

Accelerate Diagnostics, Inc
Form PRE 14C
June 04, 2013

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

SCHEDULE 14C

**Information Statement Pursuant to Section 14(c)
of the Securities Exchange Act of 1934**

(Amendment No.)

Check the appropriate box:

Preliminary Information Statement

Confidential, for Use of the Commission Only (as permitted by Rule 14c-5(d)(2))

Definitive Information Statement

Accelerate Diagnostics, Inc.

(Name of Registrant as Specified In Its Charter)

Payment of Filing Fee (Check the appropriate box):

No fee required.

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.. Fee computed below per Exchange Act Rules 14c-5(g) 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:

4) Proposed maximum aggregate value of securities:

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:

ACCELERATE DIAGNOSTICS, INC.

3950 South Country Club Road, Suite 470

Tucson, Arizona 85714

(520) 365-3100

NOTICE OF ACTION TAKEN BY

WRITTEN CONSENT OF STOCKHOLDERS

WE ARE NOT ASKING YOU FOR A PROXY AND

YOU ARE REQUESTED NOT TO SEND US A PROXY

June , 2013

To the Stockholders of Accelerate Diagnostics, Inc.:

NOTICE IS HEREBY GIVEN that the Board of Directors (the “Board”) of Accelerate Diagnostics, Inc., a Delaware corporation (the “Company,” “we,” “us” or “our”), has unanimously approved, and the holders of a majority of the outstanding shares of our common stock, par value \$0.001 per share (the “Common Stock”), have executed an Action by Written Consent of Stockholders approving, an amendment (the “Amendment”) to our Certificate of Incorporation (the “Certificate of Incorporation”) to (i) increase the total number of authorized shares of the Company’s capital stock to 60,000,000 shares and (ii) increase the number of authorized shares of Common Stock to 55,000,000 shares. Previously, the Certificate of Incorporation authorized the Company to issue 50,000,000 shares of capital stock, including 45,000,000 shares of Common Stock.

The accompanying Information Statement, which describes the Amendment in more detail and provides our stockholders with other important information, is being furnished to our stockholders for informational purposes only, pursuant to Section 14(c) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and the rules and regulations promulgated thereunder. This Notice and the accompanying Information Statement also serve as notice pursuant to Section 228(e) of the Delaware General Corporation Law and the Exchange Act of the approval by less than the unanimous written consent of the stockholders of the Company with respect to the proposed Amendment. Under the Delaware General Corporation Law, our Certificate of Incorporation and our Bylaws, stockholder action

may be taken by written consent without a meeting of stockholders. The Action by Written Consent of Stockholders referenced above, which was executed and delivered to the Company on May 31, 2013 by holders of 21,237,672 shares of our Common Stock (representing approximately 54.7% of the 38,845,209 shares of Common Stock outstanding as of such date), was sufficient to approve the proposed Amendment. Pursuant to Rule 14c-2(b) promulgated under the Exchange Act, the Amendment will not be effected until at least 20 calendar days following the mailing of the accompanying Information Statement to our stockholders. This Information Statement will first be mailed to stockholders on or about June , 2013.

Your consent regarding the proposed Amendment is not required and is not being solicited in connection with this corporate action. **We are not asking you for a proxy and you are requested not to send us a proxy.** The accompanying Information Statement is provided solely for your information.

By order of the Board of Directors,

/s/ Lawrence Mehren

Lawrence Mehren
President and Chief Executive Officer

ACCELERATE DIAGNOSTICS, INC.

3950 South Country Club Road, Suite 470

Tucson, Arizona 85714

(520) 365-3100

INFORMATION STATEMENT

THE ACCOMPANYING MATERIAL IS BEING PROVIDED TO YOU FOR INFORMATIONAL PURPOSES ONLY. NO VOTE OR OTHER ACTION OF OUR STOCKHOLDERS IS REQUIRED IN CONNECTION WITH THE MATTERS DESCRIBED IN THIS INFORMATION STATEMENT.

**WE ARE NOT ASKING YOU FOR A PROXY AND
YOU ARE REQUESTED NOT TO SEND US A PROXY.**

**THIS INFORMATION STATEMENT WILL FIRST BE MAILED TO
STOCKHOLDERS ON OR ABOUT JUNE , 2013.**

Accelerate Diagnostics, Inc., a Delaware corporation (the “Company,” “we,” “us” or “our”), is sending you this Information Statement solely for the purpose of informing you, as one of our stockholders, in the manner required under Regulation 14C promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), that our Board of Directors (the “Board”) has unanimously approved, and the holders of a majority of the outstanding shares of our common stock, par value \$0.001 per share (the “Common Stock”), have executed an Action by Written Consent of Stockholders approving, an amendment (the “Amendment”) to our Certificate of Incorporation (the “Certificate of

Incorporation”) to (i) increase the total number of authorized shares of the Company’s capital stock to 60,000,000 shares and (ii) increase the number of authorized shares of Common Stock to 55,000,000 shares. Previously, the Certificate of Incorporation authorized the Company to issue 50,000,000 shares of capital stock, including 45,000,000 shares of Common Stock. No vote or other action is requested or required on your part.

