

CHOLESTECH CORPORATION

Form DEF 14A

July 03, 2002

Table of Contents

SCHEDULE 14A INFORMATION

**PROXY STATEMENT PURSUANT TO SECTION 14(a) OF THE
SECURITIES EXCHANGE ACT OF 1934**

(AMENDMENT NO. __)

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement
 Definitive
Proxy
Statement
Confidential, for
Use of the
Commission Only
(as permitted by
Rule 14a-6(e)(2))
Definitive
Additional
Materials
Soliciting
Material Pursuant
to sec.
240.14a-11(c) or
sec. 240.14a-12

Cholestech Corporation

(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):

Fee not 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:

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

(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:

(5) Total fee
paid:

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.

(1) Amount
Previously Paid:

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

(3) Filing Party:

(4) Date Filed:

Table of Contents

CHOLESTECH CORPORATION

NOTICE OF ANNUAL MEETING OF SHAREHOLDERS

**August 14, 2002
10:00 a.m. Pacific Time**

To our Shareholders:

You are cordially invited to attend our 2002 Annual Meeting of Shareholders, which will be held at the Westin St. Francis Hotel located at 335 Powell Street, San Francisco, California 94102, on Wednesday, August 14, 2002, at 10:00 a.m. Pacific Time for the following purposes:

1. To elect six directors to serve until the next annual meeting of shareholders or until their successors are elected.
2. To ratify the appointment of PricewaterhouseCoopers LLP as our independent accountants for the fiscal year ending March 28, 2003.
3. To approve the adoption of our 2002 Employee Stock Purchase Plan and to authorize the reservation of 400,000 shares of common stock for issuance under such plan.
4. To approve an amendment to our 2000 Stock Incentive Program to amend the formula grant mechanism for non-employee directors as described herein.
5. To transact such other business as may properly come before the meeting or any adjournment or postponement of the meeting.

These items of business are more fully described in the Proxy Statement accompanying this Notice. Only shareholders of record at the close of business on June 21, 2002 will be entitled to attend and vote at the annual meeting.

Whether or not you plan to attend the annual meeting, please complete, sign, date and return the enclosed proxy card as promptly as possible in the accompanying reply envelope. You may revoke your proxy in the manner described in the accompanying Proxy Statement at any time before it has been voted at the annual meeting. Any shareholder attending the annual meeting may vote in person even if he or she has returned a proxy.

By Order of the Board of Directors,

WILLIAM W. BURKE
*Vice President of Finance, Chief Financial
Officer, Treasurer and Secretary*

July 8, 2002

YOUR VOTE IS IMPORTANT

Whether or not you plan to attend the meeting, please complete, sign and date the enclosed proxy as promptly as possible and return it in the enclosed envelope.

TABLE OF CONTENTS

GENERAL INFORMATION

Who May Vote

Revoking Your Proxy

Quorum Requirement

Voting

Proxy Solicitation Costs

Abstentions and Broker Non-Votes

Deadline of Receipt of Shareholder Proposals for 2003 Annual Meeting

PROPOSAL ONE ELECTION OF DIRECTORS

General

Nominees

Vote Required and Board Recommendation

Board and Committee Meetings

Committees of the Board

Audit Committee

Compensation Committee

Nominating Committee

Compensation Committee Interlocks and Insider Participation

PROPOSAL TWO RATIFICATION OF APPOINTMENT OF INDEPENDENT ACCOUNTANTS

Audit Fees

Financial Information Systems Design and Implementation Fees

All Other Fees

Vote Required and Board Recommendation

PROPOSAL THREE ADOPTION OF 2002 EMPLOYEE STOCK PURCHASE PLAN

Purpose

Administration

Offering Periods

Eligibility to Participate in the ESPP

Purchase Price

Payment of Purchase Price; Payroll Deductions

Purchase of Stock; Exercise of Option

Withdrawal

Termination of Employment

Capital Changes

Dissolution or Liquidation

Merger or Change of Control

Nonassignability

Amendment and Termination of the Purchase Plan

Certain United States Federal Income Tax Information

Incorporation by Reference

Vote Required and Board Recommendation

Participation in 2002 Employee Stock Purchase Plan

New Plan Benefits -- 1992 Employee Stock Purchase Plan

PROPOSAL FOUR AMENDMENT TO 2000 STOCK INCENTIVE PROGRAM

Purpose

Administration

Eligibility; Limitations

Terms and Conditions of Options

Stock Purchase Rights

Formula Option Grants to Outside Directors

Adjustments Upon Changes in Capitalization

Amendment and Termination of the 2000 Plan

Federal Income Tax Consequences

Incorporation by Reference

Vote Required and Board Recommendation

Participation in the 2000 Stock Incentive Program

EQUITY COMPENSATION PLAN INFORMATION

1999 Nonstatutory Stock Option Plan

Purpose

Eligibility to Participate in the 1999 Plan

Number of Shares Covered by the 1999 Plan

Awards Permitted under the 1999 Plan

Terms of Options

Capital Changes

Merger or Change of Control

Termination and Amendment

Certain United States Federal Income Tax Information

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

EXECUTIVE COMPENSATION AND OTHER MATTERS

Summary Compensation Table

Option Grants in Last Fiscal Year

Aggregated Option Exercises in Last Fiscal Year and Fiscal Year-End Option Values

