

AMYRIS, INC.
Form PRE 14A
August 12, 2013

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14A

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

Exchange Act of 1934

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

<input type="checkbox"/>	<input type="checkbox"/>	Preliminary Proxy Statement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))
<input type="checkbox"/>	<input type="checkbox"/>	Definitive Proxy Statement
<input type="checkbox"/>	<input type="checkbox"/>	Definitive Additional Materials
<input type="checkbox"/>	<input type="checkbox"/>	Soliciting Material Pursuant to §240.14a-12

AMYRIS, 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(1)(1) and 0-11.

(1) Title of each class 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):

(4) Proposed maximum aggregate value of transaction:

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Fee paid previously with preliminary materials.

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(1) Amount Previously Paid:

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

(3) Filing Party:

(4) Date Filed:

AMYRIS, INC.
5885 Hollis Street, Suite 100
Emeryville, California 94608

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

Dear Amyris stockholder:

NOTICE IS HEREBY GIVEN that a special meeting of stockholders of Amyris, Inc., a Delaware corporation (“Amyris” or the “Company”), will be held on [], [] [], 2013, at [] Pacific Time, at 5885 Hollis Street, Suite 100, Emeryville, California 94608 (the “Special Meeting”). At the Special Meeting, our stockholders will be asked to consider and vote upon:

1. Approval of the issuance of up to \$110,000,000 aggregate principal amount of senior convertible promissory notes and a warrant to purchase 1,000,000 shares of our common stock in a private placement transaction or series of private placement transactions and the issuance of the common stock issuable upon conversion or exercise of such notes and warrant, in accordance with NASDAQ Marketplace Rules 5635(b)-(d).

This item of business is more fully described in the Proxy Statement accompanying this Notice of Special Meeting of Stockholders. The record date for the Special Meeting is August 16, 2013. Only stockholders of record at the close of business on the record date may vote at the meeting or at any adjournment thereof. A list of stockholders eligible to vote at the meeting will be available for review for any purpose relating to the meeting during our regular business hours at our headquarters in Emeryville, California for the ten days prior to the meeting.

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 in order to ensure your representation at the meeting. You may submit your proxy and voting instructions over the Internet, by telephone, or by completing, signing, dating and returning the accompanying proxy card or voter information form as promptly as possible. Please note that if you do not give your broker specific instructions to do so, your broker will NOT be able to vote your shares with respect to the approval of the issuance of up to \$110,000,000 aggregate principal amount of senior convertible promissory notes and a warrant to purchase 1,000,000 shares of our common stock in a private placement transaction or series of private placement transactions and the issuance of the common stock issuable upon conversion or exercise of such notes and warrant in accordance with NASDAQ Marketplace Rules 5635(b)-(d). 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 custodian, nominee, trustee or fiduciary and you wish to vote at the meeting, you must obtain a proxy issued in your name from that record holder.

Important Notice Regarding the Availability of Proxy Materials for the Special Meeting of Stockholders to be held on [], 2013: the Proxy Statement is available at [].

By Order of the Board,

[Insert Signature Image]

John Melo
President and Chief Executive Officer

Emeryville, California

August [__], 2013

AMYRIS, INC.

**PROXY STATEMENT FOR A
SPECIAL MEETING OF STOCKHOLDERS**

Information About the Meeting, Meeting Materials, Voting and Proxies

Date, Time and Place of Meeting

The Board of Directors (the “Board”) of Amyris, Inc., a Delaware corporation (“Amyris,” the “Company,” “we,” “our” and similar terms), is asking for your proxy for use at a special meeting of stockholders (the “Special Meeting”) and at any adjournments or postponements thereof. We are holding the Special Meeting on [], [] [], 2013, at [] Pacific Time, at our offices at 5885 Hollis Street, Suite 100, Emeryville, California 94608. This proxy statement and the accompanying proxy card are first being mailed to stockholders on or about [] [], 2013. The address of our principal executive offices is 5885 Hollis Street, Suite 100, Emeryville, California 94608.

Purpose of Meeting

On August 8, 2013, we entered into a Securities Purchase Agreement (“Securities Purchase Agreement”) for the sale and issuance of up to \$73,057,060.41 of senior convertible promissory notes to existing investors, Maxwell (Mauritius) Pte Ltd (“Maxwell”), which is currently one of our largest stockholders, and Total Energies Nouvelles Activités USA (f.k.a. Total Gas & Power USA, SAS) (“Total”), currently our largest stockholder (the “Initial Note Offering”). The Initial Note Offering will consist of two tranches of note offerings, the first tranche, for the sale of up to \$42,616,618.57 of senior convertible promissory notes, is contemplated to occur following satisfaction of the closing conditions in the Securities Purchase Agreement, including stockholder approval of the transaction at the Special Meeting, and the second tranche, for the sale of up to \$30,440,441.84 of senior convertible promissory notes, will occur at the option of the Company at any time up to 24 months after the date of the Securities Purchase Agreement following the satisfaction of certain closing conditions in the Securities Purchase Agreement, including stockholder approval of the transaction at the Special Meeting. The Initial Note Offering will also involve the issuance to Maxwell of a warrant to purchase 1,000,000 shares of our common stock at an exercise price per share of \$0.01 that will be exercisable only if Total converts existing convertible promissory notes with a certain per share conversion price into shares of our Common Stock. In addition to the Initial Note Offering, the Company is requesting your approval of the sale of up to an additional \$36,942,939.59 of convertible promissory notes to new investors on substantially the same terms as the Initial Note Offering (such additional sales also to occur in two separate tranches of approximately \$12,380,000 and \$24,600,000, respectively) (such additional sales, together with the Initial Note Offering, the “Private Placement”). The Board and the Audit Committee of the Board approved the Private Placement on July 26, 2013 and a special Independent Committee of the Board approved the Private Placement on August 7, 2013, and in connection with such

approvals we have agreed to solicit stockholder approval of the Private Placement in accordance with NASDAQ Marketplace Rules 5635(b)-(d). The amount of senior convertible promissory notes to be sold to Total in the Initial Note Offering will be based on its exercise of its pro rata rights to purchase such securities, which will be based on its percentage ownership at the time of the sale of the notes. Further, Total and Maxwell may exercise their right to purchase their pro rata share of any additional amount of senior convertible promissory notes sold to new investors. The amount of senior convertible promissory notes that may be sold to new investors as shown throughout this proxy statement assumes that neither Total nor Maxwell exercise their pro rata rights with respect to the sale of additional senior convertible promissory notes to new investors. If the amount of senior convertible promissory notes that Total purchases pursuant to the Securities Purchase Agreement decreases due to a change in its pro rata percentage, or if Total or Maxwell elects to purchase their pro rata percentage of senior convertible promissory notes to be sold to new investors, the amount of senior convertible promissory notes to be sold to new investors would be adjusted accordingly.

