

BIOMARIN PHARMACEUTICAL INC  
Form PRER14A  
May 16, 2005

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. 1)

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 Pursuant to Section 240.14a-12

## **BioMarin Pharmaceutical Inc.**

(Name of Registrant as Specified In Its Charter)

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

Payment of Filing Fee (Check the appropriate box):

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x No fee required.

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(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):

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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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**BIOMARIN PHARMACEUTICAL INC.**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

**TO BE HELD ON \_\_\_\_\_, 2005**

TO THE STOCKHOLDERS OF BIOMARIN PHARMACEUTICAL INC.:

NOTICE IS HEREBY given that the 2005 Annual Meeting of the Stockholders (the Annual Meeting ) of BioMarin Pharmaceutical Inc. ( BioMarin or the Company ) will be held on \_\_\_\_\_, 2005 at 10:00 a.m. (California time), at the Embassy Suites Hotel located at 101 McInnis Parkway, San Rafael, California 94903 for the following purposes:

1. To elect 7 directors of the Company;
2. To ratify the selection of KPMG LLP as the independent registered public accounting firm for BioMarin for the year ending December 31, 2005; and
3. To transact such other business as properly may be brought before the Annual Meeting or any adjournment thereof.

The foregoing items of business are more fully described in the proxy statement accompanying this notice.

The Board of Directors has fixed the close of business on May 20, 2005 as the record date for determining the stockholders entitled to receive notice of, and to vote at, the Annual Meeting or any adjournment thereof. A complete list of such stockholders will be available at the Company's executive offices at 105 Digital Drive, Novato, California 94949, for a period of ten days before the Annual Meeting.

All stockholders are cordially invited to attend the Annual Meeting. To ensure your representation at the Annual Meeting, you are urged to sign and date the enclosed WHITE Proxy Card and return it today in the enclosed pre-addressed postage-paid envelope. Any stockholder attending the Annual Meeting may vote in person even if that stockholder has returned a proxy.

A group of stockholders affiliated with Caduceus Capital Master Fund Limited and Caduceus Capital II L.P., (together, the Caduceus Group ) has initiated a proxy solicitation to elect a slate of three persons selected by them to the Board of Directors. Your Board believes that this action is not in your best interests and urges you not to sign or return any proxy card the Caduceus Group may send you. If you have any questions or

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need assistance in voting your shares, please call the firm assisting the Company in the solicitation of proxies:

Morrow & Co., Inc.

445 Park Avenue - 5th Floor

New York, NY 10022

1-800-607-0088

By Order of the Board of Directors:

G. Eric Davis  
*Vice President, Corporate Counsel and Assistant  
Secretary  
Novato, California*

May , 2005

**YOUR VOTE IS IMPORTANT. IN ORDER TO ASSURE YOUR REPRESENTATION AT THE ANNUAL MEETING, YOU ARE REQUESTED TO SIGN AND DATE THE ENCLOSED WHITE PROXY CARD AND RETURN IT TODAY IN THE ENCLOSED PRE-ADDRESSED POSTAGE-PAID ENVELOPE.**

**BioMarin Pharmaceutical Inc.**

**105 Digital Drive**

**Novato, California 94949**

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**Proxy Statement for 2005 Annual Meeting of Stockholders**

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**INFORMATION CONCERNING SOLICITATION OF PROXIES AND VOTING**

**General**

This proxy statement is furnished in connection with the solicitation of proxies by the Board of Directors of the Company (the "Board") for use at the 2005 Annual Meeting of Stockholders of the Company (the "Annual Meeting") to be held on \_\_\_\_\_, 2005, or at any adjournment or postponement of the Annual Meeting, for the purpose set forth herein and in the foregoing Notice of Annual Meeting of Stockholders. The Annual Meeting will be held at 10:00 a.m. local time at the Embassy Suites Hotel located at 101 McInnis Parkway, San Rafael, California 94903. Copies of this solicitation material and the Company's Annual Report are being mailed to stockholders entitled to vote at the Annual Meeting and furnished to brokerage houses, fiduciaries and custodians to forward to beneficial owners of common stock of the Company held in their names on or about \_\_\_\_\_, 2005. The Company's Annual Report, which includes its Form 10-K for the year ended December 31, 2004, as filed with the Securities and Exchange Commission, is provided with this proxy statement.

**Record Date; Outstanding Securities**

The voting securities of the Company entitled to vote at the Annual Meeting consist of only shares of common stock. Only stockholders of record at the close of business on May 20, 2005 are entitled to notice of and to vote at the Annual Meeting. On May 20, 2005, there were \_\_\_\_\_ shares of BioMarin common stock, par value \$0.001 per share, issued and outstanding and entitled to vote. Each share of common stock is entitled to one vote.

**Revocability of Proxies**

A stockholder who signs and returns a WHITE Proxy Card will have the power to revoke it at any time before it is voted. A proxy represented by a WHITE Proxy Card may be revoked by (i) delivering to the Company at the Company's mailing address appearing at the top of this page (Attention: G. Eric Davis, Vice President, Corporate Counsel and Assistant Secretary) a written notice of revocation, or (ii) submitting a duly

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executed proxy card bearing a later date, or (iii) by appearing at the Annual Meeting and voting in person. Attendance at the meeting in and of itself, without voting in person at the meeting, will not cause your previously granted proxy to be revoked. For shares you hold in street name, you may change your vote by submitting new voting instructions to your broker, bank or other nominee or, if you have obtained a legal proxy from your broker, bank or other nominee giving you the right to vote your shares at the annual meeting, by attending the meeting and voting in person.

### **Voting**

Each stockholder is entitled to one vote for each share of common stock held. This includes shares held directly by stockholders of record and shares held through a stock broker, bank or nominee.

### **Solicitation of Proxies**

This solicitation of proxies is made by the Company and all related costs, including expenses in connection with preparing and mailing this proxy statement, will be borne by the Company. Copies of solicitation material will be furnished to brokerage firms and other persons representing beneficial owners of shares. In addition, if asked, the Company will reimburse brokerage firms and other persons representing beneficial owners of shares for their expenses in forwarding solicitation material to such beneficial owners. The Company has requested brokerage firms and other persons representing beneficial owners of shares to forward all solicitation materials to the beneficial owners of the shares they hold of record. Proxies may also be solicited by certain of the Company's directors, officers and regular employees, without additional compensation. The original solicitation by mail may also be supplemented by telephone, facsimile, e-mail and personal solicitation by these directors, officers and employees, but stockholders will not be asked to submit proxies by telephone or the Internet. Such persons are listed on *Annex A* to this proxy statement.