Director Compensation

Employment Agreements and Change of Control Arrangements

REPORT OF THE COMPENSATION COMMITTEE OF THE BOARD OF DIRECTORS

General Compensation Philosophy

Cash Compensation

Equity-Based Compensation

Tax Deductibility of Executive Compensation

REPORT OF THE AUDIT COMMITTEE OF THE BOARD OF DIRECTORS

STOCK PRICE PERFORMANCE GRAPH

RELATED PARTY TRANSACTIONS

SECTION 16(a) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

OTHER MATTERS

ANNEX A

ANNEX B

CHOLESTECH CORPORATION 2002 EMPLOYEE STOCK PURCHASE PLAN

ANNEX C

Table of Contents**TABLE OF CONTENTS**

	Page
General Information	1
Who May Vote	1
Revoking Your Proxy	1
Quorum Requirement	1
Voting	1
Proxy Solicitation Costs	2
Abstentions and Broker Non-Votes	2
Deadline of Receipt of Shareholder Proposals for 2003 Annual Meeting	2
Proposal One: Election of Directors	3
General	3
Nominees	3
Vote Required and Board Recommendation	4
Board and Committee Meetings	4
Committees of the Board	4
Audit Committee	5
Compensation Committee	5
Nominating Committee	5
Compensation Committee Interlocks and Insider Participation	5
Proposal Two: Ratification of Appointment of Independent Accountants	6
Audit Fees	6
Financial Information Systems Design and Implementation Fees	6
All Other Fees	6
Vote Required and Board Recommendation	6
Proposal Three: Adoption of 2002 Employee Stock Purchase Plan	7
Purpose	7
Administration	7
Offering Periods	7
Eligibility to Participate in the ESPP	7
Purchase Price	8
Payment of Purchase Price; Payroll Deductions	8
Purchase of Stock; Exercise of Option	8
Withdrawal	8
Termination of Employment	8
Capital Changes	9
Dissolution or Liquidation	9
Merger or Change of Control	9
Nonassignability	9
Amendment and Termination of the Purchase Plan	9
Certain United States Federal Income Tax Information	9
Incorporation by Reference	10
Vote Required and Board Recommendation	10

Table of Contents

	<u>Page</u>
Participation in 2002 Employee Stock Purchase Plan	10
New Plan Benefits 1992 Employee Stock Purchase Plan	10
Proposal Four: Amendment to 2000 Stock Incentive Program	11
Purpose	11
Administration	12
Eligibility; Limitations	12
Terms and Conditions of Options	12
Stock Purchase Rights	13
Formula Option Grants to Outside Directors	13
Adjustments Upon Changes in Capitalization	13
Amendment and Termination of the 2000 Plan	14
Federal Income Tax Consequences	14
Incorporation by Reference	15
Vote Required and Board Recommendation	15
Participation in the 2000 Stock Incentive Program	15
Equity Compensation Plan Information	16
1999 Nonstatutory Stock Option Plan	17
Purpose	17
Eligibility to Participate in the 1999 Plan	17
Number of Shares Covered by the 1999 Plan	17
Awards Permitted under the 1999 Plan	17
Terms of Options	17
Capital Changes	17
Merger or Change of Control	17
Termination and Amendment	18
Certain United States Federal Income Tax Information	18
Security Ownership of Certain Beneficial Owners and Management	19
Executive Compensation and Other Matters	21
Summary Compensation Table	21
Option Grants in Last Fiscal Year	22
Aggregated Option Exercises in Last Fiscal Year and Fiscal Year-End	22
Option Values	22
Director Compensation	23
Employment Agreements and Change of Control Arrangements	23
Report of the Compensation Committee of the Board of Directors	24
General Compensation Philosophy	24
Cash Compensation	24
Equity-Based Compensation	25
Tax Deductibility of Executive Compensation	25

Table of Contents

	Page
Report of the Audit Committee of the Board of Directors	26
Stock Price Performance Graph	27
Related Party Transactions	28
Section 16(a) Beneficial Ownership Reporting Compliance	28
Other Matters	28
ANNEX A Audit Committee Charter	A-1
ANNEX B 2002 Employee Stock Purchase Plan	B-1
EXHIBIT A	B-9
EXHIBIT B	B-11
ANNEX C 2000 Stock Incentive Program	C-1

Table of Contents

CHOLESTECH CORPORATION

PROXY STATEMENT FOR THE
2002 ANNUAL MEETING OF SHAREHOLDERS

GENERAL INFORMATION

The enclosed proxy is solicited on behalf of the Board of Directors of Cholestech Corporation (Cholestech) for use at our 2002 Annual Meeting of Shareholders and at any adjournment or postponement of the meeting. The purposes of the annual meeting are set forth in the accompanying Notice of Annual Meeting of Shareholders.

