

JAZZ PHARMACEUTICALS INC  
Form PRE 14A  
October 09, 2009

## SCHEDULE 14A INFORMATION

### Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

**Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))**

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to § 240.14a-12

**Jazz Pharmaceuticals, Inc.**

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement if Other Than the Registrant)

Payment of Filing Fee (Check the appropriate box)

No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) 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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4. Proposed maximum aggregate value of transaction:

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5. Total fee paid:

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Fee paid previously with preliminary materials.

Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

6. Amount Previously Paid:

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7. Form, Schedule or Registration Statement No.:

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8. Filing Party:

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9. Date Filed:

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**PRELIMINARY COPY SUBJECT TO COMPLETION**

**JAZZ PHARMACEUTICALS, INC.**

**3180 Porter Drive**

**Palo Alto, California 94304**

**NOTICE OF ANNUAL MEETING OF STOCKHOLDERS**

**To be Held on December 15, 2009**

Dear Stockholder:

You are cordially invited to attend the Annual Meeting of Stockholders of Jazz Pharmaceuticals, Inc., a Delaware corporation (the "Company"). The meeting will be held on Tuesday, December 15, 2009, at 10:00 a.m. local time at the Company's offices located at 3180 Porter Drive, Palo Alto, California 94304 for the following purposes:

1. To elect the three nominees for director named in the accompanying Proxy Statement to hold office until the 2012 Annual Meeting of Stockholders.
2. To ratify the selection by the Audit Committee of the Board of Directors of Ernst & Young LLP as the Company's independent registered public accounting firm for the fiscal year ending December 31, 2009.
3. To approve the amended and restated form of indemnification agreement for the Company's directors and officers and to ratify the indemnification agreements previously entered into by the Company with its directors and officers in accordance with such form.
4. To conduct any other business properly brought before the meeting.

These items of business are more fully described in the Proxy Statement accompanying this notice.

The record date for the Annual Meeting is October 20, 2009. Only stockholders of record at the close of business on that date may vote at the meeting or any adjournment thereof.

**Important Notice Regarding the Availability of Proxy Materials for the Annual Meeting of Stockholders to Be Held on December 15, 2009 at 10:00 a.m. local time at the Company's offices located at 3180 Porter Drive, Palo Alto, California 94304.**

**The proxy statement and annual report to stockholders are available at [www.jazzpharm.com](http://www.jazzpharm.com).**

By Order of the Board of Directors

Carol A. Gamble

Secretary

Palo Alto, California

October , 2009

**You are cordially invited to attend the meeting in person. Whether or not you expect to attend the meeting, please vote as soon as possible. You may vote your shares over the telephone or the internet. If you received a proxy card or voting instruction card by mail, you may submit your proxy card or voting instruction card by completing, signing, dating and mailing your proxy card or voting instruction card in the envelope provided. Even if you have voted by proxy, you may still vote in person if you attend the meeting. Please note, however, that if your shares are held of record by a broker, bank or other nominee and you wish to vote at the meeting, you must obtain a proxy issued in your name from that record holder.**

**PRELIMINARY COPY SUBJECT TO COMPLETION**

**JAZZ PHARMACEUTICALS, INC.**

**3180 Porter Drive**

**Palo Alto, California 94304**

**PROXY STATEMENT**

**FOR THE 2009 ANNUAL MEETING OF STOCKHOLDERS**

**TO BE HELD ON TUESDAY, DECEMBER 15, 2009 AT 10:00 A.M.**

**QUESTIONS AND ANSWERS ABOUT THIS PROXY MATERIAL AND VOTING**

**Why am I receiving these materials?**

The Board of Directors of Jazz Pharmaceuticals, Inc. is soliciting your proxy to vote at the Jazz Pharmaceuticals 2009 Annual Meeting of Stockholders, or the Annual Meeting, including at any adjournments or postponements of the Annual Meeting. This proxy statement contains important information regarding the Annual Meeting, the proposals on which you are being asked to vote, information you may find useful in determining how to vote and voting procedures.

**Why did I receive a Notice in the mail regarding the internet availability of proxy materials this year instead of a full set of proxy materials?**

Jazz Pharmaceuticals is pleased to take advantage of the U.S. Securities and Exchange Commission, or SEC, rules that allows companies to furnish their proxy materials over the internet. Accordingly, Jazz Pharmaceuticals is sending a Notice of Internet Availability of Proxy Materials, or Notice, to certain of its registered holders who are holding shares in street name for beneficial owners. All stockholders will have the ability to access the proxy materials on the website referred to in the Notice, and if they receive a Notice, to request to receive a printed set of the proxy materials. Instructions on how to access the proxy materials over the internet or to request a printed set of the proxy materials may be found in the Notice. Jazz Pharmaceuticals intends to mail the Notice on or about October 26, 2009 to all stockholders of record entitled to vote at the Annual Meeting who are not receiving a full set of proxy materials. If you have received a Notice, Jazz Pharmaceuticals may send you a proxy card, along with a second Notice, on or after November 5, 2009.

**Why did I receive a full set of proxy materials in the mail instead of a Notice regarding the internet availability of proxy materials?**

Jazz Pharmaceuticals is providing stockholders of record who are holding shares in their own name and stockholders who have previously requested to receive paper copies of the proxy materials with paper copies of the proxy materials instead of a Notice. Jazz Pharmaceuticals intends to mail the full sets of proxy materials to the stockholders described in the previous sentence on or about October 26, 2009.

**How do I attend the Annual Meeting?**

You are invited to attend the Annual Meeting to vote on the proposals described in this proxy statement. The Annual Meeting will be held on Tuesday, December 15, 2009 at 10:00 a.m. local time at Jazz Pharmaceuticals offices located at 3180 Porter Drive, Palo Alto, California, 94304. Directions to the Annual Meeting may be found at [www.jazzpharm.com](http://www.jazzpharm.com). Information on how to vote in person at the Annual Meeting is discussed below. However, you do not need to attend the Annual Meeting to vote your shares.

**Who can vote at the Annual Meeting?**

Only stockholders of record at the close of business on October 20, 2009 will be entitled to vote at the Annual Meeting. On this record date, there were \_\_\_\_\_ shares of common stock outstanding and entitled to vote.

