

BioAmber Inc.
Form PRE 14A
March 20, 2018
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SCHEDULE 14A

(Rule 14a-101)

INFORMATION REQUIRED IN PROXY STATEMENT

SCHEDULE 14A INFORMATION

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

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

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

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material Pursuant to Rule 14a-11(c) or Rule 14a-12
BIOAMBER 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):

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No fee required.

Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

- (1) Title of each class of securities to which transaction applies:

- (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:

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PRELIMINARY PROXY STATEMENT DATED MARCH 20, 2018 SUBJECT TO COMPLETION

BIOAMBER INC.

1250 Rene Levesque West, Suite 4310

Montreal, Quebec, Canada H3B 4W8

(514) 844-8000

To Our Stockholders:

You are cordially invited to attend a special meeting of stockholders of BioAmber Inc. (BioAmber or the Company) to be held on April 27, 2018 at 10:00 a.m. local time, at the offices of the Company, 1250 Rene Levesque West, Suite 4310, Montreal, Quebec, Canada H3B 4W8. At the special meeting, you will be asked to consider and vote upon:

1. a proposal to approve an amendment to the Company s Amended and Restated Certificate of Incorporation to increase the authorized shares of common stock, par value \$0.01 per share, of the Company from 250,000,000 to 1,000,000,000;
2. a proposal to approve an amendment to the Company s Amended and Restated Certificate of Incorporation to effect a reverse stock split at a ratio of not less than fifty-to-one and not more than three-hundred-to-one, such ratio and the implementation and timing of such reverse stock split to be determined in the discretion of our Board of Directors; and
3. a proposal to approve one or more adjournments to the special meeting, if necessary or appropriate, to permit further solicitation of proxies if there are not sufficient votes at the time of the special meeting cast in favor of Proposal 1 or Proposal 2.

The Notice of Meeting and proxy statement on the following pages describe in greater detail the matters to be presented at the special meeting and other information you may find useful in determining how to vote.

The Board of Directors of BioAmber has determined that each of Proposal 1 and Proposal 2 is in the best interests of BioAmber and its stockholders. For the reasons set forth in the proxy statement, the Board of Directors unanimously recommends that you vote **FOR** each matter to be considered. We encourage you to read the proxy statement and the accompanying appendices carefully and in their entirety.

We hope you can join us at the special meeting. As a stockholder, your vote is important, regardless of the number of shares of BioAmber common stock you hold. Therefore, whether or not you are able to personally attend, please vote your shares as soon as possible by following the instruction provided in the enclosed proxy card, or, if you hold your shares through a bank, broker or other financial intermediary, by following the instructions provided by the financial intermediary. If you decide to attend the special meeting, you will be able to vote in person even if you have previously voted.

On behalf of your Board of Directors, I thank you for your ongoing interest and investment in BioAmber Inc.

Sincerely,

Richard Eno

Chief Executive Officer

Neither the Securities and Exchange Commission nor any state securities regulatory agency has passed upon the adequacy or accuracy of the disclosure in this document. Any representation to the contrary is a criminal offense.

This proxy statement and form of proxy are dated [], 2018 and are first being mailed to stockholders on or about [], 2018.

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PRELIMINARY PROXY STATEMENT DATED MARCH 20, 2018 SUBJECT TO COMPLETION

BIOAMBER INC.

1250 Rene Levesque West, Suite 4110

Montreal, Quebec, Canada H3B 4W8

(514) 844-8000

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

TIME	10:00 a.m. local time on Friday, April 27, 2018
PLACE	Offices of BioAmber Inc. at 1250 Rene Levesque West, Suite 4310, Montreal, Quebec, Canada H3B 4W8
ITEMS OF BUSINESS	1. To consider and vote upon a proposal to approve an amendment to the Company's Amended and Restated Certificate of Incorporation to increase the authorized shares of common stock, par value \$0.01 per share, of the Company from 250,000,000 to 1,000,000,000 (Proposal 1). 2. To consider and vote upon a proposal to approve an amendment to the Company's Amended and Restated Certificate of Incorporation to effect a reverse stock split at a ratio of not less than fifty-to-one and not more than three-hundred-to-one, such ratio and the implementation and timing of such reverse stock split to be determined in the discretion of our Board of Directors (Proposal 2). 3. To consider and vote upon a proposal to approve one or more adjournments to the special meeting, if necessary or appropriate, to permit further solicitation of proxies if there are not sufficient votes at the time of the special meeting cast in favor of Proposal 1 or Proposal 2 (Proposal 3).
RECORD DATE	You are entitled to vote at the special meeting and any adjournment or postponement thereof if you owned shares of the Company's common stock as of the close of business on March 15, 2018. To ensure your representation at the special meeting, please submit your proxy as soon as possible, whether over the Internet, by telephone or by returning the enclosed proxy card by mail. Please follow the instructions for submitting your proxy detailed on the enclosed proxy card.
THE MEMBERS OF THE BIOAMBER BOARD OF DIRECTORS VOTING ON THE MATTER UNANIMOUSLY RECOMMEND THAT YOU VOTE FOR PROPOSAL 1, FOR PROPOSAL 2 AND FOR PROPOSAL 3, IF NECESSARY.	

By Order of the Board of Directors,

Mario Settino

Chief Financial Officer and Secretary

Montreal, Quebec

[], 2018

YOUR VOTE IS IMPORTANT, WHETHER OR NOT YOU PLAN TO ATTEND THE SPECIAL MEETING AND REGARDLESS OF THE NUMBER OF SHARES YOU OWN. EVEN IF YOU PLAN TO ATTEND THE SPECIAL MEETING, WE URGE YOU TO SUBMIT YOUR PROXY AS INSTRUCTED ON THE ENCLOSED PROXY CARD FOR YOUR SHARES AS SOON AS POSSIBLE. YOU MAY VOTE YOUR SHARES OVER THE INTERNET, BY TELEPHONE OR BY MAIL BY FOLLOWING THE INSTRUCTIONS ON THE ENCLOSED PROXY CARD. IF YOU ATTEND THE MEETING AND VOTE

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IN PERSON, THAT VOTE WILL REVOKE ANY PROXY YOU PREVIOUSLY SUBMITTED. IF YOU HOLD SHARES IN THE NAME OF A BROKERAGE FIRM, BANK, NOMINEE OR OTHER INSTITUTION, YOU MUST PROVIDE A LEGAL PROXY FROM THAT INSTITUTION IN ORDER TO VOTE YOUR SHARES AT THE MEETING EXCEPT AS OTHERWISE DISCUSSED IN THE PROXY STATEMENT.

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Important Notice Regarding the Availability of Proxy Materials

In accordance with the rules of the Securities and Exchange Commission, we are advising our shareholders of the availability on the Internet of our proxy materials related to our forthcoming annual meeting. These rules allow companies to provide access to proxy materials in one of two ways. Because we have elected to utilize the full set delivery option, we are delivering to all shareholders paper copies of all of the proxy materials, as well as providing access to those proxy materials on a publicly-accessible website.

The notice of annual meeting of shareholders, proxy statement, form of proxy card and our most recent Annual Report on Form 10-K are available at <http://investor.bio-amber.com/sec-filings>. If you plan to attend the annual meeting in person, you may obtain directions to the meeting site by written request directed to the Secretary, c/o BioAmber Inc., 1250 Rene Levesque West, Suite 4110 Montreal, Quebec, Canada H3B 4W8 or by telephone at (514) 844-8000.

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This proxy statement, the appendices attached hereto, the documents to which we refer you in this proxy statement, and other information incorporated herein by reference contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), including statements regarding the proposed transaction, the anticipated results of the proposed transaction and the timing of the proposed transaction. BioAmber intends such forward-looking statements to be covered by the Safe Harbor provisions for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995, and is including this statement for purposes of complying with these Safe Harbor provisions. These forward-looking statements contain projections of our future results of operations or financial position or state other forward-looking information. In some cases you can identify these statements by forward-looking words such as anticipate, believe, could, continue, estimate, expect, intend, may, plan, project, projected, should, target, will and would, or similar words. We believe it is important to communicate our future expectations to our investors. However, there may be events in the future that we are not able to accurately predict or control and that may cause our actual results to differ materially from the expectations we describe in our forward-looking statements.

You should not rely on forward-looking statements because they involve known and unknown risks, uncertainties, and other factors, some of which are beyond our control. These risks, uncertainties, and other factors may cause our actual results, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied by the forward-looking statements. Some of the factors that might cause these differences include the risks detailed in BioAmber's filings with the Securities and Exchange Commission (the "SEC"), including BioAmber's Annual Report on Form 10-K for the year ended December 31, 2016, our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2017, June 30, 2017 and September 30, 2017 and in other reports we have filed with the SEC. See the section of this prospectus titled "Where You Can Find More Information."

Given these uncertainties, you should not place undue reliance on our forward-looking statements. These forward-looking statements speak only as of the date on which the statements were made and are not guarantees of any future results, levels of activity, performance or achievements. Except as may be required by applicable law, we do not intend to update, and assume no obligation to update, any forward-looking statements. All forward-looking statements in this document and in documents incorporated by reference herein are qualified in their entirety by this cautionary statement.

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QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING

This section provides answers to frequently asked questions about the special meeting and the proposals to be voted upon at the special meeting. In this proxy statement, we refer to BioAmber Inc. as BioAmber, the Company, we and us.

Q: Why am I receiving this proxy statement?

A: You are receiving this proxy statement because you were a stockholder of BioAmber as of the close of business on March 15, 2018, the record date for the special meeting, which entitles you to vote at the special meeting. This proxy statement is being furnished to you by BioAmber as part of the solicitation of proxies by our Board of Directors for the special meeting. We encourage you to read the proxy statement and the accompanying appendices carefully and in their entirety.

Q: When and where will the special meeting be held?

A: The special meeting will be held at the offices of BioAmber Inc., which are located at 1250 Rene Levesque West, Suite 4310, Montreal, Quebec, Canada H3B 4W8 on April 27, 2018, at 10:00 a.m. local time.

Q: What proxy materials are being made available to stockholders?

A: The proxy materials consist of: (1) the notice of special meeting of stockholders; (2) this proxy statement and any appendices thereto; and (3) a proxy card or voting instruction card.

Q: What proposals will be voted on at the special meeting?

A: There are three matters on which a vote is scheduled at the special meeting:

A proposal to approve an amendment to our Amended and Restated Certificate of Incorporation (our certificate of incorporation) to increase the authorized shares of common stock, par value \$0.01 per share, of the Company from 250,000,000 to 1,000,000,000 (the Authorized Shares Increase Proposal or Proposal 1);

A proposal to approve an amendment to our certificate of incorporation to effect a reverse stock split at a ratio of not less than fifty-to-one and not more than three-hundred-to-one, such ratio and the implementation and timing of such reverse stock split to be determined in the discretion of our Board of Directors (the Reverse Stock Split Proposal or Proposal 2); and

A proposal to approve one or more adjournments to the special meeting, if necessary, to permit further solicitation of proxies if there are not sufficient votes at the time of the special meeting cast in favor of Proposal 1 or Proposal 2 (the Adjournment Proposal or Proposal 3).

Management and the Board of Directors of BioAmber know of no other matters to be brought before the special meeting. If any other matters are properly presented to the stockholders for action at the special meeting and any adjournments or postponements thereof, the proxy holder named in the enclosed proxy intends to vote in his discretion on all matters on which the shares of common stock represented by such proxy are entitled to vote.

Q: How does the BioAmber Board of Directors recommend that I vote on the proposals?

A: Our Board of Directors unanimously determined that the Authorized Shares Increase Proposal (Proposal 1) and the Reverse Stock Split Proposal (Proposal 2) are advisable and in the best interests of BioAmber and our stockholders and unanimously recommend that you vote your shares:

FOR the Authorized Shares Increase Proposal (Proposal 1);

FOR the Reverse Stock Split Proposal (Proposal 2); and

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FOR the Adjournment Proposal (Proposal 3).

For a more detailed discussion of why you should vote **FOR** Proposal 1, Proposal 2 and Proposal 3, see Proposal 1 Amendment to the Amended and Restated Certificate of Incorporation to Increase the Number of Authorized Shares of Common Stock, Proposal 2 Amendment to the Amended and Restated Certificate of Incorporation to Implement a Reverse Stock Split of the Company's Outstanding Common Stock and Proposal 3 Grant of Discretionary Authority to Adjourn the Special Meeting if Necessary to Solicit Additional Proxies.

Q: What shares may I vote?

A: You may vote all shares of common stock of the Company that you owned as of the close of business on the Record Date. These shares include:

1. those held directly in your name as the stockholder of record; and
2. those held for you as the beneficial owner through a bank, broker or other financial intermediary at the close of business on the Record Date.

Each share of common stock is entitled to one vote. On the Record Date, there were approximately 126,150,655 shares of our common stock issued and outstanding.

Q: How do I vote if I am a stockholder of record?

A: If your shares are registered directly in your name with BioAmber's transfer agent, Computershare Trust Company, N.A., you may vote:

by telephone by following the voting instructions printed on your proxy card;

by Internet by following the voting instructions printed on your proxy card;

by completing, signing and dating each proxy card that you receive; or

in person by appearing and casting your vote at the special meeting.

If you are voting by telephone or via the Internet, your voting instructions must be received by the date and time indicated on the applicable proxy card(s). Voting via the Internet, by telephone or by mailing in your proxy card will not prevent you from voting in person at the special meeting. You are encouraged to submit a proxy by mail, via the Internet or by telephone even if you plan to attend the special meeting in person, to ensure that your shares of BioAmber common stock are present in person or represented at the special meeting.

If you return a properly signed and dated proxy card but do not mark the box showing how you wish to vote, your shares will be voted FOR Authorized Shares Increase Proposal (Proposal 1), FOR Reverse Stock Split Proposal (Proposal 2) and FOR Adjournment Proposal (Proposal 3). With respect to any other matter that properly comes before the special meeting, shares present in person or represented by all proxies received by BioAmber will be voted with respect to such matter in accordance with the judgment of the persons named as attorneys-in-fact in the proxies.

If we do not hear from you after a reasonable amount of time, you may receive a call from our proxy solicitor, [], reminding you to vote. For additional voting information, please call [] at [].

Q: How do I vote if my shares are held by my brokerage firm, bank, trust or other nominee?

A: If your shares are held in a brokerage account or by another nominee, such as a bank or trust, then the brokerage firm, bank, trust or other nominee is considered to be the stockholder of record with respect to those shares. However, you still are considered to be the beneficial owner of those shares, with your shares being held in street name. If your shares are held in street name, your brokerage firm, bank, trust or other nominee, under certain circumstances, may vote your shares for you if you do not return your proxy. Brokerage firms, banks, trusts and other nominees have authority to vote customers' unvoted shares on routine matters. Proposal 1, Proposal 2 and Proposal 3 are currently considered routine matters. If you do

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not give a proxy to your brokerage firm, bank, trust or other nominee to vote your shares, your brokerage firm, bank, trust or other nominee may either: vote your shares on routine matters, or leave your shares unvoted. We therefore strongly encourage you to provide voting instructions to your brokerage firm, bank, trust or other nominee by submitting your proxy. This ensures your shares will be voted at the meeting according to your instructions. You should receive directions from your brokerage firm, bank, trust or other nominee about how to submit your proxy to them. If you wish to vote in person at the special meeting, you must bring a proxy from your brokerage firm, bank, trust or other nominee authorizing you to vote at the special meeting.

Q: May I attend the special meeting in person?

A: You are invited to attend the special meeting in person. All stockholders attending the special meeting will be asked to present a form of photo identification, such as a driver's license, in order to be admitted to the special meeting. All bags or packages permitted in the meeting room will be subject to inspection. No cameras, computers, recording equipment, other similar electronic devices, signs, placards, briefcases, backpacks, large bags or packages will be permitted in the special meeting. The use of mobile phones, tablets, laptops and similar electronic devices during the special meeting is prohibited, and such devices must be turned off and put away before entering the meeting room. By attending the special meeting, stockholders agree to abide by the agenda and procedures for the special meeting, copies of which will be distributed to attendees at the meeting.

Q: What is the quorum requirement for the special meeting?

A: The quorum requirement for holding the special meeting and transacting business is a majority of the shares entitled to vote. The shares may be present in person or represented by proxy at the special meeting. Abstentions will be counted as present and entitled to vote for purposes of determining a quorum. Broker non-votes (described below) will not be counted for this purpose.

Q: What is the voting requirement to approve each of the proposals?

A: Pursuant to the provisions of our certificate of incorporation and the Delaware General Corporation Law, each of the Authorized Shares Increase Proposal (Proposal 1) and the Reverse Stock Split Proposal (Proposal 2) must be approved by the affirmative vote of the majority of the outstanding shares of common stock entitled to vote on such proposals.

The Adjournment Proposal (Proposal 3) must be approved by a majority of the votes properly cast with respect to such proposal. In each case, a quorum must be present at the special meeting for a valid vote.

Q: What happens if I abstain from voting?

