

CYTOKINETICS INC  
Form DEF 14A  
April 03, 2019  
f

SCHEDULE 14A INFORMATION

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

Filed by the Registrant    Filed by a Party other than the Registrant  
Check the appropriate box:

Preliminary Proxy Statement

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

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to § 240.14a-12  
Cytokinetics, Incorporated

(Name of Registrant as Specified In Its Charter)

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

Payment of Filing Fee (Check the appropriate box)

No fee required.

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

1. Title of each class of securities to which transaction applies:
2. Aggregate number of securities to which transaction applies:
3. Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (Set forth the amount on which the filing fee is calculated and state how it was determined):
4. Proposed maximum aggregate value of transaction:
5. Total fee paid:

Fee paid previously with preliminary materials.

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

- 1) Amount Previously Paid:
  - 2) Form, Schedule or Registration Statement No.:
  - 3) Filing Party:
  - 4) Date Filed:
-

Cytokinetics, Incorporated

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

To Be Held May 15, 2019

To the Stockholders:

NOTICE IS HEREBY GIVEN that the Annual Meeting of Stockholders of Cytokinetics, Incorporated (the “Company”), a Delaware corporation, will be held on Wednesday, May 15, 2019, at 10:30 a.m. local time, at the Embassy Suites Hotel, 250 Gateway Boulevard, South San Francisco, CA 94080, for the following purposes:

1. To elect Santo J. Costa, John T. Henderson, M.B, Ch.B. and B. Lynne Parshall, Esq. as Class III Directors, each to serve for a three-year term and until their successors are duly elected and qualified (Proposal One);
2. To approve the amendment and restatement of the Company’s Amended and Restated 2004 Equity Incentive Plan (the “2004 EIP”) to increase the number of authorized shares reserved for issuance under the 2004 EIP by 4,100,000 shares (Proposal Two);
3. To ratify the selection by the Audit Committee of the Board of Directors of Ernst & Young LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2019 (Proposal Three);
4. To approve, on an advisory basis, the compensation of the Named Executive Officers, as disclosed in our Proxy Statement for the 2019 Annual Meeting of Stockholders (Proposal Four); and
5. To transact such other business as may properly be brought before the meeting.

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

Only stockholders of record at the close of business on March 26, 2019 are entitled to notice of and to vote at the meeting or any adjournment thereof.

South San Francisco, California

March 27, 2019

---

**YOUR VOTE IS IMPORTANT**

THIS PROXY STATEMENT IS FURNISHED IN CONNECTION WITH THE SOLICITATION OF PROXIES BY THE COMPANY, ON BEHALF OF THE BOARD OF DIRECTORS, FOR THE 2019 ANNUAL MEETING OF STOCKHOLDERS. THE NOTICE OF INTERNET AVAILABILITY OF PROXY MATERIALS IS BEING DISTRIBUTED ON OR ABOUT APRIL 5, 2019. IF YOU ARE A STOCKHOLDER OF RECORD YOU CAN VOTE YOUR SHARES USING ONE OF THE FOLLOWING METHODS:

**COMPLETE AND RETURN A WRITTEN PROXY CARD**

**BY INTERNET OR TELEPHONE**

**ATTEND OUR 2019 ANNUAL MEETING OF STOCKHOLDERS AND VOTE**

ALL STOCKHOLDERS ARE CORDIALLY INVITED TO ATTEND THE MEETING. HOWEVER, TO ENSURE YOUR REPRESENTATION AT THE MEETING, YOU ARE URGED TO MARK, SIGN, DATE AND RETURN THE PROXY CARD THAT MAY BE MAILED TO YOU AS PROMPTLY AS POSSIBLE IN THE POSTAGE-PREPAID ENVELOPE PROVIDED FOR THAT PURPOSE OR VOTE YOUR SHARES BY INTERNET OR TELEPHONE. ANY STOCKHOLDER ATTENDING THE MEETING MAY VOTE IN PERSON EVEN IF HE OR SHE HAS RETURNED A PROXY CARD OR VOTED BY INTERNET OR TELEPHONE. 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 A PROXY ISSUED IN YOUR NAME FROM THAT RECORD HOLDER.

Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting of

Stockholders to be Held on May 15, 2019

This Proxy Statement, Notice of Annual Meeting, Form of Proxy Card and Annual Report to Stockholders are available at [cytokinetics.com/proxy](http://cytokinetics.com/proxy). You may obtain directions to the Annual Meeting of Stockholders by directing a request to:

Investor Relations

Cytokinetics, Incorporated

280 East Grand Avenue

South San Francisco, California 94080

Email: [investor@cytokinetics.com](mailto:investor@cytokinetics.com)

Telephone: 650-624-3283

---

TABLE OF CONTENTS

<u>Information Concerning Solicitation and Voting</u>	1
<u>Proposal One: Election of Three Class III Directors</u>	4
<u>Proposal Two: Approval of the Amendment to And Restatement of the Company’s 2004 EIP</u>	6
<u>Proposal Three: Ratification of Selection of Ernst &amp; Young LLP as Our Independent Registered Public Accounting Firm for the Fiscal Year Ending December 31, 2019</u>	13
<u>Proposal Four: Approval, on an Advisory Basis, of Executive Compensation</u>	15
<u>Security Ownership of Certain Beneficial Owners and Management</u>	16
<u>Board of Directors</u>	18
<u>Director Skills, Experience and Background</u>	18
<u>Board Leadership Structure</u>	21
<u>Board Role in Risk Oversight</u>	21
<u>Independence of Directors</u>	22
<u>Board of Directors Meetings and Committees</u>	22
<u>Executive Officers</u>	24
<u>Executive Skills, Experience and Background</u>	24
<u>Executive Compensation</u>	26
<u>Compensation Discussion and Analysis</u>	26
<u>Compensation and Talent Committee Report</u>	34
<u>Summary Compensation Table</u>	34
<u>Outstanding Equity Awards at December 31, 2018</u>	35
<u>Grants of Plan-Based Awards in 2018</u>	36
<u>Option Exercises and Vesting of Stock in 2018</u>	36
<u>Director Compensation</u>	39
<u>Report of the Audit Committee of the Board of Directors</u>	41
<u>Section 16(A) Beneficial Ownership Reporting Compliance</u>	42
<u>Certain Business Relationships and Related Party Transactions</u>	42
<u>Indemnification of Directors and Officers</u>	42
<u>Householding of Proxy Materials</u>	42
<u>Other Matters</u>	42
<u>Appendix A: Amended and Restated 2004 Equity Incentive Plan</u>	A-1



CYTOKINETICS, INCORPORATED

280 East Grand Avenue

South San Francisco, California 94080

PROXY STATEMENT

FOR THE ANNUAL MEETING OF STOCKHOLDERS

May 15, 2019

INFORMATION CONCERNING SOLICITATION AND VOTING

General

The Board of Directors of Cytokinetics, Incorporated (the “Company”, “we”, “us”, or “our”) is soliciting proxies for use at the Annual Meeting of Stockholders (the “Annual Meeting”) to be held at the Embassy Suites Hotel, 250 Gateway Boulevard, South San Francisco, CA 94080, on Wednesday, May 15, 2019, at 10:30 a.m. local time for the purposes set forth herein and in the accompanying Notice of Annual Meeting of Stockholders. Our principal executive offices are located at the address listed at the top of the page and the telephone number is (650) 624-3000.

Pursuant to rules adopted by the Securities and Exchange Commission (the “SEC”), we have elected to provide access to our proxy materials over the internet. Accordingly, we have sent you a Notice of Internet Availability of Proxy Materials (the “Notice”) because our Board of Directors is soliciting your proxy to vote at the Annual Meeting, including at any adjournments of the meeting. All stockholders will have the ability to access the proxy materials on the website referred to in the Notice or request to receive a printed set of the proxy materials. Instructions on how to access the proxy materials over the internet or to request a printed copy may be found in the Notice.

We intend to mail the Notice on or about April 5, 2019 to all stockholders of record entitled to vote at the Annual Meeting. We may send you a proxy card, along with a second Notice, on or after April 16, 2019.