The Company has retained Morrow & Co. to assist it in the solicitation of proxies. The Company has agreed to pay customary fees to Morrow & Co. for its services in soliciting proxies, which are estimated to be \$150,000, and has agreed to reimburse Morrow & Co. for reasonable out-of-pocket expenses for these services. The Company has agreed to indemnify Morrow & Co. against certain liabilities and expenses. Morrow & Co. will employ approximately 30 people to solicit proxies from the Company's stockholders.

Because of the solicitation of opposition proxies as a result of the matters discussed below under the heading *Dissident Stockholder Solicitation*, the expenses related to its solicitation of proxies from its stockholders will exceed those normally spent for an annual meeting. Such expenses excluding the cost of litigation, if any, are expected to aggregate \$600,000, of which approximately \$175,000 has been spent to date. Such additional solicitation costs are expected to include the increased fee payable to Morrow (approximately \$150,000 this year as compared to \$10,000 in 2004), fees of outside counsel to advise the Company in connection with a contested solicitation of proxies, increased mailing costs, such as the costs of additional mailings of solicitation materials to stockholders, including printing costs, mailing costs and the reimbursement of reasonable expenses of banks, brokerage houses and other agents incurred in forwarding solicitation materials to beneficial owners of the Company's stock, as described above, and the costs of retaining an independent inspector of election. The Company will bear the cost of these expenses.

### **Quorum; Abstentions; Broker Non-Votes**

The Company's Bylaws provide that a majority of all the shares of the common stock entitled to vote, whether present in person or by proxy, shall constitute a quorum for the transaction of business at the Annual Meeting. Broker non-votes are shares held in street name for which the broker has not received instructions from the beneficial owners or other persons entitled to vote and the broker does not have discretionary voting authority. Abstentions and broker non-votes will be counted as shares present for purposes of determining whether a quorum is present. If a quorum is not present or represented, then either the chairman of the Annual Meeting or the stockholders entitled to vote at the Annual Meeting, present in person or represented by proxy, will have the power to adjourn the Annual Meeting from time to time, without notice other than an announcement at the Annual Meeting, until a quorum is present. At any adjourned Annual Meeting at which a quorum is present, any business may be transacted that might have been transacted at the Annual Meeting as originally notified. If the adjournment is for more than 30 days, or if after that adjournment a new record date is fixed for the adjourned Annual Meeting, a notice of the adjourned Annual Meeting shall be given to each stockholder of record entitled to vote at the adjourned Annual Meeting.

When proxies are properly executed and returned, the shares represented by such proxies will be voted at the Annual Meeting in accordance with the instructions of the stockholder. If no specific instructions are given, the shares represented by an executed WHITE Proxy Card will be voted (i) FOR the election of the 7 nominees





for directors set forth herein; and (ii) FOR the ratification of the selection of KPMG LLP as the independent registered public accounting firm for BioMarin for the year ending December 31, 2005. The Board knows of no other business that will be presented at the meeting. If, however, other matters are properly presented, the persons named in the enclosed WHITE Proxy Card will vote the shares represented thereby in accordance with their best judgment pursuant to the discretionary authority granted in the proxy.

The Company believes that a broker will not have discretionary authority to vote shares for Proposal One: Election of Directors. If your shares are held in street name, your broker, bank or nominee will include a voting instruction card with this proxy statement. You should vote your shares by following the instructions provided on the voting instruction card.

### **Attendance at Meeting**

If you plan to attend the Annual Meeting, please note that attendance will be limited to stockholders as of the record date. Admission will be on a first-come, first-served basis. Each stockholder may be asked to present valid picture identification, such as a driver's license or passport. Stockholders holding stock in brokerage accounts or by a bank or other nominee may be required to show a brokerage statement or account statement reflecting stock ownership as of the record date. Cameras, recording devices and other electronic devices will not be permitted at the Annual Meeting.

### **Election of Directors**

Election of the director nominees named in Proposal No. 1 requires the affirmative vote of a plurality of the shares of our common stock present in person or represented by proxy at the Annual Meeting and entitled to vote. The 7 candidates receiving the highest number of affirmative votes of the shares entitled to be voted will be elected directors. Shares represented by executed WHITE Proxy Cards will be voted, if authority to do so is not withheld, FOR the election of the director nominees named in Proposal No. 1. Votes may be cast in favor of or withheld with respect to all of the director nominees, or any of them. Broker non-votes, if any, will not be counted as having been voted and will have no effect on the outcome of the vote on the election of directors. Stockholders may not cumulate votes in the election of directors.

### **Ratification of Independent Registered Public Accounting Firm**

Ratification of the selection of KPMG LLP as the independent registered public accounting firm for the year ending December 31, 2005, as specified in Proposal No. 2, requires the affirmative vote of a majority of the shares of our common stock present or represented by proxy at the annual meeting and entitled to vote. Abstentions will be counted toward the tabulation of votes cast on this proposal and will have the same effect as a vote against this proposal. Broker non-votes, if any, will have no effect on the vote for this proposal.

### **Submission of Stockholder Proposals for the 2006 Annual Meeting**

The Company's Bylaws provide a formal procedure for bringing business before an annual meeting of stockholders. Stockholders who intend to present a proposal at the 2006 Annual Meeting of Stockholders ( 2006 Annual Meeting ) must deliver or mail a notice to the Assistant Secretary of the Company, and the notice must be received at the Company's executive offices at 105 Digital Drive, Novato, California, 94949 no earlier than \_\_\_\_\_, 2006 and no later than \_\_\_\_\_, 2006. In the event that the 2006 Annual Meeting is called for a date that is not within 25 days before or after \_\_\_\_\_, 2006, then the stockholder's notice must be received by the Assistant Secretary no later than the close of

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business on the 10th day following the day on which notice of the date of the 2006 Annual Meeting was mailed or public announcement of such date was made by the Company, whichever first occurs. With respect to the 2005 Annual Meeting, a stockholder's notice pursuant to the Company's Bylaws had to be delivered to and received by the Company by April 18, 2005.

The notice must contain a brief description of the business desired to be brought before the 2006 Annual Meeting, the reasons for conducting such business, the name and address of the stockholder, the class or series and number of shares of the Company's capital stock which are owned beneficially or of record by the stockholder, a description of all arrangements or understandings between such stockholder and any other person in connection with the proposal of such business and any material interest of the stockholder in such business and a representation that the stockholder intends to appear in person or by proxy at the 2006 Annual Meeting to bring such business before the 2006 Annual Meeting.

