AVI BIOPHARMA INC
Form 10-K/A
April 28, 2010

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-K/A

x	**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
	For the fiscal year ended December 31, 2009
o	**TRANSITION REPORT PURSUANT TO SECTION 13 OF 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission File Number: 001-14895

AVI BioPharma, Inc.

(Exact name of registrant as specified in its charter)

Oregon	**93-0797222**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
3450 Monte Villa Parkway, Suite 101, Bothell, Washington	**98021**
(Address of principal executive offices)	(Zip Code)

Registrant s telephone number, including area code: **(425) 354 5038**

Securities registered under Section 12(b) of the Act: **None**

Securities registered under Section 12(g) of the Act:

Common Stock with $.0001 par value

(Title of Class)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes o No x

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes o No x

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes x No o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes o No o

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant s knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. x

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer o	Accelerated filer x
Non-accelerated filer o (Do not check if a smaller reporting company)	Smaller Reporting Company o

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes o No x

The aggregate market value of the voting stock held by non-affiliates of the Registrant as of June 30, 2009 was approximately $128,954,972. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

The number of outstanding shares of the Registrant s Common Stock as of the close of business on April 26, 2010 was 110,374,160.

Explanatory Note

AVI BioPharma, Inc. is filing this Amendment No. 1 on Form 10-K/A (the Form 10-K/A) to amend its Annual Report on Form 10-K for the fiscal year ended December 31, 2009 (the Form 10-K), which was filed with the Securities and Exchange Commission (the SEC) on March 16, 2010. The purpose of this Form 10-K/A is to file the financial statements in Part II and amend the Subsequent Event footnote, and to disclose the information required in Part III, Items 10 through 14 and Part IV, Item 15 of the Form 10-K. Accordingly, AVI BioPharma, Inc. hereby amends and replaces in their entirety Items 10 through 14 of the Form 10-K. Except as described above, this Form 10-K/A does not amend, update or change any other items or disclosures in the Form 10-K.

PART II

Item 8. Financial Statements and Supplementary Data.

The information required by this Item 8 begins on page F-1 in Item 15 of Part IV of this report on Form 10-K and is incorporated into this item by reference.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

Executive Officers and Directors

The following table sets forth certain information with respect to the current directors and executive officers of AVI:

Name	Age	Position(4)
J. David Boyle II	56	Interim Chief Executive Officer and President, Senior Vice President, and Chief Financial Officer
Patrick L. Iversen, Ph.D.	54	Senior Vice President of Strategic Alliances
Ryszard Kole, Ph.D.	63	Senior Vice President of Discovery Research
Paul Medeiros	48	Senior Vice President of Business Development, Chief Business Officer and Secretary
Stephen B. Shrewsbury, M.D.	53	Senior Vice President of Preclinical, Clinical and Regulatory Affairs and Chief Medical Officer
Dwight D. Weller, Ph.D.	59	Senior Vice President of Chemistry and Manufacturing
Michael D. Casey(1)(3)	64	Group I Director, Chairman of the Board
William A. Goolsbee(1)(3)	56	Group I Director
John C. Hodgman(2)	55	Group II Director

Gil Price, M.D.(2)	54	Group I Director
M. Kathleen Behrens, Ph.D.(2)	57	Group II Director
Christopher S. Henney, Ph.D., D.Sc.(3)	69	Group I Director
Anthony Chase(3)	55	Group II Director

(1) Member of the Compensation Committee.

(2) Member of the Audit Committee.

(3) Member of the Nominating and Corporate Governance Committee.

(4) The terms of Group I Directors expire as of the date of the 2010 Annual Meeting, and the terms of Group II Directors expire as of the date of the 2011 Annual Meeting.