***Stockholders of Record: Shares Registered in Your Name***

If on October 20, 2009 your shares were registered directly in your name with Jazz Pharmaceuticals transfer agent, Computershare Trust Company, then you are a stockholder of record. As a stockholder of record, you may vote in person at the Annual Meeting or vote by proxy. Whether or not you plan to attend the Annual Meeting, we urge you to vote by proxy over the telephone or on the internet as instructed below, or fill out and return a proxy card.

***Beneficial Owner: Shares Registered in the Name of a Broker or Bank***

If on October 20, 2009 your shares were held, not in your name, but rather in an account at a brokerage firm, bank, dealer, or other similar organization, then you are the beneficial owner of shares held in street name and a Notice is being forwarded to you by that organization. The organization holding your account is considered to be the stockholder of record for purposes of voting at the Annual Meeting. As a beneficial owner, you have the right to direct your broker or other agent regarding how to vote the shares in your account. You are also invited to attend the Annual Meeting. However, since you are not the stockholder of record, you may not vote your shares in person at the Annual Meeting unless you request and obtain a valid proxy from your broker or other agent.

**What am I voting on?**

There are three matters scheduled for a vote:

Election of the three nominees named herein for director to hold office until the 2012 Annual Meeting of Stockholders;

Ratification of the selection by the Audit Committee of the Board of Directors of Ernst & Young LLP as Jazz Pharmaceuticals independent registered public accounting firm for the fiscal year ending December 31, 2009; and

Approval of the amended and restated form of indemnification agreement for Jazz Pharmaceuticals directors and officers and the ratification of the indemnification agreements previously entered into by Jazz Pharmaceuticals with its directors and officers in accordance with such form.

**What if another matter is properly brought before the meeting?**

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

**How do I vote?**

You may either vote For all the nominees to the Board of Directors or you may Withhold your vote for all or any of the nominees. For the ratification of the Audit Committee's selection of Ernst & Young LLP as Jazz Pharmaceuticals independent registered public accounting firm for the fiscal year ending December 31, 2009, you may vote For or Against or abstain from voting. For the approval of the amended and restated form of indemnification agreement for Jazz Pharmaceuticals directors and officers and ratification of the indemnification agreements previously entered into by Jazz Pharmaceuticals with its directors and officers in accordance with such form, you may vote For or Against or abstain from voting. The procedures for voting are fairly simple:

***Stockholders of Record: Shares Registered in Your Name***

If you are a stockholder of record, you may vote in person at the Annual Meeting, you may vote by proxy using the enclosed proxy card, or you may vote by proxy over the telephone or on the internet as instructed

below. Whether or not you plan to attend the Annual Meeting, we urge you to vote by proxy to ensure your vote is counted. You may still attend the meeting and vote in person even if you have already voted by proxy.

To vote in person, come to the Annual Meeting and we will give you a ballot when you arrive.

To vote using a proxy card, simply complete, sign and date the enclosed proxy card and return it promptly in the envelope provided. If you return your signed proxy card to us before the Annual Meeting, we will vote your shares as you direct.

To vote over the telephone, dial toll-free 1-800-652-VOTE (8683) within the U.S., U.S. territories and Canada using a touch-tone phone and follow the recorded instructions. You will be asked to provide the company number and control number from the enclosed proxy card. Your vote must be received by 1:00 a.m., Central Time, on December 15, 2009 to be counted.

To vote through the internet, go to [www.investorvote.com/JAZZ](http://www.investorvote.com/JAZZ) to complete an electronic proxy card. You will be asked to provide the company number and control number from the enclosed proxy card. Your vote must be received by 1:00 a.m., Central Time, on December 15, 2009 to be counted.

***Beneficial Owner: Shares Registered in the Name of Broker or Bank***

If you are a beneficial owner of shares registered in the name of your broker, bank, or other agent, you should have received a Notice containing voting instructions from that organization rather than from Jazz Pharmaceuticals. Simply follow the voting instructions in the Notice to ensure that your vote is counted. Alternatively, you may vote by telephone or over the internet as instructed by your broker or bank. To vote in person at the Annual Meeting, you must obtain a valid proxy from your broker, bank, or other agent. Follow the voting instructions from your broker or bank included with the Notice, or contact your broker or bank to request a proxy form.

**We provide internet proxy voting to allow you to vote your shares online, with procedures designed to ensure the authenticity and correctness of your proxy vote instructions. However, please be aware that you must bear any costs associated with your internet access, such as usage charges from internet access providers and telephone companies.**

**How many votes do I have?**

On each matter to be voted upon, you have one vote for each share of common stock you own as of October 20, 2009.

**What if I return a proxy card or otherwise vote but do not make specific choices?**

If you return a signed and dated proxy card or otherwise vote without marking voting selections, your shares will be voted, as applicable, For the election of all three nominees for director, For the ratification of the Audit Committee's selection of Ernst & Young LLP as Jazz Pharmaceuticals independent registered public accounting firm for the fiscal year ending December 31, 2009, and For the approval of the amended and restated form of indemnification agreement for Jazz Pharmaceuticals directors and officers and the ratification of the indemnification agreements previously entered into by Jazz Pharmaceuticals with its directors and officers in accordance with such form. If any other matter is properly presented at the meeting, your proxy holder (one of the individuals named on your proxy card) will vote your shares using his or her best judgment.

**Who is paying for this proxy solicitation?**

We will pay for the entire cost of soliciting proxies. In addition to these proxy materials, our directors and employees may also solicit proxies in person, by telephone, or by other means of communication. Directors and

employees will not be paid any additional compensation for soliciting proxies. We may also reimburse brokerage firms, banks and other agents for the cost of forwarding proxy materials to beneficial owners.

**What does it mean if I receive more than one set of proxy materials or more than one Notice, or combination thereof?**

If you receive more than one set of proxy materials or more than one Notice or a combination thereof, your shares may be registered in more than one name or are registered in different accounts. Please follow the voting instructions on **each** set of proxy materials or Notices to ensure that all of your shares are voted.