Stockholders interested in submitting a proposal for inclusion in the proxy materials for the 2006 Annual Meeting may do so by following the procedures prescribed in Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the Exchange Act). To be eligible for inclusion, stockholder proposals must be received by the Assistant Secretary of the Company no later than \_\_\_\_\_, 2006, or a reasonable time before the Company begins to print and mail its proxy materials if the 2006 Annual Meeting is changed by more than 30 days from the anniversary date of the 2005 Annual Meeting. Proposals should be sent to the Assistant Secretary of the Company at the Company's executive offices at 105 Digital Drive, Novato, California, 94949.

**YOUR VOTE IS EXTREMELY IMPORTANT, NO MATTER HOW MANY OR HOW FEW SHARES YOU OWN. PLEASE SIGN AND DATE THE ENCLOSED WHITE PROXY CARD AND RETURN IT TODAY IN THE ENCLOSED PRE-ADDRESSED POSTAGE-PAID ENVELOPE.**

**IMPORTANT: If your shares are held in the name of a brokerage firm, bank, nominee or other institution, only it can sign a WHITE Proxy Card with respect to your shares and only upon specific instructions from you. Please return the enclosed WHITE Proxy Card to your broker or bank and contact the person responsible for your account to ensure that a WHITE Proxy Card is voted on your behalf.**

**If you have any questions or need assistance in voting your shares, please call the firm assisting the Company in the solicitation of proxies:**

**Morrow & Co., Inc.**

**445 Park Avenue 5th Floor**

**New York, NY 10022**

**1-800-607-0088**

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**PROPOSAL ONE: ELECTION OF DIRECTORS**

The Company has a Board currently consisting of 7 directors. At the Annual Meeting, stockholders will elect 7 directors. Unless otherwise instructed, the proxy holders will vote the proxies represented by the enclosed WHITE Proxy Card FOR the 7 nominees named below, all of whom, are presently directors of the Company. If any of the Board's nominees are unable or decline to serve as director, the proxies will be voted for any substitute nominee who shall be designated by the Board. It is not expected that any of the Board's nominees will be unable to or will decline to serve as a director. The Company has received notice that Caduceus Capital Master Fund Limited and Caduceus Capital II L.P. (together, the Caduceus Group), intend to nominate and through their advisors, OrbiMed Advisors LLC and OrbiMed Capital LLC (together, OrbiMed), intend to support three opposition candidates at the Annual Meeting and may solicit your proxy for those nominees. See *Dissident Stockholder Solicitation*, below. The term of office of each person elected as a director shall continue until the next annual meeting of stockholders and until that person's successor has been elected.

If a quorum is present, the 7 nominees receiving the highest number of affirmative votes of the votes cast shall be elected as directors.

**Nominees For Director**

Set forth below are the Board's nominees to the Board and certain information regarding each nominee:

Name	Age	Position with BioMarin
Jean-Jacques Bienaimé	51	Chief Executive Officer and Director
Franz L. Cristiani(2)(3)	63	Director
Elaine J. Heron, Ph.D.(2)(4)	57	Director
Pierre Lapalme (1)(3)	64	Director, Chairman of the Board
Erich Sager(1)	47	Director
John Urquhart, M.D.(1)(4)	71	Director
Gwynn R. Williams(2)(3)	71	Director

- (1) Member of BioMarin's Compensation Committee  
(2) Member of BioMarin's Audit Committee  
(3) Member of BioMarin's Corporate Governance and Nominating Committee  
(4) Member of BioMarin's Science Committee

Each of the Board's nominees to the Board has consented to being named in this proxy statement and to serve as a director if elected. The Board has determined that each of the above nominees, other than Mr. Bienaimé, are independent as defined by Nasdaq and Securities and Exchange Commission rules. There is no family relationship between any director, the above nominees for director, or any executive officer of the Company.

**Jean-Jacques Bienaimé**, joined the BioMarin board in May 2005, at the same time he became BioMarin's Chief Executive Officer. Prior to joining BioMarin, Mr. Bienaimé served as Chief Executive Officer and President of Genencor International from November 2002 to May 2005 and its Chairman from April 2003 to May 2005. Prior to joining Genencor, Mr. Bienaimé was Chairman, President and Chief Executive Officer of SangStat Medical Corporation. He became President of SangStat Medical Corporation in 1998 and Chief Executive Officer in 1999. Prior to joining SangStat Medical Corporation, Mr. Bienaimé held various management positions from 1992 to 1998, including Senior Vice President of Corporate Marketing and Business Development, and Vice President and General Manager of the advanced therapeutic and oncology division, with Rhône-Poulenc Rorer Pharmaceuticals (now known as Aventis). Mr. Bienaimé currently serves on the boards of the Biotechnology

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Industry Organization (BIO), Aerogen, Inc., NeurogesX, Inc., and Saegis Pharmaceuticals, Inc., and is a member of the advisory board of Bellevue Asset Management's BioVentures II fund. He received an MBA from the Wharton School at the University of Pennsylvania and an undergraduate degree in economics from the Ecole Supérieure de Commerce de Paris.

**Franz L. Cristiani** joined the BioMarin Board in June 2002 and serves as chairman of its Audit Committee. From 1964 to 1999, he was with Arthur Andersen, LLP as partner since 1976, with clients in high technology, life sciences, manufacturing, mining, forest products, distribution, publishing and food products industries. Since 1999, he has provided consulting services to various companies, served as a director of various companies and served as an adjunct professor at the University of San Francisco. Mr. Cristiani serves as a director of MTI Technology, Inc., Vitasoy USA, Accuray Incorporated and Nature's Sunshine Products. He holds a B.A. from San Francisco State University and is a C.P.A.

**Elaine J. Heron, Ph.D.** joined the BioMarin Board in July 2002. Dr. Heron has served as chairman and chief executive officer of Labcyte Inc. since July 2001. Prior to that time, she spent six years in increasingly responsible positions at the Applied Biosystems Group of Applera Corporation, including stints as general manager and vice president of sales and marketing. She was vice president, marketing, at Affymetrix, Inc., from 1995 to 1996. Dr. Heron has a B.S. in chemistry with Highest Distinction and a Ph.D. in analytical biochemistry, both from Purdue University, and an M.B.A. from Pepperdine University.