Information Regarding Solicitation and Voting

Our principal executive offices are located at 5885 Hollis Street, Suite 100, Emeryville, California 94608, and our telephone number is (510) 450-0761. This Proxy Statement contains important information for you to consider when deciding how to vote on the matters brought before the meeting. Please read it carefully.

We will bear the expense of soliciting proxies. In addition to these proxy materials, our directors and employees (who will receive no compensation in addition to their regular salaries) may solicit proxies in person, by telephone or email. We will reimburse brokers, banks and other custodians, nominees and fiduciaries (“Intermediaries”) for reasonable charges and expenses incurred in forwarding soliciting materials to their clients.

Important Notice Regarding the Availability of Proxy Materials for the Special Meeting of Stockholders to be held on [], 2013

The SEC’s “Notice and Access” rule provides that companies must include in their mailed proxy materials instructions as to how stockholders can access the Company’s proxy statement and other soliciting materials online, a listing of matters to be considered at the relevant stockholder meeting, and instructions as to how shares can be voted. Since, based on timing considerations for the 2013 Special Meeting, we are mailing full sets of proxy materials to our stockholders, as permitted by SEC proxy rules, we are including the information required by the Notice and Access rule in this Proxy Statement and in the accompanying Notice of Special Meeting of Stockholders and proxy card, and we are not distributing a separate Notice of Internet Availability of Proxy Materials.

The proxy materials, including this Proxy Statement, and a means to vote your shares are available at []. You will need to enter the 12-digit control number located on the proxy card accompanying this Proxy Statement in order to view the materials and vote.

Questions and Answers

Who can vote at the meeting?

The Board set August 16, 2013 as the record date for the meeting. If you owned shares of our common stock as of the close of business on August 16, 2013, you may attend and vote your shares at the meeting. Each stockholder is entitled to one vote for each share of common stock held on all matters to be voted on. As of August 16, 2013, there were [] shares of our common stock outstanding and entitled to vote.

What is the quorum requirement for the meeting?

The holders of a majority of our outstanding shares of common stock as of the record date must be present in person or represented by proxy at the meeting in order for there to be a quorum, which is required to hold the meeting and conduct business. If there is no quorum, the holders of a majority of the shares present at the meeting may adjourn the meeting to another date.

You will be counted as present at the meeting if you are present and entitled to vote in person at the meeting or you have properly submitted a proxy card or voter instruction form, or voted by telephone or over the Internet. Both abstentions and broker non-votes (as described below) are counted for the purpose of determining the presence of a quorum.

As of the record date of August 16, 2013, there were [] shares of our common stock outstanding and entitled to vote, which means that holders of [] shares of our common stock must be present in person or by proxy for there to be a quorum.

What proposals will be voted on at the meeting?

There is one proposal scheduled to be voted on at the meeting:

Approval of the issuance of up to \$110,000,000 aggregate principal amount of senior convertible promissory notes and a warrant to purchase 1,000,000 shares of our common stock in a private placement transaction or series of private placement transactions and the issuance of the common stock issuable upon conversion or exercise of such notes and warrant in accordance with NASDAQ Marketplace Rules 5635(b)-(d) (“Proposal 1”).

Some of the members of the Board have interests and arrangements that could affect their decision to support or approve the proposal. Please refer to the section of this proxy statement entitled “*Proposal 1 — Approval of the Issuance of up to \$110,000,000 Aggregate Principal Amount of Senior Convertible Promissory Notes and a Warrant to Purchase 1,000,000 Shares of Our Common Stock in a Private Placement Transaction or Series of Private Placement Transactions and the Issuance of the Common Stock Issuable upon Conversion or Exercise of Such Notes and Warrant in Accordance with NASDAQ Marketplace Rules 5635(b)-(d)— Interests of Certain Persons in the Private Placement.*”

How does the Board recommend I vote on the proposal?

The Board recommends that you vote:

- FOR approval of Proposal 1.

How do I vote my shares in person at the meeting?

If your shares of Amyris common stock are registered directly in your name with our transfer agent, Wells Fargo Bank, National Association, you are considered, with respect to those shares, to be the stockholder of record. As the stockholder of record, you have the right to vote in person at the meeting.

If your shares are held in a brokerage account or by another intermediary, you are considered the beneficial owner of shares held in street name. As the beneficial owner, you are also invited to attend the meeting. However, since a beneficial owner is not the stockholder of record, you may not vote these shares in person at the meeting unless you obtain a “legal proxy” from the Intermediary that is the record holder of the shares, giving you the right to vote the shares at the meeting. The meeting will be held on [], [] [], 2013 at [____] a.m. Pacific Time at our headquarters located at 5885 Hollis Street, Suite 100, Emeryville, California. You can find directions to our headquarters on our company website at <http://www.amyris.com/en/about-amyris/contact>.

How can I vote my shares without attending the meeting?

Whether you hold shares directly as a registered stockholder of record or beneficially in street name, you may vote without attending the meeting. You may vote by granting a proxy or, for shares held beneficially in street name, by submitting voting instructions to your broker, bank or other trustee or nominee. In most cases, you will be able to do

this by using the Internet, by telephone or by mail.

Voting by Internet or telephone. You may submit your proxy over the Internet or by telephone by following the instructions for Internet or telephone voting provided with your proxy materials and on your proxy card or voter instruction form.

Voting by mail. You may submit your proxy by mail by completing, signing, dating and returning your proxy card or, for shares held beneficially in street name, by following the voting instructions included by your broker or other Intermediary. If you provide specific voting instructions, your shares will be voted as you have instructed.

What happens if I do not give specific voting instructions?

