VERSICOR INC /CA
Form S-4
August 29, 2002

QuickLinks -- Click here to rapidly navigate through this document

As Filed with the United States Securities and Exchange Commission on August 29, 2002

Registration No. 333-

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-4

REGISTRATION STATEMENT
UNDER THE SECURITIES ACT OF 1933

VERSICOR INC.

(Exact name of registrant as specified in its charter)

Delaware	**2834**	**04-3278032**
(State or Other Jurisdiction of Incorporation or Organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

34790 Ardentech Court
Fremont, California 94555
(510) 739-3000

(Address, Including ZIP Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

George F. Horner III President and Chief Executive Officer Versicor Inc. 34790 Ardentech Court Fremont, California 94555 United States of America (510) 739-3000	*copy to:* Peter T. Healy, Esq. O'Melveny & Myers LLP 275 Battery Street, 26th Floor San Francisco, California 94111 United States of America (415) 984-8833	*copy to:* Kenton J. King, Esq. Keith L. Belknap, Jr., Esq. Skadden, Arps, Slate, Meagher & Flom LLP 525 University Avenue, 11th Floor Palo Alto, California 94301 United States of America (650) 470-4500

(Name, Address, Including ZIP Code, and Telephone Number, Including Area Code, of Agent For Service)

Approximate date of commencement of proposed sale to the public: As soon as practicable after this registration statement becomes effective and upon completion of the merger of Biosearch Italia S.p.A., an Italian joint stock company ("Biosearch"), with and into the registrant as described in the agreement and plan of merger, dated as of July 30, 2002 (as amended, the "Merger Agreement").

If the securities being registered on this form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. o

If the form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

If the form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

CALCULATION OF REGISTRATION FEE

Title of securities to be registered(1)	Amount to be registered(2)	Proposed maximum aggregate offering price(3)	Amount of registration fee(4)
Common Stock, par value $0.001 per share(5)	21,524,085	$206,075,787	$18,959

(1) This registration statement relates to shares of the registrant's common stock issuable to holders of ordinary shares, par value €1.0 per share, of Biosearch pursuant to the Merger Agreement.

(2) Represents the number of shares of the registrant's common stock issuable in connection with the proposed merger based on the exchange ratio of 1.77 shares of the registrant's common stock for each outstanding Biosearch ordinary share multiplied by the number of outstanding Biosearch ordinary shares as of August 27, 2002.

(3) Estimated solely for the purpose of calculating the amount of the registration fee required by Section 6(b) of the Securities Act of 1933. Pursuant to Rule 457(f)(1) under the Securities Act, the proposed maximum aggregate offering price of the registrant's common stock was calculated based upon the market value of Biosearch ordinary shares (the securities to be cancelled in the merger) in accordance with Rule 457(c) under the Securities Act as follows: (a) €17.27, the average of the high (€17.53) and low (€17.00) prices per Biosearch ordinary share on August 27, 2002 as reported on the Nuovo Mercato, (b) converted to U.S. dollars at an exchange rate of €1.0191 to $1.00, and (c) multiplied by 12,160,500, the aggregate number of Biosearch ordinary shares outstanding.

(4) Calculated pursuant to Section 6(b)(2) of the Securities Act of 1933 at a rate of $92 per million dollars of aggregate offering price.

(5) This registration statement also relates to rights to purchase 1/100th share of Series A Junior Participating Preferred Stock, which are attached to all shares of the registrant's common stock pursuant to the registrant's Shareholder Rights Agreement dated June 28, 2001, as amended. Until the occurrence of events described in the Shareholder Rights Agreement, the rights are not exercisable, are evidenced by the common stock certificates and are transferred with and only with such common stock.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this registration statement shall become effective on such date as the Securities Exchange Commission, acting pursuant to said Section 8(a), may determine.

The Exhibit Index for this Registration Statement is at page II-6.

Versicor Inc.
34790 Ardentech Court
Fremont, California 94555
United States of America

MERGER PROPOSED YOUR VOTE IS VERY IMPORTANT!

Dear Fellow Versicor Stockholders: September [ ], 2002

I am pleased to report that the board of directors of Versicor Inc. and the board of directors of our collaborator of four years, Biosearch Italia S.p.A., have each unanimously approved the merger of Biosearch with and into Versicor. On [meeting date], 2002 we will hold a special meeting of stockholders of Versicor, where we will ask you to approve the stock-for-stock merger. We will also ask you to approve an increase in the number of shares available for awards under our 2001 Stock Option Plan and an increase in the number of shares that may be granted under the 2001 Stock Option Plan to one person during any calendar year under our 2001 Stock Option Plan. It is a condition to the completion

of the merger that both of these approvals be obtained. **Please return the enclosed proxy today, even if you plan to attend the meeting.**

Versicor's focus has been the use of creative chemistry and biology to discover novel anti-infective agents for development and marketing in North America. Biosearch has used natural product sourcing for the discovery, development, manufacture and eventual marketing of novel anti-infective drugs with a primary emphasis on Europe. We believe this merger substantially enhances Versicor's capabilities with respect to discovery, pre-clinical and clinical development, and manufacturing as well as our European market presence and effectiveness. The two companies are highly synergistic and the merger of Biosearch into Versicor represents a very important step towards our goal of becoming a significantly more advanced biopharmaceutical company targeting the effective, global commercialization of novel anti-infective drugs for difficult-to-treat infections.

We currently have antibiotic and antifungal agents in late stage (Phase II or III) clinical trials. The North American rights to our lead antibiotic product candidate, dalbavancin, have been licensed from Biosearch. We have been collaborating closely with Biosearch for manufacturing capability as well as regulatory approvals for the use of this drug against difficult to treat infections. Dalbavancin is in Phase II of clinical development. In addition, Versicor has worldwide rights to anidulafungin, a novel anti-fungal agent for difficult to treat fungal infections. As a result of this merger, the combined company will have substantially greater presence in two of the three major pharmaceutical markets (North America and Europe) as well as an enhanced product portfolio to partner in Asia. By acquiring the global rights to dalbavancin, Versicor eliminates royalties and manufacturing fees in North America, acquires the full potential for dalbavancin in Europe and enhances our commercialization effectiveness for anidulafungin in both of these markets. As a result, we believe all of these benefits will increase our margin and profitability prospects for dalbavancin and anidulafungin upon regulatory approval in North America and Europe. We also believe that European approval can now be obtained with only a modest increase in the clinical development expenses already planned for our North American filings.

We have been collaborating with Biosearch since February 1998 in a drug discovery program called BIOCOR. Biosearch contributes natural product leads to our collaboration, and we contribute the combinatorial and medicinal chemistry expertise necessary to optimize the leads and identify product candidates. As a result of our four-year collaboration with Biosearch, we believe that our corporate cultures are a good match and that, through a merger of Biosearch with and into Versicor, we will more efficiently pursue our shared goal of bringing new antibiotic and antifungal agents to market.

If stockholders approve the merger, we will issue approximately 21,524,085 shares of Versicor common stock in exchange for the cancelled ordinary shares of Biosearch pursuant to an exchange ratio of 1.77 shares of Versicor common stock for each ordinary share of Biosearch. In addition, outstanding Biosearch stock options will be replaced or assumed by us. Our corporate management and finance team will relocate from California to Pennsylvania and Biosearch will operate as an Italian branch, and later as an Italian subsidiary, of Versicor. If the merger of Biosearch with and into Versicor is approved, we will appoint Biosearch nominees to four of our eight board seats and amend our bylaws to provide, among other things, that for the following three years, four of the eight directors nominated or re-nominated by the board will be Biosearch nominees, and the other four will be Versicor nominees.

After careful review and consideration, your board of directors has unanimously approved the agreement and plan of merger and the related transactions, including the amendments to the 2001 Stock Option Plan. In connection with the proposed transactions, your board retained Lehman Brothers Inc. as financial advisor. Lehman Brothers has delivered to the board its written opinion to the effect that, as of the date of its opinion, the exchange ratio of 1.77 is fair to Versicor from a financial point of view. A copy of the Lehman Brothers opinion is attached as *Appendix C* to the accompanying proxy statement/prospectus, and should be read carefully in its entirety. **Your board of directors recommends that you vote "FOR" the merger proposal and "FOR" the stock option plan proposal**.

On September [ ], 2002, the last trading day before the date of the accompanying proxy statement/prospectus, Versicor common stock, which trades on the Nasdaq National Market under the symbol "VERS," closed at $[ ]. We will apply to list our common stock on the Italian Nuovo Mercato under the symbol "[VERS]" upon the completion of the proposed merger.

Your vote is important. We cannot merge Biosearch with and into Versicor unless the holders of a majority of the outstanding shares of our common stock vote to approve the agreement and plan of merger and to amend the 2001 Stock Option Plan. As a result, if you fail to return your proxy card, your inaction will have the same effect as a vote against the merger. Whether or not you plan to attend the special meeting, please complete, sign, date and promptly return the enclosed proxy card to ensure that your shares will be represented at the special meeting. If you attend the special meeting and wish to vote in person, you may withdraw your proxy and do so.

You can find additional information about the proposed merger in the accompanying proxy statement/prospectus. Please consider the matters discussed under "Risk Factors" commencing on page 18 before voting. We encourage all stockholders to read this entire document carefully.

By Order of the Board of Directors,

George F. Horner III
President and Chief Executive Officer

PLEASE COMPLETE, SIGN, DATE AND RETURN YOUR PROXY TODAY

Neither the United States Securities and Exchange Commission nor any state securities commission nor the Republic of Italy *Commissione Nazionale per le Società e le Borsa* has approved or disapproved these securities, passed upon the fairness or merits of the merger of Biosearch with and into Versicor or determined if this proxy statement/prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

This proxy statement/prospectus is dated September [ ], 2002, and is being first mailed to Versicor stockholders on or about September [ ], 2002.

VERSICOR INC.

34790 Ardentech Court
Fremont, California 94555
United States of America

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

To be held on [meeting date], 2002 at [time]

To the Stockholders of Versicor Inc.:

We will hold a special meeting of stockholders of Versicor Inc. on [day of week], [meeting date], 2002 at [time], local time, at the Marriott Hotel, 46100 Landing Parkway, Fremont, California 94538, United States of America for the purposes of considering and acting on the following matters:

1. a proposal to approve the agreement and plan of merger, as amended, by and between Versicor Inc. and Biosearch Italia S.p.A., including the merger plan ("progetto di fusione"), by and between Versicor and Biosearch, according to Italian law, in the form attached to the agreement and plan of merger;

2. a proposal to amend Versicor's 2001 Stock Option Plan to increase the number of shares of Versicor common stock available for awards under the 2001 Stock Option Plan by an additional 5,400,737 shares and to increase the number of shares that may be granted under the 2001 Stock Option Plan to one person during any calendar year by an additional 650,000 shares;

3. a proposal to authorize us to adjourn the special meeting, if necessary, to permit further solicitations of proxies if there are not sufficient votes at the time of the special meeting to approve proposals 1 or 2; and

4. to transact any other business that may properly come before the special meeting or any adjournment or postponement of the special meeting.

The foregoing items of business are more fully described in the accompanying proxy statement/prospectus, which we encourage you to read carefully.

The approval of the agreement and plan of merger, as amended, and approval of the amendments to the 2001 Stock Option Plan require the affirmative vote of a majority of the votes eligible to be cast by holders of Versicor common stock issued and outstanding as of [record date], 2002. **The Versicor board of directors has unanimously approved the agreement and plan of merger, as amended, and the stock option plan proposal and recommends that you vote "FOR" approval of the agreement and plan of merger, as amended, "FOR" approval of the stock option plan proposal and "FOR" the adjournment proposal.**

Only those stockholders whose names appear on our records as owning shares of our common stock at the close of business on [record date], 2002, are entitled to notice of, and to vote at, the special meeting and any adjournment or postponement of the special meeting.

Please complete, sign and date the enclosed proxy card and return the proxy card promptly in the enclosed postage-paid return envelope, whether or not you plan to attend the special meeting. You may revoke the proxy at any time prior to its exercise in the manner described in the accompanying proxy statement/prospectus, see the "The Special Meeting of Versicor Stockholders." Any stockholder of Versicor present at the special meeting, including any adjournment or postponement of the meeting, may revoke a previously delivered proxy and vote personally. Executed proxies with no instructions indicated will be voted "FOR" each proposal.

By Order of the Board of Directors,

George F. Horner III
President and Chief Executive Officer
Versicor Inc.

Fremont, California
United States of America
September [ ], 2002

All stockholders are cordially invited to attend the special meeting. YOUR VOTE IS IMPORTANT. To assure that your shares of our common stock will be voted at the special meeting, you are requested to mark, sign and return the enclosed proxy card promptly in the enclosed postage-paid, addressed envelope whether or not you expect to attend the special meeting. No additional postage is required if mailed in the United States. If you hold your shares of our common stock through a broker, you might also have the option to vote by telephone or over the internet. Please refer to the separate instructions provided by your broker. If you attend the special meeting, you may vote in person even though you have submitted your proxy card.

PROXY STATEMENT/PROSPECTUS

We are furnishing this document, as a proxy statement, to holders of our common stock in connection with the solicitation of proxies by our board of directors for use at a special meeting of our stockholders. As a proxy statement, this document provides information to our stockholders for their consideration of proposals we expect to be presented at our special meeting of stockholders, including a proposal to approve the agreement and plan of merger, as amended, which we call the merger agreement, between Versicor and Biosearch Italia S.p.A. Pursuant to the merger agreement, Biosearch will merge with and into our company. If the merger agreement, and the stock option plan proposal associated with it, are approved by our stockholders and all other conditions to the completion of the merger are satisfied or waived, we will issue approximately 21,524,085 shares of Versicor common stock in exchange for the cancelled ordinary shares of Biosearch pursuant to an exchange ratio of 1.77 Versicor common shares for each Biosearch ordinary share, and replace or assume existing options held by Biosearch employees and consultants and issue additional options.

One condition to closing is that the shareholders of Biosearch must also approve the merger agreement at a special meeting of Biosearch shareholders, which will be held at approximately the same time as our special meeting. The Biosearch board of directors approved the merger and is informing Biosearch shareholders of the terms of the proposed transaction by means of a separate document, the *Documento Informativo*, under Italian law. In accordance with applicable Italian law, this Versicor proxy statement/prospectus will be deposited at the registered office of Biosearch in Gerenzano, Italy at least 30 days prior to the Biosearch special meeting, where it will be available for examination by Biosearch shareholders, in lieu of the "Report of Directors" that we would otherwise be required to deposit there under Italian law. However, this document is not a Biosearch proxy statement, will not be translated into Italian and will not be mailed to Biosearch shareholders by us prior to their meeting.

Once the merger is completed, we will deliver this document, as a prospectus, to Biosearch shareholders either before or at the same time that our exchange agent delivers newly-issued shares in exchange for the cancelled Biosearch ordinary shares. As a prospectus, this document provides information relevant to the Biosearch shareholders' investment decision to accept shares of our common stock in exchange for Biosearch ordinary shares. It describes, among other things, each of the parties to the merger and the surviving company and explains the significant respects in which share ownership in the surviving company will differ from share ownership in Biosearch.

See "Risk Factors" beginning on page 19 for a discussion of important factors that you should consider in determining how to vote on the merger agreement and the stock option plan proposal.

On September [ ], 2002, the last trading day before the date of this proxy statement/prospectus, the closing sales price of our common stock, which trades on the Nasdaq National Market under the symbol "VERS", was $[ ]. We will apply to list our common stock on the Italian Nuovo Mercato under the symbol "[VERS]" upon the completion of the proposed merger.

Neither the United States Securities and Exchange Commission nor any state securities commission nor the Republic of Italy *Commissione Nazionale per le Società e le Borsa* has approved or disapproved these securities, passed upon the fairness or merits of the merger of Biosearch with and into Versicor, or determined if this proxy statement/prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this proxy statement/prospectus is September [ ], 2002.

ADDITIONAL INFORMATION

This proxy statement/prospectus incorporates important business and financial information about Versicor Inc. from documents we have filed with the Securities and Exchange Commission that are not included in or delivered with this proxy statement/prospectus. If you call or write, we will send you copies of these documents, including any exhibits specifically incorporated by reference in the documents, without charge. You may contact us at:

Versicor Inc.
34790 Ardentech Court
Fremont, California 94555
United States of America
Attention: Investor Relations
Telephone Number: (510) 739-3000

In order to receive timely delivery of the documents in advance of the special meeting, you must make your request no later than [insert date five business days before the meeting date], 2002.

For more information on the material incorporated by reference in this proxy statement/prospectus, see "Where You Can Find More Information."

All references to "dollars" or "$" in this proxy statement/prospectus are references to United States dollars; all references to "euros" or "€" are references to European Union, or EU, euros and all references to "lira" or "Lit." are to Italian lira. On August 19, 2002, the exchange rate between the euro and the dollar as quoted in *The Wall Street Journal* was €1.0242 to $1.00. The exchange rate between the lira and the euro established pursuant to the Maastricht treaty is fixed at Lit. 1,936.27 to €1.00. Since January 1, 2002, the lira has been withdrawn from circulation, see "Conditions in Italy and the European Union Exchange Rates; European Economic and Monetary Union."

VERSICOR INC.

PROXY STATEMENT/PROSPECTUS

TABLE OF CONTENTS

APPENDICES

QUESTIONS AND ANSWERS ABOUT THE PROPOSALS

Q:

What is the proposed transaction?

A:

We are proposing to merge Biosearch Italia S.p.A., an Italian joint stock company (similar to a corporation), with and into Versicor. Versicor will be the surviving corporation, and as a result:

Versicor will acquire all of Biosearch's assets and rights;

Versicor will assume all of Biosearch's liabilities and obligations;

each of Biosearch's outstanding ordinary shares will convert into 1.77 shares of Versicor common stock; and

Biosearch's separate legal existence will cease.

Q:

What am I being asked to vote on?

A:

You are being asked to vote on the following three proposals:

to approve the merger agreement;

to approve an increase in the number of shares of Versicor common stock available for award purposes under Versicor's 2001 Stock Option Plan by an additional 5,400,737 shares and an increase in the number of shares of Versicor common stock that may be granted under Versicor's 2001 Stock Option Plan to one person during any calendar year by an additional 650,000 shares; and

to authorize us to adjourn the meeting, if necessary, in order to solicit additional proxies in the event that there are not enough votes initially present to approve either of the above proposals.

Q:

How does the Versicor board of directors recommend that I vote?

A:

The Versicor board of directors recommends that you vote "FOR" each of the proposals that you are being asked to vote on, as described above.

Q:

Why is the Versicor board of directors recommending approval of the merger?

A:

Biosearch is a biopharmaceutical company focused on the discovery, development and production of novel antifungal and antibiotic agents for difficult-to-treat infections. Together with Biosearch, we will possess unified ownership rights to dalbavancin, which is in Phase II clinical trials, on a worldwide basis, as well as a broader pipeline of new product candidates, including two product candidates in Phase III clinical trials, a product candidate in Phase I clinical trials and a number of compounds in pre-clinical studies. The merger of Biosearch with and into Versicor will also provide us with manufacturing capability, which we believe will assist us in becoming a more advanced biopharmaceutical company focusing on the discovery, development, production and commercialization of antibiotic and antifungal agents for difficult-to-treat infections.

We have been collaborating with Biosearch since February 1998 in a drug discovery program called BIOCOR. Biosearch contributes natural product leads to our collaboration and we contribute the combinatorial and medicinal chemistry expertise necessary to optimize the leads and identify product candidates. As a result of our four-year collaboration with Biosearch, we believe that our corporate cultures are a good match and that by merging Biosearch with and into Versicor we can more efficiently pursue our shared goal of bringing new antibiotic and antifungal agents to market.

Our board of directors believes that the merger is fair to, and in the best interests of, Versicor and its stockholders. In reaching its decision, the Versicor board of directors considered a variety of factors, including the opinion of Lehman Brothers, Versicor's financial advisor. See "The Merger Versicor's Reasons for the Merger; Recommendation of the Versicor Board."

Q:

Are there any risks related to the proposed transaction or any risks related to owning Versicor common stock?

A:

Yes. You should carefully review the risk factors described beginning on page 18.

Q:

When and where is the Versicor special meeting?

A:

The special meeting of Versicor stockholders will be held at [time], local time, on, [date] 2002, at the Marriott Hotel, 46100 Landing Parkway, Fremont, California 94538, United States of America.

Q:

Will I receive new stock certificates?

A:

No. If the merger is approved, your existing Versicor stock certificates will not be replaced. Please do not send any stock certificates with your proxy card.

Q:

What will Biosearch shareholders receive in the merger; and what will the ownership of the combined company be following the merger?

A:

Biosearch shareholders will receive shares of our common stock in the merger, at an exchange ratio of 1.77 shares of our common stock for each Biosearch ordinary share. As a result, upon completion of the merger, current Versicor stockholders will own approximately 55% of the outstanding common stock of Versicor after the merger and current Biosearch shareholders will own approximately 45% of the outstanding common stock of Versicor after the merger.

Q:

How many shares of Versicor common stock must be voted in favor of the merger agreement and the other proposals in order to complete the merger?

A:

Approval of the merger agreement requires the affirmative vote of a majority of the shares of Versicor common stock outstanding on [record date], the record date, and entitled to vote. It is a condition to the completion of the merger that the amendments to the 2001

Stock Option Plan also receive the affirmative vote of a majority of the votes of the shares of Versicor common stock outstanding on the record date. If the merger proposal is not approved, the amendments to the 2001 Stock Option Plan will not be implemented.

Q:

Have any Versicor stockholders already committed to vote in favor of the merger?

A:

Yes. George F. Horner III, our president, chief executive officer and a member of our board of directors, and HealthCare Ventures V, L.P., one of our stockholders, owning collectively approximately 5.5% of the shares of our common stock outstanding as of August 19, 2002 and entitled to vote at the meeting, have entered into voting agreements with Biosearch that commit those stockholders, among other things, to vote all of their shares of our common stock in favor of the merger and the related proposals. Accordingly, if the parties to the voting agreements vote in accordance with the terms of the voting agreements, the vote of 11,703,645 additional shares (or approximately 44.5% of the outstanding shares) of our outstanding common stock will be required to approve the merger.

Q:

What do I need to do now?

A:

After you have carefully read this proxy statement/prospectus, please complete, sign and date the enclosed proxy card and mail it in the enclosed prepaid return envelope as soon as possible, so that your shares of Versicor common stock may be represented and voted at the special meeting of Versicor's stockholders. If you attend the special meeting, you may vote in person even though you have submitted your proxy card.

If you do not vote your shares of Versicor common stock, your inaction will have the same effect as a vote against the merger and the other proposals described above.

If you hold your shares of Versicor common stock through a broker, you may also have the option to vote by telephone or over the internet. Please refer to the separate instructions provided by your broker.

Q:

If my shares of Versicor common stock are held in "street name" by my broker, will my broker automatically vote my shares of Versicor common stock for me?

A:

No. Your broker is not permitted to vote your shares of Versicor common stock regarding the merger proposal without specific instructions from you. Unless you follow the directions your broker provides you regarding how to instruct your broker to vote your shares of Versicor common stock, your shares will not be voted. Your inaction would have the same effect as a vote against the merger and the related proposals described above.

Q:

What should I do if I receive more than one set of voting materials?

A:

You may receive more than one set of voting materials, including multiple copies of this proxy statement/prospectus and multiple proxy cards or voting instruction cards. For example, if you hold your shares of Versicor common stock in more than one brokerage account, you will receive a separate voting instruction card for each brokerage account in which you hold shares. If you are a stockholder of record and your shares of Versicor common stock are registered in more than one name, you will receive more than one proxy card. Please complete, sign, date and return each proxy card and voting instruction card that you receive.

Q:

Can I change my vote after I have mailed my proxy card?

A:

Yes. You may change your vote at any time before the special meeting by:

sending written notice to:

Versicor Inc.
34790 Ardentech Court
Fremont, California 94555
United States of America
Attention: Secretary;

returning a later-dated proxy card; OR

voting in person at the special meeting.

Q:

When do you expect to complete the merger?

A:

We are working toward completing the merger as quickly as practicable. After the Versicor stockholders special meeting and the Biosearch shareholders special meeting are held, assuming that the stockholders and shareholders of Versicor and Biosearch, respectively, vote to approve the merger and the related proposals, we will need to, among other things, provide notice and make filings with various U.S., European Union and Italian authorities. These filings include, among others, applying to have our common stock listed on the Nuovo Mercato stock exchange in Milan, Italy. We anticipate that completing all such notifications and filings and receiving the requisite governmental approvals will require 4 to 6 months from the date of this proxy statement/prospectus.

Q:

Will Versicor stockholders have the right to have their shares of Versicor common stock appraised if they dissent from the merger?

A:

No. We are organized under Delaware law. Under Delaware law, because our common stock is traded on the Nasdaq National Market System, Versicor stockholders do not have appraisal rights in connection with the merger.

Q:

Will the merger be taxable to me?

A:

We anticipate that the merger will constitute a reorganization for U.S. federal income tax purposes. Assuming the merger qualifies as a reorganization, Versicor stockholders generally will not recognize gain or loss for U.S. federal income tax purposes. Generally, the merger of Biosearch with and into our company will not cause a taxable event for Italian income tax purposes for the Biosearch shareholders who are resident in Italy for Italian tax purposes. Neither Versicor nor Biosearch will be obligated to complete the merger unless Versicor and Biosearch each receive a tax opinion from its respective tax counsel with respect to the foregoing. See "The Merger Material U.S. Federal Income Tax Considerations" and " Material Italian Tax Considerations." The tax consequences to you will depend on the facts

and circumstances of your own situation. Please consult with your tax advisor for a full understanding of the tax consequences to you.

Q:

Where can I find more information about the companies?

A:

Information about the business and management of both Versicor and Biosearch is contained in this proxy statement/prospectus. For additional information, see "Where You Can Find More Information."

Q:

Who can answer my questions?

A:

If you have questions, or want additional copies of this proxy statement/prospectus, please contact our proxy solicitor, [name of solicitor], by calling its toll-free number: [ ]. You may also contact us directly at:

Versicor Inc.
34790 Ardentech Court
Fremont, California 94555
United States of America
Attention: Investor Relations
Telephone Number: (510) 739-3000

Q:

What will the combined company be called?

A:

We are working toward selecting a new name. We expect to announce the name after the completion of the merger.

SUMMARY

This summary, together with the preceding "Questions and Answers" section, highlights information more fully described elsewhere in this proxy statement/prospectus. You should read this entire document and the other documents we refer to for a more complete understanding of the proposed merger and the related proposals. In particular, you should read the documents attached to this proxy statement/prospectus, which include the merger agreement. Many items in this summary include page references directing you to more complete descriptions of their topics. Except where the context otherwise requires, references in this proxy statement/prospectus to "we," "our," "us" and "Versicor" are to Versicor Inc. and references to "Biosearch" are to Biosearch Italia S.p.A. and its subsidiary.

The Merger (page 42)

We have entered into a merger agreement with Biosearch that provides for the merger of Biosearch with and into Versicor. We will be the surviving corporation. At the completion of the merger each Biosearch ordinary share will be exchanged for 1.77 shares of our common stock. We urge you to read carefully the entire merger agreement, a copy of which is attached as *Appendix A* to this proxy statement/prospectus.

The Companies

Versicor (page 96)

Versicor Inc.
34790 Ardentech Court
Fremont, California 94555
United States of America
Telephone: (510) 739-3000

We are a United States-based biopharmaceutical company focused on the discovery, development and marketing of pharmaceutical products for the treatment of bacterial and fungal infections. We focus on seeking to develop anti-infective products that we believe might have competitive advantages over existing products, such as greater potency, improved effectiveness against resistant strains and reduced toxicity.

We have a two-fold approach to product development and marketing. Our primary strategy is to focus on the development of proprietary products, concentrating on injectable antibiotic and antifungal products for the hospital market. Our lead antifungal product candidate, anidulafungin, is an antifungal intended for the intravenous treatment of serious systemic fungal infections. Our lead antibiotic product candidate, dalbavancin, is a next-generation antibiotic belonging to the same class as vancomycin, the most widely used antibiotic for *Staphylococci* infections. We believe anidulafungin and dalbavancin will have competitive advantages over existing therapies because we believe each product candidate combines potencies greater than those currently available with a good safety profile to date.

Our secondary strategy is to collaborate with major pharmaceutical companies to discover and develop orally administered antibiotic and antifungal products for the non-hospital market. Orally administered products require substantial expenditures and an extensive sales and

marketing infrastructure to reach their full market potential. Our collaborators conduct pre-clinical, clinical development, marketing and sales activities in order to transform the discovered compounds into pharmaceutical products. In addition to our external research collaborations, we have an internal research program with the objective of discovering novel antimicrobials for hospital use for development by us. This effort leverages our internal expertise in target selection through functional genomics, novel assay development, mechanism-based rational drug design, and combinatorial or medical chemistry.

Biosearch (page 127)

Biosearch Italia S.p.A.
Via Abbondio Sangiorgio 18
Milano 20145
Italy
Telephone: +39 (0)2 964 74 350

Biosearch is a biopharmaceutical company focused on the discovery, development and production of new antibiotics for the prevention and treatment of infectious diseases caused by multi-resistant micro-organisms (bacteria and fungi). Biosearch's discovery strategy is based on five integrated technological platforms including the high-throughput screening of its large and diversified library of microbial extracts, which can lead to the isolation of a drug candidate. Biosearch presently has three products under clinical development: dalbavancin, ramoplanin and BI-K-0376, in Phase II, Phase III and Phase I, respectively. All of these product candidates were discovered at Biosearch's laboratories.

Votes Required for Approval of the Merger (page 37)

Versicor

We will hold a special meeting of our stockholders to consider the following proposals:

to approve the merger agreement we negotiated with Biosearch; and

to approve an increase in the number of shares of our common stock available for award purposes under our 2001 Stock Option Plan by an additional 5,400,737 shares and an increase in the number of shares of Versicor common stock that may be granted under our 2001 Stock Option Plan to one person during any calendar year by an additional 650,000 shares.

We might also call for a vote to authorize us to adjourn the meeting, if necessary, in order to solicit additional proxies in the event that there are not enough votes initially present to approve either of the above proposals.

The special meeting of our stockholders will be held at our executive offices, located at the Marriott Hotel, 46100 Landing Parkway, Fremont, California 94538, United States of America on [meeting date], 2002, at [time], local time. Stockholders listed in our books as the owners of our common stock at the close of business on the record date, [record date], 2002, are entitled to vote at the special meeting. For more information about the special meeting, see "The Special Meeting of Versicor Stockholders."

In order for us to complete the proposed merger, a majority of the shares of our common stock outstanding and entitled to vote at the meeting must be voted in favor of the merger. Similarly, it is a condition to both parties' obligations to complete the merger that the 2001 Stock Option Plan amendment be approved by holders of a majority of our outstanding common shares. Thus, if you do not vote your shares of our common stock in favor of both the merger and the amendment to the 2001 Stock Option Plan, your action will have the same effect as a vote against the merger.

The proxy card also includes a proposal permitting adjournment of the meeting to solicit additional proxies in the event that there are not sufficient votes initially to approve the merger proposal or the 2001 Stock Option Plan amendments proposal. Assuming that a quorum is present, approval of this adjournment proposal would require the affirmative vote of a majority of the shares present and entitled to vote at the meeting.

George F. Horner III, our president, chief executive officer and a member of our board of directors, and HealthCare Ventures V, L.P., one of our stockholders, owning collectively approximately 5.5% of the shares of our common stock outstanding as of August 19, 2002 and entitled

to vote at the

meeting, have entered into voting agreements with Biosearch that commit those stockholders, subject to specified exceptions, to vote all of their shares in favor of the proposals described above. Accordingly, if the parties to the voting agreements vote in accordance with the terms of the voting agreements, the vote of approximately 11,703,645 additional shares of our common stock (or approximately 44.5% of the outstanding shares of our common stock as of August 19, 2002) will be required to approve the merger.

Biosearch

Biosearch will hold a special meeting of its shareholders to consider approval of the merger agreement. The special meeting of Biosearch shareholders will be held at Biosearch's offices, located at Via Roberto Lepetit n. 34, Gerenzano, Italy, on [meeting date], 2002, at [time], local time.

In order for Biosearch to complete the merger, two-thirds of the Biosearch ordinary shares present (or represented by proxy) at the Biosearch special meeting must be voted in favor or the merger agreement, provided that the required quorum is satisfied, see "Comparison of Rights of Versicor Stockholders and Biosearch Shareholders."

Two of the founders of Biosearch, who are members of its management, owning collectively approximately 16.61% of the outstanding Biosearch ordinary shares entitled to vote at the special meeting of Biosearch shareholders, have entered into voting agreements with us that commit those shareholders, subject to specified exceptions, not to sell any of their shares prior to the special meeting or any postponement thereof and to vote all of their shares in favor of the merger and the related proposals. In addition, the 3i Group plc, a shareholder of Biosearch, has entered into a voting agreement with us that requires the 3i Group, subject to specified exceptions, to hold at least 808,145 ordinary shares of Biosearch (or 6.65% of the outstanding ordinary shares of Biosearch) through the date of the special meeting or any postponement thereof, and to vote all of its Biosearch ordinary shares held at the time of the special meeting in favor of the merger and related proposals. Accordingly, if all of the parties to these voting agreements vote in favor of the merger, the vote of approximately 5,278,402 additional Biosearch ordinary shares (or 43.41% of the outstanding Biosearch ordinary shares) will be required to approve the merger, assuming that 100% of the Biosearch ordinary shares are represented at the special meeting.

Versicor's Reasons for the Merger (page 45)

We believe the proposed merger of Biosearch with and into us is a key step toward our goal of establishing ourselves as a more advanced biopharmaceutical company focusing on the discovery, development and commercialization of antibiotic and antifungal agents for difficult-to-treat infections. Like us, Biosearch is a biopharmaceutical company focused on the discovery, development and production of novel antifungal and antibiotic agents for difficult-to-treat infections. The merger will unify ownership rights to dalbavancin, which is in Phase II clinical trials, and the combined company will possess a broader pipeline of new product candidates, including anidulafungin and ramoplanin, which are in Phase III clinical trials, a product candidate in Phase I clinical trials and a number of other compounds in pre-clinical testing.

Our board of directors believes that the merger is fair to, and in the best interests of, our company and our stockholders. In reaching this conclusion, our board of directors considered a variety of factors, including the opinion of Lehman Brothers, our financial advisor, and also including the following potentially positive factors:

Following the merger we will no longer be required to pay Biosearch any royalties or manufacturing fees.

The merger should enhance our antifungal and antibiotic agent market position through the acquisition of additional pre-clinical compounds and expertise in other difficult-to-treat infections.

The merger will provide us with manufacturing capability for the production of product candidates and agents and a European presence from which to market products to the European market.

As a result of our four-year collaboration with Biosearch, we believe that our corporate cultures are a good match and that by merging with Biosearch we believe we can more efficiently pursue our shared goal of bringing new antibiotic and antifungal agents to market.

The merger should improve our ability to conduct expensive clinical trials by providing access to Biosearch's cash reserves.

Our board of directors also considered potentially negative factors, including the cost of negotiating and closing the merger and the risks of international expansion, see "The Merger Versicor's Reasons for the Merger; Recommendation of the Versicor Board."