**Pierre Lapalme** joined the BioMarin Board in January 2004 and was named as Chairman in August 2004, upon the resignation of Fredric D. Price, BioMarin's former Chief Executive Officer and Chairman of the Board. Throughout his career, Mr. Lapalme has held numerous senior management positions in the pharmaceutical industry, including chief executive officer and chairman of the board of Rhône-Poulenc Pharmaceuticals, Inc. in Canada, and senior vice president and general manager of North America Ethicals, a division of Rhône-Poulenc Rorer, Inc., where he oversaw the development of the ethical pharmaceutical business in the United States, Canada, Mexico, and Central America. Mr. Lapalme served on the board of the National Pharmaceutical Council and was a board member of the Pharmaceutical Manufacturers Association of Canada, where he played a leading role in reinstating patent protection for pharmaceuticals. Mr. Lapalme currently serves as director of First Horizon Pharmaceuticals, Bioxel Pharma Inc. and International Wex Technologies. Mr. Lapalme studied at the University of Western Ontario and INSEAD France. Mr. Lapalme also served as non-executive chairman of the board of Diagnocure, a biotechnology company from 1995 to 2005.

**Erich Sager** joined the BioMarin Board in November 1997. Since 2004, Mr. Sager has acted as Chairman of Calltrade Carrier Services AG, a European wholesale phone operator. From September 1996 until August 2004, Mr. Sager served as the chairman of LaMont Asset Management SA, a private investment management firm. From April 1994 to August 1996, Mr. Sager served as senior vice president, head of Private Banking for Dresdner Bank (Switzerland) Ltd. From September 1991 to March 1994, Mr. Sager served as vice president, Private Banking-Head German Desk for Deutsche Bank (Switzerland) Ltd. From 1981 to 1989, Mr. Sager held various positions at a number of banks in Switzerland. Mr. Sager serves as a director of Calltrade Carrier Services AG and Zecotek Medical Systems Inc. Mr. Sager received a business degree from the School of Economics and Business Administration in Zurich, Switzerland.

**John Urquhart, M.D.**, joined the BioMarin Board in July 2003 and serves as chairman of its Compensation Committee and Science Committee and has been a member of the BioMarin Science Advisory Board since 2002. Since September 1995, Dr. Urquhart has been the chief scientist of AARDEX Ltd., acting as the chief technical officer of this pharmaceutical packaging company, and the chief executive officer of APREX, also a pharmaceutical packaging company and subsidiary of AARDEX. Since 1991, he has been a member of the board of directors of the Cayman subsidiary of HBM Bioventures, as Swiss-based venture capital firm. Dr. Urquhart also served, as director and non-executive vice chairman of the board of directors of Inveresk Research Group, Inc. of Cary, North Carolina, formerly Inveresk Research Group Ltd. of Edinburgh, Scotland until its acquisition in November 2004 by Charles River Laboratories, Inc. Since November 2004, he has served as a director of Charles River Laboratories, Inc. In April 2004, Dr. Urquhart retired from his position as Extraordinary Professor of Pharmacoepidemiology at Maastricht University in the Netherlands where he served since 1986 with a concentration on graduate education and research. He has been Adjunct Professor of Biopharmaceutical Sciences at University of California, San Francisco Medical Center since 1986. In addition, he occasionally serves as a

paid consultant to the pharmaceutical industry. Dr. Urquhart received his M.D. from Harvard Medical School and his B.A. from Rice University.

**Gwynn R. Williams** joined the BioMarin Board upon its incorporation in 1996 and serves as Chairman of its Corporate Governance and Nominating Committee. Mr. Williams is also a trustee of the United Kingdom Transplant Trust. Previously, Mr. Williams was a partner at Andersen Consulting where he specialized in the design and installation of financial control systems. Additionally, he served as a mathematician with General Motors Research, an internal consultant with Canadian International Paper Company, and a statistician with British Steel. He was a founder of numerous companies including, Xoma Inc., Murex Inc., AstroMed Ltd. and Astroscan Ltd. Mr. Williams was a major stockholder of Glyko Biomedical Ltd. (which was acquired by BioMarin in 2002) and its predecessor Glyko, Inc. Mr. Williams received a B.Sc. in theoretical physics from the University of Wales and is a Chartered Physicist and Fellow of the Institute of Physics in the United Kingdom.

### **Board Meetings and Board Committees**

The Board manages the business of the Company. It establishes overall policies and standards for the Company and reviews the performance of management. In addition, the Board has established an Audit Committee, a Compensation Committee, a Corporate Governance and Nominating Committee and a Science Committee whose functions are briefly described below.

The Board held a total of 19 meetings during the year ended December 31, 2004 and took action by unanimous written consent on 2 occasions. During fiscal 2004, no director participated in fewer than 75% of all such meetings of the Board and the committees upon which directors served.

**Audit Committee.** The Audit Committee provides oversight of (i) the financial reporting process, the system of internal financial controls and the audit process of BioMarin and (ii) BioMarin's independent registered public accounting firm. The Audit Committee also recommends to the Board the appointment of the independent registered public accounting firm for BioMarin. The members of the Audit Committee are Mr. Cristiani, Chairman, Dr. Heron, and Mr. Williams. Each of the members of the Audit Committee is an audit committee financial expert as defined by Nasdaq and Securities and Exchange Commission rules and, as required by the Audit Charter, is an independent director. The committee charter is available in the investors section of the Company's website at [www.bmrn.com](http://www.bmrn.com). Information on our website is not incorporated by reference in this proxy statement. During 2004, the Audit Committee met on 8 occasions.

**Compensation Committee.** The Compensation Committee sets general compensation policy for BioMarin and has final approval power over compensation of executive officers. The Compensation Committee also has final approval power over guidelines and criteria for officers bonuses and administers BioMarin's 1997 Stock Plan and 1998 Director Option Plan. The members of the Compensation Committee are Dr. Urquhart, Chairman, Mr. Lapalme and Mr. Sager. Dr. Urquhart and Mr. Lapalme are each independent directors as defined by Nasdaq and Securities and Exchange Commission rules. Mr. Sager was not independent in 2004 due to consulting services he provided to BioMarin in 2001, but he was determined to be independent in 2005. The committee charter is available in the investors section of the Company's website at [www.bmrn.com](http://www.bmrn.com). Information on our website is not incorporated by reference in this proxy statement. During 2004, the Compensation Committee met on 4 occasions.

