (including officers), or directors or consultants of the Company.

No incentive stock option may be granted under the Incentive Plan to any person who, at the time of the grant, owns (or is deemed to own) stock possessing more than 10% of the total combined voting power of the Company or any affiliate of the Company, unless the option exercise price is at least 110% of the fair market value of the stock subject to the option on the date of grant, and the term of the option does not exceed five years from the date of grant. In addition, the aggregate fair market value, determined at the time of grant, of the shares of the Company's common stock with respect to which incentive stock options are exercisable for the first time by an optionholder during any calendar year (under the Incentive Plan and all other such plans of the Company and its affiliates) may not exceed $100,000. No employee may be granted options under the Incentive Plan covering more than 1,000,000 shares of the Company's common stock during any calendar year.

Stock Subject to the Incentive Plan

Assuming adoption of this Proposal, an aggregate of 5,486,984 shares of the Company's common stock would be authorized for issuance under the Incentive Plan immediately following the 2004 Annual Meeting of Stockholders, and as of the date of each subsequent annual stockholder meeting, continuing through and including the annual stockholder meeting to be held in 2010, the number of shares in this reserve will automatically be increased by the least of (i) 2,500,000 shares, (ii) 4.5% of the outstanding common stock of the Company on a fully-diluted basis on the date of such stockholder meeting or (iii) a lesser number as determined by the Company's Board. If options granted under the Incentive Plan expire or otherwise terminate without being exercised, the shares of the Company's common stock not acquired pursuant to such options again become available for issuance under the Incentive Plan. If any common stock acquired pursuant to the exercise of an option shall for any reason be repurchased by the Company under an unvested share repurchase option provided under the Incentive Plan, the stock repurchased by the Company under such repurchase option shall revert to and again become available for issuance under the Incentive Plan (other than pursuant to incentive stock options).

Term of Options

The following is a description of the permissible terms of options under the Incentive Plan. Individual option grants may be more restrictive as to any or all of the permissible terms described below.

Exercise Price; Payment. The exercise price of incentive stock options under the Incentive Plan are determined by the Company's Board; provided, however that the exercise price for an incentive stock option under the Incentive Plan may not be less than the fair market value of the Company's common

stock on the date of grant, and in some cases (see "Eligibility" above), may not be less than 110% of such fair market value. The exercise price of nonstatutory options under the Incentive Plan may not be less than 85% of the fair market value of the Company's common stock on the date of grant. At March 31, 2004, the closing price of the Company's common stock as reported on the NASDAQ Small Cap Market was $3.62 per share.

The exercise price of options granted under the Incentive Plan must be paid either (i) in cash at the time the option is exercised or (ii) at the discretion of the Board at the time of grant of the option (a) by delivery of other shares of the Company's common stock, (b) pursuant to a deferred payment arrangement or (c) in any other form of legal consideration acceptable to the Board.

Option Exercise. Options granted under the Incentive Plan may become exercisable ("vest") in cumulative increments as determined by the Board. Shares covered by currently outstanding options under the Incentive Plan typically vest at the rate of 1/4th of the shares one year after the vesting commencement date and 1/48th of the shares monthly thereafter over the next three years during the participant's employment by the Company or an affiliate (collectively, "service"). Shares covered by options granted in the future under the Incentive Plan may be subject to different vesting terms. The Board has the power to accelerate the time during which an option may vest or be exercised. In addition, options granted under the Incentive Plan may permit exercise prior to vesting but in such event the participant may be required to enter into an early exercise stock purchase agreement that allows the Company to repurchase unvested shares, generally at their exercise price, should the participant's service terminate before vesting. To the extent provided by the terms of an option, a participant may satisfy any federal, state or local tax withholding obligation relating to the exercise of such option by a cash payment upon exercise, by authorizing the Company to withhold a portion of the stock otherwise issuable to the participant, by delivering already-owned common stock of the Company or by a combination of these means.

