

SURG II INC  
Form DEF 14A  
January 07, 2003

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**SCHEDULE 14A**

Proxy Statement Pursuant to Section 14(a) of the Securities  
Exchange Act of 1934 (Amendment No. )

Filed by the Registrant  x  
Filed by a Party other than the Registrant  o

Check the appropriate box:

- o Preliminary Proxy Statement
- o **Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**
- x Definitive Proxy Statement
- o Definitive Additional Materials
- o Soliciting Material Pursuant to §240.14a-11(c) or §240.14a-12

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SURG II, INC.  
(Name of Registrant as Specified In Its Charter)

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

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- o No fee required.
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2) Aggregate number of securities to which transaction applies:

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

4) Proposed maximum aggregate value of transaction:

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1) Amount Previously Paid:

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2) Form, Schedule or Registration Statement No.:

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3) Filing Party:

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4) Date Filed:

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**SURG II, INC.**

**800 Nicollet Mall, Suite 2690  
Minneapolis, Minnesota 55402**

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**NOTICE OF SPECIAL MEETING OF SHAREHOLDERS  
To Be Held On  
February 12, 2003**

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Notice is hereby furnished to the shareholders of Surg II, Inc., a Minnesota corporation ( Surg ), of a special meeting of shareholders (the Meeting ), to be held at 10:00 a.m. on February 12, 2003, at the Hyatt Regency Hotel, 1300 Nicollet Mall, Minneapolis, Minnesota, for the following purposes:

To vote on a proposal to amend Surg s Articles of Incorporation to increase its authorized \$0.01 par value capital stock from 5,000,000 shares to 50,000,000 shares.

To vote on a proposal to amend Surg s Articles of Incorporation to change its name from Surg II, Inc. to Chiral Quest, Inc.

To transact such other business incidental to the Meeting.

Only shareholders of record as of the close of business on December 31, 2002, or their legal representatives, are entitled to notice and to vote at the Meeting or any adjournment thereof. Each shareholder is entitled to one vote per share on all matters to be voted on at the Meeting.

A Proxy and Proxy Statement are enclosed herewith. You are requested to complete and sign the Proxy, which is being solicited by the Board of Directors and management of Surg, and to return it in the envelope provided.

By Order of the Board of Directors

President and Chief Executive Officer

January 9, 2003

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General

Kenneth W. Brimmer

Brian D. Niebur

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Vincent M. Aita

Stephen C. Rocamboli

Alan D. Roth

David M. Tanen

Michael Weiser

Xumu Zhang

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**PROXY STATEMENT**

**OF**

**SURG II, INC.**

**800 Nicollet Mall, Suite 2690  
Minneapolis, Minnesota 55402**

**For a Special Meeting of Shareholders**

**To Be Held On February 12, 2003**

This Proxy Statement is furnished to the shareholders of Surg II, Inc. (referred to as Surg ), in connection with the solicitation by the Board of Directors of Surg of proxies to be voted at the special meeting of Surg shareholders or any adjournment thereof (the Meeting ), to be held at 10:00 a.m. on February 12, 2003, at the Hyatt Regency Hotel, 1300 Nicollet Mall, Minneapolis, Minnesota. This Proxy Statement and the accompanying proxy were first mailed on approximately January 10, 2003, to the shareholders of record of Surg as of the close of business on December 31, 2002.

The accompanying Proxy authorizes the appointees named in the Proxy, acting at the request of the management of Surg, to vote the shares indicated in the Proxy as follows:

1. For or against approving an amendment to the Surg Articles of Incorporation increasing the number of shares of \$0.01 par value capital stock which Surg may issue from 5,000,000 to 50,000,000.
2. For or against approving an amendment to the Surg Articles of Incorporation changing the name of Surg to Chiral Quest, Inc.
3. In their discretion, to vote on matters which are incidental to the Meeting.

**The solicitation of proxies from the shareholders is being made by the Board of Directors and management of Surg who will not be specially compensated for such solicitation.**

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**SUMMARY**

**The Proposals**

The management of Surg II, Inc. (Surg or we) has called the Meeting, and is asking Surg's shareholders to approve two amendments to Surg's Articles of Incorporation. The amendments are being proposed to facilitate the acquisition of Chiral Quest, LLC, a Pennsylvania limited liability company (Chiral Quest) by the merger (the Merger) of Chiral Quest into a wholly owned subsidiary of Surg called CQ Acquisition, Inc. The business of Chiral Quest and the terms of the Merger are discussed elsewhere in this Proxy Statement. Following the proposed Merger, Surg's entire business operations will be devoted to Chiral Quest's current business. Accordingly, unless the context indicates otherwise, when we discuss or refer to business or financial information in this Proxy Statement that relates to dates following completion of the proposed Merger, we are referring to Chiral Quest's business and financial information.

The first amendment to be considered at the meeting would increase the number of authorized shares of capital stock Surg may issue. Currently, Surg may issue only up to 5,000,000 shares. There are currently 4,348,720 shares of Surg common stock outstanding. The Merger will require Surg to issue to the members of Chiral Quest approximately 8,652,300 shares of Surg common stock. Accordingly, Surg is requesting its shareholders to approve an increase in the number of shares which Surg may issue to 50,000,000 shares.

If a sufficient number of Surg shareholders do not approve the amendment to increase the number of authorized shares, the Merger cannot occur. Accordingly, voting on that proposal has the practical effect of voting on the Merger itself.

The second amendment would change the name of Surg to Chiral Quest, Inc. The change in name will more closely reflect the business Surg will be engaged in should the Merger occur. If the Merger is not completed, Surg will not effect the change in its name.

Chiral Quest was organized in July 2000 and in October 2000 commenced to engage in the research, development and production of chemical compounds called ligands, which act as catalysts for chemicals used in the production of pharmaceuticals and fine chemicals. Chiral Quest currently markets limited quantities of ligands and licenses the use of these ligands to pharmaceutical, biotechnology and fine chemical companies for research and development purposes. The technology for Chiral Quest's research, development and production activities was developed by Dr. Xumu Zhang, and is licensed from the Pennsylvania State Research Foundation (Penn State Foundation), the technology development arm of Pennsylvania State University (Penn State). Dr. Zhang is an associate professor at Penn State, and is a significant owner of and consultant to Chiral Quest. Chiral Quest is in the early stages of its development and has not yet generated significant revenues.

**Voting Information**

***Who is entitled to vote?***

The holders of common stock of Surg who are shareholders of record on December 31, 2002, may vote at the Meeting. As of December 31, 2002, there were 4,348,720 shares of Surg's common stock outstanding.

***What are you voting on?***

At the Meeting, the following matters will be voted on:

An amendment to the Articles of Incorporation of Surg to increase its authorized \$0.01 par value per share capital stock from 5,000,000 shares to 50,000,000 shares.

An amendment to the Articles of Incorporation of Surg to change its name from Surg II, Inc. to Chiral Quest, Inc.

Other matters incidental to conducting the Meeting.



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***What is the purpose of the proposed amendments?***

We have entered into a Merger Agreement (the Merger Agreement ) with Chiral Quest, whereby Chiral Quest will be merged with and into Surg s wholly owned subsidiary, CQ Acquisition, Inc. A copy of the Merger Agreement without schedules is included in this Proxy Statement as Exhibit A. In the Merger, the members/owners of Chiral Quest are to receive approximately 8,652,300 shares of the common stock of Surg. Since we currently do not have authority to issue that many shares, we need to increase the number of shares authorized for issuance in Surg s Articles of Incorporation in order to complete the transaction. Changing Surg s name to Chiral Quest, Inc. also requires an amendment to the Articles of Incorporation, but is not necessary to complete the Merger.

***Will the Merger proceed if the proposal to increase Surg s authorized shares is defeated?***

No. A vote against the proposed amendment to Surg s Articles of Incorporation increasing the number of shares we may issue is essentially a vote against the Merger. Currently, we do not have authority to issue enough shares to meet the requirements of the Merger. Without the increase, the Merger will not be completed.

***Will the proposal to change Surg s name be presented to the shareholders if the proposal to increase Surg s authorized shares is defeated?***

No. If the proposal to amend Surg s Article of Incorporation to increase its authorized shares is not approved, the meeting will be adjourned and the proposal to change Surg s name to Chiral Quest, Inc. will not be presented to the shareholders for a vote.

***Will defeat of the proposal to change Surg s name prevent the Merger?***

No. The Merger Agreement contemplates that we will propose the name change to our shareholders at the Meeting, but the Merger is not dependent upon the name change.

***Will the Merger with Chiral Quest proceed if the proposal to increase Surg s authorized shares is approved?***

Very likely. The amendment to increase the authorized capital stock of Surg is a condition to completing the Merger. The Merger Agreement, however, has conditions other than approval of Surg s authorized shares which, if not satisfied, may allow either Surg or Chiral Quest to terminate the Merger Agreement. These include conditions requiring that:

the warranties and representations of the parties made in the Merger Agreement are true as of the time of the Merger;

the Merger be accomplished by February 28, 2003;

the Merger qualify as a tax free reorganization; and

Surg have at least \$3,000,000 in cash and only limited liabilities at the time of the Merger.

***What will happen if both amendments to the Articles of Incorporation are approved, but the Merger is not completed?***

If that were to occur, Surg would effect the amendment to increase the number of shares of its authorized capital stock, but would not change its name.

***Do you have statutory rights of appraisal if you oppose the Merger?***

No. Under Minnesota law, a shareholder asked to approve a merger of that shareholder s corporation has the right to dissent from the transaction and receive the fair value of his or her shares in cash. You, however, are not being asked to vote on the Merger; you are only being asked to vote on amendments to Surg s Articles

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of Incorporation. The Merger is between Surg's subsidiary, CQ Acquisition, Inc. and Chiral Quest. The only statutory right to receive the fair value of shares under Minnesota law belongs to Surg as the shareholder of CQ Acquisition, Inc.

### ***How does the Board recommend you vote on the proposals?***

The Board recommends you vote your shares **FOR** both proposed amendments to Surg's Articles of Incorporation.

### ***Who will be soliciting your vote?***

The Board of Directors is soliciting your vote by mail through this Proxy Statement. Your vote may also be solicited in person or by telephone by officers of Surg. Brokers, nominees, fiduciaries and other custodians will be requested to forward soliciting materials to beneficial owners of Surg's common stock, and will be reimbursed for their expenses in connection with that activity. The cost of all of this solicitation is being paid for by Surg.

### ***How can you vote?***

If you hold your shares as a shareholder of record, you can vote in person at the Meeting or you can vote by completing and mailing the form of proxy provided to you. You are a shareholder of record if you hold your shares directly in your own name. If you hold your shares indirectly in the name of a bank, broker or other nominee, you are a street name shareholder. If you are a street name shareholder, you will receive instructions from your bank, broker or other nominee describing how to vote your shares.

### ***How do you vote by mail?***

You can vote by mail by following the instructions on the accompanying form of proxy, signing the proxy and mailing it to the address noted on the form of proxy or by using the accompanying envelope provided for that purpose. The individuals named as proxies on the form of proxy will vote your shares in accordance with your instructions. If you sign and submit your proxy without giving instructions, the proxies named on the form of proxy will vote your shares as recommended by the Board of Directors.

### ***How can you revoke your proxy after mailing it?***

If you are a shareholder of record, you can revoke your proxy by:

Submitting a new form of proxy with a later date on it;

Giving written notice before the Meeting to Surg's Secretary, at 800 Nicollet Mall, Suite 2690, Minneapolis, Minnesota 55402, stating that you are revoking your proxy; or

Attending the Meeting and voting your shares in person.

Merely attending the Meeting without voting will not revoke your proxy.

If you are a street name shareholder, you may revoke your proxy only as instructed by the bank, broker or other nominee holding your shares.

### ***How do you sign the proxy?***

Sign your name exactly as it appears on the form of proxy. If you are signing in a representative capacity (for example, as a guardian, trustee, executor, administrator, attorney-in-fact or the officer or agent of a company), include your name and title or capacity. If the shares are held in custody (for example, under the Uniform Transfer to Minors Act), the custodian should sign, not the minor or other beneficiary. If the shares are held in joint ownership, both owners must sign.

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### ***What does it mean if you receive more than one proxy or voting instruction form?***

It means your shares are registered differently or are in more than one account. Please complete, sign and return all proxy forms you receive to ensure all your shares are voted.

### ***What constitutes a quorum?***

A quorum of shareholders is necessary to hold a valid meeting of our shareholders. A majority of the outstanding shares, present in person or represented by proxy, constitutes a quorum for the Meeting. Shareholders who send in their proxy but abstain from voting and broker non-votes are counted as present for establishing a quorum.

### ***How many votes are needed for approval of each proposal?***

The two amendments to Surg's Articles of Incorporation each require the affirmative vote of at least a majority of the shares present at the Meeting. Abstentions and broker non-votes are counted as shares present at the Meeting. Accordingly, an abstention from voting on any proposal or a broker non-vote is the same as a vote against that proposal.

### ***What is a broker non-vote?***

A broker non-vote occurs when a broker submits a proxy form that does not indicate a vote for some of the proposals because the broker did not receive instructions from the beneficial owner on how to vote on those proposals and does not have discretionary authority to vote in the absence of instructions.

### ***How can you attend the Meeting?***

If you are a shareholder of record on December 31, 2002, you can attend the Meeting by presenting acceptable identification at the Meeting. If you are a street name shareholder you may attend the Meeting by presenting acceptable identification along with evidence of your beneficial ownership of Surg's common stock. As a street name shareholder, however, you will not be able to vote your shares unless the organizations through which you hold your shares provide proxies giving you authority to vote the shares held for you. This may require more than one proxy, as the record owner of your shares is usually not the organization providing you the account in which your shares are held.

## **Risk Factors**

In deciding to approve proposals 1 and 2, you are urged to consider the following risk factors which will apply to Surg should the Merger be completed:

### **Risks Relating to the Merger**

#### ***Surg may not realize the anticipated benefits of the Merger.***

Although Surg's Board of Directors believes that the Merger is in the best interests of Surg and its shareholders, Chiral Quest is still an early stage company without any significant operating history on which to evaluate its business and prospects. Accordingly, there can be no assurance that, following the Merger, Surg and its new management will be successful in implementing Chiral Quest's business plan.

#### ***The Merger will significantly dilute your percentage ownership in Surg.***

If the Merger is completed, Surg will issue to the members of Chiral Quest a number of shares of Surg common stock that is approximately twice the number of shares held, in the aggregate, by the current shareholders of Surg. In addition, certain key employees of Chiral Quest will have options to acquire approximately an additional 910,400 shares of Surg's common stock. Surg has also agreed to issue a warrant to purchase up to 550,000 shares of Surg common stock to an entity, the principal owner of which introduced



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Surg to the opportunity to acquire Chiral Quest (See THE MERGER Other Agreements ). Accordingly, the Merger will result in substantial dilution to your current ownership and voting interests in Surg.