**Corporate Governance and Nominating Committee.** The Corporate Governance and Nominating Committee (the Committee) is responsible for overseeing the selection of qualified candidates to serve as members of the Board of Directors and guiding the corporate governance philosophy and practices of the Company. To that end, the Committee is responsible for identifying individuals to fill vacancies on the Board, recommending nominees to be voted upon at the annual meeting of stockholders, recommending to the Board appointees to serve on committees of the Board and overseeing the development and implementation of BioMarin's corporate governance policies and code of ethics. A detailed discussion of Committee procedures appears under the caption *Procedure of the Corporate Governance and Nominating Committee*.





The Committee also oversees policies including, but not limited to:

adoption of corporate governance guidelines;

establishing written charters for each Board committee;

maintaining independence standards for each Board member;

requiring sessions of Board meetings without management present;

mandating execution of a standard of business ethics for every employee and Board member;

implementing, in conjunction with the Audit Committee, the independent audit function, in order to oversee our financial processes and internal controls report to the Audit Committee on a regular basis; and

establishing a toll-free telephone number for employees to anonymously report complaints relating to financial fraud, environmental hazards, illegal or unfair employment practices and unethical behavior.

The members of the Committee are Mr. Williams, Chairman, Mr. Cristiani and Mr. Lapalme. The committee charter and the Corporate Governance Guidelines are available in the investors section of the Company's website at [www.bmrn.com](http://www.bmrn.com). Information on our website is not incorporated by reference in this proxy statement. The Committee met on 8 occasions during 2004.

*Science Committee.* In 2002, the Company formed a Scientific Advisory Board ( SAB ). The SAB provides the Company with technical advice on its research and development programs. Dr. Urquhart is a member of the SAB and collaborates with Dr. Heron as a liaison between the SAB and the Board. Dr. Urquhart chairs the Science Committee with Dr. Heron as a Science Committee member.

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

The Compensation Committee consists (and consisted during all of fiscal 2004) of three of the Company's independent directors: Dr. Urquhart (chair) and Messrs. Lapalme and Sager. None of the members of the Compensation Committee (i) was an officer or employee of the Company or any of its subsidiaries during the fiscal year, (ii) was formerly an officer of the Company or any of its subsidiaries, or (iii) had any relationships requiring disclosure by the Company under the SEC's rules requiring disclosure of certain relationships and related party transactions. None of our executive officers serves as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving on our board of directors or Compensation Committee.

**2004 Director Compensation**

The following table is a summary of the compensation paid to the directors. Each applicable line item is an additional element of compensation.

<u>Director Position</u>	<u>Annual Compensation</u>
All Independent Members	\$25,000
	Options to purchase 30,000 shares of the Company's common stock
Chairman of the Board	\$30,000
Audit Committee Chair	\$15,000
Audit Committee (Non-Chair)	\$7,500
Compensation Committee Chair	\$10,000
Compensation Committee (Non-Chair)	\$5,000
Corporate Governance and Nominating Committee Chair	\$10,000
Corporate Governance and Nominating Committee (Non-Chair)	\$5,000
Science Committee Chair	\$10,000
Science Committee (Non-Chair)	\$5,000

From January 1, 2004 through August 19, 2004, Mr. Cristiani served as lead director. In August 2004, the Board amended the Company's Corporate Governance Principles to eliminate the position of lead director in connection with the adoption of the requirement to have the role of Chief Executive Officer and Chairman of the Board held by different persons. Mr. Cristiani received \$3,750 for serving as lead director in 2004. Directors are also reimbursed for their reasonable expenses in attending meetings of the Board and while performing services for the Company.

*2004 Director Compensation*

The following table lists actual compensation paid to each of the directors during 2004.

<u>Director Name</u>	<u>Director Fees</u>	<u>Option Grant Date</u>	<u>Number of Options Granted</u>	<u>Exercise Price Per Share</u>	<u>Option Expiry</u>
Franz L. Cristiani	\$ 37,500	6/14/04	30,000	\$ 5.97	6/14/14
Elaine J. Heron, Ph.D.	\$ 29,375	7/12/04	30,000	\$ 5.12	7/12/14
Pierre Lapalme	\$ 31,250	1/27/04	30,000	\$ 8.47	1/27/14
Erich Sager	\$ 25,000	11/30/04	30,000	\$ 5.33	11/30/14
John Urquhart, M.D.	\$ 32,500	7/28/04	30,000	\$ 5.57	7/28/14
Gwynn R. Williams	\$ 31,875	11/30/04	30,000	\$ 5.33	11/30/14

*1998 Director Option Plan*

The 1998 Director Option Plan was adopted by the Board in December 1999. It was approved by the Company's stockholders as of January 15, 2000. The 1998 Director Option Plan provides for the grant of nonstatutory stock options to non-employee directors. A total of 900,000 shares

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of the Company's common stock have been reserved for issuance under the 1998 Director Option Plan. The 1998 Director Option Plan also provides for an annual increase in this number of shares equal to the lesser of: (i) 0.5% of BioMarin's outstanding common stock, (ii) 200,000 shares, or (iii) a lesser amount determined by the Board.

In fiscal year 2004, options to purchase, in the aggregate, 180,000 shares were issued to directors under the 1998 Director Option Plan.

The 1998 Director Option Plan, as amended in 2003 and May 2004, provides that each non-employee director shall automatically be granted an initial option and subsequent annual options to purchase 30,000 shares

of BioMarin common stock on the date that such person first becomes a non-employee director and on each anniversary of the date of the non-employee director's appointment to the Board. These options have a term of 10 years. The shares subject to these options vest quarterly over one year. These options continue to vest only while the director serves. The exercise price per share of each of these options is 100% of the fair market value of a share of BioMarin common stock at the date of the grant of the option.

In the event of a merger or the sale of substantially all of the assets of BioMarin, each option issued under the 1998 Director Option Plan may be assumed or substituted by the successor corporation. If an option is assumed or substituted, it shall continue to vest as provided in the 1998 Director Option Plan. However, if a non-employee director's status as a director of BioMarin or the successor corporation, as applicable, is terminated, other than upon a voluntary resignation by the non-employee director, the option immediately becomes fully vested and exercisable. If the successor corporation does not agree to assume or substitute options, each option becomes fully vested and exercisable for a period of 30 days from the date the Board notifies the optionee of the option's full exercisability, after which period the option terminates.

Options granted under the 1998 Director Option Plan are required to be exercised within three months of the end of the optionee's tenure as a director, or within 12 months after termination by death or disability, or within the original option expiration if the director retires from the Board after having served 4.5 years, but in no event later than the expiration of the option's ten-year term. No option granted under the 1998 Director Option Plan is transferable by the optionee other than by will or the laws of descent or distribution. Each option is exercisable, during the lifetime of the optionee, only by the optionee. Unless sooner terminated by the Board, the 1998 Director Option Plan will terminate automatically 10 years from the effective date of the 1998 Director Option Plan.

Except as set forth in this proxy statement or in *Annex A* hereto, to the best knowledge of the Company, none of the directors, nor any of the Board's nominees for election, nor any other persons participating in this solicitation on behalf of the Company, or with respect to items (ii), (viii) and (ix) of this paragraph, any associate (within the meaning of Rule 14a-1 of the Exchange Act) of the foregoing persons (i) have any substantial interest, direct or indirect, in any matter to be acted upon at the Annual Meeting, other than the interest of the Board's nominees in being elected and each director's interest in the operations of the Company, (ii) own beneficially, directly or indirectly, any securities of the Company, (iii) own any securities of the Company of record but not beneficially, (iv) have purchased or sold any securities of the Company within the past two years, (v) have incurred indebtedness for the purpose of acquiring or holding securities of the Company within the past two years, (vi) are or have within the past year been a party to any contract, arrangement or understanding with any person with respect to any securities of the Company, except with respect to any employment agreement, stock option grant or similar agreement described in the proxy statement or in *Annex A* hereto, (vii) own beneficially, directly or indirectly, any securities of any parent or subsidiary of the Company, (viii) have since the beginning of the Company's last fiscal year, been indebted to the Company or any of its subsidiaries in excess of \$60,000 or (ix) have any arrangement or understanding with respect to future employment by the Company or its affiliates or with respect to any future transactions to which the Company or any of its affiliates will or may be a party. In addition, except as set forth in this proxy statement or in *Annex A* hereto, to the best knowledge of the Company, none of the directors, nor any of the Board's nominees for election, nor any other person participating in this solicitation on behalf of the Company, nor any associates of any of the foregoing persons, have had or are to have a direct or indirect material interest in any transaction or proposed transaction with the Company in which the amount involved exceeds \$60,000 since the beginning of the Company's last fiscal year.

**THE BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT THE STOCKHOLDERS VOTE FOR THE ELECTION OF ALL NOMINEES NAMED ABOVE. IF YOU SIGN AND RETURN THE ENCLOSED WHITE PROXY CARD, UNLESS YOU DIRECT TO THE CONTRARY ON THAT CARD, THE SHARES REPRESENTED BY THAT PROXY CARD WILL BE VOTED FOR THE ELECTION OF ALL NOMINEES LISTED ABOVE.**

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**IF YOU HAVE ANY QUESTIONS, OR REQUIRE ASSISTANCE IN VOTING YOUR SHARES, PLEASE CALL THE FIRM ASSISTING THE COMPANY IN THE SOLICITATION OF PROXIES, MORROW & CO., INC., TOLL-FREE AT (800) 607-0088.**

### **Dissident Shareholder Solicitation**

On April 18, 2005, the Caduceus Group, the beneficial owners of an aggregate of 2,110,000 shares (3.2%) of the Company's Common Stock, notified the Company of their intention to nominate 3 persons for election as directors of the Company through their advisors, OrbiMed Advisors LLC and OrbiMed Capital LLC (together, OrbiMed). OrbiMed also advised the Company that it would support the nominations through a number of entities through which it controls an additional 3,196,300 shares (5.0%), of the Company's Common Stock. The currently-proposed Caduceus Group nominees are: Richard Brewer, Joseph Klein III and Alan J. Lewis.

The following discussion summarizes the interactions between the Company, OrbiMed and the proposed Caduceus Group nominees.

In late 2004 the Committee contacted Richard B. Brewer about the possibility of serving as the Company's Chief Executive Officer. Mr. Brewer indicated then that he was unwilling to serve as the Chief Executive Officer, but that he was interested in serving as Chairman of the Board of Directors and had ideas regarding potential candidates for the position of Chief Executive Officer. Accordingly, members of the Committee met with Mr. Brewer personally, and the Committee held a number of formal and informal meetings during which Mr. Brewer's candidacy as a director as well as his proposals for the Company were discussed.

As a result of these meetings, the Committee determined that one of Mr. Brewer's primary proposals was based on a fundamental misunderstanding on his part of the composition and manufacture of Aldurazyme. In this regard, the Committee believed that Mr. Brewer failed to understand key differences between Aldurazyme and a simpler commercial product for which he had a broader understanding based on his past experience. Furthermore, the Committee believed that following their discussions, Mr. Brewer may have contacted OrbiMed, which in turn contacted one of the Company's corporate partners, without authorization, to pursue one of Mr. Brewer's proposals for the Company. Management, as well as members of the Board of Directors, believed that this unauthorized contact needlessly harmed the Company's relationship with that corporate partner.

The Committee recognized that Mr. Brewer's opinions with respect to this and other strategic issues were necessarily based in part on limited information available to him as an outsider. But as discussions ensued, the Committee determined that Mr. Brewer in fact was unwilling to alter his opinions through further discussion and learning about the Company and its products. For these and other reasons, the Committee believed that Mr. Brewer's approach could make it considerably more difficult, among other things, to hire a qualified Chief Executive Officer—an objective that remained of primary importance for the Company. Accordingly, the Committee concluded that Mr. Brewer's nomination was not in the best interests of the Company and advised him of its determination in January 2005.

Subsequently, in January, 2005, Samuel D. Isaly of OrbiMed contacted the Company to request that three potential candidates, including Mr. Brewer, Joseph Klein, III, and a third individual, be considered for nomination by the Board for election at the Company's upcoming annual meeting. In light of this request and to assist the Committee in its evaluation process, the Committee referred Mr. Klein and the third individual to Spencer Stuart, an executive search firm retained by the Company, to perform reference checks. In February, 2005, Committee members Pierre Lapalme and Gwynn R. Williams met with Mr. Isaly to discuss his request and the reasons for these specific candidates. As the Committee had already duly considered Mr. Brewer as a candidate for the Board, it decided not to pursue his nomination further and the Committee advised Mr. Isaly accordingly. Mr. Isaly then indicated that OrbiMed was agreeable to pursuing the other two candidates nominations and abandoning Mr. Brewer's nomination.



Upon receipt of reference information on the remaining proposed candidates, the Committee met by telephone on March 21, 2005, and decided to schedule interviews with Mr. Klein and the other candidate. Ultimately, the Committee was unable to interview the other candidate, after attempting unsuccessfully several times to schedule a mutually convenient meeting time. Messrs. Lapalme and Williams were able to interview Mr. Klein, although Mr. Williams was only able to do so by traveling at considerable inconvenience to Park City, Utah, where Mr. Klein then was vacationing.

