BIOLASE TECHNOLOGY INC
Form PRE 14A
September 26, 2005

**SCHEDULE 14A**

**(Rule 14a-101)**

**INFORMATION REQUIRED IN PROXY STATEMENT**

**SCHEDULE 14A INFORMATION**

**Proxy Statement Pursuant to Section 14(a) of the**

**Securities Exchange Act of 1934**

Filed by the Registrant x

Filed by a Party other than the Registrant ¨

Check the appropriate box:

x 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 Rule 14a-12

**BIOLASE TECHNOLOGY, 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):

x No fee required.
¨ Fee computed on table below per Exchange Act Rules 14a-6(i)(4) and 0-11.
(1) Title of each class of securities to which transaction applies:

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

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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:

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

(3) Filing Party:

(4) Date Filed:

**BIOLASE TECHNOLOGY, INC.**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

**TO BE HELD NOVEMBER 15, 2005**

TO OUR STOCKHOLDERS:

NOTICE IS HEREBY GIVEN that the Annual Meeting of Stockholders of BIOLASE Technology, Inc., a Delaware corporation (the Company ), will be held on Tuesday, November 15, 2005, at 2:00 p.m. local time at the Laguna Cliffs Marriott Resort and Spa, 25135 Park Lantern, Dana Point, CA, 92629, for the following purposes, as more fully described in the Proxy Statement accompanying this Notice:

1. To elect five directors to serve until the next Annual Meeting of Stockholders;

2. To ratify the form of Indemnification Agreement entered into between the Company and its directors and officers;

3. To amend the 2002 Stock Incentive Plan to increase the shares of common stock reserved for issuance thereunder;

4. To ratify the appointment of BDO Seidman, LLP as the Company s independent registered public accounting firm for the fiscal year ending December 31, 2005; and

5. To transact such other business as may properly come before the meeting, or any adjournment or postponement thereof.

Stockholders of record at the close of business on October 3, 2005 are entitled to notice of and to vote at the Annual Meeting and any adjournment or postponement thereof. A list of stockholders entitled to vote at the Annual Meeting will be available for inspection at the executive offices of the Company and at the Annual Meeting.

All stockholders are cordially invited to attend the meeting in person. Whether or not you plan to attend, ***please sign and return the enclosed proxy as promptly as possible*** in the envelope enclosed for your convenience. Should you receive more than one proxy because your shares are registered in different names and addresses, each proxy should be signed and returned to assure that all your shares will be voted. You may revoke your proxy at any time prior to the Annual Meeting. If you attend the Annual Meeting and vote by ballot, your proxy will be revoked automatically and only your vote at the Annual Meeting will be counted.

Sincerely,

Federico Pignatelli

*Chairman of the Board of Directors*

San Clemente, California

October __, 2005

**BIOLASE TECHNOLOGY, INC.**

**981 Calle Amanecer**

**San Clemente, California 92673**

**PROXY STATEMENT**

**FOR THE ANNUAL MEETING OF STOCKHOLDERS**

**TO BE HELD ON NOVEMBER 15, 2005**

**General**

The enclosed proxy (the Proxy ) is solicited on behalf of the Board of Directors of BIOLASE Technology, Inc., a Delaware corporation (the Company ), for use at the Annual Meeting of Stockholders to be held on Tuesday, November 15, 2005 (the Annual Meeting ) and at any adjournment or postponement thereof. The Annual Meeting will be held at 2:00 p.m. local time at the Laguna Cliffs Marriott Resort and Spa, 25135 Park Lantern, Dana Point, CA, 92629. These Proxy solicitation materials were mailed on or about October 17, 2005 to all stockholders entitled to vote at the Annual Meeting.

**Voting; Quorum**

The specific Proposals to be considered and acted upon at the Annual Meeting are summarized in the accompanying Notice and are described in more detail in this Proxy Statement. On October 3, 2005, the record date (the Record Date ) for determination of stockholders entitled to notice of and to vote at the Annual Meeting, shares of the Company s common stock (the Common Stock ) were outstanding. No shares of the Company s preferred stock are outstanding. Each stockholder is entitled to one vote for each share of Common Stock held by such stockholder on the Record Date. Stockholders may not cumulate votes in the election of directors.

The presence at the Annual Meeting, either in person or by proxy, of holders of shares of the Company s outstanding stock entitled to vote and representing a majority of the voting power of all of such shares shall constitute a quorum for the transaction of business. In the election of directors, the five nominees receiving the highest number of affirmative votes will be elected. With regard to Proposals Two, Three and Four, the affirmative vote of the holders of Common Stock representing a majority of the voting power present or represented by proxy and voting at the Annual Meeting and entitled to vote on the subject matter is required for approval.

All votes will be tabulated by the inspector of election appointed for the meeting, who will separately tabulate affirmative and negative votes, abstentions and broker non-votes. Abstentions and broker non-votes are counted as present for purposes of determining the presence or absence of a quorum for the transaction of business. With regard to Proposal One, broker non-votes and votes marked withheld will not be counted towards the tabulation of votes cast on such Proposal. With regard to Proposals Two, Three and Four, abstentions will be counted towards the tabulation of votes cast on such Proposals and will have the same effect as negative votes, whereas broker non-votes will not be counted for purposes of determining whether such Proposals have been approved.

**Proxies**

If the enclosed form of Proxy is properly signed and returned to the Company, the shares represented thereby will be voted at the Annual Meeting in accordance with the instructions specified thereon. If the Proxy does not specify how the shares represented thereby are to be voted, the Proxy will be voted FOR the election of the directors proposed by the Board unless the authority to vote for the election of such directors is withheld; and, if no contrary instructions are given, the Proxy will be voted FOR the approval of Proposals Two, Three and Four. You may revoke or change your Proxy at any time before the Annual Meeting by filing with the Secretary of the Company at the Company s principal executive offices at 981 Calle Amanecer, San Clemente, California 92673 a notice of revocation or another signed Proxy with a later date. You may also revoke your Proxy by attending the Annual Meeting and voting in person.

**Solicitation**

The Company will bear the entire cost of solicitation, including the preparation, assembly, printing and mailing of this Proxy Statement, the Proxy and any additional solicitation materials furnished to the stockholders. Copies of solicitation materials will be furnished to brokerage houses, fiduciaries and custodians holding shares in their names that are beneficially owned by others so that they may forward this solicitation material to such beneficial owners. In addition, the Company may reimburse such persons for their costs in forwarding the solicitation materials to such beneficial owners. The Company may retain a proxy solicitor to assist in the distribution of Proxies and Proxy solicitation materials. Generally, the fee for such services is approximately $15,000 plus expenses. The original solicitation of proxies by mail may be supplemented by a solicitation by telephone, facsimile or other means by directors, officers or employees of the Company. No additional compensation will be paid to these individuals for any such services. Except as described above, the Company does not presently intend to solicit proxies other than by mail.

**Deadline for Receipt of Stockholder Proposals**

Proposals of stockholders of the Company that are intended to be presented by such stockholders at the Company s 2006 Annual Meeting of Stockholders must be received no later than January 10, 2006 in order that they may be included in the proxy statement and form of proxy relating to that meeting. In addition, the proxy solicited by the Board of Directors for the 2006 Annual Meeting will confer discretionary authority to vote on any stockholder proposal presented at that meeting, unless the Company receives notice of such proposal no later than March 26, 2006.

**MATTERS TO BE CONSIDERED AT THE ANNUAL MEETING**

**PROPOSAL ONE**

**ELECTION OF DIRECTORS**

**General**

The Board of Directors currently consists of five persons whose term of office expires at the Annual Meeting. The directors to be elected will serve until the 2006 Annual Meeting of Stockholders and until their successors have been duly elected and qualified or until their earlier resignation, removal or death. If this Proposal is approved, the Board will consist of five persons.

The Company s current Board members are also its nominees for the upcoming election of directors. Each of the director nominees has agreed to serve if elected. Management has no reason to believe that any of the nominees will be unavailable to serve. In the event any of the nominees named herein is unable to serve or declines to serve at the time of the Annual Meeting, the persons named in the enclosed Proxy will exercise discretionary authority to vote for substitutes.

The Board has nominated the persons listed below to serve as directors for the term beginning at the Annual Meeting of Stockholders on November 15, 2005. Unless otherwise instructed, the proxy holders will vote the Proxies received by them FOR the nominees named below.

**Nominees for Term Ending Upon the 2006 Annual Meeting of Stockholders**

***Federico Pignatelli,*** 52, has served as the Chairman of the Board since 1994 and as a director since 1991. He is the Founder and President of Art & Fashion Group since 1992. Art & Fashion Group is a holding company of an array of businesses providing services to the advertising industry, including the world s largest complex of digital and film still photography studios for production and post-production. Previously, Mr. Pignatelli was a Managing Director at Gruntal & Company, an investment banking and brokerage firm, and was a Managing Director of Ladenburg, Thalmann & Co., another investment banking and brokerage firm.

***Robert M. Anderton, DDS,*** 68, has served as a director since May 2004. From 1999 to 2001, Dr. Anderton served as the President of the American Dental Association (ADA) as well as holding many official roles with the ADA, including Trustee, Liaison to the Commissions on Dental Accreditation, Council on Education, Government and Legislative Affairs. Dr. Anderton has practiced general dentistry since 1961 and has held several dental society positions, including past President of the Texas Dental Association and Dallas County Dental Society. At various times, Dr. Anderton has published a number of articles in medical and trade journals, including the Journal of the American Society of Preventive Dentistry and Journal of Modern Dental Practice. Dr. Anderton received his DDS degree from Baylor University College of Dentistry and his J.D. degree from Southern Methodist University School of Law.

***George V. d Arbeloff,*** 60, has served as a director since 1996. Since 2003, Mr. d Arbeloff has served as Managing Member of Opus Venture Group, LLC, a company dedicated to providing innovative products for television-based home shopping retailers. Since 2000, Mr. d Arbeloff has served and continues to serve as Chairman of Big Idea Group, Inc., a company that links inventors with other companies buying innovation. From 1996 to 2000, Mr. d Arbeloff served as Chief Executive Officer of Retail Solutions, Inc., a small early-stage private company. From 1967 to 1996, he served in various executive capacities at Teradyne, Inc., a manufacturer of testing equipment for the semiconductor and electronics industries, including Vice President of Investor Relations from 1995 to 1996, Vice President and General Manager of the Semiconductor Test Group from 1992 to 1995 and Vice President and General Manager of the Industrial/Consumer Division of the Semiconductor Test Group from 1982 to 1992.