If you are a stockholder of record and you either indicate when voting on the Internet or by telephone that you wish to vote as recommended by the Board, or you sign and return a proxy card without giving specific voting instructions, then the proxy holders will vote your shares in the manner recommended by the Board with respect to Proposal 1 and as the proxy holders may determine in their discretion with respect to any other matters properly presented for a vote at the meeting.

If you are a beneficial owner of shares held in street name and do not provide the organization that holds your shares with specific voting instructions, under stock market rules, the organization that holds your shares may generally vote at its discretion only on routine matters and cannot vote on non-routine matters. If the organization that holds your shares does not receive instructions from you on how to vote your shares on a non-routine matter, the organization will inform the inspector of election that it does not have the authority to vote on this matter with respect to your shares. This is generally referred to as a “broker non-vote.” In tabulating the voting results for any particular proposal, shares that constitute broker non-votes are not considered entitled to vote on that proposal. Thus, broker non-votes will not affect the outcome of Proposal 1, assuming a quorum is obtained.

Is the proposal considered “routine” or considered “non-routine”?

The approval of Proposal 1 is considered non-routine under applicable rules. A broker or other nominee cannot vote without instructions on non-routine matters, and therefore we expect there to be broker non-votes on Proposal 1.

What if I am party to a voting agreement related to Proposal 1?

Under the terms of the voting agreement entered into between Amyris, Maxwell, Total, Biolding Investment SA, KPCB Holdings, Inc., Naxyris S.A., Sualk Capital LTD and TPG Biotechnology Partners II, LP, each stockholder who is a party to such agreement has agreed, subject to the terms and conditions set forth in such voting agreement, to vote the shares of our common stock subject to the voting agreement for the approval of Proposal 1. As of August 1, 2013, the parties to the voting agreement beneficially owned and were entitled to vote approximately 45,000 shares of our common stock, or approximately 60% of the shares of common stock outstanding as of the record date. Please refer to the section of this proxy statement entitled “*Proposal 1 — Approval of The Issuance of up to \$110,000,00 Aggregate Principal Amount of Senior Convertible Promissory Notes and a Warrant to Purchase 1,000,000 Shares of Our Common Stock in a Private Placement Transaction or Series of Private Placement Transactions and the Issuance of the Common Stock Issuable upon Conversion or Exercise of Such Notes and Warrant in Accordance with NASDAQ Marketplace Rules 5635(b)-(d)—Voting Agreements.*”

How are votes counted?

Votes will be counted by the inspector of election appointed for the meeting. The inspector of election will separately count “For” and “Against” votes, abstentions and any broker non-votes. Abstentions will be counted toward the vote total for the proposal and will have the same effect as an “Against” vote for this proposal.

What is the vote required to approve Proposal 1?

The proposal must receive a “For” vote from the holders of a majority of the shares of common stock casting votes in person or by proxy on this Proposal 1 at the Special Meeting. Abstentions will be counted toward the vote total for the proposal and will have the same effect as an “Against” vote for this proposal.

How can I revoke my proxy and change my vote after I return my proxy card?

You may revoke your proxy and change your vote at any time before the final vote at the meeting. If you are a stockholder of record, you may do this by signing and submitting a new proxy card with a later date, by using the Internet or voting by telephone (either of which must be completed by 12:00 noon Central Time on [] [], 2013 - your latest telephone or Internet proxy is counted), or by attending the meeting and voting in person. Attending the meeting alone will not revoke your proxy unless you specifically request that your proxy be revoked. If you hold shares through a bank or brokerage firm, you must contact that bank or firm directly to revoke any prior voting instructions.

How can I find out the voting results of the meeting?

The preliminary voting results will be announced at the meeting. The final voting results will be reported in a current report on Form 8-K, which we expect to file with the SEC within four business days after the meeting. If final voting results are not available within four business days after the meeting, we intend to file a current report on Form 8-K reporting the preliminary voting results within that period, and subsequently file the final voting results in an amendment to the current report on Form 8-K within four business days after the final voting results are known to us.

Forward-Looking Statements

This Proxy Statement may contain “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. These statements may be identified by their use of such words as “expects,” “anticipates,” “intends,” “hopes,” “anticipates,” “believes,” “could,” “may,” “will,” “projects” and other similar expressions, but these words are not the exclusive means of identifying such statements. We caution that a variety of factors, including but not limited to the following, could cause our results to differ materially from those expressed or implied in our forward-looking statements: our cash position and ability to fund our operations, our limited operating history and lack of revenues generated from the sale of our renewable products; our inability to decrease production costs to enable sales of our products at competitive prices; delays in production and commercialization of products due to technical, operational, cost and counterparty challenges; challenges in developing customer base in markets with established and sophisticated competitors; currency exchange rate and commodity price fluctuations; changes in regulatory schemes governing genetically modified organisms and renewable fuels and chemicals, and other risks detailed from time to time in filings we make with the SEC, including our Annual Reports on Form 10-K and our Quarterly Reports on Form 10-Q. Except as required by law, we assume no obligation to update any forward-looking information that is included in this Proxy Statement.

Proposal 1-

Approval of the Issuance of up to \$110,000,000 Aggregate Principal Amount of

Senior Convertible Promissory Notes and a Warrant to Purchase 1,000,000 Shares of Our Common Stock in a Private Placement Transaction or Series of Private Placement Transactions and the Issuance of the Common Stock Issuable Upon Conversion or Exercise of Such Notes and Warrant in Accordance with NASDAQ Marketplace Rules 5635(b)-(d).

General

We are asking stockholders to approve the issuance in the Private Placement of up to \$110,000,000 aggregate principal amount of senior convertible promissory notes, the issuance of a warrant to purchase 1,000,000 shares of our common stock and the issuance of the common stock issuable upon conversion or exercise of such notes and warrant in accordance with NASDAQ Marketplace Rules 5635(b)-(d). Up to \$73,057,060.41 principal amount of the promissory notes will be sold to existing investors, Maxwell and Total, pursuant to the Securities Purchase Agreement in the Initial Note Offering in two tranches of up to \$42,616,618.57 principal amount and \$30,440,441.84 principal amount, respectively. The closing of the initial tranche is contemplated to occur following stockholder approval of the Private Placement at the Special Meeting. The second tranche is contemplated to occur at the option of the Company at any time up to 24 months after the signing of the Securities Purchase Agreement following the satisfaction of certain closing conditions, including stockholder approval of the Private Placement at the Special Meeting.

