



Corporate Governance - Governance Guidelines

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AUXILIUM PHARMACEUTICALS, INC. CORPORATE GOVERNANCE GUIDELINES

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The Board of Directors (the "Board") of Auxilium Pharmaceuticals, Inc.'s (the "Company") has adopted the following corporate governance guidelines. These guidelines will be reviewed periodically by the Board and are subject to change from time to time.

BOARD COMPOSITION

1. Size of the Board

The number of members constituting the Board should range from 5-11, recognizing that retirements, resignations, and recruiting delays may result, periodically, in the Board consisting, for some transitional period, of a greater or lesser number of directors than the Board may have targeted. The Board will periodically review the appropriate size of the Board and, in accordance with the Company's Bylaws, this number may be adjusted from time to time.

2. Board Definition of What Constitutes Independence for Non-Employee Directors

The Company defines an "independent" director in accordance with the applicable provisions of the Securities Exchange Act of 1934, together with the rules and regulations promulgated thereunder (the "Exchange Act") and the applicable rules of The Nasdaq National Market. Because it is not possible to anticipate or explicitly provide for all potential situations that may affect independence, the Board periodically reviews each director's status as an independent director and whether any independent director has any other relationship with the Company that, in the judgment of the Board, would interfere with the director's exercise of independent judgment in carrying out such director's responsibilities as a director. The Board will make an annual determination whether each director is "independent" under the applicable provisions of the Exchange Act and the applicable rules of The Nasdaq National Market.

The following guidelines will apply to independence:

- a. **Per Se Exclusions.** A director will not be deemed independent if: (i) the director was employed by the Company or a subsidiary of the Company within the previous three years; (ii) a family member of the director was employed by the Company or a subsidiary of the Company as an executive officer within the previous three years; (iii) the director or any of his or her family members accepted any compensation (including political contributions and payments pursuant to consulting or personal service contracts) from the Company or any subsidiary of the Company of more than \$120,000 during any period of twelve consecutive months within three years preceding the Company's determination of independence (other than (A) payments for service as a member of the Board or a committee of the Board,

(B) compensation paid to a family member who is a non-executive employee of the Company or a subsidiary of the Company, or (C) benefits under a tax-qualified retirement plan, or non-discretionary compensation; (iv) the director or a family member of the director is a partner in, or an executive officer or controlling stockholder of, any for-profit or not-for-profit organization to which the Company made or from which the Company received, payments in the current fiscal year or any of the past three fiscal years that exceed 5% of the recipient's consolidated gross revenues for that year or \$200,000, whichever is more (other than (A) payments arising solely from investments in the Company's securities or (B) payments under non-discretionary charitable contribution matching programs); (v) the director or a family member of the director is or was employed as an executive officer of another entity that has or had within the past three years as a member of its compensation committee of the board of directors any of the Company's executive officers; and (vi) the director or a family member of the director is a partner of the Company's independent auditors, or was a partner or employee of the Company's independent auditors and worked on the Company's audit during any of the past three years. For the purpose of these corporate governance guidelines, "family member" means a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home.

- b. **Board Determinations.** In connection with relationships other than those listed in subsection (i) above that preclude a determination of independence, the determination of whether the relationship would interfere with the director's independent judgment in carrying out his or her responsibilities shall be made by the Board of Directors, subject to applicable listing standards or legal requirements.
- c. **Additional Audit and Compliance Committee Membership Requirements.** Audit and Compliance Committee members may not accept, directly or indirectly, any consulting, advisory or other compensatory fee from the Company or any Company subsidiary. For the purpose of this paragraph, compensatory fees do not include fees for service on the Board or a Board committee, or the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the Company (provided that such compensation is not contingent in any way on continued service). In addition, Audit and Compliance Committee members may not be "affiliated persons" of the Company or any Company subsidiary, as defined in Rule 10A-3 under the Exchange Act. Moreover, Audit and Compliance Committee members may not have participated in the preparation of the financial statements of the Company or any subsidiary of the Company (other than entities that have ceased to be subsidiaries of the Company) at any time during the preceding three years.