Following the meeting with Mr. Klein, on April 1, 2005 the Board met to further consider the two remaining proposed candidates' qualifications in light of the Company's needs and objectives. With respect to the third proposed candidate, the Board determined to defer any decision and instead to continue reviewing his candidacy along with other candidates proposed by Spencer Stuart, in part as a result of the Committee's inability to meet in person with the third proposed candidate. Based on the Committee's recommendation, the Board determined that this third proposed candidate's qualifications appeared to be inferior to those of the other candidates then available for consideration. Finally, the Committee and the Board were influenced by the seeming lack of personal interest in the Company by the third proposed candidate. On April 5, 2005, the third proposed candidate formally withdrew his candidacy and was not among the candidates subsequently proposed by the Caduceus Group on April 15, 2005.

By contrast, the Board decided to move forward with Mr. Klein's nomination. On April 8, 2005, Mr. Lapalme informed Mr. Isaly of the Committee's decision to move forward with Mr. Klein's nomination and to retain for future consideration the third proposed candidate. Mr. Isaly expressed his pleasure at the potential nomination of Mr. Klein and regret at the Board's decision on the other proposed candidates.

On April 9, 2005, Mr. Klein accepted his proposed nomination by the Committee. However, he elected not to review and comment on the relevant portions of the Company's proxy statement then provided to him. Neither Mr. Klein nor Mr. Isaly thereafter made any further attempt to communicate with the Company until April 15, 2005.

On April 15, 2005, the Caduceus Group served the Company with notice of its intention to propose a slate of three candidates for nomination in opposition to the Company's nominees. The notice named Messrs. Brewer, Klein and Alan J. Lewis, a new candidate previously unknown to the Company, as the proposed Caduceus Group nominees. Concurrent with the notice, OrbiMed also filed a Schedule 13D with the SEC referencing the same candidates. On April 18, 2005, each of the Committee and the Board convened to discuss the Caduceus Group notice. Thereafter, the Committee directed Messrs. Lapalme and Cristiani to contact Mr. Isaly to determine what the Committee might do to better satisfy his expectations as a stockholder. When contacted, Mr. Isaly advised the Committee that he desired that all three of the Caduceus Group candidates be nominated for election to the Board, including Mr. Brewer.

On April 19, 2005, each of the Committee and the Board again convened to consider the Caduceus Group notice and the OrbiMed Schedule 13D. At this meeting, the Committee revisited its prior extensive discussions regarding possible director candidates. It noted that Mr. Brewer's candidacy had been previously discussed at length and accordingly reaffirmed its prior decision to decline his nomination. It then discussed the qualifications of the new proposed director, Mr. Lewis, in light of the Company's needs and determined that at that time, another nominee then being evaluated appeared to be better qualified. In doing so, the Committee noted that there was not enough time prior to the proposed filing date of the Company's proxy statement to complete the requisite due diligence necessary to include Mr. Lewis on the Company's slate of nominees. Accordingly, the Committee was unable to recommend his nomination to the Board at that time.

While the Committee initially supported the nomination of Mr. Klein to fill the current vacancy on the Board, the Committee withdrew its support when Mr. Klein announced his intention to participate with other Caduceus Group candidates that the Company had previously deferred or rejected. In doing so, the Committee believed, among other things, that so significant and fundamental a change to the Board of Directors could significantly disrupt or delay the CEO search, which urgently needed to be completed, as well as corporate





partnering and financing opportunities. The Committee was also influenced in part by the apparent lack of candor of Mr. Klein, as suggested by his decision not to advise the Committee of his joint objectives with the other Caduceus Group nominees, his apparent interest in serving only on a conditional basis with Mr. Brewer and his decision to run with the Caduceus Group candidates in opposition to the candidates approved by the Committee, without regard for the systems and procedures implemented by the Committee on behalf of the Company's stockholders. Accordingly, the Committee recommended that none of the Caduceus Group candidates be nominated by the Board for election at the Annual Meeting.

Stockholders should further be advised that the indenture governing the Company's 3.5% convertible subordinated notes provides that each holder of the notes may require the Company to repurchase all or part of its notes upon a change of control. As defined in the indenture, a change of control will occur if at any time at least a majority of the Company's directors are not comprised of members of the Board as it existed at the time of execution of the indenture (June 23, 2003) or nominated by a majority of those directors or the successors to those directors that were so nominated. While all of the Company's nominees satisfy this requirement under the indenture, the nominees by the Caduceus Group do not. Accordingly, a change of control requiring the repurchase of the notes will occur if all of the Caduceus Group nominees are elected and one or more of the other Board members resigns or dies, unless prior to his or her resignation or death, a new director is elected by both a majority of the Board, including the Caduceus Group nominees, and a majority of the directors comprised of or nominated by the existing Board, excluding the Caduceus Group nominees. As of March 31, there was \$125 million in aggregate principal amount of the notes outstanding.

**THE BOARD WILL OPPOSE THE CADUCEUS GROUP CANDIDATES AND UNANIMOUSLY RECOMMENDS A VOTE AGAINST THE CADUCEUS GROUP CANDIDATES. YOU MAY RECEIVE A PROXY CARD SOLICITING YOUR VOTE FOR THE CADUCEUS GROUP CANDIDATES. WE URGE YOU TO DISREGARD ANY SUCH PROXY SOLICITATION AND TO SIGN AND DATE THE ENCLOSED WHITE PROXY CARD AND RETURN IT TODAY IN THE ENCLOSED PRE-ADDRESSED POSTAGE-PAID ENVELOPE.**

## PROCEDURES OF THE CORPORATE GOVERNANCE AND NOMINATING COMMITTEE

The Corporate Governance and Nominating Committee of the Board of Directors (the Committee) is responsible for overseeing the selection of qualified candidates to serve as members of the Board of Directors and guiding the corporate governance philosophy and practices of the Company. The Committee is composed of three directors each of whom is independent under the listing qualifications of the Nasdaq National Market. The Committee operates according to a charter that complies with the guidelines established by Nasdaq.

The Committee has not adopted formal procedures in selecting individuals to serve as members of the Board of Directors. Instead, it utilizes general guidelines that allow it to adjust the process to best satisfy the objectives it is attempting to accomplish in any director search. The first step in the general process is to identify the type of candidate the Committee may desire for a particular opening. This may involve locating candidates with specific backgrounds, skill sets or experiences. Once identified, the Committee looks to the best method of finding a candidate who satisfies the specified criteria. The Committee may consider candidates recommended by management, by other members of the Committee or the Board of Directors, by stockholders or it may engage a third party to conduct a search for possible candidates. In considering candidates submitted by stockholders, the Committee will take into consideration the needs of the Board and the qualifications of the candidate. To have a candidate considered by the Committee, a stockholder should submit a written recommendation that includes (i) the name of the stockholder and evidence of the stockholder's ownership of Company stock, including the number of shares owned and the length of time of ownership, and (ii) the name of the candidate, the candidate's resume or a listing of his or her qualifications to be a director of the Company and the person's consent to be named as a director if selected by the Committee and nominated by the Board. Stockholder recommendations should be addressed to the Corporate Governance and Nominating Committee in care of the Secretary of the Company at the address set forth under the heading *Stockholder Communications with the Board of Directors*.

Once candidates are identified, the Committee conducts an evaluation of the candidate. The evaluation generally includes interviews and background and reference checks. There is no difference in the evaluation process of a candidate recommended by a stockholder as compared to the evaluation process of a candidate identified by any of the other means described above. While the Committee has not established minimum criteria for a candidate, it has established important factors to consider in evaluating a candidate. These factors include: strength of character, mature judgment, business experience, availability and level of interest, attendance, career specialization, relevant technical skills, diversity and the extent to which the candidate would fill a present need on the Board of Directors.

If the Committee determines that a candidate should be nominated as a candidate for election to the Board, the candidate's nomination is then recommended to the Board of Directors, and the directors may in turn conduct their own review to the extent it deems appropriate. When the Board of Directors has agreed upon a candidate, such candidate is recommended to the stockholders for election at an Annual Meeting of stockholders.

All of the current directors have been recommended by the Committee to the Board of directors for election as directors of the Company at the Annual Meeting, and the Board has approved such recommendations. John Urquhart and Gwynn Williams, current directors and nominees for the Board at the Annual Meeting, have separately indicated that in accordance with the corporate governance principles adopted by the Company, upon reaching age 72, they intend to submit their resignation for consideration by the Committee. The Committee expects to recommend that the Board decline such resignations and that Dr. Urquhart and Mr. Williams continue to serve on the Board through the end of their terms.

As described above, the Committee received three proposed nominations from the Caduceus Group. While the Committee initially supported the nomination of one such candidate, Mr. Klein, the Committee withdrew its support when Mr. Klein announced his intention to participate with a Caduceus Group nominee which the Committee previously deferred or rejected in opposition to the Committee's approved nominees.



In light of the determination not to nominate Mr. Klein to fill the current vacancy of the Board of Directors and the desire to fill that vacancy and have the CEO also serve as a director, the Committee recommended that Mr. Drapeau, former acting CEO, be submitted to the stockholders for consideration as a nominee for election at the Annual Meeting. On May 11, 2005, Jean-Jacques Bienaimé was appointed Chief Executive Officer and director, thereby filling the vacancy on the Board. In keeping with the Board's desire to have the CEO serve as a director, the Committee recommended that Mr. Bienaimé be submitted to stockholders for consideration as a nominee for election at the Annual Meeting, and, consequently, withdrew Mr. Drapeau's nomination.

In 2003, the independent Board members appointed Franz Cristiani as its Lead Director. The Lead Director was responsible for:

approving Board meeting schedules and meeting agendas;

approving Board meeting materials;

servicing as the liaison between the then executive-Chairman and the independent Board members;

leading executive sessions of the independent Board members;

setting meetings of independent Board members; and

being available for consultation with major stockholders.

Upon the resignation of Fredric D. Price as Chief Executive Officer and Chairman of the Board on August 12, 2004, the Lead Director position was eliminated and Mr. Lapalme was appointed Chairman of the Board. The responsibilities of the Lead Director were assumed by the Chairman of the Board.

#### **STOCKHOLDER COMMUNICATIONS WITH THE BOARD OF DIRECTORS**

The Board has adopted a process for stockholders and others to send communications to the Board or any director. All such communications should be sent by mail to 105 Digital Drive, Novato, CA 94949, c/o G. Eric Davis, the Company's Assistant Secretary and Vice President, Corporate Counsel. Stockholders who wish to contact Audit Committee members directly to report complaints or concerns about accounting, internal controls or auditing matters, may do so anonymously by directing their correspondence to Franz Cristiani, Audit Committee Chairman, PO Box 130A, San Carlos, CA 94070.

It is the Company's policy to request that all Board members attend the Annual Meeting of Stockholders. However, the Company also recognizes that personal attendance by all directors is not always possible. All of the directors serving at the time of the 2004 Annual Meeting of Stockholders attended such meeting.

#### **STANDARDS OF BUSINESS CONDUCT AND ETHICS**

The Board has adopted Standards of Business Conduct and Ethics which are applicable to all employees and directors, including the Company's Chief Executive Officer, Chief Financial Officer, other executive officers and senior financial personnel. A copy of the Company's Standards of Business Conduct and Ethics is available on the Company's website at [www.bmrn.com](http://www.bmrn.com). Information on our website is not incorporated by reference in this proxy statement. The Company intends to post any waiver of or material changes, to these Standards, if any, to its website within five business days of such event.

**PROPOSAL TWO: RATIFICATION OF THE INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FOR BIOMARIN**

The Audit Committee of the Board has selected KPMG LLP, an independent registered public accounting firm, to audit the financial statements of the Company for the year ending December 31, 2005, and recommends that stockholders vote for ratification of such appointment. Although stockholder ratification is not required by the Company's Bylaws or otherwise, the Board has determined that it is desirable to request approval of this selection by the stockholders as a matter of good corporate practice. Notwithstanding this selection, the Audit Committee, in its discretion, may direct the appointment of a new independent registered public accounting firm at any time during the year if the Audit Committee feels that such a change would be in the best interests of the Company and its stockholders. In the event of a negative vote on ratification, the Audit Committee may reconsider its selection.

**Independent Registered Public Accounting Firm**

Since June 11, 2002, KPMG LLP served as the Company's independent registered public accounting firm.

Representatives of KPMG LLP plan to attend the Annual Meeting and will be available to answer appropriate questions from stockholders and, although they do not expect to do so, they will have the opportunity to make a statement if they so desire.

*Description of Services Provided by KPMG LLP*

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