The annual meeting will be held at the Westin St. Francis Hotel located at 335 Powell Street, San Francisco, California 94102, on Wednesday, August 14, 2002, at 10:00 a.m. Pacific Time. Our principal executive offices are located at 3347 Investment Boulevard, Hayward, California 94545, and our telephone number is (510) 732-7200.

These proxy solicitation materials and the Annual Report to Shareholders for the fiscal year ended March 29, 2002, including financial statements, were first mailed on or about July 7, 2002 to all shareholders entitled to vote at the meeting.

Who May Vote

You may vote if our records show that you owned your shares as of June 21, 2002 (the Record Date). At the close of business on that date, we had a total of 13,576,040 shares of common stock outstanding, which were held by approximately 169 shareholders of record. As of the Record Date, we had no shares of our preferred stock outstanding.

Revoking Your Proxy

You may revoke your proxy at any time before it is voted at the annual meeting. In order to do this, you must either i) sign and return another proxy bearing a later date; ii) provide written notice of the revocation to our Secretary before we take the vote at the annual meeting; or iii) attend the meeting and vote in person.

Quorum Requirement

A quorum, which is a majority of our outstanding shares as of the Record Date, must be present in order to hold the annual meeting and to conduct business. Your shares will be counted as being present at the meeting if you attend the meeting in person or if you submit a properly executed proxy card.

Voting

You are entitled to one vote for each share held. In voting for the election of directors (Proposal One), you may cumulate your votes. This means you may give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of shares held by you, or distribute your votes on the same principle among as many candidates as you may select, provided that you cannot cast votes for more candidates than the number of directors to be elected (six). However, you will not be entitled to cumulate votes unless the candidate's name has been placed in nomination prior to voting and you have given notice at the meeting, prior to the voting, of your intention to cumulate your votes. On all other matters, you are entitled to one vote for each share held.

Table of Contents

If your proxy is properly dated, executed and returned, your shares will be voted at the annual meeting in accordance with the instructions you indicate on the proxy card. If you submit the proxy card but do not indicate your voting instructions, your shares will be voted as follows:

FOR the election of the six nominees to the Board of Directors;

FOR the ratification of the appointment of PricewaterhouseCoopers LLP as our independent accountants for the fiscal year ending March 28, 2003;

FOR the adoption of our 2002 Employee Stock Purchase Plan and the reservation of 400,000 shares of common stock for issuance under such plan; and

FOR the amendment to our 2000 Stock Incentive Program.

Proxy Solicitation Costs

We will bear the cost of soliciting votes. We may reimburse brokerage firms and other persons representing beneficial owners for their expenses in forwarding solicitation materials to such beneficial owners. Proxies may also be solicited by certain of our directors, officers and regular employees, without additional compensation, personally or by telephone or facsimile.

Abstentions and Broker Non-Votes

If you return a proxy card that indicates an abstention from voting on all matters, the shares represented will be counted as present for the purpose of determining a quorum, but they will not be voted on any matter at the annual meeting. Consequently, if you abstain from voting on the proposals to ratify the appointment of PricewaterhouseCoopers LLP as our independent accountants, to adopt the 2002 Employee Stock Purchase Plan and to amend the 2000 Stock Incentive Program, your abstention will have the same effect as a vote against these proposals.

Under the rules that govern brokers who have record ownership of shares that are held in street name for their clients, who are the beneficial owners of the shares, brokers have discretion to vote these shares on routine matters but not on non-routine matters. Thus, if you do not otherwise instruct your broker, the broker may turn in a proxy card voting your shares for routine matters but expressly instructing that the broker is NOT voting on non-routine matters. A broker non-vote occurs when a broker expressly instructs on a proxy card that it is not voting on a matter, whether routine or non-routine. Broker non-votes are counted for the purpose of determining the presence or absence of a quorum but are not counted for determining the number of votes cast for or against a proposal. To the extent your brokerage firm submits a broker non-vote with respect to your shares, your shares will be counted as present for the purpose of determining whether a quorum exists with respect to consideration of that proposal but will not be deemed votes cast with respect to that proposal. Accordingly, broker non-votes will have no effect on the outcome of the vote with respect to each of the proposals.

Deadline of Receipt of Shareholder Proposals for 2003 Annual Meeting

As a Cholestech shareholder, you are entitled to present proposals for action at a forthcoming meeting if you comply with the requirements of the proxy rules established by the Securities and Exchange Commission. If you intend to present a proposal at our 2003 annual meeting of shareholders, the proposal must be received by us no later than March 14, 2003 to be considered for inclusion in the proxy statement and form of proxy relating to that meeting.

The enclosed proxy grants the proxy holders discretionary authority to vote on any matter raised at the annual meeting. If you intend to submit a proposal of our 2003 annual meeting of shareholders that is not eligible for inclusion in the proxy statement relating to that meeting and you fail to give us notice in accordance with the requirements set out in the Exchange Act, no later than May 28, 2003, then the proxy holders will be allowed to use their discretionary voting authority when and if the proposal is raised at our 2003 annual meeting of shareholders.

Table of Contents**PROPOSAL ONE****ELECTION OF DIRECTORS****General**

A board of six directors is to be elected at the annual meeting. Unless otherwise instructed, the proxy holders will vote the proxies received by them for management's six nominees named below, all of whom are presently our directors. In any event, the proxy holders cannot vote the proxies for a greater number of persons than six. In the event that any management nominee is unable or declines to serve as a director at the time of the annual meeting, the proxies will be voted for a nominee who shall be designated by the present Board of Directors to fill the vacancy. In the event that additional persons are nominated for election as directors, the proxy holders intend to vote all proxies received by them in such a manner (in accordance with cumulative voting) as will assure the election of as many of the nominees listed below as possible, and, in such event, the specific nominees to be voted for will be determined by the proxy holders. We are not aware of any nominee who will be unable or will decline to serve as a director. The term of office for each person elected as a director will continue until the next annual meeting of shareholders or until such director's successor has been duly elected and qualified.

Nominees

The following table sets forth the names, ages and titles of the nominees as of June 21, 2002:

<u>Name of Nominee</u>	<u>Age</u>	<u>Position with the Company</u>	<u>Director Since</u>
John H. Landon(1)(2)(3)	61	Chairman of the Board	1997
Warren E. Pinckert II(3)	58	President, Chief Executive Officer and Director	1993
Michael D. Casey(1)	56	Director	2001
John L. Castello(2)(3)	66	Director	1993
Molly J. Coye M.D.(2)	55	Director	2000
Larry Y. Wilson(1)	52	Director	1998

- (1) Member of the Audit Committee.
- (2) Member of the Compensation Committee.
- (3) Member of the Nominating Committee.

There are no family relationships between any director or executive officer.

John H. Landon has served as a director since December 1997 and as Chairman since August 2000. Mr. Landon served as Vice President and General Manager, Medical Products, E.I. DuPont de Nemours and Company from 1992 until his retirement in 1996. From 1962 to 1992, Mr. Landon held various senior management positions at DuPont. Mr. Landon is also a director of Digene Corporation, GenVec, Inc. and Christiana Care Corporation and has previously served as a director of the Advanced Medical Technology Association (AdvaMed) and the DuPont Merck Pharmaceutical Company. Mr. Landon earned a Bachelor of Science degree in Chemical Engineering from the University of Arizona.

Warren E. Pinckert II has served as our President, Chief Executive Officer and a director since June 1993. Mr. Pinckert served as our Executive Vice President of Operations from 1991 to June 1993, as our Chief Financial Officer and Vice President of Business Development from 1989 to June 1993 and as our Secretary from 1989 to January 1997. From 1983 to 1989, Mr. Pinckert was Chief Financial Officer of Sunrise Medical Inc., an international durable medical equipment manufacturer. Mr. Pinckert is also a director of PacifiCare Health Systems, Inc. and serves on the Board of Advisors for the San Francisco State University School of Business. Mr. Pinckert earned a Bachelor of Science degree in Accounting and a Masters of Business Administration degree from the University of Southern California.

Edgar Filing: CHOLESTECH CORPORATION - Form DEF 14A

Michael D. Casey has served as a director since February 2001. From October 1997 to February 2002, Mr. Casey served as the Chairman, President, Chief Executive Officer and a director of Matrix Pharmaceuti-

Table of Contents

cal, Inc. From November 1995 to December 1996, Mr. Casey was Executive Vice President at Schein Pharmaceutical, Inc. In December 1996, he was appointed President of the retail and specialty products division of Schein. From June 1993 to November 1995, he served as President and Chief Operating Officer of Genetic Therapy, Inc. Mr. Casey was President of McNeil Pharmaceutical (a unit of Johnson & Johnson) from 1989 to June 1993 and Vice President, Sales and Marketing for Ortho Pharmaceutical Corp. (a subsidiary of Johnson & Johnson) from 1985 to 1989. Mr. Casey is also a director of Bone Care International, Inc., SICOR Inc. and Allos Therapeutics, Inc.

John L. Castello has served as a director since August 1993. Mr. Castello is the Chairman, President and Chief Executive Officer of Xoma Ltd., a biotechnology company. Mr. Castello joined Xoma in April 1992 as President and Chief Executive Officer and became Chairman in 1993. He served as President of Ares Serono Diagnostics from 1986 to 1988, President and Chief Operating Officer of The Ares Serono Group from 1988 to 1991 and Chairman of Ares Serono Inc. from 1991 to 1992. From 1960 to 1986, Mr. Castello held various senior management positions at Amersham International plc, Abbott Laboratories, General Foods and Honeywell Corp. Mr. Castello earned a Bachelor of Science degree in Mechanical and Industrial Engineering from Notre Dame University.

Molly J. Coye, M.D. has served as a director since August 2000. Dr. Coye is the founder and Chief Executive Officer of the Health Technology Center, a non-profit organization. From September 1997 to April 2000, Dr. Coye was the director of the west coast office for The Lewin Group, a health care policy, strategic planning and management consulting firm. Dr. Coye has also directed product development and marketing for HealthDesk Corporation, a developer of consumer software for interactive health communication and disease management, and was Executive Vice President for Managed Care in the Good Samaritan Health System. From 1991 to 1993, Dr. Coye was the Director of the California Department of Health Services. Dr. Coye also directed the Division of Public Health at the Johns Hopkins School of Hygiene and Public Health and served as Commissioner of Health for the State of New Jersey from 1986 to 1990. Dr. Coye earned a Master of Arts degree in Asian History from Stanford University and both a Doctor of Medicine and Master of Public Health degrees from John Hopkins University.

Larry Y. Wilson has served as a director since May 1998. Since January 2002, Mr. Wilson has served as Senior Vice President for Kaiser Foundation Health Plan, Inc. From 1987 to June 2001, Mr. Wilson served as the Executive Vice President and Chief Operating Officer of Catholic Healthcare West. Mr. Wilson served as the Executive Vice President and Chief Financial Officer of Mercy Health System, a predecessor of Catholic Healthcare, from 1983 to 1986 and as a principal of the Health and Medical Division of Booz Allen & Hamilton, a consulting company, from 1979 to 1983. From 1995 to December 2001, Mr. Wilson also served as an officer and director of the California Healthcare Association and as its Chairman in 2000. Mr. Wilson earned a Bachelor of Arts degree in English from Harvard University and a Masters of Business Administration degree from Stanford University.

Vote Required and Board Recommendation

If a quorum is present, the six nominees receiving the highest number of affirmative votes of the shares entitled to be voted will be elected to the Board of Directors. Abstentions and broker non-votes will have no effect on the outcome of the vote with respect to this proposal. **The Board of Directors recommends that shareholders vote FOR the election of each of the six nominees named above.**

Board and Committee Meetings

The Board of Directors held eight meetings during fiscal 2002. All directors attended all of the meetings of the Board and Committees of which they were members held during fiscal 2002.

Committees of the Board

The Board of Directors has an Audit Committee, a Compensation Committee and a Nominating Committee. The Audit Committee is comprised of Messrs. Wilson, Casey and Landon, each of whom is independent as defined under the rules of the Nasdaq Stock Market. The Compensation Committee is

Table of Contents

comprised of Mr. Castello, Dr. Coye and Mr. Landon. The Nominating Committee is comprised of Messrs. Landon, Castello and Pinckert.

Audit Committee

The Audit Committee held four meetings during fiscal 2002. The responsibilities of the Audit Committee include recommending to the Board the selection of the independent accountants, overseeing actions taken by our independent accountants and reviewing our internal accounting controls. The Audit Committee is authorized to conduct such reviews and examinations as it deems necessary or desirable with respect to the practices and procedures of the independent accountants, the scope of the annual audit, accounting controls, practices and policies, and the relationship between us and our independent accountants, including the availability of our records, information and personnel. The Audit Committee acts under a written charter adopted and approved by our Board of Directors. A copy of the Audit Committee Charter is attached to this Proxy Statement as Annex A.

Compensation Committee

The Compensation Committee held four meetings during fiscal 2002. The Compensation Committee focuses on executive compensation, incentive and other forms of compensation for directors, officers and other employees and the administration of our various compensation and benefit plans.

Nominating Committee

The Nominating Committee did not meet during fiscal 2002. The Nominating Committee recommends to the Board of Directors candidates for nomination to the Board of Directors. The Nominating Committee will consider nominees recommended by shareholders. Shareholders making such recommendations should follow the procedures outlined above under **Deadline of Receipt of Shareholder Proposals for 2003 Annual Meeting**.

Compensation Committee Interlocks and Insider Participation

The Compensation Committee consists of Mr. Castello, Dr. Coye and Mr. Landon. There are no interlocking relationships, as described by the Securities and Exchange Commission, between the Compensation Committee members. Mr. Pinckert, our President and Chief Executive Officer and a director, participated as a non-member of the Committee in all discussions and decisions regarding salaries and incentive compensation for all of our employees and consultants, except that Mr. Pinckert was excluded from discussions regarding his own salary, incentive compensation and stock option grants.

Table of Contents

PROPOSAL TWO

RATIFICATION OF APPOINTMENT OF INDEPENDENT ACCOUNTANTS

The Board of Directors has selected PricewaterhouseCoopers LLP, independent accountants, to audit our consolidated financial statements for the fiscal year ending March 28, 2003. In the absence of contrary specifications, the shares represented by the proxies will be voted FOR the ratification of this appointment. If the shareholders fail to ratify this appointment, the Board of Directors will reconsider its selection.

PricewaterhouseCoopers LLP has been our independent accountants since 1990. A representative of PricewaterhouseCoopers LLP will be present at the annual meeting, will have the opportunity to make a statement if he or she desires to do so and will be available to answer any appropriate questions.

Audit Fees

PricewaterhouseCoopers LLP billed us approximately \$84,000 for the audit of our consolidated annual financial statements and review of the financial statements included in our quarterly reports on Form 10-Q for fiscal year 2002.

Financial Information Systems Design and Implementation Fees

We did not engage PricewaterhouseCoopers LLP to provide advice to us regarding financial information systems design and implementation during fiscal year 2002.

All Other Fees

PricewaterhouseCoopers LLP billed us approximately \$28,500 during fiscal year 2002 for all other non-audit services, which consisted of \$24,000 for tax related services and \$4,500 for review of filings with the Securities Exchange Commission.

Our Audit Committee has determined that the provision of services by PricewaterhouseCoopers LLP other than for audit related services is compatible with maintaining the independence of PricewaterhouseCoopers LLP as our independent accountants.

Vote Required and Board Recommendation

If a quorum is present, the affirmative vote of the holders of a majority of the shares to be voted will be required to approve this proposal. Abstentions will have the same effect as a vote against this proposal and broker non-votes will have no effect on the outcome of the vote with respect to this proposal. **The Board of Directors recommends that shareholders vote FOR ratification of the appointment of PricewaterhouseCoopers LLP as our independent accountants.**

Table of Contents

PROPOSAL THREE

ADOPTION OF 2002 EMPLOYEE STOCK PURCHASE PLAN

In June 2002, the Board of Directors adopted the 2002 Employee Stock Purchase Plan (the ESPP), effective September 1, 2002, and reserved 400,000 shares of our common stock for issuance under such plan, subject to shareholder approval within 12 months of Board approval.

At the annual meeting, our shareholders are being asked to approve the ESPP and the reservation of shares for issuance under the ESPP. In the absence of contrary specifications, the shares represented by the proxies will be voted FOR the approval and reservation. The ESPP is intended to be an employee stock purchase plan within the meaning of Section 423 of the Internal Revenue Code of 1986, as amended (the Code). The ESPP is intended to replace our employee stock purchase plan, initially approved in 1992 with a ten year term, which has now expired, under which \$1.3 million has been raised. Our previous employee stock purchase plan had approximately 32,652 shares of common stock available for purchase as of March 29, 2002. Any shares not purchased in the plan's last purchase period will revert to our company as treasury stock.

The essential terms of the ESPP are summarized as follows:

Purpose

The purpose of the ESPP is to provide eligible employees with an opportunity to purchase our common stock through accumulated payroll deductions.

Administration

The ESPP provides for administration by our Board of Directors or a committee appointed by the Board and is currently administered by the Compensation Committee of the Board of Directors. All questions of interpretation or application of the ESPP are determined by the Board of Directors or its appointed committee, and its decisions are final and binding upon all participants. No charge for administrative or other costs may be made against the payroll deductions of a participant in the ESPP. Directors receive no additional compensation for their services in connection with the administration of the ESPP.

Offering Periods

The ESPP has a series of consecutive, overlapping 24-month offering periods, with each offering period consisting of four six-month purchase periods. The initial offering period under the ESPP will begin on the first trading day after September 1, 2002. Subsequent offering periods will begin on the first trading day on or after March 1 and September 1 of each year. The Board of Directors has the power to alter the duration of the offering periods, including the commencement dates, without shareholder approval if such change is announced at least five days prior to the affected offering period.

Eligibility to Participate in the ESPP

Any person who has been a common law-employee for at least three months and whose customary employment with us (or a designated subsidiary of us) is at least 20 hours per week and more than five months in any calendar year is eligible to participate in the ESPP. Eligible employees become participants in the ESPP by delivering to our human resources department a subscription agreement authorizing payroll deductions. An employee who becomes eligible to participate in the ESPP after the commencement of an offering may not participate in the ESPP until the commencement of the next offering period.

Employees will not be eligible to participate in an offering under the plan (i) if immediately after the commencement of an offering, the employee owns stock or holds outstanding options to purchase stock representing five percent or more of the total combined voting power or value of all classes of our stock or (ii) the employee's rights to purchase stock under the ESPP (and all other plans of ours and our subsidiaries)

Edgar Filing: CHOLESTECH CORPORATION - Form DEF 14A

accrue at a rate that exceeds \$25,000 of the fair market value of our common stock on the effective date of the applicable offering for each calendar year in which the option is outstanding at any time.

Table of Contents

Purchase Price

The price at which shares are sold to participating employees is 85% of the fair market value per share of our common stock on (i) the first trading day of the offering period or (ii) the last trading day of the purchase period, whichever is lower. The fair market value of our common stock on a given date is determined by reference to the closing sales price of the Nasdaq National Market. The closing sale price per share of our common stock on the Nasdaq National Market on June 21, 2002 was \$15.43.

To the extent permitted by any applicable laws, regulations or stock exchange rules, if the fair market value of our common stock is lower on the last trading day of the applicable purchase period than the fair market value of our common stock on the first day of the offering period to which such purchase period applies, then all participants in the offering period will be automatically withdrawn from such offering period immediately after the exercise of their option and automatically re-enrolled in the immediately following offering period.

Payment of Purchase Price; Payroll Deductions

The purchase price of the shares is accumulated by payroll deductions over the offering period. Payroll deductions may not exceed 15% of a participant's compensation. A participating employee may discontinue his or her participation in the ESPP at any time during the offering period. A participant may increase or decrease the rate of payroll deductions no more than two times during a purchase period. Notwithstanding the foregoing, the Board of Directors or its appointed committee may limit the number of changes during any offering period. Payroll deductions will commence on the first payday following the offering date and will continue at the same rate until the end of the offering period unless sooner terminated as provided in the ESPP.

Purchase of Stock; Exercise of Option

By executing a subscription agreement to participate in the ESPP, the employee is entitled to have shares placed under option to him or her. The maximum number of shares placed under option to a participant in a single purchase period is 10,000. Within this limit, the number of shares purchased depends on the fair market value of our common stock on the first business day of the offering period and the last business day of the purchase period and the cumulative amount of an employee's contributions at the end of the purchase period. On the option exercise date, an employee's accumulated contributions will be used to purchase whole shares at the purchase price.

If the number of shares which would otherwise be placed under option at the beginning of an offering period exceeds the number of shares then available under the ESPP, a pro rata allocation of the shares remaining will be made in as equitable a manner as is practicable.

Withdrawal

A participant may withdraw from the ESPP at any time by delivering to us a notice of withdrawal. Such withdrawal may be elected at any time prior to the end of the applicable purchase period. Any withdrawal by an employee during a given offering period automatically terminates the employee's interest in that offering period, and the employee may not participate in the ESPP until the next offering period begins.

Termination of Employment

Termination of a participant's employment for any reason, including retirement or death, cancels his or her participation in the ESPP immediately. In such event, the payroll deductions credited to the participant's account will be returned without interest to such participant, or, in the case of death, to the person or person entitled thereto as specified by the employee in the subscription agreement.

Table of Contents

Capital Changes

In the event of any changes in our capitalization, such as stock splits or stock dividends, resulting in an increase or decrease in the number of shares of common stock, effected without receipt of consideration by us, appropriate adjustment will be made by us in the shares subject to purchase and in the purchase price per share.

Dissolution or Liquidation

In the event of the proposed dissolution or liquidation of our company, the offering period then in progress will be shortened by setting a new exercise date and the participant's option will be exercised automatically on such date. The ESPP will terminate immediately prior to the consummation of such proposed dissolution or liquidation, unless provided otherwise by the Board of Directors or its appointed committee.

Merger or Change of Control

In the event of a merger or change of control of our company, each outstanding option under the ESPP will be assumed or an equivalent option substituted by the successor corporation or a parent or subsidiary of the successor corporation. In the event the successor corporation refuses to assume or substitute outstanding options, any purchase periods then in progress will be shortened by setting a new exercise date and the participant's option will be exercised automatically on such date. Any offering periods then in progress will end on such new exercise date.

Nonassignability

No rights or accumulated payroll deductions of an employee under the ESPP may be pledged, assigned or transferred for any reason and any such attempt may be treated by us as an election to withdraw from the ESPP.

Amendment and Termination of the Purchase Plan

The Board of Directors may at any time amend or terminate the ESPP, except that such termination will not affect options previously granted nor may any amendment make any changes in an option granted prior thereto which adversely affects the rights of any participant.

Certain United States Federal Income Tax Information

The ESPP, and the right of participants to make purchases thereunder, is intended to qualify under the provisions of Sections 421 and 423 of the Code. Under these provisions, no income will be taxable to a participant until the shares purchased under the ESPP are sold or otherwise disposed of. Upon sale or other disposition of the shares, the participant will generally be subject to tax and the amount of the tax will depend upon the holding period. If the shares are sold or otherwise disposed of more than two years from the first day of the offering period and more than one year from the date of the shares are purchased, the participant will recognize ordinary income measured as the lesser of (a) the excess of the fair market value of the shares at the time of such sales or disposition over the purchase price, or (b) an amount equal to 15% of the fair market value of the shares as of the first day of the offering period. Any additional gain will be treated as a long-term capital gain.