3. Board Membership Criteria

The Nominating and Corporate Governance Committee is responsible for reviewing with the Board, in accordance with its Charter, the appropriate qualities, skills and characteristics desired of nominees for Board members in the context of the current make-up of the Board. The Board as a whole should collectively possess a broad range of skills, expertise, industry and other knowledge, and business and other experience useful to the effective oversight of the Company's business. In determining whether to recommend a director for reelection, the Nominating and Corporate Governance Committee also considers a director's past attendance at meetings and participation in and contributions to the activities of the Board and committees of the Board on which the director served.

4. Selection of New Director Candidates

In connection with its proxy solicitation relating to the Company's annual stockholders' meeting, the Board recommends a slate of nominees for election by stockholders. In addition, the Board fills vacancies on the Board when necessary or appropriate. The Board's recommendations or determinations are made after consideration of the recommendations of, and information supplied by, the Nominating and Corporate Governance Committee as to the suitability of each individual, taking into account the criteria described below and other factors, including the requirements for Board committee membership. Once candidates have been identified, the Nominating and Corporate Governance Committee will confirm that the candidates meet all of the minimum qualifications for director nominees established by the Nominating and Corporate Governance Committee. Based on the results of the evaluation process, the Nominating and Corporate Governance Committee will recommend those candidates that the Nominating and Corporate Governance Committee believes meet the criteria for the Board's approval as director nominees for election to the Board. The Nominating and Corporate Governance Committee also recommends candidates for the Board's appointment to the committees of the Board.

5. Procedures for Recommendation of Nominees by Shareholders

The Nominating and Corporate Governance Committee will consider director candidates who are recommended by stockholders of the Company; provided that any such stockholder submits the following information to the Nominating and Corporate Governance Committee c/o Auxilium Pharmaceuticals, Inc. at 40 Valley Stream Parkway, Malvern, Pennsylvania 19355, attention: Secretary, at least 120 days before the one-year anniversary of the date of mailing of the Company's proxy materials for the prior year's annual meeting of stockholders:

- a. the name of the candidate and information about the candidate that would be required to be included in a proxy statement under the rules of the SEC;
- b. information about the relationship between the candidate and the recommending stockholder;
- c. the consent of the candidate to serve as a director; and
- d. proof of the number of shares of the Company's common stock that the recommending stockholder owns and the length of time the shares have been owned.

The Secretary of the Company will promptly forward any such nominations to the Nominating and Corporate Governance Committee. Once the Nominating and Corporate Governance Committee receives the nomination of a candidate, the candidate will be evaluated and a recommendation with respect to such candidate will be delivered to the Board. Nominations not made in accordance with the foregoing procedure shall be disregarded by the Nominating and Corporate Governance Committee and votes cast for such nominee shall not be counted.

6. Retirement; Resignation

- a. **Term Limits.** The Board does not believe that it should establish term limits. Term limits have the disadvantage of causing the loss of the contribution of directors who have been able to develop, over a period of time, increasing insight into the Company and its operations, and therefore provide an increasing contribution to the Board as a whole.
- b. **Resignation Policy.** Management directors will offer to resign from the Board upon their resignation, removal, or retirement as an officer of the Company. The Board will, in its sole discretion, determine whether or not to accept such resignation.

7. Board Compensation

It is the general policy of the Board that Board compensation should be a mix of cash and equity-based compensation. Full-time employee directors will not be paid for Board membership in addition to their regular employee compensation. Independent directors may not receive consulting, advisory or other compensatory fees from the Company if the receipt of such fees would result in disqualifying the director as an "independent" director in accordance with the applicable provisions of the Exchange Act and the applicable rules of The Nasdaq National Market. To the extent practicable or required by applicable rule or regulation, independent directors who are affiliated with the Company's service providers or partners or collaborators will undertake to ensure that their compensation from such providers or partners or collaborators does not include amounts connected to payments by the Company. The Compensation Committee periodically reviews director compensation.

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RESPONSIBILITIES OF THE BOARD OF DIRECTORS

1. Responsibilities of Board Members Generally

Board members are expected to prepare for, attend, and participate in all Board meetings, meetings of Committees on which they serve and the Company's Annual Meeting of Shareholders. In addition, directors should stay abreast of the Company's business and markets. Each Board member is expected to ensure that other existing and planned future commitments do not materially interfere with the member's service as a director. Board members should not hold more than five directorships (including such member's seat on the Board), but, excluding for this purpose, not-for-profit organizations, trade organizations and related organizations or unless otherwise agreed to by the Nominating and Corporate Governance Committee of the Board. These other commitments will be considered by the Nominating and Corporate Governance Committee and the Board when reviewing Board candidates. Directors are expected to report changes in their primary business or professional association, including retirement, to the Chair of the Board and the Chair of the Nominating and Corporate Governance Committee.

2. Operation of the Board

- a. **Oversight.** To accomplish its mission to maximize long-term stockholder value, the Board must:
 - i. Ensure that the Company operates in a legal, ethical and socially responsible manner;
 - ii. Select, evaluate and offer substantive advice and counsel to the CEO and work with the CEO to develop effective measurement systems that facilitate an evaluation of the Company's degree of success in creating long-term economic value for its stockholders;

- iii. Review, approve and monitor fundamental financial and business strategies and major corporate actions;
 - iv. Oversee the Company's capital structure and financial policies and practices;
 - v. Assess major risks facing the Company and review options for their mitigation; and
 - vi. Provide counsel and oversight on the selection, evaluation, development and compensation of executive officers and provide critical and candid feedback on their successes and failures.
- b. **Corporate Governance.** The Board reviews and, if it deems appropriate, approves changes to these Corporate Governance Guidelines, including changes that have been recommended to the Board by the Corporate Nominating and Corporate Governance Committee.
- c. **Charters.** The Board reviews and, if it deems appropriate, approves changes to the Company's Audit and Compliance, Nominating and Corporate Governance, and Compensation Committee charters that have been recommended to the Board by such committees.
- d. **Assessing Board and Committee Performance.** The Board conducts an annual self-evaluation of its performance and an evaluation of each of the Board committees' performance to determine whether it and its committees are functioning effectively. The Board's evaluation is based, in part, on the self-evaluations conducted by each of the committees.
- e. **Assessing CEO Performance.** The Board believes that the CEO's performance should be evaluated annually and as a regular part of any decision with respect to CEO compensation. The Board has delegated the responsibility to the Compensation Committee to evaluate the CEO's performance in the course of approving CEO salary, bonus and long-term incentives such as stock and stock option awards.
- f. **Succession Planning.** The Board plans for the succession to the positions of CEO and other executive officers of the Company. To assist the Board, the CEO will annually provide to the Compensation Committee an assessment of the executive officers and their potential to succeed him or her.

3. Code of Conduct

Members of the Board of Directors shall act at all times in accordance with the requirements of the Company's Code of Conduct, which shall be applicable to each director in connection with his or her activities relating to the Company. This obligation shall at all times include, without limitation, adherence to the Company's policies with respect to conflicts of interest, confidentiality, protection of the Company's assets, ethical conduct in business dealings and respect for and compliance with applicable law. Any waiver of the requirements of the Code of Conduct with respect to any individual director or any executive officer shall be reported to, and be subject to the approval of, the Board of Directors.