### ***The Merger will result in a significant dilution in the book value of your shares.***

As of September 30, 2002, Surg had a net tangible book value of \$3,171,608 or approximately \$0.73 per share. As of that date, Chiral Quest's liabilities exceeded its tangible assets by \$430,344. Since September 30, 2002, the deficit book value of Chiral Quest has increased. Had the Merger occurred on September 30, 2002, it would have resulted in a dilution, on a per share net tangible book value basis, to current Surg shareholders of approximately \$0.52 per share.

### ***Following the Merger, a small group of persons will be able to exert significant control over Surg.***

Following the Merger, Chiral Quest's current officers and directors will beneficially own or control approximately 29% of Surg's common stock. Individually and in the aggregate, these persons will have significant influence over the management of Surg's business, the election of directors and all matters requiring shareholder approval. In particular, this concentration of ownership may have the effect of facilitating, delaying, deferring or preventing a potential acquisition of Surg and may adversely affect the market price of Surg's common stock. Additionally, four of the persons proposed to be appointed to Surg's Board of Directors following the Merger are employees of Paramount Capital, Inc., or one of its affiliates. Dr. Lindsay A. Rosenwald is the chairman and sole owner of Paramount Capital, Inc., and such affiliates. Following the Merger, Dr. Rosenwald will beneficially own 4.9% of Surg's outstanding common stock, and several trusts for the benefit of Dr. Rosenwald and his family will beneficially own 14.7% of Surg's outstanding common stock. Dr. Rosenwald does not have the legal authority to exercise voting power or investment discretion over the shares held by those trusts; however, as a result of the foregoing, Dr. Rosenwald will have the ability to exert significant influence over Surg (See CERTAIN TRANSACTIONS AND RELATIONSHIPS Interests of Proposed Directors in Chiral Quest and Paramount Capital, Inc. ).

## **Risks Relating to Chiral Quest's Operations**

### ***Chiral Quest has no meaningful operating history on which to evaluate its business or prospects.***

Chiral Quest was formed in July 2000 and commenced operations in October 2000. Chiral Quest has only a limited operating history on which you can base an evaluation of its business and prospects. Accordingly, its business prospects must be considered in the light of the risks, uncertainties, expenses and difficulties frequently encountered by companies in their early stages of development, particularly companies in new and rapidly evolving markets, such as the fine chemical, pharmaceutical and biotechnology markets.

### ***Chiral Quest's management anticipates incurring losses for the foreseeable future.***

For the nine months ended September 30, 2002, Chiral Quest had a net loss of \$280,552, and since its inception in October 2000 through September 30, 2002, Chiral Quest has incurred an aggregate net loss of \$1,135,379. As of September 30, 2002, Chiral Quest had total assets of \$456,921. Its management expects operating losses to continue for the foreseeable future and there can be no assurance that it will ever be able to operate profitably.

### ***Following the Merger, Chiral Quest will require additional financing in order to complete the development of its products and services, which may not be available on acceptable terms, or even at all.***

Chiral Quest anticipates that the capital provided by Surg upon the Merger will be adequate to fund its operations at least through 2003. However, changes may occur that would consume available capital resources before that time. Chiral Quest's combined capital requirements will depend on numerous factors, including competing technological and market developments; changes in its existing collaborative relationships; the cost of filing, prosecuting, defending and enforcing patent claims and other intellectual property rights and the outcome of any potentially related litigation or other dispute; the purchase of additional capital equipment;



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acquisition of technologies; and the development and regulatory approval progress of its customers' product candidates into which Chiral Quest's technology will be incorporated.

Additional capital which may be needed by Chiral Quest in the future may not be available on reasonable terms, or at all. If adequate financing is not available, Chiral Quest may be required to terminate or significantly curtail its operations, or enter into arrangements with collaborative partners or others that may require Chiral Quest to relinquish rights to certain of its technologies, or potential markets that it would not otherwise relinquish.

***Potential fluctuations in results of operations; difficulty in predicting results of operations.***

As it develops its business, Chiral Quest expects its revenues and operating results to vary significantly from quarter-to-quarter. As a result, quarter-to-quarter comparisons of Chiral Quest's revenues and operating results may not be meaningful. In addition, due to the fact that it has little or no significant operating history with its new technology, Chiral Quest cannot predict its future revenues or results of operations accurately. Chiral Quest's current and future expense levels are based largely on its planned expenditures and estimates of future revenues. Accordingly, it may be unable to adjust spending in a timely manner to compensate for any unexpected revenue shortfall, and any significant shortfall in revenues relative to its planned expenditures could have an immediate adverse effect on Chiral Quest's business and results of operations.

***Chiral Quest may be unable to develop successful customer relationships.***

Chiral Quest intends to establish relationships with various types of customers and partners, such as pharmaceutical and fine chemical manufacturers. Each of these relationships will involve negotiation of terms and fees. Chiral Quest cannot be certain that it will be able to negotiate profitable relationships or that it can successfully fulfill its obligations under development agreements that will allow it to continue these relationships.

***Chiral Quest's future success is highly dependent on the continued availability of Dr. Xumu Zhang and other key employees and consultants.***

In connection with the continued development of Chiral Quest's products and services, it is substantially dependent upon on the continued service of its existing research personnel, including in particular, Dr. Xumu Zhang. Dr. Zhang, an associate professor at Penn State, acts as Chiral Quest's chief technology officer and provides essential services to Chiral Quest pursuant to a consulting agreement with Chiral Quest (See CERTAIN TRANSACTIONS AND RELATIONSHIPS - Dr. Zhang Consulting Agreement). Dr. Zhang may terminate the consulting agreement upon 60 days' notice. Chiral Quest does not currently maintain any key-man life insurance with respect to Dr. Zhang. Chiral Quest also employs other research scientists who are critical to its success. Although Chiral Quest's employees and consultants have entered into confidentiality agreements, most have not entered into noncompete agreements with Chiral Quest. The loss of one or more of Chiral Quest's research personnel, especially Dr. Zhang, could prevent or delay the ongoing development of its products and services, which would materially and adversely affect its business.

***Chiral Quest's license agreement with Penn State Foundation may be terminated if Chiral Quest does not achieve certain milestones.***

Chiral Quest's business is based on technically complex products and services (See INFORMATION REGARDING CHIRAL QUEST). Chiral Quest does not directly own this technology, but rather has the exclusive, worldwide right to use it pursuant to a license agreement with the Penn State Foundation. Currently, Chiral Quest's commercial success depends entirely on this licensed technology. Pursuant to the license agreement, Chiral Quest is required to use its best efforts to achieve gross revenue (as defined in the license agreement) of at least \$250,000 in 2004, at least \$350,000 in 2005 and at least \$500,000 in 2006. In the event Chiral Quest fails to achieve these milestones, or otherwise materially breaches the license agreement, Penn State Foundation may have the right, but not the obligation, to terminate the license. Unless Chiral

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Quest subsequently develops its own technology independent of the Penn State Foundation, termination of this license would preclude Chiral Quest from implementing its business plan.

***Chiral Quest relies heavily on its relationship with Penn State.***

In addition to the license agreement with the Penn State Foundation, Chiral Quest relies heavily on its relationship with Penn State for its research and development activities and as Chiral Quest's only current supplier of its ligands. Chiral Quest's current agreement with Penn State obligates Chiral Quest to fund four Penn State post-doctorate fellows to produce research quantities of chiral ligands to Chiral Quest. This arrangement expires on October 15, 2003. Chiral Quest has no agreement with Penn State to produce its ligands in commercial quantities and Penn State does not currently have such capabilities. Should the post-doctoral fellows at Penn State fail to produce the chiral ligands in sufficient quantities or cease to produce the ligands altogether, it could materially and adversely affect Chiral Quest's business operations. Even if Chiral Quest could establish additional or replacement supplies of its ligands in a timely fashion, it may not be able to do so on commercially reasonable terms. In order to obtain research quantities of ligands after October 15, 2003, Chiral Quest will have to either enter into a new agreement with Penn State or find another source. There is no guarantee that Chiral Quest will be able to enter into such new agreement or find an alternative source for its ligands on commercially reasonable terms. Any material interruption in the supply of the ligands will have a material adverse effect on Chiral Quest's business.

***Chiral Quest may rely heavily on third parties to formulate and manufacture its products.***

Chiral Quest currently lacks the resources to formulate or manufacture its own products on a commercial scale. Chiral Quest's researchers, who are employed by Penn State, currently only have the ability to develop Chiral Quest's ligands in research quantities. If any of Chiral Quest's customers require its ligands in commercial quantities in the near term, Chiral Quest may have to rely on one or more third-party contractors to manufacture the ligands to satisfy the needs of such customers. Reliance on one or more third-party manufacturers exposes Chiral Quest to certain risks, including the following:

Chiral Quest may be unable to replace manufacturers on commercially reasonable terms or at all because the number of potential manufacturers is limited, and the United States Food and Drug Administration (FDA), or such similar regulatory authorities, may have to approve any replacement contractor;

Third-party manufacturers might be unable to formulate and manufacture Chiral Quest's ligands in the volume and of the quality required to meet customers' clinical and commercial needs;

Chiral Quest's existing and future contract manufacturers may not perform as agreed or may not remain in the contract manufacturing business for the time required to supply Chiral Quest's customers to complete their clinical trials or to successfully produce, store and distribute Chiral Quest products;

Drug manufacturers are subject to ongoing periodic unannounced inspections by the FDA and corresponding state agencies to ensure strict compliance with good manufacturing practice and other government regulations and corresponding foreign standards, which Chiral Quest would be unable to control; and

If any third-party manufacturer makes improvements in the manufacturing process for Chiral Quest's products, Chiral Quest may not own, or may have to share, the intellectual property rights to the innovation.

Each of these risks could delay the clinical trials conducted by Chiral Quest's customers, approvals required by regulatory authorities, and the commercialization of some of Chiral Quest's customers' product candidates. These risks could also result in higher costs to the customer or could deprive Chiral Quest of potential product revenues.

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***Chiral Quest needs to create and grow its scientific, sales and support operations.***

Chiral Quest will need to create and substantially grow its direct and indirect sales operations, both domestically and internationally, in order to create and increase market awareness and sales of its products and services. The sale of Chiral Quest's products and services will require the engagement of sophisticated and highly knowledgeable sales personnel. Similarly, the anticipated complexity of Chiral Quest's products and services and the difficulty of customizing them will require Chiral Quest to hire research and development personnel, and customer service and support personnel, highly trained in chiral chemistry and chemical engineering. Competition among Chiral Quest and others to retain qualified sales personnel, chemists and chemical engineers is intense due to the limited number of available qualified candidates for such positions. Many of Chiral Quest's competitors are in a financial position to offer potential employees of Chiral Quest greater compensation and benefits than those which may be offered by Chiral Quest. Failure to recruit and retain such persons will have a material adverse effect on Chiral Quest's business operations.

***Chiral Quest's future success is dependent on the management of its potential growth.***

The future success of Chiral Quest depends upon its ability to grow its business. Such growth, if it occurs, will require Chiral Quest to establish management and operating systems, hire additional support technical and sales personnel, and establish and maintain its own independent office, research and production facilities. Failure to manage that growth efficiently could have a material adverse affect on Chiral Quest.

***Chiral Quest currently has no capabilities and no experience in manufacturing its products on a commercial scale.***

Chiral Quest does not currently have the experience or ability to directly manufacture or market any chemical or pharmaceutical products in commercial quantities that may be developed under its collaborative arrangements. Rather, Chiral Quest currently intends to rely on third parties to manufacture its ligands, although it may determine in the future to develop its own manufacturing capabilities. In addition, Chiral Quest has not yet developed a cost effective and efficient commercial manufacturing process for its ligands, and may never be able to do so. To the extent Chiral Quest is unable to produce, directly or indirectly, its ligands in quantities required for commercial use, it will not realize any benefits from its technology. Further, in the event Chiral Quest decides to establish a manufacturing facility in the future, Chiral Quest may require substantial additional funds, and will be required to hire and train a significant number of additional personnel, and, in certain circumstances, may need to comply with the extensive FDA good manufacturing practice regulations applicable to such a facility.

**Risks Relating to Chiral Quest's Industry**

***Chiral Quest faces intense competition.***

Chiral Quest competes directly with the in-house research departments of fine chemical, pharmaceutical and biotechnology companies, as well as contract research companies, and research and academic institutions. Many of its competitors have greater financial and other resources than it has. As new companies enter the market and as more advanced technologies become available, Chiral Quest expects to face increased competition. In the future, any one of its competitors may develop technological advances that render obsolete the products or services that Chiral Quest provides or may provide in the future. While Chiral Quest plans to develop new and better technologies, which will give it competitive advantages, its competitors plan to do the same. Chiral Quest may not be able to develop the technologies it needs to successfully compete in the future, and its competitors may be able to develop such technologies before it does. Consequently, Chiral Quest may not be able to successfully compete in the future.

***The fine chemical, pharmaceutical and biotechnology industries involve rapidly changing technologies.***

Rapid technological change and uncertainty due to new and emerging technologies characterize the drug and fine chemical development industries. Chiral Quest may not be able to develop, integrate and market, on a

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timely basis, the new and enhanced products and services necessary to keep pace with competitors. Failure to anticipate or to respond to changing technologies, or significant delays in product development or introduction, could cause its customers to delay or decide against purchases of Chiral Quest's products or services.

***Many of Chiral Quest's customers and potential customers are pharmaceutical and biotechnology companies, and Chiral Quest is subject to risks, uncertainties and trends that affect companies in these industries.***

For the foreseeable future, Chiral Quest will derive a substantial portion of its revenue from pharmaceutical and biotechnology companies. As a result, Chiral Quest will be subject to risks and uncertainties that affect the pharmaceutical and biotechnology industries and possible reduction and delays in research and development expenditures by companies in these industries. Chiral Quest's future revenues may also be adversely affected by mergers and consolidation in the pharmaceutical and biotechnology industries, which will reduce the number of potential customers.

In particular, pharmaceutical and biotechnology companies face significant regulation by governmental entities in the United States and other countries. The nature and the extent to which such regulation may apply to Chiral Quest's customers will vary depending on the nature of any such customers' products. Virtually all pharmaceutical products developed by Chiral Quest's customers will require regulatory approval by governmental agencies prior to commercialization. In particular, human pharmaceutical therapeutic products are subject to rigorous preclinical and clinical testing and other approval procedures by the U.S. Food and Drug Administration and by foreign regulatory authorities. Various federal and, in some cases, state statutes and regulations also govern or influence the manufacturing, safety, labeling, storage, record keeping and marketing of such pharmaceutical products. The process of obtaining these approvals and the subsequent compliance with appropriate federal and foreign statutes and regulations are time consuming, can cause significant delays in the commercialization of a drug, and often require the expenditure of substantial resources. To the extent Chiral Quest's customers experience significant delays in obtaining the necessary regulatory approvals to market their pharmaceutical products, or are unable to obtain such approvals at all, these customers will not purchase from Chiral Quest its proprietary ligands and other services used in the manufacture of the ultimate pharmaceutical product.

***Chiral Quest may be held liable for harm caused by drugs that its customers develop and test.***

Chiral Quest's ligands may be used by its customers to produce drugs that are used by humans. If any of the drugs cause injuries or illness to people, Chiral Quest may be required to incur substantial costs in defending against such claims and may be required to pay damages to those persons. Although it intends to obtain liability insurance and will use commercially reasonable efforts to obtain indemnification from its customers for their use of its products, such protections may not be sufficient to protect Chiral Quest from the cost of such claims. Damages awarded in a product liability action could be substantial and could have a material negative impact on Chiral Quest's financial condition.

***Chiral Quest may be held liable for contamination or other harm caused by hazardous materials that it uses.***

Some of Chiral Quest's research and development processes involve the use of hazardous materials and, therefore, it is subject to federal, state and local regulation governing the use, manufacture, handling, storage and disposal of hazardous materials. Chiral Quest cannot completely eliminate the risk of contamination or injury resulting from hazardous materials and it may incur liability as a result of any contamination or injury. Chiral Quest may also incur expenses relating to compliance with environmental laws. Such expenses or liability could have a significant negative impact on its financial condition.

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**Risks Relating to Chiral Quest's Technology**

***Chiral Quest may not be able to license technologies that it needs to conduct its business.***

In addition to the technologies that it develops, Chiral Quest also relies heavily on technologies that it licenses from other companies or institutions. Chiral Quest may not be able to license technologies that it needs in the future or it may be unable to license such technologies on a commercially reasonable basis. Although its license agreement with the Penn State Foundation provides that Chiral Quest is entitled to use any improvements subsequently made to the technologies it currently licenses, the Penn State Foundation's obligation to license, for no additional consideration, any new technologies subsequently discovered by Dr. Zhang and researchers at Penn State expired on November 8, 2002. If Chiral Quest is unable to license the technologies it needs in the future, or to license or otherwise acquire such technologies on commercially reasonable terms, Chiral Quest could experience increased costs and, therefore, reduced profits, or be unable to engage in certain activities that require those technologies. Accordingly, failure to license the technologies it needs in the future or failure to license or otherwise acquire such technologies on commercially reasonable terms could have a material adverse effect on Chiral Quest's business operations.

***Chiral Quest's success depends on its ability to protect its proprietary technology.***

Chiral Quest's rights to a substantial portion of its technology are as the exclusive licensee to several United States patents and a number of United States and foreign pending patent applications held by the Penn State Foundation including the ligands that comprise Chiral Quest's Toolbox. These patents and patent applications are based primarily upon the work of Dr. Zhang, Chiral Quest's chief technology officer, who is also an associate professor at Penn State. Chiral Quest's success will depend largely on its ability, and the ability of its licensors and licensees, to obtain patents for their technologies and products, if any, resulting from the application of such technologies, defend patents once obtained, and maintain trade secrets.

If Chiral Quest is unable to protect its intellectual property, or incurs significant expense in doing so, its business, operating results and financial condition may be materially adversely affected. Any steps Chiral Quest takes to protect its intellectual property may be inadequate, time consuming and expensive.

Chiral Quest's success and ability to compete are substantially dependent upon its internally developed products and services, which it protects and intends to protect through the use of United States and foreign patents, and to the extent such products and services are not patentable, Chiral Quest will rely on trade secret protection. As with other knowledge-based products, however, Chiral Quest's patent positions rest on complex factual and legal issues that are not entirely resolved and there can be no assurance that the patents utilized by Chiral Quest will adequately protect its proprietary products and services. Although Chiral Quest has taken steps to protect its unpatented trade secrets and know-how, in part through the control of access to such information and through the use of confidentiality agreements with its employees, consultants and certain of its contractors, customers and potential customers, there can be no assurance that these agreements will not be breached, that Chiral Quest would have adequate remedies for any breach, or that Chiral Quest's trade secrets will not otherwise become known or be independently developed or discovered by competitors. Despite Chiral Quest's efforts to protect its proprietary rights, unauthorized parties may attempt to copy or otherwise obtain and use its products or technology. Chiral Quest anticipates that policing unauthorized use of its products will be difficult, and it cannot be certain that the steps it intends to take to prevent misappropriation of its technology, particularly in foreign countries where the laws may not protect its proprietary rights as fully as in the United States, will be successful. Other businesses may also independently develop substantially equivalent information.

***Foreign laws may not afford Chiral Quest sufficient protection for its intellectual property and, in certain cases, Chiral Quest may not seek patent protection outside the United States.***

Chiral Quest believes that its success will depend, in part, upon its ability to obtain international protection for its intellectual property. Chiral Quest has existing foreign customers and believes it will have access to large markets overseas. However, the laws of some foreign countries may not be as comprehensive as

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those of the U.S. and may not be sufficient to protect Chiral Quest's proprietary rights abroad. In addition, in certain cases, Chiral Quest may decide not to pursue patent protection outside the United States, because of cost and confidentiality concerns. Accordingly, Chiral Quest's international competitors could obtain foreign patent protection for, and market overseas, technology for which Chiral Quest is seeking U.S. patent protection, though such competitors' patent protection generally requires such competitors to make their patent filings prior to information on Chiral Quest's relevant inventions becoming sufficiently available under local law as to block the availability of such competitors' patent protection.

***Chiral Quest's technology may infringe on the proprietary rights of others.***

Chiral Quest anticipates that other patents it licenses or may license in the future will be increasingly subject to infringement claims due to the rapid development of chiral chemistry and competitors in its industry. In fact, one potential competitor, Solvias, AG, based in Basel, Switzerland, has recently notified Chiral Quest of its claim that one of the patented ligands Chiral Quest licenses from the Penn State Foundation infringes on a patent that Solvias licenses from BASF Group, AG. See INFORMATION REGARDING CHIRAL QUEST Legal Proceedings. Some of Chiral Quest's other competitors or potential competitors may have filed or intend to file patent applications that may make claims that conflict with Chiral Quest's own patent claims. Chiral Quest cannot be certain that these competitors or other third parties will not assert infringement claims against Chiral Quest with respect to its products and technology. Any infringement claim, including Solvias' claim, regardless of its merit, could be time-consuming and expensive to defend. Such claims may also require Chiral Quest to enter into royalty or licensing agreements in order to continue using some of its technology. In the event Chiral Quest could not afford to defend itself against an infringement claim or is not able to enter into a license or royalty agreement on commercially favorable terms, or at all, it may be required to abandon the technology that is subject to such claims.

**Proposal No. 1**

**AMENDMENT TO ARTICLES OF INCORPORATION TO  
INCREASE AUTHORIZED SHARES**

**General**

The Board of Directors is proposing that the Articles of Incorporation of Surg be amended to increase the authorized \$0.01 per share par value capital stock of Surg from 5,000,000 shares to 50,000,000 shares.

**Specific Language of Amendment to Increase Capitalization**

If approved by the shareholders, the existing Article III of Surg's Articles of Incorporation would be amended in its entirety to read as follows:

**ARTICLE III.**

**AUTHORIZED SHARES**

The aggregate number of shares that this Corporation has authority to issue is fifty million shares having a par value of \$0.01 per share. Unless otherwise designated, all shares issued shall be designated as common shares. Each holder of common shares shall be entitled to one vote for each common share standing in his name on the books of the Corporation. The Board of Directors is authorized to adopt, by an affirmative vote of a majority of the directors present at a duly called meeting, a resolution or resolutions providing for the establishment of a class or series of authorized shares of the Corporation, setting forth the designation of and number of shares constituting the class or series, and fixing the relative rights and preferences of the class or series. The Board of Directors may grant preemptive rights with respect to some or all of the shares not designated common shares.

The amendment to Article III of the Articles of Incorporation involves only a change to the number of authorized shares from 5,000,000 shares to 50,000,000 shares. The Board of Directors will continue to be able

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to designate different classes or series of shares of Surg's capital stock, having rights and preferences superior to those held by common stockholders, without obtaining the approval of Surg's shareholders.

### **Purpose and Effect of the Amendment to Increase Capitalization**

The increase in Surg's authorized shares from 5,000,000 to 50,000,000 shares, is being proposed in part to allow Surg to have sufficient authorized shares to complete the Merger of Chiral Quest into Surg's wholly owned subsidiary, CQ Acquisition, Inc. There are currently 4,348,720 of Surg's common stock outstanding. The Merger will require issuance of approximately 8,652,300 additional shares of Surg common stock, and the reservation of approximately 1,593,300 additional shares to accommodate the exercise of stock options and warrants which will be outstanding following the Merger.

The proposed increase in authorized shares is significantly more than is needed to complete the Merger. The proposed increase of authorized capital stock to 50,000,000 shares was negotiated between Surg and Chiral Quest, and is specified in the Merger Agreement. This increase will provide the Board of Directors of Surg with significant latitude to issue more shares of capital stock, without shareholder approval, to satisfy future capital needs or to enter into another strategic transaction in the future whether or not the Merger is effected. Such issuance would have the effect of diluting the voting interests of the shareholders of Surg. While there is no specific plan to issue new shares in addition to those to be issued in the Merger, additional new shares could be issued to satisfy Chiral Quest's additional financing requirements (See SUMMARY Risk Factors Risks Related to Chiral Quest's Operations ).

The proposed increase in the number of authorized shares of capital stock, and the flexibility in structuring the terms and conditions of those shares may be viewed as giving the Board of Directors the ability to make a takeover attempt more difficult. Management may use the shares to counter an offer by a bidder wanting to obtain control of Surg. For example, management could issue preferred shares with rights and preferences superior to common stock, such as superior voting rights, to persons friendly to management. Management has no current intention to issue preferred shares for that purpose.

### **Recommendation of Board of Directors**

**MANAGEMENT RECOMMENDS A VOTE IN FAVOR OF THE PROPOSED AMENDMENT TO SURG'S ARTICLES OF INCORPORATION, AND THE PROXIES WILL BE VOTED IN FAVOR OF SUCH AMENDMENT UNLESS OTHERWISE DIRECTED.**

### **Proposal No. 2**

#### **AMENDMENT TO ARTICLES OF INCORPORATION TO CHANGE NAME**

### **General**

The Board of Directors is proposing that the Articles of Incorporation of Surg be amended to change the corporation's name from Surg II, Inc. to Chiral Quest, Inc.

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**Specific Language of Amendment to Change Name**

If approved by the shareholders, and if the Merger is consummated, the existing Article I of Surg's Articles of Incorporation would be amended in its entirety to read as follows:

ARTICLE I

NAME

The name of this Corporation is Chiral Quest, Inc.

**Reasons for Amendment**

The Merger Agreement requires that the proposed name change be presented to the Surg shareholders for adoption. The name change is intended to more closely reflect the new business of Surg following the Merger. Failure to adopt the proposal on the name change will not have any effect on the Merger. If the Merger is not effected, the name of Surg will not be changed.

**Recommendation of the Board of Directors**

**MANAGEMENT RECOMMENDS A VOTE IN FAVOR OF THE PROPOSED AMENDMENT TO SURG'S ARTICLES OF INCORPORATION, AND THE PROXIES WILL BE VOTED IN FAVOR OF SUCH AMENDMENT UNLESS OTHERWISE DIRECTED.**

**THE MERGER**

**Background of Surg**

Until January 2002, Surg was engaged in the business of designing, developing, manufacturing and marketing specialty medical and surgical wound drainage products under the name Surgidyne, Inc. In January 2002, Surg sold substantially all of its assets to Sterion Incorporated and changed its name to Surg II, Inc.

In May 2002, Entrx Corporation acquired 3,625,000 shares of Surg's common stock (145,000,000 shares of its previously authorized no par value common stock) for \$3,000,000. This represented approximately 90% of Surg's then outstanding shares of common stock, and gave Entrx Corporation effective control of Surg. In September 2002, Entrx Corporation acquired an additional 357,142 shares of Surg (14,285,680 shares of its previously authorized no par value common stock) for \$300,000.

In October 2002, Surg effected a one for 40 share reverse stock split. As a result, the total outstanding no par value shares of Surg became 4,348,720 shares of \$0.01 par value common stock, with 3,982,142 of those shares being held by Entrx Corporation. Shortly thereafter, Entrx Corporation distributed to its shareholders one Surg share for each two shares of Entrx Corporation common stock they held as of October 11, 2002. This resulted in the distribution of 3,791,576 Surg shares to Entrx Corporation's shareholders. Surg and Entrx Corporation effected the reverse stock split and the dividend in furtherance of the plan of Entrx Corporation to use Surg to attempt to provide value for its shareholders in a business which was different than that being conducted by Entrx Corporation.

**Background of Merger**

Wayne Mills, the President of Entrx Corporation since February 14, 2002, was introduced to Dr. Lindsay A. Rosenwald, the president and owner of Paramount Capital Investments LLC, by Samuel Levinson in the spring of 2000, with respect to a transaction unrelated to the Merger. Mr. Levinson is the president and principal owner of Key West Associates, LLC. Paramount Capital, Inc. was, and continues to be, active in providing financing and management for early stage biotechnology related companies.



## Edgar Filing: SURG II INC - Form DEF 14A

Mr. Mills and Kenneth Brimmer, a director of Entrx Corporation, met with Dr. Rosenwald in early March 2002 to discuss the possible involvement of Entrx Corporation with a biotechnology related company,

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consistent with Entrx Corporation's strategy to utilize its capital to develop its business and provide added value to its shareholders.

In early April 2002, Thomas D. Krosschell, a registered representative of Equity Securities Trading, a Minneapolis broker/ dealer, contacted Mr. Mills and informed him of the availability of Surg, a publicly held corporation with limited assets and liabilities, and no business operations, which might serve as a vehicle which would fit with Entrx Corporation's strategy. The management of Entrx Corporation then entered into negotiations with the management of Surg for acquisition of a controlling interest in Surg.

At the end of April, while negotiations were continuing with the management of Surg, Dr. Rosenwald contacted Mr. Mills and stated that Dr. Rosenwald was attempting to acquire a controlling interest in a biotechnology related company, Chiral Quest, partially owned by the Penn State Foundation. Dr. Rosenwald then inquired as to whether Entrx Corporation might have an interest in providing funding to Chiral Quest through Surg. Over approximately the next two months, Entrx Corporation engaged various persons and organizations to investigate the technology, business and principals of Chiral Quest, and its shareholders.

On May 29, 2002, Entrx Corporation acquired, from Surg, approximately 90% of Surg's outstanding common stock for \$3,000,000, and increased its ownership to 91.6% for an additional \$300,000 in September 2002. After acquiring a controlling interest in Surg, Kenneth W. Brimmer, and Brian D. Niebur, the chief financial officer of Entrx Corporation, became the sole directors and officers of Surg. On July 12, 2002, Dr. Rosenwald acquired a controlling interest in Chiral Quest.

On July 30, 2002, Surg and Chiral Quest executed a non-binding letter of intent to negotiate the terms of an agreement whereby Chiral Quest would be combined with Surg. While the letter of intent was not binding, it did contemplate that the owners of Chiral Quest would own two-thirds of the outstanding shares of Surg common stock after the combination. The letter of intent contemplated that Surg would have \$3,000,000 in cash and only limited liabilities at the time of the combination. The letter of intent provided that each party would be allowed to investigate the business and records of the other party, and that they would both negotiate and use their reasonable best efforts to arrive at a mutually acceptable definitive agreement for the proposed transaction. Surg did not engage an independent third party to provide it an opinion as to the fairness of the proposed Merger to the shareholders of Surg.

In August 2002, Surg and Entrx Corporation entered into separate agreements with Chiral Quest, which provided that each party would maintain the confidentiality of information exchanged between the parties and provided further that the parties would not solicit or encourage any strategic transaction with a third party for a 60 day period.

While negotiations proceeded, the Board of Directors of Surg took action to effect a one for 40 reverse split of its common stock, and to simultaneously amend Surg's Articles of Incorporation to reduce its authorized capital stock from 200,000,000 shares of no par value common stock to 5,000,000 of \$0.01 par value common stock. The recapitalization and reverse stock split was effected as to shareholders of record on October 4, 2002.

On November 12, 2002, Surg and Chiral Quest executed the Merger Agreement. The following is a summary of the material terms of the Merger Agreement, a copy of which is included in this Proxy Statement as Exhibit A. The material terms of the Merger Agreement are summarized below, but such summary is not a complete description of the terms and conditions thereof and is qualified in its entirety by reference to the Merger Agreement. You are urged to review the Merger Agreement carefully.

### **General Terms of the Merger**

Under the Merger Agreement, Chiral Quest is to merge with and into CQ Acquisition, Inc., a wholly owned subsidiary of Surg formed for the purpose of the Merger, with CQ Acquisition remaining as the surviving entity following the Merger and a wholly owned subsidiary of Surg. The Merger will be effective when Articles of Merger are filed with the Minnesota Secretary of State and a Certificate of Merger is filed with the Pennsylvania Secretary of the Commonwealth, or at a later time specified in such Articles of Merger

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and Certificate of Merger. The latter of the specified time or the time of these filings is referred to as the Effective Time.

As a result of the Merger, Surg will issue approximately 8,652,300 shares of its \$0.01 par value common stock to the members of Chiral Quest in exchange for their units of membership in Chiral Quest. This will result in the Chiral Quest members, in the aggregate, owning approximately two-thirds of the Surg shares then outstanding. In addition, Surg is required to reserve approximately 1,593,300 shares to accommodate the exercise of options and warrants which will be outstanding at the Effective Time. Since Surg currently has authority to issue only 5,000,000 shares, consummation of the Merger will require approval of an amendment to Surg's Articles of Incorporation by the shareholders of Surg to increase the authorized capital stock of Surg as proposed under Proposal 1.

The exact number of Surg shares to be issued to Chiral Quest members will be determined by an exchange ratio based on the number of Surg shares and Chiral Quest membership units outstanding immediately prior to the Effective Time. It is not anticipated that Surg or Chiral Quest will issue any shares or units prior to the Effective Time, and the ratio is estimated to be approximately 0.7524 Surg shares for each Chiral Quest membership unit. No fractional Surg shares will be issued to Chiral Quest members in connection with the Merger. If the exchange ratio results in a fractional share being due a Chiral Quest member, the actual number of shares issued will be rounded up or down to the closest whole share.

Chiral Quest has granted options to certain of its key employees to acquire an aggregate of 1,210,000 Chiral Quest membership units. Upon the Effective Time, these will be converted into options to purchase Surg shares, with the number of shares and the purchase price being modified to reflect the exchange ratio, estimated to be 910,404 shares at an exercise price of approximately \$1.50 per share.

The Merger Agreement provides for a change in the membership of the Board of Directors of Surg. This will be accomplished at the Effective Time when Brian D. Niebur will resign from the Board of Directors, and Kenneth W. Brimmer, the remaining member of the Board of Directors will appoint the persons set forth under Proposed Directors as members of the Surg Board of Directors. These newly appointed members, as well as Mr. Brimmer, will continue to serve on the Board of Directors of Surg until the next annual meeting of the shareholders of Surg expected to be held in June, 2003.

The Merger Agreement also provides that, in addition to increasing the number of authorized shares of capital stock of Surg, Surg will propose to amend its Articles of Incorporation to change the name of Surg to Chiral Quest, Inc., as proposed under Proposal 2. If the Merger is not consummated, the amendment to Surg's Articles of Incorporation changing its name to Chiral Quest, Inc. will not take effect. The failure of Surg's shareholders to approve the name change will not affect Chiral Quest's obligation to complete the Merger.

## **Representations and Warranties**

The Merger Agreement contains various customary representations and warranties made by Surg and CQ Acquisitions, Inc., and by Chiral Quest, relating to their respective capital structures, operations, litigation, financial conditions, properties, contractual arrangements, employees, compliance with certain laws and other matters, and their respective authority to enter into the Merger Agreement and to consummate the Merger. None of the representations made by Surg, CQ Acquisitions, Inc. or Chiral Quest in the Merger Agreement will survive the Merger.

## **Other Agreements**

Surg, CQ Acquisition, Inc. and Chiral Quest agreed that from the date of the Merger Agreement until Effective Time, each will conduct its respective operations in accordance with their ordinary course of business consistent with past practice. In addition, each will refrain from altering its capitalization, incurring additional debt or material liability, making any out of the ordinary capital expenditures or loans, engaging in any merger or reorganization, or selling or encumbering any of its material assets. In addition, Chiral Quest has agreed to

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use its reasonable best efforts to preserve intact its business organization, keep its officers and employees and maintain existing business relationships.

Surg, CQ Acquisition and Chiral Quest agreed that, upon the Effective Time, Surg will issue a warrant to Key West Associates, LLC ( Key West ) permitting the purchase of up to 550,000 shares of Surg stock at a price of \$1.25 per share during the five years following the Effective Time. Such warrant or warrants were agreed to be issued as compensation to Key West for identifying to Surg the opportunity to acquire Chiral Quest.

The Merger Agreement provides that Surg is to have cash assets of \$3,000,000 as of the Effective Time and no liabilities except to the extent the fees of attorneys, accountants and others engaged by Surg in connection with the Merger exceed \$200,000. Such fees are not expected to exceed that amount. Surg has agreed to pay to Entrx Corporation a management fee equal to an amount by which the cash assets of Surg, after deduction of all liabilities, exceed \$3,000,000 as of the Effective Time. Accordingly, it is expected that Surg will have cash assets of \$3,000,000 after deduction for all liabilities when the Merger is effected.

### **CERTAIN INCOME TAX CONSEQUENCES**

Surg and Chiral Quest expect that the Merger will be treated as tax-free reorganization within the meaning of the Internal Revenue Code, and that no income, gain or loss will be recognized by either Surg, Chiral Quest or their respective shareholders or members as a result of the Merger. The Merger Agreement conditions completion of the Merger on the provision by counsel to Chiral Quest of an opinion to the effect that the Merger qualifies as a reorganization under Section 368(a) of the Internal Revenue Code and that no gain or loss will be recognized by such parties and their shareholders or members.

Such opinion is not binding on the Internal Revenue Service and there can be no assurance that the Internal Revenue Service will not take a position contrary to that reflected in the tax opinion or that the positions reflected in the opinion will be upheld by the courts if challenged by the Internal Revenue Service. The forgoing discussion of the federal income tax consequences are for general information only. Surg shareholders are urged to consult with their own tax advisor to determine particular tax consequences which may result should the Merger be effected.

### **INFORMATION REGARDING SURG**

#### **General**

Prior to January 22, 2002, Surg (then named Surgidyne, Inc. ) was in the business of developing, manufacturing and marketing specialty medical and surgical wound drainage products. Surg sold substantially all of its assets to Sterion Incorporated on January 22, 2002, and has not conducted any business operations since.

On May 30, 2002, Entrx Corporation (then called Metalclad Corporation ) acquired from Surg, 3,625,000 shares of Surg s previously unissued common stock for \$3,000,000 in cash. As a result, Entrx Corporation owned approximately 90.6% of the outstanding common stock of Surg.

Between May 20 and May 30, 2002, all members of the board of directors of Surg, and all officers of Surg, resigned their respective positions with Surg, and on May 30, 2002, Kenneth W. Brimmer was elected as a director and chief executive officer of Surg, and Brian D. Niebur was elected as a director and the chief financial officer of Surg. Mr. Brimmer was and continues to be a member and chairman of the board of Entrx Corporation, and Mr. Niebur was and continues to be the chief financial officer of Entrx Corporation.

On September 25, 2002, Entrx Corporation purchased from Surg an additional 357,142 shares of Surg s common stock, increasing its ownership to 3,982,142 shares, or approximately 91.6% of the outstanding shares of Surg s common stock.

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On October 4, 2002, the Articles of Incorporation of Surg were amended to reduce its authorized capital from 200,000,000 shares of no par value to 5,000,000 shares having a par value of \$0.01 per share. At the same time, Surg effected a reverse stock split, whereby its shareholders received one share of the \$0.01 par value common stock in exchange for 40 shares of the previously authorized no par value common stock. Unless otherwise noted, or designated as no par value common stock, all references in this Proxy Statement to the common stock or shares of Surg are adjusted to take the amendment and reverse stock split into consideration.

As a result of the reverse stock split and the issuance of shares to Entrx Corporation, Surg had 4,348,720 shares outstanding as of September 30, 2002. Of these shares, approximately 91.6% were held by Entrx Corporation. In October 2002, Entrx Corporation distributed all but 190,566 of its Surg shares to Entrx Corporation shareholders.

As of September 30, 2002, Surg had assets of \$3,212,181, including cash of \$3,198,681 and liabilities of \$40,573, for a stockholders equity of \$3,171,608.

**Market for Surg Common Stock**

Until October 4, 2002, trading in Surg's common stock was effected and reported on the Over-the-Counter Bulletin Board under the symbol SUGR. After October 4, 2002, the symbol was changed to SURG. The following table sets forth the high and low bid prices of Surg's common stock quoted during each quarter for the years ending December 31, 2001, and December 31, 2002, as obtained from information published by NASDAQ. Those quotations reflect inter-dealer prices, without retail mark-up, markdown or commission, and may not represent actual transactions. Those quotations are also adjusted to reflect the one for 40 reverse stock split of Surg's common stock effected on October 4, 2002.

	Bid Price Range	
	High	Low
Year 2001		
First Quarter	7.48	4.00
Second Quarter	7.48	1.60
Third Quarter	4.00	1.60
Fourth Quarter	3.60	1.60
Year 2002		
First Quarter	8.80	1.20
Second Quarter	8.80	2.80
Third Quarter	4.80	2.00
Fourth Quarter	4.00	0.65

On December 31, 2002, the last trade of Surg's common stock on the OTC Bulletin Board was at \$1.85 per share.

Trading of Surg's common stock has been sporadic. During the fourth quarter of 2002, transactions were reported for only 38 days. Since November 12, 2002, following the announcement of the signing of the Merger Agreement, through December 31, 2002, less than 200,000 shares traded. The bid and asked prices on January 3, 2003, were \$1.83 and \$1.89, respectively.

As of December 31, 2002, Surg had approximately 1,600 shareholders of record. It is believed that approximately 3,500 additional shareholders own shares of Surg common stock in street name.

**Incorporation by Reference**

We are allowed to incorporate by reference certain information which we file with the Securities and Exchange Commission (the SEC). This means that we can provide important information regarding Surg II, Inc. to you by referring to documents previously filed with the SEC. Any new information that we may provide in any filing with the SEC will automatically update and supersede the information contained in



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this Proxy Statement. All information filed or to be filed with the SEC is considered a part of this Proxy Statement.

We incorporate by reference the documents listed below, and any additional filing we may make with the SEC, under Sections 13 and 14 of the Securities Exchange Act of 1934.

Form 10-KSB annual report for the period ended December 31, 2001, filed on April 15, 2002.

Form 10-QSB quarterly reports for the quarters ended March 31, 2002, June 30, 2002 and September 30, 2002, filed on May 17, 2002, August 13, 2002 and November 7, 2002, respectively.

Form 10-QSB/ A, amending the quarterly reports for the periods ended March 31, 2002 and September 30, 2002, filed on May 21, 2002 and November 21, 2002, respectively.

Form 8-K current reports filed on February 2, 2002, June 6, 2002, July 16, 2002, November 5, 2002 and November 27, 2002.

We will provide you with a copy of any document incorporated by reference in this Proxy Statement if you request it by writing us at Surg II, Inc., 800 Nicollet Mall, Suite 2690, Minneapolis, MN 55402, Attention: Brian D. Niebur, or by calling us at (612) 333-0614. Upon such request, the document will be sent to you by first class mail within one business day of our receipt of the request.

You may also read and copy any materials we file with SEC at its Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549, on the internet website maintained by the SEC at <http://www.sec.gov> which contains reports, proxy and information statements of issuers which file electronically with the SEC. You may also obtain information on the operation of the SEC's Public Reference Room by calling 1-800-SEC-0330.

**INFORMATION REGARDING CHIRAL QUEST**

**Overview**

Chiral Quest, a Pennsylvania limited liability company organized in July 2000, is a research and development company involved in the commercial development of asymmetrical catalysis technology described below. Chiral Quest's technology was developed by Dr. Xumu Zhang, an associate professor at Penn State and Chiral Quest's chief technology officer, and is owned by the Penn State Foundation, the technology development arm of Penn State. In October 2000, Chiral Quest obtained from the Penn State Foundation an exclusive, worldwide license to certain patents based on Dr. Zhang's research relating to asymmetrical catalysis. The license gives Chiral Quest the right to, among other things, sub-license technology rights on a non-exclusive basis to customers, or sell molecule groups, or ligands, to pharmaceutical and fine chemical company customers for both research and commercial applications.

Chiral Quest initially plans to provide pharmaceutical and fine chemical manufacturers, and other prospective customers with broad access to its technologies for testing purposes at a low upfront cost, coupled with the opportunity to gain exclusive access to such technologies for specific applications for fees, royalties and certain manufacturing and development rights. Chiral Quest also plans to eventually provide specialized services to fine chemical, pharmaceutical and biotechnology companies relating to the development of chiral manufacturing processes for their products.

**Chiral Chemistry**

Over 50% of the top-selling 500 pharmaceutical drugs on the market are comprised of chiral molecules, including drugs used to treat anxiety, depression, indigestion, heartburn, cancer, arthritis, AIDS and allergies. In 2001, sales of chiral drugs were over \$147 billion, according to a recent report published in *The Economist* which quoted a recent survey conducted by Technology Catalysts International, a Virginia based consulting firm. The majority of new drug candidates under development by pharmaceutical companies consist of chiral chemicals. A molecule is considered chiral because it exists in two enantiomers or mirror-like images

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analogous to one's left and right hands. Most drugs interact with biological targets in a specific manner, requiring the drug to be of a specific shape and orientation. Contaminating "wrong-handed" enantiomers of the active drug molecule will not interact with the biological drug target, or worse, interact with a different biological molecule in an unintended and often toxic manner. Thalidomide, the morning sickness drug used by pregnant women in the 1960's is a notorious example of an impure chiral drug. One enantiomer of the drug's chiral molecules treated morning sickness, while its undesired counterpart caused birth defects.

Pharmaceutical companies are typically forced, at great expense, to purify the active mirror-image form of the drug molecule away from its contaminating or inactive counterpart. Chiral Quest has the rights to certain chemical compounds, known as ligands, which, either alone or with the introduction of a metal, serves as catalysts in facilitating the production of chiral molecules in such a manner that there is a preferential manufacture of the desired molecule versus the unwanted mirror-image molecule. To put it another way, if current common and traditional pharmaceutical manufacturing practices were analogous to the manufacture of human hands, then instead of separating a pile of right hands from a pile of left hands, Chiral Quest's technology allows for the manufacture of a vast majority of right hands often at a fraction of the cost of producing the same amount of right hands by traditional methods. Chiral Quest's ligands may also find use in producing fine chemicals other than pharmaceuticals. Chiral molecules are used in flavors, fragrances, agrochemicals, food and feed additives (including vitamins) and nutraceuticals.

**Chiral Quest's Products and Services**

Dr. Zhang, through Penn State, has developed groups of ligands, that can serve as catalysts to facilitate the production of the desired enantiomer of a chiral molecule. The production of the desired enantiomer begins with a precursor molecule, referred to as a chemical substrate, that during typical manufacturing processes has the potential to become either left or right handed. In one common application of the manufacturing process, hydrogen is added during the formation of the desired molecule. Chiral Quest has the rights to a series of ligands that control this reaction, through a process known as asymmetric hydrogenation. In this process, a metal, such as rhodium, is added to Chiral Quest's proprietary ligands to complete the catalysis, causing the substrate to react with the hydrogen in a directed manner. This reaction often serves as a critical step in the manufacture of a desired chiral drug product or active pharmaceutical intermediate. Although each catalytic process must be optimized for a specific resulting drug, the ligands used in the process are reusable. After a specific molecular reaction is complete, the catalyst is removed, and this same catalyst may then be used again, potentially up to several thousand times.

All of Chiral Quest's products are currently produced or provided using the laboratory facilities of Penn State and the services of four Penn State post-doctoral research fellows who are funded by Chiral Quest, and work under Dr. Zhang's supervision. Chiral Quest also leases from Penn State a small amount of office and laboratory space at a separate, off-campus location in State College, Pennsylvania. Chiral Quest employs two full time chemists at this location whose efforts are primarily devoted to providing Chiral Quest's screening services.

*Chiral Toolbox.* Chiral Quest currently sells six ligands representative of the proprietary families of chiral ligands to which it has exclusive rights. These ligands are sold in research quantities packaged in convenient Chiral Toolbox kits for exclusive use in research applications. These innovative, patent protected ligands are screened by customers for applications in the manufacture of their chiral molecules. Customers use this screening process to determine which ligands may prove optimal for their chiral manufacturing need. The sale of research quantities of ligands allows customers to gain initial access to Chiral Quest technology and to independently validate the advantages provided by that technology.

*Screening Services.* Chiral Quest also provides focused screening of customer supplied target compounds using Chiral Quest's proprietary ligands. In addition to the select ligands included in the Chiral Toolbox, Chiral Quest has several families of chiral ligands that are used to screen target compounds. Chiral Quest identifies and prepares individual ligands optimized for particular customer needs.

*Process Chemistry Development.* Chiral Quest intends to work with its customers to help optimize the conditions under which Chiral Quest's ligands are used. This may involve the development of novel



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manufacturing processes, for which Chiral Quest will derive additional compensation. In certain circumstances, this process development may result in royalties on eventual commercial sales of the products manufactured using these processes. Chiral Quest may also structure its customer agreements to assure the use of Chiral Quest ligands within the manufacturing process, thereby requiring its customers to buy the ligands from Chiral Quest in commercial quantities in order for the customer to successfully manufacture its compound.

### **Strategy**

Chiral Quest's business strategy is focused on exploiting Dr. Zhang's technology by:

Focusing Dr. Zhang and his research group on designing and discovering additional commercially useful ligands and manufacturing processes;

Providing screening services necessary to test the selectivity and activity of a broad portfolio of proprietary technologies for customer substrates;

Granting access to a selection of Chiral Quest's ligands through non-exclusive licenses for research and development purposes;

Granting compound-specific exclusive rights to customers whose businesses require commercial use of one or more of Chiral Quest's ligands;

Developing proprietary process methods for producing chirally pure pharmaceutical active ingredients, intermediates and building blocks in exchange for fees, milestone payments and royalties; and

Assisting customers in the development of chiral drugs, the development of which has been halted due to manufacturing inefficiencies, which are amenable to rescue through Chiral Quest's technology.

### **Sales and Marketing**

Although still principally in the development stage, Chiral Quest sells its products and services directly through its own employees. As of November 30, 2002, Chiral Quest had three employees and two consultants focused on research and development, administration, and sales and marketing. Initial marketing efforts have been focused on leveraging Dr. Zhang's reputation in the scientific community to initiate relationships with chemical, biotechnology and pharmaceutical companies. Chiral Quest intends to hire additional marketing personnel in the near future.

### **Intellectual Property and Proprietary Rights**

Chiral Quest has an exclusive, worldwide license from the Penn State Foundation to certain chiral technologies developed by Dr. Zhang. The license agreement has been amended on four occasions, three of which provide Chiral Quest with additional rights, including the rights to new patent applications. The Penn State Foundation license agreement grants Chiral Quest rights to any conversions, re-issues, extensions, divisional applications, continuations, continuations in part, and any patents issuing thereon, and any improvements to the licensed patents. Under the license agreement, the Penn State Foundation received an equity stake in Chiral Quest as partial consideration for the license. The license agreement also obligates Chiral Quest to reimburse the Penn State Foundation for its past patent expenses relating to the patents licensed from the Penn State Foundation.

Pursuant to a recent fourth amendment to the Penn State Foundation license agreement, Chiral Quest must use its best efforts to achieve annual gross revenue of \$250,000 in calendar year 2004, \$350,000 in calendar year 2005, and \$500,000 in calendar year 2006. Should Chiral Quest fail to obtain these milestones, the Penn State Foundation has the right, but not the obligation, to terminate the license agreement on the grounds that Chiral Quest failed to use its best efforts to achieve those milestones.

Additionally, in accordance with the license agreement, the Penn State Foundation's obligation to license to Chiral Quest, at no additional cost, any new technology subsequently discovered by Dr. Zhang and the

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other researchers at Penn State expired on November 8, 2002. Accordingly, if Dr. Zhang develops a new invention that does not constitute an improvement on the existing patent rights, then Chiral Quest will have to license the right to such invention from the Penn State Foundation. Since the Penn State Foundation has no obligation to license any new technology to Chiral Quest, or to negotiate with Chiral Quest for such purpose, there can be no assurance that the Penn State Foundation will license any new technology to Chiral Quest, or that Chiral Quest can obtain such new technology on commercially reasonable terms. Failure by Chiral Quest to obtain the right to Dr. Zhang's new inventions may, in the long run, have a material adverse effect on the Company's business.

To date, Chiral Quest has filed 10 United States patent applications covering many classes of ligands. The U.S. Patent and Trademark Office has issued two patents in connection with these applications (U.S. Pat. Nos. 6,380,392 and 6,337,406). In addition, the Patent and Trademark Office has issued notices of allowance on three other applications for which Chiral Quest anticipates patents being issued sometime in 2003. The remaining five patent applications are still pending.

## **Competition**

Competition in the traditional area of manufacture of chiral molecules comes from a few distinct sources, including Chiral Technologies Inc., Exton, Pennsylvania, ChromTech Ltd., Cheshire, UK, NovaSep, Inc., Boothwyn, Pennsylvania, and Advance Separation Technologies Inc. (Astec), Whippany, New Jersey. Traditional methods of manufacturing chiral molecules involve the production of a mixture of both chiral forms of molecules of interest, followed by a process which separates the desired enantiomer from the undesired enantiomer. This methodology, though still commonly used, is extremely cost-ineffective, as it results in the loss of greater than 50 percent of the intermediate product at each chiral purification step. Chiral Quest's competitive advantage over companies using traditional methods of separation is that its technology drives the preferential manufacture of chiral enantiomers of interest, which can result in 95 to 99 percent yields. This can result in significant cost savings in the manufacturing process, particularly for chiral molecules that may require several chiral separation steps by traditional methods.

In the area of chemical catalysts for chiral drug manufacture, Chiral Quest competes with pharmaceutical and fine chemical companies, including its current and potential customers and collaborators, academic and research institutions. Some of these companies include the Dow Chemical Company, Midland, Michigan, Degussa AG, Dusseldorf, Germany, Lonza Group Ltd., Basel, Switzerland, Rhodia ChiRex Inc., Boston, Massachusetts, and Solvias AG, Basel, Switzerland. Many of these companies are developing or marketing technologies and services similar to the ones developed or offered by Chiral Quest. Chiral Quest anticipates continued competition from other manufacturers of chiral catalysts in the future.

Some of Chiral Quest's competitors, such as Codexis, a wholly owned subsidiary of Maxygen, or Diversa Corporation, attempt to genetically modify biological enzymes for the purpose of serving as biological catalysts for asymmetric chiral manufacturing. While this approach works in certain circumstances, it is extremely time-consuming to develop for each individual manufacturing process. Chiral Quest's technology has the competitive advantage of being more broadly applicable to a number of common asymmetric transformations.

## **Employees and Consultants**

Chiral Quest currently employs three people: a president and chief executive officer, Dr. Alan D. Roth, and two full time chemists. Chiral Quest also engages two persons as consultants, including Dr. Zhang, who serves as its chief technology officer, and a consultant overseeing Chiral Quest's daily operations. Additionally, Chiral Quest funds four post-doctoral fellows, under the supervision of Dr. Zhang, pursuant to an agreement with Penn State. Seven of the nine persons providing services to Chiral Quest, either as employees or consultants, hold PhD degrees. As Chiral Quest develops its technology and business, it anticipates the need to hire additional employees, especially employees with expertise in the areas of chemistry, sales and marketing.

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### **Facilities**

Chiral Quest's headquarters are located at 1981 Pine Hall Drive in State College, Pennsylvania. Though not on the university campus, this 889 square foot facility is leased from the Penn State Foundation for approximately \$15,000 per year, and includes both office and laboratory space. Chiral Quest's management believes that its facilities are adequate for its current needs, but anticipates the leasing of additional lab facilities if Chiral Quest's business grows as anticipated. Additionally, pursuant to an agreement with Penn State four of Dr. Zhang's post-doctoral fellows conduct research and produce research quantities of ligands for Chiral Quest using the laboratories of Penn State. That agreement terminates on October 15, 2003. In consideration for these services and the use of the laboratory facilities, Chiral Quest reimburses Penn State for its expenses incurred in furnishing laboratory facilities, research personnel and supplies on a monthly basis.

### **Legal Proceedings**

Chiral Quest is not a party to any material legal proceedings.

In July 2002, however, Chiral Quest received a notice from Solvias AG, a company based in Basel, Switzerland, which claimed that a United States patent issued to BASF Group, AG and licensed to Solvias covers Chiral Quest's use of one of the patented ligands that it licenses from the Penn State Foundation, known as Me-KetalPhos. Solvias also indicated that it intended to begin marketing the BASF patent for commercial use. Chiral Quest responded to Solvias' notice by disputing the claim that BASF's patent has priority over the Me-KetalPhos patent. In October 2002, Chiral Quest and Solvias entered into a mutual confidentiality agreement pursuant to which each party agreed to exchange relevant information concerning its respective technology in order to more fully evaluate whether either is infringing upon the rights of the other. Although Chiral Quest believes that its patent position is strong in relation to Solvias' claims, there can be no assurance that a court of competent jurisdiction will not find Chiral Quest to be infringing upon the Solvias' rights. If Solvias maintains its belief that the use of the Me-KetalPhos patent infringes upon the BASF patent and pursues a legal action against Chiral Quest, the necessary expenses that Chiral Quest would incur to defend itself may be more than it could afford to bear. Chiral Quest's management is currently unable to estimate the potential costs or liabilities associated with Solvias' claim. Although Chiral Quest's inability to utilize the Me-KetalPhos patent could negatively impact its business prospects and financial condition, Chiral Quest's management does not believe the impact would be materially adverse.

## **MANAGEMENT OF CHIRAL QUEST'S DISCUSSION AND ANALYSIS**

### **OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

#### **Overview**

Since it commenced operations October 2000, Chiral Quest has focused its efforts and resources on the development of asymmetrical catalysis technology. Pursuant to a license agreement with the Penn State Foundation, Chiral Quest has the exclusive, worldwide licensing rights to several issued and pending patents in this field, all of which are owned by the Penn State Foundation. These patents and pending patents cover proprietary ligands developed by Dr. Xumu Zhang, an associate professor of chemistry at Penn State University, who also provides essential services to Chiral Quest on a consulting basis.

Since its founding and through September 30, 2002, Chiral Quest has incurred a cumulative deficit of \$1,135,379. To date, Chiral Quest has generated revenues and licensing fees from the sale of products and services, but has not generated any net profits. Chiral Quest expects its operating losses to increase significantly over the next several years, primarily due to expansion of its research and development programs, the hiring of additional personnel, including senior management, chemists, and sales and marketing personnel, and the development of its third party and direct manufacturing capabilities.

Chiral Quest's ability to achieve profitability depends upon, among other things, its ability to discover and develop new products (specifically new ligands), its ability to successfully develop its manufacturing capacity (whether direct or indirect), including devising a process for efficiently manufacturing ligands on a

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commercial scale, and its ability to obtain and retain customers. Accordingly, there can be no assurance that Chiral Quest will ever achieve significant revenues or profitable operations from the sale of any of its products or technologies.

The discussion set forth below compares Chiral Quest's results of operations for the nine month periods ended September 30, 2002 and September 30, 2001. The discussion does not include a comparison of Chiral Quest's results of operations for the years ended December 31, 2002 and December 31, 2001, however. Such a discussion would not provide a meaningful comparison since Chiral Quest had less than three months of operations in fiscal 2000.

### **Results of Operations Comparison of Nine Months Ended September 30, 2002 and September 30, 2001**

*Revenues.* Chiral Quest's revenues for the nine months ended September 30, 2002 increased \$57,280, or 56.0%, to \$159,573, as compared to \$102,293 during the nine months ended September 30, 2001. This increase in revenue is primarily attributable to a significant transaction with Pfizer, which is being amortized, whereby Pfizer has retained the rights to make and produce Chiral Quest's ligands, in research quantities, for Pfizer's own research purposes. In addition, Chiral Quest is performing certain screening services for Pfizer.

*Selling, General and Administrative.* Selling, general and administrative expenses are primarily comprised of management fees, facility costs, and legal and patent fees. Selling, general and administrative expense for the nine months ended September 30, 2002 was \$73,857, as compared to \$93,476 for the nine months ended September 30, 2001, a decrease of 21.0%. This decrease resulted from Chiral Quest's termination of a third party administrative services agreement in June 2002. Selling, general, and administrative expenses were also limited during 2002 because Chiral Quest's limited personnel was unable to focus significant attention on sales and marketing efforts as significant time was required in connection with the sale of a controlling number of membership units by some of its founding members, the negotiations involving the Merger with Surg II, and changes in its management. As less attention will need to be devoted to these matters in the future, Chiral Quest anticipates focusing more attention to its sales and marketing efforts in future periods. Accordingly, sales and marketing expenses are expected to increase significantly.

*Wages.* Wages were \$123,346 for the nine months ended September 30, 2002, compared to \$78,435 for the nine months ended September 30, 2001. This increase resulted from the hiring of two additional employees.

*Research and Development.* Research and development expenses decreased by \$121,882, or 71.9%, to \$47,597 for the nine month period ended September 30, 2002, compared to \$169,479 for the comparable period in 2001. This decrease resulted from a lack of capital to devote to research and development efforts. The decrease also resulted from the need to divert significant time and resources from Chiral Quest's research and development efforts so it could focus on managing the sale of a controlling number of membership units by some of its founding members, negotiating the Merger with Surg II, and changes in its management. As less attention will need to be devoted to these matters in the future and as additional capital is available, Chiral Quest anticipates focusing more attention and resources towards research and development in future periods. Accordingly, research and development expenses are expected to increase significantly.

*Net Loss.* Chiral Quest's net loss for the nine months ended September 30, 2002, was \$280,552 compared to \$466,213 for the nine months ended September 30, 2001, a decrease of 39.8%. The decrease was primarily due to decreased research and development expense and increased revenues, as explained above.

### **Plan of Operations**

*Working Capital Requirements.* As of September 30, 2002, Chiral Quest had a working capital deficiency of \$147,476 and approximately \$100,000 in cash. Since Surg is required to have at least \$3,000,000 in cash immediately prior to the completion of the Merger, Chiral Quest's business (which will be the business of Surg following the Merger) will have available cash of approximately \$3,000,000. Chiral Quest's management anticipates using a portion of these funds to repay its entire outstanding indebtedness owed to

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Paramount Capital Investments, LLC of \$339,942 as of December 31, 2002, plus interest which accrues after that date at the rate of 5% per annum. Chiral Quest's management expects that the remaining amount of available funds will be sufficient to satisfy its cash requirements through at least the calendar year 2003.

*Research and Development.* Over the next 12 months, Chiral Quest expects to significantly increase its research and development expenditures. The majority of Chiral Quest's expenditures will be used to develop commercial scale manufacturing processes for its current technology or to enhance the effectiveness and efficiency of Chiral Quest's current technology for the specific benefit of its customers, rather than for the general development of new technology.

*Purchases of Facilities and Significant Equipment.* Chiral Quest intends to continue using the laboratory facilities and equipment of Penn State University until at least October 2003, when its agreement with Penn State expires. However, if during the next 12 months Chiral Quest determines that there is sufficient customer demand to produce its ligands on a commercial scale, and it also determines that it has sufficient personnel and capital resources to produce its ligands on commercial scale, Chiral Quest may make significant expenditures to rapidly develop its manufacturing capabilities to satisfy such customer demand.

*Employees.* As of September 30, 2002, Chiral Quest had three full-time employees, all chemists (including the CEO), two consultants (one of which is Dr. Zhang) and four funded post-doctoral fellows in the laboratory of Dr. Xumu Zhang at Penn State. During the next 12 months, Chiral Quest anticipates hiring at least an additional five and as many as 12 new employees, including at least one employee devoted to sales and marketing, two employees devoted to research and development, and two employees devoted to administration and finance.

## **Liquidity and Capital Resources**

As of September 30, 2002, Chiral Quest has a working capital deficiency of \$147,476. Chiral Quest's revenues are not currently sufficient to satisfy its cash requirements and its management anticipates this trend to continue for the foreseeable future. Accordingly, if the Merger is not completed, Chiral Quest will require additional financing to repay outstanding debts, continue research and development activities and develop its manufacturing and marketing capabilities.

Since its inception and through June 2002, Chiral Quest had obtained an aggregate of \$607,550 as a result of its financing activities, including \$550,000 from the sale of membership units to one of its founders. Since July 2002, Chiral Quest has been financed primarily through loans from Paramount Capital Investments, LLC. These loans, totaling \$339,942 with interest at December 31, 2002, will become due and payable upon completion of the Merger. See "Certain Transaction and Agreements" for additional information concerning the loans.

Chiral Quest's working capital requirements will depend upon numerous factors, including without limitation, the progress of Chiral Quest's research and development programs, the resources that Chiral Quest devotes to developing manufacturing and marketing capabilities, technological advances, the status of competitors, and Chiral Quest's ability to establish sales arrangements with new and existing customers.

## **Market Price and Dividends on Chiral Quest Units**

Chiral Quest's membership units are not publicly traded. Chiral Quest's operating agreement authorizes it to issue 100,000,000 units of membership interest, of which 1,000,000 units are non-voting interests. As of the date of this proxy statement, 11,500,000 units of Chiral Quest's membership units were outstanding, including 1,000,000 non-voting units. In addition, Chiral Quest has issued to its president and chief executive officer an option to purchase 1,150,000 units at an exercise price of \$1.12 per unit, and options for up to an aggregate of 60,000 units at a yet undetermined price per unit issued to two employees.

As of the date of this proxy statement, there were 41 holders of Chiral Quest membership units. Chiral Quest has not paid or declared any dividends on its membership units and does not anticipate doing so in the near future.

**Table of Contents****Selected Historical Financial Data of Chiral Quest**

The following table summarizes certain selected historical financial data of Chiral Quest, which should be read in conjunction with the audited financial statements of Chiral Quest, the related notes thereto and Chiral Quest's Management's Discussion and Analysis of Financial Condition, set forth elsewhere in this Proxy Statement. The statement of operations data set forth below for each of the years ended December 31, 2000 and 2001, are derived from the audited financial statements of Chiral Quest attached to this Proxy Statement as Exhibit B. The statement of operations data set forth below for the nine months ended September 30, 2001, and September 30, 2002, and the balance sheet data as of September 30, 2002, are derived from the unaudited financial statements of Chiral Quest attached to this Proxy Statement as Exhibit B. Historical results are not necessarily indicative of the results to be expected in the future.

	<b>Nine Months Ended September 30,</b>		<b>Year Ended December 31,</b>	<b>Period from October 11, 2000 (inception) to December 31, 2000</b>
	<b>2002</b>	<b>2001</b>	<b>2001</b>	<b>2000</b>
<b>Statement of Operations Data:</b>				
Revenues	\$ 159,573	\$ 102,293	\$ 167,683	\$ 12,425
Operating expenses	439,823	570,310	809,880	226,859
Loss from operations	(280,250)	(468,017)	(642,197)	(214,434)
Interest income (expense)	(302)	1,804	1,804	
Net loss	(280,552)	(466,213)	(640,393)	(214,434)
Basic and diluted net loss per unit	(0.02)	(0.04)	(0.06)	(0.02)
		<b>September 30, 2002</b>		
<b>Balance Sheet Data:</b>				
Total assets		\$ 456,921		
Total liabilities		633,050		
Members' equity (deficit)		(176,129)		
Equity units outstanding		11,500,000		

**CURRENT OFFICERS AND DIRECTORS OF SURG****General**

The name, initial year of service as a director, age and respective position of each officer and director of Surg as of the date of this Proxy Statement, are as follows:

Name	Director Since	Age	Position
Kenneth W. Brimmer	2002	46	President, Chief Executive Officer and a Director
Brian D. Niebur	2002	39	Treasurer and Chief Financial Officer

Neither of the officers of Surg are employees of Surg. The business experience, principal occupations and directorships in publicly-held companies for the officers and directors of Surg are set forth below.

**Kenneth W. Brimmer**

Kenneth W. Brimmer was the chief executive officer and chief financial officer of Active IQ Technologies, Inc., from March 2000 until December 2001, and continues to act as its chairman of the board of directors. Active IQ Technologies, Inc., which is headquartered in Minnetonka, Minnesota, is engaged in providing accounting and financial management software and services, as well as other software and e-business

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solutions, to small and medium sized companies, and is listed on the NASDAQ System under the symbol AIQT. Until April 2000, Mr. Brimmer was an executive officer of Rainforest Café, Inc., which had offices in Hopkins, Minnesota, serving as its treasurer from 1995, and its president from April, 1997. Rainforest Café, Inc. was the owner and operator of the Rainforest Café restaurants located throughout the United States and in several foreign countries. From 1990 until 1997, Mr. Brimmer was also engaged in an executive position with Grand Casino, Inc., in Minneapolis, Minnesota, which primarily owned or managed gaming casinos in Minnesota, Mississippi and Louisiana. Mr. Brimmer is currently a member and the chairman of the board of directors of Sterion Incorporated, Hypertension Diagnostics, Inc. and Entrx Corporation.

**Brian D. Niebur**

Brian D. Niebur has been employed part time by Entrx Corporation as its treasurer and chief financial officer since February 13, 2002. Entrx Corporation, with its principal offices in Minneapolis, Minnesota, is primarily engaged in providing industrial insulation services through its California subsidiary, Metalclad Insulation Corporation, operating out of its Anaheim, California facilities. In addition, since July 2000, and also on a part-time basis, Mr. Niebur has acted as a vice president and controller for Wyncrest Capital, Inc. in Minneapolis, Minnesota, a privately held venture capital firm. Mr. Niebur's primary duties for Wyncrest Capital, Inc. are to act as chief financial officer for Marix Technologies, Inc., a development stage software company in which Wyncrest Capital, Inc. has made an equity investment. From August 1997 until July 2000, Mr. Niebur was the controller for Vital Images, Inc., a developer and marketer of medical visualization and analysis software in Plymouth, Minnesota. Mr. Niebur was the vice president and controller of IVI Publishing, Inc. in Eden Prairie, Minnesota, from September 1993 until August 1997. IVI Publishing, Inc. was an electronic publisher of health and medical information. Mr. Niebur is a certified public accountant.

**Compensation**

None of the officers or directors of Surg have received or are entitled to any cash compensation from Surg. On October 24, 2002, Messrs. Brimmer and Niebur were granted options to purchase 100,000 and 25,000 shares of Surg common stock, respectively, at \$1.25 per share. The options are exercisable through October 24, 2009; provided that only 25% of the options granted in each case are currently exercisable. The remaining options vest at the rate of 25% per year, and are fully exercisable on October 25, 2005. The options further become exercisable in full upon a change in control of Surg. The Merger would result in such a change in control.

**PROPOSED OFFICERS AND DIRECTORS****FOLLOWING THE MERGER**

The Merger Agreement requires Brian Niebur to resign as an officer and director of Surg upon completion of the Merger. This will result in Kenneth Brimmer being the sole remaining director of Surg. Under applicable law and the By-laws of Surg, he may appoint additional directors to replace Mr. Niebur as well as other directors of Surg who previously resigned their positions. The Merger Agreement provides for Mr. Brimmer to appoint the following individuals to serve, in addition to himself, as the members of the board of directors of Surg:

Name	Age
Vincent M. Aita	29
Stephen C. Rocamboli	31
Alan D. Roth	41
David M. Tanen	31
Michael Weiser	40
Xumu Zhang	41



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The business experience, principal occupations and directorships in publicly-held companies for such individuals are set forth below:

**Vincent M. Aita**

Vincent M. Aita, Ph.D. has served as a research analyst for Paramount Capital Asset Management, Inc. since November 2000. Paramount Capital Asset Management, Inc., is an affiliate of Paramount Capital, Inc., and serves as the general partner or investment manager to several privately held investment entities that focus on the biotechnology industry. Prior to that, from December 1999, Dr. Aita completed a post-doctoral fellowship in the Department of Genetics and Development at Columbia University, and concurrently served as a scientific consultant for Research Assessment Associates, Inc., a privately-held scientific research organization located in New York, New York. From August 1995 to December 1999, Dr. Aita attended Columbia University where he received a Ph.D. in Genetics from the Columbia Genome Center at Columbia University.

**Stephen C. Rocamboli**

Stephen C. Rocamboli has been a member of Chiral Quest's management committee and its secretary since July 2002. Since September of 1999, Mr. Rocamboli has been employed as deputy general counsel of Paramount Capital, Inc., an NASD member broker-dealer that focuses on financing biotechnology and pharmaceutical companies. He is also deputy general counsel of Paramount Capital Investments, LLC, a merchant banking and venture capital firm specializing in biotechnology, and Paramount Capital Asset Management, Inc., both of which are affiliates of Paramount Capital, Inc. Since November, 2002, Mr. Rocamboli has been a member of the board of directors of Ottawa, Ontario-based Adherex Technologies Inc. (TSX:ADH), a publicly held bio-pharmaceutical company focused on the development of therapeutics used in the treatment of cancer. From September, 1997 to September 1999, Mr. Rocamboli was an associate with the New York law firm of Marulli, Pewarski & Heubel. He received his J.D. from Fordham University School of Law in 1997.

**Alan D. Roth**

Alan D. Roth, Ph.D. has served as President and Chief Executive Officer of Chiral Quest and a member of its management committee since November 2002. From May 2000 to February 2002, Dr. Roth was Director of the Fundamental Analysis Group at London-based Commerzbank Asset Management, and prior to that, from June 1997, served as a Senior Analyst at Commerzbank. Commerzbank is a banking institution with principal offices located in Frankfurt, Germany. From August 1995 until June 1997, Dr. Roth worked as an independent consultant in the international financial and chemical industries. From November 1992 until August 1995, he worked in various locations around the world, including South America and Europe, as an associate at McKinsey & Company, Inc., a business consulting firm, with principal offices in New York, New York. Dr. Roth holds a Ph.D. in Chemistry from Columbia University.

**David M. Tanen**

David M. Tanen has been employed primarily as an associate director of Paramount Capital, Inc. since 1996, where he has assisted in the founding of a number of biotechnology start-up companies. Since January 2002, Mr. Tanen has served as a member of the board of directors of Atlantic Technology Ventures, Inc. (OTCBB:ATLC), a publicly-traded biotechnology company, with principal offices in New York, New York. Mr. Tanen also serves as a member of the board of directors of several other privately held development stage biotechnology companies. Mr. Tanen received his J.D. from Fordham University School of Law.

**Michael Weiser**

Michael Weiser, M.D., Ph.D. has served as a member of Chiral Quest's management committee since July 2002. Dr. Weiser has been employed by Paramount Capital Asset Management, Inc. since July 1998, and has acted as that company's director of research since July 1999. From July 1997 to July 1998, Dr. Weiser

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completed his post-graduate medical training at the Department of Obstetrics and Gynecology and Primary Care, at New York University Medical Center. Dr. Weiser received an M.D. from New York University School of Medicine and a Ph.D. in Molecular Neurobiology from Cornell University Medical College. Dr. Weiser completed a Postdoctoral Fellowship in the Department of Physiology and Neuroscience at New York University School of Medicine.

**Xumu Zhang**

Xumu Zhang, Ph.D. has been a member of Chiral Quest's management committee and has served as its chief technology consultant since its inception in October 2000. From July, 1999, until the current time, Dr. Zhang has been primarily employed by Pennsylvania State University in State College, Pennsylvania, as an Associate Professor of Organic Chemistry, and prior to that, beginning in July, 1994, was an Assistant Professor of Organic Chemistry. Dr. Zhang holds a Ph.D. in Organic and Inorganic Chemistry from Stanford University.

The Board of Directors established following the Merger is expected to appoint the following individuals as officers of Surg:

Name	Position
Alan D. Roth	President and Chief Executive Officer, and Treasurer and Chief Financial Officer
Stephen C. Rocamboli	Secretary

**COMMON STOCK OWNERSHIP****Share Ownership of Current Management of Surg**

The following table sets forth certain information as of the December 31, 2002, record date with respect to the shares of Surg's common stock beneficially owned by each current executive officer and director, and all current executive officers and directors as a group. Unless otherwise indicated, the shareholders listed in the table below have sole voting and investment powers with respect to the shares indicated:

Name of Beneficial Owner	Number of Shares Beneficially Owned(1)	Percentage of Currently Outstanding Shares(1)
Kenneth W. Brimmer	75,000(2)(3)	1.7
Brian D. Niebur	6,250(4)	*
All executive officers and directors as a group (2 persons)	81,250	1.9

\* Less than 1%

- (1) The number of shares and percentage of outstanding shares of common stock as shown in the table above is calculated based upon there being 4,348,720 shares outstanding as of the date of this Proxy Statement, plus it assumes in each case that the shareholder exercised all options available to that person which have vested or will vest within 60 days of the date of this Proxy Statement.
- (2) Includes 7,500 shares which are owned by Mr. Brimmer's Individual Retirement Account, and 2,500 shares which are owned by the Individual Retirement Account of Mr. Brimmer's spouse, and to which he disclaims any beneficial interest.
- (3) Includes 25,000 shares that Mr. Brimmer currently has the right to acquire upon exercise of outstanding stock options for 100,000 shares.
- (4) Includes 6,250 shares that Mr. Niebur currently has the right to acquire upon the exercise of outstanding stock options for 25,000 shares.



**Table of Contents****Share Ownership of Proposed Management of Surg Following the Merger**

The following table sets forth certain information as to the expected ownership of Surg's common stock upon completion of the Merger by those proposed to be executive officers and directors following the Merger, and all such expected executive officers and directors as a group.

Name of Beneficial Owner	Number of Shares Expected to be Beneficially Owned(1)	Percentage of Shares Expected to be Outstanding(1)
Vincent M. Aita	229,482	1.8
Kenneth W. Brimmer	150,000(2)	1.1
Stephen C. Rocamboli	102,702	*
Alan D. Roth	692,208(3)	5.3
David M. Tanen	102,702	*
Michael Weiser	413,067	3.2
Xumu Zhang	2,618,352	20.1
All Executive Officers and Directors as a group (7 persons)	4,308,513	32.9

\* Less than 1%.

- (1) The number of shares (except those owned by Mr. Brimmer which will not vary) and the percentage of outstanding shares shown in the table above is calculated based on an exchange rate of 0.7524 shares of Surg common stock for each unit of Chiral Quest, and upon there being 4,348,720 shares of Surg's common stock and 11,500,000 units of Chiral Quest outstanding as of the effective date of the Merger. It also assumes that in each case that the shareholder exercised all options available to the person which have vested or will vest within 60 days of the date of this Proxy Statement.
- (2) Includes 7,500 shares which are owned by Mr. Brimmer's Individual Retirement Account, 2,500 shares which are owned by the Individual Retirement Account of Mr. Brimmer's spouse (to which he disclaims any beneficial interest), and 100,000 shares which Mr. Brimmer may purchase following the Merger under an outstanding option which becomes fully exercisable on a change in control of Surg.
- (3) If the Merger is completed, Mr. Roth will have the option to purchase 865,260 shares of Surg at \$1.49 per share as the result of an option previously granted to Mr. Roth to purchase 1,150,000 units of Chiral Quest, which will be assumed by Surg when the Merger is effected. Since no portion of the option is exercisable for one year following the Merger, those shares are not included in the number of shares shown as beneficially owned by Dr. Roth in the table above.

**Share Ownership of Certain Current Beneficial Owners**

The following table sets forth the name, address, number of shares of Surg's common stock beneficially owned, and the percentage of the outstanding shares of common stock such shares represent, of each person or group of persons, known by Surg to beneficially own more than five percent of Surg's outstanding common stock:

Name and Address of Beneficial Owner	Number of Common Shares Beneficially Owned(1)	Percentage of Outstanding Shares(1)
Wayne W. Mills 5020 Blake Road Edina, MN 55436	860,000(2)	20.0

- (1) The number of shares and the percentage of outstanding shares of common stock shown in the table above is calculated based upon 4,348,720 shares outstanding as of the date of this Proxy Statement.



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- (2) Includes 200,000 shares which are owned by Blake Capital Partners, LLC, which is owned by Mr. Mills, 200,000 shares which are owned by Mr. Mills Individual Retirement Account and 137,500 shares which are owned by Mr. Mills spouse and to which Mr. Mills disclaims beneficial ownership. Entrx Corporation is holding 250,000 shares of Surg s common stock as part of the collateral for a loan Mr. Mills obtained from Entrx Corporation before he became an officer or director. Does not include 190,566 shares which are owned by Entrx Corporation, of which Mr. Mills is the president and a director.

**Share Ownership of Certain Beneficial Owners After the Merger**

The following table sets forth the name, address, number of shares of Surg s common stock and the percentage of the outstanding shares of Surg s common stock expected to be beneficially owned by each person or group of persons expected by Surg to own more than five percent of Surg s common stock outstanding assuming completion of the Merger.

Name and Address of Beneficial Owner	Number of Shares Expected to be Beneficially Owned(1)	Percentage of Shares Expected to be Outstanding(1)
Wayne W. Mills 5020 Blake Road Edina, MN 55436	860,000(2)	6.6(2)
Penn State Research Foundation 113 Technology Circle Pennsylvania State University University Park, PA 16802	752,400	5.8
Lindsay A. Rosenwald 441 West End Avenue New York, NY 10024	640,830(3)	4.9(3)
J. Jay Lobell 365 West End Avenue New York, NY 10024	1,967,037(4)	15.1(4)
Alan D. Roth 22 Aubrey House Maida Avenue London, United Kingdom W21TQ	692,208(5)	5.3(5)
Xumu Zhang 276 Camelot Lane State College, PA 16803	2,618,352	20.1

- (1) The number of shares (except those owned by Mr. Mills which will not vary) and the percentage of outstanding shares shown in the table above is calculated based upon an exchange rate of 0.7524 shares of Surg common stock for each unit of Chiral Quest, and upon there being 4,348,720 shares of Surg s common stock and 11,500,000 units of Chiral Quest outstanding as of the effective date of the Merger. It also assumes that in each case that the shareholder exercised all options available to the person which have vested or will vest within 60 days of the date of this Proxy Statement.
- (2) Includes 200,000 shares which are owned by Blake Capital Partners, LLC, which is owned by Mr. Mills, 200,000 shares which are owned by Mr. Mills Individual Retirement Account and 137,500 shares which are owned by Mr. Mills spouse and to which Mr. Mills disclaims beneficial ownership. Entrx Corporation is holding 250,000 shares of Surg s common stock as part of the collateral for a loan Mr. Mills obtained from Entrx Corporation before he became an officer or director.
- (3) Does not include 1,277,067 shares owned equally by five separate trusts established for the benefit of the children of Dr. Rosenwald, of which Dr. Rosenwald is not a trustee and disclaims any beneficial interest, and over which he is disclaiming control. Does not include 638,532 shares owned equally by three separate trusts of which Dr. Rosenwald is the beneficiary, but over which he disclaims any voting control or investment power.

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- (4) Includes 1,277,067 shares owned equally by five separate established trusts for the benefit of the children of Dr. Rosenwald, and 425,688 shares owned by two trusts established for the benefit of Dr. Rosenwald, which Mr. Lobell is the trustee, and over which he has voting control and investment power.
- (5) If the Merger is completed, Dr. Roth will have an option to purchase 865,260 shares of Surg at \$1.49 per share as the result of an option previously granted to Dr. Roth to purchase 1,150,000 units of Chiral Quest, which will be assumed by Surg when the Merger is effected. Since no portion of the option is exercisable for one year following the Merger, those shares are not included in the number of shares shown as beneficially owned by Dr. Roth in the table above.

**CERTAIN TRANSACTIONS AND RELATIONSHIPS**

**Dr. Zhang Consulting Agreement**

Dr. Xumu Zhang, an Associate Professor at Penn State, and a principal owner of Chiral Quest, entered into a Consulting Agreement with Chiral Quest dated October 3, 2000 (the Consulting Agreement). The term of the Consulting Agreement is for five years, but may be terminated by either Dr. Zhang or Chiral Quest upon 60 days notice. Under the Consulting Agreement, Dr. Zhang agrees to consult with Chiral Quest in areas of mutual interest as defined under the License Agreement with Penn State Research Foundation; namely in the area of asymmetric catalysts research and development. Specifically, Dr. Zhang is to direct Chiral Quest employees and research projects to be conducted at Penn State, to direct Chiral Quest's technical development, research and manufacturing activities, and to provide technical interaction with Chiral Quest's customers. Dr. Zhang's obligations under the Consulting Agreement are to constitute his principal business activity, with the exception of his employment with Penn State or any other non-profit institution. Under the Consulting Agreement, Dr. Zhang may not accept any consulting agreement with any other organization, without the consent of Chiral Quest, which consent will be reasonably granted under certain conditions which protect Chiral Quest's confidential and proprietary information, and where those activities will not be competitive with Chiral Quest's business. In consideration for entering into the Consulting Agreement, Dr. Zhang was issued 4,400,000 Chiral Quest membership units, 920,000 of which he subsequently transferred to Dr. Alan D. Roth, leaving Dr. Zhang with 3,480,000 units. Any inventions developed by Dr. Zhang outside of the scope of inventions licensed to Chiral Quest under the License Agreement with Penn State Research Foundation, either after termination of Dr. Zhang's employment with Penn State or using Chiral Quest's own research facilities, would belong to Chiral Quest. Where there is any dispute over the ownership of intellectual property, Dr. Zhang's agreements in that regard with Penn State shall control. Furthermore, Dr. Zhang's work under the Consulting Agreement is not to be conducted on time required to be devoted to, or using the funding, resources or facilities of Penn State or any other person, such that the University or such other third party could claim rights to the product of such work. Dr. Zhang and Penn State have entered into a Memorandum of Understanding acknowledging Dr. Zhang's outside interests and clarifying their respective rights and obligations under policies adopted by Penn State.

**Dr. Roth Employment Agreement**

Dr. Alan D. Roth, a principal owner of Chiral Quest, and a proposed director and the proposed president and chief executive officer of Surg, entered into an Employment Agreement with Chiral Quest dated March 6, 2002. The Employment Agreement provides that Dr. Roth will serve as the president and chief executive officer of Chiral Quest, and is to be elected as a member of Chiral Quest's board of directors. The term of the Employment Agreement is for three years, subject to termination by Chiral Quest after a period of 180 days of the disability of Dr. Roth, or upon 15 days notice for Cause. Cause includes, among other things, a material breach of the Employment Agreement, willful violation of the directions of the Board of Directors, substantial neglect or inattention to duties and certain criminal convictions. The Company may also terminate the Employment Agreement on a change of control (not including that which might be represented by the Merger) of Chiral Quest. If the Employment Agreement is terminated upon a change of control under circumstances where Chiral Quest or its shareholders receive \$50,000,000 or more in value, then Chiral Quest

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will pay Dr. Roth his base salary for one year and cause all unvested options for interests in Chiral Quest to vest.

Commencing on the date of the Merger, Dr. Roth will be entitled to a salary at the annual rate of \$205,000 until November 6, 2003, and thereafter at the annual rate of \$240,000. Since October 1, 2002, Chiral Quest has been accruing a salary of \$5,000 per month on behalf of Dr. Roth, to be paid within 10 days following the Merger. In addition, Dr. Roth will be entitled to receive a bonus of \$35,000 within 10 days following each anniversary date of the Employment Agreement. The Employment Agreement also provides that Dr. Roth is entitled to an option to purchase up to 1,150,000 units of Chiral Quest at a per unit price of \$1.12 (equivalent to 865,260 shares of Surg common stock at \$1.49 per share assuming the effectiveness of the Merger). The option vests as to 383,333 units on the first anniversary date following the Merger, as to 383,333 units on the second anniversary date of the Merger and 383,334 shares on the third anniversary date following the Merger. All options vest if Dr. Roth's employment is terminated by Chiral Quest without cause, or Dr. Roth terminates his employment by reason of Chiral Quest's failure to pay him his compensation due under the Employment Agreement.

**Loans to Chiral Quest by Paramount**

Dr. Lindsay A. Rosenwald, chairman and sole and managing member of Paramount Capital Investments, LLC, a merchant banking and venture capital firm ( PC Investments ), is a substantial member of Chiral Quest. The operations of Chiral Quest, to date, have been funded through loans received from PC Investments. The notes documenting debt owed by Chiral Quest to PC Investments accrue 5% interest annually and will become due and payable upon the Effective Time. The debt owed to PC Investments pursuant to the Notes is \$339,942 as of December 31, 2002.

**Interests of Proposed Directors in Chiral Quest and Paramount Capital, Inc.**

Each of Messrs. Vincent M. Aita, Michael Weiser, David M. Tanen and Stephen C. Rocamboli is a holder of an interest in Chiral Quest, and will consequently receive common stock of Surg upon the completion of the Merger. In addition, each of the foregoing are employees of Paramount Capital, Inc., a corporation of which Dr. Lindsay A. Rosenwald is the chairman and sole shareholder. Mr. Rocamboli and Dr. Weiser are currently members of Chiral Quest's management committee, and Mr. Rocamboli is Chiral Quest's secretary. All of these individuals will allocate a limited portion of their time to Chiral Quest following the Merger.



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**PRO FORMA UNAUDITED CONDENSED  
CONSOLIDATED FINANCIAL STATEMENTS**

The following pro forma unaudited condensed consolidated financial information consists of Pro Forma Unaudited Condensed Consolidated Statements of Operations of Surg for the year ended December 31, 2001 and for the nine months ended September 30, 2002 and a Pro Forma Unaudited Consolidated Balance Sheet of Surg as of September 30, 2002. The unaudited Pro Forma Consolidated Financial Statements give effect to the proposed acquisition of Chiral Quest by Surg. The Pro Forma Unaudited Consolidated Statements of Operations give effect to the acquisition as if it occurred on January 1, 2001. The Pro Forma Unaudited Consolidated Balance Sheet gives effect to the acquisition as if it occurred on September 30, 2002.

On July 30, 2002, Surg entered into a letter of intent to merge with Chiral Quest, and on November 12, 2002, the parties executed a definitive Merger Agreement. The Merger Agreement requires Surg to issue each membership unit holder of Chiral Quest an estimated 0.7524 shares of Surg common stock in exchange for each membership unit of Chiral Quest. The Merger Agreement further contemplates the satisfaction of certain conditions to the closing of the transaction, including the requirements that Surg will have at least \$3 million in cash available and no liabilities. The merger is subject to several conditions including Surg shareholder approval of an increase in the authorized shares of common stock of Surg.

Following the Merger with Chiral Quest, Surg, through a wholly owned subsidiary, will own 100% of Chiral Quest. The Pro Forma Unaudited Consolidated Statements give effect to certain adjustments, including the issuance of common stock and the elimination of certain revenues and costs of Surg.

The Pro Forma Unaudited Consolidated Financial Statements and accompanying notes should be read in conjunction with the consolidated financial statements and notes thereto appearing elsewhere or incorporated by reference in this proxy. Since Surg is a company with only monetary assets and no current operations, the Merger will be accounted for as the issuance of stock by Chiral Quest in exchange for monetary assets of Surg. Accordingly, there will be no change in the recorded amount of Chiral Quest's assets and liabilities. The monetary assets of Surg that are acquired as a result of the Merger will be recorded at their fair market value and no goodwill will be recorded. The Pro Forma Unaudited Consolidated Financial Statements do not purport to represent what the results of operations or financial position of Surg would actually have been if the aforementioned transactions in fact had occurred on January 1, 2001 or on September 30, 2002 or at any future date.

**Table of Contents****PRO FORMA UNAUDITED CONDENSED  
CONSOLIDATED FINANCIAL STATEMENTS (Continued)****SURG II, INC.****PRO FORMA CONDENSED CONSOLIDATED BALANCE SHEET**

As of September 30, 2002

	Chiral Quest, LLC	Surg II, Inc.	Pre-Merger Combined	Pro Forma Adjustments	Pro Forma
			(Unaudited)		
			<b>ASSETS</b>		
<b>Current Assets</b>					
Cash	\$ 100,297	\$ 3,198,681	\$ 3,298,978	\$	\$ 3,298,978
Accounts receivable, net	21,283		21,283		21,283
Prepaid expenses and other current assets, net	8,551	13,500	22,051	(13,500)(a)	8,551
Total current assets	130,131	3,212,181	3,342,312	(13,500)	3,328,812
<b>Equipment, net</b>	72,575		72,575		72,575
<b>Intellectual property rights, net</b>	254,215		254,215		254,215
Total Assets	\$ 456,921	\$ 3,212,181	\$ 3,669,102	\$ (13,500)	\$ 3,655,602
			<b>LIABILITIES AND STOCKHOLDERS EQUITY (MEMBERS DEFICIT)</b>		
<b>Current Liabilities</b>					
Accounts payable	\$ 142,586	\$ 40,573	\$ 183,159	\$	\$ 183,159
Accrued expenses	27,374		27,374	100,000(a)	127,374
Deferred revenue	107,647		107,647		107,647
Total current liabilities	277,607	40,573	318,180	100,000	418,180
<b>Long-term Liabilities</b>					
Notes payable	156,625		156,625		156,625
Deferred revenue	198,818		198,818		198,818
Total long-term liabilities	355,443		355,443		355,443
Total liabilities	633,050	40,573	673,623	100,000	773,623
<b>Stockholders Equity (Members Deficit)</b>					
Common stock		43,487	43,487	86,523(b)	130,010
Additional paid-in capital		8,212,779	8,212,779	(113,500)(a)	4,276,148
Equity units	1,213,000		1,213,000	(3,823,131)(b)	
Additional members equity	135,050		135,050	(1,213,000)(b)	
Accumulated deficit	(1,135,379)	(5,084,658)	(6,220,037)	5,084,658(b)	(1,135,379)
Deferred consulting expense	(388,800)		(388,800)		(388,800)
Total stockholders equity (members deficit)	(176,129)	3,171,608	2,995,479	(113,500)	2,881,979

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Total liabilities and  
stockholders' equity  
(members' deficit)

\$ 456,921

\$ 3,212,181

\$ 3,669,102

\$ (13,500)

\$ 3,655,602

**Table of Contents****PRO FORMA UNAUDITED CONDENSED  
CONSOLIDATED FINANCIAL STATEMENTS (Continued)****SURG II, INC.****PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS****For the Nine Months Ended September 30, 2002**

	<b>Chiral Quest, LLC</b>	<b>Surg II, Inc.</b>	<b>Pre-Merger Combined</b>	<b>Pro Forma Adjustments</b>	<b>Pro Forma</b>
			<b>(Unaudited)</b>		
Revenue	\$ 159,573	\$ 33,133	\$ 192,706	\$ (33,133)(c)	\$ 159,573
Cost of goods sold		31,524	31,524	(31,524)(c)	
Gross margin	159,573	1,609	161,182	(1,609)	159,573
Total operating expenses	439,823	119,076	558,899	(119,076)(c)	439,823
Operating loss	(280,250)	(117,467)	(397,717)	117,467	(280,250)
Interest income (expense), net	(302)	23,280	22,978	(23,280)(c)	(302)
Other income		62,653	62,653	(62,653)(c)	
Net loss	\$ (280,552)	\$ (31,534)	\$ (312,086)	\$ 31,534	\$ (280,552)
Basic and diluted loss per common share		\$ (0.02)			\$ (0.03)
Weighted average common shares outstanding-basic and diluted		1,922,532		8,652,296(e)	10,574,828

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**PRO FORMA UNAUDITED CONDENSED  
CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**SURG II, INC.**

**PRO FORMA CONDENSED CONSOLIDATED STATEMENT OF OPERATIONS**

**For the Year Ended December 31, 2001**

	Chiral Quest, LLC	Surg II, Inc.	Pre-Merger Combined	Pro Forma Adjustments	Pro Forma
			(Unaudited)		
Revenue	\$ 167,683	\$ 440,234	\$ 607,917	\$ (440,234)(d)	\$ 167,683
Cost of goods sold	_____	331,658	331,658	(331,658)(d)	_____
Gross margin	167,683	108,576	276,259	(108,576)	167,683
Total operating expenses	809,880	301,591	1,111,471	(301,591)(d)	809,880
Operating loss	(642,197)	(193,015)	(835,212)	193,015	(642,197)
Interest income (expense), net	1,804	(5,816)	(4,012)	5,816(d)	1,804
Other income	_____	742	742	(742)(d)	_____
Net loss	\$ (640,393)	\$ (198,089)	\$ (838,482)	\$ 198,089	\$ (640,393)
Basic and diluted loss per common share	_____	\$ (1,06)	_____	_____	\$ (0.07)
Weighted average common shares outstanding-basic and diluted	_____	186,177	_____	8,652,296(e)	8,838,473

**Table of Contents****PRO FORMA UNAUDITED CONDENSED  
CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

a) Estimated legal, accounting and other costs of the Merger.

b) Reflects issuance of common stock to Chiral Quest membership holders in exchange for their membership units pursuant to the Merger Agreement. The adjustment to additional paid-in capital is as follows:

Surg II, Inc. accumulated deficit	\$ 5,084,658
Par value of common stock issued Chiral Quest members	86,523
Less: Chiral Quest equity units	(1,213,000)
Less: Chiral Quest additional Members equity	(135,050)
	<hr/>
Total	\$ 3,823,131
	<hr/>

c) To reflect the reverse Merger as if it had occurred on January 1, 2002. Since Surg II, Inc. will be a non-operating entity at the date of the proposed Merger, none of the revenues or expenses of Surg II, Inc. would have resulted had the proposed Merger occurred on January 1, 2002. Accordingly, the adjustment reflects the removal of these revenue and expense items.

d) To reflect the reverse Merger as if it had occurred on January 1, 2001. Since Surg II, Inc. will be a non-operating entity at the date of the proposed Merger, none of the revenues or expenses of Surg II, Inc. would have resulted had the proposed Merger occurred on January 1, 2001. Accordingly, the adjustment reflects the removal of these revenue and expense items.

e) Reflects issuance of common stock to Chiral Quest membership holders in exchange for their membership units pursuant to the Merger Agreement. The Merger Agreement requires Surg to issue each membership unit holder of Chiral Quest an estimated 0.7524 shares of Surg common stock in exchange for each membership unit of Chiral Quest. The calculation of the shares issued is as follows:

Chiral Quest membership units outstanding pre-merger	11,500,000
Exchange rate	0.7524
	<hr/>
Total shares of Surg II, Inc. common stock to be issued	8,652,296
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**SHAREHOLDER PROPOSALS**

Surg anticipates that it will hold its 2003 annual meeting in June 2003. In order to be included in the proxy statement and form of proxy relating to the 2003 annual meeting, proposals that shareholders wish to present at the meeting must be received by Surg in writing prior to March 1, 2003 at 800 Nicollet Mall, Suite 2690, Minneapolis, Minnesota 55402. Additionally, if Surg receives notice of a shareholder proposal after April 30, 2003, then the persons named in proxies solicited by the Board of Directors of Surg for the 2003 annual meeting may exercise discretionary voting power with respect to such proposal.

**A form of Proxy is enclosed for your use. Please date, sign and return the Proxy at your earliest convenience. Prompt return of your Proxy will be appreciated.**

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**EXHIBIT A**

**MERGER AGREEMENT**

THIS MERGER AGREEMENT (the Agreement ) is dated as of November 12, 2002, by and among SURG II, INC., a Minnesota corporation ( Surg ), CQ ACQUISITION, INC., a Minnesota corporation and wholly-owned subsidiary of Surg ( Merger Sub ), and CHIRAL QUEST, LLC, a Pennsylvania limited liability company ( Chiral Quest ).

WITNESSETH

WHEREAS, the Boards of Directors of Surg, Merger Sub and Chiral Quest have determined that it is in the best interests of such companies and their respective shareholders or members to consummate the merger of Chiral Quest with and into Merger Sub with Merger Sub as the surviving corporation (the Merger ) in accordance with this Agreement and a Plan of Merger in the form set forth in EXHIBIT A attached hereto (the Plan of Merger );

WHEREAS, Surg, as the sole shareholder of Merger Sub, has approved this Agreement, the Plan of Merger and the transactions contemplated by this Agreement pursuant to action taken by written consent in accordance with the requirements of the MBCA;

WHEREAS, pursuant to the Plan of Merger, among other things, the outstanding membership interests of Chiral Quest shall be converted into the right to receive upon the Effective Time (as hereinafter defined), the Merger Consideration (as hereinafter defined); and

WHEREAS, the parties to this Agreement intend to adopt this Agreement as a plan of reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended (the Code ), and the regulations promulgated thereunder, and intend that the Merger and the transactions contemplated by this Agreement be undertaken pursuant to that plan.

NOW, THEREFORE, in consideration of the representations, warranties and covenants contained herein, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

As used herein, the following terms shall have the following meanings (such meaning to be equally applicable to both the singular and plural forms of the terms defined):

Affiliate has the meaning as defined in Rule 12b-2 under the Exchange Act, as such regulation is in effect on the date hereof.

Board of Directors means, with respect to Surg and Merger Sub, the duly constituted board of directors of Surg and Merger Sub, respectively, with all the rights, powers and obligations provided by the articles of incorporation and bylaws of Surg and Merger Sub and the MBCA, and with respect to Chiral Quest, the duly constituted management committee/ board of directors of Chiral Quest, with all the right, powers and obligations provided by the certificate of organization and Operating Agreement of Chiral Quest and the LLCL.

Chiral Quest Membership Units means the units of membership interest of Chiral Quest described in the Operating Agreement.

Code has the meaning ascribed thereto in the preambles to this Agreement.

Effective Date has the meaning as set forth in SECTION 2.1(C) hereof.

Effective Time has the meaning ascribed thereto in SECTION 2.1(C) hereof.





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Exchange Act means the Securities Exchange Act of 1934, as amended, together with the rules and regulations promulgated thereunder.

Exchange Ratio means the number equal to the quotient of (i) the product of two (2) times the number of shares of Surg Common Stock outstanding immediately prior to the Effective Time, divided by (ii) the number of Chiral Quest Membership Units outstanding immediately prior to the Effective Time on a fully-diluted basis, but excluding up to 1,150,000 units issuable upon the exercise of options granted to Alan D. Roth, as described on SCHEDULE 3.3 hereof.

Environmental Laws means all applicable federal, state, local and foreign laws, rules, regulations, codes, ordinances, orders, decrees, directives, permits, licenses and judgments relating to pollution, contamination or protection of the environment (including, without limitation, all applicable federal, state, local and foreign laws, rules, regulations, codes, ordinances, orders, decrees, directives, permits, licenses and judgments relating to Hazardous Materials in effect as of the date of this Agreement).

GAAP means United States generally accepted accounting principles, as in effect from time to time.

Hazardous Materials means any dangerous, toxic or hazardous pollutant, contaminant, chemical, waste, material or substance as defined in or governed by any federal, state or local law, statute, code, ordinance, regulation, rule or other requirement relating to such substance or otherwise relating to the environment or human health or safety, including without limitation any waste, material, substance, pollutant or contaminant that might cause any injury to human health or safety or to the environment or might subject any Person to any imposition of costs or liability under any Environmental Law.

Knowledge means, with respect to an individual, that such individual is actually aware of a particular fact or other matter, with no obligation to conduct any inquiry or other investigation to determine the accuracy of such fact or other matter. A Person other than an individual shall be deemed to have Knowledge of a particular fact or other matter if any officer, manager, member of the Board of Directors or other management personnel or key employee of such Person had Knowledge of such fact or other matter.

LLCL means the Pennsylvania Limited Liability Company Law of 1994, as codified at