Term. The maximum term of options under the Incentive Plan is 10 years, except that in certain cases (see "Eligibility") the maximum term is five years. Options under the Incentive Plan generally terminate three months after termination of the participant's service unless (i) such termination is due to the participant's permanent and total disability, in which case the option may, but need not, provide that it may be exercised (to the extent the option was exercisable at the time of the termination of service) at any time within 12 months of such termination; (ii) the participant dies before the participant's service has terminated, or within such time specified in the Option Agreement (if any), in which case the option may, but need not, provide that it may be exercised (to the extent the option was exercisable at the time of the participant's death) within 18 months of the participant's death by the person or persons to whom the rights to such option pass by will or by the laws of descent and distribution; or (iii) the option by its terms specifically provides otherwise. A participant may designate a beneficiary who may exercise the option following the participant's death. Individual option grants by their terms may provide for exercise within a longer period of time following termination of service.

The option term generally is extended in the event that exercise of the option within these periods is prohibited. A participant's option agreement may provide that if the exercise of the option following the termination of the participant's service would be prohibited because the issuance of stock would violate the registration requirements under the Securities Act, then the option will terminate on the earlier of (i) the expiration of the term of the option or (ii) three months after the termination of the participant's service during which the exercise of the option would not be in violation of such registration requirements.

Terms of Stock Bonuses and Purchases of Restricted Stock

Payment. The Board determines the purchase price under a restricted stock purchase agreement but the purchase price may not be less than 85% of the fair market value of the Company's common

stock on the date of purchase. The Board may award stock bonuses in consideration of past services without a purchase payment.

The purchase price of stock acquired pursuant to a restricted stock purchase agreement under the Incentive Plan must be paid either in cash at the time of purchase or at the discretion of the Board, (i) by delivery of other common stock of the Company, (ii) pursuant to a deferred payment arrangement or (iii) in any other form of legal consideration acceptable to the Board.

Vesting. Shares of stock sold or awarded under the Incentive Plan may, but need not be, subject to a repurchase option or forfeiture right in favor of the Company in accordance with a vesting schedule as determined by the Board.

Restrictions on Transfer. Rights under a stock bonus or restricted stock bonus agreement may not be transferred except where such assignment is required by law or expressly authorized by the terms of the applicable stock bonus or restricted stock purchase agreement.

Restrictions on Transfer

The participant may not transfer an incentive stock option otherwise than by will or by the laws of descent and distribution. During the lifetime of the participant, only the participant may exercise an incentive stock option. The Board may grant nonstatutory stock options that are transferable to the extent provided in the stock option agreement. Shares subject to repurchase by the Company under an early exercise stock purchase agreement may be subject to restrictions on transfer that the Board deems appropriate.

Adjustment Provisions

Transactions not involving receipt of consideration by the Company, such as a merger, consolidation, reorganization, stock dividend, or stock split, may change the type(s), class(es) and number of shares of common stock subject to the Incentive Plan and outstanding awards. In that event, the Incentive Plan will be appropriately adjusted as to the type(s), class(es) and the maximum number of shares of common stock subject to the Incentive Plan, and outstanding awards will be adjusted as to the type(s), class(es), number of shares and price per share of common stock subject to such awards.

Effect of Certain Corporate Events

In the event of (i) the sale, lease, or other disposition of all or substantially all of the assets of the Company, (ii) the sale or other disposition of all or substantially all of the outstanding securities of the Company, or (iii) certain specified types of merger, consolidation or similar transactions (collectively, "corporate transaction"), any surviving or acquiring corporation may assume awards outstanding under the Incentive Plan or may substitute similar awards. If any surviving or acquiring corporation does not assume such awards or to substitute similar awards, then with respect to awards held by participants whose service with the Company or an affiliate has not terminated as of the effective date of the corporate transaction, the vesting of such awards (and, if applicable, the time during which such awards may be exercised) will be accelerated in full and the awards will terminate if not exercised (if applicable) at or prior to such effective date.

Duration, Amendment and Termination