Biosearch's Reasons for the Merger (page 46)

The proposed merger of Biosearch with Versicor is a key step toward Biosearch's goal of establishing itself as a more advanced biopharmaceutical company focusing on the discovery, development, production and commercialization of antibacterial and antifungal agents for the prevention and treatment of difficult-to-treat infections. Biosearch expects that, as a result of the merger, the combined company could establish a presence in the market earlier than Biosearch could on its own, if and when Versicor's lead antifungal product candidate, anidulafungin, successfully completes Phase III clinical trials and begins commercialization. Together with Versicor, Biosearch will possess worldwide rights for dalbavancin, anidulafungin and its topical product against acne, BI-K-0376, which is currently in Phase I clinical development, and worldwide rights (other than in North America) for ramoplanin.

Biosearch has been collaborating with Versicor since February 1998 in a drug discovery program called BIOCOR. Biosearch contributes natural product leads to the collaboration, and Versicor contributes the combinatorial chemistry expertise necessary to optimize those selected leads and identify product candidates. As a result of this four-year collaboration with Versicor, Biosearch believes that the corporate cultures of the respective companies are a good match and that by merging Biosearch with and into Versicor it can more efficiently pursue the shared goal of bringing new antibacterial and antifungal agents to market.

Biosearch's board of directors believes that the merger is fair to, and in the best interests of, Biosearch and its shareholders. In reaching this decision, Biosearch's board of directors considered a variety of factors, including the opinion of SG Cowen, its financial advisor. See "The Merger Biosearch's Reasons for the Merger; Recommendations of the Biosearch Board."

Opinion of Versicor's Financial Advisor (page 47)

Lehman Brothers, our financial advisor in connection with the merger, delivered its oral opinion to our board of directors, which was later confirmed in writing, that, as of July 30, 2002, and based on and subject to the various considerations described in the opinion, the exchange ratio in the proposed merger is fair from a financial point of view to us. This opinion is not a recommendation to any of our stockholders regarding how to vote. We have attached a copy of the Lehman Brothers written opinion as *Appendix C* to this proxy statement/prospectus. You should read it in its entirety.

Opinion of Biosearch's Financial Advisor (page 52)

SG Cowen Securities Corporation, Biosearch's financial advisor in connection with the merger, delivered its verbal opinion to the Biosearch board of directors, which was later confirmed in writing, that, as of July 30, 2002, and based on and subject to the various considerations described in the opinion, the exchange ratio in the proposed merger is fair from a financial point of view to the Biosearch shareholders. This opinion is not a recommendation to any of the Biosearch shareholders or any of our stockholders regarding how to vote. We have attached a copy of the SG Cowen Securities Corporation written opinion as *Appendix D* to this proxy statement/prospectus. You should read it in its entirety.

What Versicor Stockholders Will Receive in the Merger (page 70)

Shares of Versicor common stock will represent equity interests in the combined company following the merger of Biosearch with and into us. There will be no need for our stockholders to exchange their share certificates.

What Biosearch Shareholders Will Receive in the Merger (page 70)

Upon the completion of the merger, each Biosearch ordinary share will be converted into 1.77 shares of Versicor common stock. The actual share exchange will occur three business days later by means of book entry changes on the records of the Italian clearing agency, Monte Titoli S.p.A., without any need for Biosearch ordinary shares to be tendered for exchange.

Ownership of the Combined Company Following the Merger (pages 70, 114 and 137)

Upon completion of the merger, current Versicor stockholders will own approximately 55% of Versicor's outstanding common stock and current Biosearch shareholders will own approximately 45% of Versicor's outstanding common stock.

Board of Directors Following the Merger (page 149)

Upon completion of the merger, we will have an eight member board of directors composed of four persons currently on the board of directors of Versicor and four persons currently on the board of directors of Biosearch. Pursuant to the merger agreement, our bylaws will be automatically amended upon completion of the merger to provide, among other things, that for the following three years, four of our eight directors will be Versicor nominees and the other four will be Biosearch nominees.

Treatment of Biosearch Options (pages 70 and 166)

The merger agreement provides that each holder of a Biosearch stock option that is outstanding immediately prior to the closing of the merger has two choices. First, a Biosearch option holder may consent to the termination of his Biosearch options, in which case the holder will be entitled to receive a replacement Versicor option upon completion of the merger. The number of Versicor shares subject to the new option will equal the number of Biosearch ordinary shares subject to the holder's terminated Biosearch options multiplied by 1.77. The per share exercise price of each new option will equal the greater of (i) the closing price per share of our common stock on the Nasdaq National Market on the merger closing date, and (ii) the average of the closing prices per share of our common stock on the Nasdaq National Market for each trading day during the one-month period immediately preceding the effective time of the merger. Each new option will also be subject to a four-year vesting schedule regardless of the vesting schedule of the predecessor Biosearch option. We expect to grant these replacement options under our 2002 Stock Option Plan. More information on our stock option plans is included under the heading "Proposal to Amend Versicor's 2001 Stock Option Plan." As described in that section, our 2002 Stock Option Plan was approved by our board of directors for the

purpose of making these replacement option grants, but will not be submitted to our stockholders for approval. If the rules of the Nasdaq National Market change such that we are not able to make these option grants under a plan not approved by our stockholders, or if we are otherwise unable to make these grants under our 2002 Stock Option Plan, we will make these grants under our 2001 Stock Option Plan.

Alternatively, a Biosearch option holder may decide not to consent to the termination of his Biosearch options, in which case the holder's Biosearch option will be assumed by us and will become an option to acquire shares of our common stock upon completion of the merger. The number of shares of our common stock that will be subject to each assumed option will equal the number of Biosearch ordinary shares subject to the option immediately prior to the merger multiplied by 1.77. The per share exercise price of each assumed option will equal the exercise price of the Biosearch option immediately prior to the effective time of the merger divided by 1.77 and converted from euros into dollars.

Versicor's Reasons for the 2001 Stock Option Plan Amendment (page 167)

As of August 19, 2001, approximately 978,000 shares remain available for grant purposes under our 2001 Stock Option Plan out of the 1.2 million shares originally available under the plan. The proposed amendments to the 2001 Stock Option Plan would increase the number of shares available under the plan by an additional 5,400,737 shares and the number of shares that may be granted under the 2001 Stock Option Plan to one person during any calendar year by an addtional 650,000 shares in order to provide our combined company with the capacity to structure incentives to our continuing and future employees, including options that we will issue in connection with the merger. The merger agreement requires us to issue replacement stock options with respect to 442,500 shares of our common stock to Biosearch optionees upon completion of the merger (or to assume any option not replaced, as described above). We intend to issue these replacement stock options under our 2002 Stock Option Plan. If the rules of the Nasdaq National Market change such that we are not able to make these option grants under a plan not approved by our stockholders, or if we are otherwise unable to make these grants under our 2002 Stock Option Plan, we will make these grants under our 2001 Stock Option Plan. In addition, we currently have contractual commitments in place to issue options covering an additional 2,845,000 shares upon completion of the merger to Biosearch key employees and one of its consultants and intend to issue additional options to other Biosearch employees in connection with the merger, all of which will be issued under the 2001 Stock Option Plan.

If the 2001 Stock Option Plan Amendment is approved by our stockholders, we will increase the shares available for grant under our 2001 Stock Option Plan from approximately 978,000 shares to approximately 6,378,737 shares and increase the number of shares that may be granted under the 2001 Stock Option Plan to one person during any calendar year from 300,000 shares to 950,000 shares.

Recommendation of Versicor's Board of Directors (pages 45, 176 and 177)

After careful consideration, our board of directors unanimously recommends that you vote "FOR" the proposal to approve the merger agreement, "FOR" the proposal to approve the amendment to the 2001 Stock Option Plan and "FOR" the proposal to adjourn the meeting, if necessary, to solicit additional proxies.

Accounting Treatment of the Merger (page 63)

The merger will be accounted for by Versicor for financial reporting purposes under the purchase method. Accordingly, the aggregate purchase price will be allocated based upon the fair values of the assets acquired and the liabilities assumed of Biosearch. Any excess purchase price will be recorded as

goodwill. Under current generally accepted accounting principles in the United States, goodwill is no longer being amortized but instead is to be capitalized and reviewed periodically for impairment.

Appraisal or Dissenters' Rights (page 64)

Our stockholders will not be entitled to appraisal or dissenters' rights in connection with the merger. Biosearch shareholders, however, will have dissenters' rights as specified under Italian law. At the closing of the merger, those Biosearch shareholders that have exercised their dissenters' rights will be entitled to receive a cash payment for their Biosearch ordinary shares in lieu of receiving any shares of Versicor common stock.

Regulatory Requirements for the Merger (page 63)

In order for the merger to be valid under Italian law, Italian law requires delivery to the shareholders of Biosearch, by deposit at the corporate headquarters of Biosearch and with copies to the Italian securities regulator, CONSOB, and the Nuovo Mercato of certain documents, including a report that indicates that, among other things, the valuation methods adopted by the board of directors of Biosearch are, under the circumstances, reasonable and not arbitrary and have been correctly applied by the directors in their determination of the ratio for the exchange of shares contained in the merger agreement.

Also, prior to completion of the merger, Versicor and Biosearch could be required to give notification of the merger to U.S., EU or Italian antitrust authorities. If notification to any of these authorities is required, the parties could be required to furnish additional information and observe one or more statutory waiting periods prior to completion of the merger.

Material U.S. Federal Tax Considerations (page 65)

Generally, the exchange by Biosearch stockholders of Biosearch ordinary shares for shares of our common stock will not cause either Biosearch shareholders or our stockholders to recognize any gain or loss for U.S. federal income tax purposes. However, Biosearch shareholders might have to recognize gain or loss if their stock ownership in Biosearch is sufficiently large. This tax treatment might not apply to all Biosearch stockholders. A determination of the actual tax consequences of the merger to you can be complicated and will depend on your own specific situation and on variables not within our control or the control of Biosearch. *You should consult your own tax advisor for a full understanding of the tax consequences of the merger to you.*

Italian Tax Considerations (page 67)

Generally, the merger will not cause a taxable event for Italian income tax purposes for the Biosearch shareholders who are resident in Italy for Italian tax purposes. Furthermore, the shares of our common stock received by the Biosearch shareholders in the merger will have the same aggregate tax basis as the Biosearch ordinary shares held by the Biosearch shareholders prior to the merger. However, for Biosearch shareholders who are resident outside of Italy for Italian tax purposes, with some exceptions described below, the merger may cause taxable gain to be recognized equal to the difference between the fair market value of the shares of our common stock received and the tax basis of Biosearch

shareholder's Biosearch ordinary shares cancelled in the merger. Exceptions to this treatment may apply to non-resident shareholders:

- who own no more than two percent of the Biosearch voting rights or no more than five percent of the Biosearch's total outstanding equity, and who meet certain other requirements, or
- who are entitled to the benefits of almost any income-tax treaty between Italy and the shareholder's country of residence.

The actual income tax consequences under Italian tax law will depend on your own specific situation and on factors not within the control of Biosearch or us. Biosearch shareholders should consult their own tax adviser for a full understanding of the potential Italian tax consequences of the merger to them.

Material Terms of the Merger Agreement

The merger agreement is the primary legal document that governs the merger. We have attached a copy of the merger agreement as *Appendix A* to this proxy statement/prospectus and encourage you to read it. A few of its key terms are listed below:

Conditions to Completion of the Merger (page 79)

Several conditions must be satisfied or waived before we complete the proposed merger, including, among others, those summarized below:

- the approval of our stockholders and Biosearch's shareholders must have been received;
- there must be no pending or threatened litigation by a governmental entity seeking to enjoin or prohibit the completion of the merger, nor any legal restraint or prohibition preventing the completion of the merger;
- the waiting period under any applicable antitrust laws (and any extensions thereof) must have expired or been terminated;
- a favorable tax ruling from the Italian tax authorities must be obtained regarding the tax neutrality of the merger;
- legal opinions from each company's corporate and tax counsel must have been received;
- each company's respective representations and warranties in the merger agreement must remain accurate, as certified by one of its officers;
- each company must have materially complied with its covenants in the merger agreement, as certified by one of its officers; and
- from the date of the merger agreement to the completion of the merger, both companies must not have experienced any material adverse effects.

In addition, the merger agreement contains detailed provisions that prohibit us and Biosearch from taking any action to solicit or engage in discussions or negotiations with any person or group with respect to an alternative transaction, as defined in the merger agreement. The merger agreement does not, however, prohibit either party or its board of directors from considering and potentially recommending an unsolicited bona-fide written alternative transaction from a third party if specified conditions are met.

Termination of the Merger Agreement (page 81)

Under circumstances specified in the merger agreement, each company may terminate the merger agreement. These circumstances include, among others:

- if the required approval of the other company's stockholders has not been obtained at its special meeting;
- if the other company's board of directors takes any action in opposition to the merger described as a triggering event in the merger agreement;

- if the other company breaches its representations, warranties or covenants in the merger agreement such that the closing conditions regarding the accuracy of its representations, warranties or covenants would not be satisfied at the closing; or
- if the other company consents to a termination.

A Termination Fee could be Payable if the Merger is not Completed (page 82)

If the merger agreement is terminated, either we or Biosearch, in specified circumstances, could be required to pay a termination fee of $6 million to the other party.

Comparison of Rights of Versicor Stockholders and Biosearch Shareholders (page 157)

After the completion of the merger, Biosearch shareholders will become stockholders of our company, and their rights as stockholders of our company will be governed by Delaware law, our current certificate of incorporation and our bylaws, which will be amended and restated upon completion of the merger. There are substantive differences between Delaware law and Italian law and between our certificate of incorporation and amended and restated bylaws and Biosearch's governing documents, as summarized under "Comparison of Rights of Versicor Stockholders and Biosearch Shareholders."

Comparative Stock Prices and Dividends (page 85)

Shares of our common stock currently trade in the United States on the Nasdaq National Market under the symbol "VERS," and Biosearch ordinary shares currently trade in Italy on the Nuovo Mercato under the symbol "BIO." The following table presents:

- the last reported per share sales price of our common stock;
- the last reported per share sales price of Biosearch ordinary shares, stated in euros;
- the last reported per share sales price of Biosearch ordinary shares, converted to dollars at the exchange rate then prevailing; and
- the implied value of the merger consideration of 1.77 Versicor shares per Biosearch share, based on the closing price of Versicor stock on each of the dates shown,

in each case on July 30, 2002, the last full trading day prior to the public announcement of the proposed merger, and on August 19, 2002, which is a recent date prior to the date of this proxy statement/prospectus. The implied value of the merger consideration has been determined by multiplying the last reported sales price per share of our common stock on each date by 1.77, which is the exchange ratio in the merger. Neither we nor Biosearch have ever paid dividends.

Date	Versicor Common Stock (dollars)	Biosearch Ordinary Shares (euros)	Biosearch Ordinary Shares (dollars)	Implied Value of Merger Consideration per Biosearch Ordinary Share (dollars)
July 30, 2002	$ 12.11	€ 16.00	$ 15.79	$ 21.43
August 19, 2002	$ 11.35	€ 17.32	$ 16.91	$ 20.09

The market prices of our common shares and Biosearch's ordinary shares fluctuate. You should obtain current market quotations.

Comparative Per Share Information (page 143)

The following table presents the net loss and book value of each of Versicor and Biosearch on a per share basis. It also presents the same types of information as adjusted by us to reflect the combination of the two companies as though it had already occurred, which is referred to as "pro forma" information. The following information should be read in conjunction with the audited financial statements of Versicor, the audited consolidated financial statements of Biosearch, the unaudited interim financial statements of Versicor, the unaudited interim consolidated financial statements of Biosearch, the selected historical consolidated financial information of Versicor and Biosearch, the selected unaudited pro forma consolidated financial information and the unaudited pro forma condensed consolidated financial statements included elsewhere in this proxy statement/prospectus or incorporated by reference as described under "Where You Can Find More Information." The pro forma information is presented for illustrative purposes only and is not necessarily indicative of the operating results or financial position that would have occurred if the merger had been completed as of the beginning of the periods presented, nor is it necessarily indicative of the future operating results or financial position of the combined company.

	Year ended and as of December 31, 2001	Six months ended and as of June 30, 2002 (unaudited)
Versicor Historical		
Net loss per diluted share	$ (1.42)	$ (0.92)
Unaudited book value per share (1)	2.28	2.80
Biosearch Historical		
Net loss per diluted share	€ (0.89)	€ (0.38)
Unaudited book value per share (1)	10.52	9.80
Versicor Pro Forma		
Unaudited net loss per diluted share	$ (1.02)	$ (0.63)
Unaudited book value per share (1)		4.58
Biosearch Equivalent Pro Forma (2)		
Unaudited net loss per diluted share	$ (1.81)	$ (1.12)
Unaudited book value per share		$ 8.11

(1) Historical book value per share is computed by dividing stockholders' equity by the number of shares of Versicor common stock or Biosearch ordinary shares outstanding at the end of each period. Pro forma book value per share is computed by dividing pro forma stockholders' equity by the pro forma number of shares of Versicor common stock outstanding at the end of the period.

(2)

The Biosearch equivalent pro forma consolidated per share amounts are calculated by multiplying Biosearch consolidated pro forma share amounts by the exchange ratio in the merger of 1.77 shares of Versicor common stock for each Biosearch ordinary share.

Summary Versicor Historical Financial Data

You should read the following selected historical financial data in conjunction with our financial statements and the related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations of Versicor" included elsewhere in this proxy statement/prospectus.

	Year ended December 31,					Six months ended June 30,	
	1997	1998	1999	2000	2001	2001	2002
						(unaudited)	
	(in thousands, except per share amounts)						
Statement of Operations Data:							
Revenues:							
Collaborative research and development and contract services	$	$	$ 3,750	$ 5,338	$ 6,145	$ 3,040	$ 3,044
License fees and milestones			525	553	283	267	258
Total revenues			4,275	5,871	6,428	3,307	3,302
Operating expenses:							
Research and development	5,403	11,429	25,472	15,531	32,612	14,154	22,065
General and administrative	807	1,386	2,586	8,891	9,600	4,913	4,537
Total operating expenses	6,210	12,815	28,586	24,422	42,212	19,067	26,602
Loss from operations	(6,210)	(12,815)	(23,783)	(18,551)	(35,784)	(15,760)	(23,300)
Interest income	104	770	749	3,712	3,313	2,132	781
Interest expense	(178)	(540)	(6,171)	(482)	(316)	(180)	(124)
Other			(14)	18	(60)		
Net loss	(6,284)	(12,585)	(29,219)	(15,303)	(32,847)	(13,808)	(22,643)
Preferred stock deemed dividends and accretion to redemption value	(422)	(2,527)	(38,175)	(3,486)			
Net loss available to common stockholders	$ (6,706)	$ (15,112)	$ (67,394)	$ (18,789)	$ (32,847)	$ (13,808)	$ (22,643)
Net loss per share, basic and diluted	$ (24.31)	$ (47.11)	$ (127.28)	$ (1.95)	$ (1.42)	$ (0.60)	$ (0.92)
Shares used in computing net loss per share, basic and diluted	276	321	530	9,638	23,090	23,048	24,642

	December 31,					
	1997	1998	1999	2000	2001	June 30, 2002
						(unaudited)

	December 31,					
	(in thousands)					
Balance Sheet Data:						
Cash and cash equivalents and marketable securities	$ 14,491	$ 4,507	$ 34,619	$ 85,934	$ 63,768	$ 85,150
Total assets	26,258	15,865	45,233	91,596	70,697	91,102
Term loan payable, less current portion	6,034	5,172	4,310	3,448	1,004	1,047
Convertible and redeemable preferred stock	31,472	33,984	83,843			
Accumulated deficit	(12,536)	(26,454)	(55,673)	(70,976)	(103,823)	(126,466)
Total stockholders' equity (deficit)	(12,551)	(27,076)	(48,796)	80,287	52,894	73,695

Summary Biosearch Historical Consolidated Financial Data
(amounts in accordance with U.S. GAAP)

You should read the following summary selected historical consolidated financial data presented in euros, which have been prepared in accordance with U.S. generally accepted accounting principles, or U.S. GAAP, in conjunction with the consolidated financial statements of Biosearch and the related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations of Biosearch" included elsewhere in this proxy statement/prospectus.

	Year ended December 31,		Six months ended June 30,	
	2000	2001	2001	2002
			(unaudited)	
	(in thousands, except per share amounts)			
Statement of Operations Data:				
Revenues:				
License fees and milestones	€ 3,066	€ 3,484	€ 2,975	€ 206
Research and development consulting and contract services and government grants	5,766	3,749	2,868	1,681
Total revenues	8,832	7,233	5,843	1,887
Operating expenses:				
Research and development(1)	28,181	16,756	6,980	6,300
General and administrative(2)	4,834	4,251	1,645	2,127
Loss (gain) on trading securities	2,970	(1,812)	(968)	(782)
Amortization of negative goodwill	(1,268)	(1,268)	(634)	
Total operating expenses	34,717	17,927	7,023	7,645
Loss from operations	(25,885)	(10,694)	(1,180)	(5,758)
Investment income (expense)	319	(163)	(623)	1,135
Net loss	€ (25,566)	€ (10,857)	€ (1,803)	€ (4,623)
Net loss per share, basic and diluted	€ (2.69)	€ (0.89)	€ (0.15)	€ (0.38)
Shares used in computing net loss per share, basic and diluted	9,505	12,154	12,161	12,104

(1) Research and development expense for the year ended December 31, 2000 and for the six months ended June 30, 2002 include non-cash stock-based compensation expenses of €19,173 and €18, respectively.

(2) General and administrative expense for the year ended December 31, 2000 includes non-cash stock-based compensation expense of €2,407.

	December 31,		June 30, 2002
	2000	2001	
			(unaudited)
	(in thousands)		
Balance Sheet Data:			
Cash and cash equivalents and unrestricted marketable securities	€130,931	€114,377	€106,214
Total assets	146,323	139,470	133,434
Long-term loan, less current portion	429	407	1,132
Accumulated deficit	(25,422)	(36,279)	(40,902)
Total stockholders' equity	136,204	127,919	119,192

Summary Pro Forma Consolidated Financial Data
(unaudited)

The following summary pro forma consolidated statement of operations data for the year ended December 31, 2001 and the six months ended June 30, 2002 give effect to our merger with Biosearch as if it had occurred on January 1, 2001. The following summary pro forma consolidated balance sheet data as of June 30, 2002 gives effect to our merger with Biosearch as if it had occurred on June 30, 2002. You should read this data along with the "Unaudited Pro Forma Condensed Consolidated Financial Information" and related notes included elsewhere in this proxy statement/prospectus.

The summary pro forma consolidated financial data is not necessarily indicative of what our results of operations would have been had the merger occurred at the beginning of the applicable period.

	Year ended December 31, 2001				Six months ended June 30, 2002			
	Historical Versicor	Historical Biosearch	Pro Forma Adjustments	Pro Forma	Historical Versicor	Historical Biosearch	Pro Forma Adjustments	Pro Forma
	(in thousands, except per share amounts)							
Statement of Operations Data:								
Revenues:								
Collaborative research and development and contract services	$ 6,145	$ 3,360	$ (509)	$ 8,996	$ 3,044	$ 1,510	$ (994)	$ 3,560
License fees and milestones	283	3,122	(1,649)	1,756	258	185	(78)	365
Total revenues	6,428	6,482	(2,158)	10,752	3,302	1,695	(1,072)	3,925

	Year ended December 31, 2001				Six months ended June 30, 2002			
Operating expenses:								
Research and development	32,612	15,017	(2,006)	45,623	22,065	5,660	(996)	26,729
General and administrative	9,600	3,810		13,410	4,537	1,911		6,448
Gain on trading securities		(1,624)		(1,624)		(703)		(703)
Amortization of intangible assets			2,863	2,863			1,431	1,431
Amortization of negative goodwill		(1,136)		(1,136)				
Total operating expenses	42,212	16,067	857	59,136	26,602	6,868	435	33,905
Loss from operations	(35,784)	(9,585)	(3,015)	(48,384)	(23,300)	(5,173)	(1,507)	(29,980)
Interest income (expense), net	2,997	(146)		2,851	657	1,020	(861)	816
Other	(60)			(60)				
Net loss	$ (32,847)	$ (9,731)	$ (3,015)	$ (45,593)	$ (22,643)	$ (4,153)	$ (2,368)	$ (29,164)
Net loss per share, basic and diluted	$ (1.42)	$ (0.80)		$ (1.02)	$ (0.92)	$ (0.34)		$ (0.63)
Shares used in computing net loss per share, basic and diluted	23,090	12,154		44,614	24,642	12,104		46,166

	June 30, 2002			
	Historical Versicor	Historical Biosearch	Pro Forma Adjustments	Pro Forma
	(in thousands)			
Balance Sheet Data:				
Cash and cash equivalents and marketable securities	$ 85,150	$ 104,900	$ (2,098)	$ 187,952
Total assets	91,102	131,783	35,425	258,310
Long-term loan, less current portion	1,047	1,118		2,165
Accumulated deficit	(126,466)	(40,396)	(51,104)	(217,966)
Total stockholders' equity	73,695	117,717	27,522	218,934

RISK FACTORS

In addition to the other information included or incorporated by reference in this proxy statement/ prospectus, you should carefully consider the following factors in evaluating the proposals to be voted on at the special meeting. Additional risks not presently known to Versicor or that Versicor currently deems immaterial might also impair Versicor's business operations. Actual future results and trends might differ materially from historical results or those anticipated depending on a variety of factors, including, without limitation, the factors set forth in this section.

Risks Related to the Merger Transaction

The issuance of approximately 21,524,085 shares of Versicor common stock to Biosearch shareholders in the merger will substantially reduce the percentage interests of Versicor stockholders.

If the merger is completed, approximately 21,524,085 shares of Versicor common stock will be issued to current Biosearch shareholders, and former Biosearch shareholders will own approximately 45% of the outstanding common stock of Versicor after the merger. The issuance of these shares to current Biosearch shareholders will cause a significant reduction in the relative percentage interests of current Versicor stockholders in earnings, voting, liquidation value and book and market value. The issuance of additional shares in future transactions could further reduce the percentage interests of current Versicor stockholders and could also reduce the percentage interests of former Biosearch shareholders.

The price of Versicor common stock might be affected by factors different from those affecting the price of Biosearch ordinary shares.

Upon completion of the merger, holders of Biosearch ordinary shares will become holders of Versicor common stock. Versicor's result of operations, as well as the price of Versicor common stock, might be affected by factors different than those affecting Biosearch's results of operations and price of Biosearch ordinary shares. Following the completion of the merger, the combined company will be exposed to the risks previously applicable to Biosearch, as well as those applicable to Versicor prior to the completion of the merger.

The integration of Versicorommittee discussed with the independent auditors matters required to be discussed by Statement on Auditing Standards No. 61 (Communication with Audit Committees), as amended, by the Auditing Standards Board of the American Institute of Certified Public Accountants.

The Company s independent auditors also provided to the Audit Committee the written disclosures required by Independence Standards Board Standard No. 1 (Independence Discussions with Audit Committees), and the Audit Committee discussed with the independent auditors their independence and satisfied itself as to the auditors independence.

Based upon the Audit Committee s discussion with management and the independent auditors and the Audit Committee s review of the representations of management and the report of the independent auditors to the Audit Committee, the Audit Committee recommended to the Board of Directors that the Company s audited consolidated financial statements be included in the Company s Annual Report on Form 10-K for the year ended April 30, 2004 filed with the Securities and Exchange Commission.

Finally, the Audit Committee believes that each of the members of the Audit Committee is independent as determined by the Board of Directors and in compliance with the rules of the National Association of Securities Dealers, Inc.

AUDITOR FEES

The audit committee pre-approved services performed by the independent auditor during fiscal year 2004 and reviews auditor billings in accordance to the Audit Committee charter. All requests for audit, audit-related, tax and other services must be submitted to the Audit Committee for specific pre-approval and cannot commence until such approval has been granted. Normally, pre-approval is provided at regularly scheduled meetings. However, the authority to grant specific pre-approval between meetings, as necessary, has been delegated to the Chairman of the Audit Committee. The Chairman must update the Audit Committee at the next regularly scheduled meeting of any services that were granted specific pre-approval. On a quarterly basis, the Audit Committee reviews the status of services and fees incurred year-to-date against the original requests and the forecast of remaining services and fees for the fiscal year

Aggregate fees billed to the company for the fiscal years ended April 30, 2004 and 2003, respectively, represent fees billed by the Company s independent accounting firm, Deloitte & Touche LLP, the member firms of Deloitte Touche Tohmatsu, and their respective affiliates (collectively, Deloitte & Touche).

	Fiscal Year Ended	
	2004	2003
Audit Fees(a)	$ 912,168	$ 654,967
Audit-Related Fees(b)	343,017	249,976
Total Audit and Audit-related Fees	1,255,185	904,943

Tax Fees(c)	336,449	517,180
All Other Fees		
Total Fees	$1,591,634	$1,422,143

(a) Includes fees for professional services related to the fiscal years ended April 30, 2004 and 2003 rendered for the audit of the Company s annual consolidated financial statements, reviews of the financial statements included in the Company s Quarterly Reports on Form 10-Q and for foreign statutory audits.

Table of Contents

(b) Includes fees for review of the Company s Sarbanes-Oxley Act of 2002 compliance program in 2004, fees associated with due diligence review related to the acquisition of Spinnaker Networks in 2004, and review of the internal control environment associated with a new financial information system in 2003.

(c) Includes fees for tax consulting services associated with international and acquisition strategies.

The Audit Committee has considered whether the provision of the non-audit services discussed above is compatible with maintaining the principal auditor s independence and believes such services are compatible with maintaining the auditor s independence.

Submitted by the Audit Committee
of the Board of Directors

Nicholas G. Moore, Chairman
Sanjiv Ahuja
Michael R. Hallman

COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION

The Compensation Committee of the Company s Board of Directors is comprised of Ms. Bartz and Mr. Wall. Neither of these individuals was at any time during the 2004 fiscal year, or at any other time, an officer or employee of the Company. No executive officer of the Company serves as a member of the board of directors or compensation committee of any entity, which has one or more executive officers serving as a member of the Company s Board of Directors or Compensation Committee.

CORPORATE GOVERNANCE

The Company s Board of Directors has adopted policies and procedures that the Board believes are in the best interests of the Company and its shareholders as well as compliant with the Sarbanes-Oxley Act of 2002, SEC rules and regulations and the Nasdaq.

In particular:

Independent Directors

A majority of our Board members are independent of the Company and its management as defined by the Nasdaq Stock Market (Nasdaq).

The non-management directors regularly meet in executive session, without management, as part of the normal agenda of our Board meetings.

The Chairman of the Board is a non-employee member and independent (as defined by the Nasdaq rules).

Nominating/ Corporate Governance Committee

All the members of the Nominating/ Corporate Governance Committee meet all the applicable requirements for independence from Company management.

The Nominating/ Corporate Governance Committee has adopted a charter that meets applicable Nasdaq standards. The charter may be located at: *http://www.netapp.com/company/corporate-governance.html*

The Board has adopted nomination guidelines for the identification, evaluation and further nomination of candidates for director.

The Nominating/ Corporate Governance Committee considers the suitability of each candidate, including any candidates recommended by stockholders holding at least 5% of the outstanding shares

Table of Contents

of the Company s voting securities continuously for at least 12 months prior to the date of the submission of the recommendation for nomination.

If the Corporate Governance and Nominating Committee wishes to identify new independent director candidates for Board membership, it is authorized to retain, and to approve the fees of, third party executive search firms to help identify prospective director nominees.

In evaluating the suitability of each candidate, the Corporate Governance and Nominating Committee will consider issues of character, judgment, independence, age, expertise, diversity of experience, length of service, other commitments and the like. While there are no specific minimum qualifications for director nominees, the ideal candidate should exhibit (i) independence, (ii) integrity, (iii) qualifications that will increase overall Board effectiveness and (iv) meet other requirements as may be required by applicable rules, such as financial literacy or expertise for Audit Committee members.

The Corporate Governance and Nominating Committee uses the same process for evaluating all nominees, regardless of the original source of the nomination.

A stockholder that desires to recommend a candidate for election to the Board shall direct the recommendation in writing to Network Appliance, Inc., 495 East Java Drive, Sunnyvale, CA 94089, Attention: Andrew Kryder, Corporate Secretary and must include the candidate s name, home and business contact information, detailed biographical data and qualifications, information regarding any relationships between the candidate and Network Appliance, Inc. within the last three years and evidence of the nominating person s ownership of Company stock.

Compensation Committee

All the members of the Compensation Committee meet the applicable requirements for independence as defined by applicable Nasdaq and Internal Revenue Service rules.

The Compensation Committee has adopted a charter that meets applicable Nasdaq standards.

Incentive compensation plans are reviewed and approved by the Compensation Committee as part of its charter.

Director compensation guidelines are determined by the Compensation Committee as defined by our Corporate Governance Guidelines.

Audit Committee

The Board s Audit Committee has established policies and procedures that are consistent with the SEC and Nasdaq requirements for auditor independence.

Audit Committee members all meet the applicable requirements for independence from Company management and requirements for financial literacy.

The Chairman of the Audit Committee has the requisite financial management expertise.

Deloitte & Touche LLP, our independent auditors, reports directly to the Audit Committee.

The internal audit function of the Company reports directly to the Audit Committee.

Shareholder Approval of Equity Compensation Plans

The Company requires shareholder approval of all equity-compensation plans, other than the Special Non-officer Stock Option Plan and the Spinnaker Networks, Inc. 2000 Stock Plan.

Table of Contents

Code of Business Conduct and Ethics

The Company has adopted a Code of Business Conduct and Ethics that includes a conflict of interest policy and applies to all directors, officers and employees.

All employees are required to affirm in writing their understanding and acceptance of the code.

All employees are required to annually reaffirm in writing their acceptance of the Code of Business Conduct and Ethics.

Personal Loans to Executive Officers and Directors

The Company does not provide personal loans or extend credit to any executive officer or director.

Stockholder Communications Policy

Stockholders may contact any of the Company s directors by writing to them whether by mail or express mail, c/o Network Appliance, Inc., 495 East Java Drive, Sunnyvale, CA 94089. Employees and others who wish to contact the board or any member of the Audit Committee to report questionable accounting or auditing matters may do so anonymously by using this address and designating the communication as confidential.

EMPLOYMENT CONTRACTS, TERMINATION OF EMPLOYMENT AND CHANGE-IN-CONTROL AGREEMENTS

The Company does not presently have any employment contracts in effect with the Chief Executive Officer or any of the other executive officers named in the Summary Compensation Table.

Each outstanding option held by the Chief Executive Officer, the other executive officers and the employees of the Company under the Discretionary Option Grant Program of the 1995 Plan or the 1999 Plan will automatically accelerate in full, and all unvested shares of Common Stock held by such individuals under the 1995 Plan or the 1999 Plan will immediately vest in full, upon an acquisition of the Company by merger or asset sale, except to the extent such options are to be assumed by, and the Company s repurchase rights with respect to those shares are to be assigned to, the successor corporation. In addition, the Compensation Committee as Plan Administrator of the 1995 Plan and the 1999 Plan will have the authority to provide for the accelerated vesting of the shares of Common Stock subject to outstanding options held by the Chief Executive Officer or any other executive officer, and the shares of Common Stock subject to direct issuances held by such individual, in connection with the termination of the officer s employment following (i) a merger or asset sale in which those options are assumed and the Company s repurchase rights with respect to unvested shares are assigned, or (ii) certain other changes in control or ownership of the Company. Pursuant to such authority, the options granted to Daniel J. Warmenhoven, Chief Executive Officer; Jeffry R. Allen, Executive Vice President, Business Operations; Steven J. Gomo, Senior Vice President Finance and Chief Financial Officer; and Thomas F. Mendoza, President, under the Discretionary Option Grant Programs of the 1995 Stock Incentive Plan and the 1999 Stock Option Plan, will immediately vest in full in the event of their termination of employment in connection with an acquisition of the Company by merger or asset sale.

The options granted under the Salary Investment Option Grant Program of the 1995 Plan to Messrs. Warmenhoven and Hitz on January 2, 2004, will immediately accelerate in full upon an acquisition of the Company by merger, asset sale or other change in control of the Company.

Table of Contents

Equity Compensation Plan Information

The following table provides information as of April 30, 2004 with respect to the shares of the Company s Common Stock that may be issued under the Company s existing equity compensation plans. The table does not include information with respect to shares subject to outstanding options granted under equity compensation plans assumed by the Company in connection with mergers and acquisitions of the companies that originally granted those options. Footnote (5) to the table sets forth the total number of shares of the Company s Common Stock issuable upon the exercise of those assumed options as of April 30, 2004, and the weighted average exercise price of those options.

	A	B	C
	Number of Securities to be Issued Upon Exercise of Outstanding Options	Weighted Average Exercise Price of Outstanding Options	Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column A)
Equity Compensation Plans Approved by Stockholders(1)	73,405,781(3)	$21.31	24,240,502(4)
Equity Compensation Plans Not Approved by Stockholders(2)	3,001,692	6.21	1,626,822
Total	76,407,473	20.71	25,867,324

(1) The category consists of the 1995 Plan, the 1999 Plan and the Purchase Plan.

(2) The category consists of the Special Non-Officer Stock Option Plan and the Spinnaker Networks, Inc. 2000 Stock Plan. The material features of the special Non-Officer Stock Option Plan and the Spinnaker Networks, Inc. 2000 Stock Plan are described in Proposal 2 on page 9 under the heading Other Stock Plans.

(3) Excludes purchase rights accruing under the Company s Purchase Plan. The Purchase Plan was approved by the stockholders in connection with the initial public offering of the Company s Common Stock. Under the Purchase Plan, each eligible employee may purchase up to 1,500 shares of Common Stock at semi-annual intervals on the last business day of May and November each year at a purchase price per share equal to 85% of the lower of (i) the closing selling price per share of Common Stock on the employee s entry date into the two-year offering period in which that semi-annual purchase date occurs, or (ii) the closing selling price per share on the semi-annual purchase date. In no event, however, may more than 1,000,000 shares be issued in total on any one purchase date.

(4) Includes 13,014,076 shares of Common Stock available for issuance under the 1999 Plan; 6,555,236 shares available for issuance under the 1995 Plan; and 4,671,190 shares available for issuance under the Purchase Plan.

(5) Includes 294,048 shares of Common Stock available for issuance under the Special Non-Officer Stock Option Plan; and 1,332,774 shares available for issuance under the Spinnaker Networks, Inc. 2000 Stock Plan.

(6) The table does not include information for equity compensation plans assumed by the Company in connection with mergers and acquisitions of the companies, which originally established those plans. As of April 30, 2004, a total of 447,152 shares of the Company s Common Stock were issuable upon exercise of outstanding options under plans those assumed plans. The weighted average exercise price of those outstanding options is $15.38 per share. No additional options may be made under those assumed plans, except for the Spinnaker Networks, Inc 2000 Stock Plan.

CERTAIN TRANSACTIONS

In May 2000 the Company entered in a split dollar insurance arrangement with Daniel J. Warmenhoven. Under the arrangement, the Company will pay the annual premiums on several insurance policies on the life of the survivor of Mr. Warmenhoven and his wife Charmaine Warmenhoven, and Mr. Warmenhoven will pay the Company each year for a portion of those premiums equal to the economic value of the term insurance

Table of Contents

coverage provided him under the policies. For each of the 2001, 2002, 2003 and 2004 fiscal years, the Company paid an aggregate net annual premium on these split dollar policies in the amount of $2,050,000. Under the arrangement, the Company will be reimbursed for all premium payments made on those policies, and it is intended that the Company will be reimbursed not later than May 2005. The policies are owned by a family trust established by Mr. Warmenhoven, and upon the death of the survivor of Mr. Warmenhoven and his wife or any earlier cash-out of the policies, the Company will be entitled to a portion of the insurance proceeds or cash surrender value of the policies equal to the net amount of cumulative premiums paid on those policies by the Company, and the balance will be paid to the trust. The Company has obtained a collateral assignment of the policies as a security interest for its portion of the proceeds or cash surrender value payable to it under the policies, and neither Mr. Warmenhoven nor the trust may borrow against the policies while that security interest remains in effect. The arrangement is terminable by the Company upon thirty (30)-days prior notice, and such termination will trigger a refund of the net cumulative premiums paid by the Company on the policies.

The foregoing transactions were negotiated by the Company on an arms-length basis, and were made on terms no less favorable to the Company than could be obtained from an unaffiliated third party.

Table of Contents

PERFORMANCE GRAPH

The following graph compares the cumulative total stockholder return on the Common Stock of the Company with that of the Nasdaq Stock Market U.S. Index, a broad market index published by the National Association of Securities Dealers, Inc., and the S&P Information Technology Index. The comparison for each of the periods assumes that $100 was invested on April 30, 1999 in the Company s Common Stock, the stocks included in the Nasdaq Stock Market U.S. Index and the stocks included in the S&P Information Technology Index. These indices, which reflect formulas for dividend reinvestment and weighing of individual stocks, do not necessarily reflect returns that could be achieved by individual investors.

COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN* AMONG

NETWORK APPLIANCE, INC., THE NASDAQ STOCK MARKET (U.S.) INDEX AND THE S&P INFORMATION TECHNOLOGY INDEX.

* $100 INVESTED ON APRIL 30, 1999 IN STOCK OR INDEX INCLUDING REINVESTMENT OF DIVIDENDS. FISCAL YEAR ENDING APRIL 30.

Cumulative Total Return

	4/99	4/00	4/01	4/02	4/03	4/04
NETWORK APPLIANCE, INC.	100.00	587.83	180.87	138.73	105.42	147.96
NASDAQ STOCK MARKET (U.S.)	100.00	165.50	83.07	64.13	55.00	80.67
S&P INFORMATION TECHNOLOGY	100.00	162.70	80.68	55.97	46.91	59.08

OTHER BUSINESS

The Board of Directors knows of no other business that will be presented for consideration at the Annual Meeting. If other matters are properly brought before the Annual Meeting, however, it is the intention of the persons named in the accompanying proxy to vote the shares represented thereby on such matters in accordance with their best judgment.

Table of Contents

FORM 10-K

The Company filed an Annual Report on Form 10-K with the Securities and Exchange Commission on or about June 29, 2004. Our Internet address is *http://www.netapp.com/*. We make available through our Web site our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) of the Securities Exchange Act of 1934 as soon as reasonably practicable after we electronically file such material with, or furnish it to, the Securities and Exchange Commission. Stockholders may also obtain a copy of this report, without charge, by writing to Steven J. Gomo, Chief Financial Officer of the Company at the Company s principal executive offices located at 495 East Java Drive, Sunnyvale, California 94089.

STOCKHOLDER PROPOSALS

From time to time, stockholders may submit proposals that they believe should be voted on at the annual meeting or nominate persons for election to the Board. Pursuant to Rule 14a-8 under the Securities Exchange Act of 1934, for a proposal to be eligible for inclusion in the Company s 2005 proxy statement, the proposal must be received at the Company s principal executive offices no later than March 18, 2005. In addition, the proposal must be in compliance with applicable laws and regulations in order to be considered for possible inclusion in the proxy statement and form of proxy for that meeting.

Alternatively, under the Company s Bylaws, if a stockholder does not wish to include a proposal or a nomination for the 2005 annual meeting in the Company s proxy statement, the stockholder may submit the proposal or nomination not less than 120 calendar days prior to the Company s 2005 annual meeting. If a stockholder gives notice of a proposal after such deadline, the notice will not be considered timely, and the stockholder will not be permitted to present the proposal to the stockholders for a vote at the meeting. Even when the notice was timely received, if the stockholder does not also comply with the requirements of Rule 14a-4(c)(2) under the Securities Exchange Act of 1934, the Company may exercise discretionary voting authority under proxies it solicits to vote in accordance with its best judgment on any such stockholder proposal or nomination.

By Order of the Board of Directors

DANIEL J. WARMENHOVEN
Chief Executive Officer

June 15, 2004

Table of Contents

NETWORK APPLIANCE, INC.
1999 STOCK OPTION PLAN

AS AMENDED AND RESTATED THROUGH JULY 7, 2004

ARTICLE ONE

GENERAL PROVISIONS

I. PURPOSE OF THE PLAN

This 1999 Stock Option Plan is intended to promote the interests of Network Appliance, Inc., a Delaware corporation, by providing eligible persons with the opportunity to acquire a proprietary interest, or otherwise increase their proprietary interest, in the Corporation as an incentive for them to remain in the service of the Corporation.

Capitalized terms shall have the meanings assigned to such terms in the attached Appendix.

All share numbers in this document reflect (i) the 2-for-1 split of the Common Stock effected on December 20, 1999 and (ii) the 2-for-1 split of the Common Stock effected on March 22, 2000.

II. STRUCTURE OF THE PLAN

A. The Plan shall be divided into five separate equity programs:

(i) the Discretionary Option Grant Program under which eligible persons may, at the discretion of the Plan Administrator, be granted options to purchase shares of Common Stock,

(ii) the Stock Appreciation Rights Program under which eligible persons may, at the discretion of the Plan Administrator, be granted stock appreciation rights that will allow individuals to receive the appreciation in Fair Market Value of the Shares subject to the award between the exercise date and the date of grant,

(iii) the Stock Issuance Program under which eligible persons may, at the discretion of the Plan Administrator, be issued shares of Common Stock directly, either through the issuance or immediate purchase of such shares or as a bonus for services rendered the Corporation (or any Parent or Subsidiary),

(iv) the Performance Share and Performance Unit Program under which eligible persons may, at the discretion of the Plan

Table of Contents

Administrator, be granted performance shares and performance units, which are awards that will result in a payment to a Participant only if the performance goals or other vesting criteria the established by the Plan Administrator are achieved or the awards otherwise vest, or

(v) the Automatic Option Grant Program under which non-employee Board members shall automatically receive option grants at periodic intervals to purchase shares of Common Stock.

B. The provisions of Articles One and Seven shall apply to all equity programs under the Plan and shall accordingly govern the interests of all persons under the Plan.

III. ADMINISTRATION OF THE PLAN

A. The Primary Committee shall have sole and exclusive authority to administer the Discretionary Option Grant, the Stock Appreciation Rights Program, Stock Issuance Programs and the Performance Share and Performance Unit Program with respect to Section 16 Insiders. Administration of the Discretionary Option Grant, Stock Appreciation Rights, Stock Issuance and Performance Share and Performance Unit Programs with respect to all other eligible persons may, at the Board s discretion, be vested in the Primary Committee or a Secondary Committee, or the Board may retain the power to administer that program with respect to all such persons.

B. Members of the Primary Committee or any Secondary Committee shall serve for such period of time as the Board may determine and may be removed by the Board at any time. The Board may also at any time terminate the functions of any Secondary Committee and reassume all powers and authority previously delegated to such committee.

C. Each Plan Administrator shall, within the scope of its administrative functions under the Plan, have full power and authority to establish such rules and regulations as it may deem appropriate for proper administration of the Discretionary Option Grant, Stock Appreciation Rights, Stock Issuance and Performance Share and Performance Unit Programs and to make such determinations under, and issue such interpretations of, the provisions of such programs and any outstanding options thereunder as it may deem necessary or advisable. Decisions of the Plan Administrator within the scope of its administrative functions under the Plan shall be final and binding on all parties who have an interest in the Discretionary Option Grant, Stock Appreciation Rights, Stock Issuance or Performance Share and Performance Unit Program under its jurisdiction or any award granted thereunder.

D. Service by Board members on the Primary Committee or the Secondary Committee shall constitute service as a Board member, and Board members of each such committee shall accordingly be entitled to full indemnification and reimbursement as Board members for their service on such committee. No member of the Primary Committee or the Secondary Committee shall be liable for any act or omission made in good faith with respect to the Plan or any option grants under the Plan.

Table of Contents

E. Administration of the Automatic Option Grant Program shall be self-executing in accordance with the terms of that program, and no Plan Administrator shall exercise any discretionary functions with respect to option grants made thereunder.

IV. ELIGIBILITY

A. The persons eligible to participate in the Discretionary Option Grant, Stock Appreciation Rights, Stock Issuance and Performance Share and Performance Unit Programs are as follows:

(i) Employees, and

(ii) consultants and other independent advisors who provide services to the Corporation (or any Parent or Subsidiary).

B. Each Plan Administrator shall, within the scope of its administrative jurisdiction under the Plan, have full authority (subject to the provisions of the Plan) to determine (i) with respect to the Discretionary Option Grant and Stock Appreciation Rights Programs, which eligible persons are to receive awards under the Discretionary Option Grant and Stock Appreciation Rights Programs, the time or times when such awards are to be made, the number of shares to be covered by each such grant, the status of an option as either an Incentive Option or a Non-Statutory Option, the time or times when each award is to become exercisable, the vesting schedule (if any) applicable to the award, the maximum term for which the award is to remain outstanding, and whether to modify or amend each award, including the discretionary authority to extend the post-termination exercisability period of awards longer than is otherwise provided for in the Plan, and (ii) with respect to awards granted under the Stock Issuance and Performance Share and Performance Unit Programs, which eligible persons are to receive awards, the time or times when such awards are to be made, the number of shares subject to awards to be issued to each Participant, the vesting schedule (if any) applicable to the awards and the consideration, if any, to be paid for shares subject to such awards.

C. Only non-employee Board members shall be eligible to participate in the Automatic Option Grant Program.

V. STOCK SUBJECT TO THE PLAN

A. The stock issuable under the Plan shall be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Corporation on the open market. The maximum number of shares of Common Stock which may be issued over the term of the Plan shall not exceed 65,800,000 shares. Such authorized share reserve is comprised of (i) the 13,200,000 shares of Common Stock initially authorized for issuance under the Plan, (ii) an additional increase of 15,000,000 shares authorized by the Board on August 17, 2000 and approved by the stockholders at the 2000 Annual Meeting, (iii) an additional increase of 13,400,000 shares authorized by the Board on August 9, 2001 and approved by the stockholders at the 2001 Annual Meeting, (iv) an additional increase of 14,000,000 shares authorized by the Board on July 2, 2002 and approved by the stockholders at the 2002 Annual Meeting, plus (v) an

Table of Contents

additional increase of 10,200,000 shares authorized by the Board on July 7, 2004 and approved by the stockholders at the 2004 Annual Meeting. Such authorized share reserve shall be in addition to the number of shares of Common Stock reserved for issuance under the Corporation s 1995 Stock Incentive Plan and the Corporation s Special Non-Officer Stock Option Plan, and share issuances under this Plan shall not reduce or otherwise affect the number of shares of Common Stock available for issuance under the 1995 Stock Incentive Plan or the Special Non-Officer Stock Option Plan. In addition, share issuances under such plans shall not reduce or otherwise affect the number of shares of Common Stock available for issuance under this Plan.

B. No one person participating in the Plan may receive stock options and/or stock appreciation rights under the Plan for more than 3,000,000 shares of Common Stock in the aggregate per calendar year.

C. Shares of Common Stock subject to outstanding options or stock appreciation rights shall be available for subsequent issuance under the Plan to the extent the options or stock appreciation rights expire or terminate for any reason prior to exercise in full. In addition, any unvested shares issued under the Plan and subsequently repurchased or reacquired by the Corporation pursuant to the Corporation s repurchase rights under the Plan shall be added back to the number of shares of Common Stock reserved for issuance under the Plan and shall accordingly be available for reissuance through one or more subsequent awards under the Plan. Should the exercise price of an award under the Plan be paid with shares of Common Stock or should shares of Common Stock otherwise issuable under the Plan be withheld by the Corporation in satisfaction of the withholding taxes incurred in connection with the exercise of an award or the vesting or disposition of exercised shares or stock issuances under the Plan, then the number of shares of Common Stock available for issuance under the Plan shall be reduced by the gross number of shares for which the award is exercised or the gross number of exercised shares or stock issuances which vest, and not by the net number of shares of Common Stock issued to the holder of such award or exercised shares or stock issuances.

D. Should any change be made to the Common Stock by reason of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Common Stock as a class without the Corporation s receipt of consideration, appropriate adjustments shall be made to (i) the maximum number and/or class of securities issuable under the Plan, (ii) the maximum number and/or class of securities for which any one person may be granted stock options and/or stock appreciation rights or awards under the Stock Issuance and Performance Share and Performance Unit Programs per calendar year, (iii) the number and/or class of securities for which automatic option grants are to be made subsequently under the Automatic Option Grant Program and (iv) the number and/or class of securities and the exercise price per share in effect under each outstanding award in order to prevent the dilution or enlargement of benefits thereunder. The adjustments determined by the Plan Administrator shall be final, binding and conclusive.

Table of Contents

ARTICLE TWO

DISCRETIONARY OPTION GRANT PROGRAM

I. OPTION TERMS

Each option shall be evidenced by one or more documents in the form approved by the Plan Administrator; provided, however, that each such document shall comply with the terms specified below. Each document evidencing an Incentive Option shall, in addition, be subject to the provisions of the Plan applicable to such options.

A. Exercise Price.

1. The exercise price per share shall be fixed by the Plan Administrator but shall not be less than one hundred percent (100%) of the Fair Market Value per share of Common Stock on the option grant date.

2. The exercise price shall become immediately due upon exercise of the option and shall be payable in one or more of the forms specified by the Plan Administrator, including without limitation, by one of the following forms of consideration:

(i) cash or check made payable to the Corporation,

(ii) shares of Common Stock held for the requisite period necessary to avoid a charge to the Corporation s earnings for financial reporting purposes and valued at Fair Market Value on the Exercise Date, or

(iii) to the extent the option is exercised for vested shares, through a special sale and remittance procedure pursuant to which the Optionee shall concurrently provide irrevocable instructions to (a) a brokerage firm reasonably satisfactory to the Corporation for purposes of administering such procedure to effect the immediate sale of the purchased shares and remit to the Corporation, out of the sale proceeds available on the settlement date, sufficient funds to cover the aggregate exercise price payable for the purchased shares plus all applicable Federal, state and local income and employment taxes required to be withheld by the Corporation by reason of such exercise and (b) the Corporation to deliver the certificates for the purchased shares directly to such brokerage firm in order to complete the sale transaction.

Except to the extent such sale and remittance procedure is utilized, payment of the exercise price for the purchased shares must be made on the Exercise Date.

B. Exercise and Term of Options. Each option shall be exercisable at such time or times, during such period and for such number of shares as shall be determined by the Plan Administrator and set forth in the documents evidencing the option. However, no option shall have a term in excess of ten (10) years measured from the option grant date.

Network Appliance, Inc.
Amended 1999 Stock Option Plan

Table of Contents

C. Effect of Termination of Service.

1. The following provisions shall govern the exercise of any options held by the Optionee at the time of cessation of Service or death:

(i) Any option outstanding at the time of the Optionee s cessation of Service for any reason shall remain exercisable for such period of time thereafter as shall be determined by the Plan Administrator and set forth in the documents evidencing the option, but no such option shall be exercisable after the expiration of the option term.

(ii) Any option exercisable in whole or in part by the Optionee at the time of death may be exercised subsequently by the personal representative of the Optionee s estate or by the person or persons to whom the option is transferred pursuant to the Optionee s will or in accordance with the laws of descent and distribution.

(iii) During the applicable post-Service exercise period, the option may not be exercised in the aggregate for more than the number of vested shares for which the option is exercisable on the date of the Optionee s cessation of Service. Upon the expiration of the applicable exercise period or (if earlier) upon the expiration of the option term, the option shall terminate and cease to be outstanding for any vested shares for which the option has not been exercised. However, the option shall, immediately upon the Optionee s cessation of Service, terminate and cease to be outstanding to the extent the option is not otherwise at that time exercisable for vested shares.

(iv) Should the Optionee s Service be terminated for Misconduct, then all outstanding options held by the Optionee shall terminate immediately and cease to be outstanding.

2. The Plan Administrator shall have the discretion, exercisable either at the time an option is granted or at any time while the option remains outstanding, to:

(i) extend the period of time for which the option is to remain exercisable following the Optionee s cessation of Service from the period otherwise in effect for that option to such greater period of time as the Plan Administrator shall deem appropriate, but in no event beyond the expiration of the option term, and/or

(ii) permit the option to be exercised, during the applicable post-Service exercise period, not only with respect to the number of vested shares of Common Stock for which such option is exercisable at the time of the Optionee s cessation of Service but also with respect to one or more additional installments in which the Optionee would have vested under the option had the Optionee continued in Service.

Table of Contents

D. Stockholder Rights. The holder of an option shall have no stockholder rights with respect to the shares subject to the option until such person shall have exercised the option, paid the exercise price and become a holder of record of the purchased shares.

E. Repurchase Rights. The Plan Administrator shall have the discretion to grant options which are exercisable for unvested shares of Common Stock. Should the Optionee cease Service while holding such unvested shares, the Corporation shall have the right to repurchase, at the exercise price paid per share, any or all of those unvested shares. The terms upon which such repurchase right shall be exercisable (including the period and procedure for exercise and the appropriate vesting schedule for the purchased shares) shall be established by the Plan Administrator and set forth in the document evidencing such repurchase right.

F. Limited Transferability of Options. During the lifetime of the Optionee, Incentive Options shall be exercisable only by the Optionee and shall not be assignable or transferable other than by will or by the laws of inheritance following the Optionee s death. However, Non-Statutory Options may be assigned in whole or in part during the Optionee s lifetime to one or more members of the Optionee s family or to a trust established exclusively for one or more such family members or the Optionee s former spouse, to the extent such assignment is in connection with the Optionee s estate plan, or to the Optionee s former spouse pursuant to a domestic relations order. The person or persons who acquire a proprietary interest in the option pursuant to the assignment may only exercise the assigned portion. The terms applicable to the assigned portion shall be the same as those in effect for the option immediately prior to such assignment and shall be set forth in such documents issued to the assignee as the Plan Administrator may deem appropriate.

II. INCENTIVE OPTIONS

The terms specified below shall be applicable to all Incentive Options. Except as modified by the provisions of this Section II, all the provisions of Articles One, Two and Five shall be applicable to Incentive Options. Options which are specifically designated as Non-Statutory Options when issued under the Plan shall not be subject to the terms of this Section II.

A. Eligibility. Incentive Options may only be granted to Employees.

B. Dollar Limitation. The aggregate Fair Market Value of the shares of Common Stock (determined as of the respective date or dates of grant) for which one or more options granted to any Employee under the Plan (or any other option plan of the Corporation or any Parent or Subsidiary) may for the first time become exercisable as Incentive Options during any one (1) calendar year shall not exceed the sum of One Hundred Thousand Dollars ($100,000). To the extent the Employee holds two (2) or more such options which become exercisable for the first time in the same calendar year, the foregoing limitation on the exercisability of such options as Incentive Options shall be applied on the basis of the order in which such options are granted.

C. 10% Stockholder. If any Employee to whom an Incentive Option is granted is a 10% Stockholder, then the exercise price per share shall not be less than one hundred

ten percent (110%) of the Fair Market Value per share of Common Stock on the option grant date, and the option term shall not exceed five (5) years measured from the option grant date.

III. CORPORATE TRANSACTION/CHANGE IN CONTROL

A. Each option, to the extent outstanding under the Plan at the time of a Corporate Transaction but not otherwise exercisable for all the option shares, shall automatically accelerate so that each such option shall, immediately prior to the effective date of the Corporate Transaction, become exercisable for all of the shares of Common Stock at the time subject to such option and may be exercised for any or all of those shares as fully-vested shares of Common Stock. However, an outstanding option shall not become exercisable on such an accelerated basis if and to the extent: (i) such option is, in connection with the Corporate Transaction, to be assumed by the successor corporation (or parent thereof) or replaced with a comparable option to purchase shares of the capital stock of the successor corporation (or parent thereof), (ii) such option is to be replaced with a cash incentive program of the successor corporation which preserves the spread existing on the unvested option shares at the time of the Corporate Transaction and provides for subsequent payout in accordance with the same vesting schedule applicable to those option shares or (iii) the acceleration of such option is subject to other limitations imposed by the Plan Administrator at the time of the option grant. The determination of option comparability under clause (i) above shall be made by the Plan Administrator, and its determination shall be final, binding and conclusive.

B. All outstanding repurchase rights shall also terminate automatically, and the shares of Common Stock subject to those terminated rights shall immediately vest in full, in the event of any Corporate Transaction, except to the extent: (i) those repurchase rights are to be assigned to the successor corporation (or parent thereof) in connection with such Corporate Transaction or (ii) such accelerated vesting is precluded by other limitations imposed by the Plan Administrator at the time the repurchase right is issued.

C. Immediately following the consummation of the Corporate Transaction, all outstanding options shall terminate and cease to be outstanding, except to the extent assumed by the successor corporation (or parent thereof).

D. Each option which is assumed in connection with a Corporate Transaction shall be appropriately adjusted, immediately after such Corporate Transaction, to apply to the number and class of securities which would have been issuable to the Optionee in consummation of such Corporate Transaction had the option been exercised immediately prior to such Corporate Transaction. Appropriate adjustments to reflect such Corporate Transaction shall also be made to (i) the exercise price payable per share under each outstanding option, provided the aggregate exercise price payable for such securities shall remain the same, (ii) the maximum number and/or class of securities available for issuance over the remaining term of the Plan and (iii) the maximum number and/or class of securities for which any one person may be granted stock options under the Plan per calendar year.

E. The Plan Administrator shall have the full power and authority to accelerate the vesting of options granted under the Discretionary Option Grant Program upon a

Table of Contents

Corporate Transaction or Change in Control or upon an event or events occurring in connection with such transactions. The portion of any Incentive Option accelerated in connection with a Corporate Transaction or Change in Control shall remain exercisable as an Incentive Option only to the extent the applicable One Hundred Thousand Dollar limitation is not exceeded. To the extent such dollar limitation is exceeded, the accelerated portion of such option shall be exercisable as a Non-Qualified Option under the Federal tax laws.

F. The outstanding options shall in no way affect the right of the Corporation to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

IV. REPRICING OR CANCELLATION AND REGRANT OF OPTIONS

The Plan Administrator may not modify or amend a stock option or stock appreciation right to reduce the exercise price of such stock option or stock appreciation right after it has been granted (except for adjustments made pursuant to Article One Section V.D.), unless approved by the Company s stockholders and neither may the Plan Administrator, without the approval of the Corporation s stockholders, cancel any outstanding stock option or stock appreciation right and immediately replace it with a new stock option or stock appreciation right with a lower exercise price.

Table of Contents

ARTICLE THREE

STOCK APPRECIATION RIGHTS PROGRAM

I. STOCK APPRECIATION RIGHT TERMS

Each stock appreciation right shall be evidenced by one or more documents in the form approved by the Plan Administrator; provided, however, that each such document shall comply with the terms specified below.

A. Exercise Price.

1. The exercise price per share shall be fixed by the Plan Administrator but shall not be less than one hundred percent (100%) of the Fair Market Value per share of Common Stock on the option grant date.

B. Payment of SAR Amount. Upon exercise of a stock appreciation right, a Participant will be entitled to receive payment from the Company in an amount determined by multiplying:

1. The difference between the Fair Market Value of a share of Common Stock on the date of exercise over the exercise price; times

2. The number of shares of Common Stock with respect to which the stock appreciation right is exercised.

At the discretion of the Plan Administrator, the payment upon the exercise of a stock appreciation right may be in cash, in shares of Common Stock of equivalent value, or in some combination thereof.

C. Exercise and Term of Stock Appreciation Rights. Each stock appreciation right shall be exercisable at such time or times, during such period and for such number of shares as shall be determined by the Plan Administrator and set forth in the documents evidencing the stock appreciation right. However, no stock appreciation right shall have a term in excess of ten (10) years measured from the stock appreciation right grant date.

D. Effect of Termination of Service. A stock appreciation right granted under the Plan will expire upon the date determined by the Plan Administrator, in its sole discretion, and set forth in the agreement evidencing the award. Notwithstanding the foregoing, the rules of Article Two Section I.C. also will apply to stock appreciation rights.

E. Stockholder Rights. The holder of a stock appreciation right shall have no stockholder rights with respect to the shares subject to the stock appreciation right until such person shall have exercised the stock appreciation right and become a holder of record of shares, if any, issued thereunder.

Network Appliance, Inc.
Amended 1999 Stock Option Plan

Table of Contents

II. CORPORATE TRANSACTION/CHANGE IN CONTROL

A. Each stock appreciation right, to the extent outstanding under the Plan at the time of a Corporate Transaction but not otherwise exercisable for all the shares subject thereto, shall automatically accelerate so that each such stock appreciation right shall, immediately prior to the effective date of the Corporate Transaction, become exercisable for all of the shares of Common Stock at the time subject to such stock appreciation right and may be exercised for any or all of those shares as fully-vested shares of Common Stock. However, an outstanding stock appreciation right shall not become exercisable on such an accelerated basis if and to the extent: (i) such stock appreciation right is, in connection with the Corporate Transaction, to be assumed by the successor corporation (or parent thereof) or replaced with a comparable award, (ii) such stock appreciation right is to be replaced with a cash incentive program of the successor corporation which preserves the spread existing on the unvested shares subject to the award at the time of the Corporate Transaction and provides for subsequent payout in accordance with the same vesting schedule applicable to the award or (iii) the acceleration of such stock appreciation right is subject to other limitations imposed by the Plan Administrator at the time of grant. The determination of stock appreciation right comparability under clause (i) above shall be made by the Plan Administrator, and its determination shall be final, binding and conclusive.

B. Immediately following the consummation of the Corporate Transaction, all outstanding stock appreciation rights shall terminate and cease to be outstanding, except to the extent assumed by the successor corporation (or parent thereof).

C. Each stock appreciation right which is assumed in connection with a Corporate Transaction shall be appropriately adjusted, immediately after such Corporate Transaction, to apply to the number and class of securities which would have been issuable to the Participant in consummation of such Corporate Transaction had the stock appreciation right been exercised immediately prior to such Corporate Transaction. Appropriate adjustments to reflect such Corporate Transaction shall also be made to (i) the exercise price payable per share under each outstanding stock appreciation right, provided the aggregate exercise price for such award shall remain the same, (ii) the maximum number and/or class of securities available for issuance over the remaining term of the Plan, and (iii) the maximum number and/or class of securities for which any one person may be granted stock appreciation rights under the Plan per calendar year.

D. The Plan Administrator shall have the full power and authority to accelerate the vesting of stock appreciation rights granted under the Stock Appreciation Rights Program upon a Corporate Transaction or Change in Control or upon an event or events occurring in connection with such transactions.

E. The outstanding stock appreciation rights shall in no way affect the right of the Corporation to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

Table of Contents

III. REPRICING OR CANCELLATION AND REGRANT OF STOCK APPRECIATION RIGHTS

The Plan Administrator may not modify or amend a stock option or stock appreciation right to reduce the exercise price of such stock option or stock appreciation right after it has been granted (except for adjustments made pursuant to Article One Section V.D.), unless approved by the Company s stockholders and neither may the Plan Administrator, without the approval of the Corporation s stockholders, cancel any outstanding stock option or stock appreciation right and immediately replace it with a new stock option or stock appreciation right with a lower exercise price.

Table of Contents

ARTICLE FOUR

STOCK ISSUANCE PROGRAM

I. STOCK ISSUANCE TERMS

Shares of Common Stock may be issued under the Stock Issuance Program through direct and immediate issuances without any intervening option grants. Each such stock issuance shall be evidenced by a Stock Issuance Agreement which complies with the terms specified below. Shares of Common Stock may also be issued under the Stock Issuance Program pursuant to share right awards which entitle the recipients to receive those shares upon the attainment of designated performance goals. In no event may shares subject to awards under the Stock Issuance and Performance Share or Performance Unit Programs be issued for more than ten percent (10%) of the shares of Common Stock reserved for issuance hereunder by the Board on July 7, 2004, ten percent (10%) of the shares available for issuance hereunder as of May 28, 2004, plus ten percent (10%) of the shares subject to outstanding awards as of such date that return to the Plan as the result of the termination or expiration of such awards prior to their exercise or as the result of the repurchase or reacquisition of unvested shares. To the extent any shares issued pursuant to awards granted under the Stock Issuance and Performance Share or Performance Unit Programs after July 7, 2004 are forfeited or otherwise return to the Plan, such shares will not count against the foregoing limit and may once again be issued pursuant to awards under the Stock Issuance and Performance Share or Performance Unit Programs as if the original award were never granted. The Plan Administrator, in its sole discretion, shall determine the number of shares of Common Stock to be granted to each Participant, provided that during any calendar year, no Participant shall receive more than 200,000 shares of Common Stock under the Stock Issuance Program.

A. Purchase Price.

1. The purchase price per share of Common Stock subject to direct issuance shall be fixed by the Plan Administrator.

2. Shares of Common Stock may be issued under the Stock Issuance Program for any item of consideration which the Plan Administrator may deem appropriate in each individual instance, including, without limitation, the following:

(i) cash or check made payable to the Corporation, or

(ii) past services rendered to the Corporation (or any Parent or Subsidiary).

B. Vesting/Issuance Provisions.

1. The Plan Administrator may issue shares of Common Stock under the Stock Issuance Program which are fully and immediately vested upon issuance or which are

Network Appliance, Inc.
Amended 1999 Stock Option Plan

Table of Contents

to vest in one or more installments over the Participant s period of Service or upon attainment of specified performance objectives. The elements of the vesting schedule applicable to any unvested shares of Common Stock issued under the Stock Issuance Program, namely:

(i) the Service period to be completed by the Participant or the performance objectives to be attained,

(ii) the number of installments in which the shares are to vest,

(iii) the interval or intervals (if any) which are to lapse between installments, and

(iv) the effect which death, Permanent Disability or other event designated by the Plan Administrator is to have upon the vesting schedule,

shall be determined by the Plan Administrator and incorporated into the Stock Issuance Agreement. For purposes of qualifying awards made under the Stock Issuance Program as performance-based compensation under Section 162(m) of the Code, the Plan Administrator, in its discretion, may set restrictions based upon the achievement of Performance Goals, which shall be set by the Plan Administrator on or before the Determination Date. In this connection, the Plan Administrator shall follow any procedures determined by it from time to time to be necessary or appropriate to ensure qualification of awards made under the Stock Issuance Program under Section 162(m) of the Code (e.g., in determining the Performance Goals).

2. Any new, substituted or additional securities or other property (including money paid other than as a regular cash dividend) which the Participant may have the right to receive with respect to his or her unvested shares of Common Stock by reason of any stock dividend, stock split, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Common Stock as a class without the Corporation s receipt of consideration shall be issued subject to (i) the same vesting requirements applicable to the Participant s unvested shares of Common Stock and (ii) such escrow arrangements as the Plan Administrator shall deem appropriate.

3. The Participant shall have full stockholder rights with respect to any shares of Common Stock issued to the Participant under the Stock Issuance Program, whether or not the Participant s interest in those shares is vested. Accordingly, the Participant shall have the right to vote such shares and to receive any regular cash dividends paid on such shares.

4. Should the Participant cease to remain in Service while holding one or more unvested shares of Common Stock issued under the Stock Issuance Program or should the performance objectives not be attained with respect to one or more such unvested shares of Common Stock, then those shares shall be immediately surrendered to the Corporation for cancellation, and the Participant shall have no further stockholder rights with respect to those

shares. To the extent the surrendered shares were previously issued to the Participant for cash consideration, unless the Plan Administrator provides otherwise, the Corporation shall repay that consideration to the Participant at the time the shares are surrendered.

5. The Plan Administrator may in its discretion waive the surrender and cancellation of one or more unvested shares of Common Stock (or other assets attributable thereto) which would otherwise occur upon the cessation of the Participant s Service or the non-attainment of the performance objectives applicable to those shares. Such waiver shall result in the immediate vesting of the Participant s interest in the shares of Common Stock as to which the waiver applies. Such waiver may be effected at any time, whether before or after the Participant s cessation of Service or the attainment or non-attainment of the applicable performance objectives.

6. Outstanding share right awards under the Stock Issuance Program shall automatically terminate, and no shares of Common Stock shall actually be issued in satisfaction of those awards, if the performance goals established for such awards are not attained. The Plan Administrator, however, shall have the discretionary authority to issue shares of Common Stock in satisfaction of one or more outstanding share right awards as to which the designated performance goals are not attained.

II. CORPORATE TRANSACTION/CHANGE IN CONTROL

A. All of the Corporation s outstanding repurchase rights under the Stock Issuance Program shall terminate automatically, and all the shares of Common Stock subject to those terminated rights shall immediately vest in full, in the event of any Corporate Transaction, except to the extent (i) those repurchase rights are to be assigned to the successor corporation (or parent thereof) in connection with such Corporate Transaction or (ii) such accelerated vesting is precluded by other limitations imposed in the Stock Issuance Agreement.

B. The Plan Administrator shall have the discretionary authority, exercisable either at the time the unvested shares are issued or any time while the Corporation s repurchase rights remain outstanding under the Stock Issuance Program, to provide that those rights shall automatically terminate in whole or in part, and the shares of Common Stock subject to those terminated rights shall immediately vest upon a Corporate Transaction or Change in Control or upon an event or events associated with such transactions.

III. SHARE ESCROW/LEGENDS

Unvested shares may, in the Plan Administrator s discretion, be held in escrow by the Corporation until the Participant s interest in such shares vests or may be issued directly to the Participant with restrictive legends on the certificates evidencing those unvested shares.

Table of Contents

ARTICLE FIVE

PERFORMANCE SHARE AND PERFORMANCE UNIT PROGRAM

I. PERFORMANCE UNITS AND PERFORMANCE SHARES

Shares of Common Stock or cash may be issued under the Performance Share or Performance Unit Program through awards of performance shares and performance units, which are awards that will result in a payment to a Participant only if the performance goals or other vesting criteria the established by the Plan Administrator are achieved or the awards otherwise vest. Each award granted hereunder shall be evidenced by an agreement in such form as the Plan Administrator shall determine which complies with the terms specified below. In no event may shares subject to awards under the Stock Issuance and Performance Share or Performance Unit Programs be issued for more than ten percent (10%) of the shares of Common Stock reserved for issuance hereunder by the Board on July 7, 2004, ten percent (10%) of the shares available for issuance hereunder as of May 28, 2004, plus ten percent (10%) of the shares subject to outstanding awards as of such date that return to the Plan as the result of the termination or expiration of such awards prior to their exercise or as the result of the repurchase or reacquisition of unvested shares. To the extent any shares issued pursuant to awards granted under the Stock Issuance and Performance Share or Performance Unit Programs after July 7, 2004 are forfeited or otherwise return to the Plan, such shares will not count against the foregoing limit and may once again be issued pursuant to awards under the Stock Issuance and Performance Share or Performance Unit Programs as if the original award were never granted.

A. Grant of Performance Units/Shares. The Plan Administrator will have complete discretion in determining the number of performance units and performance shares granted to each Participant provided that during any calendar year, (a) no Participant will receive performance units having an initial value greater than $1,000,000, and (b) no Participant will receive more than 200,000 performance shares.

B. Value of Performance Units/Shares. Each performance unit will have an initial value that is established by the Plan Administrator on or before the date of grant. Each performance share will have an initial value equal to the Fair Market Value of a share of Common Stock on the date of grant.

C. Performance Objectives and Other Terms. The Plan Administrator will set performance objectives or other vesting provisions (including, without limitation, continued status as an Employee) in its discretion which, depending on the extent to which they are met, will determine the number or value of performance units/shares that will be paid out to the Participant. Each Award of performance units/shares will be evidenced by an agreement that will specify the Performance Period, and such other terms and conditions as the Plan Administrator, in its sole discretion, will determine.

Network Appliance, Inc.
Amended 1999 Stock Option Plan

Table of Contents

1. General Performance Objectives. The Plan Administrator may set performance objectives based upon the achievement of Company-wide, divisional, or individual goals, or any other basis determined by the Plan Administrator in its discretion.

2. Section 162(m) Performance Objectives. For purposes of qualifying grants of performance units/shares as performance-based compensation under Section 162(m) of the Code, the Plan Administrator, in its discretion, may determine that the performance objectives applicable to performance units/shares will be based on the achievement of Performance Goals. The Plan Administrator will set the Performance Goals on or before the Determination Date. In granting performance units/shares which are intended to qualify under Section 162(m) of the Code, the Plan Administrator will follow any procedures determined by it from time to time to be necessary or appropriate to ensure qualification of the performance units/shares under Section 162(m) of the Code (e.g., in determining the Performance Goals).

D. Earning of Performance Units/Shares. After the applicable Performance Period has ended, the holder of performance units/shares will be entitled to receive a payout of the number of performance units/shares earned by the Participant over the Performance Period, to be determined as a function of the extent to which the corresponding performance objectives or other vesting provisions have been achieved. After the grant of a performance unit/share, the Plan Administrator, in its sole discretion, may reduce or waive any performance objectives or other vesting provisions for such performance unit/share.

E. Form and Timing of Payment of Performance Units/Shares. Payment of earned performance units/shares will be made as soon as practicable after the expiration of the applicable Performance Period. The Administrator, in its sole discretion, may pay earned performance units/shares in the form of cash, in shares of Common Stock (which have an aggregate Fair Market Value equal to the value of the earned performance units/shares at the close of the applicable Performance Period) or in a combination thereof.

F. Cancellation of Performance Units/Shares. On the date set forth in the agreement evidencing the award, all unearned or unvested performance units/shares will be forfeited to the Company, and again will be available for grant under the Plan.

II. CORPORATE TRANSACTION/CHANGE IN CONTROL

A. All performance goals or other vesting criteria will be deemed achieved at target levels and all other terms and conditions met with respect to performance shares and performance units in the event of any Corporate Transaction, except to the extent (i) those awards are assumed or an equivalent option or right substituted by the successor corporation (or parent thereof) in connection with such Corporate Transaction or (ii) such accelerated vesting is precluded by other limitations imposed in the award Agreement.

B. The Plan Administrator shall have the discretionary authority, exercisable either at the time the unvested awards are granted or any time while such awards remain unvested and outstanding under the Performance Share or Performance Unit Program, to provide

Table of Contents

that those awards shall immediately vest upon a Corporate Transaction or Change in Control or upon an event or events associated with such transactions.

Table of Contents

ARTICLE SIX

AUTOMATIC OPTION GRANT PROGRAM

On August 17, 2000, the Board approved the following changes to the Automatic Option Grant Program which became effective when approved by the stockholders at the 2000 Annual Meeting: (i) reduced the number of shares of Common Stock for which option grants are to be made to new non-employee Board members under the Automatic Option Grant Program from 160,000 shares (as adjusted to reflect the two splits of the Common Stock which have occurred since the implementation of the Plan) to 40,000 shares and (ii) reduced the number of shares of Common Stock for which option grants are to be made to continuing non-employee Board members under the Automatic Option Grant Program from 40,000 shares (as adjusted to reflect the two splits of the Common Stock which have occurred since the implementation of the Plan) to 15,000 shares.

On August 9, 2001, the Board approved the following changes to the Automatic Option Grant Program which became effective with stockholder approval at the 2001 Annual Meeting: (i) increase the number of shares of Common Stock for which option grants are to be made to new non-employee Board members under the Automatic Option Grant Program from 40,000 shares to 55,000 shares and (ii) modify the vesting schedule applicable to each such option grants from four (4) successive equal annual installments to the vesting of 25,000 shares after one (1) year of Board service and the balance in three (3) successive equal annual installments thereafter.

I. OPTION TERMS

A. Grant Dates. Option grants shall be made on the dates specified below:

1. Each individual who is first elected or appointed as a non-employee Board member on or after the date of the 2000 Annual Stockholders Meeting and prior to the date of the 2001 Annual Stockholders Meeting shall automatically be granted, on the date of such initial election or appointment, a Non-Statutory Option to purchase 40,000 shares of Common Stock, provided such individual has not previously been in the employ of the Corporation (or any Parent or Subsidiary). Each individual who is first elected or appointed as a non-employee Board member at any time on or after the date of the 2001 Annual Stockholders Meeting shall automatically be granted, on the date of such initial election or appointment, a Non-Statutory Option to purchase 55,000 shares of Common Stock, provided such individual has not previously been in the employ of the Corporation (or any Parent or Subsidiary).

2. On the date of each Annual Stockholders Meeting, beginning with the 2000 Annual Meeting, each individual who is to continue to serve as a non-employee Board member shall automatically be granted a Non-Statutory Option to purchase 15,000 shares of Common Stock, provided such individual has served as a non-employee Board member for at least six (6) months. There shall be no limit on the number of such 15,000-share option grants any one non-employee Board member may receive over his or her period of Board service.

Network Appliance, Inc.
Amended 1999 Stock Option Plan

Table of Contents

3. Stockholder approval of the 2001 Restatement shall constitute pre-approval of each option grant made under this Automatic Option Grant Program on or after the date of the 2001 Annual Meeting and the subsequent exercise of that option in accordance with the terms and conditions of this Article Three and the stock option agreement evidencing such grant.

4. The Automatic Option Grant Program under this Plan supersedes and replaces the Automatic Option Grant Program previously in effect for the non-employee Board members under the Corporation s 1995 Stock Incentive Plan. That latter program terminated upon stockholder approval of the Plan at the 1999 Annual Stockholders Meeting, and no further option grants shall be made to the non-employee Board members under that program. All options granted to the non-employee Board members on or after the date of the 1999 Annual Stockholders Meeting, whether upon their initial election or appointment to the Board or upon their re-election at one or more of the Corporation s subsequent Annual Stockholder Meetings, shall be effected solely and exclusively in accordance with the terms and provisions of this Article Three, as in effect from time to time.

B. Exercise Price.

1. The exercise price per share shall be equal to one hundred percent (100%) of the Fair Market Value per share of Common Stock on the option grant date.

2. The exercise price shall be payable in one or more of the alternative forms authorized under the Discretionary Option Grant Program. Except to the extent the sale and remittance procedure specified thereunder is utilized, payment of the exercise price for the purchased shares must be made on the Exercise Date.

C. Option Term. Each option shall have a term of ten (10) years measured from the option grant date.

D. Exercise and Vesting of Options. Each option shall be immediately exercisable for any or all of the option shares. However, any shares purchased under the option shall be subject to repurchase by the Corporation, at the exercise price paid per share, upon the Optionee s cessation of Board service prior to vesting in those shares.

1. The shares subject to each 40,000-share grant made to a newly elected or appointed non-employee Board member on or after the date of the 2000 Annual Stockholders Meeting and prior to the date of the 2001 Annual Stockholders Meeting shall vest, and the Corporation s repurchase right with respect to those shares shall lapse, in a series of four (4) successive equal annual installments over the Optionee s period of continued service as a Board member, with the first such installment to vest upon the Optionee s completion of one (1) year of Board service measured from the option grant date.

2. The shares subject to each 55,000-share grant made to a newly elected or appointed non-employee Board member on or after the date of the 2001 Annual Stockholders Meeting shall vest, and the Corporation s repurchase right with respect to those

shares shall lapse, as follows: (x) 25,000 shares shall vest upon the Optionee s completion of one (1) year of Board service measured from the option grant date, and (y) the balance of the shares shall vest in a series of three (3) successive equal annual installments upon the Optionee s completion of each additional year of Board service over the three (3) year-period measured from the first anniversary of the option grant date.

3. The shares subject to each annual 15,000-share grant shall vest, and the Corporation s repurchase right with respect to those shares shall lapse, upon the Optionee s continuation in Board service through the day immediately preceding the date of the next Annual Stockholders Meeting following the option grant date.

E. Effect of Termination of Board Service. The following provisions shall govern the exercise of any options held by the Optionee at the time the Optionee ceases to serve as a Board member:

(i) The Optionee (or, in the event of the Optionee s death, the personal representative of the Optionee s estate or the person or persons to whom the option is transferred pursuant to the Optionee s will or in accordance with the laws of descent and distribution) shall have a twelve (12)-month period following the date of such cessation of Board service in which to exercise each such option.

(ii) During the twelve (12)-month exercise period, the option may not be exercised in the aggregate for more than the number of shares of Common Stock in which the Optionee is vested at the time of his or her cessation of Board service.

(iii) Should the Optionee cease to serve as a Board member by reason of death or Permanent Disability, then all shares at the time subject to the option shall immediately vest so that such option may, during the twelve (12)-month exercise period following such cessation of Board service, be exercised for all or any portion of those shares as fully-vested shares of Common Stock.

(iv) In no event shall the option remain exercisable after the expiration of the option term. Upon the expiration of the twelve (12)-month exercise period or (if earlier) upon the expiration of the option term, the option shall terminate and cease to be outstanding for any vested shares for which the option has not been exercised. However, the option shall, immediately upon the Optionee s cessation of Board service for any reason other than death or Permanent Disability, terminate and cease to be outstanding with respect to any and all shares in which the Optionee is not otherwise at that time vested.

Table of Contents

II. CORPORATE TRANSACTION/CHANGE IN CONTROL

A. The shares of Common Stock subject to each outstanding option at the time of a Corporate Transaction but not otherwise vested shall automatically vest in full so that each such option shall, immediately prior to the effective date of that Corporate Transaction, become fully exercisable for all of the shares of Common Stock at the time subject to such option and may be exercised for all or any portion of those shares as fully-vested shares of Common Stock. Immediately following the consummation of the Corporate Transaction, each automatic option grant shall terminate and cease to be outstanding, except to the extent assumed by the successor corporation (or parent thereof).

B. The shares of Common Stock subject to each outstanding option at the time of a Change in Control but not otherwise vested shall automatically vest in full so that each such option shall, immediately prior to the effective date of that Change in Control, become fully exercisable for all of the shares of Common Stock at the time subject to such option and may be exercised for all or any portion of those shares as fully-vested shares of Common Stock. Each such option shall remain exercisable for such fully-vested option shares until the expiration or sooner termination of the option term.

C. All repurchase rights of the Corporation outstanding under the Automatic Option Grant Program at the time of a Corporate Transaction or Change in Control shall automatically terminate at that time, and the shares of Common Stock subject to those terminated rights shall immediately vest.

D. Each option which is assumed in connection with a Corporate Transaction shall be appropriately adjusted, immediately after such Corporate Transaction, to apply to the number and class of securities which would have been issuable to the Optionee in consummation of such Corporate Transaction had the option been exercised immediately prior to such Corporate Transaction. Appropriate adjustments shall also be made to the exercise price payable per share under each outstanding option, provided the aggregate exercise price payable for such securities shall remain the same.

E. The grant of options under the Automatic Option Grant Program shall in no way affect the right of the Corporation to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

III. REMAINING TERMS

The remaining terms of each option granted under the Automatic Option Grant Program shall be the same as the terms in effect for option grants made under the Discretionary Option Grant Program.

Table of Contents

ARTICLE SEVEN

MISCELLANEOUS

I. TAX WITHHOLDING

A. The Corporation s obligation to deliver shares of Common Stock upon the exercise or issuance of awards or vesting of such shares under the Plan shall be subject to the satisfaction of all applicable Federal, state and local income and employment tax withholding requirements.

B. The Plan Administrator may, in its discretion, provide any or all holders of unexercised or unvested awards under the Plan (other than the options granted or the shares issued under the Automatic Option Grant Program) with the right to use shares of Common Stock in satisfaction of all or part of the minimum Withholding Taxes to which such holders become subject in connection with the exercise of their awards or the vesting or disposition of their shares issued pursuant thereto. Such right may be provided to any such holder in either or both of the following formats:

(i) Stock Withholding: The election to have the Corporation withhold, from the shares of Common Stock otherwise issuable upon the exercise of such award, the vesting or issuance of such shares or upon disposition of the shares, a portion of those shares with an aggregate Fair Market Value equal to the percentage of the Withholding Taxes (not to exceed one hundred percent (100%) of the minimum amount required to be withheld) designated by the holder.

(ii) Stock Delivery: The election to deliver to the Corporation, at the time the award is exercised, the shares vest or are otherwise issued or upon disposition of the shares, one or more shares of Common Stock previously acquired by such holder (other than in connection with the exercise of an award or share vesting triggering the Withholding Taxes) with an aggregate Fair Market Value equal to the percentage of the Withholding Taxes (not to exceed one hundred percent (100%) of the minimum amount required to be withheld) designated by the holder.

II. EFFECTIVE DATE AND TERM OF THE PLAN

The Plan became effective on the Plan Effective Date and shall remain in effect until the earliest of (i) August 16, 2009, (ii) the date on which all shares available for issuance under the Plan shall have been issued or (iii) the termination of all outstanding awards in connection with a Corporate Transaction (unless the acquiror assumes the Plan in the transaction). Upon such Plan termination, all outstanding awards and unvested shares issued pursuant to awards shall continue to have force and effect in accordance with the provisions of the documents evidencing such awards.

Network Appliance, Inc.
Amended 1999 Stock Option Plan

Table of Contents

III. AMENDMENT OF THE PLAN

A. The Board shall have complete and exclusive power and authority to amend or modify the Plan in any or all respects, subject to any stockholder approval which may be required pursuant to applicable laws or regulations; provided, however, that the Board may not, without stockholder approval, (i) increase the number of shares of Common Stock authorized for issuance under the Plan, or (ii) materially increase the benefits offered to participants under the 1999 Plan. No amendment or modification shall adversely affect any rights and obligations with respect to awards at the time outstanding under the Plan unless the Optionee or Participant consents to such amendment or modification.

B. The Plan was amended on August 17, 2000 to increase the number of shares of Common Stock authorized for issuance under the Plan by an additional 15,000,000 shares. The amendment was approved by the stockholders at the 2000 Annual Meeting, and no option grants were made on the basis of the 15,000,000-share increase, until such stockholder approval was obtained.

C. The Plan was amended on August 9, 2001 to: (i) increase the number of shares of Common Stock authorized for issuance under the Plan by an additional 13,400,000 shares, (ii) increase the number of shares of Common Stock for which option grants are to be made to newly elected or appointed non-employee Board members under the Automatic Option Grant Program from 40,000 shares to 55,000 shares and (iii) modify the vesting schedule applicable to such option grants from four (4) successive equal annual installments to the vesting of 25,000 shares after one (1) year of Board service and the balance in three (3) successive equal annual installments. Such amendment was approved by the stockholders at the 2001 Annual Meeting, and no options grants were made on the basis of the 13,400,000-share increase or the amendments to the Automatic Option Grant Program until such stockholder approval was obtained.

D. The Plan was amended on July 2, 2002 to increase the number of shares of Common Stock authorized for issuance under the Plan by an additional 14,000,000 shares. Such amendment was approved by the stockholders at the 2002 Annual Meeting, and no option grants were made on the basis of the 14,000,000-share increase, until such stockholder approval was obtained.

E. The Plan was amended and restated on June 12, 2003 so that awards under the Plan could qualify as performance based compensation under Section 162(m) of the Code. The stockholders approved the amended and restated Plan at the 2003 Annual Meeting.

F. The Plan was amended and restated on July 7, 2004 to (i) increase the number of share of Common Stock authorized for issuance under the Plan by an additional 10,200,000, and (ii) to add the Stock Appreciation Rights and Performance Share and Performance Unit Programs. The stockholders approved the amended and restated Plan at the 2004 Annual Meeting.

Table of Contents

G. Options to purchase shares of Common Stock may be granted under the Discretionary Option Grant Program in excess of the number of shares then available for issuance under the Plan, provided any excess shares actually issued under such program are held in escrow until there is obtained stockholder approval of an amendment sufficiently increasing the number of shares of Common Stock available for issuance under the Plan. If such stockholder approval is not obtained within twelve (12) months after the date the first such excess grants are made, then (i) any unexercised options granted on the basis of such excess shares shall terminate and cease to be outstanding and (ii) the Corporation shall promptly refund to the Optionees the exercise price paid for any excess shares issued under the Plan and held in escrow, together with interest (at the applicable Short Term Federal Rate) for the period the shares were held in escrow, and such shares shall thereupon be automatically cancelled and cease to be outstanding.

IV. REGULATORY APPROVALS

A. The implementation of the Plan, the granting of any award under the Plan and the issuance of any shares of Common Stock pursuant to an award shall be subject to the Corporation s procurement of all approvals and permits required by regulatory authorities having jurisdiction over the Plan, the awards granted under it and the shares of Common Stock issued pursuant to it.

B. No shares of Common Stock or other assets shall be issued or delivered under the Plan unless and until there shall have been compliance with all applicable requirements of Federal and state securities laws and all applicable listing requirements of any stock exchange (or the Nasdaq National Market, if applicable) on which Common Stock is then listed for trading.

V. USE OF PROCEEDS

Any cash proceeds received by the Corporation from the sale of shares of Common Stock under the Plan shall be used for general corporate purposes.

VI. NO EMPLOYMENT/SERVICE RIGHTS

Nothing in the Plan shall confer upon the Optionee or the Participant any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Corporation (or any Parent or Subsidiary employing or retaining such person) or of the Optionee or the Participant, which rights are hereby expressly reserved by each, to terminate such person s Service at any time for any reason, with or without cause.

Table of Contents

APPENDIX

The following definitions shall be in effect under the Plan:

A. Annual Revenue means as to any Performance Period, the Corporation s or business unit s net sales.

B. Automatic Option Grant Program shall mean the automatic option grant program in effect under Article Six of the Plan.

C. Board shall mean the Corporation s Board of Directors.

D. Cash Position means as to any Performance Period, the Corporation s level of cash and cash equivalents.

E. Change in Control shall mean a change in ownership or control of the Corporation effected through either of the following transactions:

(i) the acquisition, directly or indirectly, by any person or related group of persons (other than the Corporation or a person that directly or indirectly controls, is controlled by, or is under common control with, the Corporation), of beneficial ownership (within the meaning of Rule 13d-3 of the 1934 Act) of securities possessing more than fifty percent (50%) of the total combined voting power of the Corporation s outstanding securities pursuant to a tender or exchange offer made directly to the Corporation s stockholders, or

(ii) a change in the composition of the Board over a period of thirty-six (36) consecutive months or less such that a majority of the Board members ceases, by reason of one or more contested elections for Board membership, to be comprised of individuals who either (A) have been Board members continuously since the beginning of such period or (B) have been elected or nominated for election as Board members during such period by at least a majority of the Board members described in clause (A) who were still in office at the time the Board approved such election or nomination.

F. Code shall mean the Internal Revenue Code of 1986, as amended.

G. Common Stock shall mean the Corporation s common stock.

H. Corporate Transaction shall mean either of the following stockholder-approved transactions to which the Corporation is a party:

(i) a merger or consolidation in which securities possessing more than fifty percent (50%) of the total combined voting power of the Corporation s outstanding securities are transferred to a person or persons

different from the persons holding those securities immediately prior to such transaction; or

(ii) the sale, transfer or other disposition of all or substantially all of the Corporation s assets in complete liquidation or dissolution of the Corporation.

I. Corporation shall mean Network Appliance, Inc., a Delaware corporation, and any corporate successor to all or substantially all of the assets or voting stock of Network Appliance, Inc. which shall by appropriate action adopt the Plan.

J. Determination Date means the latest possible date that will not jeopardize the qualification of an award granted under the Plan as performance-based compensation under Section 162(m) of the Code.

K. Discretionary Option Grant Program shall mean the discretionary option grant program in effect under Article Two of the Plan.

L. Earnings Per Share means as to any Performance Period, the Corporation s or a business unit s Net Income, divided by a weighted average number of common shares outstanding and dilutive common equivalent shares deemed outstanding.

M. Employee shall mean an individual who is in the employ of the Corporation (or any Parent or Subsidiary), subject to the control and direction of the employer entity as to both the work to be performed and the manner and method of performance.

N. Exercise Date shall mean the date on which the Corporation shall have received written notice of the option exercise.

O. Fair Market Value per share of Common Stock on any relevant date shall be determined in accordance with the following provisions:

(i) If the Common Stock is at the time traded on the Nasdaq National Market, then the Fair Market Value shall be the closing selling price per share of Common Stock on the date in question, as such price is reported by the National Association of Securities Dealers on the Nasdaq National Market and published in *The Wall Street Journal*. If there is no closing selling price for the Common Stock on the date in question, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(ii) If the Common Stock is at the time listed on any Stock Exchange, then the Fair Market Value shall be the closing selling price per share of Common Stock on the date in question on the Stock Exchange determined by the Plan Administrator to be the primary market for the Common Stock, as such price is officially quoted in the composite tape of transactions on such exchange and published in *The Wall Street Journal*. If there is no closing selling price for

Table of Contents

the Common Stock on the date in question, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(iii) In the absence of an established market for the Common Stock, the Fair Market Value thereof shall be determined in good faith by the Plan Administrator.

P. Incentive Option shall mean an option which satisfies the requirements of Code Section 422.

Q. Individual Objectives means as to an Optionee or Participant for any Performance Period, the objective and measurable goals set by a process and approved by the Plan Administrator (in its discretion).

R. Misconduct shall mean the commission of any act of fraud, embezzlement or dishonesty by the Optionee, any unauthorized use or disclosure by such person of confidential information or trade secrets of the Corporation (or any Parent or Subsidiary), or any other intentional misconduct by such person adversely affecting the business or affairs of the Corporation (or any Parent or Subsidiary) in a material manner. The foregoing definition shall not be deemed to be inclusive of all the acts or omissions which the Corporation (or any Parent or Subsidiary) may consider as grounds for the dismissal or discharge of any Optionee or other person in the Service of the Corporation (or any Parent or Subsidiary).

S. 1934 Act shall mean the Securities Exchange Act of 1934, as amended.

T. Net Income means as to any Performance Period, the Corporation s or a business unit s income after taxes.

U. Non-Statutory Option shall mean an option not intended to satisfy the requirements of Code Section 422.

V. Operating Cash Flow means as to any Performance Period, the Corporation s or a business unit s sum of Net Income plus depreciation and amortization less capital expenditures plus changes in working capital comprised of accounts receivable, inventories, other current assets, trade accounts payable, accrued expenses, product warranty, advance payments from customers and long-term accrued expenses.

W. Operating Income means as to any Performance Period, the Corporation s or a business unit s income from operations but excluding any unusual items.

X. Optionee shall mean any person to whom an option is granted under the Plan.

Y. Parent shall mean any corporation (other than the Corporation) in an unbroken chain of corporations ending with the Corporation, provided each corporation in the unbroken chain (other than the Corporation) owns, at the time of the determination, stock

possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

Z. Participant shall mean any person who is issued award under the Stock Appreciation Rights, Stock Issuance, or Performance Share and Performance Unit Programs.

AA. Performance Goals means the goal(s) (or combined goal(s)) determined by the Plan Administrator (in its discretion) to be applicable to an Optionee or Participant with respect to an award granted under the Plan (an Award). As determined by the Plan Administrator, the Performance Goals applicable to an Award may provide for a targeted level or levels of achievement using one or more of the following measures: (a) Annual Revenue, (b) Cash Position, (c) Earnings Per Share, (d) Individual Objectives, (e) Net Income, (f) Operating Cash Flow, (g) Operating Income, (h) Return on Assets, (i) Return on Equity, (j) Return on Sales, and (k) Total Shareholder Return. The Performance Goals may differ from Optionee to Optionee and from award to award. Prior to the Determination Date, the Plan Administrator shall determine whether any significant element(s) shall be included in or excluded from the calculation of any Performance Goal with respect to any Optionee or Participant. For example (but not by way of limitation), the Plan Administrator may determine that the measures for one or more Performance Goals shall be based upon the Corporation s pro-forma results and/or results in accordance with generally accepted accounting principles.

BB. Performance Period means any fiscal year of the Corporation or such other period as determined by the Administrator in its sole discretion.

CC. Performance Share and Performance Unit Program shall mean the performance share and performance unit program in effect under Article Five of the Plan.

DD. Permanent Disability or Permanently Disabled shall mean the inability of the Optionee or the Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment expected to result in death or to be of continuous duration of twelve (12) months or more. However, solely for the purposes of the Automatic Option Grant Program, Permanent Disability or Permanently Disabled shall mean the inability of the non-employee Board member to perform his or her usual duties as a Board member by reason of any medically determinable physical or mental impairment expected to result in death or to be of continuous duration of twelve (12) months or more.

EE. Plan shall mean the Corporation s 1999 Stock Option Plan, as set forth in this document.

FF. Plan Administrator shall mean the particular entity, whether the Primary Committee, the Board or the Secondary Committee, which is authorized to administer the Discretionary Option Grant, Stock Appreciation Rights, Stock Issuance and Performance Share and Performance Unit Programs with respect to one or more classes of eligible persons, to the extent such entity is carrying out its administrative functions under such program with respect to the persons under its jurisdiction.

Table of Contents

GG. Plan Effective Date shall mean August 17, 1999, the date on which the Board adopted the Plan.

HH. Primary Committee shall mean the committee of two (2) or more non-employee Board members appointed by the Board to administer the Discretionary Option Grant Program with respect to Section 16 Insiders.

II. Return on Assets means as to any Performance Period, the percentage equal to the Corporation s or a business unit s Operating Income before incentive compensation, divided by average net Corporation or business unit, as applicable, assets.

JJ. Return on Equity means as to any Performance Period, the percentage equal to the Corporation s Net Income divided by average stockholder s equity.

KK. Return on Sales means as to any Performance Period, the percentage equal to the Corporation s or a business unit s Operating Income before incentive compensation, divided by the Corporation s or the business unit s, as applicable, revenue.

LL. Secondary Committee shall mean a committee of Board members or of other individuals satisfying applicable laws appointed by the Board to administer the Discretionary Option Grant and Stock Issuance Programs with respect to eligible persons other than Section 16 Insiders.

MM. Section 16 Insider shall mean an officer or director of the Corporation subject to the short-swing profit liabilities of Section 16 of the 1934 Act.

NN. Service shall mean the provision of services to the Corporation (or any Parent or Subsidiary) by a person in the capacity of an Employee, a non-employee member of the board of directors or a consultant or independent advisor, except to the extent otherwise specifically provided in the documents evidencing the option grant or stock issuance.

OO. Stock Appreciation Rights Program shall mean the stock appreciation rights program in effect under Article Three of the Plan.

PP. Stock Exchange shall mean either the American Stock Exchange or the New York Stock Exchange.

QQ. Stock Issuance Agreement shall mean the agreement entered into by the Corporation and the Participant at the time of issuance of shares of Common Stock under the Stock Issuance Program.

RR. Stock Issuance Program shall mean the stock issuance program in effect under Article Four of the Plan.

SS. Subsidiary shall mean any corporation (other than the Corporation) in an unbroken chain of corporations beginning with the Corporation, provided each corporation (other than the last corporation) in the unbroken chain owns, at the time of the determination, stock

Table of Contents

possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

TT. 10% Stockholder shall mean the owner of stock (as determined under Code Section 424(d)) possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Corporation (or any Parent or Subsidiary).

UU. Total Shareholder Return means as to any Performance Period, the total return (change in share price plus reinvestment of any dividends) of a Share.

VV. Withholding Taxes shall mean the Federal, state and local income and employment withholding taxes to which the holder of options or unvested shares of Common Stock becomes subject in connection with the exercise of those options, or the vesting of those shares or upon the disposition of shares acquired pursuant to an option or stock issuance.

Table of Contents

NETWORK APPLIANCE, INC.
C/O COMPUTERSHARE

VOTE BY INTERNET - www.proxyvote.com
Use the Internet to transmit your voting instructions and for electronic delivery of information up until 11:59 P.M. Eastern Time the day before the cut-off date or meeting date. Have your proxy card in hand when you access the web site and follow the instructions to obtain your records and to create an electronic voting instruction form.

VOTE BY PHONE - 1-800-690-6903
Use any touch-tone telephone to transmit your voting instructions up until 11:59 P.M. Eastern Time the day before the cut-off date or meeting date. Have your proxy card in hand when you call and then follow the instructions.

VOTE BY MAIL
Mark, sign, and date your proxy card and return it in the postage-paid envelope we have provided or return to Network Appliance, Inc., c/o ADP, 51 Mercedes Way, Edgewood, NY 11717.

YOUR VOTE IS IMPORTANT!

TO VOTE, MARK BLOCKS BELOW IN BLUE OR BLACK INK AS FOLLOWS: NTWAP1 KEEP THIS PORTION FOR YOUR RECORDS

DETACH AND RETURN THIS PORTION ONLY

THIS PROXY CARD IS VALID ONLY WHEN SIGNED AND DATED.

NETWORK APPLIANCE, INC.

Vote On Directors

1. The Board of directors recommends a vote FOR each of the listed nominees.

	Yes	**No**
Please indicate if you plan to attend this meeting	o	o

Signature [PLEASE SIGN WITHIN BOX] **Date**

Signature (Joint Owners) **Date**

Table of Contents

Proxy Network Appliance, Inc.

This Proxy is Solicited On Behalf Of The Board Of Directors.

Daniel J. Warmenhoven and Steven J. Gomo, or either of them, are hereby appointed as the lawful agents and proxies of the undersigned (with all powers the undersigned would possess if personally present, including full power of substitution) to represent and to vote all shares of capital stock of Network Appliance, Inc. (the Company) which the undersigned is entitled to vote at the Company s Annual Meeting of Stockholders on September 2, 2004, and at any adjournments or postponements thereof as follows.

The Board of Directors recommends a vote FOR each of the proposals. This proxy will be voted as directed, or, if no direction is indicated, will be voted FOR each of the proposals and at the discretion of the persons named as proxies, upon such other matters as may properly come before the meeting. This proxy may be revoked at any time before it is voted.

PLEASE VOTE PROMPTLY BY USING THE TELEPHONE OR INTERNET VOTING OPTIONS OR MARK, SIGN, DATE, AND RETURN THIS CARD USING THE ENCLOSED POSTAGE PREPAID ENVELOPE.

(Continued and to be signed on reverse side.)