WE WILL PROVIDE WITHOUT CHARGE TO ANY STOCKHOLDER SOLICITED BY THESE PROXY SOLICITATION MATERIALS A COPY OF OUR ANNUAL REPORT ON FORM 10-K, TOGETHER WITH THE FINANCIAL STATEMENTS REQUIRED TO BE FILED WITH THE ANNUAL REPORT ON FORM 10-K, UPON REQUEST OF THE STOCKHOLDER MADE IN WRITING TO CYTOKINETICS, INCORPORATED, 280 EAST GRAND AVENUE, SOUTH SAN FRANCISCO, CALIFORNIA, 94080, ATTN: INVESTOR RELATIONS, ANNUAL STOCKHOLDER MEETING.

Record Date and Share Ownership

Common stockholders of record at the close of business on March 26, 2019 (the “Record Date”) are entitled to notice of and to vote at the Annual Meeting. We have one class of common shares issued and outstanding, designated as Common Stock, \$0.001 par value per share (the “Common Stock”). As of the Record Date, 163,000,000 shares of Common Stock were authorized and 55,373,139 shares were outstanding, and 10,000,000 shares of Preferred Stock were authorized and none were outstanding.

### Revocability of Proxies

Any proxy given pursuant to this solicitation may be revoked by the person giving it at any time before its use by: (i) issuing a later proxy, (ii) delivering to us at our principal offices a written notice of revocation to the attention of the Corporate Secretary or (iii) attending the Annual Meeting and voting in person.

### Voting

On all matters, each common share has one vote.

### Cost of Proxy Solicitation

We will pay for the entire cost of soliciting any proxies, unless otherwise stated herein. In addition to these proxy materials, our directors and employees 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. We may

also reimburse brokerage firms, banks and other agents for the routine cost of forwarding proxy materials to beneficial owners.

#### Voting in Person or by Proxy Card

If you are a stockholder of record, you may vote in person at the Annual Meeting or vote by proxy using the proxy card. Whether you plan to attend the Annual Meeting or not, we urge you to vote by proxy to ensure your vote is counted. You may still attend the Annual 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 proxy card (that you may request or that we may elect to deliver later), 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.

#### Voting via the Internet or by Telephone

Stockholders may also vote their shares by proxy by means of the telephone or on the Internet. The laws of the State of Delaware, under which we are incorporated, specifically permit electronically transmitted proxies, provided that each such proxy contains or is submitted with information from which the Inspector of Elections (the "Inspector") can determine that such proxy was authorized by the stockholder.

The telephone and Internet voting procedures below are designed to authenticate stockholders' identities, to allow stockholders to grant a proxy to vote their shares and to confirm that stockholders' instructions have been recorded properly. Stockholders granting a proxy to vote via the Internet should understand that there may be costs associated with electronic access, such as usage charges from Internet access providers and telephone companies, which must be borne by the stockholder.

#### For Shares Registered in Your Name

Stockholders of record as of the close of business on the Record Date may go to [envisionreports.com/cytk](http://envisionreports.com/cytk) to vote by proxy their shares by means of the Internet. They will be required to provide our number and the control number contained on your Notice. The stockholder will then be asked to complete an electronic proxy card. The votes represented by such proxy will be generated on the computer screen and the stockholder will be prompted to submit or revise them as desired. Any stockholder using a touch-tone telephone may also grant a proxy to vote shares by calling 1-800-652-8683 and following the recorded instructions.

#### For Shares Registered in the Name of a Broker or Bank

Most beneficial owners whose stock is held in street name receive instructions for granting proxies from their banks, brokers or other agents, rather than our proxy card.

A number of brokers and banks are participating in a program provided through Broadridge Financial Solutions that offers the means to grant proxies to vote shares via telephone and the Internet. If your shares are held in an account with a broker or bank participating in the Broadridge Financial Solutions program, you may grant a proxy to vote those shares telephonically by calling the telephone number shown on the instruction form received from your broker or bank, or via the Internet at Broadridge Financial Solutions' web site at [proxyvote.com](http://proxyvote.com).

#### General Information for All Shares Voted via the Internet or by Telephone

Votes submitted via the Internet or by telephone must be received by 1:00 a.m., Pacific Time on May 15, 2019. Submitting your proxy via the Internet or by telephone will not affect your right to vote in person should you decide to attend the Annual Meeting.

