OSCIENT PHARMACEUTICALS CORP
Form DEF 14A
April 22, 2008

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

Proxy Statement Pursuant to Section 14(a)

of the Securities Exchange Act of 1934

Filed by the Registrant x

Filed by a Party other than the Registrant ¨

Check the appropriate box:

¨	Preliminary Proxy Statement	¨	**Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
x	Definitive Proxy Statement		
¨	Definitive Additional Materials		
¨	Soliciting Material Pursuant to §240.14a-12		

Oscient Pharmaceuticals Corporation

(Name of Registrant as Specified In Its Charter)

Payment of Filing Fee (Check the appropriate box):

x No fee required.

¨ Fee computed on table below per Exchange Act Rules 14a-6(i)(4) 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:

OSCIENT PHARMACEUTICALS CORPORATION

NOTICE OF ANNUAL MEETING OF STOCKHOLDERS

To Be Held On June 12, 2008

To the Stockholders of

OSCIENT PHARMACEUTICALS CORPORATION

NOTICE IS HEREBY GIVEN that the Annual Meeting of Stockholders of Oscient Pharmaceuticals Corporation, (the Company) will be held on Thursday, June 12, 2008 beginning at 9:00 a.m. at Ropes & Gray LLP, One International Place, 36th floor, Boston, Massachusetts, for the following purposes:

A. To fix the numbers of directors at nine and to elect nine directors.

B. To approve an amendment to the 2001 Incentive Plan to increase the number of shares of common stock, par value $0.10 per share, available for issuance under the plan by 1,000,000 shares.

C. To ratify the selection of Ernst & Young LLP as the Company s independent registered public accounting firm for the year ending December 31, 2008.

D. To transact such other business as may properly come before the meeting or any adjournment of the meeting.

The Board of Directors has fixed the close of business on April 15, 2008 as the record date for the determination of stockholders entitled to notice of and to vote at this meeting and at any adjourned session(s) thereof.

All stockholders are cordially invited to attend the meeting. However, to assure your representation at the meeting, you are urged to mark, sign, date and return the enclosed form of proxy as promptly as possible. Stockholders attending the meeting may vote in person even if they have returned a proxy.

By Order of the Board of Directors,

PATRICK O BRIEN, Clerk

April 25, 2008

Boston, Massachusetts

OSCIENT PHARMACEUTICALS CORPORATION

PROXY STATEMENT FOR ANNUAL MEETING OF STOCKHOLDERS

TO BE HELD ON JUNE 12, 2008

GENERAL INFORMATION ABOUT THE MEETING AND VOTING

Why did you send me this Proxy Statement?

We sent you this Proxy Statement and the accompanying proxy card because the Board of Directors of Oscient Pharmaceuticals Corporation is soliciting your proxy to vote at our Annual Meeting of Stockholders to be held on Thursday, June 12, 2008 beginning at 9:00 a.m. at Ropes & Gray LLP, One International Place, 36th floor, Boston, Massachusetts. This Proxy Statement, along with the accompanying Notice of Annual Meeting of Stockholders, summarizes the purposes of the meeting and the information that you need to know to vote at the meeting.

Our 2007 Annual Report to Stockholders and our 2007 Annual Report on Form 10-K, which includes our audited financial statements, are being mailed with this Proxy Statement, but are not part of this Proxy Statement. You can also find a copy of our 2007 Annual Report on Form 10-K on the Internet through the SEC s electronic data system called EDGAR at *www.sec.gov* or through the Investor Relations section of our website at *www.oscient.com.*

Who can vote?

Each share of common stock you own as of the close of business on the record date of April 15, 2008 entitles you to one vote on each matter to be voted upon at the meeting. As of the record date, 14,125,127 shares of common stock were outstanding and entitled to vote. We are mailing this Proxy Statement and the accompanying proxy on or about April 28, 2008 to all stockholders entitled to notice of and to vote at the meeting.

Shares represented by valid proxies, received in time for the meeting and not revoked prior to the meeting, will be voted at the meeting. You can revoke your vote in the manner described in How can I change my vote?

How do I vote?

If your shares are registered directly in your name through our stock transfer agent, Computershare, or you have stock certificates, you may vote:

By mail. Complete and mail the enclosed proxy card in the enclosed postage prepaid envelope. Your proxy will be voted in accordance with your instructions. If you sign the proxy card but do not specify how you want your shares voted, they will be voted as recommended by our Board of Directors.

In person at the meeting. If you attend the meeting, you may deliver your completed proxy card in person or you may vote by completing a ballot, which will be available at the meeting.

If your shares are held in street name (held in the name of a bank, broker or other nominee), you must provide the bank, broker or other nominee with instructions on how to vote your shares and can do so as follows:

By Internet or by telephone. You will receive instructions from your bank, broker or other nominee if you are permitted to vote over the Internet or by telephone.