***Robert E. Grant,*** 36, has served a director and President and Chief Executive Officer since October 2004. He joined the Company in 2003 and served as Chief Operating Officer until 2004. From 2002 to 2003, Mr. Grant served as Executive Vice President and General Manager of the Medical Business of Lumenis in Santa Clara, California. In 2002, he served as Executive Vice President and General Manager of the Surgical and Ophthalmic Business of Lumenis. In 2001, Mr. Grant served as Vice President of the Surgical Business of the Coherent Medical Group, a subsidiary of Coherent, Inc. and a manufacturer of laser equipment that was later acquired by Lumenis. Between 2000 and 2001, he also served as Vice President of Business Development of the Coherent Medical Group. From 1998 to 2001, Mr. Grant served as the Managing Director of European Operations for the Coherent Medical Group, based in Dieburg, Germany. From 1997 to 1998, he served as Director of Business Development for HGM, Inc., a manufacturer of medical lasers used in ophthalmic, dental and aesthetic applications, which also was later acquired by Lumenis. Before 1997, Mr. Grant held several positions in management at other companies in the medical device industry.

***Jeffrey W. Jones, 47,*** has served as a director since 1998 and as Vice Chairman of the Board and Chief Technology Officer since October 2004. He served as President and Chief Executive Officer from 1998 to 2004, and as Managing Director of BIOLASE Europe GmbH, a wholly owned subsidiary, from 2001 to 2004. From 1986 to 1998, Mr. Jones served in various executive capacities for a group of privately held companies, including the McMahan Enterprise Group and HGM Medical Laser Systems, a manufacturer of medical lasers used in ophthalmologic, dental and anesthetic applications. At various times during the above-mentioned period, he served as President and Chief Executive Officer of these companies.

**Independent Directors**

The Board believes that a majority of the Board members should be independent directors. The Board also believes that it is useful and appropriate to have members of management, including the Chief Executive Officer, as directors. The Board has determined that each of Messrs. Pignatelli and d Arbeloff and Dr. Anderton are independent directors as defined by the listing standards of the NASDAQ Marketplace Rules ( NASDAQ Rules ) and the rules and regulations of the U.S. Securities and Exchange Commission ( SEC ).

**Board Committees and Meetings**

The Board of Directors held seven meetings and acted by written consent various times during the year ended December 31, 2004. The Board has an Audit Committee, a Compensation Committee and a Nominating and Corporate Governance Committee. Each director attended or participated in 75% or more of the aggregate of (i) the total number of meetings of the Board of Directors and (ii) the total number of meetings held by all committees of the Board on which such director served during 2004. In addition, the Board encourages each of the directors to attend the annual meeting of stockholders, and four of the five directors attended the 2004 annual meeting of stockholders.

***Audit Committee.*** The Audit Committee currently consists of three directors, Messrs. d Arbeloff and Pignatelli and Dr. Anderton, and is primarily responsible for approving the services performed by the Company s independent auditor and reviewing their reports regarding the Company s accounting practices and systems of internal accounting controls. The committee also reviews the Company s financial reports, its accounting and financial policies in general, and management s procedures and policies with respect to the Company s internal accounting controls. The Audit Committee held ten meetings during 2004 and acted by written consent various times during 2004.

The Board has determined that all members of the Audit Committee are independent as that term is defined in the NASDAQ Rules and according to the standards established by the rules and regulations of the SEC. The Board has determined that Mr. d Arbeloff qualifies as the audit committee financial expert under the SEC rules, by means of his experience identified in this Proxy Statement under Nominees for Term Ending Upon the 2006 Annual Meeting of Stockholders.

4

The Board of Directors adopted and approved a written charter for the Audit Committee. A copy of the Audit Committee Charter is attached to this Proxy Statement as Appendix A.

***Compensation Committee.*** The Compensation Committee currently consists of three directors, Messrs. Pignatelli and d Arbeloff and Dr. Anderton, and is primarily responsible for reviewing and developing the Company s general compensation policies and making recommendations to the Board of Directors on compensation levels for the Company s executive officers. The Compensation Committee also reviews and makes recommendations to the Board of Directors on matters relating to employee compensation and benefit plans. Each of the members of the Compensation Committee qualifies as an independent director under the NASDAQ Rules and SEC rules and regulations, and as a non-employee director under the Internal Revenue code. The Compensation Committee held one meeting during 2004.

The Board of Directors has adopted and approved a written charter for the Compensation Committee. A copy of the Compensation Committee Charter is attached to this Proxy Statement as Appendix B.

***Nominating and Corporate Governance Committee.*** The Nominating and Corporate Governance Committee currently consists of three directors, Messrs. Pignatelli and d Arbeloff and Dr. Anderton, and is primarily responsible for recommending to the Board of Directors criteria for membership on the Board of Directors, identifying individuals qualified to serve on the Board of Directors and recommending individuals for selection by the Board of Directors as director nominees for election at each annual meeting of the Company s stockholders. The Nominating and Corporate Governance Committee is also responsible for developing and recommending to the Board of Directors corporate governance guidelines applicable to the Company. The Nominating and Corporate Governance Committee has a policy that it will review and evaluate the qualifications of any director candidates who have been recommended by stockholders of the Company. A stockholder who wishes to suggest a prospective nominee for the Board should notify any member of the Nominating and Corporate Governance Committee in writing with any supporting material the stockholder considers appropriate. Each of the members of the Nominating and Corporate Governance Committee qualifies as an independent director under the NASDAQ Rules and the SEC rules and regulations. The Nominating and Corporate Governance Committee held two meetings during 2004.

The Board of Directors has adopted and approved a written charter for the Nominating and Corporate Governance Committee. A copy of the Nominating and Corporate Governance Committee Charter is attached to this Proxy Statement as Appendix C.

**Compensation Committee Interlocks and Insider Participation**

During 2004, the Compensation Committee consisted of Messrs. Pignatelli and d Arbeloff and Dr. Anderton. No member of the Compensation Committee was an officer or employee at any time during the 2004 fiscal year or at any other time. The Board of Directors as a whole, including the Chief Executive Officer, made all compensation decisions with respect to the executive officers during 2004. No current executive officer has ever served as a member of the board of directors or compensation committee of any other entity that has or has had one or more executive officers serving as a member of the Board of Directors or Compensation Committee.

**Stockholder Communications**

Any stockholder who wishes to communicate with the Board may send his or her communication in writing to: Robert E. Grant, President, Chief Executive Officer and Board member, BIOLASE Technology, Inc., 981 Calle Amanecer, San Clemente, California 92673. The communication must include the stockholder s name, address and an indication that the person is a stockholder of the Company. Mr. Grant will review any

5

communications received from stockholders, and all material communications from stockholders will be forwarded to the appropriate director or directors, or committee of the Board, based on the subject matter.

**Director Compensation**

Non-employee directors did not receive any cash compensation from the Company for their service as members of the Board of Directors or any Board committee in 2004. However, directors are reimbursed for all reasonable travel and lodging expenses incurred by them in attending Board and committee meetings. As Chairman of the Board, Mr. Pignatelli receives a quarterly payment of $7,500 which approximates his actual expenses incurred in connection with his service on the Company s Board of Directors. In addition, in June 2005, the Board of Directors resolved to make a one-time payment of $90,000 to Mr. d Arbeloff in connection with his service as Audit Committee chair and the extraordinary efforts he contributed in connection with the 2004 fiscal year-end audit.

Under the automatic option grant program in effect under the 2002 Stock Incentive Plan, each individual who is elected to the Board as a non-employee director, at an annual meeting of stockholders or at a special meeting at which directors are elected, automatically is granted, on the date of such election, a non-statutory option to purchase 30,000 shares of Common Stock. Each option vests at a rate of 7,500 shares per quarter, with the first vesting date occurring three months after the date of grant. If a non-employee director becomes a director for the first time on a date other than the date of a meeting at which all directors are elected, he or she automatically is granted a non-statutory option to purchase the number of shares equal to (a) 2,500 multiplied by (b) the difference between 12 and the number of months since the last meeting at which directors were elected, vesting at a rate of 2,500 shares per month.

Each automatic grant under the 2002 Stock Incentive Plan has an exercise price per share equal to the fair market value per share of Common Stock on the grant date and has a maximum term of ten years, subject to earlier termination 12 months after the date of the optionee s cessation of Board service for any reason. Each automatic option is immediately exercisable for all of the option shares. However, any shares purchased under such option are subject to repurchase by the Company, at the lower of the exercise price paid per share or the fair market value per share (determined at the time of repurchase), should the optionee cease Board service prior to vesting of those shares. The shares subject to each initial option grant and each annual option grant will immediately vest in full if certain changes in control or ownership occur or if the optionee dies or becomes disabled while serving as a director.

Under the automatic option grant program, Messrs. Pignatelli and d Arbeloff and Dr. Anderton each received an automatic option grant on May 26, 2004 to purchase 30,000 shares of Common Stock at an exercise price of $11.96 per share.

**Required Vote**

The five nominees receiving the highest number of affirmative votes of the outstanding shares of Common Stock present or represented by proxy and entitled to be voted for them shall be elected as directors. Broker non-votes and votes marked withheld will not be counted towards the tabulations of votes cast for the election of directors. Each Proxy cannot be voted for a greater number of persons than five.

**Recommendation of the Board of Directors**

***The Board of Directors recommends that the stockholders vote FOR the election of the nominees listed above.***

## PROPOSAL TWO

## RATIFICATION OF FORM OF INDEMNIFICATION AGREEMENT

### General

The Board has directed the submission to a vote of the stockholders of a Proposal to ratify the form of indemnification agreement which may be made between the Company and its present and future directors, officers and key employees, as may be determined from time to time by the Board, in substantially the form attached to this Proxy Statement as Appendix D. The Board of Directors approved, and the Company entered into, such indemnification agreements with its directors, officers and certain key employees (the Indemnified Parties ) on July 26, 2005. Pursuant to the terms and conditions of the indemnification agreements, the Indemnified Parties are indemnified by the Company against certain liabilities arising out of their service to the Company.

Prior to entry into these indemnification agreements, the Company did not have indemnification agreements with its directors and officers, except pursuant to the provisions contained in the employment agreements of Messrs. Grant, Hohener, and Jones. The Board believes that such agreements should be adopted for all directors and officers in response to the increasing hazard, and related expense, of unfounded litigation directed against directors and officers, the difficulty of obtaining broad directors and officers liability insurance and significant limitations in amounts and breadth of coverage, dramatic increases in premiums for that coverage, and the potential inability to continue to attract and retain qualified directors and executive officers in light of these circumstances.

Although neither stockholder approval nor ratification of the form of indemnification agreement is required by law, the Board believes it is appropriate to submit the form of indemnification agreement to the Company s stockholders for ratification because the members of the Board are parties to, and the beneficiaries of, the rights contained in the indemnification agreements.