Quorum; Abstentions; Broker Non-Votes

Votes cast by proxy or in person at the Annual Meeting (“Votes Cast”) will be tabulated by the Inspector of Elections who is expected to be a representative from Computershare Shareowner Services, our transfer agent and registrar. The Inspector will also determine whether or not a quorum is present. Except in certain specific circumstances, the affirmative vote of a majority of shares present in person or represented by proxy at a duly held meeting at which a quorum is present is required under Delaware law for approval of proposals presented to

stockholders. In general, Delaware law provides that a quorum will be present if stockholders holding at least a majority of shares entitled to vote are present in person or represented by proxy at the meeting.

The Inspector will treat shares that are voted WITHHELD or ABSTAIN as being present and entitled to vote for purposes of determining the presence of a quorum. However, such shares will not be treated as votes in favor of approving any matter submitted to the stockholders for a vote. When proxies are properly dated, executed and returned, or if instructions are properly carried out for Internet or telephone voting, the shares represented by such proxies will be voted at the Annual Meeting in accordance with the stockholder's instructions. If no specific instructions are given, the shares will be voted (i) for the election of the nominees for directors set forth herein; (ii) for the ratification of Ernst & Young LLP as independent auditors for the year ended December 31, 2019; (iii) for the amendment and restatement of the 2004 EIP to increase the number of authorized shares reserved for issuance under the 2004 EIP by 4,100,000 shares; and (iv) for approval, on an advisory basis, of the compensation of the Named Executive Officers; and, upon such other business as may properly come before the Annual Meeting or any adjournment thereof, at the discretion of the proxy holder.

If a broker indicates on the proxy or its substitute that such broker does not have discretionary authority as to certain shares to vote on a particular matter ("broker non-votes"), then those shares will be considered as present with respect to establishing a quorum for the transaction of business. Discretionary items are proposals considered routine under the rules of the New York Stock Exchange on which your broker or bank may vote shares held in street name in the absence of your voting instructions. Non-discretionary items are matters that may substantially affect the rights or privileges of stockholders, such as mergers, stockholder proposals, elections of directors (even if not contested) and executive compensation, including the advisory stockholder votes on executive compensation and on the frequency of stockholder votes on executive compensation. On non-discretionary items for which you do not give your broker or bank instructions, the shares will be treated as broker non-votes. Accordingly, your broker, bank or nominee may not vote your shares on Proposal One and Proposal Two without your instructions, but may vote your shares on Proposals Three and Four. We believe that the tabulation procedures to be followed by the Inspector are consistent with the general statutory requirements in Delaware concerning voting of shares and determination of a quorum.

Broker non-votes with respect to proposals set forth in this proxy statement will not be considered "Votes Cast" and, accordingly, will not affect the determination as to whether the requisite number of Votes Cast has been obtained with respect to a particular matter. 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.

#### Deadline for Receipt of Stockholder Proposals

Stockholders are entitled to present proposals for action at a forthcoming meeting if they comply with the requirements of our bylaws and the rules established by the Securities and Exchange Commission (the "SEC") under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). Under these requirements, proposals of our stockholders that are intended to be presented by such stockholders at our 2020 Annual Meeting of Stockholders must be received by us no later than December 9, 2019. Proposals submitted by this date will also be considered for inclusion in next year's proxy materials. If you wish to bring a matter before the stockholders at next year's Annual Meeting and you do not notify us before December 9, 2019, for all proxies we receive, the proxyholders will have discretionary authority to vote on the matter, including discretionary authority to vote in opposition to the matter. A copy of the relevant bylaws provisions relating to stockholder proposals is available upon written request to Cytokinetics, Incorporated, 280 East Grand Avenue, South San Francisco, California 94080, Attention: Corporate Secretary.

#### Results of the Voting at the Annual Meeting

Preliminary voting results will be announced at the Annual Meeting. Results will be published in a current report on Form 8-K that we expect to file within four business days after the date of the Annual Meeting. If final voting results

are not available to us in time to file a Form 8-K within four business days after the meeting, we will file a Form 8-K to publish preliminary results and, within four business days after the final results are known to us, file an additional Form 8-K to publish the final results.

