

PROVECTUS PHARMACEUTICALS INC
Form PRE 14A
April 19, 2013

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

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-12

PROVECTUS PHARMACEUTICALS, INC.

(Name of Registrant as Specified in Its Charter)

Not Applicable

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

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(1) Amount previously paid:

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

(3) Filing party:

(4) Date filed:

7327 Oak Ridge Highway

Knoxville, TN 37931

phone 866/594-5999

fax 866/998-0005

Dear Stockholder:

You are cordially invited to attend the 2013 annual meeting of stockholders, which will be held on Thursday, June 27, 2013 at 4:00 p.m. Eastern Time at the offices of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC located at 265 Brookview Centre Way, Suite 600, Knoxville, Tennessee 37919.

The Notice and Proxy Statement on the following pages contain details concerning the business to come before the meeting.

Regardless of whether you plan to attend the 2013 annual meeting in person, please complete, sign and date the enclosed proxy card and return it promptly in the accompanying postage-paid envelope. I look forward to personally meeting all stockholders who are able to attend.

Peter R. Culpepper

Chief Financial Officer, Chief Operating Officer

and Secretary

YOUR VOTE IS IMPORTANT

TO ENSURE THAT YOU ARE REPRESENTED AT THE 2013 ANNUAL MEETING OF STOCKHOLDERS, PLEASE COMPLETE, SIGN, DATE AND PROMPTLY RETURN THE ENCLOSED PROXY IN THE ACCOMPANYING ENVELOPE, REGARDLESS OF WHETHER YOU PLAN TO ATTEND THE 2013 ANNUAL MEETING OF STOCKHOLDERS IN PERSON. NO ADDITIONAL POSTAGE IS NECESSARY IF THE PROXY IS MAILED IN THE UNITED STATES. YOU MAY REVOKE YOUR PROXY AT ANY TIME BEFORE IT IS VOTED AT THE MEETING.

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NOTICE OF 2013 ANNUAL MEETING OF STOCKHOLDERS

TO BE HELD ON JUNE 27, 2013

To the Stockholders of Provectus Pharmaceuticals, Inc.:

NOTICE IS HEREBY GIVEN that we will hold the 2013 annual meeting of stockholders of Provectus Pharmaceuticals, Inc. on Thursday, June 27, 2013 at 4:00 p.m. Eastern Time, at the offices of Baker, Donelson, Bearman, Caldwell & Berkowitz, PC located at 265 Brookview Centre Way, Suite 600, Knoxville, Tennessee 37919. The 2013 annual meeting is being held for the following purposes:

1. To elect five directors to serve on our Board of Directors for a one-year term;
 2. To approve and adopt an amendment to our Restated Articles of Incorporation, as amended, to increase the number of shares of common stock, par value \$.001 per share, that we are authorized to issue from 200,000,000 to 250,000,000 shares;
 3. To conduct an advisory vote to approve the compensation of our named executive officers; and
 4. To ratify the selection of BDO USA, LLP as our independent auditor for 2013.
- Stockholders also will transact any other business that properly comes before the 2013 annual meeting of stockholders.

OUR BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT YOU VOTE FOR PROPOSALS 1 THROUGH 4.

Only stockholders of record as of the close of business on April 29, 2013 will be entitled to notice of and to vote at the 2013 annual meeting of stockholders and any adjournment thereof.

Important Notice Regarding the Availability of Proxy Materials for the 2013 Annual Meeting of Stockholders to Be Held on June 27, 2013. This Proxy Statement and our Annual Report on Form 10-K for the year ended December 31, 2012 are available at: http://www.pvct.com/annual_reports.html.

By order of our Board of Directors,

Peter R. Culpepper

Secretary

April 30, 2013

Knoxville, Tennessee

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**PROXY STATEMENT FOR
2013 ANNUAL MEETING OF STOCKHOLDERS**

TO BE HELD ON JUNE 27, 2013

We are delivering these proxy materials to solicit proxies on behalf of the Board of Directors of Provectus Pharmaceuticals, Inc., for the annual meeting of stockholders to be held on Thursday, June 27, 2013, beginning at 4:00 p.m. Eastern Time, at 265 Brookview Centre Way, Suite 600, Knoxville, Tennessee.

We are mailing this Proxy Statement, together with a form of proxy and our annual report on Form 10-K for the year ended December 31, 2012, on or about April 30, 2013.

We will refer to your company and its subsidiaries throughout this Proxy Statement as *we*, *us*, *the Company* or *Provectus*.

At the meeting, our stockholders will vote on proposals to (1) elect five directors to serve on our Board of Directors for a one-year term; (2) approve and adopt an amendment to our Restated Articles of Incorporation, as amended, to increase the number of shares of common stock, par value \$.001 per share, that we are authorized to issue from 200,000,000 to 250,000,000 shares; (3) conduct an advisory vote to approve the compensation of our named executive officers; and (4) ratify the selection of BDO USA, LLP as our independent auditor for 2013. The proposals are set forth in the accompanying Notice of 2013 Annual Meeting of Stockholders and are described in more detail in this Proxy Statement. Stockholders also will transact any other business, not known or determined at the time of this proxy solicitation that properly comes before the 2013 annual meeting of stockholders, although our Board of Directors knows of no such other business to be presented.

OUR BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT YOU VOTE FOR PROPOSALS 1 THROUGH 4.

When you submit your proxy by executing and returning the enclosed proxy card, you will authorize the proxy holders Peter R. Culpepper and Tonya Mitchem Grindon to vote as proxy all your shares of common stock, 8% convertible preferred stock or Series A 8% convertible preferred stock and otherwise to act on your behalf at the 2013 annual meeting of stockholders and any adjournment thereof, in accordance with the instructions set forth therein. These persons also will have discretionary authority to vote your shares on any other business that properly comes before the meeting. They also may vote your shares to adjourn the meeting and will be authorized to vote your shares at any adjournment of the meeting.

YOUR VOTE IS IMPORTANT

TO ENSURE THAT YOU ARE REPRESENTED AT THE 2013 ANNUAL MEETING OF STOCKHOLDERS, PLEASE COMPLETE, SIGN, DATE AND PROMPTLY RETURN THE ENCLOSED PROXY IN THE ACCOMPANYING ENVELOPE, REGARDLESS OF WHETHER YOU PLAN TO ATTEND THE 2013 ANNUAL MEETING OF STOCKHOLDERS IN PERSON. NO ADDITIONAL POSTAGE IS NECESSARY IF THE PROXY IS MAILED IN THE UNITED STATES. YOU MAY REVOKE YOUR PROXY AT ANY TIME BEFORE IT IS VOTED AT THE MEETING.

QUESTIONS AND ANSWERS ABOUT THE 2013 ANNUAL MEETING OF STOCKHOLDERS

What is the purpose of the 2013 Annual Meeting?

At the 2013 annual meeting, stockholders will act upon the following matters:

1. To elect five directors to serve on our Board of Directors for a one-year term;
2. To approve and adopt an amendment to our Restated Articles of Incorporation, as amended, to increase the number of shares of common stock, par value \$.001 per share, that we are authorized to issue from 200,000,000 to 250,000,000 shares;
3. To conduct an advisory vote to approve the compensation of our named executive officers; and
4. To ratify the selection of BDO USA, LLP as our independent auditor for 2013.

Stockholders also will transact any other business, not known or determined at the time of this proxy solicitation that properly comes before the 2013 annual meeting of stockholders, although our Board of Directors knows of no such other business to be presented.

Who is entitled to vote?

Only stockholders of record at the close of business on April 29, 2013, the record date for the 2013 annual meeting, are entitled to receive notice of the 2013 annual meeting and to vote the shares of common stock, 8% convertible preferred stock and Series A 8% convertible preferred stock that they held on that date at the 2013 annual meeting. Each outstanding share of common stock, par value \$.001 per share, 8% convertible preferred stock, par value \$.001 per share, and Series A 8% convertible preferred stock, par value \$.001 per share, entitles its holder to cast one vote on each matter to be voted on at the 2013 annual meeting. Holders of shares of our 8% convertible preferred stock and Series A 8% convertible preferred stock vote such shares of preferred stock on a one-for-one as converted basis. The shares of common stock, 8% convertible preferred stock and Series A 8% convertible preferred stock will vote together as a single class.

Am I entitled to vote if my shares are held in street name?

If you are the beneficial owner of shares held in street name by a brokerage firm, bank, or other nominee, such entity, as the record holder of the shares, is required to vote the shares in accordance with your instructions. If you do not give instructions to your nominee, it will nevertheless be entitled to vote your shares on discretionary items but will not be permitted to do so on non-discretionary items. Proposals 1 through 3 are non-discretionary items for which a nominee will not have discretion to vote in the absence of voting instructions from you. However, Proposal 4 is a discretionary item on which your nominee will be entitled to vote your shares even in the absence of instructions from you.

What constitutes a quorum?

The presence at the 2013 annual meeting, in person or by proxy, of the holders of a majority of the shares of common stock, 8% convertible preferred stock and Series A 8% convertible preferred stock (on an as-converted basis) outstanding on the record date will constitute a quorum.

As of March 31, 2013, there were 124,550,960 outstanding shares of common stock, 1,885,185 outstanding shares of 8% convertible preferred stock and 3,400,001 outstanding shares of Series A 8% convertible preferred stock, for a total of 129,836,146 shares of capital stock outstanding. Shares held by stockholders present at the 2013 annual meeting in person or represented by proxy who elect to abstain from voting nonetheless will be included in the calculation of the number of shares considered present at the 2013 annual meeting.

What happens if a quorum is not present at the 2013 annual meeting?

If a quorum is not present at the scheduled time of the meeting, the holders of a majority of the shares of common stock, 8% convertible preferred stock and Series A 8% convertible preferred stock present in person or represented by proxy at the meeting may adjourn the meeting to another place, date, or time until a quorum is present. The place, date, and time of the adjourned meeting will be announced when the adjournment is taken, and no other notice will be given unless the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting.

How do I vote?

If you complete and properly sign the accompanying proxy card and return it to us, the proxy holders named on the proxy card will vote your shares as you direct. If you are a registered stockholder and attend the 2013 annual meeting, you may deliver your completed proxy card or vote in person at the 2013 annual meeting. If you hold your shares in a brokerage account or in street name and you wish to vote at the 2013 annual meeting, you will need to obtain a proxy from the broker or other nominee who holds your shares.

Can I change my vote after I return my proxy card?

Yes. Even after you have submitted your proxy card, you may change your vote at any time before the proxy is exercised by filing with the Secretary either a notice of revocation or a duly executed proxy card bearing a later date. If you are a street name stockholder, you must contact your broker or other nominee and follow its instructions if you wish to change your vote. The powers of the proxy holders will be suspended if you attend the 2013 annual meeting in person and so request, although your attendance at the 2013 annual meeting will not by itself revoke a previously granted proxy.

What are the Board's recommendations?

Our Board of Directors unanimously recommends that you vote:

1. FOR the election of five directors to serve on our Board of Directors for a one-year term;
2. FOR the approval of an amendment to our Restated Articles of Incorporation, as amended, to increase the number of shares of common stock, par value \$.001 per share, that we are authorized to issue from 200,000,000 to 250,000,000 shares;
3. FOR the advisory vote to approve the compensation of our named executive officers; and
4. FOR ratification of the selection of BDO USA, LLP as our independent auditor for 2013.

What happens if I do not specify how my shares are to be voted?

If you submit a proxy but do not indicate any voting instructions, your shares will be voted FOR each of Proposals 1 through 4.

Will any other business be conducted at the 2013 annual meeting?

As of the date hereof, our Board of Directors knows of no business that will be presented at the meeting other than the proposals described in this Proxy Statement. If any other business is properly brought before the 2013 annual meeting, the proxy holders will vote your shares in accordance with their best judgment.

What vote is required to approve each item?

1. The director nominees will be elected to serve on our Board of Directors for a term of one year if they receive a plurality of the votes cast on the shares of common stock, 8% convertible preferred stock and Series A 8% convertible preferred stock present in person or represented by proxy at the 2013 annual meeting and entitled to vote on the subject matter. This means that the director nominees will be elected if they receive more votes than any other person at the 2013 annual meeting. If you vote to Withhold Authority with respect to the election of one or more director nominees, your shares of common stock, 8% convertible preferred stock and Series A 8% convertible preferred stock will not be voted with respect to the person or persons indicated, although they will be counted for the purpose of determining whether there is a quorum at the meeting.
2. The amendment to our Restated Articles of Incorporation, as amended, to increase the number of shares of common stock, par value \$.001 per share, that we are authorized to issue from 200,000,000 to 250,000,000 will be approved if a majority of the outstanding shares of common stock, 8% convertible preferred stock and Series A 8% convertible preferred stock entitled to vote in person or by proxy are voted in favor of the amendment.
3. The advisory vote to approve the compensation of our named executive officers will be approved if a majority of the shares of common stock, 8% convertible preferred stock and Series A 8% convertible preferred stock present in person or represented by proxy at the 2013 annual meeting and entitled to vote on the subject matter are voted in favor of the proposal.
4. The selection of BDO USA, LLP as our independent auditor for 2013 will be ratified if a majority of the shares of common stock, 8% convertible preferred stock and Series A 8% convertible preferred stock present in person or represented by proxy at the meeting and entitled to vote on the subject matter are voted in favor of the proposal.

How will Abstentions and Broker Non-Votes be Treated?

You do not have the option of abstaining from voting on Proposal 1, but you may abstain from voting on Proposals 2 through 4. With respect to Proposal 1, because the directors are elected by a plurality vote, an abstention will have no effect on the outcome of the vote and, therefore, is not offered as a voting option on the proposal. In the case of an abstention on Proposals 2 through 4, your shares of common stock, 8% convertible preferred stock and Series A 8% convertible preferred stock would be included in the number of shares of common stock, 8% convertible preferred stock and Series A 8% convertible preferred stock considered present at the meeting for the purpose of determining whether there is a quorum. Because your shares of common stock, 8% convertible preferred stock and Series A 8% convertible preferred stock would be voted but not in favor of Proposals 2 through 4, your abstention would have the same effect as a negative vote in determining the outcome of the vote on the proposal.

Broker non-votes occur when a brokerage firm, bank, or other nominee does not vote shares that it holds in street name on behalf of the beneficial owner because the beneficial owner has not provided voting instructions to the nominee with respect to a non-discretionary item. Proposals 1 through 3 are non-discretionary items for which a nominee will not have discretion to vote in the absence of voting instructions from you. However, Proposal 4 is a discretionary item on which your nominee will be entitled to vote your shares of common stock, 8% convertible preferred stock and Series A 8% convertible preferred stock even in the absence of instructions from you. Accordingly, it is possible for there to be broker non-votes with respect to Proposals 1 through 3, but there will not be broker non-votes with regard to Proposal 4. In the case of a broker non-vote, your shares of common stock, 8% convertible preferred stock and Series A 8% convertible preferred stock would be included in the number of shares of common stock, 8% convertible preferred stock and Series A 8% convertible preferred stock considered present at the meeting for the purpose of determining whether there is a quorum. A broker non-vote, being shares of common stock, 8% convertible preferred stock and Series A 8% convertible preferred stock not entitled to vote, would not have any effect on the outcome of the vote on Proposals 1 through 3.

STOCK OWNERSHIP

Directors, Executive Officers, and Other Stockholders

The following table provides information about the beneficial ownership of common stock as of April 1, 2013, by each of our directors, each of our executive officers named in the Summary Compensation Table of this Proxy Statement and all of our directors and executive officers as a group. With the exception of Dr. Wachter, we do not believe any person beneficially owns more than 5% of our outstanding common stock. Each outstanding share of common stock entitles its holder to cast one vote on each matter to be voted on at the 2013 annual meeting, and holders of shares of 8% convertible preferred stock and Series A 8% convertible preferred stock are entitled to vote their shares of 8% convertible preferred stock and Series A 8% convertible preferred stock on a one-for-one as-converted basis with the holders of shares of common stock. Holders of 8% convertible preferred stock and Series A 8% convertible preferred stock will be entitled to cast one vote on each matter to be voted at the 2013 annual meeting and will not vote as a separate class.

Name and Address ⁽¹⁾	Amount and Nature of Beneficial Ownership ⁽²⁾	Percentage of Class ⁽³⁾
Directors and Executive Officers:		
H. Craig Dees	5,997,859 ⁽⁴⁾	4.7%
Peter R. Culpepper	4,708,332 ⁽⁵⁾	3.7%
Timothy C. Scott	5,955,966 ⁽⁶⁾	4.6%
Eric A. Wachter	7,889,017 ⁽⁷⁾	6.2%
Alfred E. Smith IV	100,000 ⁽⁸⁾	*
Kelly M. McMasters	250,000 ⁽⁹⁾	*
Jan Koe	886,300 ⁽¹⁰⁾	*
All directors and executive officers as a group (7 persons)	25,787,474 ⁽¹¹⁾	18.4%

* Less than 1% of the outstanding shares of common stock.

(1) If no address is given, the named individual is an officer or director of Provectus Pharmaceuticals, Inc., whose business address is 7327 Oak Ridge Highway, Knoxville, TN 37931.

(2) Shares of common stock that a person has the right to acquire within 60 days of April 1, 2013 are deemed outstanding for computing the percentage ownership of the person having the right to acquire such shares, but are not deemed outstanding for computing the percentage ownership of any other person. Except as indicated by a note, each stockholder listed in the table has sole voting and investment power as to the shares owned by that person.

(3) As of April 1, 2013, there were 124,550,960 shares of common stock issued and outstanding.

(4) Dr. Dees' beneficial ownership includes 4,543,750 shares of common stock subject to options which are exercisable within 60 days.

(5) Mr. Culpepper's beneficial ownership includes 3,497,958 shares of common stock subject to options which are exercisable within 60 days and 266,666 shares of common stock issuable upon the exercise of warrants.

(6) Dr. Scott's beneficial ownership includes 55,996 shares of common stock held by Scott Family Investment Limited Partnership, a limited partnership established for the benefit of Dr. Scott's family, and 4,500,000 shares of common stock subject to options which are exercisable within 60 days.

- (7) Dr. Wachter's beneficial ownership includes 4,867 shares of common stock held by the Eric A. Wachter 1998 Charitable Remainder Unitrust, 1,824,248 shares of common stock subject to options which are exercisable within 60 days and 666,666 shares of common stock issuable upon the exercise of warrants.
- (8) Mr. Smith's beneficial ownership includes 100,000 shares of common stock subject to options which are exercisable within 60 days.
- (9) Dr. McMasters' beneficial ownership includes 250,000 shares of common stock subject to options which are exercisable within 60 days.
- (10) Mr. Koe's beneficial ownership includes 50,000 shares of common stock subject to options which are exercisable within 60 days, 150,000 shares of common stock held by Vekoe Partners LLC, of which Mr. Koe is an affiliate, and 200,000 shares of common stock issuable upon the exercise of warrants. Mr. Koe disclaims beneficial ownership of the shares held by Vekoe Partners LLC except to the extent of his pecuniary interest therein.
- (11) Includes 15,899,288 shares of common stock subject to options and warrants which are exercisable within 60 days.

Section 16(a) Beneficial Ownership Reporting Compliance

The federal securities laws require our directors and executive officers and persons who beneficially own more than 10% of a registered class of our equity securities to file with the SEC initial reports of ownership and reports of changes in ownership of our securities. Based solely on our review of the copies of these forms received by us or representations from reporting persons, we believe that SEC beneficial ownership reporting requirements for 2012 were met.

CORPORATE GOVERNANCE

Board Leadership Structure

Our Board of Directors consists of five members, H. Craig Dees, Timothy C. Scott, Jan E. Koe, Kelly M. McMasters and Alfred E. Smith, IV. Dr. Dees, who is our Chief Executive Officer, serves as chairman of our Board of Directors. Three members of our Board of Directors, Mr. Koe, Dr. McMasters and Mr. Smith, are considered independent under the independence standards of the Nasdaq Stock Market. Our Board of Directors considered the payment of consulting fees by the Company to Dr. McMasters in the amount of \$54,000 for consulting services performed in 2012 in connection with scientific and technical issues in clinical development and overseeing our compassionate use program and the payment of consulting fees in the amount of \$75,000 paid by the Company to each of Mr. Smith and Mr. Koe for consulting services performed in 2012 with respect to investor relations in determining that each of Dr. McMasters and Messrs. Koe and Smith are independent under the independence standards of the Nasdaq Stock Market.

We believe that the leadership structure of our Board of Directors is appropriate given that we have only four employees. In addition, our entire Board of Directors is responsible for our risk oversight function due to the fact that we have only four employees, two of whom are members of our Board of Directors.

Board of Directors and Committees

Our Board of Directors met one time and took action by unanimous written consent twenty times during 2012. Each member of our Board of Directors attended or took action by unanimous consent more than 75% of the total number of meetings and written actions of our Board of Directors and its committees on which he served during 2012. Members of our Board of Directors are encouraged to attend the 2013 annual meeting of stockholders. A majority of the members of our Board of Directors attended the 2012 annual meeting of stockholders either in person or via telephone conference.

Because our Board of Directors consists of only five members and our operations remain amenable to oversight by a limited number of directors, our Board of Directors had not delegated any of its functions to standing committees prior to July 2, 2012. Accordingly, prior to July 2, 2012, our entire Board of Directors acted as our audit committee, nominating committee, and compensation committee. Effective July 2, 2012, our Board of Directors established an audit committee, corporate governance and nominating committee (the nominating committee) and a compensation committee and appointed Jan E. Koe, Kelly M. McMasters and Alfred E. Smith, IV to serve on each of these committees. Beginning July 2, 2012, all members of the audit committee, the compensation committee and the nominating committee are independent under the independence standards of the Nasdaq Stock Market. Prior to July 2, 2012, Drs. Dees, Scott and Wachter, each of whom were not independent under the independence standards of the Nasdaq Stock Market, served on our audit committee, nominating committee, and compensation committee. Dr. Wachter resigned from our Board of Directors effective May 14, 2012. We believe that all members of our Board of Directors have been and remain qualified to serve on the committees of our Board of Directors and have the experience and knowledge to perform the duties required of the committees.

Audit Committee

The audit committee currently consists of Jan E. Koe, Kelly M. McMasters and Alfred E. Smith, IV, all of whom are independent directors under the listing standards of the Nasdaq Stock Market. Our Board of Directors has determined that Alfred E. Smith, IV qualifies as an audit committee financial expert, as defined under the rules of the SEC. The audit committee met four times during 2012.

The audit committee's responsibilities include:

hire one or more independent registered public accountants to audit our books, records and financial statements and to review our systems of accounting (including our systems of internal control);

discuss with the independent registered public accounting firm the results of the annual audit and quarterly reviews;

conduct periodic independent reviews of the systems of accounting (including systems of internal control);

make reports periodically to our Board of Directors with respect to its findings; and

undertake other activities described more fully in the section called "Audit Committee Report."

Our audit committee charter is posted on our website at <http://www.pvct.com/AuditCommitteeCharter.html> and is also available in print to any stockholder or other interested party who makes such a request to the Company's Secretary. The information on our website, however, is not a part of this Proxy Statement.

Compensation Committee

The compensation committee currently consists of Jan E. Koe, Kelly M. McMasters and Alfred E. Smith, IV, all of whom are independent directors under the listing standards of the Nasdaq Stock Market. The compensation committee met four times during 2012.

The compensation committee's responsibilities include: