

BIOMERICA INC  
Form DEF 14A  
September 28, 2016

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

SCHEDULE 14A INFORMATION

PROXY STATEMENT PURSUANT TO SECTION 14(A) OF THE SECURITIES EXCHANGE ACT OF 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

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

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material under Rule 14a-12

**BIOMERICA, INC.**

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(Name of Registrant as Specified In Its Charter)  
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(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

No fee required.

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

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

(3) Per unit price or other underlying value of  
transaction computed pursuant to Exchange Act Rule  
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(1) Amount Previously Paid:

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

(3) Filing Party:

(4) Date Filed:

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**BIOMERICA, INC.**

**17571 Von Karman Avenue**

**Irvine, CA 92614**

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**NOTICE OF 2016 ANNUAL MEETING OF STOCKHOLDERS**

**TO BE HELD ON DECEMBER 14, 2016**

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To Our Stockholders:

NOTICE IS HEREBY GIVEN that the annual meeting of the stockholders of BIOMERICA, INC., a Delaware corporation (herein called the "Company"), will be held at the offices of the Company, 17571 Von Karman Avenue, Irvine, California 92614 on December 14, 2016 at 1:30 p.m.

At the meeting, you will be asked to consider and vote upon the following matters:

1. The election of six directors, each to serve until the next annual meeting of stockholders and until his or her successor has been elected and qualified or until his or her earlier resignation, death or removal. The Proxy Statement which accompanies this Notice includes the names of the nominees to be presented by the Board of Directors for election; and
2. To approve on an advisory, non-binding basis named executive officer compensation as disclosed in this proxy statement;
3. To ratify the selection by the Audit Committee of the Company's Board of Directors of PKF, Certified Public Accountants, a Professional Corporation, as the Company's independent public accounting firm for the current fiscal year; and
4. Transaction of such other business which may properly come before the annual meeting and any adjournment thereof.

In accordance with the provisions of the Company's Bylaws, the Board of Directors has fixed the close of business on October 19, 2016, as the record date for the determination of the holders of the Company's common stock, \$0.08 par value, entitled to notice of and to vote at said Annual Meeting. To assure that your shares will be represented at the Annual Meeting, please complete, sign, date and promptly return the accompanying proxy card in the enclosed envelope. You may revoke your proxy at any time before it is voted.

By Order of the Board of Directors,  
/S/ Zackary S. Irani  
ZACKARY S. IRANI, Chairman of the Board and  
Chief Executive Officer

Irvine, California  
September 28, 2016

**BIOMERICA, INC.**

**17571 Von Karman Avenue**

**Irvine, CA 92614**

**PROXY STATEMENT**

**ANNUAL MEETING OF STOCKHOLDERS**

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**GENERAL INFORMATION**

This Proxy Statement is furnished by the Board of Directors of BIOMERICA, INC., a Delaware corporation (the "Company"), in connection with the solicitation of proxies for use at the Company's Annual Meeting of Stockholders to be held on December 14, 2016, at the offices of the Company, 17571 Von Karman Avenue, Irvine, California 92614 at 1:30 p.m., and at any and all adjournments thereof (the "Annual Meeting"). The Annual Meeting has been called for the purposes set forth in the accompanying Notice of the Annual Meeting of Stockholders (the "Notice"). This Proxy Statement, and the Annual Report of the Company for the year ended May 31, 2016, will be mailed on or about October 27, 2016, to each stockholder of record as of the close of business on October 19, 2016.

**RECORD DATE AND OUTSTANDING SHARES**

The close of business on October 19, 2016, has been set as the record date for the determination of stockholders entitled to notice of and to vote at the Annual Meeting (the "Record Date"). As of September 28, 2016, there was outstanding and entitled to vote an aggregate of 8,184,673 shares of the Company's common stock, \$0.08 par value per share (the "Common Stock"), held of record by approximately 840 stockholders. However, brokers and other institutions hold many shares on behalf of other beneficial owners of the Company's stock.

**VOTING RIGHTS, QUORUM & VOTES REQUIRED**

The holder of each share of Common Stock is entitled to one vote for each share held as of the Record Date on each matter to be considered at the Annual Meeting.

The presence at the Annual Meeting, in person or by proxy, of the holders of a majority of the outstanding shares of Common Stock held of record on the Record Date is necessary to constitute a quorum for the purposes of electing directors and each other item of business. Shares represented by proxies pursuant to which votes contain one or more abstentions or broker "non-votes," are counted as present for purposes of determining the presence or absence of a quorum for the Meeting.

Broker "non-votes" occur when a broker holding shares in "street name" votes on one proposal, but does not vote on another proposal because the broker does not have discretionary voting power and has not received instructions from the beneficial owner of such shares. Usually, this would occur when brokers holding stock in "street name" have not received any instructions from clients, in which case the brokers (as holders of record) are generally permitted by the rules of the New York Stock Exchange to vote only on "discretionary" matters. Under a 2009 amendment to such rules, the uncontested election of directors is no longer a "discretionary" matter, and therefore brokers will not be permitted to vote shares for which they have not received voting instructions in favor of the proposed election of directors. However, under such rules, the proposed ratification of the selection by the Audit Committee of PKF, Certified Public Accountants, a Professional Corporation as the Company's independent public accounting firm for the current fiscal year, is a "discretionary" matter, and the Company believes brokers will therefore generally be able to vote shares held in "street name" on such matter without receiving instructions from the beneficial holders of such shares.

Directors shall be elected by a plurality of the votes cast at the meeting of stockholders. The affirmative vote of a majority of the votes properly cast is required to approve, on an advisory basis, the Named Executive Officers Compensation and to ratify the selection of PKF, Certified Public Accountants, a Professional Corporation as the Company's independent public accounting firm for the current fiscal year. Abstentions on such election and the other proposal, and any broker "non-votes," will be counted as present or represented for purposes of determining the presence of a quorum for the meeting, but will not be taken into account in the voting.

All votes will be tabulated by the inspector of elections appointed for the meeting, who will separately tabulate, for the proposal, affirmative and negative votes, abstentions and broker non-votes.

## **APPRAISAL RIGHTS**

Under Delaware law, stockholders are not entitled to any appraisal rights with respect to the approval of any of the proposals described in this Proxy Statement.

## **PERSONS MAKING THE SOLICITATION**

The Proxy accompanying this Proxy Statement is solicited on behalf of the Board of Directors of the Company for use at the Annual Meeting. The solicitation of proxies is being made by use of the mails and the cost of preparing, assembling and mailing these proxy materials will be paid by the Company. Following the mailing of this Proxy Statement, directors, officers and employees of the Company may solicit proxies by mail, telephone, telegraph or personal interview. Such persons will receive no additional compensation for such services. Brokerage houses and other nominees, fiduciaries and custodians nominally holding shares of the Company's Common Stock, of record will be requested to forward proxy soliciting material to the beneficial owners of such shares. The Company will, upon request, reimburse such parties for their reasonable expenses in forwarding proxy materials to the beneficial owners.

## **TERMS OF THE PROXY**

The enclosed Proxy indicates the matters to be acted upon at the Annual Meeting and provides boxes to be marked to indicate the manner in which the stockholder's shares are to be voted with respect to such matters. By appropriately marking the boxes, a stockholder may specify whether the proxy shall vote for or against or shall be without authority to vote the shares represented by the Proxy. The Proxy also confers upon the proxy discretionary voting authority with respect to such other business as may properly come before the Annual Meeting.

If the Proxy is executed properly and is received by the Company prior to the Annual Meeting, the shares represented by the Proxy will be voted. Where a stockholder specifies a choice with respect to the matter to be acted upon, the shares will be voted in accordance with such specification. Any proxy which is executed in such a manner as not to withhold authority to vote for the election of the specified nominees as directors shall be deemed to confer such authority. A Proxy may be revoked at any time prior to its exercise (i) by giving written notice of the revocation thereof to Ms. Janet Moore, Secretary, Biomerica, Inc., 17571 Von Karman Avenue, Irvine, California 92614, (ii) by attending the meeting and electing to vote in person, or (iii) by delivering a duly executed Proxy bearing a later date.

## **COMMON STOCK OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

The following table sets forth, as of September 28, 2016 certain information as to shares of Common Stock owned by (i) each person known to beneficially own more than 5% of the outstanding Common Stock, (ii) each Director, including nominees for director, and each named executive officer of the Company, and (iii) all executive officers and directors of the Company as a group. Unless otherwise indicated, each person listed has sole voting and investment power over the shares beneficially owned by him or her. Unless otherwise indicated, the address of each named beneficial owner is the same as that of the Company's principal executive offices located at 17571 Von Karman Avenue, Irvine, California 92614.

NAME OF BENEFICIAL OWNER (1)	SHARES BENEFICIALLY OWNED	PERCENTAGE BENEFICIALLY OWNED (1)
Janet Moore (2)	800,977	9.7%
Zackary Irani (3)	880,850	10.6%
Francis Capitanio (4)	132,000	1.6%
Allen Barbieri (5)	155,389	1.9%
Francis R. Cano, Ph.D. (6)	160,336	1.9%
Jane Emerson, M.D., Ph.D. (7)	77,500	*%
Mark Sirgo, Pharm. D.	12,000	*%
Alan Gelband, et al. (8)	566,950	6.9%
All executive officers and directors as a group (six persons) (9)	2,219,052	25.9%

\*Less than one percent.

(1) Beneficial ownership is determined in accordance with Rule 13d-3 of the Securities Exchange Act of 1934. Any shares of Common Stock that each named person and group has the right to acquire within 60 days pursuant to options, warrants, conversion privileges or other rights, are deemed outstanding for purposes of computing shares beneficially owned by and the percentage ownership of each such person and group. However, such shares are not deemed outstanding for purposes of computing the shares beneficially owned by or percentage ownership of any other person or group. Percentage ownership for each named beneficial owner, and the ownership of the directors and executive officers as a group, is based on 8,184,673 shares outstanding as of the date of the Proxy Statement plus the shares the named person and group has a right to acquire within 60 days thereafter pursuant to options, warrants, conversion privileges or other rights and privileges.

(2) Includes 44,000 shares underlying options exercisable by Ms. Moore at or within 60 days after the date of the Proxy; 635,777 shares owned by The Janet Moore Trust of which Janet Moore is the sole trustee.

(3) Includes 101,250 shares underlying options exercisable by Mr. Irani at or within 60 days after the date of the Proxy.

(4) Includes 65,000 shares underlying options exercisable by Mr. Capitanio at or within 60 days after the date of the Proxy.

(5) Includes 57,500 shares underlying options exercisable by Mr. Barbieri at or within 60 days after the date of the Proxy.

(6) Includes 57,500 shares underlying options exercisable by Dr. Cano at or within 60 days after the date of the Proxy.

(7) Includes 57,500 shares underlying options exercisable by Dr. Emerson at or within 60 days after the date of the Proxy.

(8) The address of Alan Gelband is 750 3<sup>rd</sup> Avenue, New York, NY 10007.

(9) Includes all information set forth in footnotes (2) through (7), above.

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

The Company's Bylaws give the Board of Directors ("the Board") the power to set the number of directors at no less than three (3) or more than nine (9). The size of the Company's Board is currently set at six (6) directors and six (6) directors are to be elected at the Annual Meeting to be held on December 14, 2016. Each director of the Company is elected annually and holds office for the ensuing year and until his or her successor has been elected and qualified. In the event that any of them should become unavailable prior to the Annual Meeting, the Proxy will be voted for a substitute nominee or nominees designated by the Board or the number of directors may be reduced accordingly.

The following table sets forth the name and current age of each nominee for director, the year he or she was first elected a director and his or her position(s) with the Company. The Company does not pay a fee to any third party to identify potential nominees. The Board has not received recommended nominees from any stockholder.

Name	Age	Director Since	Positions Held
Zackary Irani	50	1997	Chairman of the Board and Chief Executive Officer Secretary, Chief Financial Officer, Treasurer and Director
Janet Moore	65	1997	Director, Audit Committee Chairman, Member of Compensation and Nominating Committees
Allen Barbieri	58	1999	Director, Member of Audit Committee, Compensation Committee and Nominating Committee
Francis R. Cano, Ph.D.	69	1999	Director, Member of Audit Committee
Jane Emerson, M.D., Ph.D.	62	2007	Director, Member of Audit Committee
Mark Sirgo, Pharm.D.	62	2016	Director

Mr. Zackary Irani has been a Director of the Company, and has been serving as the Company's Chairman of the Board and Chief Executive Officer since April 29, 1997. Prior to that time, Mr. Irani served as the Company's Vice President of Business Development. He has been an employee of the Company since 1986. During fiscal 2008 and 2009, Mr. Irani also served as Chairman of the Board of Lancer Orthodontics, Inc. and served as Lancer's Chief Executive Officer from April 1997 until April 2004.

Ms. Janet Moore has been a Director of the Company since April 29, 1997, and has been serving as the Company's Secretary and Treasurer since 1985. She has served as the Company's Chief Financial Officer since 1999 and has been an employee of the Company since 1976. From fiscal 1998 through 2008, Ms. Moore also served as a director and Secretary of Lancer Orthodontics, Inc.

Mr. Allen Barbieri has served as a Director of the Company since October 1999. Mr. Barbieri currently serves as the CEO of Biosynthetic Technologies, a privately held, renewable chemicals manufacturing company. Prior to that, from April 2004 to September 2009, Mr. Barbieri served as the Chief Executive Officer of Lancer Orthodontics, Inc., a medical products company with manufacturing operations in US and Mexico. From 1998 to 1999, he served as President and Chief Financial Officer of BUY.COM, a major internet retailer and from 1994 until 1998, Mr. Barbieri was President and Chief Executive Officer of Pacific National Bank. Mr. Barbieri also currently serves as a member of the board of directors of CareTrust REIT, Inc. (NASDAQ: CTRE), a publicly traded real estate investment trust.

Francis R. Cano, Ph.D., has served as a Director of the Company since June 1999. Dr. Cano is the managing director of Cano Biotechnology, a consulting business which is focused on vaccines and immunotherapeutics. He co-founded Aviron in 1993 and served as the President and Chief Operating Officer. The Company developed the intranasal flu vaccine, Flu-Mist, and was acquired by MedImmune in 2002 for \$1.2 billion. From 1972-1993 Dr. Cano held various scientific/management positions with American Cyanamid, the last of which was as Vice President-General Manager of the Lederle-Praxis Biological Division. From fiscal 2001 through 2008, Dr. Cano also served on the board of Lancer Orthodontics, Inc., and currently serves on the board of Arbor Vita Corporation and Dynavax.

Dr. Emerson has served as a Director of the Company since April 2007. Since July 1, 2009, Dr. Emerson has served as Vice Chair for Clinical Programs and Chief of Clinical Pathology at the University of Southern California Keck School of Medicine, Los Angeles, California. From 1994 to 2009, Dr. Emerson was on the faculty of the University of California, Irvine School of Medicines where she served as Chief of Clinical Pathology and from 2000 to 2009, also served as the Vice Chair for Clinical Programs, Department of Pathology and Laboratory Medicine.

Mark A. Sirgo, Pharm.D., age 62, has served as President of BioDelivery Sciences International, Inc. ( BDSI ) since January 2005 and Chief Executive Officer and Director since August 2005. He joined BDSI in August 2004 as Senior Vice President of Commercialization and Corporate Development upon the acquisition of Arius Pharmaceuticals, of which he was a co-founder and Chief Executive Officer. He also served as Executive Vice President, Corporate and Commercial Development and Chief Operating Officer of BDSI. Dr. Sirgo has over 30 years of experience in the pharmaceutical industry, including 16 years in clinical drug development, 7 years in marketing, sales, and business development and 12 years in executive management positions. Prior to his involvement with Arius Pharmaceuticals from 2003 to 2004, he spent 16 years in a variety of positions of increasing responsibility in both clinical development and marketing at Glaxo, Glaxo Wellcome, and GlaxoSmithKline, including Vice President of International OTC Development and Vice President of New Product Marketing. Dr. Sirgo was responsible for managing the development and FDA approval of Zantac 75 while at Glaxo Wellcome, among other accomplishments. From 1996 to 1999, Dr. Sirgo was Senior Vice President of Global Sales and Marketing at Pharmaceutical Product Development, Inc., a leading contract service provider to the pharmaceutical industry. Dr. Sirgo served on the Board of Directors and as Chairman of the Compensation Committee of Salix Pharmaceuticals, Ltd. (NASDAQ:SLXP), a specialty pharmaceutical company specializing in gastrointestinal products from 2008 until its sale in 2015.

**THE BOARD RECOMMENDS A VOTE FOR THE ELECTION OF EACH OF THE NOMINATED DIRECTORS.**

**EXECUTIVE OFFICERS**

Mr. Francis Capitanio, age 72, has served as the President of Biomerica since July 10, 2000. Mr. Capitanio was President and Chief Executive Officer of Kalisto Biologicals, Inc. from 1997 until 2000. From 1980 until 1996, he

was President and Chief Executive Officer of Diatech Diagnostics.

The backgrounds of Zackary Irani, Chief Executive Officer, and Janet Moore, Secretary, Chief Financial Officer and Treasurer, are discussed above under the heading Directors .

## **BOARD OF DIRECTORS MEETINGS AND COMMITTEES**

The Board of Directors maintains an Audit Committee, a Compensation Committee, and a Nominating and Corporate Governance Committee. The Board of Directors held at least one in-person meeting during the year ended May 31, 2016 for each committee, acted by unanimous written consent four times, and held several review and update meetings with and without management and with and without Auditors. All directors attended 75% or more of the aggregate of all meetings of the Board of Directors and the committees, if any, upon which the directors served during the year ended May 31, 2016.

## **NOMINATING AND CORPORATE GOVERNANCE COMMITTEE**

The Company has a Nominating and Corporate Governance Committee Charter which may be viewed on the Company's website at [www.biomerica.com](http://www.biomerica.com).

The Company has a standing Nominating and Corporate Governance Committee (the Committee). Dr. Francis Cano and Allen Barbieri serve on this Committee. They regularly assess the appropriate size of the Board of Directors and whether any vacancies on the Board of Directors are expected due to retirement or otherwise. In the event that vacancies are anticipated or otherwise arise, the Committee utilizes a variety of methods for identifying and evaluating director candidates. Candidates may come to the attention of the Committee through current directors, professional search firms, stockholders or other persons.

Once the Committee has identified a prospective nominee, the Committee will evaluate the prospective nominee in the context of the then current composition of the Board of Directors and will consider a variety of other factors, including the prospective nominee's business, technology and industry, finance and financial reporting experience, and other attributes that would be expected to contribute to an effective Board of Directors. The Board seeks to identify nominees who possess a diverse range of experience, skills, areas of expertise, industry knowledge and business judgment. Successful nominees should have a history of superior performance or accomplishments in their professional undertakings and should have the highest personal and professional ethics and values. The Board does not evaluate stockholder nominees differently than any other nominee.

Our Board will consider stockholder nominations for directors if we receive timely written notice, in proper form, of the intent to make a nomination at a meeting of stockholders. To be timely, the notice must be received within the time frame discussed below in this Proxy Statement under the heading "Date of Submission of Stockholder Proposals." To be in proper form, the notice must, among other matters, include each nominee's written consent to serve as a director for the next annual meeting if elected, a description of all arrangements or understandings between the nominating stockholder and each nominee and information about the nominating stockholder and each nominee.

## **COMPENSATION COMMITTEE**

The Compensation Committee is responsible for assisting the Board of Directors in discharging its responsibilities regarding the compensation of our employees and directors. The specific duties of the Compensation Committee include, among other matters: reviewing and approving executive compensation; evaluating our executive officers' performance; setting the compensation levels of our executive officers; setting our incentive compensation plans, including our equity-based incentive plans; and making recommendations to our Board of Directors regarding our overall compensation structure, policies and programs. During fiscal 2016, the Compensation Committee was

comprised of Mr. Allen Barbieri and Dr. Francis Cano. Several Compensation Committee meetings were held without management, and one Compensation Committee meeting was held with management during the fiscal year ended May 31, 2016.

## **AUDIT COMMITTEE**

The Company has an Audit Committee Charter which may be viewed on the Company's website at [www.biomerica.com](http://www.biomerica.com).