In addition to the Initial Note Offering, the Company is requesting in Proposal 1 your approval of the sale of up to an additional \$36,942,939.59 principal amount of senior convertible promissory notes to new investors on substantially the same terms as the Initial Note Offering as outlined in the Securities Purchase Agreement and the Tranche I Notes (as defined below) and the Tranche II Notes (as defined below) (such additional sales also to occur in two separate tranches of approximately \$12,380,000 principal amount and \$24,600,000 principal amount, respectively). The maximum aggregate principal amount of senior convertible promissory notes issuable in each of the first tranche and the second tranche is \$55,000,000 principal amount.

The conversion price of the Tranche I Notes will initially be \$2.44, and will be subject to certain price adjustments, including but not limited to, adjustments (i) in connection with any future securities issuance by the Company at a price less than the then effective conversion price for such notes, (ii) in connection with failure by the Company to achieve certain milestones agreed upon in connection with the execution of the Securities Purchase Agreement (as further described below), (iii) if the Company reduces the conversion price of certain existing promissory notes held by Total (other than pursuant to the terms of such notes) and (iv) in the event that Total exchanges existing convertible notes for new securities of the Company in connection with future financing transactions in excess of its pro rata amount (calculated pursuant to the Securities Purchase Agreement). When, and if, the second tranche of the promissory notes are issued, the conversion price of the Tranche II Notes will initially be \$2.87, and will be subject to certain price adjustments, including adjustment (i) in connection with any future securities issuance by the Company at a price less than the then effective conversion price for such notes and (ii) in the event that Total exchanges existing convertible notes for new securities of the Company in connection with future financing transactions in excess of its pro rata amount (calculated pursuant to the Securities Purchase Agreement). The warrant to purchase 1,000,000 shares of our common stock at a per share exercise price of \$0.01 will be issued in the Initial Note Offering to Maxwell and will only be exercisable in the event that Total converts certain outstanding convertible promissory notes that have a conversion price as of the date hereof of \$3.08 into shares of the Company's common stock. The issuance of the warrant to Maxwell is a condition to its obligation to purchase senior convertible promissory notes in the Initial Note Offering.

In connection with the Initial Note Offering, the Company also agreed to grant a senior security interest in the Company's intellectual property to Maxwell in connection with their participation in the Initial Note Offering, subject to certain conditions outlined below.

Vote Required and Board Recommendation for Proposal 1

The proposal must receive a "For" vote from the holders of a majority of the shares of common stock casting votes in person or by proxy on Proposal 1 at the Special Meeting. Abstentions will be counted toward the vote total for the proposal and will have the same effect as an "Against" vote for this proposal. Shares represented by executed proxies that do not indicate a vote "For," "Against" or "Abstain" will be voted by the proxy holders "For" the adoption of the resolution. If you own shares through a bank, broker or other holder of record, you must instruct your bank, broker or other holder of record how to vote in order for them to vote your shares so that your vote can be counted on this proposal.

The Board recommends a vote "FOR" this Proposal 1.

The Board unanimously determined that Proposal 1 is advisable and in the best interest of our stockholders and recommended that our stockholders vote in favor of Proposal 1.

In reaching its determination to approve Proposal 1, the Board, with advice from our management and legal advisors, considered a number of factors, including:

- the fact that the proceeds from the Private Placement will enable us to advance our strategic direction;

our financial condition, results of operations, cash flow and liquidity, including our outstanding debt obligations, which required us to raise additional capital for ongoing cash needs;

- our view that the proceeds from the Private Placement will enhance our balance sheet;

the fact that our management and certain of our directors have explored financing options with other potential investors and are not aware of an ability for us to obtain the financing needed for our ongoing cash needs on comparable or better terms to the Private Placement, or at all;

- the fact that the issuance of the Tranche II Notes (as defined below) will be at our election; and

the fact that our stockholders would have an opportunity to approve the Private Placement.

The Independent Committee also considered the following factors adverse to the Private Placement:

the fact that our stockholders who are not participating in the Private Placement may be diluted and the value of our common stock could be diluted upon conversion of the promissory notes and exercise of the warrant;

the fact that the conversion price for the convertible promissory notes to be issued in the first tranche of the Private Placement will initially be at a discount to the market price on the date the Company entered into the Securities Purchase Agreement;

the fact that the conversion prices of the promissory notes issuable in the Private Placement are subject to adjustment and there is no cap on the maximum number of shares that we could be required to issue upon conversion of the promissory notes (in the case of potential anti-dilution adjustments if the Company sells any shares of common stock or securities exchangeable for or convertible into its common stock, at a price, or with an exercise or conversion price, less than the conversion price of the notes to be issued in the Private Placement);

the fact that the ownership by Maxwell and Total of a substantial percentage of our total voting power may make it more difficult and expensive for a third party to pursue a change of control of our Company;

the fact that convertible promissory notes issuable to Total in the Private Placement will be issued for the conversion of existing debt and, as such, will not be an immediate source of liquidity to us;

the fact that the Private Placement may result in Maxwell sharing a senior security interest in the Company's intellectual property with Total;

the fact that the Private Placement will involve the issuance of a warrant to Maxwell that, under certain circumstances, would be exercisable for 1,000,000 shares of our common stock at a per share exercise price of \$0.01;

the fact that in connection with the Private Placement, the Company may be required to enter into an agreement to reduce the conversion price of certain outstanding convertible promissory notes held by Total, which reduction would result in a related reduction of the conversion price of the convertible notes to be issued in the Private Placement;

the fees and expenses to be incurred by us in connection with the Private Placement; and

the fact that the covenants and restrictions in the Securities Purchase Agreement as described in “*Terms of the Private Placement – Summary of the Terms of the Securities Purchase Agreement*” below may limit our financing flexibility in the future or our ability to participate in a change of control transaction.

In view of the variety of factors considered in connection with the evaluation of the Private Placement and the complexity of these matters, the Board did not find it practicable to, and did not, quantify or otherwise attempt to assign any relative weight to the various factors considered. In addition, in considering the various factors, individual members of the Board may have assigned different weights to different factors.

After evaluating these factors for and against the Private Placement, and based upon their knowledge of our business, financial condition and prospects, and the view of our management, the Board unanimously concluded that the Private Placement is in our best interest and in the best interests of our stockholders, and recommends that all stockholders vote “FOR” the approval of Proposal 1 at the Special Meeting.