The Board believes the indemnification agreements serve the best interests of the Company and its stockholders by strengthening its ability to attract and retain the services of knowledgeable and experienced persons as directors and officers who, through their efforts and expertise, can make a significant contribution to the Company s success. The indemnification agreements are intended to complement the indemnity protection available under applicable law, the Company s certificate of incorporation and bylaws and any policies of insurance it may maintain.

In the event the stockholders fail to ratify the form of indemnification agreement, the Board will consider whether or not to seek a modification or termination of the agreements. Even if the form of indemnification agreement is ratified, the Board of Directors in its discretion may amend the indemnification agreements at any future time if the Board believes that such an amendment would be in the best interests of the Company and its stockholders.

### Delaware Law

Under the Delaware General Corporation Law ( DGCL ), a Delaware corporation is obligated to indemnify officers and directors in connection with liabilities arising from legal proceedings resulting from that person s service to the corporation in certain circumstances. A Delaware corporation may also voluntarily undertake to indemnify certain persons acting on its behalf in certain circumstances.

The DGCL states that Delaware corporations shall indemnify any present or former director or officer against reasonable expenses (including attorney s fees) incurred in connection with any proceeding to which such person was a party if that person is successful on the merits or otherwise in the defense of such action.

The DGCL authorizes corporations to indemnify any director or officer against liability incurred in a proceeding to which he or she was a party if his or her conduct was in good faith and he or she reasonably believed that his or her conduct was in or not opposed to the corporation s best interests, and in the case of any criminal proceeding, the director had no reasonable cause to believe his or her conduct was unlawful. This voluntary indemnification must be approved by a majority of uninterested directors, by a committee of such directors designated by majority vote of uninterested directors, by independent legal counsel in a written opinion if the uninterested directors so direct, or by the stockholders.

The DGCL authorizes the Court of Chancery to summarily determine a corporation s obligation to advance expenses (including attorney s fees).

The DGCL also authorizes corporations to advance reasonable expenses to a director or officer in advance of final disposition of a proceeding if the corporation receives an undertaking by or on behalf of such director or officer to repay such amount if it is ultimately determined that such person is not entitled to be indemnified by the corporation.

**Summary of Indemnification Agreements**

Under the indemnification agreements, the Company agrees to indemnify its directors, officers and agents, or Indemnified Parties, to the fullest extent permitted by law against all expenses and liabilities actually and reasonably incurred by reason of such Indemnified Party becoming, or being threatened to be made, a party to any action, claim, suit, arbitration, alternate dispute resolution mechanism, investigation, administrative hearing or any other proceeding, whether civil, criminal, administrative, investigative or other. Such expenses will be advanced by the Company upon written request by an Indemnified Party.

The Company has no obligation to provide indemnification if the party selected by the Board of Directors (such party being either the stockholders, a majority of disinterested directors, independent legal counsel or a panel of arbitrators) to review the Indemnified Party s request for indemnification (the Reviewing Party ) determines that the Indemnified Party would not be permitted to be indemnified. Additionally, if the Company has advanced expenses to the Indemnified Party and the Reviewing Party subsequently determines the Indemnified Party is not permitted to be indemnified under applicable law, the advanced expenses must be reimbursed by the Indemnified Party to the Company.

If an Indemnified Party is successful on the merits of an action, the Company is required to indemnify such Indemnified Party against all expenses and liabilities incurred in connection with such action. An Indemnified Party must notify the Company in writing, as soon as practicable, of any claim made against him or her for which indemnification will or could be sought.

To secure the Company s obligations to indemnify and advance expenses to the Indemnified Parties in the event of a change of control, the Company will secure a surety bond in the amount of not less than $1.0 million, upon which an Indemnified Party may from time to time file a claim for payment. If there is a change in control of the Company (other than a change in control approved by a majority of the Board of Directors who were directors immediately prior to the change in control), then independent legal counsel will act as the Reviewing Party to determine whether the Indemnified Party is entitled to indemnification. The Company agrees to pay the reasonable fees of any independent legal counsel or arbitrators retained to make a determination of entitlement to indemnification pursuant to the indemnification agreement.

The termination of any claim by judgment, order, settlement, conviction, or plea of *nolo contendere*, or its equivalent, does not affect the presumption that an Indemnified Party is entitled to indemnification under the indemnification agreement, and the Company shall have the burden of proof to overcome that presumption. Additionally, if the Company is obligated to pay the expenses of any claim, the Company may assume the defense of such claim with counsel approved by such Indemnified Party upon the delivery to such Indemnified Party of written notice of the Company s election to do so.

The Company shall not be obligated under the indemnification agreement: (i) to make any payment in connection with any claim against an Indemnified Party to the extent such party has otherwise actually received payment (under any insurance policy or otherwise) of the amounts indemnifiable under the indemnification agreement; (ii) to indemnify an Indemnified Party for liabilities in connection with a proceeding settled without the Company s consent; (iii) to indemnify an Indemnified Party for expenses and the payment of profits arising from the purchase and sale by such Indemnified Party of securities in violation of Section 16(b) of the Securities Exchange Act of 1934, or any similar state statute; or (iv) to indemnify an Indemnified Party for acts, omissions or transactions from which such Indemnified Party may not be relieved of liability under applicable law.

The Company agrees to use all reasonable efforts to maintain one or more policies of directors and officers liability insurance for such period of time as the Indemnified Party shall consent to serve as a director, officer or agent of the Company, as thereafter for so long as the Indemnified Party is subject to any possible proceeding.

The indemnification agreement is governed by Delaware law.

**Indemnification for Liabilities Under the Securities Act of 1933**

The Securities and Exchange Commission has expressed its opinion that indemnification of directors, officers and controlling persons of the Company against liabilities arising under the Securities Act of 1993, (the Act ), is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the company of expenses incurred or paid by a director or officer of the Company in the successful defense of the action, suit or proceeding) is asserted by the director or officer in connection with securities which may have been registered, the Company will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court or appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issues.

**Required Vote**

The affirmative vote of at least a majority of the shares of Common Stock present in person or by proxy at the Annual Meeting and entitled to vote on this matter is required for approval of the Proposal to ratify the form of indemnification agreement. Abstentions will be counted towards the tabulation of votes cast on this Proposal and will have the same effect as negative votes. Broker non-votes will not be counted for purposes of determining whether this Proposal has been approved.

**Recommendation of the Board of Directors**

The Board of Directors believes that the indemnification agreement serves the best interests of the Company and its stockholders by strengthening its ability to attract and retain the services of knowledgeable and experienced persons as directors and officers who, through their efforts and expertise, can make a significant contribution to the Company s success.

***The Board of Directors recommends a vote FOR approval of the Proposal to ratify the form of Indemnification Agreement.***

**PROPOSAL THREE**

**APPROVAL OF AMENDMENT TO THE**

**BIOLASE TECHNOLOGY, INC. 2002 STOCK INCENTIVE PLAN**

**General**

The stockholders are being asked to vote on an amendment to the Company s 2002 Stock Incentive Plan (the 2002 Plan ) which was approved by the Board of Directors on September 19, 2005, subject to stockholder approval. The effect of the amendment is to increase the number of shares of Common Stock available for issuance under the 2002 Plan by an additional 950,000 to a total of 4,950,000. The number of shares of Common Stock subject to the 2002 Plan is being increased to provide for awards in future years. The Company intends to award grants to directors, officers and employees in order to provide incentives to such individuals to focus on critical long-range objectives of the Company and to encourage the attraction and retention of such individuals.

**Background of the 2002 Plan**

The 2002 Plan was approved by the Company s stockholders on May 23, 2002. The 2002 Plan originally reserved 3,000,000 shares of Common Stock for issuance as stock awards or upon exercise of options granted pursuant to the 2002 Plan and included options outstanding under the predecessor 1998 Stock Option Plan which were transferred to the 2002 Plan. The 2002 Plan was amended in 2004 to increase the shares reserved by an additional 1,000,000 shares, bringing the current total shares of Common Stock reserved for issuance to 4,000,000.

The 2002 Plan is designed to serve as a comprehensive equity incentive program to attract and retain the services of individuals essential to the Company s long-term growth and financial success. Accordingly, the Company s officers and other employees, the non-employee directors and independent contractors have the opportunity to acquire a meaningful equity interest in the Company through their participation in the 2002 Plan.

**Shares Subject to the 2002 Plan**

As of September 15, 2005, options awarded pursuant to the 2002 Plan for 3,425,952 shares of Common Stock are outstanding and 142,856 shares remain available for issuance. These options were issued at fair market value of the Common Stock on the date of grant. Options expire following termination of the optionee s service between 90 days and 12 months following termination service and have an exercise term not to exceed ten years from the date of grant. The market value of the securities underlying the options as of September 15, 2005 was $6.05 per share of Common Stock. If the entire amount of 3,568,808 shares that have been authorized under the 2002 Plan were issued thereunder, such shares would constitute 15.4% of the Common Stock outstanding as of September 15, 2005.

The Company plans to file an S-8 Registration Statement to register the additional 950,000 shares being reserved under the 2002 Plan.

**Description of the Plan**

Both the Board of Directors and the Compensation Committee have the authority to act as the plan administrator of the discretionary option grant and stock issuance programs with respect to option grants and stock issuances made to the Company s executive officers and non-employee directors and also have the authority to make option grants and stock issuances under those programs to all other eligible individuals. The Board of Directors may at any time appoint a secondary committee comprised of one or more directors to have concurrent authority to make option grants and stock issuances under those two programs to individuals other than executive officers and non-employee directors. All grants under that program will be made in strict compliance with the express provisions of such program. Options granted under the 2002 Plan may be incentive stock options as defined in Section 422 of the Internal Revenue Code of 1986, as amended (the Code ), or non-qualified options.

The 2002 Plan consists of three equity incentive programs: (1) the discretionary option grant program, (2) the stock issuance program, and (3) the automatic option grant program for the Company s non-employee directors. The principal features of each program are described below.

**Discretionary Option Grant Program**

The plan administrator has complete discretion under the discretionary option grant program to determine which eligible individuals are to receive option grants, the time or times when those grants are to be made, the number of shares subject to each such grant, the status of any granted option as either an incentive stock option or a non-statutory option under the federal tax laws, the vesting schedule (if any) to be in effect for the option grant and the maximum term for which any granted option is to remain outstanding.

Each granted option will have an exercise price per share determined by the plan administrator. No granted option will have a term in excess of ten years. The shares subject to each option will generally vest in one or more installments over a specified period of service measured from the grant date.

**Stock Issuance Program**

Shares may be issued under the stock issuance program at a price per share determined by the plan administrator, payable in cash or for past services rendered to the Company. Shares may also be issued as a bonus for past services without any cash outlay required of the recipient. Shares of Common Stock may also be issued under the program pursuant to share right awards that entitle the recipients to receive those shares upon the attainment of designated performance goals. The plan administrator has complete discretion under the program to determine which eligible individuals are to receive such stock issuances or share right awards, the time or times when those issuances or awards are to be made, the number of shares subject to each such issuance or award and the vesting schedule to be in effect for the stock issuance or share rights award.

**Automatic Option Grant Program**

Under the automatic option grant program, eligible non-employee members of the Board of Directors will receive a series of option grants over their period of Board service. Each individual who is elected to the Board as a non-employee director, at an annual meeting of stockholders or at a special meeting at which directors are elected, automatically will be granted, on the date of such election, a non-statutory option to purchase 30,000 shares of Common Stock. Each option will vest at a rate of 7,500 shares per quarter, with the first vesting date occurring three months after the date of grant. If a non-employee director becomes a member of the Board of Directors for the first time on a date other than the date of a meeting at which all directors are elected, he or she will automatically be granted a non-statutory option to purchase the number of shares equal to (a) 2,500 multiplied by (b) the difference between 12 and the number of months since the last meeting at which directors were elected. This option will vest at a rate of 2,500 shares per month.

**Exercise Provisions, Amendment and Termination of the 2002 Plan**

Upon cessation of service, the optionee will have a limited period of time in which to exercise his or her outstanding options to the extent exercisable for vested shares. The plan administrator has complete discretion to extend the period following the optionee s cessation of service during which his or her outstanding options may be exercised and/or to accelerate the exercisability or vesting of such options in whole or in part. Such discretion may be exercised at any time while the options remain outstanding, whether before or after the optionee s actual cessation of service.

The Board of Directors may amend or modify the 2002 Plan at any time, subject to any required stockholder approval pursuant to applicable laws and regulations and the NASDAQ Rules.

Unless sooner terminated by the Board of Directors, the 2002 Plan will terminate on April 16, 2012.

**Options Granted Under the 2002 Plan**

Because option grants under the 2002 Plan are subject to the discretion of the plan administrator, awards under the 2002 Plan that will be made for the upcoming year are undeterminable. Future option exercise prices under the 2002 Plan are also indeterminable because they will be based upon the fair market value of the Common Stock on the date of grant. As of September 15, 2005, the following persons or groups had in total, received options to purchase shares of Common Stock under the 2002 Plan, each of which had an exercise price per share equal to the fair market value on the date of grant, as follows:

| Name and Position | Number of Shares |
|---|---|
| Federico Pignatelli<br>Chairman of the Board | 280,000 |
| Robert M. Anderton<br>Director | 30,000 |
| George V. d Arbeloff<br>Director | 180,000 |
| Robert E. Grant<br>President, Chief Executive Officer and Director | 500,000 |
| Jeffrey W. Jones<br>Vice Chairman of the Board and Chief Technology Officer;<br>former Chief Executive Officer | 1,007,000 |
| Keith G. Bateman<br>Executive Vice President, Marketing | 300,000 |
| John W. Hohener<br>Executive Vice President and Chief Financial Officer | 250,000 |
| James M. Haefner<br>Executive Vice President, Sales | 100,000 |
| Edson J. Rood | 200,000 |

| | |
|---|---|
| Former Vice President and Chief Financial Officer | |
| Ioana Rizoiu | 30,000 |
| Vice President, Clinical Research | |
| All current executive officers as a group (5 persons) | 2,157,000 |
| All current directors who are not executive officers as a group (3 persons) | 490,000 |
| All employees, including all current officers who are not executive officers, as a group | 1,197,644 |

**Certain Federal Income Tax Consequences**

Incentive stock options granted under the 2002 Plan will be afforded favorable federal income tax treatment under the Code. If an option is treated as an incentive stock option, the optionee will recognize no income upon grant or exercise of the option unless the alternative minimum tax rules apply. Upon an optionee s sale of the

12

shares (assuming that the sale occurs more than two years after grant of the option and more than one year after exercise of the option), any gain will be taxed to the optionee as long term capital gain. If the optionee disposes of the shares prior to the expiration of the above holding periods, then the optionee will recognize ordinary income in an amount generally measured as the difference between the exercise price and the lower of the fair market value of the shares at the exercise date or the sale price of the shares. Any gain recognized on such a premature sale of the shares in excess of the amount treated as ordinary income will be characterized as capital gain.

All other options granted under the 2002 Plan will be non-statutory stock options and will not qualify for any special tax benefits to the optionee. An optionee will not recognize any taxable income at the time he or she is granted a non-statutory stock option. However, upon exercise of the non-statutory stock option, the optionee will recognize ordinary income for federal income tax purposes in an amount generally measured as the excess of the then fair market value of each share over its exercise price. Upon an optionee s resale of such shares, any difference between the sale price and the fair market value of such shares on the date of exercise will be treated as capital gain or loss and will generally qualify for long term capital gain or loss treatment if the shares have been held for more than one year. The Code provides for reduced tax rates for long term capital gains based on the taxpayer s income and the length of the taxpayer s holding period.

The recipient of a restricted share award will generally recognize ordinary compensation income when such shares are no longer subject to a substantial risk of forfeiture, based on the excess of the value of the shares at that time over the price, if any, paid for such shares. However, if the recipient makes a timely election under the Code to be subject to tax upon the receipt of the shares, the recipient will recognize ordinary compensation income at that time equal to the fair market value of the shares over the price paid, if any, and no further ordinary compensation income will be recognized when the shares vest.

The Company is generally entitled to a deduction for Federal income tax purposes equal to the amount of ordinary compensation income recognized by the recipient of an option or restricted share award at the time such income is recognized.

The foregoing does not purport to be a complete summary of the federal income tax considerations that may be relevant to holders of options or restricted shares, or to the Company. It also does not reflect provisions of the income tax laws of any municipality, state or foreign country in which an optionee may reside, nor does it reflect the tax consequences of an optionee s death.

**Required Vote**

The affirmative vote of at least a majority of the shares of Common Stock present in person or by proxy at the Annual Meeting and entitled to vote on this matter is required for approval of the amendment of the 2002 Plan, and the amendment will become effective immediately upon approval. Abstentions will be counted towards the tabulation of votes cast on this Proposal and will have the same effect as negative votes. Broker non-votes will not be counted for purposes of determining whether this Proposal has been approved.

**Recommendation of the Board of Directors**

***The Board of Directors deems this Proposal to be in the best interests of the Company and its stockholders and recommends a vote FOR approval of the amendment to the 2002 Plan.***

**PROPOSAL FOUR**

**RATIFICATION OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

**Current Accountants**

On August 8, 2005 the Audit Committee and the Board of Directors selected the firm of BDO Seidman, LLP ( BDO ), as the Company s independent registered public accounting firm for the fiscal year ending December 31, 2005, and the Board is asking the stockholders to ratify this appointment. Stockholder ratification of such selection is not required by the Company s bylaws or other applicable legal requirement. However, the Board of Directors is submitting the selection of BDO to the stockholders for ratification as a matter of good corporate governance. In the event the stockholders fail to ratify the selection, the Audit Committee and the Board of Directors will reconsider whether or not to retain that firm for the 2006 fiscal year. Even if the selection is ratified, the Board of Directors in its discretion may direct the appointment of a different independent registered public accounting firm at any time during the year if the Board of Directors believes that such a change would be in the best interests of the Company and its stockholders.

A representative of BDO is expected to be present at the Annual Meeting, will have the opportunity to make a statement if he or she desires to do so, and will be available to respond to appropriate questions.

**Former Accountants**

On August 3, 2005, the Company dismissed PricewaterhouseCoopers LLP ( PWC ) as the Company s independent registered public accounting firm. The Company s Audit Committee approved the decision to dismiss its independent registered public accounting firm. A representative of PWC is not expected to be at the Annual Meeting.

The reports of PWC on the Company s financial statements as of and for the fiscal years ended December 31, 2004 and 2003 contained no adverse opinion or disclaimer of opinion, nor were they qualified or modified as to uncertainty, audit scope or accounting principle.

During the fiscal years ended December 31, 2004 and 2003 and the subsequent interim period, there were two disagreements with PWC on matters regarding accounting principles and practices, financial statement disclosure, or auditing scope or procedure, which disagreements, although ultimately resolved to the satisfaction of PWC, were reportable events as described in Item 304(a)(1)(iv) of Regulation S-K promulgated by the SEC pursuant to the Securities Exchange Act of 1934, as amended. There was a disagreement during the year ended December 31, 2003 related to revenue recognition. There was a disagreement during the year ended December 31, 2004 related to the accounting for penalties and interest on sales tax. The Company s Audit Committee has discussed the foregoing disagreements with PWC and has authorized PWC to respond fully to BDO concerning these disagreements. Except for the disagreements noted above, there were no disagreements with PWC on the matters noted above for the fiscal years ended December 31, 2004 and 2003 and through the subsequent interim period that would have caused PWC to make reference thereto in their reports on the Company s financial statements for such years if such matters were not resolved to the satisfaction of PWC.

The Company refers to Item 9A of its Form 10-K for the fiscal year ended December 31, 2004 which was filed with the SEC on July 19, 2005 with respect to the eleven material weaknesses in the Company s internal control over financial reporting, which is incorporated herein by reference. The Company refers to Item 9A of its Form 10-K for the fiscal year ended December 31, 2003, which was filed with the SEC on March 3, 2004 with respect to the material weakness in the Company s internal control over financial reporting, which is incorporated herein by reference. Except for the material weaknesses noted above, there were no other reportable events (as defined in Item 304(a)(1)(v) of Regulation S-K) for the fiscal years ended December 31, 2004 and 2003 and through August 3, 2005.

The Company provided PWC with a copy of the disclosure it proposed to make in a current report on Form 8-K, as required under the federal securities laws, and requested that PWC furnish a letter addressed to the SEC stating whether that firm agreed with the statements by the Company and, if not, stating the respects in which it did not agree. A copy of PWC s letter was filed as an exhibit to the Company s Form 8-K reporting the change in its auditors.

During the Company s two most recent fiscal years and the subsequent interim period, the Company did not consult with BDO with respect to the application of accounting principles to a specified transaction, either completed or proposed, or the type of audit opinion that might be rendered on the Company s financial statements, or any other matters or reportable events listed in Item 304(a)(2)(i) or (ii) of Regulation S-K.

**Fees Billed by PricewaterhouseCoopers LLP during 2004 and 2003**

The following table presents fees billed to the Company for professional services rendered by PWC for the fiscal years ended December 31, 2004 and 2003.

| | Fiscal Year Ended December 31, | |
|---|---|---|
| | **2004** | **2003** |
| Audit Fees(1) | $ 2,697,667 | $ 817,297 |
| Audit-Related Fees(2) | 0 | 41,714 |
| Tax Fees(3) | 2,000 | 27,068 |
| All Other Fees(4) | 0 | 0 |
| Total | $ 2,699,667 | $ 886,079 |

(1) Audit fees billed to the Company related to 2004 and 2003 for the audit of the annual consolidated financial statements and a review of the quarterly financial statements totaled $1,421,666 and $219,054, respectively. The audit fees for 2004 include fees in connection with the restatement of the years ended December 31, 2003 and 2002, the four quarters of 2003 and the first three quarters of 2004. Audit fees billed to the Company in connection with the audit of management s assessment of the effectiveness of its internal control over financial reporting as required by section 404 of the Sarbanes-Oxley Act related to 2004 totaled $1,276,001. Audit fees billed to the Company in connection with its restatement of the financial statements and the audit thereof in 2003 totaled $304,242. Audit fees billed to the Company in connection with the Company s public offering in 2003, including the issuance of consents and a comfort letter, totaled $294,001.

(2) Audit-related fees for 2003 consisted of fees for accounting consultations.

(3) Tax fees for 2004 and 2003 were for professional services for federal, state and international tax compliance, tax advice and tax planning.

(4) All other fees were for services other than those reported above, for which there were none in 2004 and 2003.

**Determination of Independence**

The Company s Audit Committee has determined that the fees received by PWC for the non-audit related services listed above were compatible with maintaining the independence of PWC.

**Pre-Approval Policy and Procedures**

According to policies adopted by the Audit Committee and ratified by the Company s Board of Directors, to ensure compliance with the SEC s rules regarding auditor independence, all audit and non-audit services to be provided by the Company s independent registered public accounting firm must be pre-approved by the Audit Committee. This policy generally provides that the Company will not engage its independent registered public accounting firm to render audit or non-audit services unless the service is specifically approved in advance by the Audit Committee or the engagement is entered into pursuant to one of the pre-approval procedures described below.

From time to time, the Audit Committee may pre-approve specified types of services that are expected to be provided to the Company by its independent registered public accounting firm during the next 12 months. Any such pre-approval will be detailed as to the particular service or type of services to be provided and is also generally subject to a maximum dollar amount.

All fees paid to PWC were for services pre-approved by the Audit Committee.

**Required Vote**

The affirmative vote of the holders of a majority of the shares present or represented and entitled to vote at the meeting is being sought to ratify the selection of BDO as the Company s independent registered public accounting firm for the year ending December 31, 2005. Abstentions will be counted towards the tabulations of votes cast on this Proposal and will have the same effect as negative votes. Broker non-votes will not be counted for purposes of determining whether this Proposal has been approved.

**Recommendation of the Board of Directors**

***The Board of Directors recommends that the stockholders vote FOR the ratification of the selection of BDO Seidman, LLP to serve as the Company s independent registered public accounting firm for the year ending December 31, 2005.***

## OTHER MATTERS

The Company knows of no other matters that will be presented for consideration at the Annual Meeting. If any other matters properly come before the Annual Meeting, it is the intention of the persons named in the enclosed form of Proxy to vote the shares they represent as the Board of Directors may recommend. Discretionary authority with respect to such other matters is granted by the execution of the enclosed Proxy.

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

**AND RELATED STOCKHOLDER MATTERS**

The following table sets forth the beneficial ownership of shares of the Company s Common Stock as of September 15, 2005 by (i) any stockholder known to the Company who beneficially owns more than five percent (5%) of the outstanding Common Stock, (ii) each director and nominee for director, (iii) each named executive officer shown in the Cash Compensation Table and (iv) the current directors and executive officers as a group. Options shown in the table were granted pursuant to the 2002 Stock Option Plan, 1993 Stock Option Plan or 1990 Stock Option Plan and represent the shares issuable upon exercise of outstanding options, now exercisable or exercisable within sixty (60) days of September 15, 2005. Except as otherwise indicated, the address for each beneficial owner listed below is care of BIOLASE Technology, Inc., 981 Calle Amanecer, San Clemente, California 92673. Except as indicated in the footnotes to this table, the persons or entities named in the table have sole voting and investment power with respect to all shares of Common Stock shown as beneficially owned by them, subject to community property laws, where applicable. Percentage ownership is calculated pursuant to SEC Rule 13d-3(d)(1) and is based on 23,246,536 shares of Common Stock outstanding at September 15, 2005, and excludes shares reserved for 81,037 unexercised warrants.

| Beneficial Owner | Shares Beneficially Owned | Number of Shares Underlying Options | Percentage of Shares Beneficially Owned |
|---|---|---|---|
| FMR Corp. (1)<br>82 Devonshire Street<br>Boston, MA 02109 | 3,385,100 | 0 | 14.56% |
| Federico Pignatelli | 554,750 | 320,000 | 3.71% |
| Robert M. Anderton | 0 | 30,000 | * |
| George V. d Arbeloff | 38,182 | 218,335 | 1.09% |
| Jeffrey W. Jones | 10,700 | 998,663 | 4.16% |
| Robert E. Grant | 1,000 | 210,828 | * |
| Keith G. Bateman | 4,050 | 296,873 | 1.28% |
| Edson J. Rood | 35,535 | 0 | * |
| Ioana Rizoiu | 21,976 | 110,000 | * |
| All current directors and executive officers as a group (8 persons) | 608,682 | 2,074,699 | 10.60% |

* Represents less than 1%.

(1) FMR Corp., a parent holding company ( FMR ), filed a Schedule 13F dated August 15, 2005 which reported investment discretion with respect to accounts holding 3,385,100 shares, including sole voting power over 673,600 of such shares. FMR previously filed a Schedule 13G dated February 14, 2005 which reported beneficial ownership of 1,593,700 shares, including sole voting power over 335,900 shares and sole dispositive power over 1,593,700 shares. According to the previous Schedule 13G, Fidelity Management & Research Company, an investment advisor and wholly owned subsidiary of FMR, beneficially owned 1,268,200 shares, and Fidelity Management Trust Company, a bank and wholly owned subsidiary of FMR, beneficially owned 325,500 shares.

**Equity Incentive Plans**

The Company maintains various equity incentive plans designed to attract and retain the services of individuals essential to its long-term growth and success. These plans consist of the 1990 Stock Option Plan, 1993 Stock Option Plan and 2002 Stock Incentive Plan, as amended (the 2002 Plan ). The 1990 Stock Option Plan and 1993 Stock Option Plan have terminated pursuant to their terms. No new option grants may be issued under the 1990 Stock Option Plan or 1993 Stock Option Plan.

The following table provides information as of December 31, 2004 and September 15, 2005 with respect to the shares of Common Stock that may be issued under existing equity compensation plans.

| Plan Category | Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights | | Weighted Average Exercise Price of Outstanding Options, Warrants and Rights | | Weighted Average Remaining Life (Years) of Options, Warrants and Rights | | Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans | |
|---|---|---|---|---|---|---|---|---|
| | 12-31-04 | 9-15-05 | 12-31-04 | 9-15-05 | 12-31-04 | 9-15-05 | 12-31-04 | 9-15-05 |
| **Equity Compensation Plans Approved by Stockholders(1)** | 4,016,312 | 3,679,000 | $ 6.83 | $ 6.85 | 7.43 | 6.73 | 104,856 | 142,856 |
| **Equity Compensation Plans Not Approved by Stockholders(2)** | 53,000 | 3,000 | $ 1.57 | $ 2.69 | .77 | 4.76 | 0 | 0 |
| **Total** | 4,069,312 | 3,682,000 | $ 6.76 | $ 6.85 | 7.34 | 6.73 | 104,856 | 142,856 |

(1) Consists solely of the 2002 Stock Incentive Plan and 1993 Stock Option Plan.
(2) Consists solely of the 1990 Stock Option Plan. Options granted in 1995 totaling 50,000 shares are held by a named executive officer under the 1990 Stock Option Plan.

The 1990 Stock Option Plan (the 1990 Plan ) was implemented by the Board on December 15, 1990. The 1990 Plan is a non-stockholder-approved plan under which options were authorized to be granted to directors, officers or employees. The Board authorized 150,000 shares of Common Stock for issuance under the 1990 Plan. Options under this plan were granted with an exercise price per share equal to the fair market value per share of Common Stock on the grant date and vested in installments during the optionee s period of service with us. The plan administrator (either the Board or a Board committee) may cause options to vest on an accelerated basis in the event the Company is acquired and those options are not assumed or replaced by the acquiring entity. Each option has a maximum term (not to exceed 10 years) set by the plan administrator at the time of grant, subject to earlier termination following the optionee s termination.

For a description of the 2002 Plan, see the discussion above under Proposal Three Approval of Amendment to the BIOLASE Technology, Inc. 2002 Stock Incentive Plan.

## EXECUTIVE COMPENSATION AND RELATED INFORMATION

### Directors and Executive Officers of the Company

The following table sets forth certain information regarding our current directors and executive officers:

| Name | Age | Position |
|---|---|---|
| Federico Pignatelli(1) | 52 | Chairman of the Board |
| George V. d Arbeloff(1) | 60 | Director |
| Robert M. Anderton, DDS(1) | 68 | Director |
| Jeffrey W. Jones | 47 | Vice Chairman and Chief Technology Officer |
| Robert E. Grant | 36 | President, Chief Executive Officer and Director |
| John W. Hohener | 50 | Executive Vice President, Chief Financial Officer and Secretary |
| James M. Haefner | 39 | Executive Vice President, Global Sales |
| Keith G. Bateman | 52 | Executive Vice President, Marketing |

(1) Member of Audit, Compensation, and Nominating and Governance Committees

The following is a brief description of the present and past business experience of each of the current executive officers. The executive officers are elected by the Board of Directors on an annual basis and serve at the discretion of the Board, subject to the terms of any employment agreement with the Company, until their successors have been duly elected and qualified or until their earlier resignation or removal. There are no family relationships among any of the directors or executive officers. The biographies of Messrs. Pignatelli, d Arbeloff, Jones and Grant and Dr. Anderton appear earlier in this Proxy Statement under Proposal One Election of Directors.

***John W. Hohener*** joined the Company in November 2004 as Executive Vice President, Chief Financial Officer and Secretary. Prior to joining the Company, Mr. Hohener served as Chief Financial Officer of Netlist, Inc., a manufacturer and designer of high-density memory subsystems, during 2004. From 2002 to 2004, Mr. Hohener served as Senior Vice President and Chief Financial Officer of TRC Companies, Inc., a $350 million public engineering services firm that provides technical, financial, risk management and construction services. He was Chief Financial Officer of Entridia Corporation, a fabless semiconductor company from 2000 to 2001, and from 1988 to 1999, he was Chief Financial Officer and co-founder of Smartflex Systems, Inc., a $180 million public electronics contract manufacturer, which was later sold to Saturn Electronics.

***James M. Haefner*** joined the Company as Executive Vice President, Global Sales in January 2005 and is responsible for managing the global sales organization. Prior to joining the Company, and following the acquisition of the Coherent Medical Group by Lumenis Ltd, Mr. Haefner held numerous management positions at Coherent and Lumenis including, Vice President of Sales, Director of Sales & Service, Regional Sales Manager and as a top Sales Representative at the earlier stage of his career. For more than 10 years, he has worked extensively across all of Coherent and Lumenis medical laser product lines including surgical, ophthalmic and aesthetic.

***Keith G. Bateman*** has served as Executive Vice President, Marketing since January 2005 and been as Executive Vice President since 2002, previously serving as Vice President of Global Sales from 1999 to 2001. From 1994 to 1998, Mr. Bateman held executive positions with the international and domestic divisions of HGM Medical Laser Systems, Inc., a manufacturer of medical lasers used in ophthalmologic, dental and anesthetic applications. Prior to that, he held several positions in sales, marketing and management at various companies in the computer industry.

**Summary of Cash and Certain Other Compensation**

The following table summarizes all compensation paid to persons who served as chief executive officer during the last fiscal year, the executive officer whose served in that capacity at December 31, 2004 and whose total salary and bonus exceeded $100,000, and two other executive officers who no longer serve in that capacity at December 31, 2004 but whose total salary and bonus exceeded $100,000 (referred to collectively as the named executive officers), for services rendered in all capacities for the fiscal years ended December 31, 2004, 2003 and 2002. Perquisites and other personal benefits paid to the named executive officers are less than the minimum reporting threshold of $50,000 or 10% of the total annual salary plus bonus for the named executive officer, and such amounts paid, if any, are represented in the table by $ .

**Summary Compensation Table**

| | | | | | Long-Term Compensation Awards | |
|---|---|---|---|---|---|---|
| **Name and Principal Position** | **Year** | **Salary** | **Bonus** | **Other Annual Compensation** | **Securities Underlying Options/SARs** | **All Other Compensation** |
| Robert E. Grant(1) | 2004 | $ 195,167 | $ 101,022 | $ | 400,000 | $ 6,657(2) |
| | 2003 | 67,203 | 16,667 | | 100,000 | 0 |
| President and Chief Executive Officer | | | | | | |
| Jeffrey W. Jones(3) | 2004 | $ 273,542 | $ 181,500 | $ | 0 | 0 |
| | 2003 | 240,000 | 174,500 | | 200,000 | 0 |
| Chief Technology Officer | 2002 | 240,000 | 96,000 | | 0 | 0 |
| Keith G. Bateman | 2004 | $ 173,966 | $ 106,349 | $ | 0 | 0 |
| | 2003 | 148,333 | 136,876 | | 75,000 | 0 |
| Executive Vice President, Marketing | 2002 | 110,000 | 137,362 | | 0 | 0 |
| Edson J. Rood(4) | | | | | | |
| | 2004 | $ 145,000 | $ 0 | $ | 0 | 0 |
| Vice President and Chief Financial Officer | 2003 | 150,000 | 50,000 | | 0 | 0 |
| (former) | 2002 | 150,000 | 0 | | 0 | 0 |
| Ioana Rizoiu | 2004 | $ 122,917 | $ 45,000 | $ | 0 | 0 |
| | 2003 | 95,625 | 0 | | 0 | 0 |
| Vice President, Clinical Research | 2002 | 94,306 | 0 | | 0 | 0 |

(1) Mr. Grant was named President and Chief Executive Officer in October 2004 and previously served as Chief Operating Officer from 2003 to 2004. His annual base salary was $275,000 for 2004 and $150,000 for 2003.
(2) Represents reimbursement of relocation expenses.
(3) Mr. Jones was named Chief Technology Officer in October 2004 and previously served as President and Chief Executive Officer from 1998 to 2004.
(4) Mr. Rood retired in July 2004. John W. Hohener joined the Company in November 2004 as Executive Vice President, Chief Financial Officer and Secretary. His annual base salary was $225,000 for 2004.

**Stock Options**

The following table contains information concerning the grant of stock options under the 2002 Stock Option Plan to the named executive officers during the fiscal year ended December 31, 2004. No stock appreciation rights were granted to the named executive officers in 2004. The potential realizable values were determined in accordance with rules promulgated by the SEC and are not intended to forecast the prices at which the Common Stock could trade in the future. The actual realized value will depend on the amount by which the sales price of the shares exceeds the exercise price.

**Option Grants in Last Fiscal Year**

| | | | | | Potential Realizable Value at Assumed Annual Rates of Stock Price Appreciation for Option Term | |
|---|---|---|---|---|---|---|
| Name | Number of Securities Underlying Options/ SARs Granted | Percent of Total Options/SARs Granted to Employees in Fiscal Year | Exercise or Base Price Per Share | Expiration Date | 5% | 10% |
| Robert E. Grant | 400,000 | 31% | $ 5.98 | 10-25-2014 | $ 1,504,316 | $ 3,812,232 |
| Jeffrey W. Jones | 0 | | | | | |
| Keith G. Bateman | 0 | | | | | |
| Edson J. Rood | 0 | | | | | |
| Ioana Rizoiu | 0 | | | | | |

The option grant made to Mr. Grant becomes exercisable ratably over a three-year period at the rate of 33,333 shares per quarter, with the first quarter ending December 31, 2004. The option has a term of ten years from the date of grant. The exercise price per share represented the fair market value of the underlying shares of Common Stock on the date the option was granted.

The following table provides information, with respect to the named executive officers, concerning unexercised options held as of the end of the fiscal year. No options were exercised by any of the named executive officers during the last fiscal year. Value is calculated as market price of the Common Stock at fiscal year end less exercise price. The market price of the Common Stock at December 31, 2004 was $10.87.

**Aggregated Option/SAR Exercises in Last Fiscal Year and Fiscal Year-End Option/SAR Values**

| | Number of Securities Underlying Unexercised Options at December 31, 2004 | Value of Unexercised in-the-Money Options at December 31, 2004 |
|---|---|---|

| Name | Exercisable | Unexercisable | Exercisable | Unexercisable |
|---|---|---|---|---|
| Robert E. Grant | 129,165 | 370,835 | $ 326,787 | $ 1,630,013 |
| Jeffrey W. Jones | 956,997 | 50,003 | $ 6,143,715 | $ 0 |
| Keith G. Bateman | 281,249 | 18,751 | $ 1,659,219 | $ 0 |
| Edson J. Rood | 200,000 | 0 | $ 1,296,000 | $ 0 |
| Ioana Rizoiu | 160,000 | 0 | $ 1,282,381 | $ 0 |

**Employment Contracts, Termination of Employment and Change in Control Arrangements**

The Compensation Committee of Board of Directors has the authority to provide for accelerated vesting of the shares of Common Stock subject to any outstanding options held by the Chief Executive Officer or any other executive officer or any unvested share issuances actually held by such individual, in connection with certain changes in control of the Company or the subsequent termination of the officer s employment following the change of control event. In addition, as described below, options held by the Company s Chief Executive Officer and Chief Financial Officer accelerate upon a change of control.

*Employment Agreement with Robert E. Grant*

On October 26, 2004, the Company entered into an at-will employment agreement with Robert E. Grant, as the newly appointed President and Chief Executive Officer, which superseded his employment agreement of August 2003. The agreement provides for an annual base salary of $275,000 and, beginning in calendar year 2005, an annual bonus of up to $175,000 (Mr. Grant s bonus for calendar year 2004 was $78,000). Sixty percent of the annual bonus is based on the achievement of revenue targets and 40% is based on the achievement of net income targets. In connection with the annual bonus, Mr. Grant is eligible to receive up to $50,000 paid quarterly based upon the achievement of such revenue and net income targets. The remaining portion of the bonus (up to $125,000) was payable upon the completion and filing with the SEC of the Company s annual report on Form 10-K for the previous reporting year. The agreement also provides for a stock option grant to purchase 400,000 shares of Common Stock at an exercise price of $5.98 per share, with pro rata vesting quarterly over three years at the rate of 33,333 shares per quarter, with the first quarter ending on December 31, 2004. Mr. Grant will also be eligible to receive stock options with respect to 100,000 shares annually beginning on the third anniversary of the effective date of the agreement. Mr. Grant is entitled to four weeks paid vacation per year, and the Company pays the medical and dental plan premiums for him and his immediate family and reimburses him for out-of-pocket costs, fees, charges or expenses in connection with the medical and dental plans, which reimbursement shall not exceed $3,000 per year without the prior approval of the Board of Directors. The Company has agreed to assume or reimburse Mr. Grant the costs associated with the lease of his vehicle.

In the event Mr. Grant s employment is terminated without cause or Mr. Grant terminates his employment for good reason, he will receive severance equal to six times the base monthly salary he was receiving immediately prior to the date of termination or resignation, the Company will pay his COBRA premiums for the six-month period following termination or resignation, he will be entitled to receive the pro-rated portion of any performance bonus to which he would otherwise be entitled and his stock options will continue to vest through the end of the quarter in which such termination or resignation becomes effective. Mr. Grant will have one year from the effective date of such termination or resignation to exercise the vested portion of his stock options.

In the event of Mr. Grant s death while employed by the Company and during the term of the agreement, Mr. Grant s estate will receive a lump sum payment of an amount equal to six months of his then-effective base salary, subject to offset from insurance benefit payments, and all stock options that would be vested at the end of the quarter in which the death occurred will be vested and immediately exercisable. His estate will have one year from the effective date of such death to exercise the vested portion of Mr. Grant s stock options.

If Mr. Grant s employment is terminated by the Company due to mental or physical disability, Mr. Grant will continue to receive his base salary for six months and all stock options that would be vested at the end of the quarter in which the termination occurred will be vested and immediately exercisable. Mr. Grant will have one year from the effective date of the termination to exercise the vested portion of his stock options.

Upon a change of control of the Company, which includes a change in a majority of the Board composition within a period of 60 consecutive days or the acquisition of the Company by a third party of greater than 50% of the outstanding shares, all options held by Mr. Grant will fully vest and become immediately exercisable.

The Company has agreed to indemnify Mr. Grant, to the maximum extent permitted under Delaware law, against any expenses (including attorneys fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with any action, suit or proceeding, whether civil, criminal, administrative or investigative, threatened or initiated against him by reason of the fact that he was serving as an officer, director, employee or agent of the Company or was serving at the Company s request as an officer, director, employee or agent of another corporation, partnership, joint venture, trust or other enterprise.

Unless earlier terminated, the terms of the employment agreement will end on October 23, 2007, provided that, unless and until a new written agreement is entered into, the employment relationship under the agreement will continue on a calendar quarter to calendar quarter basis with the same remuneration and compensation as shall apply during the final year of the agreement term.

*Employment Agreement with John W. Hohener*

On October 24, 2004, the Company entered into an at-will employment agreement with John W. Hohener, as the newly appointed Executive Vice President and Chief Financial Officer, which agreement subsequently has been amended. Mr. Hohener s employment commenced on November 13, 2004 and he was appointed Executive Vice President and Chief Financial Officer on November 15, 2004. The agreement provides for an annual base salary of $225,000 and, beginning in calendar year 2005, an annual performance bonus of up to $120,000. The agreement also provides for a stock option grant to purchase 250,000 shares of Common Stock at an exercise price of $8.25 per share, with 1/3 of the options becoming vested on the first anniversary of the effective date and 1/8 vesting quarterly thereafter. The exercise price of such stock option is the fair market value of the Common Stock on the date of grant, November 13, 2004. Mr. Hohener is entitled to four weeks paid vacation per year, and the Company pays the medical and dental plan premiums for him and his immediate family and reimburses Mr. Hohener for out-of-pocket costs, fees, charges or expenses in connection with the medical and dental plans, which reimbursement shall not exceed $3,000 per year without the prior approval of the Board of Directors.

In the event Mr. Hohener s employment is terminated without cause or Mr. Hohener terminates his employment for good reason, he will receive severance equal to six times the base monthly salary he was receiving immediately prior to the date of termination or resignation, the Company will pay his COBRA premiums for the six-month period following termination or resignation, he will be entitled to receive the pro-rated portion of any performance bonus to which he would otherwise be entitled and vesting of stock options granted to him will accelerate such that at least 100,000 option shares will be vested and immediately exercisable. Mr. Hohener will have six months from the effective date of such termination or resignation to exercise the vested portion of his stock options.

In the event of Mr. Hohener s death while employed by the Company and during the term of the agreement, Mr. Hohener s estate will receive a lump sum payment of an amount equal to six months of his then-effective base salary, subject to offset from insurance benefit payments, and vesting of stock options granted to Mr. Hohener will accelerate such that at least 100,000 option shares will be vested and immediately exercisable. His estate will have six months from the effective date of such death to exercise the vested portion of Mr. Hohener s stock options.

If Mr. Hohener s employment is terminated by the Company due to mental or physical disability, Mr. Hohener will continue to receive his base salary for six months and vesting of stock options granted to him will accelerate such that at least 100,000 option shares will be vested and immediately exercisable. Mr. Hohener will have six months from the effective date of the termination to exercise the vested portion of his stock options.

Upon a change of control of the Company, which includes a change in a majority of the Board composition within a period of 60 consecutive days or the acquisition of the Company by a third party of greater than 50% of the outstanding shares, all options held by Mr. Hohener will fully vest and become immediately exercisable.

The Company has agreed to reimburse Mr. Hohener on an after-tax basis for half of any excise tax penalties to which he may be subject by reason of receiving excess parachute payments upon a change of control.

The Company has agreed to indemnify Mr. Hohener, to the maximum extent permitted under Delaware law, against any expenses (including attorneys fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with any action, suit or proceeding, whether civil, criminal, administrative or investigative, threatened or initiated against him by reason of the fact that he was serving as an officer, director, employee or agent of the Company or was serving at the Company s request as an officer, director, employee or agent of another corporation, partnership, joint venture, trust or other enterprise. In addition, the Company has agreed to provide Mr. Hohener with directors and officers liability insurance coverage in an amount at least as favorable to him as that which was in effect at the time he joined the Company or such greater coverage as it may maintain in the future.

Unless otherwise terminated, the terms of the employment agreement will continue automatically on a yearly basis.

*Employment Agreement with Jeffrey W. Jones*

In December 2003, the Company entered into an employment agreement with Jeffrey W. Jones, then President and Chief Executive Officer. Effective October 24, 2004, Mr. Jones was named Vice Chairman of the Board and his title was changed to Chief Technology Officer. The agreement provides for an initial term of two years commencing on January 1, 2004 and ending on December 31, 2005, after which his employment will continue on a calendar quarter to calendar quarter basis on the terms existing at the time until terminated at the expiration of a calendar quarter on at least 90 days prior notice by either party, or until the employment agreement is amended, renewed or extended.

The Company may immediately terminate the employment agreement at any time for cause as defined in the employment agreement. If Mr. Jones employment is terminated other than for cause, Mr. Jones will be entitled to receive severance pay in an amount equal to six to 12 months base salary, depending on the amount of notice he is given.

Under the terms of the employment agreement, Mr. Jones receives a base annual salary of $275,000. In addition, Mr. Jones is entitled to receive a bonus equal to 0.75% of all 2004 sales in excess of $40.0 million. Under his employment agreement, Mr. Jones received an option to purchase 200,000 shares of Common Stock at an exercise price of $14.01, which was the fair market value of the Common Stock on December 12, 2003. The option vests and will be exercisable at a rate of approximately 8,333 shares per month and expires ten years from the date of grant, subject to early termination should Mr. Jones cease to provide service to the Company. Mr. Jones is entitled to receive a housing allowance of $3,500 per month for expenses incurred in maintaining a residence in California in connection with his employment by the Company. The housing allowance will be deducted from any bonus he is entitled to receive. Mr. Jones also is entitled to receive an allowance for an automobile and related expenses, four weeks paid vacation per year, reimbursement of reasonable business expenses and other executive benefits.

The Company agreed to indemnify Mr. Jones to the maximum extent permitted under Delaware law against any expenses (including attorneys fees), judgments, fines and amounts paid in settlement (with the Company s written consent which shall not be unreasonably withheld) actually and reasonably incurred in connection with any action, suit or proceeding, whether civil, criminal, administrative or investigative, threatened or initiated against Mr. Jones by reason of the fact that he was serving as an officer, director, employee or agent or was serving at the Company s request as an officer, director, employee or agent of another corporation, partnership, joint venture, trust or other enterprise.

*Employment Agreement with Keith G. Bateman*

In January 1999, the Company entered into an employment agreement with Keith G. Bateman, then Vice President of Global Sales. Mr. Bateman was subsequently named Executive Vice President in 2002 and Executive Vice President, Marketing in January 2005. Mr. Bateman s base salary was $175,000 for 2004. Under the terms of this agreement, if the Company is acquired or merged, the surviving entity either must offer Mr. Bateman a one-year employment agreement with at least equivalent compensation terms as he currently receives or must pay Mr. Bateman severance in an amount equal to his total compensation during the previous nine months, including base salary, commissions and bonus. Except for the above-described provision relating to an acquisition or merger, the agreement is terminable at any time by the Company or Mr. Bateman.

24

*The following pages contain a report issued by the Compensation Committee relating to executive compensation for 2004, a report issued by the Audit Committee relating to its review of the accounting, auditing and financial reporting practices of the Company, and a chart titled Stock Performance Graph. Stockholders should be aware that under SEC rules, the Report on Executive Compensation, the Audit Committee Report and the Stock Performance Graph are not deemed to be soliciting material or filed with the SEC under the Securities Exchange Act of 1934, and are not incorporated by reference in any past or future filing by the Company under the Securities Exchange Act of 1934 or the Securities Act of 1933 unless these sections are specifically referenced.*

## COMPENSATION COMMITTEE REPORT

### Report on Executive Compensation

During 2004, the Compensation Committee s primary responsibility was to review and develop general compensation policies and make recommendations to the Board of Directors on compensation levels for our executive officers. After receiving and reviewing the Compensation Committee s recommendations, the Board of Directors, which included a majority of the independent directors, determined the overall compensation packages, including option grants, provided to each of the executive officers and our President and Chief Executive Officer.

***General Compensation Policy.*** The Board and the Compensation Committee believe that the compensation programs for our executive officers should reflect our performance and the value created for our stockholders. In addition, our compensation programs are meant to support our short-term and long-term strategic goals and values and should reward individual contributions to our success. When establishing overall compensation, the Board and the Compensation Committee take into consideration the amounts paid to executive officers of companies with business structure, size, location and stage of development similar to us.

The goal of the Board and the Compensation Committee is to attract and retain executive officers who will strive for excellence and to motivate those individuals to achieve superior performance by providing them with rewards for assisting us in meeting targets regarding revenues, profitability and technology development. In order to achieve this goal, the policy of the Board and the Compensation Committee is to provide our Chief Executive Officer and other executive officers with competitive compensation opportunities based upon their contribution to our financial success and their personal performance. The objective of the Board and the Compensation Committee is to have a substantial portion of each executive officer s compensation contingent upon our performance. Accordingly, the compensation package for the Chief Executive Officer and other executive officers is comprised of three elements: (1) a base salary, designed to be competitive with salary levels in the industry and to reflect individual performance; (2) a discretionary annual incentive bonus payable in cash and tied to our achievement of annual financial and other performance goals; and (3) where appropriate, long-term stock-based incentive awards designed to strengthen the mutuality of interests between the executive officer and our stockholders.

The Board and the Compensation Committee periodically review total compensation levels and the distribution of compensation among the three elements identified above for each of the executive officers in the context of our compensation policy and compensation packages awarded to executive officers in comparable positions at companies within related industries. The Board and the Compensation Committee believe that our most direct competitors for executive talent include significantly larger and better-capitalized companies in the medical device industry, comprising a broader range of companies than those with which we usually are compared for purposes of stock performance.

***Base Salary.*** During 2004, the Compensation Committee reviewed the base salary of each executive officer. In assessing appropriately competitive salary levels, the Compensation Committee considered each

25

officer s position, experience and tenure with us, the duties and changes in duties of each officer, the past accomplishments and expected future contributions of each officer, and information on competitive compensation levels for similar executive positions.

***Annual Incentive Bonuses.*** An executive officer may be awarded incentive bonuses based on our results of operations and financial performance, the performance of the executive officer in that officer s area of responsibility and the officer s contribution to our operating performance.

***Long Term Stock-Based Incentives.*** Stock-based incentives are designed to align the interests of our executive officer with those of our stockholders and provide each individual with a significant incentive to manage us from the perspective of an owner with an equity stake in the business. Options allow the officers to acquire shares of Common Stock at a fixed price per share (generally the market price on the grant date) over a specified period of time (up to ten years). Options generally become exercisable in a series of installments over a two- to three-year period, contingent upon the officer s continued employment with us. Accordingly, options provide a return to the executive officer only if he or she remains employed by us during the vesting period, and then only if the market price of the shares appreciates over the option term.

The size of the option grant to each executive officer, including any grant considered for the Chief Executive Officer, is set at a level that is intended to create a meaningful opportunity for stock ownership based upon the individual s current position with us, the individual s personal performance in recent periods and his or her potential for future responsibility and promotion over the option term. The Board and the Compensation Committee may also take into account the number of unvested options held by the executive officer in order to maintain an appropriate level of equity incentive for that individual. The relevant weight given to each of these factors varies from individual to individual.

***CEO Compensation.*** Mr. Jones served as our Chief Executive Officer until October 2004, when Mr. Grant was appointed to that position. In setting the total compensation payable to the person serving as our Chief Executive Officer, we sought to provide a stable level of cash compensation within a range of compensation found among competitive companies, while recognizing the individual s contributions to our overall performance. Messrs. Jones and Grant are each compensated in accordance with the terms of employment agreements which are summarized under Employment Contracts, Termination of Employment and Change in Control Arrangements.

***Compliance with Internal Revenue Code Section 162(m).*** Section 162(m) of the Internal Revenue Code disallows a tax deduction to publicly held companies for compensation paid to certain of their executive officers to the extent that such compensation exceeds $1.0 million per covered officer in any fiscal year. The limitation applies only to compensation that is not considered to be performance-based. Non-performance-based compensation paid to our executive officers for the 2004 fiscal year did not exceed the $1.0 million limit per officer, and we do not expect the non-performance-based compensation to be paid to our executive officers for the 2005 fiscal year to exceed that limit. Because it is unlikely that the cash compensation payable to any of our executive officers in the foreseeable future will approach the $1.0 million limit, we do not expect to take any action to limit or restructure the elements of cash compensation payable to our executive officers so as to qualify that compensation as performance-based compensation under Section 162(m). We will reconsider this decision should the individual cash compensation of any executive officer ever approach the $1.0 million level.

The 2002 Stock Incentive Plan imposes the requisite limitation on the maximum number of shares for which options may be granted per individual. Therefore, assuming a committee comprised solely of outside directors as required by Section 162(m) makes all option grants to our executive officers, any compensation deemed paid in connection with the exercise of future option grants made to executive officers under the 2002 Stock Incentive Plan with an exercise price equal to the fair market value of the option shares on the grant date should qualify as performance-based compensation that will not be subject to the $1.0 million limitation.

It is the opinion of the Compensation Committee that the executive compensation policies and plans provide the necessary total remuneration program to properly align our performance and the interests of our stockholders through the use of competitive and equitable executive compensation in a balanced and reasonable manner, for both the short and long-term.

Submitted by the Compensation Committee of the Board of Directors

and approved by the Board of Directors

Federico Pignatelli, Chairman

Robert M. Anderton

George V. d Arbeloff

**AUDIT COMMITTEE REPORT**

The following is the Report of the Audit Committee with respect to the Company s audited financial statements for the year ended December 31, 2004, which were included in the Company s Annual Report on Form 10-K for that year, and which include the consolidated balance sheets of the Company as of December 31, 2004 and 2003, and the related consolidated statements of operations, stockholders equity (deficit) and cash flows for each of the three years in the period ended December 31, 2004, and the notes thereto.

**Review with Management**

The Audit Committee has reviewed and discussed our audited financial statements with management.

**Discussions with Independent Registered Public Accounting Firm**

The Audit Committee discussed with our independent registered public accounting firm for the fiscal year ended December 31, 2004, PricewaterhouseCoopers LLP ( PWC ), the matters required to be discussed by SAS 61 (Codification of Statements on Auditing Standards, AU Section 380), as amended, which includes, among other items, matters related to the conduct of the audit of our financial statements.

The Audit Committee also has received written disclosures and the letter from PWC required by Independence Standards Board Standard No. 1 (Independence Discussions with Audit Committees), as amended, and discussed with PWC the independence of PWC from us.

**Conclusion**

Based on the review and discussions referred to above in this Report, the Audit Committee recommended to our Board of Directors that our audited financial statements be included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2004 for filing with the Securities and Exchange Commission.

Submitted by the Audit Committee of the Board of Directors

George V. d Arbeloff, Chairman

Robert M. Anderton

Federico Pignatelli

**STOCK PERFORMANCE GRAPH**

The graph depicted below shows a comparison of cumulative total stockholder returns for the Company s Common Stock, the S&P SmallCap 600 Index and the S&P SmallCap 600 Healthcare Index for the period from December 31, 1999 to December 31, 2004. The S&P SmallCap 600 Healthcare Index is depicted in the graph instead of the Nasdaq Medical Devices Index which was used last year because the latter index is no longer available.

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(1) The graph assumes that $100 was invested on December 31, 1999, in the Company s Common Stock and in each index, and that all dividends, if any, were reinvested. The Company paid cash dividend of $0.01 per share in each of July, September and November of 2004.

(2) Stockholder returns over the indicated period should not be considered indicative of future stockholder returns.

**Certain Relationships and Related Transactions**

See the above discussion under Employment Contracts, Termination of Employment and Change in Control Arrangements for a discussion of the employment agreements with Messrs. Grant, Hohener, Jones and Bateman.

The Company entered into indemnification agreements with each of its executive officers and directors. See the above discussion under Proposal Two Ratification of Form of Indemnification Agreement for a summary of the indemnification agreements. In addition, the Company s executive officers and directors are indemnified under Delaware General Corporation Law and the Company s bylaws to the fullest extent permitted under Delaware law.

Since January 1, 2004, there has not been any transaction or series of similar transactions to which the Company was a party in which the amount involved exceeded or exceeds $60,000 and in which any director, executive officer, holder of more than five percent (5%) of any class of voting securities, or any member of the immediate family of any of the foregoing persons, had or will have a direct or indirect material interest.

**Section 16(a) Beneficial Ownership Reporting Compliance**

The members of the Board of Directors, the executive officers and beneficial holders of more than ten percent of the outstanding Common Stock are subject to the reporting requirements of Section 16(a) of the Securities Exchange Act of 1934 which requires them to file reports with respect to their ownership of the Company s securities. Based upon the copies of Section 16(a) reports which the Company received from such persons for their 2004 fiscal year transactions in the Common Stock and their Common Stock holdings, and while the Company inadvertently did not obtain timely written certifications from each such person that no Forms 5 were due, the Company believes that all reporting requirements under Section 16(a) for such fiscal year were met in a timely manner by its directors, executive officers and greater than ten percent beneficial owners, except for the following: Dr. Anderton did not file a Form 3 within ten days of being elected as a director and failed to report one transaction relating to his initial stock option grant upon joining the Board, Mr. Pignatelli did not file a Form 4 reporting one transaction relating to his annual automatic stock option grant, Mr. d Arbeloff filed one late Form 4 reporting one transaction regarding his annual automatic stock option grant, and Messrs. Jones and Bateman each did not file a Form 5 to report one transaction each relating to a stock option grant received by each of them the previous fiscal year but previously unreported.

**Annual Report**

The Company filed with the Securities and Exchange Commission an annual report on Form 10-K on July 19, 2005. A copy of the annual report on Form 10-K has been mailed concurrently with this Proxy Statement to all stockholders entitled to notice of and to vote at the Annual Meeting. No separate annual report to the stockholders was prepared by the Company. Stockholders may obtain a copy of the annual report on Form 10-K, without charge, by writing to BIOLASE Technology, Inc., 981 Calle Amanecer, San Clemente, California 92673.

By Order of the Board of Directors

John W. Hohener

*Secretary*

Dated: October , 2005

**Appendix A**

**BIOLASE TECHNOLOGY, INC.**

**AUDIT COMMITTEE CHARTER**

**Purpose of the Audit Committee**

The purpose of the Audit Committee is to assist the Board of Directors (the Board ) in fulfilling its responsibilities relating to the general oversight of the Company s accounting and financial reporting processes, the system of internal controls, the audit of the financial statements and such other duties as directed by the Board. The Committee s role includes a particular focus on the qualitative aspects of financial reporting to stockholders, and on the Corporation s processes to manage business and financial risk, and for compliance with significant applicable legal, ethical, and regulatory requirements. The Committee is directly responsible for the appointment, compensation, and oversight of the public accounting firm engaged to prepare or issue an audit report on the financial statements of the Corporation.

The Committee s responsibility is limited to oversight as set forth in this Charter. It is not the duty of the Committee to duplicate or certify the activities of management and the independent auditor.

**Membership and Structure**

The Audit Committee shall be comprised of at least three directors determined by the Board to meet the independence and experience requirements of the applicable rules of the National Association of Securities Dealers, Inc. governing companies listed on the NASDAQ Stock Market and applicable rules of the SEC. The Board shall appoint the members based on the recommendation of the Nominating Committee.

The entire Committee or any individual Committee member may be removed from such Committee with or without cause by the affirmative vote of a majority of the Board. Any Committee member may resign from the Committee effective upon giving oral or written notice to the Chairman of the Board, the Corporate Secretary, or the entire Board (unless the notice specifies a later time for the effectiveness of such resignation). The Board may appoint a qualified successor to take office when such resignation becomes effective.

**Chairperson**

A chairperson of the Committee (the Chairperson ) may be designated by a majority of the members of the Committee or by the Board upon recommendation, if any, by the Nominating and Corporate Governance Committee of the Board. In the absence of such designation, the members of the Committee may designate the Chairperson by majority vote of the full Committee membership. The Chairperson shall determine the agenda, the frequency and the length of meetings. All Committee members, including the Chairperson, shall have unlimited access to management, employees and information.

**Meetings**

The Audit Committee shall meet at such times and places as the Audit Committee shall determine but not less frequently than quarterly. The Audit Committee shall periodically meet separately with the independent auditor and with management. Notice of meetings shall be given in accordance with the provisions of the Corporation s by-laws.

**Responsibilities**

General:

The Audit Committee shall be directly responsible for the appointment, compensation and oversight of the work of the independent auditor (including resolution of disagreements between management and the independent auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or related work. The independent auditor shall report directly to the Audit Committee.

The Audit Committee shall establish procedures for the receipt, retention and treatment of the complaints received by the issuer regarding accounting, internal accounting controls or auditing matters, and the confidential, anonymous submission by employees of the Company of concerns regarding questionable accounting or auditing matters.

The Audit Committee shall have the authority to engage independent counsel and other advisers as it determines necessary to carry out its duties.

The Audit Committee shall determine appropriate funding by the Company for payment of compensation to the independent auditor employed by the Company for the purpose of rendering or issuing an audit report and to any advisers employed by the Audit Committee.

Relationship with the Independent Auditor

The Audit Committee shall assess the independence of the independent auditor ( Auditor ) based on a written statement from the Auditor delineating any relationship between the Auditor and the Company, consistent with Independence Standards Board Standard No. 1, or any other relationships that may adversely affect the independence of the Auditor. The Committee will actively engage in a dialogue with the Auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the Auditor and take appropriate action as necessary to oversee the independence of the Auditor.