The Audit Committee is responsible for overseeing our accounting and financial reporting processes and the audits of our financial statements. In addition, the Audit Committee assists the Board of Directors in its oversight of our compliance with legal and regulatory requirements. The specific duties of the Audit Committee include, among others: monitoring the integrity of our financial process and systems of internal controls regarding finance, accounting and legal compliance; selecting our independent auditor; monitoring the independence and performance of our independent auditor; and providing an avenue of communication among the independent auditor, our management and our Board of Directors. The Audit Committee has the authority to conduct any investigation appropriate to fulfilling its responsibilities, and it has direct access to all of our employees and to the independent auditor. The Audit Committee also has the ability to retain, at the Company's expense and without further approval of the Board of Directors, special legal, accounting or other consultants or experts that it deems necessary in the performance of its duties.

The Audit Committee met four times during fiscal 2016. The members of the Audit Committee are Mr. Barbieri, Dr. Cano and Dr. Emerson. The Board of Directors determined that Mr. Barbieri qualifies as an "audit committee financial expert" and that each member of the Audit Committee is financially literate.

## **DIRECTOR INDEPENDENCE**

The Board reviews the independence of each director when he/she is elected to the board and monitors such on a continual basis. The Board considers the transactions and relationships between each member and the Company in determining independence. The Board judges independence based on the definition of Director Independence as defined by the Financial Industry Regulatory Authority ( FINRA ) Rule 4200(a)(15). Based upon that review, the Board affirmatively determined that Allen Barbieri, Dr. Cano, Dr. Sirgo and Dr. Emerson are considered "independent" with respect to FINRA'S definition of such.

## **BOARD LEADERSHIP STRUCTURE**

The Board does not have a lead independent director and does not believe one is necessary. We believe our leadership structure is appropriate for the size and scope of operations of a company of our size. During the fiscal year ended May 31, 2016, no director served as chairman of any committee except the Audit Committee which was chaired by Allen Barbieri.

## **RISK OVERSIGHT**

The Board is responsible for oversight of risks facing the Company, while our management is responsible for the day-to-day management of risk. The Board, as a whole, oversees our strategic and business risk, including financial reporting related risk and works with the Chief Executive Officer and Chief Financial Officer to assess and manage risks facing the Company.

## **REPORT OF THE AUDIT COMMITTEE**

The information in this Report of the Audit Committee is not deemed "soliciting material" or to be "filed" with the Securities and Exchange Commission.

The Audit Committee oversees the Company's financial reporting process on behalf of the Board of Directors. Management has the primary responsibility for the financial statements and the reporting process including the systems of internal controls. In fulfilling its oversight responsibilities, the Audit Committee reviewed the audited consolidated financial statements in the Annual Report with management including a discussion of the quality, not just the acceptability, of the accounting principles, the reasonableness of significant judgments, and the clarity of disclosures in the consolidated financial statements.

The Audit Committee reviewed with the independent auditors, who are responsible for expressing an opinion on the conformity of those audited consolidated financial statements with accounting principles generally accepted in the United States of America, their judgments as to the quality, not just the acceptability, of the Company's accounting principles and such other matters as are required to be discussed with the Audit Committee. The Audit Committee has discussed with the independent auditors the auditors' independence from management and the Company including the matters in the written disclosures required by the Independence Standards Board and considered the compatibility of non-audit services with the auditors' independence.

The Audit Committee discussed with the Company's independent auditors the overall scope and plans for their audit. The Audit Committee meets with the independent auditors, with and without management present, to discuss the results of their examinations, their understanding of the Company's internal controls, and the overall quality of the Company's financial reporting.

In reliance on the reviews and discussions referred to above, the Audit Committee recommended to the Board of Directors (and the Board has approved) that the audited consolidated financial statements be included in the Annual Report on Form 10-K for the year ended May 31, 2016 for filing with the Securities and Exchange Commission. The Audit Committee and the Board have also recommended the selection of the Company's independent auditors, PKF, Certified Public Accountants, a Professional Corporation.

/s/ Dr. Francis R. Cano

/s/ Allen Barbieri

/s/ Dr. Jane Emerson

## EXECUTIVE COMPENSATION OF NAMED EXECUTIVE OFFICERS

We carefully evaluate an executive's performance during the year against established goals, operational performance, business responsibilities, and career with the Company, current compensation arrangements and long-term potential to enhance stockholder value in order to determine compensation.

The following table sets forth the total compensation earned by the Company's Chief Executive Officer, President and Chief Financial Officer, Treasurer and Secretary (the Named Executive Officers) for the fiscal years ended May 31, 2016 and 2015.

### EXECUTIVE COMPENSATION

#### SUMMARY COMPENSATION TABLE

	Bonus	Stock Awards	Option Awards (\$)	Non Equity Incentive Plan Compensation	Non-qualified Deferred Compensation Earnings
Salary (\$)	(\$)	(\$)	(4)	(\$)	

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97,231	-0-	-0-	60,900	-0-	-0-
130,981	-0-	-0-	86,096	-0-	-0-
136,555	-0-	-0-	30,450	-0-	-0-
136,555	-0-	-0-	49,168	-0-	-0-

**f the Dynamo Equity Securities**

Authorized capital stock consists of 100,000 shares of common stock, par value \$0.01 per share. Outstanding capital stock consists of 100,000 shares of common stock, all of which are currently held. There is no established public trading market for the common stock of Dynamo. There are no options or warrants to purchase, or securities convertible into, equity securities of Dynamo. Upon conversion of the Dynamo Equity Securities, Dynamo would become a wholly-owned subsidiary of Biomerica. Biomerica has never declared or paid any cash dividends on its capital stock.

**Approvals**

Believe that we, Holdings or Dynamo are required to obtain any approvals or clearances from any regulatory authorities in the United States or other countries to consummate the transaction in. In the United States, we must comply with applicable federal and state securities laws and the regulations of The NASDAQ Stock Market in connection with the issuances of shares of our common stock pursuant to the Transaction Documents.

**Required for Approval**

The issuance of our common stock to Holdings pursuant to the Transaction Documents requires an affirmative vote from the holders of a majority of shares present either in person or by proxy at the special meeting. Votes cast "Abstain" will be counted towards the vote total for this proposal, and therefore will have the same effect as "Against" votes. Broker non-votes will have no effect and will not be counted towards the vote total for this proposal.

**THE BOARD OF DIRECTORS RECOMMENDS**

**A VOTE IN FAVOR OF PROPOSAL 1.**

**PROPOSAL 2**

**APPROVAL OF INCREASE IN NUMBER OF AUTHORIZED SHARES OF COMMON STOCK**

Directors is requesting stockholder approval of an amendment to the Company's Sixth Amended Certificate of Incorporation to increase the Company's authorized number of shares of common stock from 100,000,000 shares to 150,000,000 shares.

The common stock to be authorized by adoption of the amendment would have rights identical to the outstanding common stock of the Company. Adoption of the proposed amendment and issuance of the common stock would not affect the rights of the holders of currently outstanding common stock of the Company, except for effects incidental to increasing the number of shares of the Company's common stock, such as dilution of the earnings per share and voting rights of current holders of common stock. If the amendment is adopted, it will become effective upon filing of a Certificate of Amendment of the Company's Sixth Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware.

As of the [ ] shares of common stock outstanding on our record date of [ ], the Board has authorized the issuance of an aggregate of [ ] shares for issuance upon exercise of options (the options at exercise prices ranging from [ ] to [ ]) and rights granted under the Company's stock option and stock purchase plan to purchase up to [ ] shares of common stock which may be issued upon exercise of outstanding warrants to purchase up to [ ] shares of common stock (the warrants at exercise prices ranging from [ ] to [ ]). Assuming the issuance to Holdings of the 13,000,000 shares of common stock, the issuance of the warrants to purchase up to 2,000,000 shares of our common stock, the cancellation of previously issued warrants to purchase up to 2,000,000 shares, and the settlement of the promissory note potentially paid in stock, the Board of Directors believes it is prudent to increase the number of shares of our common stock in order to have the additional flexibility to use our capital for various business and financial purposes in the future.

The common stock may be used for various purposes without further stockholder approval. These purposes include: raising capital; providing equity incentives to employees, officers or directors; establishing relationships with other companies; expanding the Company's business or product lines through the acquisition of other businesses or products; and other purposes.

The common stock to be authorized by adoption of the amendment would be available for issuance if the proposal were adopted by the Board of Directors. The Board of Directors has not been used by Dynavax to oppose a hostile takeover attempt or to delay or prevent changes in control or ownership of Dynavax. For example, we have a poison pill which would, under certain circumstances related to a change of control of Dynavax, give certain holders the right to acquire shares of common stock at a low price, or the Board could strategically sell shares of common stock in a transaction to purchasers who would oppose a takeover or favor the current Board. Although this proposal to increase the authorized common stock has been prompted by business and financial considerations and not by a threat of any hostile takeover attempt (nor is the Board currently aware of any such attempts by Dynavax), nevertheless, stockholders should be aware that approval of this proposal could facilitate a change of control by Dynavax to deter or prevent changes in control of Dynavax, including transactions in which stockholders might otherwise receive a premium for their shares over then current market prices.

The affirmative vote of the holders of a majority of the outstanding shares of the common stock will be required for the amendment to the Company's Sixth Amended and Restated Certificate of Incorporation. As a result, abstentions and broker non-votes will have the same effect as negative votes.

**THE BOARD OF DIRECTORS RECOMMENDS**

**A VOTE IN FAVOR OF PROPOSAL 2.**

**Information About Us and the Transaction**

Transaction Documents described above will be filed as an exhibit to our Annual Report on Form 10-K for 2009 with the U.S. Securities and Exchange Commission (the "SEC"). In addition, each of the Transaction documents that were entered into in April 18, 2006 by the parties with respect to Dynavax is included as an exhibit to our Quarterly Report on Form 10-Q, which was filed with the SEC on August 4, 2009. The descriptions above are qualified by reference to the copies of each agreement, as filed with the SEC. For more information, please contact our Corporate Secretary at 2929 Seventh Street, Suite 100, Berkeley, California 94710, to request copies of these agreements.

Dynavax electronically files annual, quarterly and current reports, proxy statements and other information with the SEC. Dynavax maintains a website that contains reports, proxy and information statements and other information regarding Dynavax and other issuers that file electronically with the SEC at [www.sec.gov](http://www.sec.gov). The annual reports on Form 10-K, quarterly reports on Form 10-Q and current reports on Form 8-K, as well as amendments to those reports, are available free of charge through the SEC's website. Stockholders may also obtain and copy materials that Dynavax files with the SEC at the SEC's Public Reference Room at 450 L Street, N.W., Washington, DC 20549. Stockholders may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330.

**SELECTED UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL DATA**

This table presents certain unaudited pro forma condensed consolidated financial data for Dynavax after giving effect to our acquisition of all of the equity securities of Dynamo pursuant to the terms of our proxy statement. The following unaudited pro forma condensed consolidated balance sheet and the unaudited pro forma condensed consolidated statement of operations data assume that the transaction was made effective as of September 30, 2009, in each case after giving effect to the pro forma adjustments described in the unaudited pro forma condensed consolidated financial statements beginning on page 19. The information in the following table should be read together with, the pro forma information that appears elsewhere in this filing and the historical information we have presented in prior filings with the Securities and Exchange Commission. See the unaudited pro forma condensed consolidated financial statements beginning on page 16. Since Dynamo's inception in 2008, we have reported consolidated financial statements that include the financial position and results of operations of Dynamo in accordance with the guidance of Financial Accounting Standards Board Interpretation No. 14, *Consolidation of Variable Interest Entities*. This pro forma financial information is not necessarily indicative of results that may be obtained in the future.

	<b>September 30, 2009</b>
	<b>(in thousands)</b>
<b>Pro Forma Condensed Consolidated Balance Sheet Data:</b>	
Equivalents and marketable securities	\$ 46,432
Accounts receivable	37,281
Prepaid expenses	61,664
Portion of other accrued liabilities	160
Accrued liabilities	9,371
Liability	3,000
Warrants equity	19,653
Per share	0.36

	<b>Year Ended</b>	<b>Nine Months Ended</b>
	<b>December 31,</b>	<b>September 30,</b>
	<b>2008</b>	<b>2009</b>
	<b>(in thousands, except per share data)</b>	
<b>Pro Forma Condensed Consolidated Statement of Operations Data:</b>		
Operations	\$ (24,120)	\$ (3,501)
	(27,669)	(4,451)
Adjusted net loss per share	(0.52)	(0.08)

**COMPARATIVE HISTORICAL AND UNAUDITED PRO FORMA PER SHARE DATA**

table presents historical and unaudited pro forma per share financial data reflecting our all of the equity securities of Dynamo pursuant to the terms described in this proxy statement. information assumes that the transaction had been completed on the dates and at the beginning of periods indicated. The pro forma information does not attempt to predict or suggest future results.

o s inception in April 2006, we have reported consolidated financial statements that include the ion and results of operations of Dynamo in accordance with the guidance of Financial Accounting and Interpretation No. 46, *Consolidation of Variable Interest Entities*. Therefore historical information is reported below.

on in the following table is based on, and should be read together with, the pro forma information elsewhere in this proxy statement and the historical information we have presented in prior filings ities and Exchange Commission. The pro forma information represents management s preliminary d on available information and may be revised as additional information becomes available and analyses are performed. The final allocation of the purchase price will be determined after the completed and after completion of the final analyses to determine fair values on the date the completed. See the unaudited pro forma condensed consolidated financial statements beginning d Additional Information About Us and the Transaction on page 16.