J. David Boyle II, has served as Interim Chief Executive Officer and President since April 20, 2010, and as Senior Vice President and Chief Financial Officer of the Company since August 18, 2008. Mr. Boyle also previously served as the Company s Secretary from September 29, 2008 to April 20, 2010. In the five years prior to his appointment as the Company s Senior Vice President and Chief Financial Officer, Mr. Boyle worked for both XOMA Ltd., a biopharmaceutical company in the field of therapeutic antibody discovery and development, and Polycom, Inc., a worldwide high technology communications company. Mr. Boyle served as Chief Financial Officer of XOMA Ltd. from July 2005 to August 2008. Prior to his position as Chief Financial Officer, Mr. Boyle served as Vice President, Financial Operations of XOMA Ltd. from January 2005 to July 2005. Mr. Boyle joined XOMA Ltd. in January 2005 from Polycom, Inc. where he served from March 2002 to December 2004, most recently, as Vice President, Finance. Mr. Boyle also brings to the Company extensive global financial leadership experience in the pharmaceutical industry through previous senior leadership positions. Prior to his employment with Polycom, Inc., Mr. Boyle worked for Salix Pharmaceuticals, Ltd. in the US and for Ares Serono Group both in the US and Switzerland. Mr. Boyle holds a Bachelor of Arts degree from Catholic University.

Patrick L. Iversen, Ph.D., has served as Senior Vice President of Strategic Alliances since April 10, 2008. From 1997 until April 10, 2008, Dr. Iversen previously served as the Company s Senior Vice President of Research and Development. He also served as a director of the Company from 1997 through May 2005. From 1987 through 1997, Dr. Iversen was on staff at the University of Nebraska Medical Center, most recently as a Professor in the College of Medicine. Dr. Iversen, who has published extensively on antisense research and development, additionally served as a consultant to various pharmaceutical and biotechnology companies, including GLAXO Inc., Innovir Pharmaceuticals, Lynx Therapeutics, and Isis Pharmaceuticals, as well as to the Company. He is a former member of the Leukemia Society of America Board of Directors. Dr. Iversen holds a B.S. in Biology from Westminster College and a Ph.D. in Biochemical Pharmacology and Toxicology from the University of Utah, followed by post-doctoral work at the Eppley Institute for Research in Cancer and Allied Diseases. Current services activities include being a reviewer for the ONC-L and BST-S study sections of the National Institutes of Health.

Ryszard Kole, Ph.D., has served as Senior Vice President of Discovery Research since April 10, 2008. Prior to his appointment as Senior Vice President of Discovery Research, Dr. Kole had served as a consultant to the Company after the closing of the Company s acquisition of Ercole Biotech, Inc., a privately held Delaware corporation (Ercole), on March 20, 2008. Prior to his service as a consultant with the Company and Ercole s acquisition by the Company, Dr. Kole served as President, Chief Scientific Officer and a member of the Board of Directors of Ercole from the time he founded Ercole in 2001. He served as a compensated consultant to Ercole from September 2007 until its acquisition in March 2008. As a member of Ercole s senior management, Dr. Kole had primary responsibility for managing Ercole s internal and collaborative research activities. At the time of its acquisition, Ercole had six full-time employees and two part-time consultants, including Dr. Kole. In addition to his work with Ercole, Dr. Kole had also been employed by the University of North Carolina at Chapel Hill (UNC) in the Department of Pharmacology as a Professor from 1996 until April 2008. Dr. Kole holds a Ph.D. in Natural Sciences from the Institute of Biochemistry and Biophysics, Polish Academy of Sciences in Warsaw, Poland.

Paul Medeiros, has served as the Senior Vice President of Business Development and Chief Business Officer since May 19, 2009, and has served as Secretary since April 20, 2010. In the five years prior to his appointment as the Company s Senior Vice President of Business Development and Chief Business Officer, Mr. Medeiros worked for Schering-Plough. Most recently, Mr. Medeiros served as Vice President, Global Licensing and Strategic Alliances for Schering-Plough, where he led worldwide specialty product licensing and strategic partnering initiatives. Mr. Medeiros joined Schering-Plough in 1996 as marketing planning director, and subsequently held senior positions of increasing responsibility in marketing and business development. Prior to Schering-Plough, Medeiros was employed by Merck & Company, where he held positions in Field Sales, New Product Planning and Worldwide Human Health Marketing. Medeiros holds an A.B. with honors from Brown University and an M.B.A. from Columbia Business School. He is a member of the Licensing Executives Society and is a *Certified Licensing Professional* .

Stephen B. Shrewsbury, M.D., has served as Chief Medical Officer and Senior Vice President of Preclinical, Clinical and Regulatory Affairs since January 26, 2009. In the five years prior to his appointment as the Company s Chief Medical Officer and Senior Vice President of Preclinical, Clinical and Regulatory Affairs, Dr. Shrewsbury worked as a consultant to companies in the pharmaceutical industry from August 2008 to January 2009. Prior to his work as a consultant, Dr. Shrewsbury served as Chief Medical Officer & Senior Vice President, Clinical Development, Medical and Regulatory Affairs of Adamas Pharmaceuticals Inc. from March 2008 to August 2008. He joined Adamas Pharmaceuticals Inc. in March 2008 from MAP Pharmaceuticals Inc., where he served from February 2005 to March 2008 as Chief Medical Officer, Formerly Vice President, Clinical and Regulatory Affairs. Prior to his employment with MAP Pharmaceuticals, Inc., Dr. Shrewsbury worked as Senior Director of Clinical Development of Chiron Corporation from July 2002 until February 2005. Prior to joining Chiron, Dr. Shrewsbury held several senior positions at GlaxoSmithKline both in the UK and U.S. from 1993 until 2002. Dr. Shrewsbury holds a Bachelor of Medicine and a Bachelor of Surgery degree from the University of Liverpool, UK.

Dwight D. Weller, Ph.D., has served as Senior Vice President of Chemistry and Manufacturing of the Company since 1997, as Vice President of Research and Development of the Company from 1992 to 1997, and as a director of the Company from 1991 through May 2006. Dr. Weller received a B.S. in Chemistry from Lafayette College and a Ph.D. in Chemistry from the University of California at Berkeley, followed by postdoctoral work in Bio-Organic Chemistry at the University of Illinois. Dr. Weller was on the faculty of Oregon State University from 1978 to 1992.

Michael D. Casey has served as a director of the Company since May 2006 and was appointed the Chairman effective March 10, 2008. In addition to serving as Chairman of the Board, Mr. Casey also serves as Chairman of the Compensation Committee. Mr. Casey s experience in leadership positions in public companies in the biopharmaceutical industry qualifies him for service as a member of the Board of Directors. Since 2002, Mr. Casey has served as a director of several public biopharmaceutical companies. Previously, Mr. Casey served four years as President, Chief Executive Officer and Chairman of Matrix Pharmaceutical, Inc., a biopharmaceutical company, until Chiron Corporation acquired Matrix in 2002. Prior to joining Matrix, Mr. Casey was President of two divisions of Schein Pharmaceutical, Inc. from 1995 to 1997, and President and Chief Operating Officer of Genetic Therapy, Inc. from 1993 to 1995 until it was sold to Sandoz (Novartis). Mr. Casey also spent 25 years with Johnson & Johnson, including serving as Vice President of Sales and Marketing of Ortho Pharmaceutical Corporation and President of McNeil Pharmaceuticals. Mr. Casey is a director of Celgene Corp. and Durect Corporation. In the past five years, Mr. Casey has also served as a director of Allos Therapeutics, Cholestech Corporation, Bone Care International, Inc., OrthoLogic Corporation, and Sicor, Inc.

William A. Goolsbee has served as a director of the Company since October 2007. Mr. Goolsbee s 30-year career in the medical device and biopharmaceutical industries qualifies him for service as a member of the Board of Directors. Mr. Goolsbee was founder, chairman and Chief Executive Officer of Horizon Medical Inc. from 1987 until its acquisition by a unit of UBS Private Equity in 2002. Mr. Goolsbee was a founding director of ImmunoTherapy Corporation in 1993, becoming chairman of the board in 1995, a position he held until overseeing the successful acquisition of the company by the Company in 1998. Experience prior to 1987 includes a series of increasingly responsible executive positions with CooperVision Inc. and Cooper Laboratories Inc. Mr. Goolsbee holds a Bachelor of Arts degree from the University of California at Santa Barbara. Mr. Goolsbee serves as chairman of privately held BMG Pharma LLC, a product development and licensing company.

John C. Hodgman has served as a director of the Company since March 2004. He also serves as the Chairman of the Audit Committee and as the Audit Committee s financial expert. Mr. Hodgman s significant executive-level experience as a finance executive with biotechnology and biopharmaceutical companies qualifies him for service as a member of the Board of Directors. He has served as the Senior Vice President of Finance, Chief Financial Officer of InterMune, Inc., a biotechnology company, since August 2006. He served as the Chairman of Cygnus, Inc., a biopharmaceutical company, from 1999 to 2008, and as President and Chief Executive Officer of that company between 1998 and 2006. Mr. Hodgman joined Cygnus in 1994 as Vice President of Finance and Chief Financial Officer and between 1995 and 1998, he also served as President of Cygnus Diagnostics. He was President and Chief Executive Officer of Aerogen, Inc., a biopharmaceutical company, from June 2005 to October 2005 when the company was sold to Nektar, Inc. Mr. Hodgman holds a Bachelor of Science degree from Brigham Young University and an M.B.A. from the University of Utah. Mr. Hodgman is a director of Immersion Corporation. In the past five years, Mr. Hodgman has also served as a director of Inflazyme Pharmaceuticals, Ltd., Alpha Innotech Corporation, and Aerogen, Inc.

Gil Price, M.D., has served as a director of the Company since October 2007. Dr. Price s experience in the clinical, research and commercial sectors in the fields of medicine and pharmaceuticals qualifies him for service as a member of the Board of Directors. Dr. Price is a clinical physician trained in internal medicine with a long-standing interest in drug development, adverse drug reactions, drug utilization and regulation. Since 2002, he has been the Chief Executive Officer and Chief Medical Officer of Drug Safety Solutions. From 1997 to 2002, Dr. Price was the director of clinical development for oncology at MedImmune Inc. Prior to joining MedImmune, Dr. Price worked in the CRO sector. Dr. Price began his pharmaceutical career at GlaxoSmithKline Inc., where he worked for nearly nine years on both the commercial and research sides of the company. Dr. Price is a member of the American Medical Association, the Academy of Pharmaceutical Physicians and a past member of the American Society for Microbiology.

M. Kathleen Behrens, Ph.D., has served as a director of the Company since March 2009. Dr. Behrens significant experience in the financial services and biotechnology sectors, as well as in healthcare policy, qualifies her for service as a member of the Board of Directors. Dr. Behrens served as a member of the President s Council of Advisors on Science and Technology (PCAST) from 2001 to early 2009 and she was Chair of PCAST s Subcommittee on Personalized Medicine. She has served as a public-market biotechnology securities analyst as well as venture capitalist focusing on healthcare, technology and related investments. She was instrumental in the founding of several biotechnology companies including Protein Design Labs, Inc. and COR Therapeutics, Inc. She worked for Robertson Stephens & Co. from 1983 through 1996, serving as a general partner and managing director. Dr. Behrens continued in her capacity as a General Partner for selected venture funds for RS Investments from 1996 through 2009, after management led a buyout of that firm from Bank of America. From 1997 to 2005, she was a director of the Board on Science, Technology and Economic Policy (STEP) for the National Research Council, and from 1993 to 2000 she was a director, President, Chair and Past Chair of the National Venture Capital Association. Dr. Behrens holds a Ph.D. in Microbiology from the University of California, Davis. Dr. Behrens is a director of Amylin Pharmaceuticals, Inc. In the past five years, Dr. Behrens has also served as a director of Abgenix, Inc.

4

Christopher S. Henney, Ph.D., D.Sc., has served as a director of the Company since March 2009. Dr. Henney s significant executive-level and board experience at biotechnology companies qualifies him to serve as a member of the Board of Directors. Dr. Henney co-founded three major publicly held U.S. biotechnology companies, Immunex Corporation, ICOS Corporation and Dendreon Corporation, and was a board member and held executive positions at each company.. From 1995 to January 2003, Dr. Henney was Chairman and Chief Executive Officer of Dendreon Corporation. Dr. Henney also serves as Chairman of Oncothyreon Inc. Dr. Henney received a Ph.D. in experimental pathology from the University of Birmingham and a D.Sc. from the same university for contributions to the field of immunology. Dr. Henney serves as Chairman of Oncothyreon Inc., Chairman of Anthera Pharmaceuticals, and as Vice Chairman of Cyclacel Pharmaceuticals, Inc., formerly Xcyte Therapies, Inc. In the past five years, Dr. Henney also served as Chairman of SGX Pharmaceuticals, Inc.

Anthony Chase, has served as a director of the Company April 20, 2010. Mr. Chase s experience in leadership positions in public companies qualifies him for service as a member of the Board of Directors. Since January 2009, Mr. Chase has served as Executive Vice President of Crest Investment Company. He is also Chairman of ChaseSource, L.P., a position he has held since October 2006, and ChaseSource Real Estate Services, L.P., a position he has held since January 2008. Previously, he was Chairman and Chief Executive Officer of ChaseCom, L.P. from January 1997 to December 2007, when ChaseCom, L.P. was acquired by AT&T. Mr. Chase is a tenured Professor at the University of Houston Law Center where he began teaching in 1990. He graduated with honors from Harvard College, received a law degree from Harvard Law School, and received an MBA from Harvard Business School. Mr. Chase is a member of the American Bar Association and State Bar of Texas. Mr. Chase serves as lead director of the Cornell Companies and is a director of Western Gas Partners. He is a member of the Council on Foreign Relations.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Exchange Act requires AVI s directors and officers, and persons who own more than ten percent (10%) of a registered class of AVI s equity securities, to file initial reports of ownership and report of changes in ownership with the Commission. Such persons also are required to furnish AVI with copies of all Section 16(a) reports they file.

Based solely on its review of the copies of such reports received by it with respect to fiscal year 2009, or written representations from certain reporting persons, AVI believes that all filing requirements applicable to its directors, officers and persons who own more than ten percent (10%) of a registered class of AVI s equity securities have been complied with for fiscal 2009.

Code of Business Conduct and Ethics

The Company has adopted a Code of Business Conduct and Ethics (the Code). The Code applies to all directors and employees, including all officers, managers and supervisors, and is intended to better ensure full, fair, accurate, timely and understandable disclosures in our public documents and reports, compliance with applicable laws, prompt internal reporting of violations of these standards and accountability for adherence to standards. The Company has contracted with Ethicspoint to provide a method for employees and others to report violations of the Code anonymously. A copy of the Code is posted on the Company s website *(www.avibio.com).*

Audit Committee

The Board of Directors has a separately designated standing Audit Committee, established in accordance with Section 3(a)(58)(A) of the Securities Exchange Act of 1934, as amended. As of the date hereof, the members of the Audit Committee are Mr. Hodgman, Dr. Price, and Dr. Behrens. Former director Dr. Fara also served on the Audit Committee during 2009. Dr. Fara decided not to stand for reelection in March 2009, and ceased to be a member of the Audit Committee when his term as a director expired on May 19, 2009.

Audit Committee Financial Expert

Mr. Hodgman serves as the Audit Committee s Chairman and the Audit Committee s designated financial expert. All members of the Audit Committee, including Mr. Hodgman, are independent directors, as defined under applicable listing requirements of the Nasdaq Stock Market.

Item 11. Executive Compensation.

The Company is a biopharmaceutical company developing products in the growing field of RNA therapeutics. Current applications of the Company s technology platform include clinical trials for genetic diseases (Duchenne muscular dystrophy), and earlier programs in infectious diseases (Ebola and Marburg viruses), H1N1 and other early discovery targets. We operate in a highly complex business environment and believe that a competitive compensation program is an important tool to help attract, retain, recognize and reward the talented employees we need to achieve our mission and deliver value to our shareholders.

The Company intends that total compensation and each of its components, including base salary, incentive cash compensation, equity compensation, benefits and perquisites be competitive in the marketplace for suitable talent and in accord with the Company s short and long term goals. We seek to attract, retain, develop and reward employees whose performance helps the Company to achieve such goals and to provide value to our shareholders. While base compensation, benefits and perquisites are primarily a factor of being competitive in the marketplace for employees, incentive compensation is primarily merit based, with actual compensation a function of the achievement of defined and agreed corporate and individual goals. Towards this end:

- We structure our total compensation to consist of both fixed (salary and benefits) and variable compensation (cash incentive, equity compensation and merit based annual adjustments). We believe that the variable compensation elements provide an appropriate percentage of overall compensation to motivate executives to focus on our performance, while the fixed element serves to provide an appropriate and fair compensation level that allows us to remain competitive in the market to obtain and retain the services of our employees while also not encouraging executives and non-executive employees to take unnecessary or excessive risks in the achievement of goals;

- We believe that our compensation program balances short and long-term performance and does not place inappropriate focus on achieving short-term results at the risk of long-term, sustained performance;

- Most incentive plans (including the plans covering our executive officers) include a threshold, target and maximum payment. The threshold ensures that if goal achievement is not at a minimum level, no payments will be made. The maximum ensure that payments do not exceed a certain level, keeping the compensation mix within certain ranges and limiting excessive payments under any one element;

- All incentive plan designs and specific elements are reviewed and approved by the Compensation Committee annually;

- Performance targets for the annual performance plan, which covers all named executives and most employees, are established annually by the Compensation Committee and the Board. We have internal controls over the measurement and calculation of these performance metrics, designed to prevent manipulation of results by any employee, including our executives. Additionally, the Committee and Board monitor the corporate performance metrics formally no less than annually and periodically on a more informal basis during the year;

- The Compensation Committee has the discretion to increase or decrease any plan payment upwards or downwards, allowing the Committee to consider the circumstances surrounding corporate and/or individual performance and adjust payments accordingly;

- There are appropriate internal controls over the processing of payments;

- The Company s existing governance and organizational structure incorporates a substantial risk management component through the review and actions of the Board and its standing committees; and

- The long-term component of compensation consists of restricted stock units and stock option grants. Vesting requirements of typically three years encourage employees to take a long-term perspective on overall corporate performance, which ultimately influences share price appreciation. We believe that long-term equity compensation balances the cash incentives in place to motivate short-term performance.

In mid-2009, the Committee retained the services of a compensation consultant, Frederick W. Cook & Co., Inc. (FW Cook) to assist the Committee in its evaluation of certain aspects of executive compensation for 2009 and 2010 melding base compensation, incentive cash compensation and equity compensation. The Compensation Committee has the independent authority to approve the fees and other retention terms with respect to such a compensation consultant. The Compensation Committee also has the authority, as necessary and appropriate, to consult with other outside advisors to assist in its duties to the Company.

Compensation Discussion and Analysis

Introduction

Throughout this section of the proxy statement, the individuals who served as the Company s Chief Executive Officer and Chief Financial Officer during fiscal year 2009, as well as the other individuals included in the Summary Compensation Table included in this proxy statement, are referred to as the named executive officers.

Overview

In 2008 and 2009, the Company had several significant changes to its management team. One result of these new recruits is that certain elements of the compensation package for certain of the named executive officers were established as a result of arms-length negotiations between the Company and the individuals the Company was recruiting to join the Company at its facility in Bothell, Washington. Thus, in some cases, the base compensation and benefits packages for our named executive officers reflect market forces rather than benchmarking and other tools often used by compensation consultants. In the final analysis, however, there was no material difference between negotiated compensation packages and the benchmarks preferred by the compensation consultant.

Other noteworthy aspects of the Company s compensation program include:

- Base salaries for all named executives have increased 2% - 3% in 2010 compared to 2009;

- The named executive officers, as a group, achieved approximately 63% of the 2009 Company-wide corporate performance goals and, on average 64% of the individual goals set for them in 2009; the bonuses for Mr. Medeiros were determined in accordance with the terms of his employment contract entered into upon the commencement of his employment in 2009;

- The 2009 bonuses, which were paid in 2010 represent in the aggregate approximately 13% of the total compensation paid to the named executive officers;

- The bonus for the Company s Chief Executive officer is 100% dependent on achievement of Company-wide performance goals established by the Board and Compensation Committee and the bonus for the other named executive officers is 70% dependent on such Company-wide goals and 30% dependent on achievement of individual performance goals established by the Chief Executive officer in consultation with the Compensation Committee;

- The Compensation Committee and the Board has established Company-wide performance goals for the named executive officers, including the Chief Executive officer, for 2010 and the Chief Executive officer, in consultation with the Compensation Committee, has established individual performance goals for 2010 for the named executive officers. If achieved at the 100% level, these bonuses would represent in the aggregate approximately 36% of the anticipated total compensation in 2010 for the named executive officers;

- The Compensation Committee and the Board believe that the performance goals for 2010, like those for 2009, provide appropriate incentives to the named executive officers to align their personal financial interests with the short and long term goals of the Company without promoting inappropriate risk-taking behavior; and

- The Compensation Committee believes a mixture of base cash compensation, performance- based bonuses, equity incentive compensation in the form of options and restricted shares and a fair package of health care and similar benefits is appropriate for the Company and is in the best interests of the Company s shareholders.

Significant Management Changes in Fiscal Year 2009

In 2009, the Company underwent several senior management changes, including hiring Stephen B. Shrewsbury as the Company s Chief Medical Officer and Senior Vice President of Preclinical, Clinical and Regulatory Affairs, and Paul Medeiros as the Company s Senior Vice President of Business Development and Chief Business Officer.

The Compensation Committee

The Company s executive compensation program is administered by the Company s Compensation Committee. As of December 31, 2009, the Compensation Committee was composed of three directors: K. Michael Forrest, William Goolsbee, and Michael Casey (Chair). During 2009, all members of the Compensation Committee were independent for purposes of applicable securities and regulatory requirements. Although Mr. Forrest acted as the Company s Interim Chief Executive Officer until February 8, 2008, under applicable Nasdaq listing requirements he may be considered independent if the Board of Directors concludes that such former employment and any compensation received would not interfere with his exercise of independent judgment in carrying out his responsibilities as director. The Board of Directors has concluded that Mr. Forrest is independent in accordance with these applicable listing requirements. Additionally, the Board feels that his presence on, and participation in the discussion of, the Committee is in the best interests of the Company due to his prior experience with the management of the Company and experience as a director in public and private companies.

The Compensation Committee is responsible for reviewing, assessing, and approving all elements of compensation for our named executive officers. More specifically, the Compensation Committee is directly responsible for establishing annual Company-wide performance goals and objectives for our named executive officers and for working with the Company s Chief Executive Officer to establish individual performance goals for each of the other named executive officers. This responsibility includes, among other things: (a) evaluating the performance of our Chief Executive Officer and other executives as determined by the Compensation Committee in light of the approved performance goals and objectives; (b) setting the compensation of the Chief Executive Officer and other executives based upon the evaluation of the performance of the Chief Executive Officer and the other executives; (c) making recommendations to the Board of Directors with respect to new cash-based incentive compensation plans and equity-based compensation plans; and (d) preparing an annual report of the Compensation Committee.

The Compensation Committee has independent authority to make compensation decisions for our named executive officers. The Compensation Committee seeks ratification from the Company s Board of Directors of its decisions regarding the compensation of the Chief Executive Officer.

Compensation Philosophy and Objectives

The purpose of the Company s executive compensation program is and has been to attract, motivate, recognize, reward and retain key executive employees in order to promote the success of the Company. The Company seeks, and has sought, to reward and to provide incentives to named executive officers, including the Chief Executive Officer, for their performance and delivery against agreed goals. Over the past few years, the Company has seen significantly increased demand for executives with industry-specific skills and experience and a highly competitive market for such executives. Additionally, given the small size of the Company relative to certain other members of our industry sector and the fact that there was a significant doubt about the Company s ability to secure the funding needed to continue our research and development programs at the time when certain changes in management were made, in 2009 we faced significant challenges in recruiting senior members of our management team. Therefore, in 2009 (and we expect in 2010 and beyond) the attraction and retention of executives was, and will be, one of the key purposes of the Company s executive compensation program.

The Company s executive compensation program also includes a pay-for-performance component. In that respect, the compensation program is designed to reward the named executive officers, including the Chief Executive Officer, for meeting specific goals that are established and reviewed by the Compensation Committee for each named executive officer and for the Company as a whole. In 2009, the Committee, Board and the Chief Executive Officer agreed and set performance goals for each named executive officer and the Company as a whole. Following the completion of such fiscal year, the Chief Executive Officer and the Compensation Committee assessed the degree to which the corporate goals were met and how each named executive officer had performed with respect to these goals. The Compensation Committee made an independent assessment with respect to the Chief Executive Officer s performance. The Compensation Committee has established similar goals for 2010.

The at-risk component of the compensation package for each named executive officer, which includes a targeted cash bonus and stock options/restricted stock, is determined in large part on the basis of how that named executive officer performed in meeting his or her goals and recommendations from the Committee s compensation consultant. Compensation decisions are also based on market factors that require the Company to remain competitive in its compensation package in order to attract and retain qualified individuals.

In addition to the foregoing, the following executive compensation principles guided the Compensation Committee during 2009 in fulfilling its roles and responsibilities:

- Compensation levels and opportunities should be sufficiently competitive to facilitate recruitment and retention of experienced executives in the Company s highly competitive talent market;

- Compensation should reinforce the Company s business strategy by integrating and communicating key metrics and operational performance objectives and by emphasizing incentives in the total compensation mix;

- Compensation programs should align executives long-term financial interests with those of the shareholders by providing equity-based incentives without incentivizing the executives to take inappropriate risks to the Company in order to enhance their individual compensation;

- Compensation programs should be flexible, giving the Compensation Committee and our Board of Directors discretion to make adjustments on an as-needed basis;

- Similarly situated executives should be compensated similarly; and

- Compensation should be transparent and easily understandable to both our executives and our shareholders.

Role of Executive Officers in Compensation Decisions

Our Chief Executive Officer plays a pivotal role in determining executive compensation. No less than annually, the Company s Chief Executive Officer assesses the performance of the named executive officers. He then recommends to the Compensation Committee a base salary, performance-based cash bonus, and a grant of stock options for each named executive officer based on that assessment. The Compensation Committee considers the information provided by the Chief Executive Officer, together with other information available to the Compensation Committee and determines the compensation for each named executive officer other than the Chief Executive Officer. With respect to the compensation of our Chief Executive Officer, the Compensation Committee meets without the Chief Executive Officer to discuss its recommendation and makes a recommendation to the full Board of Directors.

Use of Compensation Consultants and Reports

In establishing compensation for 2010, the Compensation Committee did retain a compensation consultant, In August 2009 FW Cook presented its assessment and recommendations to the Compensation Committee. Based in part on such assessment and recommendations, the Compensation Committee established for the named executive officer and with respect to the Company s Chief Executive Officer recommended to the Board of Directors that each of the Chief Executive Officer and the named executive officers receive an increase in base salary and be granted additional options to acquire shares of the Company s common stock. The bonuses for Mr. Medeiros were established and paid in accordance with the terms of his contract entered into when he was hired in 2009 and the increase in his base compensation for 2010 took effect on January 1, 2010.

Setting Executive Compensation

As a general proposition, in setting compensation for the named executive officers, other than the Chief Executive Officer, and in developing its recommendations to the Board of Directors regarding compensation for the Chief Executive Officer, the Compensation Committee considers a number of factors, including analyses of compensation in similarly-sized companies in the biopharmaceutical industry, analyses of compensation levels in similar companies in the Company s local geographic area, the satisfaction of (or failure to satisfy) previously-developed performance measurements for the named executive officer and the Company, and the total vested and unvested equity grants owned by the executive. The Company competes for executive talent across a broad range of business sectors.

The Compensation Committee believes it is important when making its compensation-related decisions to be informed as to current practices of similarly situated companies in the biotechnology industry. In addition to the report of its compensation consultant, the Compensation Committee has historically taken into account input from other sources, including input from members of the Compensation Committee based on their roles as executive officers and directors of other public companies, as well as other members of the Board of Directors.

The Compensation Committee believes that the total compensation package provided to the Company s named executive officers, combining both short-term and long-term incentives, some of which are at risk based on individual and Company performance, is competitive without being excessive and is at an appropriate level to assure the retention and motivation of this highly skilled and experienced segment of the Company s workforce, and at the same time would be attractive to any additional talent that might be needed in the changing workplace without creating incentives for inappropriate risk-taking by the named executive officers that might be in their own self-interests, but might not necessarily be in the best long and short term interests of the Company s shareholders.

Performance Factors in 2009

The Compensation Committee, together with the Chief Executive Officer and full Board of Directors, establishes performance criteria for the named executive officers (other than Paul Medeiros), both in terms of individual performance and the performance of the Company as a whole, and generally assigns a weight to the performance goals. Mr. Medeiros bonus was determined in accordance with his employment agreement, which did not establish any performance goals for 2009.

The following corporate goals, along with the weighting assigned to each of the goals, including the weight achieved, drove the Compensation Committee s executive compensation decisions for fiscal year 2009:

Goal	Assigned Weight	Achieved Weight
Develop approved operational and other administrative plans and budget for 2009	20%	16.5% (included within goal was to manage expense and revenue goals to achieve an overall 2009 cash burn not to exceed $11.5 million; actual cash burn was $10.8 million)
Attain certain preclinical and clinical development milestones	40%	23.5%
Complete certain key business development partnerships, including partnerships relating to collaboration on drug research and development and to commercialization of certain products under development	15%	6.5%
Advance core discovery research projects	5%	2.5%