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BOARD MEETINGS AND PROCEDURES

1. Board Meetings

- a. **Number of Meetings; Attendance and Preparation.** The Board holds a minimum of four regularly scheduled meetings per year. Directors are expected to attend all regularly scheduled meetings and to have, prior to the meetings, reviewed all written meeting materials distributed to them in advance.
- b. **Selection of Agenda Items.** The CEO or the director calling the meeting should establish the agenda for Board meetings; however, directors may at any time suggest that particular items be placed on the agenda.
- c. **Attendance of Non-Directors.** Selected senior officers of the Company may attend all or a portion of each Board meeting. Other persons may be invited to attend Board meetings where appropriate.
- d. **(Executive Sessions of Non-Employee Directors.** The independent directors meet in executive session during each of the Board's regularly scheduled meetings, without any management directors and any other members of the Company's management (without limiting the ability of the independent directors to invite members of management to address issues or otherwise respond to questions that the independent directors may have) who may otherwise be present, to consider matters as they may deem appropriate. The non-employee directors will designate the name of the director who will preside at the executive sessions. The independent directors may meet in executive session at any time to consider issues that they deem important to address without management present. Following each executive session, the results of the deliberations and any recommendations should be communicated to the

full Board.

2. Access to Senior Managers and Independent Advisors

Board members have complete and open access to senior members of management. The Board, including the independent members of the Board, has the authority, in its discretion, to retain independent advisors.

3. Frequency

In-person Board meetings are scheduled in advance at least four times a year. Additional Board meetings may be called upon appropriate notice at any time to address specific needs of the Company.

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BOARD COMMITTEES

1. **Number of Committees** The Company currently has three standing Committees: Audit and Compliance; Compensation; and Nominating and Corporate Governance. There will, from time to time, be occasions on which the Board may form a new committee or disband a current committee depending upon the circumstances. The Audit and Compliance, Compensation and Nominating and Corporate Governance Committees shall be composed entirely of independent directors.

Each Committee will have a written charter, approved by the Board, which describes the Committee's general authority and responsibilities. Each Committee will undertake an annual review of its charter, and will work with the Nominating and Corporate Governance Committee and the Board to make such revisions as are considered appropriate.

Each Committee has the authority to engage outside experts, advisors and counsel to the extent it considers appropriate to assist the Committee in its work.

Each Committee will regularly report to the Board concerning the Committee's activities.

2. **Assignment and Term of Service of Committee Members**

The Board is responsible for the appointment of Committee members.

3. **Frequency and Length of Committee Meetings and Committee Agenda**

The Committee Chairperson, in consultation with the Chairman of the Board and appropriate members of management, will determine the frequency and length of the Committee meetings and develop the Committee's agenda. The agendas and meeting minutes of the Committees will be shared with the full Board.

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SECURITY HOLDER-BOARD COMMUNICATIONS

1. **Communications with the Board**

The Board provides to every security holder the ability to communicate with the Board, as a whole, and with individual directors on the Board through an established process for security holder communication (as that term is defined by the rules of the Securities and Exchange Commission) as follows:

For communications directed to the Board as a whole, security holders may send such communication to the attention of the Chair of the Board via one of the two methods listed below:

By U.S. Mail (including courier or expedited delivery service):

Auxilium Pharmaceuticals, Inc.
640 Lee Road
Chesterbrook, PA 19087
Attn: Chair of the Board of Directors

By facsimile at (484) 321-5999
Attn: Chair of the Board of Directors

For security holder communications directed to an individual director in his or her capacity as a member of the Board, security holders may send such communications to the attention of the individual director via one of the two methods listed below:

By U.S. Mail (including courier or expedited delivery service):

Auxilium Pharmaceuticals, Inc.
640 Lee Road
Chesterbrook, PA 19087
Attn: [Name of Individual Director]

By facsimile at (484) 321-5999
Attn: [Name of Individual Director]

The Company will forward any such security holder communication to the Chairperson of the Board, as a representative of the Board, and/or to the director to whom the communication is addressed on a periodic basis.

2. Attendance at Annual Meeting of Shareholders

The Board's policy is that all directors and all nominees for election as directors attend the Company's Annual Meeting of Shareholders in person.