**Can I change my vote after submitting my proxy?**

Yes. You can revoke your proxy at any time before the final vote at the meeting. If you are the record holder of your shares, you may revoke your proxy in any one of the following ways:

You may submit another properly completed proxy card with a later date.

You may grant a subsequent proxy by telephone or through the internet.

You may send a timely written notice that you are revoking your proxy to Jazz Pharmaceuticals Secretary at 3180 Porter Drive, Palo Alto, California 94304.

You may attend the Annual Meeting and vote in person. Simply attending the meeting will not, by itself, revoke your proxy. Your most current proxy card or telephone or internet proxy is the one that is counted.

If your shares are held by your broker or bank as a nominee or agent, you should follow the instructions provided by your broker or bank.

**When are stockholder proposals due for next year's annual meeting?**

Stockholders of Jazz Pharmaceuticals may submit proposals on matters appropriate for stockholder action at meetings of its stockholders in accordance with Rule 14a-8 promulgated under the Securities Exchange Act of 1934, as amended, or Exchange Act. For such proposals to be included in Jazz Pharmaceuticals proxy materials relating to its 2010 Annual Meeting of Stockholders, all applicable requirements of Rule 14a-8 must be satisfied and, pursuant to Rule 14a-8, such proposals must be received by Jazz Pharmaceuticals no later than June 28, 2010, which deadline assumes that the 2010 Annual Meeting of Stockholders will be held within 30 days of the anniversary date of this year's Annual Meeting. However, Jazz Pharmaceuticals currently expects that its 2010 Annual Meeting of Stockholders will be held in the first half of 2010 and if so, the deadline will not be June 28, 2010 and will instead be a reasonable time prior to the time Jazz Pharmaceuticals begins to print and mail its proxy materials. Such proposals should be delivered to Jazz Pharmaceuticals, Inc., Attn: Secretary, 3180 Porter Drive, Palo Alto, California 94304.

Pursuant to Jazz Pharmaceuticals bylaws, if you wish to bring a proposal before the stockholders or nominate a director at the 2010 Annual Meeting of Stockholders, but you are not requesting that your proposal or nomination be included in next year's proxy materials, you must notify Jazz Pharmaceuticals Secretary, in writing, not earlier than the close of business on the 120th day prior to the 2010 Annual Meeting of Stockholders and not later than the close of business on the later of the ninetieth 90<sup>th</sup> day prior to the 2010 Annual Meeting of Stockholders or the tenth day following the day on which public announcement of the date of the 2010 Annual Meeting of Stockholders is first made. However, in the unlikely event that the 2010 Annual Meeting of Stockholders is held within 30 days of the anniversary date of this year's Annual Meeting, Jazz Pharmaceuticals bylaws provide that in order to be timely, notice by the stockholder must be so received not later than the close of business on September 16, 2010 nor earlier than the close of business on August 17, 2010. Jazz Pharmaceuticals

also advises you to review its bylaws, which contain additional requirements about advance notice of stockholder proposals and director nominations. Among other things, a stockholder's notice to Jazz Pharmaceuticals' Secretary must set forth the information required by Jazz Pharmaceuticals' bylaws with respect to each matter the stockholder proposes to bring before the 2010 Annual Meeting of Stockholders. The chairman of the 2010 Annual Meeting of Stockholders may determine, if the facts warrant, that a matter has not been properly brought before the meeting and, therefore, may not be considered at the meeting. In addition, the proxy solicited by the Board of Directors for the 2010 Annual Meeting of Stockholders will confer discretionary voting authority with respect to (i) any proposal presented by a stockholder at that meeting for which Jazz Pharmaceuticals has not been provided with timely notice and (ii) any proposal made in accordance with the Jazz Pharmaceuticals bylaws, if the 2010 proxy statement briefly describes the matter and how management's proxy holders intend to vote on it, if the stockholder does not comply with the requirements of Rule 14a-4(c)(2) promulgated under the Exchange Act.

**How are votes counted?**

Votes will be counted by the inspector of election appointed for the Annual Meeting, who will separately count For and Withhold votes, and, with respect to proposals other than the election of the nominees named herein for director, Against, Abstain and broker non-votes. A broker non-vote occurs when a nominee, such as a broker or bank, holding shares for a beneficial owner does not vote on a particular proposal because the nominee does not have discretionary voting power with respect to that proposal and has not received instructions with respect to that proposal from the beneficial owner. In the event that a broker, bank, custodian, nominee or other record holder of our common stock indicates that it does not have discretionary authority to vote certain shares on a particular proposal, then those shares will be treated as broker non-votes with respect to that proposal. Accordingly, if you own shares through a nominee, such as a broker or bank, please be sure to instruct your nominee how to vote to ensure that your vote is counted on each of the proposals.

Abstentions and broker non-votes will be treated as shares present for the purpose of determining the presence of a quorum for the transaction of business at the Annual Meeting. Abstentions will be counted towards the tabulation of shares present in person or represented by proxy and will have the same effect as an Against vote on Proposals 2 and 3. Broker non-votes are not counted as votes For or Against Proposals 2 and 3.

**How many votes are needed to approve each proposal?**

For the election of directors, the three nominees receiving the most For votes (among votes properly cast in person or by proxy) will be elected.

To be approved, Proposal 2, the ratification of the Audit Committee's selection of Ernst & Young LLP as Jazz Pharmaceuticals independent registered public accounting firm for the fiscal year ending December 31, 2009, must receive a For vote from at least a majority of the shares represented and voting either in person or by proxy at the Annual Meeting on Proposal 2.

To be approved, Proposal 3, the approval of the amended and restated form of indemnification agreement for Jazz Pharmaceuticals directors and officers and the ratification of the indemnification agreements previously entered into by Jazz Pharmaceuticals with its directors and officers in accordance with such form, must receive a For vote from at least a majority of the shares represented and voting either in person or by proxy at the Annual Meeting on Proposal 3.

**What is the quorum requirement?**

A quorum of stockholders is necessary to hold a valid meeting. A quorum will be present if stockholders holding at least a majority of the outstanding shares entitled to vote are present at the meeting in person or represented by proxy. On the record date, there were \_\_\_\_\_ shares outstanding and entitled to vote.