A: If you submit a proxy and explicitly abstain from voting on any proposal, the shares represented by the proxy will be considered present at the special meeting for the purpose of determining a quorum. **If you abstain from**

voting, fail to cast your vote, in person or by proxy, or fail to give voting instructions to your brokerage firm, bank, trust or other nominee, it will have the same effect as a vote against the proposal to approve the Authorized Shares Increase Proposal (Proposal 1) and the Reverse Stock Split Proposal (Proposal 2). With respect to the Adjournment Proposal (Proposal 3), because abstentions are not considered votes cast for the foregoing purpose, abstentions will have no effect on the vote for this proposal.

Q: What is a broker non-vote ?

A: A broker non-vote occurs when a broker submits a proxy that does not indicate a vote for one or more of the proposals because the broker has not received instructions from the beneficial owner on how to vote on such proposals and does not have discretionary authority to vote in the absence of instructions. Brokers have discretionary authority to vote on matters that are deemed routine, but brokers do not have discretionary authority to vote on matters that are deemed non-routine. Each of the Authorized Shares Increase Proposal (Proposal 1), the Reverse Stock Split Proposal (Proposal 2) and the Adjournment Proposal (Proposal 3) are matters that are deemed routine. Accordingly, these proposals may be voted upon by your broker if you do not submit voting instructions. You should follow the directions provided by your broker regarding how to instruct your broker to vote your shares.

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Q: Am I entitled to dissenters' rights?

A: No dissenters' rights are available under the General Corporation Law of the State of Delaware, our certificate of incorporation, or our Second Amended and Restated Bylaws (our bylaws) to any stockholder with respect to any of the matters proposed to be voted on at the special meeting.

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THE SPECIAL MEETING

Date, time, place and purpose of the special meeting

This proxy statement is being furnished to BioAmber stockholders as part of the solicitation of proxies by our Board of Directors for use at the special meeting to be held at the offices of BioAmber Inc., which are located at 1250 Rene Levesque West, Suite 4310, Montreal, Quebec, Canada H3B 4W8 on April 27, 2018, at 10:00 a.m. local time.

The purpose of the special meeting is for BioAmber stockholders to consider and vote on the following:

A proposal to approve an amendment to our Amended and Restated Certificate of Incorporation (our certificate of incorporation) to increase the authorized shares of common stock, par value \$0.01 per share, of the Company from 250,000,000 to 1,000,000,000 (Proposal 1);

A proposal to approve an amendment to our certificate of incorporation to effect a reverse stock split at a ratio of not less than fifty-to-one and not more than three-hundred-to-one, such ratio and the implementation and timing of such reverse stock split to be determined in the discretion of our Board of Directors (Proposal 2); and

A proposal to approve one or more adjournments to the special meeting, if necessary or appropriate, to permit further solicitation of proxies if there are not sufficient votes at the time of the special meeting cast in favor of Proposal 1 or Proposal 2 (Proposal 3).

Solicitation

The enclosed proxy is being solicited by BioAmber's Board of Directors. BioAmber has retained [] as proxy solicitor to assist in the solicitation of proxy votes. The proxy solicitor's services include [proxy consulting, mailing, tabulation and solicitation services]. The cost of retaining such proxy solicitor is estimated to be []. The costs of the solicitation will be borne by BioAmber. Proxies may be solicited personally or by mail, telephone or facsimile by directors, officers and regular employees of BioAmber, none of whom will receive any additional compensation for such solicitations. BioAmber will reimburse banks, brokers, nominees, custodians and fiduciaries for reasonable out-of-pocket expenses they incur in forwarding copies of this proxy statement to beneficial owners of shares of BioAmber common stock and in obtaining voting instructions from those owner.

Stockholder List

A list of BioAmber stockholders entitled to vote at the special meeting will be available for inspection at our principal executive offices located at 1250 Rene Levesque West, Suite 4310, Montreal, Quebec, Canada H3B 4W8 at least ten days prior to the date of the special meeting and continuing through the special meeting for any purpose germane to the meeting. The list will also be available at the special meeting for inspection by any stockholder present at the special meeting.

Voting Rights and Votes Required

Holders of shares of BioAmber common stock, at the close of business on the record date are entitled to notice of, and to vote at, the special meeting. On the record date, approximately 126,150,655 shares of common stock were outstanding. Holders of common stock are entitled to one vote per share.

The presence, in person or by proxy, of holders of a majority of the shares entitled to vote as of the record date constitutes a quorum for the transaction of business at the special meeting. In the event there are not sufficient shares represented for a quorum or votes to approve any proposals at the time of the special meeting, the special meeting may be adjourned in order to permit further solicitation of proxies. Abstentions will count towards quorum requirements. Broker non-votes will not be counted for this purpose.

The approval of the Authorized Shares Increase Proposal (Proposal 1) and the Reverse Stock Split Proposal (Proposal 2) will require the affirmative vote of the majority of the outstanding shares of common stock entitled to vote. The approval of the Adjournment Proposal (Proposal 3) which the BioAmber stockholders will be asked to approve, if necessary, if necessary, to solicit additional proxies if BioAmber has not obtained sufficient affirmative stockholder votes to approve the Authorized Shares Increase Proposal (Proposal 1) and the Reverse Stock Split Proposal (Proposal 2) will require the approval of a majority of the votes properly cast with respect to such matter as long as a quorum is achieved.

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Shares of common stock represented by all properly executed proxies received by April 26, 2018 by 12:00 p.m. Eastern Time will be voted as specified in the proxy. Unless contrary instructions are indicated on the proxy, the shares of common stock represented by such proxy will be voted **FOR** the approval of the Authorized Shares Increase Proposal, **FOR** the approval of the Reverse Stock Split Proposal and **FOR** the approval of the Adjournment Proposal.

The giving of the enclosed proxy does not preclude the right to vote in person should the stockholder giving the proxy so desire. A proxy may be revoked at any time prior to its exercise by (1) providing notice in writing to BioAmber's Corporate Secretary that the proxy is revoked; (2) presenting to BioAmber a later-dated proxy; or (3) by attending the special meeting and voting in person.

Table of Contents**PROPOSAL 1:****AMENDMENT TO THE AMENDED AND RESTATED CERTIFICATE OF****INCORPORATION TO INCREASE THE NUMBER OF AUTHORIZED SHARES OF COMMON STOCK****General**

On [], 2018, our Board of Directors determined that it is advisable and in our and our stockholders' best interests to increase the number of authorized shares of common stock, par value \$0.01 per share, of the Company from 250,000,000 shares to 1,000,000,000 shares. Accordingly, stockholders are asked to approve an amendment to our certificate of incorporation to effectuate such increase. The form of the proposed amendment to the certificate of incorporation is attached to this proxy statement as Appendix A, which you should carefully review.

Purpose of the Amendment

We are seeking stockholder approval of Proposal 1 because it is necessary to increase the amount of authorized common stock permitted to be issued under our Amended and Restated Certificate of Incorporation in order to have a sufficient amount of common stock to (i) allow the issuance of common stock upon exercise of the Outstanding Warrants (as defined below), (ii) allow the issuance of common stock upon exercise of the outstanding stock options granted under the Company's 2008 Stock Option and Incentive Plan and the Company's Amended and Restated 2013 Stock Option and Incentive Plan (the "Outstanding Stock Options") and (iii) continue to have sufficient common stock available for other general corporate purposes on an ongoing basis, including for future possible issuance to fund ongoing operations, growth and strategic investments. The increase of authorized shares of common stock from 250,000,000 shares to 1,000,000,000 shares will yield sufficient shares of common stock authorized and reserved to cover exercise of all of the Outstanding Warrants and Outstanding Stock Options.

Outstanding Shares

Our certificate of incorporation currently provides us with the authority to issue up to 250,000,000 shares of common stock. As of March 14, 2018, we had 126,150,655 shares of common stock issued and outstanding. Below is a table that calculates the shares available for future issuance and issuable upon exercise or conversion of the Outstanding Warrants and Outstanding Stock Options as of March 14, 2018.

	Shares of Common Stock
Authorized shares of common stock	250,000,000
Issued and outstanding shares of common stock, including treasury shares	126,150,655
Shares available for future issuance	123,849,345
Shares issuable upon conversion of the Outstanding Stock Options	7,266,648
Shares issuable upon conversion of the Outstanding Warrants	339,564,098

(222,981,401)

Below is a table that calculates the projected shares available for future issuance assuming that Proposal 1 is approved.

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	Shares of Common Stock
Authorized shares of common stock	1,000,000,000
Issued and outstanding shares of common stock, including treasury shares	126,150,655
Shares available for future issuance	873,849,345
Shares issuable upon conversion of the Outstanding Stock Options	7,266,648
Shares issuable upon conversion of the Outstanding Warrants	339,564,098
	527,018,599

Outstanding Warrants

As of March 14, 2018, we had warrants to purchase 339,564,098 shares of our common stock outstanding, with a weighted exercise price of \$0.0854. As of March 14, 2018, we had options to purchase 7,266,648 shares of our common stock outstanding, with a weighted exercise price of \$5.55.

These warrants are described in more detail below. In each case, the summaries provided below or elsewhere in this proxy statement are subject to and qualified in their entirety by the form of warrant or agreement, as applicable, which have been filed as exhibits to our Registration Statements on Form S-1 and/or Current Reports on Form 8-K.

February 2018 Warrants

On February 9, 2018, we sold 15,969,166 Series A Units, with each Series A Unit consisting of one share of our common stock, one Series A common stock purchase warrant, or Series A common warrant, to purchase one share of our common stock, and one Series B common stock purchase warrant, or Series B common warrant, to purchase one share of our common stock and one Series C common stock purchase warrant, or Series C common warrant, to purchase that number of shares of our common stock as set forth therein (and the shares of common stock issuable from time to time upon exercise of these common warrants) to certain institutional investors in a registered direct offering. For investors whose purchase of Series A Units would have resulted in such investor, together with its affiliates and certain related parties, beneficially owning more than 4.99% of our outstanding common stock following the closing of the offering, we offered the opportunity to purchase, in lieu of Series A Units that have would otherwise resulted in ownership in excess of 4.99% of our outstanding common stock, 30,935,833 Series B Units. Each Series B Unit consists of one pre-funded common stock purchase warrant, or pre-funded warrant, to purchase one share of our common stock, one Series A common warrant, one Series B common warrant and one Series C common warrant (the Series A common warrants, Series B common warrants, Series C common warrants and pre-funded common warrants, collectively, the February 2018 Common Warrants).

320,787,498 shares of our common stock are issuable upon exercise of the February 2018 Common Warrants.

August 2017 Warrants

On August 11, 2017, we issued and sold 14,666,667 shares of our common stock, together with warrants to purchase up to 14,666,667 shares of common stock with an initial exercise price of \$0.75 per share (the August 2017 Underwritten Warrants), subject to the adjustments set forth in the August 2017 Underwritten Warrants in an underwritten public offering. Concurrent with this offering, we entered into subscription agreements with certain of our officers and directors to issue and sell in a private placement an aggregate of 273,331 shares of common stock, together with warrants to purchase up to 273,331 shares of common stock with an initial exercise price of \$0.75 per

share of common stock (the August 2017 Private Placement Warrants and, together with the August 2017 Underwritten Warrants, the August 2017 Common Warrants).

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14,939,998 shares of our common stock are issuable upon exercise of the August 2017 Common Warrants.

January 2017 Warrants

On January 23, 2017, we issued and sold 3,684,212 shares of common stock, together with warrants to purchase up to 1,842,106 shares of Common Stock with an initial exercise price of \$5.50 per share of Common Stock (the January 2017 Warrants), subject to certain adjustments, at a price to the public of \$4.75 per fixed combination consisting of one share of common stock and associated January 2017 Warrant to purchase one-half share of our common stock. The Company also granted the underwriters a 30-day option to purchase up to an additional 552,632 shares of common stock and/or warrants to purchase 276,316 shares of common stock at the public offering price, which the underwriters exercised in full on January 27, 2017.

2,118,422 shares of our common stock are issuable upon exercise of the January 2017 Common Warrants.

Legacy Warrants

As of March 14, 2018, our outstanding warrants issued prior to our initial public offering (which we refer to as legacy warrants, and together with the January 2017 Common Warrants, August 2017 Common Warrants and February 2018 Common Warrants, the Outstanding Warrants) consist of the following (if applicable, as adjusted to reflect the effect of anti-dilution protection on the number of shares issuable upon exercise of such warrant):

On February 6, 2009, the Company issued warrants to purchase up to 159,390 shares of common stock (the February 2009 Warrants).

On April 17, 2009, the Company issued warrants to purchase up to 44,240 shares of common stock (the April 2009 Warrants).

On June 22, 2009, the Company issued warrants to purchase up to 991,217 shares of common stock common stock (the June 2009 Warrants).

On April 11, 2011, the Company issued warrants to purchase up to 523,333 shares of common stock (the 2011 Warrants).

1,718,180 shares of our common stock are issuable upon exercise of the legacy warrants.

Post-Closing Purchase Price Adjustment and Limitation on Exercise of Warrants

If at any time while any of the February 2018 Common Warrants are outstanding we issue common stock or any type of securities giving the holders thereof the right to purchase common stock at a price below the as-adjusted purchase price of the pre-funded warrants or the exercise price of the Series A common warrants and the Series B common warrants, the purchasers of the February 2018 Common Warrants will have full-ratchet anti-dilution protection on any outstanding pre-funded warrants (via an increase in the number of shares of common stock underlying the pre-funded warrants) and the Series A common warrants and Series B common warrants (via a decrease in the exercise price per share thereof), subject to a \$0.05 floor. In addition, the August 2017 Common Warrants contain full ratchet

anti-dilution protection upon the issuance of any common stock, securities convertible into common stock or certain other issuances at a price below the then-existing exercise price of the warrants, with certain exceptions. This anti-dilution protection was triggered in connection with the sale of the February 2018 Common Warrants. The June 2009 Warrants and 2011 Warrants contain anti-dilution protection in the event that we issue any common stock, securities convertible into common stock, or other securities at a price below the then-existing exercise price of such warrants, with certain exceptions. The anti-dilution protection contains a price adjustment and an adjustment to the number of shares issuable upon exercise of such warrants. This anti-dilution protection was triggered in connection with our underwritten public offerings in 2015 and in 2016, as well as by our offerings in August 2017 and February 2018. The issuance of additional securities in connection with the adjustment to the exercise price of such warrants could result in further dilution to our stockholders.

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The number of shares of common stock that we issue upon exercise or conversion of the February 2018 Common Warrants may not exceed the number of shares of common stock authorized under our certificate of incorporation, less the number of shares of common stock then outstanding or reserved for issuance upon exercise or conversion of other convertible securities that are then outstanding. Such limit may be increased by procuring an increase in the number of our authorized shares of common stock or reducing the number of outstanding shares of common stock, including through a reverse split of our common stock.

Reasons for the Proposed Increase in Number of Authorized Shares of Common Stock

We Do Not Have Sufficient Authorized Shares for Exercise of the Outstanding Warrants

The Outstanding Warrants represent the right to purchase an additional 339,564,098 shares of our common stock, accounting for anti-dilution provisions contained in the Outstanding Warrants, as applicable, that have been triggered to date.

The outstanding award agreements under the 2008 Plan and 2013 Plan represent the right (assuming all vesting conditions have been met) to purchase an additional 7,266,648 shares of our common stock.

We currently do not have sufficient shares authorized for exercise of the Outstanding Warrants and Outstanding Stock Options in full, and the Outstanding Warrants and Outstanding Stock Options will not be exercisable in full unless we file an amendment to our certificate of incorporation, subject to approval by its stockholders, to increase the number of authorized shares of the Company's common stock such that all of the Outstanding Warrants and Outstanding Stock Options may be exercised in full by the holders thereof.

Contractual Obligations Pursuant to the Outstanding Warrants

Pursuant to the terms of the Outstanding Warrants, and, as applicable, the offering or sale documents relating to the same, we are contractually obligated to reserve and keep available a sufficient number of shares of common stock for the purpose of enabling us to issue shares pursuant to contracts governing the rights and obligations of the Company and purchasers of the Outstanding Warrants with respect to the Outstanding Warrants. Pursuant to certain of the February 2018 Common Warrants and the related offering and sale documents, we are contractually obligated to keep reserved a sufficient number of shares of common stock for the purpose of enabling us to issue shares pursuant to the agreement. If on any date, the number of authorized but unissued, and otherwise unreserved, shares is insufficient to meet this obligation, then we are contractually obligated to use commercially reasonable efforts to, pursuant to the Securities Purchase Agreement, and to immediately take all action necessary to, pursuant to the February 2018 Common Warrants, amend our certificate of incorporation to increase the number of authorized shares to a minimum number calculated in accordance with the provisions of the 2018 Warrant Purchase Agreement, as soon as possible and in any event not later than the 75th day after such date. The sale of the February 2018 Common Warrants triggered this obligation. We must use our best efforts to solicit our stockholders' approval of such increase in authorized shares of common stock and to cause our Board of Directors to recommend to the stockholders that they approve such proposal.

Pursuant to certain of the Outstanding Warrants, if we fail for any reason to deliver to the holder of the warrant the shares of common stock for which the warrant has been exercised by a certain delivery date, as more fully detailed by the warrant, we shall pay to the holder, in cash, as liquidated damages and not as a penalty, for each \$1,000 of common stock shares underlying the exercise of the warrant, as calculated pursuant to the warrant, \$10 per trading day for each trading day (increasing to \$20 per trading day on the fifth such day after such liquidated damages begin to accrue) after such delivery date until such shares of common stock are delivered or the holder rescinds their exercise.

Future Capital Raising and General Corporate Purposes

In addition to being necessitated by the exercise and conversion terms of the Outstanding Warrants, our Board of Directors believes that the proposed increase in the number of authorized shares of common stock will also benefit us by improving our flexibility in considering opportunities that require the issuance of shares of common stock. The additional authorized shares will be available for issuance from time to time to enable us to respond to future business opportunities requiring the issuance of shares, including stock dividends, the consummation of equity-linked financings involving common stock or securities convertible into or exercisable for common stock (common stock derivatives) including refinancings of current or future indebtedness involving the issuance of common stock or common stock derivatives, acquisition or strategic joint venture transactions involving the issuance of common stock or common stock derivatives, grants of common stock and common stock derivatives to our current and future employees and consultants, or for other general purposes that our Board of Directors may deem advisable from time to time.

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In determining the size of the proposed authorized share increase, our Board of Directors considered a number of factors, including the factors set forth above, our historical issuances of shares and our potential future needs, including that over a number of years that we may potentially need additional shares in connection with one or more future equity transactions, acquisitions or other strategic transactions and future issuances under equity compensation plans.

Consequences of Failure to Obtain Stockholder Approval

Impact on Funding and Ability to Raise Capital

If the stockholders do not approve Proposal 1, we may also not have needed additional shares available for financing transactions or would be required to seek stockholder approval in connection with any such transaction, which could delay, prevent or otherwise have a material adverse effect on the transaction or our ability to raise capital and may cause the loss of significant business opportunities. Any of the foregoing outcomes could adversely affect our financial performance, growth and ability to continue our operations. In addition, our failure to obtain the approval of our stockholders for this Proposal 1 and fulfill our obligations to the investors as described in the purchase agreements pursuant to which investors purchased any of the Outstanding Warrants could adversely affect our ability to raise capital in the future and have a detrimental impact on our capital raising efforts. It is also possible that investors or potential new investors may be unwilling to participate in such future transactions. The exercise of Outstanding Warrants for cash provides the Company with an additional funding source, which we will forego if there are insufficient authorized shares for the exercise of the Outstanding Warrants.

Contractual Obligations Pursuant to the Outstanding Warrants

Please see the discussion under **Reasons for the Proposed Increase in Number of Authorized Shares of Common Stock** Contractual Obligations Pursuant to the Outstanding Warrants.

Principal Effects of Increase in Number of Authorized Shares of Common Stock

If stockholders approve this Proposal 1, the additional authorized common stock will have rights identical to the currently outstanding shares of our common stock. The proposed amendment will not affect the par value of the common stock, which will remain at \$0.01 per share. Approval of this Proposal 1 and issuance of the additional authorized shares of common stock would not affect the rights of the holders of currently outstanding shares of our common stock, except for effects incidental to increasing the number of shares of our common stock outstanding, such as dilution of any earnings per share and voting rights of current holders of common stock. Future issuance of common stock or securities convertible into our common stock could have a dilutive effect on the earnings per share, book value per share, voting power and percentage interest of holdings of current stockholders.

The proposed increase in the number of authorized shares of common stock will not have any immediate effect on the rights of our existing stockholders. However, our Board of Directors will have the authority to issue the additional shares of common stock without requiring future stockholder approval of such issuances, except as may be required by applicable law or rules of any stock exchange on which our securities may be listed. Stockholders do not have preemptive rights to subscribe to additional securities that we may issue, which means that current stockholders do not have a prior right thereunder to purchase any new issue of common stock, or securities that are convertible into common stock, in order to maintain their proportionate ownership interests in the Company. The issuance of additional shares of common stock may decrease the relative percentage of equity ownership of our existing stockholders, thereby diluting the voting power of their common stock. The perception that there might be additional dilution to our existing stockholders may put pressure on our stock price. We can provide no assurance that we will be

successful in amending our certificate of incorporation to increase the number of shares of common stock that are available for issuance, or that the Authorized Shares Increase Amendment will not have an adverse effect on our stock price.

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If stockholders approve this Proposal 1, then we will have sufficient shares for the exercise of the Outstanding Warrants, which, if the Outstanding Warrants are exercised, will be a source of additional funding to us via payment of the warrant exercise price.

Rights of Additional Authorized Shares

The additional authorized shares of common stock, if and when issued, would be part of the existing class of common stock and would have the same rights and privileges as the shares of common stock presently outstanding. Our stockholders do not have preemptive rights with respect to our common stock. Accordingly, should our Board of Directors elect to issue additional shares of our common stock, existing stockholders would not have any preferential rights to purchase the shares.

Effectiveness of the Authorized Shares Amendment

If the Authorized Shares Increase Amendment is approved by our stockholders, it will become effective upon the acceptance by the Secretary of State of the State of Delaware of the filing of the Authorized Shares Increase Amendment. Such filing is expected to occur promptly after stockholder approval of this proposal. If this proposal is not approved, our certificate of incorporation would remain unchanged, and the number of authorized shares of common stock would remain 250,000,000. Other than as described herein, this proposed Authorized Shares Increase Amendment effects no other changes to our certificate of incorporation.

No Appraisal Rights

Our stockholders are not entitled to dissenters' or appraisal rights under the DGCL or our certificate of incorporation and bylaws with respect to the proposed amendment to our certificate of incorporation to increase the number of authorized shares of common stock and we will not independently provide the stockholders with any such right if the increase is implemented.

Required Vote and Director Recommendation

The affirmative vote of the majority of the outstanding shares of common stock entitled to vote is required for approval of this proposal. Therefore, abstentions and broker non-votes will have the effect of a vote AGAINST this proposal. **OUR BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT YOU VOTE FOR PROPOSAL 1 TO APPROVE THE INCREASE IN THE AUTHORIZED SHARES OF COMMON STOCK.**

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PROPOSAL 2:
AMENDMENT TO THE AMENDED AND RESTATED CERTIFICATE OF
INCORPORATION TO EFFECT A REVERSE STOCK SPLIT OF
THE COMPANY'S OUTSTANDING COMMON STOCK

General

We are seeking stockholder approval for an amendment to our certificate of incorporation authorizing a reverse stock split of the issued and outstanding shares of our common stock, at a ratio within a range of fifty-to-one and not more than three-hundred-to-one (the "reverse stock split"), such ratio and the implementation and timing of such reverse stock split to be determined in the discretion of our Board of Directors. The form of the proposed amendment to our certificate of incorporation is attached to this proxy statement as Appendix B (the "Reverse Stock Split Amendment").

On [], 2018, our Board of Directors approved the proposed reverse stock split and the Reverse Stock Split Amendment in order to effect the reverse stock split, subject to stockholder approval, and directed that the Reverse Stock Split Amendment be submitted to a vote of our stockholders at the special meeting.

We are proposing that our Board of Directors have the discretion to select the reverse stock split ratio from within a range between and including fifty-to-one and three hundred-to-one, rather than proposing that stockholders approve a specific ratio at this time, in order to give our Board of Directors the flexibility to implement a reverse stock split at a ratio that reflects the Board of Directors' then-current assessment of factors including:

the minimum price per share requirements of the New York Stock Exchange (the "NYSE"), the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, or the Nasdaq Global Select Market;

the historical trading price and trading volume of our common stock;

the number of shares of our common stock outstanding;

business developments affecting us; and

prevailing general market and economic conditions.

If Proposal 2 is approved and our Board of Directors decides to implement a reverse stock split, we will file the Reverse Stock Split Amendment with the Secretary of State of the State of Delaware and the reverse stock split will be effective when it is filed with the Secretary of State of the State of Delaware, or such later time as is chosen by the Board of Directors and set forth in the Reverse Stock Split Amendment. Except for adjustments that may result from the treatment of fractional shares as described below, each of our stockholders will hold the same percentage of our outstanding common stock immediately following the reverse stock split as such stockholder holds immediately prior to the reverse stock split.

Reasons for the Reverse Stock Split

Our Board of Directors believes that the reverse stock split, if implemented, would have the effect of increasing the price of our common stock so that we can meet the price criteria for listing on a national stock exchange on which our securities may be listed.

Our common stock was formerly publicly traded and listed on the NYSE under the symbol BIOA. On February 8, 2018, the NYSE notified us that it had suspended trading in our common stock, effective immediately, and had commenced proceedings to delist our common stock from the NYSE. The NYSE took this action when the trading price of our common stock decreased to below \$0.16 per share on February 8, 2018. The NYSE, in interpreting the continued listing standards under Section 802.01D of the NYSE's Listed Company Manual, determined that a trading price of below \$0.16 per share was abnormally low and, therefore, was cause for suspension of trading and delisting from the NYSE. On February 9, 2018, our common stock started to trade on the OTC Pink Sheets Market. The NYSE's application to the SEC to delist our common stock became effective on February 27, 2018.

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We can provide no assurance that we can or will attempt to obtain or maintain a listing on a national stock exchange or market, or that our common stock will commence trading on such exchange or market (or, if commenced, continue to trade on such exchange or market), whether broker-dealers will continue to provide public quotes of our common stock on this market, whether the trading volume of our common stock will be sufficient to provide for a liquid trading market for our common stock or whether quotes for our common stock may be blocked by such exchange or market in the future. Although we expect that the reverse stock split will result in an increase in the market price of our common stock, the reverse stock split may not result in a permanent increase in the market price of our common stock, which is dependent on many factors, including general economic, market and industry conditions and other factors detailed from time to time in the reports we filed with the SEC.

Certain Risks Associated with the Reverse Stock Split

Reducing the number of outstanding shares of common stock through the reverse stock split is intended, absent other factors, to increase the per share market price of our common stock. However, other factors, including our financial results, market conditions and the market perception of our business could adversely affect the market price of our common stock. As a result, there can be no assurance that the reverse stock split, if completed, will result in the intended benefits described above, that the market price of our common stock will increase following the reverse stock split or that the market price of our common stock will not decrease in the future. Additionally, we cannot assure you that the market price of our common stock after a reverse stock split will increase in proportion to the reduction in the number of shares of our common stock outstanding before the reverse stock split. Accordingly, the total market capitalization of our common stock after the reverse stock split may be lower than the total market capitalization before the reverse stock split. If the reverse stock split is effectuated, the liquidity of our common stock could be adversely affected by the reduced number of shares that would be outstanding after the reverse stock split.

There can be no assurance that if we obtain a re-listing on a national stock exchange, the market price per new share of our common stock after the reverse stock split will remain unchanged or increase in proportion to the reduction in the number of old shares of our common stock outstanding before the reverse stock split. We are aware that in many cases, the market price of a company's shares declines after a reverse stock split is implemented.

Accordingly, the total market capitalization of our common stock after the reverse stock split, when and if implemented, may be lower than the total market capitalization before the reverse stock split. Moreover, in the future, the market price of our common stock following the reverse stock split if we obtain a re-listing may not exceed or remain higher than the market price prior to the reverse stock split.

Further, the liquidity of our capital stock may be harmed by the proposed reverse stock split given the reduced number of shares that will be outstanding after the reverse stock split, particularly if we are not able to obtain re-listing, and, if we do obtain re-listing, particularly if the stock price does not remain increased as a result of the reverse stock split. In addition, the proposed reverse stock split may increase the number of stockholders who own odd lots (less than 100 shares) of our common stock, creating the potential for such stockholders to experience an increase in the cost of selling their shares and greater difficulty effecting sales. If we effect the reverse stock split, the resulting per-share market price may not attract institutional investors and may not satisfy the investing guidelines of such investors and, consequently, the trading liquidity of our common stock may not improve.