

# **CPEX PHARMACEUTICALS, INC.**

## **CORPORATE GOVERNANCE GUIDELINES**

**June 10, 2008**

The following Corporate Governance Guidelines have been adopted by the Board of Directors (the “Board”) of CPEX Pharmaceuticals, Inc. (the “Company”) to assist the Board in the exercise of its responsibilities. These Corporate Governance Guidelines are not intended to change or interpret any Federal or state law or regulation, including the Delaware General Corporation Law, or the Certificate of Incorporation or By-laws of the Company. These Corporate Governance Guidelines are subject to modification from time to time by the Board.

### **THE BOARD**

#### ***Role of Directors***

The business and affairs of the Company shall be managed by or under the direction of the Board. A director is expected to spend the time and effort necessary to properly discharge such director’s responsibilities. Accordingly, a director is expected to regularly attend meetings of the Board and committees on which director sits, and to review prior to meetings material distributed in advance for such meetings. A director who is unable to attend a meeting (which is understood will occur on occasion) is expected to notify the Chairman of the Board or the Chairman of the appropriate committee in advance of such meeting.

#### ***The Board’s Goals***

The Board’s goal is to build long-term value for the Company’s stockholders and to assure the vitality of the Company for its customers, employees and the other individuals and organizations who depend on the Company.

To achieve these goals the Board will monitor the performance of the Company (in relation to its goals, strategy and competitors) and delegates to the Compensation Committee the responsibility to monitor the performance of the Chief Executive Officer, and offer him or her constructive advice and feedback. When it is appropriate or necessary, it is the Board’s responsibility to remove the Chief Executive Officer and to select his or her successor.

#### ***Selection of the Chairman of the Board***

The Board does not require the separation of the offices of the Chairman of the Board and the Chief Executive Officer. The Board shall be free to choose its Chairman of the Board in any way that it deems best for the Company at any given point in time.

#### ***Size of the Board***

The Board believes that it should generally have no fewer than three and no more than thirteen directors. This range permits diversity of experience without hindering effective discussion or

diminishing accountability. The Board will periodically review the appropriate size and mix of the Board in light of its current composition and future objectives.

### ***Selection of New Directors***

The Board shall be ultimately responsible for nominating members for election to the Board and for filling vacancies on the Board that may occur between annual meetings of the stockholders. The Nominating and Corporate Governance Committee is responsible for identifying, screening and recommending candidates to the Board for Board membership. When formulating its Board membership recommendations, the Nominating and Corporate Governance Committee shall also consider advice and recommendations from others as it deems appropriate.

The Nominating and Corporate Governance Committee will consider candidates recommended by shareholders. In considering candidates submitted by shareholders, the Nominating and Corporate Governance Committee will take into consideration the needs of the Board and the qualifications of the candidate. The Nominating and Corporate Governance Committee may establish procedures, from time to time, regarding shareholder submission of candidates.

### ***Board Membership Criteria***

The Nominating and Corporate Governance Committee shall be responsible for assessing the appropriate balance of criteria required of Board members. Board members must be able to dedicate the time and resources sufficient for the diligent performance of their duties on the Company's behalf and should not hold positions that conflict with their responsibilities to the Company. The Nominating and Corporate Governance Committee shall take into account the nature of and time involved in a director's service on other boards in evaluating the suitability of individual directors and making its recommendations to the Board.

### ***Other Public Company Directorships***

The Company does not have a policy limiting the number of other public company boards of directors upon which a director may sit, in general. However, the Nominating and Corporate Governance Committee shall consider the number of other public company boards and other boards (or comparably governing bodies) on which a perspective nominee is a member.

Although the Company does not impose a limit on outside directorships, it does recognize the substantial time commitments attendant to Board membership and expects that the members of its Board be fully committed to devoting all such time as is necessary to fulfill their Board responsibilities, both in terms of preparation for, and attendance and participation at meetings.

### ***Independence of the Board***

The Board shall be comprised of a majority of directors who qualify as independent directors (the "Independent Directors") under the listing standards of NASDAQ, subject to the phase-in periods provided in NASDAQ Rule 4350(a)(5) (the "Independence Rules").

The Board may adopt and disclose categorical standards to assist it in determining director independence. In the event that a director becomes aware of any change of circumstances that

may result in such director no longer being considered independent under the listing standards of NASDAQ or under applicable law, the directors shall promptly inform the Chairman of the Nominating and Corporate Governance Committee.

### ***Non-Independent Directors***

Provided that a majority of the Board meets the Independence Rules, the Board may consider for director positions members of senior management and other individuals who may not meet the Independence Rules. In addition, the Board believes that it may be beneficial for managers that do not serve on the Board to attend board meetings on a regular basis in order to share with the Board their unique company and/or industry specific expertise. It is understood, however, that all matters of corporate governance will be decided by the directors, after such consultation with management and non-management advisors as the Board may deem appropriate.

### ***Directors Who Change Their Present Job Responsibility***

The Board does not believe that directors who retire or change the position they held when they became a member of the Board should necessarily leave the Board. Promptly following such event, the director must notify the Nominating and Corporate Governance Committee, which shall review the continued appropriateness of the affected director remaining on the Board under the circumstances. The affected director is expected to act in accordance with the Nominating and Corporate Governance Committee's recommendation following such review.

### ***Director Tenure***

The Board does not believe it should establish term limits for directors. However, in connection with each director nomination recommendation, the Nominating and Corporate Governance Committee shall consider the issue of continuing director tenure and take steps as may be appropriate to ensure that the Board maintains an openness to new ideas and a willingness to critically re-examine the status quo. An individual director's renomination is dependent upon such director's performance evaluation, as well as a suitability review, each to be conducted by the Nominating and Corporate Governance Committee in connection with each director nomination recommendation.

### ***Retirement Age***

The Board does not believe that it should establish a mandatory retirement age for directors or otherwise mandate the retirement of directors based on factors that are not directly related to a director's capacity to serve effectively. Instead, director qualifications will be reviewed periodically by the Nominating and Corporate Governance Committee to ensure that qualified directors are nominated for membership of the Board.

### ***Board Compensation***

The Board is responsible for establishing director compensation. The Board believes that directors should be fairly compensated for undertaking the responsibilities associated with serving as a director. At the same time, director compensation should be consistent with market practices generally.

The Compensation Committee shall annually assess the appropriate level of compensation for Board and Committee service. In addition the Nominating and Corporate Governance Committee evaluates director compensation in the context of evaluating director recruitment and retention. The Board will review director compensation at least as often as annually.

Director's fees (including any additional amounts paid to chairs of committees and to members of committees of the Board) are the only compensation a member of the Audit Committee may receive from the Company; provided, however, that a member of the Audit Committee may also receive fixed amounts of compensation under a retirement plan (including deferred compensation) from the Company for prior service with the Company so long as such compensation is not contingent in any way on continued service.

### ***Separate Sessions of Non-Management Directors<sup>1</sup>***

The non-management directors of the Company shall meet in executive session without management on a regularly scheduled basis, but not less frequently than quarterly. A non-management director designated by the non-management directors on the Board (the "Lead Non-Management Director") shall preside at such executive sessions, or in such director's absence, another Independent Director designated by the Lead Non-Management Director shall preside at such executive sessions. The individual who serves as the Lead Management Director at these executive sessions shall rotate each year among the chairs (if such chair is not a member of management) of the committees of the Board.

In the event that the non-management directors include directors who are not independent under the NASDAQ listing standards, the Company should, at least once a year, schedule an executive session including only independent directors.

### ***Self-Evaluation by the Board***

The Nominating and Corporate Governance Committee will sponsor an annual self-assessment of the Board's performance as well as the performance of each committee of the Board, the results of which will be discussed with the full Board and each committee. The assessment should include a review of any areas in which the Board or management believes the Board can make a better contribution to the Company. The Nominating and Corporate Governance Committee will utilize the results of this self-evaluation process in assessing and determining the characteristics and critical skills required of prospective candidates for election to the Board and making recommendations to the Board with respect to assignments of Board members to various committees.

### ***Strategic Direction of the Company***

Normally it is management's job to formalize, propose and implement strategic choices and the Board's role to approve strategic direction and evaluate strategic results. However, as a practical

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<sup>1</sup> Non-management directors are those directors who are not company officers (as such term is defined in Rule 16a-1(f) under the Exchange Act) and includes directors who are not independent by virtue of a material relationship, former status, family membership or for any other reason.

matter, the Board and management will be better able to carry out their respective strategic responsibilities if there is an ongoing dialogue among the Chief Executive Officer, other members of top management and other Board members. To facilitate such discussions, members of senior management who are not directors may be invited to participate in Board meetings when appropriate.

### ***Board Access to Management***

Board members shall have access to the Company's management and, as appropriate, to the Company's outside advisors. Board members shall coordinate such access through the Chief Executive Officer and Board members will use judgment to assure that this access is not distracting to the business operation of the Company.

### ***Attendance of Management Personnel at Board Meetings***

The Board encourages the Chief Executive Officer to bring members of management from time to time into Board meetings to (i) provide management insight into items being discussed by the Board which involve the manager; (ii) make presentations to the Board on matters which involve the manager; and (iii) bring managers with significant potential into contact with the Board. Attendance of such management personnel at Board meetings is at the discretion of the Board. Should the Chief Executive Officer desire to add additional members of management as attendees on a regular basis, this should be suggested to the Board for its concurrence.

### ***Board Materials Distributed in Advance***

Information and materials that are important to the Board's understanding of the agenda items and other topics to be considered at a Board meeting should, to the extent practicable, be distributed sufficiently in advance of the meeting to permit prior review by the directors. In the event of a pressing need for the Board to meet on short notice or if such materials would otherwise contain highly confidential or sensitive information, it is recognized that written materials may not be available in advance of the meeting.

### ***Board Interaction with Institutional Investors, Analysts, Press and Customers***

The Board believes that management generally should speak for the Company. It is suggested that each director shall refer all inquiries from institutional investors, analysts, the press or customers to the Chief Executive Officer or his or her designee.

### ***Board Orientation and Continuing Education***

The Company shall provide new directors with a director orientation program to familiarize such directors with, among other things, the Company's business, strategic plans, significant financial, accounting and risk management issues, compliance programs, conflicts policies, code of business conduct and ethics, corporate governance guidelines, principal officers, internal auditors and independent auditors. Each director is expected to participate in continuing educational programs in order to maintain the necessary level of expertise to perform his or her responsibilities as a director.

### *Director Attendance at Annual Meetings of Shareholders*

Directors are encouraged to attend the Company's annual meeting of shareholders. A director who is unable to attend the Company's annual meeting of shareholders (which it is understood will occur on occasion) is expected to notify the Chairman of the Board in advance.

## **BOARD MEETINGS**

### *Frequency of Meetings*

It is the Board's view that regular meetings at appropriate intervals are desirable for the performance of the Board's responsibilities. At least one regularly scheduled meeting of the Board shall be held quarterly. In addition to regularly scheduled meetings, additional unscheduled meetings may be called upon appropriate notice at any time to address special needs.

### *Selection of Agenda Items for Board Meetings*

The Chairman of the Board, in consultation with the Chief Executive Officer, shall annually prepare a "Board of Directors Master Agenda." This Master Agenda shall set forth a general agenda of items to be considered by the Board at each of its specified meetings during the year. Thereafter, the Chairman of the Board, in consultation with the Chief Executive Officer, may adjust the agenda to include special items not contemplated during the initial preparation of the annual Master Agenda.

Upon completion, a copy of the Master Agenda shall be provided to the entire Board. Each Board member shall be free to suggest inclusion of items on the agenda as well as free to raise at any Board meeting subjects that are not specifically on the agenda for that meeting.

## **COMMITTEE MATTERS**

### *Number and Names of Board Committees*

The Company shall have three standing committees: Audit, Nominating and Corporate Governance and Compensation. The purpose and responsibilities for each of these committees shall be outlined in committee charters adopted by the Board. The Board may want, from time to time, to form a new committee or disband a current committee depending on circumstances. In addition, the Board may determine to form ad hoc committees from time to time, and determine the composition and areas of competence of such committees.

### *Independence of Board Committees*

Each of the Audit Committee, the Nominating and Corporate Governance Committee and the Compensation Committee shall be composed entirely of Independent Directors satisfying applicable legal, regulatory and stock exchange requirements necessary for an assignment to any such committee, subject to the phase-in periods provided by Rule 4350(a)(5) of the NASDAQ rules and Rule 10A-3(b)(iv)(A) of the Exchange Act.

### *Assignment and Rotation of Committee Members*

The Nominating and Corporate Governance Committee shall be responsible, after consultation with the Chairman of the Board, for making recommendations to the Board with respect to the assignment of Board members to various committees. After reviewing the Nominating and Corporate Governance Committee's recommendations, the Board shall be responsible for appointing the Chairman and members to the committees on an annual basis.

The Nominating and Corporate Governance Committee shall annually review the Committee assignments and shall consider the rotation of the Chairman and members with a view toward balancing the benefits derived from continuity against the benefits derived from the diversity of experience and viewpoints of the various directors.

### **LEADERSHIP DEVELOPMENT**

#### *Selection of the Chief Executive Officer*

The Board shall be responsible for identifying potential candidates for, and selecting, the Company's Chief Executive Officer. In identifying potential candidates for, and selecting, the Company's Chief Executive Officer, the Board shall consider, among other things, a candidate's experience, understanding of the Company's business environment, leadership qualities, knowledge, skills, expertise, integrity, and reputation in the business community.

#### *Evaluation of Chief Executive Officer*

The Board will provide the Chief Executive Officer with an annual performance review for the prior year at the second regularly scheduled meeting of the Board each fiscal year. The following steps will be utilized to carry out this review:

- The Chief Executive Officer will develop a self-evaluation at the end of each fiscal year and provide this to the Board within one-month of the end of the fiscal year, either orally or in writing.
- With this information, each non-management director will provide his or her assessment of the Chief Executive Officer's performance in writing to the Nominating and Corporate Governance Committee. These assessments should include the director's appraisal of:
  - The Company's performance and the Chief Executive Officer's contribution to it, both compared to competitors and the Company's own strategic goals;
  - Achievement of personal goals set by the Chief Executive Officer for the year, as part of his or her self-evaluation; and
  - Other aspects of the Chief Executive Officer's performance which the non-management director deems relevant.

The Compensation Committee will synthesize this information and report a summary of this information to the non-management directors in executive session at the second regularly scheduled meeting of the Board each fiscal year. After agreement by the non-management directors to the evaluation, the Board will meet with the Chief Executive Officer to discuss the Board's assessment. The Chief Executive Officer may then take the opportunity to discuss his or her reaction to the evaluation.

### ***Succession Planning***

The Compensation Committee shall plan for the succession to the position of the Chief Executive Officer. To assist the Compensation Committee, the Chief Executive Officer shall prepare and distribute to the Compensation Committee an annual report on succession planning for all senior officers of the Company with an assessment of senior managers and their potential to succeed the Chief Executive Officer and other senior management positions. The Compensation Committee shall identify, and periodically review and reassess, the qualities and characteristics necessary for an effective Chief Executive Officer. With these principles in mind together with annual report of the Chief Executive Officer, the Compensation Committee should periodically monitor and review the development and progression of potential internal candidates against these standards.

### ***Management Development***

The Board shall determine that a satisfactory system is in effect for education, development, and orderly succession of senior and mid-level managers throughout the Company.