Purpose of Proposal 1—Nasdaq Stockholder Approval Requirement

Our common stock is listed on The Nasdaq Global Market (“Nasdaq”) and trades under the ticker symbol AMRS. The rules governing companies with securities listed on Nasdaq require stockholder approval in connection with a transaction other than a public offering involving the sale or issuance by the issuer of common stock (or securities convertible into or exchangeable for common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for a price that is less than the greater of book or market value of the stock on the date the Company enters into a binding agreement for the issuance of such securities. This requirement is set forth in Nasdaq Marketplace Rule 5635(d). Based on a market price on August 7, 2013 of \$2.82 per share and the sale of the full \$110,000,000 aggregate principal amount of notes issuable in the Private Placement (including notes that may be sold to new investors under terms substantially similar to the terms of the Initial Note Offering), the issuance of the promissory notes would involve the issuance of securities convertible into more than 20% of our common stock at a discount to the market value of our common stock on the date of execution of the binding agreement to issue such securities. Further, the 1,000,000 shares of our common stock issuable to Maxwell upon exercise of the warrant to be issued in connection with the Initial Note Offering would also be counted against the 20% limit.

As detailed in “*Terms of the Private Placement*” below, the first tranche of promissory notes to be sold in the Private Placement will be issued with a conversion price equal to \$2.44, which conversion price is below the greater of book value or market value of the stock at the time the Company entered into a binding agreement to issue such notes and which conversion price will be subject to certain downward adjustments. The notes to be issued in the second tranche of the Private Placement will be issued with a conversion price equal to \$2.87, which conversion price will be subject to downward conversion price adjustments. Finally, the warrant to be issued to Maxwell in the Private Placement will, subject to certain contingencies, be exercisable at a per share exercise price of \$0.01.

Because the Private Placement involves the potential issuance by us of securities convertible into shares of common stock that would represent more than 20% of our currently outstanding common stock at a price below the greater of book or market value of the common stock at the time the Company entered into a binding agreement to issue such securities, stockholder approval is required for the issuance of the senior convertible promissory notes being issued in the Private Placement, the issuance of the shares of common stock issuable upon full conversion of such notes, the issuance of the warrant to be issued to Maxwell in the Private Placement and the issuance of the shares of common stock issuable upon exercise of such warrant.

Nasdaq additionally requires stockholder approval prior to the issuance of securities when the issuance or potential issuance of securities will result in a change of control of the Company. This requirement is set forth in Nasdaq Marketplace Rule 5635(b). Nasdaq defines a change of control as occurring when, as a result of an issuance, an investor or a group would own, or have the right to acquire 20% or more of the outstanding shares of common stock or voting power of a company, and such ownership or voting power would be the largest ownership position. Under certain circumstances, Proposal 1 could result in Maxwell being the largest owner of common stock of the Company in an amount greater than 20%.

Nasdaq Marketplace Rule 5635(c) requires stockholder approval of security issuances at below fair market value made to officers, directors, employees or consultants, or affiliated entities of any such persons. Proposal 1 will result in purchase of securities convertible into shares of common stock by entities affiliated with Philippe Boisseau below the fair market value of our common stock at the time the Company entered into the Securities Purchase Agreement (as outlined above).

By approving Proposal 1, you are approving the proposal for purposes of the requirements under Nasdaq Marketplace Rules 5635(b), (c) and (d), which will result in the purchase of securities convertible into shares of our common stock.

Terms of the Private Placement

We have entered into the Securities Purchase Agreement with Maxwell and Total (the “Investors”) under which (i) Maxwell has agreed to purchase \$35,000,000 principal amount of senior convertible promissory notes in the first tranche and up to, at our election, \$25,000,000 principal amount of senior convertible promissory notes in the second tranche and (ii) Total has agreed to purchase the lesser of \$7,616,618.57 principal amount and its actual pro rata share of the senior convertible promissory notes sold pursuant to the Securities Purchase Agreement in the first tranche and the lesser of \$5,440,441.84 principal amount and its actual pro rata share of the senior convertible promissory notes sold pursuant to the Securities Purchase Agreement in the second tranche. The Company is also seeking your approval in Proposal 1 to sell up to an additional \$36,942,939.59 principal amount of senior convertible promissory notes to new investors under terms substantially similar to the terms of the Initial Note Offering. The Company contemplates selling such new notes in two tranches paralleling the tranches of the Initial Note Offering such that the Company would issue an additional \$12,383,381.43 principal amount of convertible notes in substantially the form of the Tranche I Notes and an additional \$24,559,558.16 principal amount of convertible notes in substantially the form of the Tranche II Notes.

In addition, the Private Placement will involve the issuance to Maxwell of a warrant to purchase 1,000,000 shares of the Company’s common stock at a per share exercise price of \$0.01. Such warrant will only be exercisable if Total converts existing promissory notes with a certain per share conversion price into shares of the Company’s common stock. The issuance of the warrant to Maxwell is a condition to its obligation to purchase senior convertible promissory notes in the Initial Note Offering.

We are requesting in this Proposal 1 that our stockholders approve the issuance of up to \$110,000,000 aggregate principal amount of senior convertible promissory notes and a warrant to purchase 1,000,000 shares of our common stock in a private placement transaction or series of private placement transactions and the issuance of the common stock issuable upon conversion or exercise of such notes and warrants in accordance with NASDAQ Marketplace Rules 5635(b)-(d). The issuance and sale of the convertible promissory notes and the warrant in the Private Placement are intended to be exempt from the registration requirements of the Securities Act of 1933, as amended (the “Securities Act”), pursuant to the Regulation D “safe harbor” provisions of the Securities Act. Set forth below are the material terms of the Private Placement.

THIS SUMMARY OF THE TERMS OF THE Private Placement IS INTENDED TO PROVIDE YOU WITH BASIC INFORMATION CONCERNING THE Private Placement; HOWEVER, IT IS NOT INTENDED AS A SUBSTITUTE FOR REVIEWING THE FORM OF SECURITIES PURCHASE AGREEMENT, THE FORM OF TRANCH I SENIOR CONVERTIBLE NOTE AND THE FORM OF TRANCHE II SENIOR CONVERTIBLE NOTE IN THEIR ENTIRETY, WHICH WE HAVE INCLUDED AS ANNEXES A, B AND C, RESPECTIVELY, TO THIS PROXY STATEMENT. THE COMPANY HAS ALSO ATTACHED CERTAIN FINANCIAL INFORMATION OF THE COMPANY AS ANNEX D TO THIS PROXY STATEMENT. YOU SHOULD READ THIS SUMMARY TOGETHER WITH THESE DOCUMENTS.

Summary of the Terms of the Securities Purchase Agreement

We and the Investors have entered into the Securities Purchase Agreement and any additional investors who participate will be required to enter into a securities purchase agreement on substantially similar terms. The Securities Purchase Agreement contains representations and warranties by us and the Investors to each other and is not intended to provide any other factual information about us.

Representations and Warranties. We provided representations and warranties that we believe are customary for transactions of this nature for similar businesses. In addition, each Investor made representations and warranties to us that we believe are customary for transactions of this nature. The representations and warranties in the Securities Purchase Agreement were made only for the purposes of the Securities Purchase Agreement and solely for the benefit of the parties to the Securities Purchase Agreement as of specific dates. The assertions embodied in the representations and warranties are subject to qualifications and limitations agreed to by the respective parties in connection with negotiating the terms of the Securities Purchase Agreement. In addition, certain representations and warranties were made as of a specific date, may be subject to a contractual standards of materiality different from what might be viewed as material to stockholders, or may have been used for purposes of allocating risk between the respective parties rather than establishing matters as facts. Accordingly, you should not rely on the representations and warranties in the Securities Purchase Agreement as characterizations of the actual state of facts about us and you should read the Securities Purchase Agreement together with the other information concerning us that we publicly file in reports and statements with the SEC.

Covenants. We made certain covenants to the Investors that we believe are customary for transactions of this nature for similar businesses, including (a) limitations on the Company's ability to incur additional debt, (b) restrictions on the Company's ability to engage in certain change of control transactions without the consent of the holders of at least a majority of the outstanding principal of all outstanding Tranche I Notes and Tranche II Notes then held by the Investors, (c) restrictions on the Company's ability to purchase assets in one transaction or a series of related transactions in excess of \$20,000,000 without the consent of holders of at least a majority of the outstanding principal of all outstanding Tranche I Notes and Tranche II Notes then held by the Investors, and (d) the provision of certain information rights to the Investors.

Preemptive Rights. The Securities Purchase Agreement grants a right of first investment to holders of the Notes with respect to future securities issuances by the Company while such Notes are outstanding.

Conditions to the Initial Closing. The obligation of the Investors to purchase the promissory notes on the date of the initial closing of the Private Placement (the "Initial Closing"), which closing is expected to occur shortly after stockholder approval of the Private Placement and which closing will involve the sale and issuance of the Tranche I Notes, is subject to the satisfaction or waiver of specified conditions, including, but not limited to, the following:

our stockholders shall have approved the Private Placement;

the representations and warranties made by us in the Securities Purchase Agreement shall be true and correct in all respects as of the Initial Closing;

unless Total shall have previously released all security interests it holds with respect to the Company's intellectual property, Total, Maxwell and the Company shall have reached an agreement whereby Maxwell shall be given a shared security interest with Total in the Company's intellectual property;

the Company shall have issued a warrant to Maxwell to purchase 1,000,000 shares of the Company's common stock at an exercise price of \$0.01 per share, exercisable only if Total converts existing promissory notes with a certain per share conversion price into shares of the Company's common stock; and

the Company and the Investors shall have obtained all necessary third-party consents and approvals, including any approval required by the relevant competition authorities.

Conditions to Sale of Tranche II Notes. The obligation of the Investors to purchase any of the Tranche II Notes, which the Company may require for up to 24 months from the signing date, in addition to the conditions to the Initial Closing outlined above, will be subject to the satisfaction or waiver of specified conditions, including, but not limited to, the following:

a specified Company manufacturing plant shall have previously achieved total production of 750,000 liters within a run period of 45 days;

the current chief executive officer of the Company or an individual approved by holders of at least a majority of the outstanding principal of all outstanding Tranche I Notes and Tranche II Notes, if any, then held by Investors shall remain chief executive officer of the Company;

there shall be no material adverse change in the Company's business from the signing of the Securities Purchase Agreement; and

any security interests held by the Investors in the Company's intellectual property shall have been released in full.

Description of Senior Convertible Promissory Notes to be Issued

Tranche I Notes

The first tranche of senior convertible promissory notes to be issued in the Private Placement under the Securities Purchase Agreement and such substantially similar notes as shall be issued to new investors in the Private Placement (the “Tranche I Notes”) shall be issued for up to \$55,000,000 aggregate principal amount. Maxwell is committed to purchase \$35,000,000 principal amount of Tranche I Notes pursuant to the Securities Purchase Agreement. Total is committed to purchase the lesser of \$7,616,618.57 principal amount and its actual pro rata share of the Tranche I Notes sold pursuant to the Securities Purchase Agreement, all of which will be issued upon the conversion of outstanding convertible promissory notes of the Company held by Total. Total and Maxwell may also elect to purchase their pro rata share of any of the additional \$12,383,381.43 principal amount of Tranche I Notes which may be sold to new investors.

Interest and Payment. The Tranche I Notes shall bear interest at 5.00% per six-month period (subject to adjustment as provided in the Tranche I Notes), compounded semi-annually, and payable beginning on the thirty (30) month anniversary of the issue date, and thereafter, every six months. Should the Company default on a Tranche I Note, the interest rate on such note would increase to 6.5% per six-month period until such default is cured. Should the Company fail to maintain NASDAQ listing status, the interest rate on such note would increase to 8% after the first 180 days of such failure. Interest for the first 30 months will be payable in kind (“PIK”) and added to principal every six months, and thereafter, at the option of the Company, may be payable in cash.

Conversion. The Tranche I Notes will be convertible into common stock of the Company at the option of the holder thereof, at any time following the eighteen (18) month anniversary of the Securities Purchase Agreement or earlier in connection with an event of default or change in control.

Conversion Price. The Tranche I Notes will be convertible into common stock of the Company at a conversion price equal to \$2.44, and will be subject to certain price adjustments set forth in the Tranche I Notes. The conversion price of the Tranche I Notes will be reduced to \$2.15 if either (a) a specified Company manufacturing plant fails to achieve a total production of 1,000,000 liters within a run period of 45 days prior to June 30, 2014, or the Company fails to achieve gross margins from product sales for a fiscal quarter of at least 5% prior to June 30, 2014 or (b) the Company reduces the conversion price of certain existing promissory notes held by Total prior to the repayment or conversion of the Tranche I Notes, and to \$1.87 if both of the conditions described in clauses (a) and (b) occur. In addition, if the Company sells any shares of its common stock, or securities exercisable for or convertible into its common stock, at a price, or with an exercise or conversion price, less than the conversion price of the Tranche I Notes, the conversion price of the Tranche I Notes will be reduced to the price or exercise or conversion price of such subsequently issued securities. No maximum number has been provided for the amount of shares that could be issuable on conversion of the Tranche I Notes as a result of the adjustment of the conversion price (in the case of potential anti-dilution

adjustments if the Company sells any shares of common stock or securities exchangeable for or convertible into its common stock, at a price, or with an exercise or conversion price, less than the conversion price of the Tranche I Notes).

Maturity. The Tranche I Notes will mature and become payable in full sixty (60) months from the date of the first issuance of such notes, unless converted into our common stock prior to such time.

Redemption. The Tranche I Notes will be redeemable at the Company's option by prepayment of the principal plus all accrued interest of such notes thirty (30) months after the issuance of such notes and on every six-month anniversary thereafter and will be mandatorily redeemable on the maturity date; provided further that the holder of such notes may demand redemption in cash in an amount equal to 101% of the principal plus all accrued interest thereunder in connection with a change of control of the Company.

Change of Control. Upon the occurrence of a change of control prior to the maturity date of the Tranche I Notes, each holder will have the right to require the Company to repurchase all or any part of the Tranche I Notes at an offer price in cash equal to 101% of the face value of the Tranche I Notes.

Second Tranche Notes

The second tranche of senior convertible promissory notes to be issued in the Private Placement and such substantially similar notes as shall be issued to new investors in the Private Placement (the “Tranche II Notes” and, with the Tranche I Notes, the “Notes”) shall be issued for up to \$55,000,000 aggregate principal amount. Maxwell is committed to purchase up to \$25,000,000 principal amount of Tranche II Notes at the election of the Company and pursuant to the Securities Purchase Agreement. Total is committed to purchase the lesser of up to \$5,440,441.84 principal amount and its actual pro rata share of the Tranche II Notes sold pursuant to the Securities Purchase Agreement at the election of the Company, all of which could be issued upon the conversion of outstanding convertible promissory notes of the Company held by Total. An additional \$36,942,939.59 principal amount of Tranche II Notes may be sold to new investors. Total and Maxwell may elect to purchase their pro rata share of such additional Tranche II Notes.

Our Ability to Issue the Tranche II Notes. The Company has the ability to cause the Investors to purchase the Tranche II Notes any time within 24 months of execution of the Securities Purchase Agreement if the Company meets certain conditions within such time period, including that: (a) a specified Company manufacturing plant has achieved total production of 750,000 liters within a run period of 45 days, (b) the current chief executive officer or an individual approved by a majority of the holders of at least a majority of the outstanding principal of all outstanding Tranche I Notes and Tranche II Notes, if any, held by the Investors remains chief executive officer of the Company, (c) there is no material adverse change in the Company’s business and (d) all security interests in the Company’s intellectual property held by the Investors shall have been released in full. The Investors do not have an option to require the Company to sell the Tranche II Notes other than upon the Company’s election to do so. Any new investors will, similarly, be obligated to purchase Tranche II Notes upon the Company’s election.

Interest and Payment. The Tranche II Notes shall bear interest at 10% per annum (subject to adjustment as provided in the Tranche II Notes), compounded annually; provided, however, that should the Company default on a Tranche II Note, the interest rate on such note would increase to 12% per annum until such default is cured and should the Company fail to maintain NASDAQ listing status the interest rate on such note would increase to 13% applicable to the first 180 days and 16% applicable thereafter. Interest for the first 36 months shall be payable in kind and added to principal every year following the issue date, and thereafter the Company may continue to pay interest in kind by adding to principal on every year anniversary of the issue date or may elect to pay interest in cash.

Conversion. Unless an Event of Default (as defined in the Tranche II Notes) occurs, each Tranche II Note will be convertible into Common Stock at the option of the holder thereof, at any time following the twelve (12) month anniversary of the applicable drawdown or earlier in connection with an event of default or change in control.

Conversion Price. When issued, the Tranche II Notes will be convertible into common stock at a conversion price equal to \$2.87 and will be subject to adjustment as set forth in the Tranche II Notes.

Per the price adjustment provisions of the Tranche II Notes, if the Company sells any shares of our common stock, or securities exercisable for or convertible into our common stock, at a price, or with an exercise or conversion price, less than the conversion price of the Tranche II Notes, the conversion price of the Tranche II Notes will be reduced to the price or exercise or conversion price of such subsequently issued securities. No maximum number has been provided for the amount of shares that could be issuable on conversion of the Tranche II Notes as a result of the adjustment of the conversion price (in the case of potential anti-dilution adjustments if the Company sells any shares of common stock or securities exchangeable for or convertible into its common stock, at a price, or with an exercise or conversion price, less than the conversion price of the Tranche II Notes). The Tranche II Notes also provide for downward adjustments for Tranche II Notes held by investors other than Total in the event that Total exchanges existing convertible notes for new securities of the Company in connection with future financing transactions in excess of its pro rata amount.

Maturity. The Tranche II Notes will mature and become payable in full sixty (60) months from the date of the first issuance of such notes, unless converted into our common stock prior to such time.

Redemption. The Tranche II Notes will be mandatorily redeemable by the Company in cash on the maturity date; provided, however, that the holder of such notes may demand redemption in cash in an amount equal to 101% of the principal plus all accrued interest thereunder in connection with a change of control of the Company.

Change of Control. Upon the occurrence of a change of control prior to the maturity date of the Tranche II Notes, each holder will have the right to require the Company to repurchase all or any part of the Tranche II Notes at an offer price in cash equal to 101% of the face value of the Tranche II Notes.

Seniority. The Notes, collectively, will be senior indebtedness of the Company.

Description of Warrants to be Issued

The warrant to be issued to Maxwell in the Private Placement (the “Warrant”) will be issued for the purchase of up to 1,000,000 shares of the Company’s common stock at a per share exercise price of \$0.01, provided, however, that such warrant will only be exercisable in the event that Total converts any of its currently outstanding convertible promissory notes that have a conversion price as of the date of Securities Purchase Agreement of \$3.08, as such price may be adjusted pursuant to the terms of such notes, into shares of the Company’s Common Stock. The warrant will be issued in a form that is mutually agreeable to the Company and Maxwell. The issuance of the warrant to Maxwell is a condition to its obligation to purchase senior convertible promissory notes in the Initial Note Offering.

Voting Agreements

Under the terms of the voting agreement entered into between Amyris, Maxwell, Total, Biolding Investment SA, KPCB Holdings, Inc., Naxyris S.A., Sualk Capital LTD and TPG Biotechnology Partners II, LP, each party has agreed, subject to the terms and conditions set forth in the voting agreement, to vote the shares of our common stock subject to the voting agreement for Proposal 1. As of August 1, 2013, these entities beneficially own and are entitled to vote approximately 45,000,000 shares of our common stock, or approximately 60% of the shares of common stock outstanding as of the record date.

Use of Proceeds

We currently intend to use the net proceeds from the Private Placement for working capital and general corporate purposes, which may include the repayment of indebtedness. Stockholders should understand that we have wide discretion over the use of proceeds.

Potential Adverse Effects of Proposed Amendment—Dilution and Impact of the Private Placement on Existing Stockholders

The Private Placement could have a dilutive effect on current stockholders who are not participating in the Private Placement in that the percentage ownership of the Company held by such current stockholders will decline as a result

of the issuance of the common stock issuable upon conversion or exercise of the Notes and the Warrant. This means also that our current stockholders who are not participating in the Private Placement will own a smaller interest in us as a result of the Private Placement and therefore have less ability to influence significant corporate decisions requiring stockholder approval. Issuance of the common stock issuable upon conversion or exercise of the Notes and the Warrant could also have a dilutive effect on book value per share and any future earnings per share. Dilution of equity interests could also cause prevailing market prices for our common stock to decline.

Because of the conversion price adjustments contained in the Notes and the uncertainty about the aggregate value, if any, of the Notes that will be issued to new investors, the exact magnitude of the dilutive effect of the Notes cannot be conclusively determined. However, the dilutive effect may be material to current stockholders of the Company. By way of example, assuming the sale and issuance of the full \$55,000,000 principal amount of Tranche I Notes and assuming the conversion price of such notes will remain unchanged from the initial conversion price of \$2.44, then approximately 22,540,000 shares of the Company's common stock will be issuable upon conversion of the Tranche I Notes. Assuming sale and issuance of the full \$55,000,000 principal amount of Tranche II Notes (or substantially similar notes issued to new investors) and assuming the conversion price of such notes will remain unchanged from the initial conversion price of \$2.87, then approximately 19,160,000 shares of the Company's common stock will be issuable upon conversion of the Tranche II Notes. Note however that the Private Placement documents do not provide for a floor on the downwards adjustments to the conversion price of the Notes (in the case of potential anti-dilution adjustments if the Company sells any shares of common stock or securities exchangeable for or convertible into its common stock, at a price, or with an exercise or conversion price, less than the conversion price of the Notes). As a result, the number of shares issuable upon conversion of the Notes could be significantly larger than these examples.

In addition to dilution, the existence of additional convertible debt could, under certain circumstances, discourage or make more difficult the Company's efforts to obtain additional financing. And the covenant in the Securities Purchase Agreement imposing restrictions on the Company's ability to engage in a change of control transaction may limit the Company's ability to participate in a change of control transaction.

As a condition to the Initial Closing of the Tranche I Notes, unless Total shall have previously released any security interests it holds with respect to the Company's intellectual property, the Company, Total and Maxwell must reach an agreement whereby Maxwell shall be given a shared security interest with Total in the Company's intellectual property. Such agreement will result in an additional party having a secured interest in the Company's intellectual property and will likely increase the value of the secured interest in the Company's intellectual property, which could limit the Company's ability to pursue certain strategic transactions.

Risks to Stockholders of Non-Approval

If the stockholders do not approve this proposal, one of the conditions to closing the Private Placement will not be achieved and the Company will have to renegotiate financing terms or look for alternative capital investments. Such investments may not be available on favorable terms or at all. Failure to raise additional capital investment would have a material adverse effect on our business and prospects.

Interests of Certain Persons in the Private Placement

When you consider the Board's recommendation to vote in favor of Proposal 1, you should be aware that our directors and executive officers and existing stockholders may have interests in the Private Placement that may be different from, or in addition to, the interests of other of our stockholders. In particular, our director Philippe Boisseau is affiliated with Total and Maxwell is our second largest stockholder and pursuant to its contractual rights with us has appointed a designee Nam Hai Chua, to our Board to serve as a director (the "Affiliated Investors"). Mr. Boisseau is an affiliate of Total and Dr. Chua is the Board designee of Maxwell. The beneficial ownership of such Affiliated Investors as of August 1, 2013, shortly before the signing of the Securities Purchase Agreement is outlined below in the Section titled *Security Ownership of Certain Beneficial Owners and Management*. Maxwell may purchase up to \$60,000,000 principal amount of Notes in the Private Placement (plus such additional amount, if any, as Maxwell elects to purchase pursuant to its pro rata rights with respect to Notes sold to new investors) and Total may purchase up to \$13,057,060.41 principal amount of Notes in the Private Placement (or such lesser amount as determined based upon Total's pro-rata share of each tranche of Notes pursuant to the Securities Purchase Agreement plus such additional amount, if any, as Total elects to purchase pursuant to its pro rata rights with respect to Notes sold to new investors).

Because of the conversion price adjustments contained in the Notes, the exact number of shares issuable to the Affiliated Investors on conversion of the Notes cannot be conclusively determined. The interests to be acquired by such Affiliated Investors may be of material interest to stockholders of the Company in considering Proposal 1. By way of example, assuming Maxwell purchases its full commitment of \$60,000,000 principal amount of Not