QUESTIONS AND ANSWERS REGARDING THE AMENDMENT TO OUR CERTIFICATE OF INCORPORATION

Q1: What corporate actions were approved by the Action by Written Consent of the Stockholders?

Pursuant to the Action by Written Consent of Stockholders, holders of a majority of the outstanding shares of our Common Stock approved the Amendment described above, which will (i) increase the total number of authorized shares of the Company’s capital stock to 60,000,000 shares and (ii) increase the number of authorized shares of
A1: Common Stock to 55,000,000 shares. Previously, the Certificate of Incorporation authorized the Company to issue 50,000,000 shares of capital stock, including 45,000,000 shares of Common Stock. A copy of the Action by Written Consent of Stockholders is attached as Annex A to this Information Statement and incorporated herein by reference.

Q2: Why is the Company increasing the number of shares of Common Stock that it is authorized to issue?

The Board believes that the increase in the number of authorized shares of Common Stock is in the best interests of the Company and will provide the Company with available shares that may be issued for various corporate purposes, including equity financings, acquisitions, stock dividends, stock options and warrants. Specifically, the Amendment was approved to facilitate a rights offering (the “Rights Offering”), whereby the Company would issue
A2: and offer to each of its existing stockholders the opportunity to purchase his, her or its pro rata share of newly issued Common Stock at a specified price per share, consistent with the terms of the Rights Offering approved by the Board on May 31, 2013. The Board also believes that the increase in the number of authorized shares of Common Stock will enable the Company to benefit from market conditions and any favorable financing opportunities in the future without further delay and expense to the Company.

Q3: How many shares of Common Stock were voted in favor of the Amendment?

The approval of the Amendment required the written consent of the holders of at least a majority of the outstanding shares of our Common Stock. Each share of our Common Stock is entitled to one vote in connection with the Amendment. The Action by Written Consent of Stockholders referenced above, which was executed and delivered to the Company on May 31, 2013 by holders of 21,237,672 shares of our Common Stock (representing approximately 54.7% of the 38,845,209 shares of Common Stock outstanding as of such date), was sufficient to approve the proposed Amendment. Consequently, no additional votes are required to approve the Amendment. The following stockholders executed the Action by Written Consent:

- A3: The John Patience Trust Dated 7/23/1993 (3,822,525 shares)
Patience Enterprises LP (1,911,263 shares)
Schuler Grandchildren LLC (600,000 shares)
Schuler GC 2010 Continuation Trust (600,000 shares)
Jack W. Schuler Living Trust (6,843,004 shares)
MAB, LLC (1,576,792 shares)
Matthew W. Strobeck (1,911,263 shares)
Oracle Partners, LP (3,533,409 shares)
Oracle Institutional Partners, LP (439,416 shares)

All such stockholders (or the beneficial owners of the shares held by such stockholders) are listed below in the "Security Ownership of Certain Beneficial Owners and Management" section of this Information Statement.

Q4: Why is the Company amending its Certificate of Incorporation through stockholder action by written consent in lieu of holding a meeting of our stockholders?

- A4: Under the Delaware General Corporation Law, our Certificate of Incorporation and our Bylaws, the Company's stockholders may take action by written consent in lieu of holding a meeting. To avoid the significant time and expense associated with calling and holding a special meeting of the Company's stockholders, the stockholders listed above (which held a sufficient number of shares of outstanding Common Stock to approve the Amendment without requiring the Company to solicit its proxy, or the proxy of any other stockholder) determined to take action by written consent. Therefore, the Company is not required to solicit the vote or consent of any stockholders to effect the Amendment. However, the Company is obligated by the Delaware General Corporation Law and federal securities laws to provide this Information Statement to you in connection with the Amendment.

Q5: Has the Board approved the Amendment?

- A5: Yes. On May 31, 2013, the Board unanimously approved the Amendment, declared its advisability, and recommended that our stockholders approve the Amendment.

Q6: When will the Amendment be effective?