	Year ended December 31, 2008	Nine months ended September 30, 2009
<b>Share Attributed to Dynavax Common</b>		
	\$ (0.52)	\$ (0.01)
	(0.52)	(0.08)
<b>r Common Share:</b>		
	\$	\$
<b>er Common Share:</b>		
	\$ 0.41	\$ 0.42
	0.36	0.36

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**UNAUDITED PRO FORMA CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

ed pro forma condensed consolidated financial statements have been prepared to give effect to our all of the outstanding equity securities of Dynamo and our issuance of the consideration described section with this transaction.

unaudited pro forma condensed consolidated balance sheet presents Dynavax's historical balance sheet after giving effect to the transaction on September 30, 2009, accounting for the an equity transaction, in accordance with the guidance of Statement of Financial Accounting 160, *Noncontrolling Interests in Consolidated Financial Statements-An Amendment of ARB* giving effect to the related pro forma adjustments described in the accompanying notes to these pro forma condensed consolidated financial statements. Since Dynamo's inception in April 2006, we consolidated financial statements that include the financial position and results of operations of accordance with the guidance of Financial Accounting Standards Board Interpretation No. 46, *of Variable Interest Entities*.

unaudited pro forma condensed consolidated statements of operations for the year ended 2008 and the nine months ended September 30, 2009 are presented after giving effect to the if the transaction had become effective as of January 1, 2008, accounting for the transaction as an tion and giving effect to the related pro forma adjustments described in the accompanying notes to pro forma condensed consolidated financial statements and exclude any one-time charges associated action.

ed pro forma consolidated financial statements are presented for informational purposes only. on includes various estimates and may not necessarily be indicative of the financial condition or ations that would have occurred if the transaction described in this proxy statement had been the date or at the beginning of the period indicated or which may be obtained in the future. These pro forma condensed consolidated financial statements and accompanying notes should be read in with the historical consolidated financial statements of Dynavax that have been filed with the Exchange Commission. These unaudited pro forma condensed consolidated financial statements to predict or suggest future results and do not necessarily reflect what the historical results of the ppany would have been had our companies been combined during this period.

**Unaudited Pro Forma Condensed Consolidated Balance Sheet**

(in thousands, except per share amounts)

	As of September 30, 2009		
	Historical	Adjustments	Pro Forma
Equivalents	\$ 24,735	\$ 21,697	\$ 46,432
Securities			
held by Dynamo	21,697	(21,697)	
held by	677		677
available	1,184		1,184
prepaid expenses and other current assets	1,008		1,008
Assets	\$ 49,301		\$ 49,301
Equipment, net	8,507		8,507
Intangible assets, net	2,312		2,312
Other assets, net	1,524		1,524
	\$ 61,644	\$	\$ 61,644
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>			
Liabilities:			
Accounts payable	\$ 1,037	\$	\$ 1,037
Accounts receivable	7,356	500	7,856
Due to related parties	3,127		3,127
Other liabilities	11,520	500	12,020
Deferred revenue, noncurrent	17,440		17,440
Warrant liability	15,000	(15,000)	
Dividend payable to Holdings		9,371	9,371
Contingent liability		3,000	3,000
Other liabilities	160		160
Equity:			
Technologies Corporation stockholders' equity:			
Common stock: \$0.001 par value; 5,000 shares authorized and no shares issued and outstanding at September 30, 2009			
Preferred stock: \$0.001 par value; 100,000 shares authorized at September 30, 2009; 41,274 shares issued and outstanding at September 30, 2009	41	13	54
Additional paid-in capital	267,115	2,058	269,173
Other comprehensive loss	(36)		(36)
Accumulated deficit	(249,038)	(500)	(249,538)
Technologies Corporation stockholders' equity	18,082	1,571	19,653
Noncontrolling interest in Dynamo	(558)	558	
Total stockholders' equity	17,524	2,129	19,653
Liabilities and stockholders' equity	\$ 61,644	\$	\$ 61,644

The accompanying notes are an integral part of these unaudited pro forma

condensed consolidated financial statements

**Unaudited Pro Forma Condensed Consolidated Statement of Operations**

(in thousands, except per share amounts)

	For the Year Ended December 31, 2008		
	Historical	Adjustments	Pro Forma
	\$ 37,094	\$	\$ 37,094
Expenses:			
Development	44,771		44,771
Administrative	15,463		15,463
of intangible assets	980		980
Legal expenses	61,214		61,214
Depreciation	(24,120)		(24,120)
Goodwill	1,631		1,631
Business	5,000		5,000
Impairment	(9,157)	(1,133)	(10,290)
(expense)	110		110
	(26,536)	(1,133)	(27,669)
Attributable to noncontrolling interest in Symphony (SDI)	5,707	(5,707)	
Attributable to Dynavax common stockholders	\$ (20,829)	\$ (6,840)	\$ (27,669)
Loss attributable to Dynavax common stockholders	\$ (0.52)		\$ (0.52)
To compute basic and diluted net loss per share Dynavax common stockholders	39,819		52,819

The accompanying notes are an integral part of these unaudited pro forma

condensed consolidated financial statements

**Unaudited Pro Forma Condensed Combined Statement of Operations**

(in thousands, except per share amounts)

	For the Nine Months Ended September 30, 2009		
	Historical	Adjustments	Pro Forma
	\$ 38,129	\$	\$ 38,129
Expenses:			
Development	29,202		29,202
Administrative	11,693		11,693
Amortization of intangible assets	735		735
Other operating expenses	41,630		41,630
Other non-recurring items	(3,501)		(3,501)
Gain on sale of assets	174		174
Loss on sale of assets	(120)	(964)	(1,084)
Other (expense)	(40)		(40)
	(3,487)	(964)	(4,451)
Loss attributable to noncontrolling interest in SDI	3,192	(3,192)	
Loss attributable to Dynavax common stockholders	\$ (295)	\$ (4,156)	\$ (4,451)
Loss attributable to Dynavax common stockholders	\$ (0.01)		\$ (0.08)
Loss to compute basic and diluted net loss per share attributable to Dynavax common stockholders	39,990		52,990

The accompanying notes are an integral part of these unaudited pro forma condensed consolidated financial statements

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**DYNAVAX TECHNOLOGIES CORPORATION**

**SYMPHONY DYNAMO, INC.**

**NOTES TO UNAUDITED PRO FORMA CONDENSED**

**CONSOLIDATED FINANCIAL STATEMENTS**

**of Presentation**

ed pro forma condensed consolidated financial statements include estimated adjustments to reflect

suance of 13,000,000 shares of Dynavax common stock;

suance of warrants to purchase up to 2,000,000 shares of Dynavax common stock;

suance of a non-interest bearing note in the principal amount of \$15 million due on December 31,  
and payable in cash, Dynavax common stock or a combination thereof;

ancellation of the outstanding warrants to purchase up to 2,000,000 shares of Dynavax common  
issued to Holdings on April 18, 2006;

suance of rights to contingent cash payments equal to 50% of the first \$50 million from any  
nt, pre-commercialization milestone or similar payments received by Dynavax with respect to the  
opment and/or commercialization of the cancer and hepatitis C therapies; and

ccurrence of transaction costs.

adjustments represent management's preliminary estimates based on available information. The  
adjustments included herein may be revised as additional information becomes available and as  
lyses are performed. The final allocation of the purchase price will be determined after the  
completed and after completion of the final analyses to determine fair values on the date the  
completed.

**Statements to Unaudited Pro Forma Condensed Consolidated Balance Sheet**

***h and cash equivalents***

held by Dynamo consist of money market funds and are restricted to fund the development of the  
are not available for general corporate expenses. Upon the completion of the transaction, all  
will become available for general corporate purposes and classified as cash and cash equivalents.

***Consideration Transferred***

table outlines the elements of consideration paid by Dynavax, the elimination of the  
interest and the excess purchase price over carrying value of noncontrolling interest in Dynamo  
the effect on the various line items in the unaudited pro forma condensed consolidated balance  
tem (in thousands):

Description	Fair Value	Note
3,000,000 shares of Dynavax common stock	\$ 17,420	(1)(7)
Fair value of stock warrants to purchase up to 2,000,000 shares of Dynavax common stock	1,521	(2)(7)
Fair value of note payable to Holdings	9,371	(3)
Fair value of future milestones to be paid to Holdings	3,000	(4)
Total purchase price	31,312	
Add: Deficit of noncontrolling interest in Dynamo	558	(5)
Excess purchase price over carrying value of noncontrolling interest in Dynamo	\$ 31,870	(6)(7)

value of the Dynavax common stock results in an increase to common stock and additional paid in

value of the warrants results in a increase of additional paid in capital.

value of the note payable to Holdings is recorded as a noncurrent liability.

value of the future milestones to be paid to Holdings is recorded as a noncurrent contingent

completion of the transaction, the noncontrolling interest in Dynamo will cease to exist and will  
be removed from the balance sheet.

the excess purchase price over carrying value of noncontrolling interest in Dynamo is accounted for as a

dividend to the noncontrolling interests and results in a reduction to additional paid in capital.

The net impact to common stock/additional paid in capital is an increase of \$2,058,000.

#### **Costs**

The pro forma condensed consolidated balance sheet also reflects estimated transaction costs of \$0.5  
million, which are presented as an accrued liability and as an increase to the accumulate deficit.

#### **Adjustments to Unaudited Pro Forma Condensed Consolidated Statements of Operations**

For the year ended December 31, 2008 and the nine months ended September 30, 2009, we reported  
the unaudited pro forma condensed consolidated statements of operations that included the results of operations of Dynamo. All intercompany  
balances and transactions have been eliminated. As a result, there are no changes to the historical loss from operations or net loss.

The unaudited pro forma condensed consolidated statements of operations reflect the elimination of the loss  
from operations of noncontrolling interests in Dynamo in computing net loss per share attributable to Dynavax  
common stockholders.

In order to compute the pro forma net loss per share attributable to Dynavax common stockholders  
based on 3,000,000 shares issued to the Dynamo stockholders as of January 1, 2008. The warrants issued in  
2008 have an anti-dilutive effect on the net loss per share attributable to Dynavax common  
stockholders and therefore are excluded from the computation.

The transaction costs described above in note 2 are considered nonrecurring and therefore are  
not included in the unaudited pro forma condensed consolidated statements of operations.

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**SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT**

table sets forth the beneficial ownership of our common stock as of September 30, 2009 by holder that is known by us to beneficially own more than 5% of the common stock, (ii) each of our ve officers identified in the summary compensation table included in the proxy statement for our meeting of stockholders, (iii) each director and (iv) all executive officers and directors as a group.

ownership is based upon 41,274,270 shares outstanding as of September 30, 2009. Beneficial calculated based upon SEC requirements. All shares of common stock subject to options, k units or warrants currently exercisable or exercisable within 60 days after September 30, 2009 be outstanding for the purpose of computing the percentage of ownership of the person holding restricted stock units or warrants, but are not deemed to be outstanding for computing the ownership of any other person. Unless otherwise indicated below, each stockholder named in the or shared voting and investment power with respect to all shares beneficially owned, subject to community property laws.

Address of Beneficial Owner (1)	Number of Shares (2)	Percent of Shares Beneficially Owned
Biotechnology Value Fund, L.P. 2000 Michigan Avenue, Suite 1100 Chicago, Illinois 60611 (3)	4,560,851	11.1%
Dr. E. Auriana 145 <sup>th</sup> Street, 43 <sup>rd</sup> Floor New York, New York 10017-9301 (4)	3,000,000	7.3%
Genetic Ventures 100 Camino Real, Suite 1200 Menlo Park, CA 94402 (5)	2,114,320	5.1%
<b>Executive Officers and Directors</b>		
Dr. J. A. M.D. (6)	1,206,484	2.9%
Dr. A. Smeltzer (7)	77,500	*
Dr. J. Coffman, Ph.D. (8)	247,249	*
Dr. J. Janowicz, Ph.D. (9)	128,125	*
Dr. J. Lew (10)	32,332	*
Dr. J. Ostrach (11)	197,500	*
Dr. J. Oronsky, Ph.D. (12)	645,493	1.6%
Dr. J. Carson, M.D. (13)	118,119	*
Dr. J. Philips (14)	77,500	*
Dr. J. Gilbert, Ph.D. (15)	60,000	*
Dr. J. Buc, Esq. (16)	53,500	*
Dr. J. Plotkin, M.D. (17)	50,000	*
Dr. J. Lawrence, M.D. (18)	30,000	*
Executive officers and directors as a group (13 persons)	2,923,802	6.8%

1%.

Address of each of the named executive officers and directors is c/o Dynavax Technologies Corporation, 2929 Seventh Street, Suite 100, Berkeley, California 94710.

knowledge, except as set forth in the footnotes to this table, and subject to applicable community laws, each person named in this table has sole voting and investment power with respect to the shares set forth opposite such person's name.

This table is based on a Schedule 13D filed by Biotechnology Value Fund, L.P. on September 11, 2009 with the Securities and Exchange Commission.



a Schedule 13D filed by Lawrence E. Auriana on December 29, 2008 with the Securities and Commission.

information provided directly by the holder as of August 24, 2009.

203,214 shares held by the Dino Dina 1999 Revocable Trust, of which Dr. Dina is trustee. Also 28,273 shares purchased through the employee stock purchase plan, 100,000 shares held directly by Ms. Auriana and options to purchase 874,997 shares of common stock exercisable within 60 days of September 30, 2009.

Options to purchase 77,500 shares of common stock exercisable within 60 days of September 30, 2009. Ms. Smeltzer announced her retirement from Dynavax.

Options to purchase 206,805 shares of common stock exercisable within 60 days of September 30,

Options to purchase 128,125 shares of common stock exercisable within 60 days of September 30,

Options to purchase 30,000 shares of common stock exercisable within 60 days of September 30,

Options to purchase 197,500 shares of common stock exercisable within 60 days of September 30,

(i) options to purchase 57,500 shares of common stock exercisable within 60 days of September 30, 2009 and (ii) 587,993 shares held by InterWest Partners V L.P. Mr. Oronsky is a general partner of InterWest Partners V L.P. and disclaims beneficial ownership of such shares except to the extent of his pecuniary interest therein.

Options to purchase 50,000 shares of common stock exercisable within 60 days of September 30,

Options to purchase 32,500 shares of common stock exercisable within 60 days of September 30,

Options to purchase 60,000 shares of common stock exercisable within 60 days of September 30,

Options to purchase 47,500 shares of common stock exercisable within 60 days of September 30,

Options to purchase 50,000 shares of common stock exercisable within 60 days of September 30,

Options to purchase 30,000 shares of common stock exercisable within 60 days of September 30,

Number of shares includes 1,081,375 shares of common stock in aggregate held as of September 30, 2009 by our executive officers and directors and entities affiliated with such officers and directors. Also includes options to purchase 1,842,427 shares of common stock exercisable within 60 days of September 30, 2009.

#### HOUSEHOLDING OF PROXY MATERIALS

Adopted rules that permit companies and intermediaries (e.g., brokers) to satisfy the delivery of proxy materials with respect to two or more stockholders sharing the same address by a single set of proxy materials addressed to those stockholders. This process, which is commonly known as householding, potentially means extra convenience for stockholders and cost savings for

brokers with account holders who are Dynavax stockholders will be householding the Company's proxy materials. A single set of proxy materials will be delivered to multiple stockholders sharing an address if proxy instructions have been received from the affected stockholders. Once you have received notice from your broker that they will be householding proxy communications to your address, householding will continue unless you are notified otherwise or until you revoke your consent. If, at any time, you no longer wish to be householded, you may request to be unhouseholded. If you are currently householded and would prefer to receive a separate set of proxy materials, please notify your broker in writing of your request to Corporate Secretary, Dynavax Technologies Corporation, 2929 Seventh Avenue, Berkeley, California 94710. Stockholders who currently receive multiple copies of the proxy materials and would like to request householding of their communications should contact your broker.

**OTHER MATTERS**

The Board of Directors knows of no other matters that will be presented for consideration at the Special Meeting. If any other matters are properly brought before the meeting, it is the intention of the persons named in this proxy to vote on such matters in accordance with their best judgment.

By Order of the Board of Directors

**Michael S. Ostrach**  
Secretary

**Directors recommends a vote FOR Proposals 1 and 2.**

Mark Here  
for Address ..  
Change or  
Comments

to approve the following issuances of shares of our Common  
Symphony Dynamo Holdings LLC ( Holdings ): (a) 13,000,000  
pursuant to an Amended and Restated Purchase Option  
the Amended Purchase Option Agreement ), dated as of  
2009, by and between the Company, Holdings and Symphony  
( Dynamo ); (b) 2,000,000 shares issuable upon exercise of  
issued to Holdings pursuant to a Warrant Purchase Agreement,  
November 9, 2009, by and between the Company and Holdings;  
\$15 million worth of Common Stock issuable if we elect to pay  
shares on the maturity date of a Promissory Note due December  
pursuant to the Amended Purchase Option Agreement

**For**      **Against**      **Abstain**  
..            ..

..

to approve an amendment to the Company s Sixth Amended and  
Certificate of Incorporation to increase the authorized number of  
Common stock from 100,000,000 to 150,000,000 shares.

**For**      **Against**      **Abstain**  
..            ..            ..

**Signature**

**Date**

exactly as your name appears hereon. If the stock is registered in the names of two or more persons,  
sign. Executors, administrators, trustees, guardians and attorneys-in-fact should add their titles. If  
corporation, please give full corporate name and have executed by a duly authorized officer, stating  
is a partnership, please sign in partnership name by an authorized person. Please vote, date and  
in this proxy in the enclosed return envelope, which is postage prepaid if mailed in the United

**p FOLD AND DETACH HERE p**

**Vote by Internet or Telephone or Mail**

**24 Hours a Day, 7 Days a Week**

**Internet and telephone voting is available through 11:59 PM Eastern Time**

**the day prior to stockholder meeting date.**

**Internet or telephone vote authorizes the named proxies to vote your shares in the same manner**

**as if you marked, signed and returned your proxy card.**

et      **OR**                      **Telephone**                      **OR**

1-[\_\_\_\_\_]

**Mail**

Use any touch-tone telephone to vote  
your proxy. Have your proxy card in

Mark, sign and date

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Internet to  
proxy.

hand when you call.

your proxy card and return it in the

proxy card  
then

enclosed postage prepaid envelope.

the Web

**If you vote your proxy by Internet or by telephone,**

**you do NOT need to mail back your proxy card.**

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**Dynavax Technologies Corporation**

**THIS PROXY IS SOLICITED ON BEHALF OF THE BOARD OF DIRECTORS OF**

**DYNAVAX TECHNOLOGIES CORPORATION**

**FOR THE SPECIAL MEETING OF STOCKHOLDERS**

I, the undersigned stockholder of DYNAVAX TECHNOLOGIES CORPORATION, a Delaware corporation, hereby acknowledge receipt of the Notice of Special Meeting of Stockholders and Proxy Statement dated [ ] and hereby appoints Dino Dina, M.D. and Jennifer Lew, or either of them, with full power to each of substitution, on behalf and in the name of the undersigned, to represent the undersigned at the Special Meeting of Stockholders of the Company to be held on [ ] at [ ] a.m., at the Company's offices at 2929 Seventh Street, Suite 100, Berkeley, California, and at any adjournment thereof, and to vote all shares of common stock of the Company which I would be entitled to vote if then and there personally present, on the matters set on the reverse side of this proxy statement.

**IF NO CONTRARY DIRECTION IS SPECIFIED, MY VOTES WILL BE VOTED AS DIRECTED OR, IF NO CONTRARY DIRECTION IS SPECIFIED, WILL BE VOTED FOR PROPOSALS 1 AND 2 AS MORE SPECIFICALLY SET FORTH IN THE PROXY STATEMENT. IF SPECIFIC INSTRUCTIONS ARE INDICATED, MY VOTES WILL BE VOTED IN ACCORDANCE THEREWITH.**

**IMPORTANT - TO BE SIGNED AND DATED ON REVERSE SIDE**

FOR VOTING AND RECORD-KEEPING PURPOSES, PLEASE RETURN THIS PROXY TO:

60

PROXY SERVICES, INC., 1000 KENSACK, NJ 07606-9250

**Address Change/Comments (Mark the corresponding box on the reverse side)**

**p FOLD AND DETACH HERE p**