If the shares are sold or otherwise disposed of on before the expiration of the above holding periods, the participant will recognize ordinary income generally measured as the excess of the fair market value of the shares on the date the shares are purchased over the purchase price. Any additional gain or loss of such sale or disposition will be long-term or short-term capital gain or loss, depending on the holding period. We are not entitled to a deduction for amounts taxed as ordinary income or capital gain to a participant except to the extent that we are entitled to a deduction for ordinary income recognized by participants upon a sale or disposition of shares prior to the expiration of the holding period(s) described above.

Table of Contents

The foregoing is only a summary of the effect of federal income taxation upon the participant and us with respect to the shares purchased under the ESPP. Reference should be made to the applicable provisions of the Code. In addition, the summary does not discuss the tax consequences of a participant's death or the income tax laws of any state or foreign country in which the participant may reside.

Incorporation by Reference

The foregoing is only a summary of the ESPP and is qualified in its entirety by reference to its full text, a copy of which is attached to this Proxy Statement as Annex B.

Vote Required and Board Recommendation

If a quorum is present, the affirmative vote of the holders of a majority of the shares to be voted will be required to approve this proposal. Abstentions will have the same effect as a vote against this proposal and broker non-votes will have no effect on the outcome of the vote with respect to this proposal. **The Board of Directors recommends that shareholders vote FOR the adoption of the 2002 Employee Stock Purchase Plan and the reservation of 400,000 shares of our common stock for issuance under such plan.**

Participation in 2002 Employee Stock Purchase Plan

Participation in the 2002 Employee Stock Purchase Plan is voluntary and is dependent on each eligible employee's election to participate and his or her determination as to the level of payroll deductions. Accordingly, future purchases under the ESPP are not determinable. Non-employee directors are not eligible to participate in the ESPP. No purchases have been made under the ESPP since its adoption by the Board of Directors.

New Plan Benefits 1992 Employee Stock Purchase Plan

The following table sets forth certain information regarding shares purchased during the fiscal year ended March 29, 2002 and the payroll deductions accumulated at the end of the fiscal year ended March 29, 2002 in accounts under the 1992 Employee Stock Purchase Plan (the 1992 Plan) for each of the executive officers named in the Summary Compensation Table below who participated in the 1992 Plan, all current executive officers as a group, and all other employees who participated in the 1992 Plan as a group:

Name	Number of Shares Purchased	Dollar Value(1)	Payroll Deductions as of Fiscal Year End
Warren E. Pinckert II			
William W. Burke			
Robert J. Dominici			
Timothy I. Still			
Kevin R. Stromberg			
All current executive officers as a group	3,284	\$ 20,165	\$ 20,419
All other employees (including all current officers who are not executive officers) as a group	33,423	204,975	231,233

(1) Market value of shares on date of purchase, minus the purchase price under the 1992 Employee Stock Purchase Plan.

Table of Contents

PROPOSAL FOUR

AMENDMENT TO 2000 STOCK INCENTIVE PROGRAM

The Board of Directors has approved an amendment to our 2000 Stock Incentive Program (the 2000 Plan) to amend the non-discretionary grant mechanism for the grant of options to non-employee directors. At the annual meeting, our shareholders are being asked to approve the amendment which is described below. As of the Record Date, options to purchase 749,102 shares of the Company s Common Stock have been granted pursuant to the 2000 Plan, 179,154 of which were vested.

Our 2000 Stock Incentive Program currently provides for the grant of options to purchase our common stock to non-employee directors pursuant to a non-discretionary, automatic grant mechanism, whereby each such director is granted an initial option to purchase 10,000 shares upon becoming a member of the Board of Directors, either by way of election by our shareholders or by way of appointment by our board to fill a vacancy. In addition, each non-employee director is automatically granted an option to purchase up to 10,000 shares on the date of each annual meeting, provided, if immediately after such meeting, the non-employee director continues to serve on our board and has served on our board for at least the preceding six months. These non-discretionary, automatic options are currently subject to a five year term and vest at a rate of 25% each calendar quarter after the date of grant so long as the individual remains a director of our company.

The Board of Directors adopted the amendment to the 2000 Plan, which is contingent upon shareholder approval, in order to amend the formula grant mechanism to provide for additional grants to non-employee directors who act as the Chairman of the Board of Directors, the Chairman of the Audit Committee and the Chairman of the Compensation Committee. Each non-employee director who serves as the Chairman of the Audit Committee or the Chairman of the Compensation Committees of the Board of Directors will be granted an additional option to purchase up to 5,000 shares on the date of each annual meeting, provided that he or she will continue to serve as Chairman of such committee. In addition, non-employee directors who serve as the Chairman of the Board of Directors will be granted an additional option to purchase up to 10,000 shares on the date of each annual meeting, provided that he or she will continue to serve as Chairman of the Board of Directors. Our 1997 Stock Incentive Program contains a similar automatic grant mechanism for the Chairman of the Board of Directors which will be terminated if our shareholders approve the amendment to the 2000 Plan.