Your shares will be counted towards the quorum only if you submit a valid proxy (or one is submitted on your behalf by your broker, bank or other nominee) or if you vote in person at the meeting. Abstentions and broker non-votes will be treated as shares present for the purpose of determining the presence of a quorum. If there is no quorum, the chairman of the meeting or a majority of shares present at the meeting in person or represented by proxy may adjourn the meeting to another date.

**How can I find out the results of the voting at the Annual Meeting?**

Preliminary voting results will be announced at the Annual Meeting. Final voting results will be published in our annual report on Form 10-K for the year ending December 31, 2009.

**What proxy materials are available on the internet?**

The letter to stockholders, proxy statement, and annual report to stockholders are available at [www.jazzpharm.com](http://www.jazzpharm.com).

**PROPOSAL 1**

**ELECTION OF DIRECTORS**

Jazz Pharmaceuticals Board of Directors is divided into three classes and each class has a three-year term. Vacancies on the Board of Directors may be filled only by the affirmative vote of a majority of the remaining directors, even if the remaining directors constitute less than a quorum of the Board of Directors. A director elected by the Board to fill a vacancy in a class, shall serve for the remainder of the full term of that class and until the director's successor is elected and qualified. This applies to vacancies created by an increase in the authorized number of directors.

Jazz Pharmaceuticals Board of Directors presently has 11 members and there are no vacancies. There are three directors in Class II, the class whose term of office expires at the Annual Meeting. Each of the nominees listed below, except for Robert M. Myers, was elected to the Board prior to Jazz Pharmaceuticals' initial public offering in June 2007. Mr. Myers was elected, effective in April 2009, to the Board of Directors and was recommended for election to the Board of Directors by a non-management director. Each of the nominees listed below was recommended for reelection to the Board at the Annual Meeting by the Nominating and Corporate Governance Committee of the Board of Directors. If elected at the Annual Meeting, each of these nominees would serve until the 2012 Annual Meeting of Stockholders and until his successor is elected and has qualified, or until the director's death, resignation or removal. It is Jazz Pharmaceuticals' policy to invite directors and nominees for director to attend annual meetings of stockholders. None of our non-employee directors attended the 2008 Annual Meeting of Stockholders.

Directors are elected by a plurality of the votes of the holders of shares present in person or represented by proxy and entitled to vote on the election of directors. The three nominees receiving the highest number of affirmative votes will be elected. Shares represented by executed proxies will be voted, if authority to do so is not withheld, for the election of the three nominees named below. If any nominee becomes unavailable for election as a result of an unexpected occurrence, your shares will be voted for the election of a substitute nominee proposed by the Nominating and Corporate Governance Committee of the Board. Each person nominated for election has agreed to serve if elected. Jazz Pharmaceuticals' management has no reason to believe that any nominee will be unable to serve.

The following is a brief biography of each nominee and each director whose term of office will continue after the Annual Meeting, and their respective ages as of October 23, 2009.

**Class II Director Nominees for Election for a Three-Year Term Expiring at the 2012 Annual Meeting**

*Samuel D. Colella*, age 69, has served as a member of our Board of Directors since 2004. Since 1999, he has served as Managing Member of Versant Ventures, a venture capital firm, which he co-founded. He serves on the boards of Genomic Health Inc., a molecular diagnostics company, Alexza Pharmaceuticals, a drug delivery company, and several privately-held companies. He received a B.S. from the University of Pittsburgh and an M.B.A. from the Stanford Graduate School of Business.

*James C. Montazee*, age 36, has served as a member of our Board of Directors since 2004. Since 1996, he has been employed by Kohlberg Kravis Roberts & Co. L.P., where he is a Member. He serves on the boards of HCA Inc., a healthcare services company, and Accellent Inc., a manufacturing and engineering services company. He received an A.B. from Stanford University and an M.B.A. from the Stanford Graduate School of Business.

*Robert M. Myers*, age 45, is a co-founder and was appointed as our President in March 2007 and has served as a member of our Board of Directors since April 2009. From 2003 until 2007, he served as our Executive Vice President and Chief Business Officer. From 2002 until 2003, he served as Executive Vice President, Pharmaceuticals at Exelixis, a biotechnology company. He previously held various positions with ALZA

Corporation from 1992 to 2001, most recently as its Senior Vice President, Commercial Development. In this role, he was responsible for ALZA Corporation's corporate development, mergers and acquisitions, new product planning and corporate planning. He received B.S. and M.S. degrees from Stanford University and an M.B.A. from the Stanford Graduate School of Business.

*The Board of Directors recommends*

*a vote For each named nominee.*

**Class III Directors Continuing in Office Until the 2010 Annual Meeting**

*Bruce C. Cozadd*, age 46 is a co-founder and has served as our Chairman and Chief Executive Officer since April 2009. From 2003 until 2009, he served as our Executive Chairman. From 1991 until 2001, he held various positions with ALZA Corporation, a pharmaceutical company now owned by Johnson & Johnson, most recently as its Executive Vice President and Chief Operating Officer, with responsibility for research and development, manufacturing and sales and marketing. Previously at ALZA Corporation he held the roles of Chief Financial Officer and Vice President, Corporate Planning and Analysis. He serves on the boards of Cerus Corporation, a biopharmaceutical company, Threshold Pharmaceuticals, a biotechnology company, and The Nueva School and Stanford Hospital and Clinics, both non-profit organizations. He received a B.S. from Yale University and an M.B.A. from the Stanford Graduate School of Business.

*Michael W. Michelson*, age 57, has served as a member of our Board of Directors since 2004. Since 1981, he has been employed by Kohlberg Kravis Roberts & Co. L.P., where he is a Member and also serves on KKR's Investment and Other Business committees. He serves on the boards of HCA Inc., a healthcare services company and Biomet, Inc., a healthcare manufacturing company. He received an A.B. from Harvard College and a J.D. from Harvard Law School.

*Kenneth W. O'Keefe*, age 42, has served as a member of our Board of Directors since 2004. Since 1997, he has been Managing Director of Beecken Petty O'Keefe & Company, a private equity firm, which he co-founded. He serves on the boards of several privately-held healthcare companies. He received a B.A. from Northwestern University and an M.B.A. from the University of Chicago.

*Alan M. Sebulsky*, age 49, has served as a member of our Board of Directors since 2004. Since 2003, he has served as a Managing Partner of Apothecary Capital LLC, an investment advisory firm. From 2002 to 2003, he was an independent investor. From 1994 to 2002, he held various positions, most recently as a Managing Director, at Lincoln Capital Management, a private investment management firm, where he was responsible for investments in the health care industry. He received a B.B.A. and an M.S. from the University of Wisconsin, Madison.

**Class I Directors Continuing in Office Until the 2011 Annual Meeting**

*Bryan C. Cressey*, age 59, has served as a member of our Board of Directors since 2006. Since 2007 he has been a Partner of Cressey and Company, LLC, and since 1998, he has been a Partner of Thoma Cressey Bravo, Inc., both private equity firms of which he is a founder. He serves on the boards of Belden, Inc., a networking cable technology company, Select Medical Corporation, a healthcare services company, and several privately-held healthcare services companies. He received a B.A. from the University of Washington, a J.D. from Harvard Law School and an M.B.A. from Harvard Business School.

*Patrick G. Enright*, age 47, has served as a member of our Board of Directors since July 2009. Since 2006, he has served as a Managing Member of Longitude Capital, a venture capital firm, of which he is a founder. From 2002 through 2006, Mr. Enright was a Managing Director of Pequot Ventures where he co-led the life sciences investment practice. Mr. Enright also has significant life sciences operations experience, beginning his career more than 25 years ago at Sandoz (now Novartis). He currently serves on the boards of Corcept Therapeutics Incorporated, a pharmaceutical company, and several privately-held companies. Mr. Enright received a B.S. from Stanford University and an M.B.A. from the Wharton School at the University of Pennsylvania.

*James B. Tananbaum, M.D.*, age 45, has served as a member of our Board of Directors since 2003. Since 2000, Dr. Tananbaum has been a Managing Member of Prospect Venture Partners, a venture capital firm he co-founded. He serves on the boards of Critical Therapeutics, Inc., Infinity Pharmaceuticals, Inc., Novavax, Inc., and several privately-held companies. Dr. Tananbaum was also the founder of GelTex, Inc. and Theravance, Inc. He received a B.S.E.E. from Yale University, and an M.D. and an M.B.A. from Harvard University.

*Nathaniel M. Zilkha*, age 34, has served as a member of our Board of Directors since October 2007. Since August 2007, he has been employed at Kohlberg Kravis Roberts & Co., L.P., where he is a Director. From July 1999 to May 2007, Mr. Zilkha was a vice president at Goldman Sachs, where he led the healthcare investing efforts for the Goldman Sachs Capital Partners funds. He currently serves on the board of Oriental Brewery Co. Ltd. Mr. Zilkha graduated cum laude from Princeton University in 1999.

## **CORPORATE GOVERNANCE AND BOARD MATTERS**

### **Independence of Jazz Pharmaceuticals Board of Directors**

As required under the NASDAQ Stock Market LLC, or NASDAQ, listing standards, a majority of the members of a listed company's board of directors must qualify as independent, as affirmatively determined by the board of directors. The Board of Directors consults with internal counsel to ensure that the Board's determinations are consistent with relevant securities and other laws and regulations regarding the definition of independent, including those set forth in pertinent listing standards of NASDAQ, as in effect time to time. Consistent with these considerations, after review of all relevant transactions or relationships between each director, or any of his or her family members, and Jazz Pharmaceuticals, its senior management and its independent registered public accounting firm, the Board has affirmatively determined that all of our directors are independent directors within the meaning of the applicable NASDAQ listing standards, except that Mr. Cozadd, our Chief Executive Officer and Chairman, and Mr. Myers, our President, are not independent directors by virtue of their employment with Jazz Pharmaceuticals. The Board also determined that Dr. Saks, our former Chief Executive Officer, was not an independent director by virtue of his former employment with Jazz Pharmaceuticals. In addition, the Board determined that each member of our Audit Committee, Compensation Committee and Nominating and Corporate Governance Committee during 2008 was an independent director within the meaning of the applicable NASDAQ listing standards and SEC rules, except that, as noted below under Audit Committee, although our Board of Directors has determined that Mr. Momtazee meets the independence requirements of the NASDAQ listing standards with respect to members of boards of directors, our Board determined that Mr. Momtazee did not meet the heightened independence requirements of Rule 10A-3 of the Exchange Act and NASDAQ listing standards with respect to audit committee members, due to his affiliation with Kohlberg Kravis Roberts & Co. L.P., our largest stockholder.

### **Meetings of the Board of Directors**

The Board of Directors met 11 times during the fiscal 2008. All directors attended at least 75% of the aggregate number of meetings of the Board and of the committees on which they served, held during the portion of the last fiscal year for which they were directors or committee members, respectively.

As required under applicable NASDAQ listing standards, in fiscal 2008, Jazz Pharmaceuticals independent directors met five times during 2008, at each regularly scheduled Board meeting, in regularly scheduled executive sessions at which only independent directors were present.

**Committees of the Board**

Our Board has three standing committees: an Audit Committee, a Compensation Committee, and a Nominating and Corporate Governance Committee. The following table provides membership and meeting information for fiscal 2008 for each of the standing Board committees:

<b>Name</b>	<b>Audit</b>	<b>Compensation</b>	<b>Nominating and Corporate Governance<sup>(1)</sup></b>
Samuel D. Colella		X	X
Bryan C. Cressey	X <sup>(2)</sup>		
Michael W. Michelson		X*	
James C. Momtazee	X <sup>(3)</sup>		X*
Kenneth W. O Keefe	X*		
Alan M. Sebulsky	X		
James B. Tananbaum, M.D.		X	
Total meetings in fiscal 2008	9	8	1

<sup>(1)</sup> Mr. Colella was chair of the Nominating and Corporate Governance Committee until June 1, 2008, whereupon Mr. Momtazee became chair.

<sup>(2)</sup> Joined the Audit Committee on April 1, 2008.

<sup>(3)</sup> Resigned from the Audit Committee on May 31, 2008.

\* Committee Chairperson

Below is a description of each standing committee of our Board of Directors. Except as noted below, our Board of Directors has determined that each member of each committee meets the applicable NASDAQ rules and regulations regarding independence and that each member is free of any relationship that would impair his individual exercise of independent judgment with regard to Jazz Pharmaceuticals.

**Audit Committee**

The Audit Committee of the Board of Directors oversees Jazz Pharmaceuticals' corporate accounting and financial reporting processes and audits of its financial statements. For this purpose, the Audit Committee performs several functions. In particular, the Audit Committee:

evaluates the performance of and assesses the qualifications of the independent auditors;

determines and approves the engagement of the independent auditors;

determines whether to retain or terminate the existing independent auditors or to appoint and engage new independent auditors;

determines and approves the engagement of the independent auditors to perform any proposed permissible non-audit services;

monitors the rotation of partners of the independent auditors on Jazz Pharmaceuticals' audit engagement team as required by applicable laws and rules;

reviews and approves or rejects transactions between Jazz Pharmaceuticals and any related persons;

confers with management and the independent auditors regarding the effectiveness of our internal control over financial reporting;

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establishes procedures, as required under applicable laws and rules, for the receipt, retention and treatment of complaints received by Jazz Pharmaceuticals regarding accounting, internal accounting controls or auditing matters and the confidential and anonymous submission by employees of concerns regarding questionable accounting or auditing matters; and

meets to review our annual audited financial statements and quarterly financial statements with management and the independent auditor, including reviewing Jazz Pharmaceuticals disclosures under Management's Discussion and Analysis of Financial Condition and Results of Operations included in our annual and quarterly reports filed with the SEC.

We have a standing Audit Committee that is currently composed of four directors (Messrs. Cressey, Enright, O'Keefe and Sebulsky). During a portion of 2008, Mr. Momtazee was also a member of the Audit Committee. Although our Board of Directors has determined that Mr. Momtazee meets the independence requirements of the NASDAQ listing standards with respect to members of boards of directors, our Board has determined that Mr. Momtazee does not meet the heightened independence requirements of Rule 10A-3 of the Exchange Act and NASDAQ listing standards with respect to audit committee members due to his affiliation with Kohlberg Kravis Roberts & Co. L.P., our largest stockholder. As a result, Mr. Momtazee resigned from the Audit Committee on May 31, 2008. Mr. Cressey joined the Audit Committee in April 2008. Mr. Enright was appointed to the Audit Committee on September 30, 2009. Our Board of Directors has determined that Messrs. Cressey, Enright, O'Keefe and Sebulsky meet the independence requirements of Rule 10A-3 of the Exchange Act and NASDAQ listing standards with respect to audit committee members. Our Board has determined that Mr. O'Keefe qualifies as an audit committee financial expert within the meaning of SEC regulations. In making this determination, our Board of Directors considered the overall knowledge, experience and familiarity of Mr. O'Keefe with accounting matters and in analyzing and evaluating financial statements, including his experience managing private equity investments. Mr. O'Keefe serves as chairperson of the Audit Committee.

The Audit Committee met nine times during 2008. The Audit Committee is governed by a written charter that is available on Jazz Pharmaceuticals website at [www.jazzpharmaceuticals.com](http://www.jazzpharmaceuticals.com) under the section entitled Company at Board Committees.

#### **Report of the Audit Committee of the Board of Directors<sup>(1)</sup>**

The Audit Committee has reviewed and discussed the audited financial statements for the fiscal year ended December 31, 2008 with management of Jazz Pharmaceuticals. The Audit Committee has discussed with the independent registered public accounting firm the matters required to be discussed by Statement on Auditing Standards No. 61, as amended (AICPA, *Professional Standards*, Vol. 1. AU section 380), as adopted by the Public Company Accounting Oversight Board, or the PCAOB, in Rule 3200T. The Audit Committee has also received the written disclosures and the letter from the independent registered public accounting firm required by applicable requirements of the PCAOB regarding the independent accountants' communications with the audit committee concerning independence, and has discussed with the independent registered public accounting firm the accounting firm's independence. Based on the foregoing, the Audit Committee recommended to the Board of Directors that the audited financial statements be included in Jazz Pharmaceuticals Annual Report on Form 10-K for the fiscal year ended December 31, 2008.

Respectfully submitted,

The Audit Committee of the Board of Directors

Mr. Kenneth W. O'Keefe (Chairperson)

Mr. Bryan C. Cressey

Mr. Alan M. Sebulsky

<sup>(1)</sup> The material in this report is not soliciting material, is not deemed filed with the Commission and is not to be incorporated by reference in any filing of Jazz Pharmaceuticals under the Securities Act of 1933, as amended, or the Exchange Act, whether made before or after the date hereof and irrespective of any general incorporation language in any such filing.

### **Compensation Committee**

The Compensation Committee is composed of three directors: Messrs. Colella and Michelson and Dr. Tananbaum. Mr. Michelson serves as the chairperson of the Compensation Committee. All members of the Compensation Committee are independent (as independence is currently defined in Rule 5605(a)(2) of the NASDAQ listing standards). The Compensation Committee held seven regular meetings and acted by unanimous written consent two times during the fiscal year. The Compensation Committee also had a number of informal discussions and consultations with one another and with Mr. Cozadd, our Chairman and Chief Executive Officer. The Compensation Committee is governed by a written charter that is available on Jazz Pharmaceuticals' website at [www.jazzpharmaceuticals.com](http://www.jazzpharmaceuticals.com) under the section entitled "Company Board Committees."

The Compensation Committee reviews and oversees our compensation policies, plans and programs, and reviews and determines the compensation to be paid to our executive officers and other senior management. Specific responsibilities of our Compensation Committee include:

recommending to our Board of Directors for approval the compensation and other terms of employment of our Chairman and Chief Executive Officer;

determining the compensation and other terms of employment of our other executive officers and senior management;

reviewing and approving the compensation of our executive officers and other senior management against objectives and goals approved by the Board of Directors;

evaluating and recommending to our Board of Directors for approval the compensation plans and programs advisable for us, and evaluating and recommending the modification or termination of existing plans and programs; and

reviewing and approving the terms of any employment agreements, severance arrangements, change of control protections and any other compensatory arrangements for our executive officers and other senior management.

### **Compensation Committee Processes and Procedures**

Typically, the Compensation Committee meets four to six times per year, generally on the same day as regularly scheduled Board meetings and with greater frequency if necessary. The agenda for each meeting is usually developed by our General Counsel, in consultation with our Human Resources department and Mr. Cozadd, our Chairman and Chief Executive Officer. However, from time to time, various members of management and other employees as well as outside advisors or consultants may be invited by the Compensation Committee to make presentations, provide financial or other background information or advice or otherwise participate in Compensation Committee meetings. Mr. Cozadd may not participate in, or be present during, any deliberations or determinations of the Compensation Committee regarding his compensation. The charter of the Compensation Committee grants the Compensation Committee full access to all books, records, facilities and personnel of Jazz Pharmaceuticals, as well as authority to obtain, at the expense of Jazz Pharmaceuticals, advice and assistance from internal and external legal, accounting or other advisors and consultants and other external resources that the Compensation Committee considers necessary or appropriate in the performance of its duties. In particular, the Compensation Committee has the authority to retain compensation consultants to assist in its evaluation of executive compensation (or we may do so on behalf of the Compensation Committee at its request), including the authority to approve the consultant's reasonable fees and other retention terms.

Under its charter, the Compensation Committee may form and delegate authority to subcommittees as appropriate, including, but not limited to, a subcommittee composed of one or more members of the Board, to grant stock awards under our equity compensation plans. In 2008, the Compensation Committee delegated authority to Mr. Cozadd and Dr. Saks, our former Chief Executive Officer, and in September 2009, to Mr. Myers, our President, (while still also retaining authority for itself and for the Board), to approve discretionary options

grants under our 2007 Equity Incentive Plan, or the 2007 Plan, to newly hired employees who are below the Vice President level, to employees newly promoted to below the Vice President level, and to our specialty sales consultants as part of a sales incentive plan. The purpose of this authority is to enhance the flexibility of option administration within Jazz Pharmaceuticals and to facilitate the timely grant of options to new non-officer employees of Jazz Pharmaceuticals within the specified guidelines approved by the Compensation Committee. The total number of shares subject to options that Mr. Cozadd and Mr. Myers may grant during the term of the 2007 Plan may not exceed an aggregate of 2,350,000 shares. No employee may be granted a stock option by Mr. Cozadd or Mr. Myers for more than the number of shares of our common stock that is determined pursuant to the guidelines and policies established by the Compensation Committee from time to time. During 2008, Mr. Cozadd and Dr. Saks exercised their authority to grant options to purchase an aggregate of 384,592 shares to non-officer employees. As part of its oversight function, the Compensation Committee reviews, at each regularly-scheduled meeting of the Compensation Committee, the list of grants made by Mr. Cozadd and Mr. Myers since the last regularly scheduled meeting.

As described under Executive Compensation Compensation Discussion and Analysis, in 2007 Compensia, Inc., a compensation consulting firm, provided a competitive compensation assessment with respect to our executive officers, which consisted of providing the Compensation Committee with certain benchmarking material to assist the Compensation Committee in determining executive compensation levels, and in 2008, Compensia provided the Compensation Committee with an update of certain of the benchmarking material provided in 2007. As part of its engagement, Compensia was requested by the Compensation Committee to perform analyses of competitive compensation levels for a group of comparative companies chosen by the Compensation Committee, as well as to provide the Compensation Committee with additional survey data collected from the Radford Biotech Executive Survey.

Historically, the Compensation Committee has made most significant adjustments to annual compensation, determined bonus and equity awards at one or more meetings held during the first quarter of the year. However, the Compensation Committee also considers matters related to our progress in achieving our corporate objectives under our annual Bonus Plan for the year, as well as high-level strategic issues, such as the efficacy of our compensation strategy, potential modifications to that strategy and new trends, plans or approaches to compensation, at various meetings throughout the year. For executives other than Mr. Cozadd and Dr. Saks, prior to his leaving the company, the Compensation Committee solicits and considers evaluations and recommendations submitted to the Compensation Committee by Mr. Cozadd and Dr. Saks, prior to his leaving the company. While Mr. Cozadd and Dr. Saks, prior to his leaving the company, discuss their recommendations with the Compensation Committee, they do not participate in determining their own compensation. In making their recommendations, Mr. Cozadd and Dr. Saks, prior to leaving the company, receive input from our Human Resources department and have access to various third party compensation surveys and compensation data. Our General Counsel also participates in Compensation Committee meetings, but does not participate in any discussions of executive officer compensation. For all executives, as part of its deliberations, the Compensation Committee may review and consider, as appropriate, materials such as financial reports and projections, our progress against our corporate performance objectives, operational data, tax and accounting information, executive and stock ownership information, company stock performance data, analyses of historical executive compensation levels and current corporate compensation levels, and recommendations of any compensation consultants engaged by the Compensation Committee (or by us on behalf of the Compensation Committee), including analyses of executive compensation paid at other companies identified by any such consultants. The specific determinations of the Compensation Committee with respect to executive compensation for fiscal 2008 and fiscal 2009 are described in greater detail under Executive Compensation Compensation Discussion and Analysis.

With respect to director compensation matters, our Board of Directors determines and sets non-employee director compensation, including based upon any recommendations provided to our Board by the Nominating and Corporate Governance Committee. Our compensation arrangements for our non-employee directors for 2008 are described under Director Compensation.

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

In 2008, our Compensation Committee was composed of three directors: Messrs. Colella and Michelson and Dr. Tananbaum. None of the members of our Compensation Committee has at any time been an officer or employee of Jazz Pharmaceuticals. None of our executive officers serves, or in the past fiscal year has served, as a member of the board of directors or the compensation committee of any entity that has one or more of its executive officers serving on our Board of Directors or Compensation Committee. Please see the disclosure below under **Certain Transactions With or Involving Related Persons Sales of Securities Registered Direct Offering** regarding our registered direct offering to select investors and the participation therein of the entities with which Messrs. Colella and Michelson and Dr. Tananbaum are affiliated.