By mail. You will receive instructions, typically in the form of a voting instruction form, from your bank, broker or other nominee explaining how to vote your shares.

In person at the meeting. Contact the bank, broker or other nominee who holds your shares to obtain a broker proxy card and bring it with you to the meeting. You will not be able to vote at the meeting unless you have a proxy card from your bank, broker or other nominee.

How can I change my vote?

You may revoke your proxy and change your vote at any time before the meeting. You may do this by:

Signing a new proxy card or voting instruction form and submitting it as instructed above.

If your shares are registered in your name or if you have stock certificates, delivering to our Clerk a signed statement of revocation or a duly executed proxy bearing a later date.

If your shares are held in street name, re-voting as instructed above. Only your latest vote will be counted.

Attending the meeting in person and voting in person. Attending the meeting in person will not in and of itself revoke a previously submitted proxy unless you specifically request it.

Will my shares be voted if I do not vote?

If your shares are registered in your name or if you have stock certificates, they will not be voted if you do not return a signed proxy card unless you vote at the meeting in the manner described under How do I vote?

If you return a signed proxy card without indicating your vote, your shares will be voted **FOR** all of the proposals for which you did not indicate a vote.

If your shares are held in street name and you do not vote in the manner described under How do I vote, the bank, broker or other nominee has the authority to vote your unvoted shares on Proposal A Election of Nine Directors and Proposal C Ratification of the Selection of Ernst & Young as the Company s Independent Registered Public Accounting Firm for the Year Ending December 31, 2008. If the bank, broker or other nominee does not vote your unvoted shares on these proposals, the shares become broker non-votes as to the particular proposals.

If your shares are held in street name and you do not vote on Proposal B Approval of the Amendment of our 2001 Incentive Plan, your shares will not be voted and the shares also become broker non-votes as to the particular proposals.

The effect of broker non-votes on the vote for each proposal is described under What vote is required to approve each matter and how are votes counted? We encourage you to provide voting instructions. This ensures your shares will be voted at the meeting in the manner you desire.

What if I receive more than one proxy card or voting instruction form?

You may receive more than one proxy card or voting instruction form if you hold shares of our common stock in more than one account, which may be in registered form or held in street name. Please vote in the manner described under How do I vote? for each account to ensure that all of your shares are voted.

How many shares must be present to hold the meeting?

A majority of our outstanding shares of common stock as of the record date must be present at the meeting to hold the meeting and conduct business. This is called a quorum. Shares voted in the manner described under How do I vote? will be counted as present at the meeting. Shares counted as present at the meeting that abstain or do not vote on one or more of the matters to be voted upon, as well as broker non-votes, are counted as present for establishing a quorum.

If a quorum is not present, we expect that the meeting will be adjourned until we obtain a quorum.

What vote is required to approve each matter and how are votes counted?

Election of Directors. The nine nominees for director receiving the highest number of votes FOR election will be elected as directors. This is called a plurality. Abstentions are not counted for purposes of electing directors. You may vote either FOR all of the nominees, WITHHOLD your vote from all of the nominees or WITHHOLD your vote from any one or more of the nominees. Votes that are withheld will not be included in the vote tally for the election of directors. Brokerage firms have the authority to vote customers unvoted shares held by the firms in street name for the election of directors. If a broker does not exercise this authority, such broker non-votes will have no effect on the results of this vote.

Approval of the Amendment of our 2001 Incentive Plan. The affirmative vote of a majority of shares present or represented and entitled to vote at the meeting is required to approve the amendment of our 2001 Incentive Plan to increase the number of shares of common stock available for issuance under the plan by 1,000,000 shares. Abstentions and unvoted shares will be treated as votes against this proposal. Broker non-votes will have no effect on the results of this vote. Brokerage firms do not have the authority to vote customers unvoted shares held by the firms in street name on this proposal.

Ratification of Ernst & Young LLP as our Independent Registered Public Accounting Firm. The affirmative vote of a majority of shares present or represented and entitled to vote at the meeting is required to ratify Ernst & Young LLP as our independent registered public accounting firm for 2008. Abstentions will be treated as votes against this proposal. Brokerage firms have the authority to vote customers unvoted shares held by the firms in street name on this proposal. If a broker does not exercise this authority, such broker non-votes will have no effect on the results of this vote. We are not required to obtain the approval of our stockholders to select our independent registered public accounting firm. However, if our stockholders do not ratify the selection of Ernst & Young LLP as our independent registered public accounting firm for 2008, the Audit Committee of our Board of Directors will reconsider its selection.

Are there other matters to be voted on at the meeting?

We do not know of any other matters that may come before the meeting. If any other matters are properly presented to the meeting, the persons named in the accompanying proxy intend to vote, or otherwise act, in accordance with their judgment.

Where do I find the voting results of the meeting?

We will announce preliminary voting results at the meeting. We will publish final voting results in our Quarterly Report on Form 10-Q for the second quarter of 2008, which we plan to file with the Securities and

Exchange Commission by August 9, 2008. You may request a copy of the Form 10-Q by writing to Investor Relations, Oscient Pharmaceuticals Corporation, 1000 Winter Street, Suite 2200, Waltham, Massachusetts 02451. You will also be able to find a copy on the Internet through the SEC s electronic data system called EDGAR at www.sec.gov or through the Investor Relations section of our website at *www.oscient.com*.

Who is soliciting the proxy and what are the costs of soliciting the proxies?

Our Board of Directors is soliciting the proxy accompanying this Proxy Statement. Our directors, executive officers and other employees may also solicit proxies by telephone, fax, e-mail, Internet and personal solicitation. They will not receive any additional compensation for such solicitation. We will bear the cost of soliciting proxies, including expenses in connection with preparing and mailing this Proxy Statement. We will also reimburse banks, brokers and other nominees representing stockholders who hold their shares in street name for their expenses in forwarding proxy material to such stockholders. We have engaged the proxy solicitation firm The Altman Group to assist us with the solicitation of proxies, and we expect to pay this firm approximately $7,000 for its services plus out-of-pocket expenses incurred by The Altman Group.

Security Ownership of Certain Beneficial Owners and Management

The following table sets forth information regarding the beneficial ownership of Company common stock as of April 15, 2008 by:

- each person known by the Company to own beneficially 5% or more of Company common stock;
- each director and nominee for director of the Company;
- each executive officer of the Company; and
- all of the directors and executive officers of the Company as a group.

The percentages shown are based on shares of Company common stock outstanding as of April 15, 2008, and where indicated also include beneficially owned shares of common stock underlying the Company s outstanding convertible notes. Unless otherwise indicated, the address for each stockholder is c/o Oscient Pharmaceuticals Corporation, 1000 Winter Street, Suite 2200, Waltham, Massachusetts 02451. Unless otherwise indicated, each person or entity named in the table has sole voting power and investment power (or shares such power with his or her spouse) with respect to all shares of capital stock listed as owned by such person or entity.

	Amount and Nature of Beneficial Ownership	Percent of Class Including Convertible Notes	Amount and Nature of Beneficial Ownership Excluding Convertible Notes	Percent of Class Excluding Convertible Notes
5% Stockholders:				
Akanthos Capital Management, LLC	1,814,815(1)	11.5%		
Alexandra Investment Management, LLC	844,444(2)	5.6%		
Ashford Capital Management, Inc.	798,842(3)	5.5%	441,064(4)	3.1%
Bruce & Co., Inc.	1,022,370(5)	6.7%		
Highbridge International, LLC	1,743,310(6)	11.0%	32,421(7)	0.2%
Paul Royalty Fund Holdings II	1,676,908(8)	11.6%	1,676,908(8)	11.6%
Renaissance Technologies, LLC	804,476(9)	5.7%	804,476(9)	5.7%
Visium Asset Management, LP	1,777,778(10)	11.2%		
Zazove Associates, LLC	1,357,852(11)	8.9%		
Directors and Named Executive Officers:				
Gregory B. Brown	1,925(12)		1,925(12)	
Dominick Colangelo	138,023(13)	1.0%	138,023(13)	1.0%
Robert J. Hennessey	17,166(14)	0.1%	17,166(14)	0.1%
John R. Leone	1,677,508(15)	11.6%	1,677,508(15)	11.6%
Philippe M. Maitre	73,375(16)	0.5%	73,375(16)	0.5%
William R. Mattson	2,725(17)		2,725(17)	
Gary Patou	19,641(18)	0.1%	19,641(18)	0.1%
Steven M. Rauscher	370,607(19)	2.6%	370,607(19)	2.6%
William S. Reardon	11,367(20)	0.1%	11,367(20)	0.1%
Norbert G. Riedel	20,965(21)	0.1%	20,965(21)	0.1%
David K. Stone	23,195(22)	0.2%	23,195(22)	0.2%
John E. Voris	6,400(23)		6,400(23)	
All directors and officers as a group (12 persons)	2,362,897(24)	15.8%	2,362,897(24)	15.8%

(1) Includes 1,814,815 shares of Common Stock issuable upon the conversion of the Company s 3.50% Convertible Senior Notes due 2011. The address of this shareholder is 21700 Oxnard Street, Suite 1520, Woodland Hills, CA 91367. This information is based on the Schedule 13F filed on February 14, 2008 by Akanthos Capital Management, LLC.

(2) Includes 844,444 shares of Common Stock issuable upon the conversion of the Company s 3.50% Convertible Senior Notes due 2011. The address of this shareholder is 767 Third Avenue, 39th Floor, New York, New York, 10017. This information is based on the Schedule 13F filed on February 14, 2008 by Alexandra Investment Management, LLC.

(3) Includes 93,750 shares of Common Stock issuable upon exercise of warrants. Includes 357,778 shares of Common Stock issuable upon the conversion of the Company s 3.50% Convertible Senior Notes due 2011. The address of this shareholder is P.O. Box 4172, Wilmington, DE 19807. This information is based on the Schedule 13G filed on February 13, 2007 and the Schedule 13F filed on February 15, 2008 by Ashford Capital Management, Inc.

(4) Includes 93,750 shares of Common Stock issuable upon exercise of warrants. The address of this shareholder is P.O. Box 4172, Wilmington, DE 19807. This information is based on the Schedule 13G filed on February 13, 2007 and the Schedule 13F filed on February 15, 2008 by Ashford Capital Management, Inc.

(5) Includes 1,022,370 shares of Common Stock issuable upon the conversion of the Company s 3.50% Convertible Senior Notes due 2011. The address of this shareholder is 20 N. Wacker Drive, Suite 2414, Chicago, IL 60606. This information is based on the Schedule 13F filed on February 14, 2008 by Bruce & Co., Inc.

(6) Includes (i) 1,710,889 shares of Common Stock issuable upon the conversion of the Company s 3.50% Convertible Senior Notes due 2011, and (ii) 25,000 shares of Common Stock issuable to Smithfield Fiduciary, LLC, a wholly owned subsidiary of Highbridge International, LLC, upon the exercise of warrants to purchase shares of Common Stock. In addition to such warrants and common shares, the reporting persons may be deemed to beneficially own 161,917 shares of Common Stock issuable to Highbridge International, LLC and 58,891 shares of Common Stock issuable to Smithfield Fiduciary, LLC, a wholly-owned subsidiary of Highbridge International, LLC, upon the exercise of warrants to purchase shares of Common Stock; however, pursuant to the terms of these warrants, the warrants cannot be exercised until such time as its holders would not beneficially own after such exercise more than 4.99% of the outstanding shares of Common Stock. The address of this shareholder is The Cayman Corporate Centre, 4th Floor, 27 Hospital Road, Grand Cayman, Cayman Islands, British West Indies. This information is based on the Schedule 13G filed on February 7, 2008 by Highbridge International, LLC.

(7) Includes 25,000 shares of Common Stock issuable to Smithfield Fiduciary, LLC, a wholly owned subsidiary of Highbridge International, LLC, upon the exercise of warrants to purchase shares of Common Stock. In addition to such warrants and common shares, the reporting persons may be deemed to beneficially own 161,917 shares of Common Stock issuable to Highbridge International, LLC and 58,891 shares of Common Stock issuable to Smithfield Fiduciary, LLC, a wholly-owned subsidiary of Highbridge International, LLC, upon the exercise of warrants to purchase shares of Common Stock; however, pursuant to the terms of these warrants, the warrants cannot be exercised until such time as its holders would not beneficially own after such exercise more than 4.99% of the outstanding shares of Common Stock. The address of this shareholder is The Cayman Corporate Centre, 4th Floor, 27 Hospital Road, Grand Cayman, Cayman Islands, British West Indies. This information is based on the Schedule 13G filed on February 7, 2008 by Highbridge International, LLC.

(8) Includes 1,388,889 restricted shares directly held by Paul Royalty Fund Holdings II (PRFH) and indirectly held by Paul Royalty Fund II, LP (PRF), Paul Royalty Associates II, LP (PRA), Paul Royalty Management, LLC (PRM) and Paul Capital Advisors, LLC (PCA). PRFH directly owns 1,388,889 shares of Common Stock. PRF and PRA may be deemed to indirectly own 1,388,889 shares of common stock held by PRFH because PRF and PRA are the general partners of PRFH. PRM may be deemed to indirectly own the shares because PRM is the general partner of PRF and PRA. As manager of PRA, PCA exercises voting and dispositive power over investments held by PRA. Includes warrants exercisable for 288,019 shares of Common Stock held by PRFH. PRF and PRA may be deemed to own the warrants held by PRFH because PRF and PRA are the general partners of PRFH. PRM may be deemed to own the warrants because PRM is the general partner of PRF and PRA. As manager of PRA, PCA exercises voting and dispositive power over investments held by PRA. The address of this shareholder is 50 California Street, Suite 3000, San Francisco, CA 94111. This information is based on information contained in a joint Schedule 13G filed on August 28, 2006 by PRFH.

(9) The address of the shareholder is 800 Third Avenue, New York, NY 10022. This information is based on information contained in a Schedule 13F filed on February 13, 2008 by Renaissance Technologies, LLC.

(10) Includes 1,777,778 shares of Common Stock issuable upon the conversion of the Company s 3.50% Convertible Senior Notes due 2011. Visium Asset Management, LP has indirect beneficial ownership as the investment manager of pooled investment vehicles. The address of this shareholder is 950 Third Avenue,

New York, NY 10022. This information is based on the Form 3 filed on February 14, 2008 by Visium Asset Management, LP.

(11) Includes 1,357,852 shares of Common Stock issuable upon the conversion of the Company s 3.50% Convertible Senior Notes due 2011. The address of this shareholder is 1001 Tahoe Blvd., Incline Village, NV 89451. This information is based on the Schedule 13G filed on January 31, 2008 by Zazove Associates, LLC.

(12) Includes (i) 1,025 shares of common stock, which shares are issuable upon the exercise of vested options or options that are to become vested within 60 days following April 15, 2008 and (ii) 450 restricted shares.

(13) Includes (i) 91,554 shares of common stock, which shares are issuable upon the exercise of vested options or options that are to become vested within 60 days following April 15, 2008 and (ii) 23,781 restricted shares.

(14) Includes (i) 10,508 shares of common stock, which shares are issuable upon the exercise of vested options or options that are to become vested within 60 days following April 15, 2008 and (ii) 150 restricted shares.

(15) Includes 1,388,889 restricted shares directly held by PRFH and indirectly held by PRF, PRA, PRM and PCA. PRFH directly owns 1,388,889 shares of Common Stock. PRF and PRA may be deemed to indirectly own 1,388,889 shares of common stock held by PRFH because PRF and PRA are the general partners of PRFH. PRM may be deemed to indirectly own the shares because PRM is the general partner of PRF and PRA. As manager of PRA, PCA exercises voting and dispositive power over investments held by PRA. Includes warrants exercisable for 288,019 shares of Common Stock held by PRFH. PRF and PRA may be deemed to own the warrants held by PRFH because PRF and PRA are the general partners of PRFH. PRM may be deemed to own the warrants because PRM is the general partner of PRF and PRA. As manager of PRA, PCA exercises voting and dispositive power over investments held by PRA. Mr. Leone, a partner of Paul Capital Healthcare, is the designee of PRF to the Company s Board of Directors. Includes 600 restricted shares.

(16) Includes (i) 29,550 shares of common stock, which shares are issuable upon the exercise of vested options or options that are to become vested within 60 days following April 15, 2008 and (ii) 22,907 restricted shares.

(17) Includes (i) 1,825 shares of common stock, which shares are issuable upon the exercise of vested options or options that are to become vested within 60 days following April 15, 2008 and (ii) 150 restricted shares.

(18) Includes (i) 5,800 shares of common stock, which shares are issuable upon the exercise of vested options or options that are to become vested within 60 days following April 15, 2008 and (ii) 150 restricted shares.

(19) Includes (i) 303,397 shares of common stock, which shares are issuable upon the exercise of vested options or options that are to become vested within 60 days following April 15, 2008 and (ii) 30,245 restricted shares.

(20) Includes (i) 9,114 shares of common stock, which shares are issuable upon the exercise of vested options or options that are to become vested within 60 days following April 15, 2008 and (ii) 150 restricted shares.

(21) Includes (i) 19,925 shares of common stock, which shares are issuable upon the exercise of vested options or options that are to become vested within 60 days following April 15, 2008 and (ii) 150 restricted shares.

(22) Includes (i) 18,645 shares of common stock, which shares are issuable upon the exercise of vested options or options that are to become vested within 60 days following April 15, 2008 and (ii) 150 restricted shares.

(23) Includes (i) 5,800 shares of common stock, which shares are issuable upon the exercise of vested options or options that are to become vested within 60 days following April 15, 2008 and (ii) 150 restricted shares.

(24) Includes (i) 497,143 shares of common stock that are issuable upon the exercise of vested options or options that are to become vested within 60 days following April 15, 2008, (ii) 79,033 restricted shares held by officers and directors, (iii) warrants exercisable for 288,019 shares of common stock held by PRFH and (iv) 1,388,889 restricted shares held by PRFH.

REPORT OF COMPENSATION COMMITTEE

The Compensation Committee has reviewed and discussed the Compensation Discussion and Analysis (the CD&A) for the year ended December 31, 2007 with management. Based on these reviews and discussions, the Compensation Committee recommended to the full Board that the CD&A be included in this proxy statement and in the Annual Report on Form 10-K for the fiscal year ended December 31, 2007 for filing with the Securities and Exchange Commission.

By the Compensation Committee of the Board of Directors:

Norbert G. Riedel (Chair)

William R. Mattson, Jr.

John E. Voris

EXECUTIVE COMPENSATION

Compensation Discussion and Analysis

Objectives of Compensation Program

Our goal is to attract, retain, motivate, and reward our employees through the use of competitive compensation plans that serve to closely align employee interests with that of the Company and the long-term interests of our stockholders. Competitive and labor market dynamics as well as financial position influence our compensation philosophy. We strive to retain and reward the highest caliber management team by offering competitive compensation plans, which are comparable to those offered by our competitors, and promote performance-based compensation. To more closely align the interests of employees with those of the stockholders, we employ equity-based employee awards.

Overview of Compensation and Process

We strive to attract and retain the necessary executive talent, reward annual performance and provide incentives to reward performance that is intended to create long-term stockholder value. The amount of each element of compensation is determined by or under the direction of our Compensation Committee, which considers the following factors in determining the amount of salary and other benefits to pay each executive:

- performance against corporate and individual goals for the previous year;
- difficulty of achieving desired results in the coming year;
- value of his or her unique skills and capabilities to support long-term performance of the Company;
- performance of their general management responsibilities; and
- contribution as a member of the executive management team.

Our compensation policy strives to provide a balance between short and long-term compensation in order to attract and retain talent and provide incentives to maximize long-term value for our company and our stockholders. The compensation of the executive officer team consists of a combination of salary, annual cash incentives, equity grants, contributions to or accruals under benefit plans and participation in various other plans generally available to all employees, such as our 401(k) plan. We provide cash compensation in the form of base salary to meet competitive salary norms and annual cash incentive payments to reward performance against specific annual corporate goals. We provide equity awards to reward performance against specific objectives and long-term strategic goals and help align the interest of our executive officers with those of our stockholders. Equity awards are determined by performance and competitive market practice with respect to equity awards granted to executives as a percentage of common shares outstanding.

Each year we review the compensation paid to all employees, including executive officers, to ensure that the key elements and overall compensation remain competitive with prevailing industry benchmark data of similarly situated companies and remain aligned with stockholder interests. In fiscal 2007, the Compensation Committee engaged W.T. Haigh and Company to assist in benchmarking and assessing our compensation program against market standards. W.T. Haigh prepared a benchmarking report for the Compensation Committee based on a peer group of eighteen companies and the Radford Biotechnology Survey, which provides data for a broader range of biotechnology and pharmaceutical companies. The peer group was selected based upon similarities in pharmaceutical industry specialty, number of employees, market capitalization and net sales. The peer group consisted of: Abaxis, Inc., Akorn, Inc., ArQule, Inc., Auxilium Pharmaceuticals, Inc., Barrier Therapeutics, Inc., Bentley Pharmaceuticals, Inc., CollaGenex Pharmaceuticals, Inc., Columbia Laboratories, Inc., Cytogen Corporation, Enzon Pharmaceuticals, Inc., Indevus Pharmaceuticals, Inc., ISTA Pharmaceuticals, Inc., Nabi Biopharmaceuticals, Quidel Corporation, Santarus, Inc., SciClone Pharmaceuticals, Inc., Sciele Pharma, Inc. and Stratagene Corporation. The Compensation Committee utilizes benchmarking data as a guide to ensure that executive compensation and mix of compensation elements remain competitive with market standards.

Compensation Components

The components of our compensation program are described in more detail below:

Base Salary

Base salaries for our named executive officers are established based on their responsibilities, experience, performance and expected contribution to the Company. Salary levels also take into account the salary and compensation paid by similar companies with which we compete for executive talent. Base salaries are reviewed annually taking into account the executive officer s effectiveness in achieving the corporate goals set out for the previous year, his or her expected contribution for the coming year and the competitive data. Base salaries are also evaluated relative to other components of our compensation program to ensure the executives total compensation and mix of components is consistent with our compensation philosophy and objectives.

Each year, the Company establishes a budget for merit based salary increases for its employees. The Committee retains discretion as to whether or not salary increases will be granted and makes a determination based upon achievement of the corporate goals (discussed under Annual Incentives below), individual performance and market data. In fiscal 2007, the Committee determined that the 2007 bases salaries for Messrs. Rauscher, Colangelo and Maitre would remain unchanged.

Annual Incentives

Our named executive officers are eligible to receive annual cash incentive payments in an amount equal to a percentage of their annual base salary based on attainment of corporate performance goals as determined by the

Compensation Committee. The Committee sets a percentage of base salary as a target for each named executive officers annual incentive cash bonus and then determines the annual incentive cash bonus to be paid based on achievement of stated goals.

Each year, the Chief Executive Officer recommends corporate goals for the prospective year. The Compensation Committee reviews, modifies if necessary, and approves the proposed goals and then sets and prioritizes officer performance goals for the year and assigns relative weight of importance for each performance goal. In prior years, in assessing executive officer performance, the Committee considered individual performance goals for each executive officer in addition to the corporate goals. In fiscal 2007, the Committee decided to measure executive officer performance against the corporate goals only and not utilize individual performance goals. The Committee s decision reflects its belief that the corporate goals provide unified objectives for the management team and a more objective basis for assessing executive performance and determining annual incentive payments.

The fiscal 2007 corporate performance goals were linked to revenue, cash management and certain strategic and operational objectives. The Committee assigned each goal a weight based upon its relative importance to the Company. Credit is awarded and apportioned based on the achievement of a performance goal which ranges from 85% to 150% of the proposed goal. If a goal is not achieved at the 85% level, then no credit is awarded. Based on the actual results and the weight of each goal an aggregate performance score is computed, which is then used to determine the annual incentive amount paid to each named executive officer.

The Committee evaluated overall 2007 performance against the goals summarized below:

ANTARA and FACTIVE net sales: The Company established sales targets for each product. Given the importance of product revenues to the Company, the Committee further provided that no incentive payments would be made unless aggregate sales of ANTARA and FACTIVE equaled or exceeded 85% of the aggregate sales target for the products. The Company achieved ANTARA net sales of $58.6M exceeding the established target for that product. FACTIVE US net sales were $16.6M which did not meet the target for that product. Aggregate sales exceeded 85% of the aggregate sales target.

Secure additional capital: In April 2007, the Company secured an additional $41.5M in net proceeds exceeding the established target.

Additional financial objectives: The Company had a year end cash balance of $12.1M (excluding new financing) which exceeded the goal. However, the net loss of $56M (excluding the impact of certain non-cash gains) did not meet the established objective.

Strategic goals: Corporate development and operational goals including, among other items, acquiring or licensing a third product were not achieved in 2007.

Based on these actual results and the weighting of each goal the actual aggregate performance score achieved in fiscal 2007 was 75.6%. The target bonus levels for Messrs. Rauscher, Colangelo and Maitre in fiscal 2007 were 60%, 50% and 40% of their base salaries, respectively, which translate to target bonuses of $259,650, $170,000 and $108,000, respectively, as listed in the Grant of Plan Based Awards for 2007 presented later in the proxy. Multiplying these target bonuses by the aggregate performance score of 75.6% provides the annual incentive payouts to Messrs. Rauscher, Colangelo and Maitre for fiscal 2007 in the amounts of $196,253, $128,537 and $81,659, respectively, as reported in the Summary Compensation Table, which follows this Compensation Discussion and Analysis.

Long-Term Equity Incentives

We grant equity awards to our named executive officers, in the form of restricted stock grants and stock options, to provide employees, including executive officers, with longer term incentives and as a key tool to encourage employee retention. Because of the direct relationship between the value of an equity award and the market price of our common stock, we believe that granting stock options and other equity awards is an effective method of motivating executive officers to manage our company in a manner that is consistent with the interests of our stockholders. Equity awards are typically granted to employees when they are hired, upon promotions and each year in connection with annual performance review. For annual performance grants, the executive team makes a recommendation to the Compensation Committee as part of the Company s annual salary planning cycle which occurs in March and the Committee determines the grant for each executive officer. Equity awards typically include a mix of options to purchase our common stock and restricted shares of our common stock that vest over a prescribed period. Exercise prices for option grants are wholly determined by the Compensation Committee and are fixed at the fair market value on the date of Compensation Committee approval or at a specified date of grant.

We grant stock awards to our executive officers and eligible employees based upon prior performance, the importance of retaining their services and the potential for their performance to help us attain our long-term goals. In determining annual equity awards the Compensation Committee also takes into account the extent to which previous equity awards continue to provide appropriate incentives to employees. Company and individual performance and competitive market practices are key considerations in determining size and mix of grants for employees, including executive officers. Equity grants awarded to officers and other eligible employees are typically confined to a certain percentage of common shares outstanding. The Committee considered data from benchmarking analysis conducted by W.T. Haigh and Company, which among other compensation elements, compared equity stakes held by the named executive officers to other executives in comparable positions in the peer group and the Radford Survey. Based on the factors described above, the Committee determined that 2007 equity grants should be granted at a level equal to 75% of last year s grants. On February 25, 2008, as part of the annual process for determining annual compensation and annual equity awards Messrs. Rauscher, Colangelo and Maitre received restricted stock awards of 18,147 shares, 14,672 shares and 14,000 shares, respectively, all of which vest over two years and stock options to purchase 45,303 shares, 36,629 shares and 35,000 shares of common stock, respectively, which vest over two years; however for Messrs. Rauscher and Colangelo, as with other employees with at least two years tenure with the Company, twenty-five percent of the stock options vested on the day of the grant and the remaining seventy-five percent vest over two years. All options were granted at an exercise price of $2.16, the closing sale price of a share of the Company s common stock on February 25, 2008. These equity awards granted to our executive officers in the aggregate represent 1.2% of common shares outstanding and follow the Company s practice of considering officer grants within the confines of performance, market practices, annual approved usage rate and past practice with respect to percentage of outstanding shares awarded to our executive officers.

Other Benefits

Our executives are entitled to few benefits that are not otherwise available to all of our employees. Other benefits for executive officers are limited to executive life insurance. Our Chief Executive Officer also receives a predetermined annual allowance of $14,652 as prescribed in Mr. Rauscher s employment agreement with the Company which is paid primarily for car allowances and Philippe Maitre, our Executive Vice President and Chief Financial Officer, received $64,711 as a reimbursement for relocation expenses in fiscal 2007.

All of our named executive officers participated in our 401(k) plan and received matching employer contributions at the same rate as other employee-participants. Our health and insurance plans are the same for all employees and our healthcare premiums follow a shared cost schedule, under which employees contribute approximately 23% of the healthcare premiums.

Termination-based compensation

Under the terms of their employment agreements, our executive officers are, under specified circumstances, entitled to receive severance payments and, in some cases, accelerated vesting of equity awards upon termination of employment. The severance payments, and in particular the change of control severance, are intended to aid in employee retention and maintain productivity in the event of a change of control of the Company. In addition, these payments are designed to align executive and stockholder interests by enabling executives to consider corporate transactions that are in the best interests of the stockholders and other constituents of the Company without undue concern over whether the transactions may jeopardize the executives own employment. The specific triggering provisions and severance due each of the executive officers is described below under Employment Agreements and Potential Payments upon Change of Control. We believe that our severance arrangements are in line with severance packages offered to executive officers of companies of similar size to us represented in the compensation data we reviewed.

162(m) Policy

Under Section 162(m) of the Internal Revenue Code, publicly held corporations may be prohibited from deducting as an expense for federal income tax purposes total compensation in excess of $1 million paid to certain executive officers in a single year. However, Section 162(m) provides an exception for qualifying performance-based compensation, including compensation attributable to certain stock options. We periodically review the potential consequences of Section 162(m) and may structure the performance-based portion of our executive compensation to comply with certain exemptions in Section 162(m). However, we reserve the right to use our judgment to authorize compensation payments that do not comply with the exemptions in Section 162(m) when we believe that such payments are appropriate and in the best interests of the stockholders, after taking into consideration changing business conditions or the officer s performance.

Post-Employment Compensation

Pension Benefits

We do not provide pension arrangements or post-retirement health coverage for our executives or employees. Our executive officers are eligible to participate in our 401(k) defined contribution plan. In any plan year, we will contribute to each participant a matching contribution equal to 50% of the first 6% of the participant s compensation that has been contributed to the plan, as prescribed in the plan document and within federal tax limits. All of our executive officers participated in our 401(k) plan during fiscal 2007 and received matching contributions.

Nonqualified Deferred Compensation

We do not provide any nonqualified defined contribution or other deferred compensation plans.

Summary Compensation Table for 2007

The following table sets forth a summary of annual and long-term compensation awarded, earned or paid for the fiscal year ended December 31, 2007 and December 31, 3006 to our Chief Executive Officer and two Executive Vice Presidents.

Name and Principal Position	Year	Salary ($)	Non-Equity Incentive Plan Compensation ($)	Stock Awards ($)(1)	Option Awards ($)(2)	All Other Compensation ($)	Total ($)
Steven Rauscher	2007	432,600	196,253	156,883	390,698	25,709(3)	1,202,143
Chief Executive Officer and	2006	432,115	325,282	92,196	919,779	174,240(6)	1,943,612
President							
Dominick Colangelo	2007	340,000	128,537	125,818	267,581	7,200(4)	869,136
Executive Vice President,	2006	338,654	206,136	73,757	193,495	7,050(7)	819,092
Corporate Development and							
Operations							
Philippe Maitre	2007	270,000	81,659	41,546	52,883	64,711(5)	510,799
Executive Vice President and	2006	155,769(9)	96,904	14,264	18,001	22,022(8)	306,960
Chief Financial Officer							