3

---

## PROPOSAL ONE

### ELECTION OF THREE CLASS III DIRECTORS

#### Nominees

Our Board of Directors currently has nine members. We have a classified Board of Directors, which is divided into three classes of directors whose terms expire at different times. The three classes are currently comprised of the following directors:

• Class I consists of L. Patrick Gage, Ph.D., Edward M. Kaye, M.D. and Wendell Wierenga, Ph.D., who will serve until the 2020 Annual Meeting of Stockholders;

• Class II consists of Robert I. Blum, Robert M. Califf, M.D. and Sandford D. Smith, who will serve until the 2021 Annual Meeting of Stockholders and until their successors have been duly elected and qualified; and

• Class III consists of Santo J. Costa, John T. Henderson, M.B., Ch.B. and B. Lynne Parshall, Esq., who will serve until the 2019 Annual Meeting of Stockholders and until their successors have been duly elected and qualified. Mr. Costa, Dr. Henderson and Ms. Parshall will stand for election as Class III directors at this Annual Meeting.

At each Annual Meeting of Stockholders, the successors to directors whose terms will then expire will be elected to serve from the time of election and qualification until the third Annual Meeting of Stockholders following such election and until their successors have been duly elected and qualified or their earlier resignation or removal. Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class will consist of an equal number of directors.

Unless otherwise instructed, the proxy holders will vote the proxies received by them for our three nominees named below, who are currently directors of the Company who were previously elected by the stockholders. The nominees have consented to be named as nominees in the proxy statement and to continue to serve as directors if elected. If any nominee becomes unable or declines to serve as a director or if additional persons are nominated at the meeting, the proxy holders intend to vote all proxies received by them in such a manner as will assure the election of the nominees listed below if possible (or, if new nominees have been designated by the Board of Directors, in such a manner as to elect such nominees), and the specific nominees to be voted for will be determined by the proxy holders.

The nominees for the Class III directors are:

• Santo J. Costa,

• John T. Henderson, M.B., Ch.B. and

• B. Lynne Parshall, Esq.

Biographical information for each director can be found below in the Board of Directors section. We are not aware of any reason that any nominee will be unable or will decline to serve as a director. The term of office of each person elected as a Class III director will continue until our 2022 Annual Meeting of Stockholders and until a successor has been elected and qualified, or their earlier resignation or removal. There are no arrangements or understandings between any director or executive officer and any other person pursuant to which he or she is or was to be selected as a director or officer of the Company.

#### Vote Required

Directors will be elected by a plurality vote of the shares of Common Stock present or represented and entitled to vote on this matter at the Annual Meeting. Accordingly, the candidates receiving the highest number of affirmative votes of shares represented and voting on this proposal at the Annual Meeting will be elected directors of the Company. Votes withheld from a nominee and broker non-votes will be counted for purposes of determining the presence or absence of a quorum. This is an uncontested election of directors because the number of nominees for director does not exceed the number of directors to be elected. Pursuant to our director resignation policy, if any nominee for director in this

election receives a greater number of votes “withheld” from such nominee than votes “for”, the nominee for director must tender his or her resignation for consideration by our Nominating and Governance Committee. The Nominating and Governance Committee shall consider all of the relevant facts and circumstances and recommend to our Board of Directors the action to be taken with respect to such offer of resignation. The Board of Directors will

4

---

then act on the Nominating and Governance Committee's recommendation. Promptly following the Board of Director's decision, we will disclose that decision and an explanation of such decision in a filing with the Securities and Exchange Commission and a press release. See "Quorum; Abstentions; Broker Non-Votes."

THE CLASS I AND II DIRECTORS RECOMMEND THAT

STOCKHOLDERS VOTE FOR THE CLASS III NOMINEES LISTED ABOVE.

## PROPOSAL TWO

### APPROVAL OF THE AMENDMENT AND RESTATEMENT OF THE AMENDED AND RESTATED 2004 EQUITY INCENTIVE PLAN

We are asking our stockholders to approve the amendment and restatement of Company's Amended and Restated 2004 Equity Incentive Plan (the "2004 EIP"), to increase the number of authorized shares of Common Stock reserved for issuance under the 2004 EIP by 4,100,000 shares. The Board of Directors has approved the amendment and restatement of the 2004 EIP subject to approval from our stockholders at the Annual Meeting.

The 2004 EIP was originally adopted by our Board of Directors in January 2004 and approved by our stockholders in February 2004. Our stockholders approved amendments to the 2004 EIP in May 2008, May 2009, May 2010, May 2011, May 2012, May 2015 and May 2017. As of February 28, 2019, a total of 11,637,190 shares of our Common Stock were authorized for issuance under the 2004 EIP.

The Board of Directors believes that this is an appropriate time to update the terms of the 2004 EIP to increase the total number of shares of our Common Stock reserved for issuance and to reflect updates to Section 162(m) of the Internal Revenue Code of 1986, as amended and it therefore approved an amendment and restatement of the 2004 EIP. In addition, our Board of Directors believes that the number of shares of our Common Stock that remain available for issuance under the 2004 EIP is insufficient to achieve the purposes of the plan over the term of the plan. Accordingly, the Board of Directors is now requesting that the stockholders approve the amendment and restatement of 2004 EIP, including an increase to the number of authorized shares of Common Stock reserved for issuance under the 2004 EIP of 4,100,000 shares. The Board of Directors has approved this increase to the authorized share reserve, subject to approval from our stockholders at the Annual Meeting. If this Proposal Two is not approved by our stockholders, the 2004 EIP will continue in accordance with its existing terms, and there will be no such increase to the number of shares of Common Stock reserved for issuance under the 2004 EIP or updated regarding Section 162(m).

#### Amendment to the Amended and Restated 2004 EIP

The following is a summary of the proposed amendment and restatement of the 2004 EIP. This summary is qualified in its entirety by reference to the actual text of the 2004 EIP and the proposed amendment and restatement thereto, which is appended to this Proxy Statement as Appendix A.

• We propose to increase the number of authorized shares of our Common Stock reserved for issuance under the 2004 EIP by an additional 4,100,000 shares, from 11,637,190 shares as of February 28, 2019 to 15,737,190 shares, subject to stockholder approval of the amendment and restatement.

• The 2004 EIP eliminates references to Section 162(m) of the Internal Revenue Code of 1986, as amended (the "Code"), and eliminates individual grant limits that applied under the 2004 EIP to awards that were intended to comply with the exemption for "performance-based compensation" under Code Section 162(m).

The Board of Directors believes that the approval of the amendment and restatement of the 2004 EIP is essential to our continued success. We believe that our employees are one of our most valuable assets and that the issuance of awards under the 2004 EIP is a critical factor in our ability to attract and retain outstanding and highly skilled individuals in the extremely competitive labor markets in which we operate. Such awards also are crucial to our ability to motivate our employees to achieve our goals. This Proposal Two is intended to provide sufficient shares to fund anticipated equity awards under the 2004 EIP until our 2021 Annual Meeting of Stockholders.

If approved, the number of authorized shares of Common Stock available for issuance under the 2004 EIP, as a percentage of the number of shares of our Common Stock issued and outstanding, would be consistent with those of our Peer Companies (as defined in the Compensation Discussion and Analysis section of this proxy statement). For our Peer Companies, this percentage ranges between 2.4% and 4.5% annually. For the past three years (2016 through

2018) we have granted an average of 3.6% annually of shares of our Common Stock then issued and outstanding.

The Board of Directors believes that our ability to issue awards to our employees under the 2004 EIP at a level that is competitive with our Peer Companies is critical to our ability to succeed.

#### 2004 EIP Outstanding Awards and Available Shares

As of February 28, 2019, a total of 7,448,319 shares of our Common Stock were subject to outstanding stock options awarded under the 2004 EIP with a weighted average exercise price of \$8.43 per share and a weighted average

remaining term of 2.9 years. No stock option awards were granted under the 2004 EIP in which the exercise price for the underlying shares was less than the fair market value of such shares on the date of grant. As of February 28, 2019, there were 887,150 unvested restricted stock units outstanding and 704,309 shares available for grant.

#### Summary of the Amended and Restated 2004 EIP

The principal features of the 2004 EIP, subject to stockholder approval are summarized below. This summary is qualified in its entirety by reference to the 2004 EIP, attached as Appendix A.

The 2004 EIP provides for the grant of the following types of incentive awards: (i) stock options, including incentive stock options and nonstatutory stock options, (ii) stock appreciation rights (“SARs”), (iii) restricted stock, (iv) restricted stock units, (v) performance shares, and (vi) performance units. Each of these is referred to as an “Award.”

Eligibility. Under the 2004 EIP, eligible individuals include employees and consultants who provide services to us as well as members of our Board of Directors. As of February&#16