### **Nominating and Corporate Governance Committee**

The Nominating and Corporate Governance Committee of our Board of Directors is responsible for, among other things:

overseeing all aspects of our corporate governance functions on behalf of the Board;

making recommendations to the Board regarding corporate governance issues;

identifying, reviewing, evaluating and recommending for selection candidates for membership to our Board of Directors;

reviewing, evaluating and considering the recommendation for nomination of incumbent members of our Board of Directors for reelection to our Board of Directors and monitoring the size of our Board of Directors;

evaluating nominations by stockholders of candidates for election to our Board of Directors;

reviewing, discussing and reporting to our Board of Directors an assessment of our Board's performance;

recommending compensation paid to non-employee directors; and

determining adherence to our Code of Conduct of our policy statements.

The Nominating and Corporate Governance Committee believes that candidates for director should have certain minimum qualifications, including the ability to read and understand basic financial statements, being over 21 years of age and having the highest personal integrity and ethics. The Nominating and Corporate Governance Committee also intends to consider such factors as possessing relevant expertise upon which to be able to offer advice and guidance to management, having sufficient time to devote to the affairs of Jazz Pharmaceuticals, demonstrated excellence in his or her field, having the ability to exercise sound business judgment and having the commitment to rigorously represent the long-term interests of Jazz Pharmaceuticals' stockholders. However, the Nominating and Corporate Governance Committee retains the right to modify these qualifications from time to time. Candidates for director nominees are reviewed in the context of the current composition of the Board, the operating requirements of Jazz Pharmaceuticals and the long-term interests of stockholders. In conducting this assessment, the Nominating and Corporate Governance Committee considers diversity, age, skills, and such other factors as it deems appropriate given the current needs of the Board and Jazz Pharmaceuticals, to maintain a balance of knowledge, experience and capability. In the case of incumbent directors whose terms of office are set to expire, the Nominating and Corporate Governance Committee reviews these directors' overall service to Jazz Pharmaceuticals during their terms, including the number of meetings attended, level of participation, quality of performance and any other relationships and transactions that might impair the directors' independence. In the case of new director candidates, the Nominating and Corporate Governance Committee also determines whether the nominee is independent for NASDAQ purposes, which determination is based upon applicable NASDAQ listing standards, applicable SEC rules and regulations and the advice of counsel, if necessary. The Nominating and Corporate Governance Committee may use its network of contacts to compile a list of potential candidates, but may also engage, if it deems appropriate, a professional search firm. The Nominating and Corporate Governance Committee conducts any appropriate and necessary



inquiries into the backgrounds and qualifications of possible candidates after considering the function and needs of the Board. The Nominating and Corporate Governance Committee meets to discuss and consider the candidates' qualifications and then selects a nominee for recommendation to the Board.

The Nominating and Corporate Governance Committee, to date, has not adopted a formal policy with regard to the consideration of director candidates recommended by stockholders and will consider director candidates recommended by stockholders on a case-by-case basis, as appropriate. Stockholders wishing to recommend individuals for consideration by the Nominating and Corporate Governance Committee may do so by delivering a written recommendation to Jazz Pharmaceuticals' Secretary at 3180 Porter Drive, Palo Alto, California 94304 and providing the candidate's name, biographical data and qualifications and a document indicating the candidate's willingness to serve if elected. The Nominating and Corporate Governance Committee does not intend to alter the manner in which it evaluates candidates based on whether the candidate was recommended by a stockholder or not. To date, the Nominating and Corporate Governance Committee has not received any such nominations nor has it rejected a director nominee from a stockholder or stockholders holding more than 5% of our voting stock.

The Nominating and Corporate Governance Committee is composed of two directors: Messrs. Colella and Momtazee. Until June 1, 2008, Mr. Colella was Chairman of the Nominating and Corporate Governance Committee. On June 1, 2008, Mr. Momtazee became Chairman of the Nominating and Corporate Governance Committee. Both members of the Nominating and Corporate Governance Committee are independent (as independence is currently defined in Rule 5605(a)(2) of the NASDAQ listing standards). The Nominating and Corporate Governance Committee met one time during 2007. The Nominating and Corporate Governance Committee is governed by a written charter that is available on Jazz Pharmaceuticals' website at [www.jazzpharmaceuticals.com](http://www.jazzpharmaceuticals.com) under the section entitled "Company at Board Committees."

#### **Stockholder Communications with the Board of Directors**

To date, we have not adopted a formal process related to stockholder communications with the Board. Nevertheless, every effort has been made to ensure that the views of stockholders are heard by the Board or individual directors, as applicable, and that appropriate responses are provided to stockholders in a timely manner. We believe that our responsiveness to stockholder communications to the Board has been excellent. As a result, the Board believes that there has not been a need to adopt a formal process for stockholder communications with the Board. During the upcoming year, we expect that the Nominating and Corporate Governance Committee will give consideration to the adoption of a formal process for stockholder communications with the Board and, if adopted, publish it promptly and post it to Jazz Pharmaceuticals' website.

#### **Code of Conduct**

The Jazz Pharmaceuticals Code of Conduct applies to all officers, directors and employees, including our principal executive officer, acting principal financial officer, principal accounting officer or controller, or persons performing similar functions. The Code of Conduct is available on our website at [www.jazzpharmaceuticals.com](http://www.jazzpharmaceuticals.com) under the section entitled "Company at Corporate Responsibility". Stockholders may request a free copy of the Code of Conduct by submitting a written request to Jazz Pharmaceuticals, Inc., Attention: Investor Relations, 3180 Porter Drive, Palo Alto, California 94304. If we make any substantive amendments to the Code of Conduct or grant any waiver from a provision of the Code of Conduct to any executive officer or director, we will promptly disclose the nature of the amendment or waiver on our website.

**EXECUTIVE OFFICERS OF JAZZ PHARMACEUTICALS**

The following table sets forth certain information concerning our executive officers as of October 15, 2009: