

DUSA PHARMACEUTICALS INC

Form DEF 14A

April 19, 2011

**Table of Contents**

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**  
**Washington, DC 20549**  
**SCHEDULE 14A**  
**(Rule 14a-101)**  
**INFORMATION REQUIRED IN PROXY STATEMENT**  
**SCHEDULE 14A INFORMATION**  
**Proxy Statement Pursuant to Section 14(a) of the Securities**  
**Exchange Act of 1934 (Amendment No. )**

Filed by the Registrant  b

Filed by a Party other than the Registrant  o

Check the appropriate box:

Preliminary Proxy Statement

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

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to §240.14a-12

**DUSA Pharmaceuticals, Inc.**

(Name of Registrant as Specified in its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

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

(1) Title of each class of securities to which transaction applies: \_\_\_\_\_

(2) Aggregate number of securities to which transaction applies: \_\_\_\_\_

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth amount on which filing fee is calculated and state how it was determined): \_\_\_\_\_

(4) Proposed maximum aggregate value of transaction: \_\_\_\_\_

(5) Total fee paid: \_\_\_\_\_

Fee paid previously with preliminary materials: \_\_\_\_\_

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

(1) Amount Previously Paid: \_\_\_\_\_

(2) Form, Schedule or Registration Statement No.: \_\_\_\_\_

(3) Filing Party: \_\_\_\_\_

(4) Date Filed: \_\_\_\_\_

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**Table of Contents**

April 20, 2011

Dear Shareholder:

You are invited to attend the Annual Meeting of Shareholders of DUSA Pharmaceuticals, Inc. to be held at the Company's headquarters at 25 Upton Drive, Wilmington, Massachusetts on Wednesday, June 8, 2011 at 11:00 a.m. Eastern Time.

The business of the meeting is described in the accompanying Notice of Meeting and proxy statement. We are also enclosing our 2010 Annual Report on Form 10-K and a proxy card.

There will be a management presentation at the meeting to those shareholders who attend the meeting.

Your participation in the meeting is important regardless of the number of shares you hold. If you cannot attend the meeting, please grant a proxy to vote your shares by marking, signing and dating the proxy card and returning it by no later than 5:00 p.m. Eastern Time on Tuesday, June 7, 2011 in the manner described in the proxy statement. Your proxy may be revoked at any time before it is exercised as explained in the proxy statement.

If you plan to attend, please bring photo identification. Also, if your shares are held in the name of a broker or other nominee, please bring with you a proxy or letter from the broker or nominee confirming your ownership as of the record date.

Sincerely,

Robert F. Doman  
President and  
Chief Executive Officer

**CORPORATE HEADQUARTERS** 25 Upton Drive, Wilmington, MA 01887 - Phone 978.657.7500,  
Fax 978.657.9193

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**Table of Contents**

**DUSA Pharmaceuticals, Inc.  
25 Upton Drive  
Wilmington, Massachusetts 01887**

**NOTICE OF ANNUAL MEETING OF SHAREHOLDERS AND  
IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS  
FOR THE SHAREHOLDER MEETING  
TO BE HELD JUNE 8, 2011**

**TO THE SHAREHOLDERS OF  
DUSA PHARMACEUTICALS, INC.**

YOU ARE HEREBY NOTIFIED that the Annual Meeting of Shareholders of DUSA Pharmaceuticals, Inc. will be held on Wednesday, June 8, 2011 at 11:00 a.m. at the Company's offices located at 25 Upton Drive, Wilmington, Massachusetts to consider and act upon the following matters:

- (1) To elect eight (8) directors;
- (2) To approve of amendments to the 2006 Equity Compensation Plan and to ratify the 2011 Amended and Restated Equity Compensation Plan;
- (3) To ratify the selection of Deloitte & Touche LLP as the Company's independent registered public accounting firm for fiscal year 2011;
- (4) To conduct a Say-on-Pay advisory vote on the approval of executive compensation;
- (5) To conduct a Say-When-on-Pay advisory vote on the approval of the frequency of shareholder votes on executive compensation; and
- (6) To transact any other business that may properly come before the meeting or any adjournments thereof.

Only shareholders of record at the close of business on April 18, 2011 are entitled to notice of, and to vote at the meeting, or any adjournment or adjournments thereof.

The proxy statement for our 2011 Annual Meeting of Shareholders and our annual report to shareholders on Form 10-K for the year ended December 31, 2010 are available on our website at [www.dusapharma.com](http://www.dusapharma.com) under "For Investors".

**Whether or not you plan to attend the meeting, please vote. If you hold shares in your own name, please fill in, date and sign the enclosed proxy and return it promptly in the enclosed envelope. If your broker or other nominee holds your shares, please follow their instructions to vote. The prompt return of your proxy will assist us in preparing for the Annual Meeting. The proxy does not require any postage if it is mailed in the United States or Canada.**

By Order of the Board of Directors,

Nanette W. Mantell, Esq.  
Secretary

Dated: April 20, 2011

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
<b><u>NOTICE OF ANNUAL MEETING OF SHAREHOLDERS</u></b>	i
<b><u>PROXY STATEMENT</u></b>	1
<b><u>QUESTIONS AND ANSWERS</u></b>	1
<b><u>PROPOSAL NO. 1 - ELECTION OF DIRECTORS</u></b>	3
<b><u>DIRECTOR COMPENSATION</u></b>	6
<b><u>CORPORATE GOVERNANCE</u></b>	7
<b><u>MEETING AND COMMITTEES OF THE BOARD OF DIRECTORS</u></b>	7
<b><u>CODE OF ETHICS APPLICABLE TO SENIOR OFFICERS</u></b>	9
<b><u>COMPENSATION COMMITTEE INTERLOCKS AND INSIDER PARTICIPATION</u></b>	9
<b><u>STRUCTURE AND RISK OVERSIGHT FUNCTION OF THE BOARD OF DIRECTORS</u></b>	9
<b><u>EQUITY COMPENSATION PLAN INFORMATION</u></b>	10
<b><u>PROPOSAL NO. 2 - APPROVAL OF AMENDMENTS TO THE 2006 EQUITY COMPENSATION PLAN AND TO RATIFY THE 2011 AMENDED AND RESTATED EQUITY COMPENSATION PLAN</u></b>	10
<b><u>PROPOSAL NO. 3 - RATIFICATION OF THE SELECTION OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM</u></b>	16
<b><u>AUDIT COMMITTEE REPORT</u></b>	18
<b><u>COMPENSATION DISCUSSION &amp; ANALYSIS</u></b>	19
<b><u>REPORT OF THE COMPENSATION COMMITTEE</u></b>	24
<b><u>EXECUTIVE OFFICERS WHO ARE NOT DIRECTORS</u></b>	24
<b><u>EXECUTIVE COMPENSATION</u></b>	25
<b><u>GRANTS OF PLAN-BASED AWARDS</u></b>	26
<b><u>OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END</u></b>	27
<b><u>OPTION EXERCISES AND STOCK VESTED</u></b>	28
<b><u>NON-QUALIFIED DEFERRED COMPENSATION</u></b>	29
<b><u>POTENTIAL PAYMENTS UPON TERMINATION OR CHANGE-IN-CONTROL</u></b>	29
<b><u>ESTIMATED TERMINATION PAYMENT</u></b>	30
<b><u>401(k) PROFIT SHARING PLAN</u></b>	30
<b><u>SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT</u></b>	31
<b><u>CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE</u></b>	33
<b><u>SHAREHOLDER PROPOSALS AND COMMUNICATIONS WITH THE BOARD OF DIRECTORS</u></b>	33
<b><u>SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE</u></b>	34
<b><u>HOUSEHOLDING OF PROXY MATERIALS</u></b>	34
<b><u>PROPOSAL NO. 4 - SAY-ON-PAY ADVISORY VOTE ON THE APPROVAL OF EXECUTIVE COMPENSATION</u></b>	34
<b><u>PROPOSAL NO. 5 - SAY-WHEN-ON-PAY ADVISORY VOTE ON THE APPROVAL OF THE FREQUENCY OF SHAREHOLDER VOTES ON EXECUTIVE COMPENSATION</u></b>	35
<b><u>OTHER MATTERS</u></b>	36
<b><u>APPENDIX A</u></b>	37

**Table of Contents**

**PROXY STATEMENT**

**QUESTIONS AND ANSWERS**

**Why I am receiving these proxy materials?**

You are receiving these proxy materials because the Board of Directors of DUSA Pharmaceuticals, Inc. ( "DUSA" or the Company ), a New Jersey corporation, is soliciting your proxy to vote at the Company's 2011 Annual Meeting of Shareholders and at any adjournments or postponements thereof. The Annual Meeting will be held on Wednesday, June 8, 2011, at 11:00 a.m., at the Company's principal executive offices at 25 Upton Drive, Wilmington, Massachusetts 01887. If properly signed and returned, and not revoked, your proxy will be voted in accordance with the instructions it contains. The persons named in the accompanying proxy will vote the proxy for the Board of Directors' slate of directors and for the other matters listed on the proxy as recommended by the Board of Directors unless contrary instructions are given.

This proxy statement and the accompanying form of proxy are being mailed to shareholders on or about April 21, 2011. DUSA's Annual Report on Form 10-K for 2010, including financial statements for the year ended December 31, 2010, but excluding certain exhibits, is being mailed to shareholders at the same time. A copy of the exhibits will be provided upon request and payment to DUSA of reasonable expenses.

**Who can vote at the Annual Meeting?**

Only shareholders of record of shares of DUSA common stock at the close of business on April 18, 2011 are entitled to notice of and to vote at the Annual Meeting and at any and all adjournments or postponements of the meeting. On the record date, there were 24,433,969 shares of common stock without par value ( "Common Stock" ) outstanding and entitled to vote. These shares were the only shares outstanding of the Company.

**What am I voting on?**

There are five matters scheduled for a vote at the annual meeting:

the election of directors;

the approval of the amendments to the 2006 Equity Compensation Plan to (i) increase the number of shares of common stock reserved for issuance pursuant to the plan from 4,815,690 to 6,108,492 shares, which is 25% of the shares outstanding as of April 18, 2011, the record date of the 2011 Annual Meeting of Shareholders, (ii) amend the formula grant to provide the Compensation Committee with the discretion to award 8,000 shares of restricted stock annually in lieu of a grant of 10,000 options to each continuing non-employee director, (iii) extend the term of the 2006 Plan to June 8, 2021, which is ten (10) years from the 2011 Plan's effective date, (iv) increase the maximum number of shares issuable to one person on an annual basis from 300,000 to 500,000 shares and (v) rename the 2006 Plan as the "DUSA Pharmaceuticals, Inc. 2011 Amended and Restated Equity Compensation Plan" ;

the ratification of the selection by the Audit Committee of our Board of Directors of Deloitte & Touche LLP as our independent registered public accounting firm for the fiscal year ending December 31, 2011;

a "Say-on-Pay" advisory vote on the approval of executive compensation; and



a Say-When-on-Pay advisory vote on the approval of the frequency of shareholder votes on executive compensation.

**How many votes do I have?**

Each share owned on April 18, 2011, the record date for the meeting, entitles its owner to one vote on each matter to be voted upon. As of the record date, the Company's management owned approximately .94% of the Company's outstanding Common Stock.

**What is the quorum requirement?**

The holders of one-third of the shares that are outstanding and entitled to vote at the Annual Meeting must be present, in person or represented by proxy, to constitute a quorum for all matters to come before the meeting.

**How do I vote?**

Shareholder of Record: Shares Registered in Your Name.

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## **Table of Contents**

If you are a shareholder of record (that is, a shareholder who holds shares in your own name with our transfer agent, American Stock Transfer and Trust Company), you can vote by attending the Annual Meeting in person, or at any adjournment thereof, or by signing, dating and returning your proxy card in the enclosed postage-paid envelope. If you sign and return your proxy card but do not give voting instructions, the shares represented by that proxy will be voted as recommended by our Board of Directors, and will be voted in the proxy holder's discretion as to other matters that may come before the Annual Meeting.

Beneficial Owner: Shares Registered in the Name of a Broker, Bank or Other Nominee.

If your shares are held in street name (that is, in an account at a bank, brokerage firm or other holder of record), then you are the beneficial owner of the shares and these proxy materials, including instructions that you must follow in order for your shares to be voted are being forwarded to you by that organization. The organization holding your account is considered the shareholder of record for purposes of voting at the Annual Meeting. As a beneficial owner, you have the right to direct your broker or other agent on how to vote the shares in your account. You are also invited to attend the Annual Meeting. However, since you are not the shareholder of record, you may not vote your shares in person at the meeting unless you request and obtain a valid proxy from your broker or other agent.

## **How are votes counted?**

Other than the vote for the election of directors, which requires a plurality of the votes cast, each matter to be submitted to the shareholders requires the affirmative vote of a majority of the votes cast at the meeting for such matter. For purposes of determining the number of votes cast with respect to Proposals 1, 2, 3 and 4, only those votes cast FOR OR AGAINST are included. Abstentions and broker non-votes are counted only for purposes of determining whether a quorum is present at the meeting. A broker non-vote occurs when a nominee holding shares for a beneficial owner does not vote on a particular proposal because the nominee does not have discretionary voting power with respect to that item and has not received voting instructions from the beneficial owner. If you do not give instructions to your broker, bank, or other agent, it can vote your shares with respect to discretionary items, but not with respect to non-discretionary items. Discretionary items are proposals considered routine under the rules of the New York Stock Exchange on which your broker, bank or other agent may vote shares held in street name in the absence of your voting instructions, and include the ratification of the selection of our independent registered public accounting firm. On non-discretionary items for which you do not give instructions to your broker, bank or other agent, which include the election of directors, the shares will be treated as broker non-votes. With respect to the election of directors, a shareholder may vote FOR OR WITHHOLD AUTHORITY. Votes indicating WITHHOLD AUTHORITY will be counted as a vote against the nominee. For Proposals 2, 3 and 4, a shareholder may indicate FOR, AGAINST OR ABSTAIN. Management knows of no other matter to be voted upon other than with respect to the election of directors, approval of amendments to the 2006 Equity Compensation Plan, advisory votes regarding executive compensation and ratification of the selection of Deloitte and Touche LLP. However, if any other matter is properly presented at the meeting, one of the individuals named on your proxy card as your proxy will vote your shares using his or her best judgment.

## **Can I change my vote after submitting my proxy?**

Yes. If you are a shareholder of record, you may change your vote at any time before the proxy is exercised, by executing and delivering a timely and valid later-dated proxy, by voting by ballot at the Annual Meeting or by giving written notice to the Secretary of the Company. Attendance at the Annual Meeting will not have the effect of revoking a proxy unless you give proper written notice of revocation to the Secretary before the proxy is exercised or you vote by written ballot at the Annual Meeting.

If you are a beneficial owner of shares in street name, you may change your vote by submitting new voting instructions to your broker, bank or other agent, or, if you have obtained a valid proxy card from your broker, bank or other agent giving you the right to vote your shares, by attending the Annual Meeting and voting in person.

**Who is paying for this proxy solicitation?**

We will pay for the entire cost of soliciting proxies. In addition to these mailed proxy materials, our directors and employees may also solicit proxies in person, by telephone, or by other means of communication. Directors and employees will not be paid any additional compensation for soliciting proxies. We may also reimburse brokerage firms, banks and other agents for the cost of forwarding proxy materials to beneficial owners. In addition, we have retained our transfer agent, American Stock Transfer and Trust Company to assist in the distribution of proxy materials and solicitation of votes for a fee not to exceed ten thousand dollars (\$10,000) plus reimbursement of out-of-pocket expenses.

**Table of Contents****How can I find out the results of the voting at the Annual Meeting?**

Preliminary voting results will be announced at the Annual Meeting. Final voting results will be published in our Current Report on Form 8-K to be filed with the Securities and Exchange Commission within three business days after the conclusion of the Annual Meeting of Shareholders. If the final voting results are not available within three business days after the conclusion of the meeting, we will provide the preliminary results in the Form 8-K and the final results in an amendment to the Form 8-K within four business days after the final voting results are known to us.

**PROPOSAL NO. 1 - ELECTION OF DIRECTORS**

There are eight (8) nominees for election as directors who will hold office until the next Annual Meeting of Shareholders and/or until their successors have been duly elected and qualified. The persons named on the accompanying proxy will vote all shares for which they have received proxies FOR the election of the nominees named below unless contrary instructions are given. In the event that any nominee should become unavailable, shares will be voted for a substitute nominee unless the number of directors constituting a full board is reduced. Directors are elected by plurality vote. All of the nominees were elected to the Board of Directors at the 2010 Annual Meeting of Shareholders and are currently serving.

<b>Name</b>	<b>Age</b>	<b>Position</b>	<b>Date First Elected</b>
Jay M. Haft <sup>(3)</sup>	75	Chairman of the Board	9/16/1996
Alfred Altomari <sup>(2)(3)(4)</sup>	52	Director	7/29/2010
David M. Bartash <sup>(1)(4)</sup>	68	Vice-Chairman of the Board and Lead Director	11/16/2001
Alexander W. Casdin <sup>(2)(3)</sup>	43	Director	1/29/2009
Robert F. Doman	61	Director, President and Chief Executive Officer	6/15/2006
Paul J. Hondros <sup>(1)(4)</sup>	61	Director	7/29/2010
Magnus Moliteus <sup>(2)(4)</sup>	72	Director	7/25/2003
David M. Wurzer <sup>(1)(2)</sup>	52	Director	7/29/2010

(1) Member of the Audit Committee.

(2) Member of the Compensation Committee.

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

(4) Member of the Acquisition and Business Development Committee.

*Jay M. Haft, Esq.*, 75, who serves as the Chairman of the Board of Directors and Chairman of our Nominating and Corporate Governance Committee, was first elected to the Board on September 16, 1996. He is a strategic and financial consultant for growth-stage companies. He has served as Chairman of the Board since December 1, 2008. Mr. Haft also served as Chairman of the Board from June 2003 to December 2004 and Vice Chairman and Lead Director from December 2004 to December 2008. Since 2005, Mr. Haft has been a partner and a member of the Investment Committee of Columbus Nova, a private investment arm of the Renova Group. He was a senior corporate partner of the law firm of Parker, Duryee, Rosoff & Haft from 1989 to 1994 and was of counsel to Parker, Duryee,

Rosoff & Haft from 1994 until 2002. Mr. Haft was a director of Encore Medical prior to its acquisition by the Blackstone Group in 2006 and is a current member of the Board of Directors of Kingstone Companies Inc. He is also active in international corporate finance mergers and acquisitions, having extensive experience in the Russian market, where he has worked on growth strategies for companies looking to internationalize their business assets and enter international capital markets. Mr. Haft has served on approximately 30 corporate boards, including his tenure as Chairman of the Emerson Radio Corporation, and director at CompuComp Systems, Inc. He has served as a founder, consultant and/or director of Imatron Inc. (a CT scanner company whose technology is now owned by GE), Cardiac Resuscitator Corp. (technology now owned by Medtronic, Inc.) and Encore Orthopedics Corp. (technology acquired by the Blackstone Group). Currently Mr. Haft is a director of Ballantyne Cashmere, SpA as well as an advisor to Montezemolo & Partners, an Italian family investment group. He also serves on the board of the U.S.-Russia Business Council, and The Link of Times Foundation, a private cultural historical foundation. Mr. Haft is also active in the non-profit sector as well, particularly in the areas of education and art. He has served as a director of the Florida International University (FIU) Foundation and a member of the Advisory Board of the Wolfsonian Museum and the FIU Law School. He was previously appointed by Governor Lawton Chiles to the Florida Commission for the Governmental Accountability to the People, and served as a National Trustee and Treasurer of the Miami City Ballet and on the board of the Concert Association of Florida. Mr. Haft earned his Bachelor's degree and graduated Phi Beta Kappa from Yale University and earned his law degree from Yale Law School. The Board believes that Mr. Haft is qualified to serve as a director due to his wealth of knowledge and insight into the challenges faced by emerging growth companies, including successful companies in the medical device field as well as his expertise in counseling companies on strategic matters.

**Table of Contents**

*Alfred Altomari, 52*, who serves as a member of our Compensation, Nominating and Corporate Governance, and Acquisition and Business Development Committees, was elected to the Board of Directors on July 29, 2010. Mr. Altomari is the Chief Executive Officer of Agile Therapeutics, Inc., a position he has held since October 2010. From July, 2009 to October, 2010, he was Executive Chairman of Agile Therapeutics. From April, 2008 to September, 2008, Mr. Altomari was Chief Executive Officer of Barrier Therapeutics, Inc., a specialty pharmaceutical company, and a member of the company's Board of Directors from January 2008 until the sale of the company to Stiefel Laboratories, Inc. (now owned by GlaxoSmithKline plc) in August 2008. Mr. Altomari joined Barrier as a Chief Commercial Officer in 2003 and became Chief Operating Officer in 2006. Prior to joining Barrier, he had served in numerous executive roles in general management, commercial operations, business development, product launch preparation and finance within Johnson & Johnson from 1982 to 2003. Prior to his tenure at Johnson & Johnson, Mr. Altomari was Vice President/Franchise Head of Ortho-McNeil Pharmaceutical's Women's Health Care Franchise. He completed his undergraduate studies at Drexel University earning a Bachelors of Science degree with a dual major in finance and accounting, and subsequently received a Masters in Business Administration from Rider University. Mr. Altomari currently serves as a member of the Board of Directors of Auxilium Pharmaceuticals Inc. and two privately held companies including Agile Therapeutics, and Nitric Bio Therapeutics. Mr. Altomari is also currently serving as a member of the advisory board of Le Bow College, the Business School of Drexel University. The Board believes that Mr. Altomari is qualified to serve as a director due to his valuable sales and marketing experience, business development, product launch, financial and general management experience from his more than 25 years in the pharmaceutical industry.

*David M. Bartash, 68*, retired, who serves as the Vice Chairman of the Board of Directors, the Lead Director, Chairman of our Acquisition and Business Development Committee, and is also a member of our Audit Committee was first elected to the Board on November 16, 2001. He was the President and founder of Bartash and Company, a consulting company which, from 1990 to 2009, provided financial and scientific consulting services to the healthcare industry. He has personally advised pharmaceutical and biotechnology companies in the United States, Canada, and Australia; investment firms in the United States and Great Britain; and investment banking firms in the United States. Mr. Bartash also serves on the Board of Directors of the Developmental Disabilities Institute, a not-for-profit organization providing educational, residential, and medical services to over 1500 individuals with autism spectrum disorders. He served as Chairman for the Board of DDI until 2009, and currently serves on the Executive, Finance, and Building Committees. Mr. Bartash also serves on the Board of Directors of the DDI Foundation. Prior to founding Bartash & Company, Mr. Bartash spent over 20 years as a research analyst, and primarily as a pharmaceutical analyst, at several major investment firms representing both the buy and the sell sides of Wall Street. His last two positions, prior to forming Bartash & Company, were as senior pharmaceutical analyst at Dean Witter and Citibank. Mr. Bartash earned his Bachelor's degree from the University of Pennsylvania and his Master's degree from Bryn Mawr College. The Board believes that Mr. Bartash is qualified to serve as a director as a result of his significant experience in the pharmaceutical industry, particularly stemming from his years of providing investment advice and financial analysis of business and product opportunities, as well as his diversity of view-points.

*Alexander W. Casdin, 43*, who is a member of our Compensation and Nominating and Corporate Governance Committees, was first elected to the Board on January 29, 2009. He is also Vice President, Finance of Amylin Pharmaceuticals, Inc., a position he has held since November, 2009. Prior to his position at Amylin, Mr. Casdin was founder of Casdin Advisors LLC, formed in 2007, where he served as a strategic advisor to companies in the life sciences industry. From October 2005 until he founded Casdin Advisors, Mr. Casdin was Chief Executive Officer and Portfolio Manager of Cooper Hill Partners, LLC, a healthcare investment fund, and from 2001 to October 2005, he was Co-Portfolio Manager at Cooper Hill Partners. From 1999 to 2001, Mr. Casdin was employed by Pequot Capital Management, LLC as an analyst and then Portfolio Manager where he oversaw the Pequot Capital Healthcare Fund. Prior to joining Pequot Capital Management, Mr. Casdin was a Senior Managing Analyst at Dreyfus Corporation focusing on the healthcare industry. In the non-profit sector, Mr. Casdin is a member of the Social Enterprise Program at Columbia Business School, a member of the Advisory Board of Hassenfeld Center for Cancer & Blood Disorders

based at New York University's Langone Medical Center and a member of the Artists Council of the Whitney Museum of American Art. Mr. Casdin earned his Bachelor's degree from Brown University and earned his Master's in Business Administration, Beta Gamma Sigma, from Columbia Business School. The Board believes Mr. Casdin is qualified to serve as a director due to his extensive knowledge of the pharmaceutical industry and his business and financial expertise in the healthcare field.

*Robert F. Doman, 61*, has served as our President and Chief Executive Officer since June 2007 and as our President and Chief Operating Officer from January 2005 to June 2007. He was first elected to the Board on June 15, 2006. From 2000 until 2004, Mr. Doman served as President of Leach Technology Group, the medical device division of Leach Holding Corporation which was sold to Easterline Technologies in 2004. From 1999 to 2000, he was President, Device Product Development of West Pharmaceutical Services, a manufacturer of systems and device components for parentally administered medicines and drugs. Prior to joining West Pharmaceutical Services, he worked for the Convatec division of Bristol-Myers Squibb from 1991 to 1999

**Table of Contents**

in positions that included: Vice President, Worldwide Marketing and Business Development; Vice President and General Manager, U.S. Wound and Skin Care; and Vice President, U.S. Operations. From 1976 to 1990, he held sales, marketing and business development roles of increasing responsibilities for Critikon, Inc., a Johnson & Johnson company. Mr. Doman earned his Bachelor's degree from Saint Joseph's University. The Board believes that Mr. Doman is qualified to serve as a director due to his prior extensive diverse international and domestic experience in senior management positions at pharmaceutical and medical device companies, including in the field of dermatology, with respect to general management, business development, building sales and marketing capabilities, new product development and strategic planning.

*Paul J. Hondros, 61*, who is a member of our Audit and Acquisition and Business Development Committees was elected to the Board on July 29, 2010. He is the President and Chief Executive Officer of AlphaOne Capital Partners, LLC, and its affiliate companies. Prior to founding AlphaOne in December 2008, he was the founding President and Chief Executive Officer of Gartmore Global Investments and President and Chief Executive Officer of the Gartmore Group, a global asset management company. In 1998 he founded Villanova Capital, Inc., which operated until 2003, when it was merged into Gartmore Investment Management plc. Prior to founding Villanova Capital, Inc., he served briefly as President and Chief Operating Officer of Pilgrim Baxter & Associates, Ltd. From 1990 to 1997 he was President and Chief Executive Officer of Fidelity Investments Institutional Services Company and President and Chief Executive Officer of its Individual Investors groups. Early in his career, Mr. Hondros worked with SEI Investments, Inc., a global investment management, software, and mutual fund services company, where he was employed as a computer programmer, eventually rising to Executive Vice President of its Financial Services Division. Mr. Hondros also serves as the Chairman of the Board of Trustees of St. Joseph's University, from which he earned his bachelor's degree in history, and where he and his wife recently founded The Kinney Center for Autism Studies. The Board believes that Mr. Hondros is qualified to serve as a director due to his management experience and his investment expertise regarding the analysis of corporate performance.

*Magnus Moliteus, 72*, who serves as Chairman of our Compensation Committee and is a member of our Acquisition and Business Development Committee, was first elected to the Board on July 25, 2003. He also has been a consultant to the healthcare industry and Chairman of COM Consulting, a privately held firm, which enhances Swedish-American relations particularly between health care companies, since 2001. He is also Chief Executive Officer of KAEL-Gemvax Co., Ltd. US and European operations, a privately-held Korean development stage pharmaceutical company. From 1995 to 2001, Mr. Moliteus served as Executive Director of Invest in Sweden Agency, U.S., a Swedish government agency. From 1973 to 1976 he was President of Pharmacia France S.A. From 1977 to 1990, he was the Chief Executive Officer of Pharmacia, Inc. (now owned by Pfizer, Inc.) and from 1990 to 1995 he was Chief Executive Officer of Procordia US Inc. Mr. Moliteus served as Chairman of the Swedish-American Chamber of Commerce, Inc. between 1988 and 1991 and remains an honorary director. Also, from 1989 to 1995, Mr. Moliteus was a member of the Board of the Health Industry Manufacturers Association (HIMA). Currently Mr. Moliteus is a member of the Advisory board of Eon Reality, Inc. and of e-pill, LLC. Mr. Moliteus earned his Master's degree from Uppsala University. The Board believes that Mr. Moliteus is qualified to serve as a director based on his extensive senior executive management positions with a global pharmaceutical company and his role as an advisor to numerous other companies in the industry.

*David M. Wurzer, CPA, 52*, who serves as the Chairman of our Audit Committee and is a member of our Compensation Committee, was elected to the Board of Directors on July 29, 2010. He has been the Managing Director of Investments at Connecticut Innovations, the State of Connecticut's venture capital arm, since November 2009. From September 1997 until December 2007, he served as the Executive Vice President, Treasurer and Chief Financial Officer of CuraGen Corporation, a publicly-traded bio-pharmaceutical company developing protein, antibody and small molecule therapeutics in oncology. Prior to his employment with CuraGen, from 1991 to 1997, he held management and executive level positions with Value Health, Inc., focusing on raising capital, business synergy, cost savings, and mergers and acquisitions, including being named the Senior Vice President, Treasurer and Chief



Financial Officer from February 1994 until September 1997. Additionally, from 1980 to 1991, Mr. Wurzer held managerial and accounting positions at Coopers & Lybrand. Mr. Wurzer graduated in 1980 from the University of Notre Dame, with a Bachelor of Business Administration degree in Accounting. He is currently a member of the board of directors of Strategic Diagnostics, Inc. and Response Genetics, Inc., both public companies, four privately held companies, including Axerion Therapeutics, Inc., CyVek, Inc., Post-N-Track Corporation and Semantifi, Inc. and the not-for-profit theatre management company Playhouse Theatre Group, Inc. Since 2008, Mr. Wurzer has periodically provided consulting services relating to raising capital, analyzing the costs associated with expense reductions and implementing business productivity strategies. The Board believes that Mr. Wurzer is qualified to serve as a director due to his prior accounting experience, his investment manager's perspective on the analysis of corporate performance and his senior management experience in the bio-pharmaceutical industry.

According to the terms of an agreement dated as of May 13, 2010 by and among DUSA and SRB Management, L.P., SRB Greenway Opportunity Fund, (QP), L.P., SRB Greenway Opportunity Fund,

**Table of Contents**

L.P., BC Advisors, LLC, Steven R. Becker and Matthew A. Drapkin, DUSA has agreed to nominate Mr. Wurzer, as well as Mr. Altomari and Mr. Hondros for election to the Board at the Company's 2011 Annual Meetings of Shareholders.

Additionally, pursuant to the terms of the merger agreement dated as of December 30, 2005, as amended, by and among DUSA, Sirius Laboratories, Inc. and certain shareholders of Sirius, Sirius has the right to nominate one director to our Board. Sirius's initial representative on our Board resigned on April 10, 2007 for personal reasons and has not been replaced by the Sirius shareholder representatives. DUSA's obligation to nominate a director candidate recommended by the Sirius shareholder representatives, continues through the expiration of the period of time that any milestone payment may be paid to former Sirius shareholders under the terms of the merger agreement (i.e., December 31, 2011).

**THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR EACH NOMINEE.****DIRECTOR COMPENSATION**

Directors who are members of management receive no cash compensation for service as a director or as a member of any committee. For 2010, non-employee directors determined in October, 2010 that members who were reelected at the 2010 annual meeting of shareholders should receive a prorated \$25,000 per year for the period January 1, 2010 to June 30, 2010 and prorated \$30,000 per year for the period July 1, 2010 to December 31, 2010, as annual compensation, regardless of the number of Board or Committee meetings they attended. Newly elected directors received a pro rated \$30,000 as annual compensation. The Chairman of the Board received an additional \$10,000 per year, and the Vice-Chairman of the Board received \$1,000 per meeting in which he acted in the absence of the Chairman of the Board. Directors serving on the Audit Committee received an additional \$5,000 per year. The Chairman of the Audit Committee received an additional \$5,000 per year. Directors were also reimbursed for their out-of-pocket expenses related to their attendance at meetings of the Board and Committees. Under the Company's 2006 Equity Compensation Plan all non-employee directors are awarded options to purchase up to 15,000 shares of Common Stock on June 30th of their first year of service or as of the close of business thirty (30) days following their election, whichever shall first occur, and options to purchase up to 10,000 shares of Common Stock on June 30th of each year following their re-election.

The following table sets forth the annual compensation to non-employee directors for 2010:

Name	Fees		Option Awards (\$) <sup>(2)(3)</sup>	Change in Pension Value and Nonqualified Non-Equity Deferred Incentive Plan Compensation		All Other Compensation	Total (\$)
	Earned or Paid in Cash (\$) <sup>(1)</sup>	Stock Awards (\$)		Non-Equity Incentive Plan Compensation (\$)	Deferred Compensation (\$)		
Alfred Altomari	\$ 12,775		\$ 23,375				\$ 36,149
David M. Bartash	\$ 33,129		\$ 14,343				\$ 47,472

Alexander W. Casdin	\$ 30,000	\$ 14,343	\$ 44,343
Jay M. Haft.	\$ 44,258	\$ 14,343	\$ 58,601
Paul J. Hondros	\$ 14,904	\$ 23,375	\$ 38,278
Magnus Moliteus	\$ 30,000	\$ 14,343	\$ 44,343
David M. Wurzer	\$ 14,904	\$ 23,375	\$ 38,278

- (1) As of January 1, 2011, the Committee set annual fees as follows: Chairman of the Board - \$25,000; Chairman of the Audit Committee - \$12,500; Chairman of all other standing committees - \$7,500; members of all standing committees - \$1,200 per meeting, in person or \$750 per meeting by telephone conference.
- (2) Option awards represent the grant-date fair value of the awards. The grant date fair value of each director's 2010 stock option grant was \$1.50 per share. Grant date fair value is based on the Black-Scholes option pricing model on the date of grant. For additional discussion on the valuation assumptions used in determining the grant date fair value, see Note 8 to the audited consolidated financial statements in our Annual Report on Form 10-K for the year ended December 31, 2010.
- (3) The aggregate numbers of shares subject to option awards outstanding as of December 31, 2010 were as follows: 15,000 for Mr. Altomari, 105,000 for Mr. Bartash, 35,000 for Mr. Casdin, 95,000 for Mr. Haft, 15,000 for Mr. Hondros, 70,000 for Mr. Moliteus and 15,000 for Mr. Wurzer.

### **Independence of Directors**

The Board has determined that all of the non-employee directors are independent, as independence is defined under the rules of The NASDAQ Stock Market.

**Table of Contents**

**CORPORATE GOVERNANCE**

**Meetings and Committees of the Board of Directors**

During the year ended December 31, 2010, there were eleven (11) meetings of the Board of Directors. Each incumbent director, except Mr. Casdin due to unanticipated scheduling conflicts, attended at least 75% of the aggregate of the meetings of the Board of Directors and of all of the committees on which he serves. The Board of Directors has established an Audit Committee, Nominating and Corporate Governance Committee, Compensation Committee and Acquisition and Business Development Committee. Mr. Haft, the Chairman of the Board, normally presides at Board meetings, and, in his absence, Mr. Bartash, the Vice-Chairman of the Board, presides.

The members of the Audit Committee currently are Messrs. Bartash, Hondros and Wurzer. Mr. Wurzer serves as its Chairman. All of the members are independent directors in accordance with the rules of The NASDAQ Stock Market and applicable federal securities laws and regulations. In addition, the Board of Directors has determined that Mr. Wurzer qualifies as an audit committee financial expert and has designated him to fill that role. The Audit Committee provides oversight of the Company's accounting functions and acts as liaison between the Board of Directors and the Company's independent registered public accounting firm. The Committee reviews with the independent auditors the Company's unaudited quarterly financial statements, the planning and scope of the audits of the Company's financial statements, the results of those audits and the adequacy of internal accounting controls, and monitors other corporate and financial policies. In performing these functions, the Audit Committee meets periodically with the independent auditors (including in private sessions) and with management. In addition, the Audit Committee selects the independent registered public accounting firm. The Audit Committee operates under a written charter adopted and approved by the Board of Directors, a copy of which is attached to this proxy statement and is also available on the Company's website at [www.dusapharma.com](http://www.dusapharma.com). The Committee met four (4) times during 2010.

The members of the Nominating and Corporate Governance Committee currently are Mr. Haft, who serves as its Chairman, and Messrs. Altomari and Casdin. All of the members of our Nominating and Corporate Governance Committee are independent directors in accordance with the rules of The NASDAQ Stock Market. The Nominating and Corporate Governance Committee's purpose is to identify and evaluate the qualifications of individuals to become members of the Board of Directors, to select the director nominees, to develop and recommend corporate governance principles to the Board of Directors and to provide oversight and guidance to the Board of Directors to assure compliance with its corporate governance policies and principles. There were three (3) meetings of this Committee in 2010. Shareholders who wish to suggest qualified candidates to the Nominating and Corporate Governance Committee for director should write to: Administrator, Nominating and Corporate Governance Committee, DUSA Pharmaceuticals, Inc., 25 Upton Drive, Wilmington, Massachusetts 01887 stating, in detail, the suggested nominee's biography and qualifications of such person for consideration by the Nominating and Corporate Governance Committee. You should also enclose a written statement from each proposed nominee consenting to be named as a nominee and, if nominated and elected, to serve as a director. The Committee operates under a written charter adopted and approved by the Board of Directors. A copy of which is located on the Company's website at [www.dusapharma.com](http://www.dusapharma.com).

Among the central purposes of the Nominating and Corporate Governance Committee are identifying individuals qualified to become members of the Board of Directors, reviewing the qualifications of candidates and selecting the director nominees to be voted on at each annual meeting of shareholders. When the need to recruit a director arises, the Nominating and Corporate Governance Committee will consult the other directors and the Chief Executive Officer and may retain fee-paid third party recruiting firms to identify potential candidates. Mr. Wurzer's original nomination in 2010 was proposed by Steven Becker, who, through investment funds controlled by him, owns 4.8% of DUSA's

common stock and may be deemed to be the beneficial owner of approximately 4.8% of DUSA's common stock according to his most recently filed Schedule 13G. The candidate evaluation process may include inquiries as to the candidate's reputation and background, examination of the candidate's experiences and skills in relation to the Board of Director's requirements at the time, consideration of the candidate's independence as measured by the Board of Director's independence standards, and other considerations as the Nominating and Corporate Governance Committee deems appropriate at the time. In addition, the Committee considers the diversity of professional experience, education, skill sets and viewpoints of the Board of Directors, as a whole, when considering the individual qualities of a potential nominee, with the goal of promoting a balance of perspectives. Prior to formal consideration by the Nominating and Corporate Governance Committee, any candidate who passes such screening would be interviewed by the Nominating and Corporate Governance Committee or its Chairman and the Chief Executive Officer. In effectuating those purposes, the Nominating and Corporate Governance Committee is charged with ensuring that the nominees for membership on the Board of Directors are of the highest possible caliber and are able to provide insightful, intelligent and effective guidance to the management of the Company. The following criteria

**Table of Contents**

have been identified by the Nominating and Corporate Governance Committee, and adopted by the Board of Directors, to guide the Nominating and Corporate Governance Committee in selecting nominees:

1. Directors should be of the highest ethical character and share the values of DUSA;
2. Directors should have personal and professional reputations that compliment and enhance the image and standing of DUSA;
3. Directors should be leaders in their fields of endeavor, with exemplary qualifications;
4. The Committee should generally seek current and/or former officers and/or directors of companies and organizations, including scientific, government, educational and other non-profit institutions;
5. The Committee should seek directors so the Board is comprised of directors who collectively are knowledgeable in the fields of pharmaceuticals and device development, particularly those areas of research, development and commercialization undertaken by the Company;
6. Directors should have varied educational and professional experiences and backgrounds who, collectively, provide meaningful counsel to management;
7. Directors should generally not serve on more than six (6) boards;
8. At least two-thirds (2/3rds) of the directors on the Board should be independent as defined by The NASDAQ Stock Market and should not have any real or apparent conflicts of interest in serving as a director; and
9. Each director should have the ability to exercise sound, independent business judgment.

The Committee applies the same criteria to all nominees for the Board irrespective of the source of such nominee.

Absent extenuating circumstances, each member of the Board of Directors is expected to attend the 2011 Annual Meeting of Shareholders. Seven of the eight directors, who were directors at such time attended the 2010 Annual Meeting of Shareholders.

The members of the Compensation Committee currently are Messrs. Altomari, Casdin, Moliteus and Wurzer. Mr. Moliteus serves as its Chairman. The Compensation Committee considers matters related to the compensation of the Company's key officers and directors. The Committee also considers employee benefits which may be appropriate as the Company grows and develops policies and procedures. The Compensation Committee is responsible for setting and administering the policies which govern annual executive salaries and cash bonus awards, and under the 2006 Equity Compensation Plan approves the amounts of stock option or other equity awards awarded to all grantees. The Compensation Committee evaluates, on a yearly basis, the performance, and determines the compensation of, the executive officers of DUSA, including the named executive officers. DUSA's President and Chief Executive Officer, Robert F. Doman, is not a member of the Compensation Committee, however, the Compensation Committee seeks input from him regarding the performance and proposed compensation of DUSA's other executive officers. Mr. Doman and Richard C. Christopher, DUSA's Vice President of Finance and Chief Financial Officer, are present, at the invitation of the Compensation Committee, at its meetings, other than during consideration of their own compensation. The Compensation Committee has the authority to retain, at the Company's expense, independent counsel or other advisers as it deems necessary in connection with its responsibilities. In 2010, the Compensation Committee engaged WNB Consulting LLC to review and analyze DUSA's executive compensation program, including benefit plans, to prepare a benchmarking analysis and to recommend appropriate levels of cash and equity

compensation for DUSA's directors, executive officers, including the Chairman of the Board and Chief Executive Officer, and to recommend ways to enhance long-term incentives for the Company's management team. The Compensation Committee is solely responsible for the engagement of WNB Consulting, and all work performed by WNB Consulting on behalf of DUSA is initiated and supervised by the Compensation Committee, except to the extent delegated by the Compensation Committee to management. The Compensation Committee met nine (9) times in 2010. It also met once in 2011 to discuss cash and equity compensation for 2011 and to consider cash bonuses for 2010. The Compensation Committee operates under a written charter adopted and approved by the Board of Directors, a copy of which is available on the Company's website at [www.dusapharma.com](http://www.dusapharma.com).

The members of the Acquisition and Business Development Committee are Messrs. Altomari, Bartash, Hondros and Moliteus. Mr. Bartash serves as its Chairman. The Acquisition and Business Development Committee reviews potential business acquisition candidates, potential business combinations and potential therapies or products that DUSA is considering or should consider for in-licensing. The Acquisition and Business Development Committee did not meet during 2010, but did

## **Table of Contents**

meet in April 2011 to adopt a written charter and to set guidelines for its working model. The Board of Directors will consider the charter at an upcoming meeting.

### **Code of Ethics Applicable to Senior Officers**

We have adopted a written Code of Ethics Applicable to Senior Officers that applies to our senior officers, including our principal executive officer, principal financial officer, principal accounting officer, or persons performing similar functions. We have posted the Code of Ethics on our website, which is located at [www.dusapharma.com](http://www.dusapharma.com). In addition, we intend to disclose on our website any amendments to, or waivers from, any provision of the Code of Ethics that applies to our principal executive officer, principal financial officer, principal accounting officer, or persons performing similar functions.

### **Compensation Committee Interlocks and Insider Participation**

None of the directors on the Compensation Committee is or was formerly an officer or employee of the Company or had any relationship or related person transaction requiring disclosure under the rules of the Securities and Exchange Commission. None of our executive officers serves as a member of the board of directors or compensation committee of any entity that has one or more of its executive officers serving as a member of our Compensation Committee. In addition, none of our executive officers serves as a member for the compensation committee of any entity that has one or more of its executive officers serving as a member of our Board of Directors.

### **Structure and Risk Oversight Function of the Board of Directors**

The leadership structure of the Board currently consists of an independent Chairman of the Board who oversees the Board meetings and works with our Chief Executive Officer to establish meeting agendas and a Vice-Chairman of the Board and Lead Director. Our Chairman, Mr. Haft, does not serve as our principal executive officer as we believe this structure enhances the independence of our Board. As noted above, our Chief Executive Officer, Mr. Doman, is the only member of our Board who has not been deemed to be independent by the Board. Further, our Corporate Governance Guidelines provide that if the positions of Chairman of the Board and Chief Executive Officer are held by the same person, the Board shall designate a Lead Director who will organize and lead meetings of the Board's independent directors. Our Audit, Nominating and Corporate Governance and Compensation Committees are comprised of only independent directors. All Board committees are chaired by independent directors who report to the full Board whenever necessary. We believe this leadership structure helps facilitate efficient decision-making and communication among our directors and fosters efficient Board functioning at regularly scheduled meetings.

Our management is primarily responsible for managing the risks we face in the ordinary course of operating our business. The Board oversees potential risks and our risk management activities by receiving operational and strategic presentations from management which include discussions of key risks to our business. The Board also periodically discusses with management important compliance and quality issues. In addition, the Board has delegated risk oversight to each of its key committees within their areas of responsibility. For example, the Audit Committee assists the Board in its risk oversight function reviewing and discussing with management certain financial risks, such as our system of disclosure controls and risks associated with our cash investment policies. The Compensation Committee assists the Board in its risk oversight function by overseeing strategies with respect to our incentive compensation programs and key employee retention issues. We believe our Board leadership structure facilitates the division of risk management oversight responsibilities among the Board committees and enhances the Board's efficiency in fulfilling its oversight function with respect to different areas of our business risks and our risk mitigation practices.



**Table of Contents****Equity Compensation Plan Information**

The Company had the following securities authorized for issuance under equity compensation plans as of December 31, 2010:

Plan Category	(a) Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights (#)	(b) Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights (\$)	(c) Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column (a)) (#)
Equity compensation plans approved by security holders	3,064,050	\$ 4.09	627,243
Equity compensation plans not approved by security holders	250,000 <sup>(1)</sup>	\$ 6.00	
Total	3,314,050	\$ 4.25	627,243

(1) These securities are Class B warrants originally issued to a former Chairman of the Board of Directors and Chief Executive Officer at the time of the Company's initial public offering. On January 29, 2011, all 250,000 of the Class B warrants expired.

**PROPOSAL NO. 2 - APPROVAL OF AMENDMENTS TO THE 2006 EQUITY  
COMPENSATION PLAN AND TO RATIFY THE 2011 AMENDED AND RESTATED EQUITY  
COMPENSATION PLAN**

The shareholders are being asked to approve the Company's 2011 Amended and Restated Equity Compensation Plan (the "2011 Plan"), which is an amendment and restatement of the Company's 2006 Equity Compensation Plan, as amended (the "2006 Plan"). The 2006 Plan was initially adopted by our Board of Directors and approved by the Company's shareholders at the 2006 Annual Meeting of Shareholders, and a subsequent amendment to the 2006 Plan was adopted by our Board of Directors and approved by the Company's shareholders in June 2008. The 2006 Plan was amended further by the Compensation Committee in July 2008 based on the recommendations of a large institutional shareholder. On April 13, 2011, our Board of Directors adopted resolutions approving and authorizing amendments to the Company's 2006 Plan, subject to the approval of the shareholders, to (i) increase the percentage of shares of common stock issuable under the 2006 Plan from 20% of the number of shares outstanding as of the date of the 2008 Annual Meeting of shareholders to 25% of the number of shares outstanding as of the date of the 2011 Annual Meeting of Shareholders, (ii) amend the formula grant to provide the Compensation Committee with the discretion to award 8,000 shares of restricted stock annually in lieu of a grant of 10,000 options to each continuing non-employee director, (iii) extend the term of the 2006 Plan to June 8, 2021, which is ten (10) years from the 2011 Plan's effective date, (iv) increase the maximum number of shares issuable to one person on an annual basis from 300,000 to

500,000 shares and (v) rename the 2006 Plan the DUSA Pharmaceuticals, Inc. 2011 Amended and Restated Equity Compensation Plan.

The executive officers' equity awards over the last three years have been limited due to the number of shares remaining eligible for award under the 2006 Plan. The awards, therefore, have been below market as compared to similarly situated companies based on the analysis of the Compensation Committee's independent consultant. As of March 31, 2011, there were only 126,868 shares remaining eligible for awards under the 2006 Plan.

The 2006 Plan currently provides for the granting of awards to purchase up to a maximum of the lesser of (i) 20% of the 24,078,452 shares of the Company's Common Stock that were outstanding at any given time, less the number of shares issued and outstanding under any other equity plan of the Company at such time; or (ii) 4,815,690 shares, less the number of shares issued and outstanding under any other equity compensation plan of the Company from time to time. We believe that the 2006 Plan has encouraged, and the 2011 Plan will continue to encourage, its participants to contribute materially to our growth, thereby benefiting our shareholders, and will align the economic interests of its participants with our shareholders. An increase in the number of shares available under the 2011 Plan is necessary to provide sufficient shares to achieve this goal. The Board of Directors, upon the recommendation of the Compensation Committee and WNB Consulting, the Compensation Committee's compensation consultant, has approved the amendment to the 2006 Plan to increase the aggregate number of shares authorized for issuance to the lesser of (i) 25% of the total number of shares of our common stock issued and outstanding at any given time, less the number of shares issued and outstanding under any other equity plan of the Company at such time; or (ii) 6,108,492 shares less the number of shares issued and outstanding under any other equity

**Table of Contents**

compensation plan of the Company from time to time, subject to approval by our shareholders at the 2011 Annual Meeting. Because the 2011 Plan allows for a maximum number of shares of Common Stock available for issuance, approval of the amendment to the 2011 Plan will increase the potential dilution of DUSA's current shareholders only modestly.

The Board of Directors, upon the recommendation of the Compensation Committee and WNB Consulting, the Compensation Committee's compensation consultant, has also approved the amendment to the 2006 Plan to amend the formula grant to provide the Compensation Committee with the discretion to award 8,000 shares of restricted stock annually in lieu of the current grant of 10,000 options to each continuing non-employee director. The Company believes that a smaller grant of restricted shares would preserve shares eligible for award under the 2011 Plan and better align the directors with the shareholders.

The full text of the 2011 Plan has been attached as an appendix to the electronic copy of this proxy statement, which is available at our website located at [www.dusapharma.com](http://www.dusapharma.com) and at the Securities and Exchange Commission's website located at [www.sec.gov](http://www.sec.gov). If approved by the shareholders, the 2011 Plan will be effective on the date of the Annual Meeting, June 8, 2011.

Set forth below is a summary of the principal features of the 2011 Plan. This summary is qualified in its entirety by reference to the complete text of the 2011 Plan, which will be filed with the Securities and Exchange Commission and is attached as Appendix A to this proxy statement.

**Purpose of the 2011 Plan:**

The 2011 Plan is intended to provide a means by which the Company's employees, consultants, advisors and directors can acquire and maintain stock ownership, thereby strengthening their commitment to the Company's success. The 2011 Plan will provide an incentive for employees, consultants, advisors and directors to focus their attention on managing the Company as equity owners and will align their interests with the shareholders.

**Description of the 2011 Plan:**

*Administration:* The 2011 Plan will be administered by the Compensation Committee of the Board of Directors (the Committee). However, the Board may ratify or approve any grants as it deems appropriate, and an independent committee of the Board shall approve and administer all grants made to non-employee directors. The Committee has the authority to: (i) determine the individuals to whom grants will be made under the 2011 Plan; (ii) determine the type, size, and terms of each grant; (iii) determine the time when grants will be made and the duration of any applicable exercise or restriction period; (iv) amend the terms of any previously issued grant; and (v) deal with any other matters arising under the 2011 Plan.

*Shares:* The maximum aggregate number of shares of the Company's Common Stock that may be issued under the 2006 Plan under any form of award may not exceed the lesser of: (i) 20% of the total number of shares of our common stock issued and outstanding at any given time, less the number of shares issued and outstanding under any other equity compensation plan of the Company at such time; or (ii) 4,815,690 shares, less the number of shares issued and outstanding under any other equity compensation plan of the Company from time to time. The Board of Directors has approved, subject to shareholder approval, an increase in the number of shares reserved for issuance under the 2011 Plan to lesser of (i) 25% of the total number of shares of our common stock issued and outstanding at any given time, less the number of shares issued and outstanding under any other equity compensation plan of the Company at such time; or (ii) 6,108,492 shares, less the number of shares issued and outstanding under any other equity compensation plan of the Company from time to time.

The 2006 Plan currently provides that the maximum number of shares of Common Stock that may be granted to any individual during any calendar year is 300,000. The Board of Directors, upon the recommendation of the Compensation Committee, has approved the amendment to the 2006 Plan to increase the maximum number of shares of Common Stock that may be granted to any individual during any calendar year to 500,000. An increase of the annual maximum number of shares of Common Stock that may be granted to any individual will provide the Committee with additional flexibility during the life of the 2011 Plan to incentivize current executive management and to be able to attract new executives at market levels more in line with the Company's competitors. The maximum share limits are subject to adjustment in the event of a stock dividend, spin-off, recapitalization, stock split, combination, exchange of shares, reclassification, change in par value, merger, reorganization, or consolidation, or other corporate change. If any grant expires, is forfeited, or cancelled or otherwise terminates without having been exercised, the shares subject to the grant will again become available for grant under the 2011 Plan.

**Table of Contents**

*Eligibility:* The following persons are eligible to participate in the 2011 Plan:

The Company's employees and employees of our parents, subsidiaries, and affiliates.

The Company's non-employee directors.

Consultants and advisors who perform services for us or our parents, subsidiaries, or affiliates (referred to as Key Advisors).

The Committee will select the employees, non-employee directors and Key Advisors who are eligible for grants under the 2011 Plan. As of March 31, 2011, approximately 91 employees and seven (7) non-employee directors were eligible to participate in the 2011 Plan. The Company also utilizes the services of a number of Key Advisors who are also eligible to participate in the 2011 Plan.

*Options:* The Committee will select the employees, non-employee directors, and Key Advisors who will receive stock options and will determine the number of shares of stock that will be subject to each grant of stock options. The Committee may grant nonqualified stock options (NSOs) or incentive stock options (ISOs). ISOs may be granted only to employees or the employees of our parent or subsidiary corporation as defined in the Internal Revenue Code. NSOs may be granted to employees, non-employee directors, or Key Advisors.

The Committee will establish the exercise price of each option on the date of grant. The exercise price of an NSO or ISO may be equal to or greater than the fair market value of the underlying shares of stock on the date of grant. However, if the grantee of an ISO is a person who holds more than 10% of the combined voting power of all classes of the Company's outstanding stock or the outstanding stock of a parent or subsidiary, the exercise price per share of the ISO must be at least 110% of the fair market value of a share of stock on the date of grant. If the aggregate fair market value of shares of stock, determined on the date of grant, with respect to which ISOs become exercisable for the first time by a grantee during any calendar year exceeds \$100,000, the options in excess of this limit will be treated as NSOs.

Options granted to non-exempt employees under the Fair Labor Standards Act may not be exercisable for at least six (6) months after the date of grant, except as determined by the Committee upon death, disability, retirement, or change in control.

The Committee determines the term of each stock option, which will not exceed seven (7) years (five (5) years in the case of an ISO granted to a 10% owner). The Committee may establish such vesting and other conditions with respect to options as it deems appropriate. The Company may not accelerate the exercisability of any outstanding Options except in the case of death, disability, retirement or change in control. Notwithstanding the preceding sentence, the Company may accelerate the exercisability of any outstanding Options for reasons other than death, disability, retirement or change in control, provided that the aggregate number of shares of Company Stock underlying Options that may be accelerated for reasons other than death, disability, retirement or change in control together with the aggregate number of Stock Awards that contain vesting restrictions that may be waived by the Company for reasons other than death, disability, retirement or change in control, will not exceed ten (10%) percent of the shares authorized for issuance under the 2011 Plan. The Committee may provide in a grant instrument that the grantee may elect to exercise part or all of an option before it otherwise has become exercisable, and receive restricted stock.

Options may be exercised while the grantee is an employee, director, or Key Advisor of the Company, or any parent, subsidiary or affiliate of the Company. Unless the Committee determines otherwise, but in any event no later than the date of expiration of the option term, an option may be exercised after the termination of employment or service as follows:

For any reason other than disability, death, or termination for misconduct, any vested option may be exercised within ninety (90) days after the date on which the grantee ceases to be employed by or provide services to the Company.

Due to being disabled, any vested option may be exercised within one (1) year after the date on which the grantee ceases to be employed by or provide services to the Company.

Due to death, all of the unexercised outstanding options shall become immediately exercisable and remain exercisable for a period of one (1) year from the grantee's date of death.

In the event a grantee ceases to be employed by the Company on account of a termination for misconduct, any option held by the grantee will terminate at the time that the date on which the grantee ceases to be employed by or provide services to the Company or the date on which such option would otherwise expire, if earlier.

To the extent that any of the Company's sponsored plans or arrangements, or any agreement to which the Company is a party expressly provides for a longer exercise period for an option under applicable circumstances than the exercise period that is provided for under the 2011 Plan under those circumstances,

**Table of Contents**

the exercise period set forth in such plan, arrangement, or agreement applicable to such circumstances will apply in lieu of the exercise period provided for the 2011 Plan.

A grantee may pay the exercise price of an option: (i) in cash; (ii) by payment through a broker in accordance with procedures permitted by Regulation T of the Federal Reserve Board; or (iii) by such other method as the Committee may approve. If a grantee uses shares of the Company's Common Stock to exercise an option, the shares must have been held by the grantee for the requisite period of time to avoid adverse accounting consequences to the Company.

Each individual who agrees to become a non-employee director will receive, on June 30th of the first year of such service or as of the close of business 30 days following his/her election, whichever occurs first, and without the exercise of the discretion of any person, an NSO to purchase 15,000 shares of the Company's Common Stock at an exercise price equal to the fair market value on the date the NSO is granted. Thereafter, on June 30th of each year, each individual who is a continuing non-employee director will receive automatically an NSO to purchase 10,000 shares of the Company's Common Stock. Each NSO will vest in full on the date of the grant and have a term not to exceed seven (7) years from the date of grant, or, if later, the date the individual becomes a non-employee director. Notwithstanding the exercise period of any such NSO, all such NSOs will immediately become exercisable upon: (i) the death of non-employee director while serving as such; or (ii) upon a change of control (as defined in *Consequences of a Change in Control* below).

The Board of Directors has approved, subject to shareholder approval, an amendment to the formula grant to provide the Compensation Committee with the discretion to award 8,000 shares of restricted stock annually in lieu of a grant of 10,000 options to each continuing non-employee director. Each restricted stock award will be subject to the vesting period outlined below in the *Stock Awards* section.

*Stock Awards:* The Committee may grant stock awards to employees, Key Advisors, or non-employee directors. Shares of stock issued or transferred pursuant to stock awards may be issued or transferred for consideration or for no consideration, and subject to a minimum of a one (1) year vesting period for performance awards and a minimum three (3) year vesting period for awards not subject to performance vesting. The Committee may determine that stock awards granted to an Employee shall be considered qualified performance-based compensation under Section 162(m) of the Internal Revenue Code. The Committee shall not be permitted to waive such vesting periods except in the case of death, disability, retirement or change in control. Notwithstanding the preceding sentence, the Committee may waive the vesting restrictions of any shares of Company Stock for reasons other than death, disability, retirement or change in control, provided that the aggregate number of shares of Company Stock that contain vesting restrictions that may be waived by the Committee for reasons other than death, disability, retirement or change in control together with the aggregate number of shares of Company Stock underlying Options that may be accelerated by the Committee for reasons other than death, disability, retirement or change in control, will not exceed 10% of the shares of Company Stock authorized for issuance under the 2011 Plan. The Committee may establish conditions under which restrictions on stock awards will lapse over a period of time or according to such other criteria as the Committee deems appropriate, including restrictions based upon the achievement of specific performance goals. During the restriction period, the grantee will not have the right to vote shares of stock awards or to receive any dividends or other distributions paid on such shares. If the grantee's employment or service terminates during the restriction period or if any other conditions are not met, unless the Committee determines otherwise, the stock award will terminate with respect to all of the shares of stock covered by the stock award as to which the restrictions have not lapsed, and those shares of stock will be forfeited and immediately returned to the Company. The Committee may hold stock awards in escrow until all restrictions on shares have lapsed. The Committee or its delegate may also grant restricted stock units to an employee or Key Advisor. Each restricted stock unit represents the right of the grantee to receive an amount in cash or Common Stock (as determined by the Committee or its delegate) based on the value of the restricted stock unit, if performance goals established by the Committee are met or upon the lapse of a specified vesting period. A restricted stock unit shall be based on the fair market value of a share of the Company's Common Stock or on such

other measurement base as the Committee or its delegate deems appropriate. The Committee or its delegate shall determine the number of restricted stock units to be granted and the requirements applicable to such restricted stock units.

*Stock Appreciation Rights:* The Committee may grant stock appreciation rights (SARs) to employees, non-employee directors, or Key Advisors separately or in tandem with any option. The Committee will establish the base amount of each SAR at the time the SAR is granted. Unless the Committee determines otherwise, the base amount of a SAR will be the exercise price of the related option, or if there is no related option, an amount at least equal to the fair market value of a share of stock on the date of grant of the SAR. A SAR will be exercisable during the period specified by the Committee in the grant instrument and will be subject to vesting and other restrictions as specified in the grant instrument. The Committee may accelerate the exercisability of any outstanding SARs. A tandem SAR is exercisable only during the period when the option to which it is related is also exercisable.



**Table of Contents**

When a grantee exercises a SAR, the grantee will receive an amount equal to the value of the stock appreciation for the number of SARs exercised. The Company will pay the stock appreciation in shares of the Company's Common Stock. The stock appreciation for a SAR is the amount by which the fair market value of the underlying stock on the date of exercise exceeds the base amount of the SAR.

*Performance-Based Compensation:* The Committee may grant employees stock awards that are intended to meet the requirements of qualified performance-based compensation under Section 162(m) of the Internal Revenue Code (see Section 162(m) under Federal Income Tax Consequences below). In that event, at the beginning of the performance period, the Committee will establish in writing (i) the objective performance goals that must be met; (ii) the threshold, target, and maximum amounts that may be paid if the performance goals are met; and (iii) any other conditions that the Committee deems appropriate. The Committee must establish the performance goals either before the performance period or during a period ending no later than the earlier of ninety (90) days after the beginning of the performance period, the date on which 25% of the performance period has been completed, or such other date as may be permitted under the Internal Revenue Code.

The Committee will establish objective performance goals for each grantee related to the grantee's business unit or the Company's performance and the performance of its parents, subsidiaries and affiliates as a whole, or any combination of the foregoing. The objectively determinable performance goals will be based on one or more of the following criteria: stock price, earnings per share, net earnings, operating earnings, return on assets, shareholder return, return on equity, growth in assets, unit volume, sales, market share, or strategic business criteria consisting of one or more objectives based on meeting specified revenue goals, market penetration goals, geographic business expansion goals, cost targets, or goals relating to acquisitions or divestitures.

At the end of each performance period, the Committee will certify the results of the performance goals and the extent to which the performance goals have been met. If stock awards are granted as qualified performance based compensation, the total amount that may be paid or delivered to a grantee with respect to stock awards for any year in the performance period will not exceed 100,000 shares of stock. The Committee may provide for payment of grants in the event of the death or disability of a participant, or under other circumstances.

*Employees Subject to Taxation Outside the United States:* The Committee may make grants on terms different from those specified in the 2011 Plan, including granting options with a term longer than seven (7) years if appropriate to assure favorable treatment, with respect to persons who are subject to taxation outside the United States as necessary to achieve the purposes of the 2011 Plan.

*Transferability of Grants:* Grants are not transferable by the grantee except by will or the laws of descent or, in the case of a grant other than an ISO, pursuant to a domestic relations order, subject to Committee consent. The Committee may allow a grantee to transfer an NSO to family members or a trust or other entity for the benefit of family members.

*Consequences of a Change in Control:* If a change in control occurs, unless the Committee determines otherwise:

The Company will provide each grantee with outstanding awards written notice of such change in control.

All outstanding options and SARs will automatically accelerate and become fully exercisable.

Any restrictions on outstanding stock awards will immediately lapse.

Upon a change in control, unless the Committee determines otherwise, the Committee may also:

Determine that outstanding options and SARs that are not exercised will be assumed by, or replaced with comparable options or rights by the surviving corporation, and other outstanding grants will be converted to similar grants of the surviving corporation.

Require that grantees surrender their outstanding options and SARs in exchange for payment, in cash or shares of the Company's Common Stock (as the Committee determines) in an amount by which the then fair market value of the stock exceeds the exercise price.

A change in control means the consummation of a transaction that is the subject of a determination (which may be made effective as of a particular date specified by the Board) by the Board, made by a majority vote that a change in control has occurred, or is about to occur. A change in control will be deemed to have occurred as of the first day either of the following occurs:

The acquisition by any individual, entity, or group of 35% or more of the combined voting power of the Company's outstanding stock subject to exceptions described in the 2011 Plan.

**Table of Contents**

*Approval by the shareholders of:* (i) a plan of liquidation or dissolution; (ii) an agreement for the sale or disposition of all or substantially all of the Company's assets; or (iii) a merger, consolidation, or reorganization involving the Company, other than a merger, consolidation, or reorganization that would result in the Company's voting securities outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least 50% of the combined voting power of the Company's voting securities outstanding immediately after such merger, consolidation, or reorganization.

A change in control will not occur when a restructuring, reorganization, merger, or other change in capitalization in which persons or entities who own an interest in the Company on the date hereof maintain more than a 50% interest in the resultant entity. Additionally, a change in control will not occur, with respect to a grantee, if the grantee is part of a purchasing group that consummates the change in control transaction.

*Amendment and Termination of the 2011 Plan:* The 2011 Plan will terminate on June 8, 2021. The Board may terminate or amend the 2011 Plan earlier at any time. However, the Board will not amend the 2011 Plan without shareholder approval if shareholder approval is required to comply with the Internal Revenue Code or applicable laws, or to comply with applicable stock exchange requirements.

**U.S. Federal Income Tax Consequences:**

The following description of the federal income tax consequences of grants under the 2011 Plan is a general summary. State, local, and other taxes may also be imposed in connection with grants.

*Incentive Stock Options:* In general, a grantee will not recognize taxable income upon the grant or exercise of an ISO, and the Company will not be entitled to any business expense deduction with respect to the grant or exercise of an ISO. Upon the exercise of an ISO, however, the excess of the fair market value of the shares received on the date of exercise over the exercise price of the option will be included as an adjustment for purposes of the alternative minimum tax.

If a grantee holds the shares acquired upon exercise of an ISO for at least two (2) years after the date of grant and for at least one (1) year after the date of exercise, when the grantee disposes of the shares, the difference, if any, between the sale price of the shares and the exercise price of the option will be treated as long-term capital gain or loss. If a grantee disposes of the shares before satisfying these holding period requirements (referred to as a disqualifying disposition), the grantee will recognize ordinary income at the time of the disqualifying disposition, in an amount equal to the excess of the fair market value of the shares at the time the option was exercised over the exercise price of the option, or an amount equal to the gain on the disposition, if less. The balance of the gain realized, if any, will be short-term or long-term capital gain, depending upon the length of the time that the shares have been held after the date of exercise. In general, the Company will be allowed a business expense deduction to the extent a grantee recognizes ordinary income.

*Nonqualified Stock Options:* In general, a grantee who receives an NSO will recognize no income at the time of the grant of the option. Upon exercise of an NSO, a grantee will recognize ordinary income in an amount equal to the excess of the fair market value of the shares on the date of exercise over the exercise price of the option. The basis in shares acquired upon exercise of an NSO will equal the fair market value of such shares at the time of exercise, and the holding period of the shares (for capital gain purposes) will begin on the date of exercise. In general, the Company will be entitled to a business expense deduction in the same amount and at the same time as the grantee recognizes ordinary income.

*Stock Awards:* A grantee who receives a stock award generally will not recognize taxable income until the stock is transferable by the grantee or no longer subject to a substantial risk of forfeiture for federal tax purposes, whichever occurs first. When the stock is either transferable or is no longer subject to a substantial risk of forfeiture, the grantee will recognize ordinary income in an amount equal to the fair market value of the shares, less any amounts paid for the shares, at that time. The Company generally will be entitled to a business expense deduction in the same amount.

A grantee may elect to recognize ordinary income when a restricted stock award is granted in an amount equal to the fair market value of the shares, less any amount paid for the shares, at the date of grant, determined without regard to the restrictions. The Company generally will be entitled to a corresponding business expense deduction in the same year.

*Stock Appreciation Rights:* There are generally no federal income tax consequences to a grantee upon the grant of a SAR. Instead, when payments are made to the grantee, the grantee will recognize ordinary income in an amount equal to the cash received and the fair market value of any shares received. The Company generally will be entitled to a corresponding business expense deduction when the grantees recognize ordinary income.

*Excise Taxes:* Under certain circumstances, the accelerated vesting of grants in connection with a change in control could be deemed an excess parachute payment for purposes of the parachute tax

## **Table of Contents**

provisions of Section 280G of the Internal Revenue Code. In that event, a grantee could be subject to a 20% excise tax and the Company could be denied a tax deduction with respect to a portion of the grants under the 2011 Plan.

*Section 162(m)*: Section 162(m) of the Internal Revenue Code generally disallows a federal income tax deduction for compensation paid in excess of \$1,000,000 in any taxable year to the chief executive officer or any of the four (4) other most highly compensated executive officers. The Internal Revenue Code has an exception to the deduction limit for qualified performance based compensation, if, among other requirements, the material terms of the plan are disclosed to and approved by the shareholders. The Company has structured the 2011 Plan so that compensation resulting from the grant of stock awards, stock options, and SARs may qualify as qualified performance-based compensation and be deductible.

### **Market Price of Shares:**

The closing price of the Company's Common Stock on March 31, 2011 was \$5.20.

### **New 2011 Plan Benefits:**

Pursuant to the terms of the 2011 Plan, the percentage of shares of common stock issuable under the 2011 Plan has increased from 20% of the number of shares outstanding as of the date of the 2008 Annual Meeting of Shareholders to 25% of the number of shares outstanding as of the date of the 2011 Annual Meeting of Shareholders, the maximum number of shares subject to grants to any individual during any calendar year has increased from 300,000 to 500,000 and the Compensation Committee has the discretion to award a formula grant of 8,000 shares of restricted stock annually in lieu of a grant of 10,000 options to each continuing non-employee director.

Under the 2011 Plan, all awards to grantees other than the formula grants to non-employee directors, are granted at the discretion of the Board of Directors, the Compensation Committee or such other persons to whom authority may be delegated by the Board of Directors or Compensation Committee, and such awards are based upon criteria established by such persons. As such, at this time, the amount of any future awards to any grantees, other than the non-employee directors, under the 2011 Plan cannot be determined.

### **Required Vote:**

The affirmative vote of a majority of the votes cast, in person or by proxy, at the Annual Meeting of Shareholders is required in order to approve the proposed amendment to the 2006 Plan.

**THE BOARD OF DIRECTORS BELIEVES APPROVAL OF THE AMENDMENTS TO THE 2006 PLAN IS IN THE BEST INTERESTS OF THE COMPANY AND ITS SHAREHOLDERS AND UNANIMOUSLY RECOMMENDS A VOTE FOR THE APPROVAL OF THE AMENDMENTS TO THE 2006 PLAN AND RATIFICATION OF THE 2011 PLAN.**

### **PROPOSAL NO. 3 - RATIFICATION OF THE SELECTION OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The Audit Committee of the Board of Directors selected Deloitte & Touche LLP as the independent registered public accounting firm for the Company for the 2011 fiscal year. Shareholder ratification of the appointment is not required under the laws of the State of New Jersey, but the Audit Committee has decided to ascertain the position of the shareholders on the appointment. The Board of Directors will reconsider the appointment if it is not ratified. A majority of the votes cast, in person or by proxy, at the Annual Meeting of Shareholders is required for ratification. Abstentions will have no effect on this proposal. The ratification of Deloitte & Touche LLP is a matter on which a

broker or nominee has discretionary voting authority, so broker non-votes will not result from this proposal. A representative of Deloitte & Touche LLP will be present at the meeting to answer questions from shareholders and will have the opportunity to make a statement on behalf of the firm, if he or she so desires.

**THE BOARD OF DIRECTORS RECOMMENDS A VOTE FOR THIS PROPOSAL.**

**Audit Fees**

The aggregate fees billed by Deloitte & Touche LLP for professional services rendered for the audit of the Company's annual financial statements for the fiscal years ended December 31, 2010 and 2009 and for the reviews of the financial statements included in the Company's Quarterly Reports on Form 10-Q for fiscal years 2010 and 2009 were \$480,000 and \$478,500, respectively.

**Table of Contents**

**Audit Related Fees**

The aggregate fees billed by Deloitte & Touche LLP during fiscal year 2010 for the review of documents filed with the Securities and Exchange Commission related to the Company's filing of Post-effective Amendments to a Registration Statement on Form S-8 were \$15,500. The aggregate fees billed by Deloitte & Touche LLP during fiscal year 2009 for the review of documents filed with the Securities and Exchange Commission related to the Company's filing of a Post-effective Amendment to a Registration Statement on Form S-8 were \$14,000.

**Fees for Tax Services**

The aggregate fees billed by Deloitte Tax LLP for tax services rendered in support of an Internal Revenue Code Section 382 analysis were \$15,000 and \$170,000 for the fiscal years ended December 31, 2010 and 2009, respectively.

**All Other Fees**

Other fees billed by Deloitte & Touche LLP, which related to the Company's subscription to an online accounting research tool, were \$2,200 and \$2,000 for the fiscal years ended December 31, 2010 and 2009, respectively.

**Policy on Audit Committee Pre-Approval of Audit and Permissible Non-Audit Services of Independent Registered Public Accounting Firm**

In considering the nature of the services provided by the independent registered public accounting firm, all of which were pre-approved in accordance with procedures required by the Audit Committee Charter, the Audit Committee determined that such services are compatible with the provision of independent audit services. The Audit Committee discussed these services with the independent auditors and Company management to determine that Deloitte & Touche LLP is permitted under the rules and regulations concerning auditor independence promulgated by the Securities and Exchange Commission to implement the Sarbanes-Oxley Act of 2002, as well as by the American Institute of Certified Public Accountants.

**Table of Contents**

**AUDIT COMMITTEE REPORT <sup>1</sup>**

The Audit Committee of the Board of Directors (the "Audit Committee") assists the Board of Directors by providing oversight of the Company's financial reporting process and its independent registered public accounting firm. Management is responsible for preparing the Company's financial statements and the Company's independent registered public accounting firm is responsible for auditing those financial statements. The Audit Committee is responsible for overseeing the conduct of these activities by the Company's management and selecting the independent registered public accounting firm. The Audit Committee operates under a written charter adopted and approved by the Board of Directors. A brief description of the responsibilities of the Audit Committee is set forth above under the caption "Meetings and Committees of the Board."

The Audit Committee reviewed and discussed the audited consolidated financial statements for the fiscal year ended December 31, 2010 with management. The Audit Committee also discussed with Deloitte & Touche LLP, the independent registered public accounting firm, the matters required to be discussed by Statement on Auditing Standards No. 61, *Communication with Audit Committees*. In addition, the Audit Committee received from Deloitte & Touche LLP the written disclosures and the letter required by the applicable requirements of the Public Company Accounting Oversight Board regarding the independent registered public accounting firm's communications with the Audit Committee concerning independence, and the Audit Committee discussed with the independent registered public accounting firm their independence from the Company and its management. Additionally, the Audit Committee considered whether their provision of services to the Company beyond those rendered in connection with their audit and review of the Company's consolidated financial statements was compatible with maintaining their independence and the fees and costs billed and to be billed for those services as shown on pages 16 and 17 of this proxy statement. The Audit Committee concluded that Deloitte & Touche LLP's provision of such services is compatible with Deloitte & Touche LLP's independence.

Based on its review and the discussions with the Company's management and its independent auditors, the Audit Committee recommended to the Board of Directors that the Company's audited consolidated financial statements for the fiscal year ended December 31, 2010 be included in the Company's Annual Report on Form 10-K.

David M. Bartash  
Paul J. Hondros  
David M. Wurzer (Chairman)

- (1) The materials in the Audit Committee Report are not soliciting material, are not deemed filed with the SEC and are not to be incorporated by reference in any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this report and irrespective of any general incorporation language therein.



**Table of Contents**

**COMPENSATION DISCUSSION & ANALYSIS**

**Philosophy and Objectives** - All of our compensation programs and policies are designed to attract, retain, and reward key employees to align compensation with DUSA's performance and to motivate executive officers to achieve the Company's business objectives. Our programs are geared to rewarding both short and longer-term performance with the ultimate objective of increasing shareholder value over time.

The Compensation Committee of the Board of Directors (the "Compensation Committee" or the "Committee") believes that compensation should reflect the success of our executives as a management team, so we consider both individual and corporate strategic and financial goals in determining compensation. We believe that executive compensation should not be based on the short-term performance of our stock, but that the price of our stock will, in the long-term, reflect our operating performance and management of the Company by our executives. We seek to have the long-term performance of our stock reflected in executive compensation through our stock option and restricted stock award programs.

Throughout this proxy statement, the individuals who served as our Chief Executive Officer and our Chief Financial Officer during fiscal year 2010, as well as other individuals included in the Summary Compensation Table on page 25, are referred to as "named executive officers."

**Overview of Compensation and Process** - The Compensation Committee is composed of Messrs. Altomari, Casdin, Moliteus and Wurzer. Mr. Moliteus serves as its Chairman. The Compensation Committee is responsible for setting and administering the policies which govern annual executive salaries and cash bonus awards, and under the 2006 Equity Compensation Plan, the Committee approves the amounts of stock option or other equity awards to all grantees. The Compensation Committee evaluates, on a yearly basis, the performance, and determines the compensation of, the executive officers of DUSA, including the named executive officers. DUSA's President and Chief Executive Officer, Robert Doman, is not a member of the Compensation Committee, however, the Compensation Committee seeks input from him regarding the performance of DUSA's other executive officers. Mr. Doman and Richard C. Christopher, DUSA's Vice President of Finance and Chief Financial Officer, are present, at the invitation of the Compensation Committee, at its meetings, other than during consideration of their own compensation or other executive sessions.

The Compensation Committee regularly retains an independent compensation consultant, WNB Consulting LLC to review and analyze DUSA's executive compensation programs, to prepare a benchmarking analysis, and to recommend appropriate levels of cash and equity compensation for DUSA's directors and executive officers, including its President and Chief Executive Officer. WNB Consulting was retained in both 2009 and 2010 for similar purposes, which included updating the information that the firm had provided to the Committee in 2008. The Compensation Committee is solely responsible for the engagement of WNB Consulting, and all work performed by WNB Consulting is initiated and supervised by the Compensation Committee, except to the extent delegated by the Compensation Committee to management. The Committee discussed the recommendations of WNB Consulting with the consultant when setting 2008, 2009, 2010 and 2011 salaries, when making decisions about bonus levels and equity compensation awards and when revising compensation for our directors. While input from the consultant is carefully considered, ultimate decision making authority rests with the Compensation Committee which retains discretion over salary, cash bonus, and equity compensation determinations based upon its subjective view of an executive's performance.

DUSA's executive compensation programs consist of base salary, discretionary cash bonus incentives based on annual individual and corporate goals, grants under the Company's equity plan, a 401(k) plan, a deferred compensation plan, and certain other prerequisites and benefits generally available on the same basis as benefits provided to its other

employees. Typically, during the first quarter of each year, our Compensation Committee meets to consider and, if deemed appropriate, approve cash bonuses for our executives based on the prior fiscal year's performance and base salaries for the new fiscal year, and to consider and, if deemed appropriate, grant equity awards, in the form of stock options and restricted stock awards, to all of the executive officers. On occasion, compensation adjustments are made during the year to reflect a change in roles or responsibilities of our executives.

DUSA does not currently provide any pension benefits to its named executive officers or employees.

Section 162(m) of the Internal Revenue Code of 1986, as amended, generally disallows a tax deduction to public companies for compensation in excess of \$1 million paid to the corporation's chief executive officer and four other most highly paid executive officers. We periodically review the potential consequences of Section 162(m) and may structure performance-based compensation to comply with certain exemptions. However, we have not done so to date.

DUSA had numerous successes in 2010 highlighted by achieving its first full year of profitability and positive cash flow. In order to recognize the short term performance, as well as, strengthening the

**Table of Contents**

Company's position for the long term through the expansion of its patent estate, the Committee provided a combination of base salary increases, cash bonuses and equity awards in order to better align management with shareholders interests.

**Base Salary** - With regard to base salary, the Compensation Committee believes that DUSA's officers should be compensated at levels comparable to the base salary of executive officers at similar public biotechnology or pharmaceutical companies. Base salaries are paid at competitive levels to attract and retain talented management personnel. During 2008, 2009 and 2010, the Compensation Committee used survey data reporting the salaries and bonuses for executives of companies in these groups which was prepared by WNB Consulting LLC. In addition, the Committee has referred to survey data or analyses of survey data from the Ernst and Young's National Life Sciences Entrepreneurial Survey, Radford Associates Survey, Mercer Executive Compensation Survey, Tower Watson's Executive Compensation Survey, ORC SIRS Executive Compensation Survey and Salary.com 2010 proxy analysis. The Committee uses this information to assist it in setting executive compensation but does not have a pre-established policy or target for the allocation between either cash and non-cash or short-term and long-term incentive compensation.

The Committee also takes note of the cost of living increase in determining base salary increases, as well as the general performance of the Company. Following the analysis by WNB Consulting which indicated that several of the named executive officers' base salaries were below the low end range of competitiveness, the Committee, in April 2008, approved base salary increases in the range of 3.5% to 14.6%, including 10% for Mr. Doman and 14.6% for Mr. Christopher. For 2009, all base salaries company-wide remained at 2008 levels in order to preserve cash resources during uncertain economic times. However, for 2010, the Committee approved base salary increases for the named executive officers, other than Mr. Doman, in the range of 2.0% to 6.4% which includes certain market adjustments for two of the named executive officers based on recommendations from WNB Consulting. The Committee granted an increase of 4% to Mr. Doman in light of his very strong performance and guidance of the Company to achieve both positive cash flow and profitability during the fourth quarter of 2009. In setting salaries for 2011, in addition to assessing individual performance, the Committee also considered WNB Consulting's updated findings, which indicated that some of the Company's executive officers' base salaries were below an appropriate composite average and composite median. In an effort to address this situation, two of the named executive officers received base salary adjustments in order to bring them more in line with the competitive market. The Committee approved base salary increases, including these adjustments, ranging from 0% to 10%, including an increase of 3.69% for Mr. Doman and 10% for Mr. Christopher, due to their leadership and the impressive financial improvement by the Company.

**Bonuses** - Under the terms of its employment agreements with its officers, DUSA's Vice Presidents are eligible to receive a range of up to 35% to 40% of their base salary as a discretionary cash bonus award to be set by the Board of Directors. These percentage opportunities reflect increases of 5%-10% which the Committee made in April 2008 upon the recommendation and analysis of WNB Consulting. In June 2007, in connection with his promotion to President and Chief Executive Officer, the Committee determined that Mr. Doman should be eligible to receive up to 50% of his base salary as a cash bonus. In some cases, the agreements provide that the Board may award a cash bonus in excess of the stated percentage for outstanding performance. DUSA believes that the cash bonus is an important incentive to its officers and assists DUSA in reaching its corporate goals.

Financial and strategic business goals are typically set by management, and approved by the Board of Directors, usually during the fourth quarter of the previous year. The primary financial goals relate to achievement of net revenue and income statement improvement milestones. Management recommends these goals to incentivize its named executive officers to perform at consistent high levels, however, these goals are not set at levels which management believes are likely to be unattainable. The Committee uses a subjective approach in its consideration of cash bonus incentives. For 2010, while management made recommendations to the Committee in light of certain corporate performance, including the achievement of key corporate goals of profitability and generation of positive

cash on a full year basis, the significant revenue growth of the Company's core products, completion of key product enhancements, as well as the successful completion of two patent re-examinations and the issuance of a new patent on its core technology, no formal metrics were adopted by the Committee. In the past, the Committee also considered other factors, such as the attainment of positive cash flow and profitability in the fourth quarter of 2009, despite a difficult economic environment. In February 2011, the Committee using its discretion, based on the experience of its members, and in light of strong performance during 2010, determined that bonuses should be paid in amounts ranging from approximately 34% to approximately 59% of base salary. The Committee believes that in light of the Company's stage of development, a flexible approach is fairer and provides a greater incentive for the Company's executives to achieve both short and long term objectives.

The Compensation Committee discusses and adjusts the written recommendations of the President and Chief Executive Officer of DUSA in awarding discretionary cash bonuses, as well as base salary increases for the other executives. For 2008, the then current Chairman of the Board discussed a recommendation with the Committee for the compensation of the then current President and Chief

**Table of Contents**

Executive Officer which was considered by the Committee. The Compensation Committee exercises subjective judgment and discretion in the granting of the amount of bonuses and in setting base salaries.

In February 2010 and again in February 2011, the Committee met with Mr. Doman and Mr. Christopher who reviewed the contributions of each of the named executive officers, and Mr. Doman provided his recommendations for base salaries for 2010 and 2011, respectively, and proposed a cash bonus opportunity that should be paid to each of the named executive officers other than himself. In making its decision, the Committee discussed and evaluated the recommendations of Mr. Doman regarding 2010 and 2011 salaries and cash bonus opportunities, as well as the base salary and bonus for Mr. Doman, in conjunction with WNB Consulting.

**Equity Awards** - DUSA has awarded stock options to its executive officers on initial hire, sometimes at the time of a promotion, and generally, on an annual basis at a meeting of the Compensation Committee during the first quarter of the year. During 2008 and 2009, in conjunction with the recommendation of WNB Consulting, the Committee also provided its executives with restricted stock awards. For 2010, due to limitations with the remaining number of shares available under the 2006 Equity Compensation Plan, the Committee awarded its executives restricted share awards, but no stock options. The Compensation Committee believes that a strong stock ownership program aligns executive officers with shareholders interests and is essential to the long-term growth of the Company by providing executives with incentives to increase shareholder value over time. The Compensation Committee uses survey data and recommendations of consultants to monitor and evaluate the amount of long-term incentive compensation levels of its officers. There is no formula for the number of grants which are issued. In addition, the Board has decided to grant equity awards every year in order to take into account the volatility of DUSA's stock price from year to year. WNB Consulting has recommended to the Compensation Committee that going forward, DUSA should increase the level of equity compensation DUSA pays to its executive officers to better align executive officers interest with shareholders and maintain the effectiveness of DUSA's goal of retaining and motivating its executive officers through the use of equity compensation since historical equity compensation has been significantly below that of similarly situated companies. WNB Consulting has advised that DUSA's current equity compensation does not meet desired levels of competitive long-term compensation based on its analysis. In addition, as of March 31, 2011, the 2006 Equity Plan has only 126,868 shares remaining eligible for award. For these reasons, DUSA is seeking approval of its shareholders to increase the number of shares available under its equity plan. Please refer to Proposal No. 2 and Appendix A to this proxy statement for more details.

WNB Consulting also provided survey data indicating that the members of DUSA's Board of Directors receive less compensation than their peers, particularly with respect to equity compensation and committee activities. During 2008, the Board awarded a special grant of restricted shares to the then current Committee members, including, among others, Messrs. Bartash and Moliteus who each received an award of 7,500 restricted shares and Mr. Haft who received 15,000 restricted shares. In October 2010, the Committee reviewed updated information from WNB Consulting and in light of this information and the increasing responsibilities of board members of public companies, increased the annual base fee for non-employee members of the Board of Directors from \$25,000 to \$30,000. The Compensation Committee has recommended to the Board of Directors that the Committee should have the discretion to grant Stock Awards to the non-employee directors in lieu of the automatic grant of stock options in the event of their re-election to the Board. The Board is seeking shareholder approval to amend the 2006 Equity Compensation Plan in order to implement this change.

Stock options have typically been granted as of the close of business on the date of grant. In December 2006, the Board of Directors determined that all grants should be made two days following the release of quarterly earnings by DUSA.

DUSA also maintains a 401(k) plan for all employees which provides a match of \$0.50 for each dollar contributed up to 2.5% of base salary. In 2006, DUSA adopted a deferred compensation plan which was available to operating

director-level employees and above, however since only one executive officer is currently enrolled, the plan has been suspended for the time being. DUSA adopted these plans in order to provide competitive benefits to its upper level employees.

In some cases, the Committee has altered a proposed amount of a cash bonus or option grant to provide a particular award for excellent performance. This is an example of the discretion which is contemplated in the employment agreements between the Company and the named executive officers.

Currently, DUSA does not have any stated policy regarding an adjustment or recovery of awards or payments if a performance measure upon which such award or payment may have been based were to be restated. However, the Committee plans to consider adoption of a policy consistent with the Dodd-Frank Wall Street Reform and Consumer Protection Act following issuance of the final regulations by the Securities and Exchange Commission on this matter.

**Table of Contents**

**Perquisites** - As provided in his employment agreement, DUSA provides its President and Chief Executive Officer with local housing, including utilities, since his permanent residence is in a state different from the location of DUSA's principal offices in Massachusetts. In addition, DUSA covers the amount of tax that the officer pays on the amount of the rent which constitutes compensation to him. This form of compensation did affect the level of base salary that the officer was offered and agreed upon when he joined DUSA in 2005.

**Other Compensation** -

**Generally Available Benefits**

We provide the following benefits to our named executive officers generally on the same basis as the benefits provided to all employees:

Health and dental insurance;

Life insurance;

Short- and long-term disability;

Educational assistance; and

401(k) plan.

We believe that these benefits are consistent with those offered by other similarly situated companies.

**Severance Benefits**

All of the named executive officers have a provision in their employment agreements providing for a severance benefit equal to twelve (12) months of the officer's then current salary. DUSA has received information from its employment consultant that the provision of twelve (12) months severance for termination without cause is relatively common, and DUSA believes that the provision assists it in attracting key management to the Company.

**Change of Control**

DUSA provides a change of control provision in its named executive officers' employment agreements. The provision provides for the payment of three (3) times an officer's then current salary under certain change of control circumstances. DUSA believes that the change of control provisions would serve to retain DUSA's senior management talent and to focus management's attention on DUSA's operations during a change of control transaction.

Sections 280G and 4999 of the Internal Revenue Code impose certain adverse tax consequences on compensation treated as excess parachute payments. An executive is treated as having received excess parachute payments if he receives compensatory payments or benefits that are contingent on a change in control, and the aggregate amount of such payments and benefits equal or exceeds three times the executive's base amount as defined under the Internal Revenue Code. The portion of the payments and benefits in excess of one times base amount are treated as excess parachute payments and are subject to a 20% excise tax, in addition to any applicable federal income and employment taxes. Also, our compensation deduction in respect of the executive's excess parachute payments is disallowed. If we were to be subject to a change of control, certain amounts received by our executives could be excess parachute payments under Section 380G and 4999 of the Internal Revenue Code.

**Deferred Compensation**