- A6: The Amendment will become effective filing with the Secretary of State of the State of Delaware. Pursuant to Rule 14c-2(b) promulgated under the Exchange Act, such filing will not occur until at least 20 calendar days

following the mailing of this Information Statement to our stockholders. The Company currently anticipates that the Amendment will be filed and take effect on or about June , 2013.

Q7: Can I dissent or exercise appraisal rights in connection with the Amendment?

Pursuant to the Delaware General Corporation Law, our Certificate of Incorporation and our Bylaws, our **A7**: stockholders are not entitled to exercise appraisal or other dissenters' rights in connection with the Amendment or the other matters described in this Information Statement.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth information regarding the beneficial ownership of our Common Stock as of May 31, 2013 of (i) each named executive officer and each director of the Company, (ii) all named executive officers and directors as a group, and (iii) each person known to the Company to be the beneficial owner of more than five percent (5%) of our Common Stock. We deem shares of our Common Stock that may be acquired by an individual or group within 60 days of May 31, 2013, pursuant to the exercise of options or warrants or conversion of convertible securities, to be outstanding for the purpose of computing the percentage ownership of such individual or group, but such shares are not deemed to be outstanding for the purpose of computing the percentage ownership of any other individual or group shown in the table. Percentage of ownership is based on 38,845,209 shares of Common Stock outstanding on May 31, 2013. The information as to beneficial ownership was either (y) furnished to us by or on behalf of the persons named or (z) determined based on a review of the beneficial owners' Schedules 13D/G and Section 16 filings with respect to our Common Stock. Unless otherwise indicated, the business address of each person listed is c/o Accelerate Diagnostics, Inc., 3950 South Country Club Road, Suite 470, Tucson, Arizona 85714.

Name of Beneficial Owner	Amount & Nature of Beneficial Ownership	Percentage of Class	
Named Executive Officers and Directors:			
Lawrence Mehren (1)	2,682,389	6.7	%
John Patience (2)	5,744,956	14.8	%
Jack Schuler (3)	8,054,172	20.7	%
Matthew W. Strobeck, Ph.D. (4)	1,922,431	4.9	%
Frank J.M. ten Brink (5)	11,168	*	
Steven Reichling	100	*	
All named executive officers and directors as a group (6 persons)	18,415,216	46.0	%
Beneficial Owners of 5% of Common Stock:			
Larry Feinberg (6)	3,972,825	10.23	%
Oracle Associates, LLC (6)	3,972,825	10.23	%
Oracle Partners, LP (6)	3,533,409	9.1	%

*Represents less than one percent (1%) of our issued and outstanding Common Stock.

Mr. Mehren is a director of the Company and is the Company's President and Chief Executive Officer. Amount includes 580,000 shares issuable to him upon the exercise of stock options that are vested or vest within 60 days of (1) the date hereof. Amount also includes 1,576,792 shares and warrants to purchase an additional 525,597 shares held by MAB, LLC. Mr. Mehren disclaims beneficial ownership of these securities except to the extent of his pecuniary interest therein.

Mr. Patience is the Chairman of the Board. Amount includes 3,822,525 shares held by the John Patience Trust dated 7/23/1993 and 1,911,263 shares held by Patience Enterprises LP. Mr. Patience disclaims beneficial (2) ownership of these securities except to the extent of his pecuniary interest therein. Amount also includes options to purchase 11,168 shares of Common Stock that are vested or will vest within 60 days.

- Mr. Schuler is a director of the Company. Amount includes 600,000 shares held by Schuler Grandchildren LLC (Mr. Schuler has sole voting and dispositive power with respect to such shares in his capacity as manager of the entity); 600,000 shares held by Schuler GC 2010 Continuation Trust (Mr. Schuler has shared voting and dispositive power with respect to such shares in his capacity as the grantor of the trust); and 6,843,004 shares held by the Jack W. Schuler Living Trust (Mr. Schuler has sole voting and dispositive power with respect to such shares in his capacity as trustee of the trust). Mr. Schuler disclaims beneficial ownership of these securities except to the extent of his pecuniary interest therein. Amount also includes options to purchase 11,168 shares of Common Stock that are vested or will vest within 60 days.
- (3)
- Dr. Strobeck is a director of the Company. Amount includes options to purchase 11,168 shares of Common Stock that are vested or will vest within 60 days.
- (4)
- Mr. ten Brink is a director of the Company. Reflects options to purchase 11,168 shares of Common Stock that are vested or will vest within 60 days.
- (5)
- Based on a Schedule 13G jointly filed by Larry Feinberg, Oracle Associates, LLC, Oracle Partners, LP, and Oracle Institutional Partners, LP with the SEC on or about March 18, 2013. Each of Mr. Feinberg and Oracle Associates, LLC reported shared voting and dispositive power with respect to 3,533,409 shares of Common Stock held by Oracle Partners, LP and 439,416 shares of Common Stock held by Oracle Institutional Partners, LP. Each of Oracle Partners, LP and Oracle Institutional Partners, LP reported shared voting and dispositive power with respect to the shares of Common Stock held directly by such entity. The address of the principal business office of such reporting persons is 200 Greenwich Avenue, 3rd Floor, Greenwich, Connecticut 06830.
- (6)

INTERESTS OF CERTAIN PERSONS IN OR OPPOSITION TO MATTERS TO BE ACTED UPON

Except as specifically described below or relating to the interests held by such persons through their respective beneficial ownership of the shares of our Common Stock set forth above in the section entitled “Security Ownership of Certain Beneficial Owners and Management,” none of the persons who have served as our officers or directors since the beginning of our last fiscal year, or any associates of such persons, have any substantial interest, direct or indirect, in the Amendment.

Rights Offering—Standby Purchase Agreement with Abeja Ventures, LLC

In connection with the Rights Offering referenced above, we have entered into a Standby Purchase Agreement with Abeja Ventures, LLC (the “Standby Purchaser”), pursuant to which the Standby Purchaser has agreed to acquire from the Company, at the applicable per share subscription price established under the terms of the Rights Offering, any shares of Common Stock that are not subscribed for in connection with the Rights Offering by the record holders of the Company’s common stock (including pursuant to their basic subscription privileges and over-subscription privileges, as specified in the Rights Offering documents). Messrs. Mehren, Patience, Schuler and Strobeck are all directors of the Company and also owners of membership interests in Abeja (either individually or through trusts or entities controlled by them).

To the extent that shares of Common Stock are not subscribed for in connection with the Rights Offering, assuming the Rights Offering is consummated, the Standby Purchaser will acquire such unsubscribed shares, and the beneficial ownership and relative voting power of each of Messrs. Mehren, Patience, Schuler and Strobeck will increase (directly and/or indirectly) as a result of the transactions contemplated by the Standby Purchase Agreement. As noted above, the Standby Purchaser will pay the applicable per share subscription price payable by all stockholders in connection with the Rights Offering for any shares purchased by it pursuant to the Standby Purchase Agreement. In addition, neither the Standby Purchaser nor any of its members or affiliates (including Messrs. Mehren, Patience, Schuler and Strobeck) will receive any fees or other compensation from the Company in exchange for its commitment under the Standby Purchase Agreement. Nevertheless, to the extent that the Amendment is a condition precedent to the Company's ability to undertake and consummate the Rights Offering and the transactions contemplated by the Standby Purchase Agreement, each of Messrs. Mehren, Patience, Schuler and Strobeck have an interest in these matters based on their membership interests in the Standby Purchaser.

EXPENSE OF INFORMATION STATEMENT

The expenses of preparing and mailing this Information Statement will be borne by the Company. Copies of this Information Statement may be obtained at no charge by writing us at: Accelerate Diagnostics, Inc., 3950 South Country Club Road, Suite 470, Tucson, Arizona 85714, Attn: Steven Reichling, Chief Financial Officer. The Information Statement is also available at: <http://www.acceleratediagnostics.com>.

ADDITIONAL INFORMATION

We file annual, quarterly and current reports, proxy statements, and registration statements with the Securities and Exchange Commission ("SEC"). These filings are available to the public via the Internet at the SEC's website at <http://www.sec.gov>. You may also read and copy any document we file with the SEC without charge at the public reference facility maintained by the SEC at 100 F Street, N.E., Washington, D.C. 20549. You may also obtain copies of the documents at prescribed rates by writing to the Public Reference Section of the SEC at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference facilities.

Accelerate Diagnostics, Inc.

/s/ Lawrence Mehren

Lawrence Mehren

President and Chief Executive Officer

June , 2013

ANNEX A

**ACTION BY WRITTEN CONSENT
OF THE
STOCKHOLDERS**

The undersigned, consisting of the stockholders of Accelerate Diagnostics, Inc., a Delaware corporation (the “Corporation”), holding a majority of the outstanding shares of the Corporation’s capital stock entitled to vote on the matters described herein, hereby consent to the following resolutions, by written consent in lieu of a meeting, pursuant to Section 228 of the General Corporation Law of the State of Delaware and the Bylaws of the Corporation:

Approval of Charter Amendment; Increase in Authorized Common Stock

WHEREAS, to raise additional funding for working capital and other corporate purposes, the Board of Directors of the Corporation (the “Board”) has determined that it would be advisable and in the best interests of the Corporation to undertake a rights offering (the “Rights Offering”), whereby the Corporation would issue and offer to each of its existing stockholders as of the record date established by the Board the opportunity to purchase his, her or its pro rata share of newly issued common stock of the Corporation, par value \$0.001 per share (“Common Stock”), at the price and on the other terms and conditions approved by the Board;

WHEREAS, the Corporation must amend its Certificate of Incorporation to increase the number of authorized but unissued shares of Common Stock in order to make the Rights Offering feasible;

WHEREAS, the Board has approved, declared the advisability of and recommended that the Corporation’s stockholders approve a proposed amendment to the Certificate of Incorporation in substantially the form attached hereto as Exhibit A (the “Charter Amendment”), which Charter Amendment would (i) increase the total number of authorized shares of the Corporation’s capital stock to 60,000,000 shares and (ii) increase the number of authorized shares of Common Stock to 55,000,000 shares; and

WHEREAS, by execution of this Action by Written Consent, each of the undersigned stockholders desires to approve, authorize, ratify and confirm the Charter Amendment.

NOW, THEREFORE BE IT RESOLVED, that the Charter Amendment, in the form attached hereto as Exhibit A, be, and the same hereby is, approved, authorized, ratified and confirmed in all respects and for all purposes;

FURTHER RESOLVED, that upon receipt of executed counterparts of this written consent from the stockholders holding such number of shares as shall be necessary to approve the Charter Amendment, Lawrence Mehren, Steve Reichling or such other officer(s) designated by them (the "Designated Officers"), be, and each of the Designated Officers acting alone hereby is, authorized, empowered and directed, in the name and on behalf of the Corporation, to take such actions as shall be necessary to effect the filing of the Charter Amendment with the Secretary of State of the State of Delaware, in accordance with the General Corporation Law of the State of Delaware.

General Resolutions

RESOLVED, that all actions taken by the officers and directors of the Corporation, for and on behalf of the Corporation, in connection with or furtherance of the matters described herein, be, and they hereby are, approved, ratified and confirms as the acts of the Corporation; and

RESOLVED, that this Action by Written Consent may be executed in one or more counterparts, all of which together shall be deemed to be one and the same instrument.

EXHIBIT A

**CERTIFICATE OF AMENDMENT
TO THE
CERTIFICATE OF INCORPORATION
OF
ACCELERATE DIAGNOSTICS, INC.**

Accelerate Diagnostics, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the “Corporation”), hereby certifies as follows:

FIRST: That the following resolutions were duly adopted by the Corporation’s Board of Directors, in accordance with the Corporation’s Bylaws and the General Corporation Law of the State of Delaware, setting forth a proposed amendment to the Certificate of Incorporation of the Corporation as follows:

RESOLVED, that the Certificate of Incorporation be amended by deleting the current text of the first paragraph of Article IV (Capital Stock) in its entirety and replacing it with the following text (the “Amendment”):

“The Corporation shall be authorized to issue two classes of shares of capital stock, to be designated, respectively, “Common Stock” and “Preferred Stock.” The total number of shares of Common Stock and Preferred Stock that the Corporation shall have the authority to issue is sixty million (60,000,000), of which fifty-five million (55,000,000) shares shall be Common Stock, par value \$0.001 per share, and five million (5,000,000) shares shall be Preferred Stock, par value \$0.001 per share.”

FURTHER RESOLVED, any officer of the Corporation is authorized and directed to execute and file the Amendment with the Secretary of State of the State of Delaware and to take such further actions and execute such additional documents and make such additional filings as such officer shall determine to be necessary or appropriate to effectuate the foregoing resolutions.

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FURTHER RESOLVED, that all actions heretofore taken by the officers, directors, or agents of the Corporation relating to the foregoing resolutions, be, and they are hereby, approved, adopted, ratified, and confirmed in all respects.

SECOND: The foregoing Amendment to the Certificate of Incorporation was duly adopted by the Corporation's Board of Directors by written consent in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

THIRD: The foregoing Amendment to the Certificate of Incorporation was duly approved by the Corporation's stockholders by written consent in accordance with Section 228 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to the Certificate of Incorporation to be signed by the undersigned duly authorized officer who declares under penalty of perjury that the matters set forth in the foregoing Certificate of Amendment are true and correct to his knowledge.

Dated: _____, 2013 ACCELERATE DIAGNOSTICS, INC.

By:

Name: Lawrence Mehren

Title: President and Chief Executive Officer