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As filed with the Securities and Exchange Commission on May 17, 2007

Registration No. 333 -141164

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

AMENDMENT NO. 3
TO
FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

JAZZ PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

Delaware	2834	05-0563787
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

3180 Porter Drive
Palo Alto, CA 94304
(650) 496-3777
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

Samuel R. Saks, M.D.
Chief Executive Officer
3180 Porter Drive
Palo Alto, CA 94304
(650) 496-3777
(Name, address, including zip code, and telephone number, including area code, of agent for service)

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Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this registration statement.

If any of the securities being registered on this form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box. ☐

If this form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ☐

If this form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration number of the earlier effective registration statement for the same offering. ☐

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Aggregate Offering Price(2)	Amount of Registration Fee(3)(4)
Common Stock, $.0001 par value per share	6,900,000 shares	$26.00	$179,400,000	$5,507.58

(1) Includes 900,000 shares of common stock that the underwriters have the option to purchase to cover over-allotments, if any.
(2) Estimated solely for the purpose of computing the registration fee in accordance with Rule 457(a) under the Securities Act.
(3) Calculated pursuant to Rule 457(a) based on an estimate of the proposed maximum aggregate offering price.
(4) A registration fee of $5,296.00 has been paid previously in connection with this Registration Statement based on an estimate of the aggregate offering price. Accordingly, the Registrant has paid the difference of $211.58 with this filing.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment that specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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PROSPECTUS (Subject to Completion)
Issued May 17, 2007

6,000,000 Shares

COMMON STOCK

Jazz Pharmaceuticals, Inc. is offering 6,000,000 shares of its common stock. This is our initial public offering and no public market exists for our shares. We anticipate that the initial public offering price will be between $24.00 and $26.00 per share.

We have applied to have our common stock listed on the NASDAQ Global Market under the symbol "JAZZ".

Investing in the common stock involves risks. See " Risk Factors" beginning on page 9.

PRICE $ A SHARE

	Price to Public	***Underwriting Discounts and Commissions***	***Proceeds to Jazz Pharmaceuticals***
Per Share	*$*	*$*	*$*
Total	*$*	*$*	*$*

We have granted the underwriters the right to purchase up to an additional 900,000 shares of common stock to cover over-allotments.

The Securities and Exchange Commission and state securities regulators have not approved or disapproved these securities, or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The underwriters expect to deliver the shares of common stock to purchasers on , 2007.

MORGAN STANLEY *LEHMAN BROTHERS*

CREDIT SUISSE

NATEXIS BLEICHROEDER INC.

, 2007

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You should rely only on the information contained in this prospectus or any related free writing prospectus we may authorize to be delivered to you. We have not, and the underwriters have not, authorized anyone to provide you with information different from, or in addition to, that contained in this prospectus or any related free writing prospectus. If anyone provides you with different or inconsistent information, you should not rely on it. We are offering to sell, and are seeking offers to buy, shares of common stock only in jurisdictions where offers and sales are permitted. The information contained in this prospectus or any related free writing prospectus is accurate only as of its date, regardless of its time of delivery, or of any sale of the common stock. Our business, financial conditions, results of operations and prospects may have changed since that date.

Through and including , 2007 (25 days after the date of this prospectus), all dealers that buy, sell or trade our common stock, whether or not participating in this offering, may be required to deliver a prospectus. This delivery requirement is in addition to the obligation of dealers to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

For investors outside of the United States: Neither we nor any of the underwriters have done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than in the United States. You are required to inform yourselves about and to observe any restrictions relating to this offering and the distribution of this prospectus.

PROSPECTUS SUMMARY

The following summary is qualified in its entirety by, and should be read together with, the more detailed information and financial statements and related notes thereto appearing elsewhere in this prospectus. This summary highlights what we believe is the most important information about us and this offering. Before you decide to invest in our common stock, you should read the entire prospectus carefully, including the "Risk Factors" section and the financial statements and related notes included in this prospectus.

JAZZ PHARMACEUTICALS, INC.

Corporate Overview

We are a specialty pharmaceutical company focused on identifying, developing and commercializing innovative products to meet unmet medical needs in neurology and psychiatry. Our goal is to build a broad portfolio of products through a combination of internal development and acquisition and in-licensing activities and to utilize our specialty sales force to promote our products in our target markets. We apply novel formulations and drug delivery technologies to known drug compounds, and compounds with the same mechanism of action or similar chemical structure as marketed products, to improve patient care by, among other things, improving efficacy, reducing adverse side effects or increasing patient compliance relative to existing therapies. By working with these drug compounds, we believe that we can substantially mitigate the risks and reduce the costs and time associated with product development and commercialization of new therapies with significant market opportunities. Through the application of novel formulations and drug delivery technologies available from third parties, we also explore potential new indications for known drug compounds. Since our inception in 2003, our experienced executive management team has built a commercial operation and assembled a portfolio of products and product candidates that currently includes two marketed products that generated net product sales of $41.9 million in 2006, one product candidate for which an approvable letter has been issued by the U.S. Food and Drug Administration, or FDA, and five product candidates in various stages of clinical development. We also have additional product candidates in earlier stages of development.

Our marketed products and late-stage product candidates are:

- *Xyrem (sodium oxybate) oral solution*. Xyrem is the only product approved by the FDA for the treatment of both cataplexy and excessive daytime sleepiness in patients with narcolepsy. Narcolepsy is a chronic neurologic disorder caused by the brain's inability to regulate sleep-wake cycles normally. According to the National Institutes of Health, 150,000 or more individuals in the United States are affected by narcolepsy. Cataplexy, the sudden loss of muscle tone, is the most well-recognized symptom of narcolepsy. Excessive daytime sleepiness is the most common symptom of narcolepsy and is present in all narcolepsy patients. We promote Xyrem in the United States to neurologists, psychiatrists, pulmonologists and sleep specialists through our 55 person specialty sales force. We have significantly increased domestic net product sales of Xyrem since our acquisition of Orphan Medical, Inc. in June 2005. Our net product sales of Xyrem were $29.0 million in 2006 and $8.6 million in the first quarter of 2007. We have licensed the rights to commercialize Xyrem in 54 countries outside of the United States to UCB Pharma Limited, or UCB, and in Canada to Valeant Canada Limited, or Valeant. UCB has commercially launched Xyrem in 12 countries.
- *Antizol (fomepizole)*. Antizol is the only FDA-approved antidote for suspected or confirmed ethylene glycol or methanol poisonings in humans. We market Antizol primarily to hospitals and emergency rooms. Antizol is distributed to wholesalers in the United States, and we retain the services of a third party to promote the product. Antizol is marketed by our distributors in Canada and Israel. Our net product sales of Antizol were $12.5 million in 2006 and $2.6 million in the first quarter of 2007. We also market Antizol-Vet, an injectable formulation of fomepizole approved as an antidote for suspected

or confirmed ethylene glycol poisonings in dogs. Net product sales of Antizol-Vet were $313,000 in 2006 and $65,000 in the first quarter of 2007.

- *Luvox CR (fluvoxamine maleate extended release capsules).* Our most advanced product candidate is Luvox CR, an extended release formulation of fluvoxamine, a selective serotonin reuptake inhibitor, which has been developed for the treatment of obsessive compulsive disorder and social anxiety disorder. Selective serotonin reuptake inhibitors are a class of antidepressants used in the treatment of depression, anxiety disorders and some personality disorders. According to the National Institute of Mental Health, obsessive compulsive disorder and social anxiety disorder affect approximately 2.2 million and 15 million adults in the United States, respectively. Luvox CR was developed by Solvay Pharmaceuticals, Inc., or Solvay, in collaboration with Elan Pharma International Limited, or Elan. We obtained the exclusive rights to market and distribute Luvox CR in the United States from Solvay in January 2007. Solvay retains the rights to market and distribute Luvox CR outside of the United States. In addition, Solvay has assigned to us its rights and obligations under its license and supply agreement with Elan. Under this agreement, Elan has the right and obligation to manufacture the worldwide commercial requirements of Luvox CR. Under the terms of our license agreement with Solvay, we made an initial payment to Solvay, and we are required to make additional payments to Solvay if various development and commercial milestones are achieved. We have also agreed to pay royalties to Solvay at specified rates based on net product sales and to pay to Elan development and commercial milestone payments, royalties on net product sales and supply price payments for the supply of Luvox CR.

  Solvay submitted a new drug application, or NDA, to the FDA for Luvox CR in April 2006, and, in February 2007, the FDA issued an approvable letter to Solvay. The requirements set forth in the approvable letter include the completion of certain toxicology studies on the impurities that are generated by fluvoxamine maleate, the active pharmaceutical ingredient in Luvox CR, the submission of additional information relating to the chemistry, manufacturing and controls section of the NDA and the re-analysis by Solvay of certain data set forth in the NDA. Under our agreement with Solvay, Solvay has primary responsibility for the NDA for Luvox CR and communications with the FDA until after such time, if ever, as the FDA approves the NDA for Luvox CR. Subject to the satisfaction of the requirements set forth in the approvable letter and receipt of FDA approval, we expect to commence promotion of Luvox CR in the United States in the first quarter of 2008 through a significantly expanded specialty sales force. During 2007, we expect to make significant expenditures relating to the planned commercial launch of Luvox CR.
- *JZP-6 (sodium oxybate).* We are developing a liquid dosage form of sodium oxybate, the active pharmaceutical ingredient in Xyrem, for the treatment of fibromyalgia syndrome. Fibromyalgia syndrome is a chronic pain condition that affects between two and four percent of the U.S. population, according to the American College of Rheumatology. There are currently no products approved by the FDA for the treatment of fibromyalgia syndrome. We have successfully completed a Phase II clinical trial of this product candidate for the treatment of fibromyalgia syndrome. We are currently conducting two Phase III pivotal clinical trials, and we expect preliminary data from the first Phase III pivotal clinical trial in the second half of 2008. We have granted UCB the commercialization rights to JZP-6 in 54 countries outside of the United States.

In addition to our product candidates in late-stage development, our clinical development pipeline consists of the following product candidates:

- *JZP-4 (type IIa sodium channel antagonist).* JZP-4, a controlled release formulation of an anticonvulsant that is in the same chemical class as Lamictal (lamotrigine), an antiepileptic drug marketed by GlaxoSmithKline, is being developed for the treatment of epilepsy and bipolar disorder. According to the Epilepsy Foundation, approximately 2.7 million people in the United States suffer from epilepsy and, according to the National Institute of Mental Health, approximately 5.7 million

people in the United States are affected by bipolar disorder. We have planned two proof of concept clinical trials designed to provide evidence of therapeutic activity of JZP-4. A proof of concept study is performed in a small group of subjects to test whether a product candidate is likely to have the desired therapeutic effect. The results from the first proof of concept clinical trial indicate potential central nervous system activity of JZP-4, and the second proof of concept clinical trial is expected to commence in the third quarter of 2007. Subject to satisfactory results from the second proof of concept clinical trial, long-term toxicology studies, formulation studies and certain drug-drug interaction studies, we plan to commence a Phase II clinical trial of JZP-4 for the treatment of epilepsy beginning in the fourth quarter of 2007.

- *JZP-8 (benzodiazepine)*. JZP-8, a novel formulation incorporating a benzodiazepine, is being developed for the treatment of recurrent acute repetitive seizures in epilepsy patients who have been unresponsive to previous treatments. Recurrent acute repetitive seizures are bouts of multiple seizures occurring over a short period of time. According to an article published in the *New England Journal of Medicine*, approximately 30% of epilepsy patients are unresponsive, or refractory, to treatment despite being on an effective dose of an antiepilepsy regimen, and a subset of these refractory patients experience recurrent acute repetitive seizures. We have completed development activities to select the active pharmaceutical ingredient for this product candidate and are conducting further development activities related to formulation, safety and tolerance. We plan to commence a Phase II clinical trial of JZP-8 for the treatment of recurrent acute repetitive seizures in refractory epilepsy patients in the fourth quarter of 2007.
- *JZP-7 (dopamine agonist)*. JZP-7, a novel formulation incorporating a dopamine agonist, is being developed for the treatment of restless legs syndrome. Dopamine is naturally produced by the human body, and in the brain, dopamine functions to help nerve cells communicate. A dopamine agonist is a drug compound that mimics the effects of dopamine. According to the Restless Legs Syndrome Foundation, up to 10% of the U.S. population suffers from restless legs syndrome. We have completed development activities to select the active pharmaceutical ingredient for this product candidate and are conducting further development activities related to formulation, safety and tolerance. We intend to conduct an additional pharmacokinetic study, or a study designed to assess how the body processes a drug once the drug is delivered to the body, in 2007 prior to commencing Phase II clinical trials for the treatment of restless legs syndrome.
- *JZP-2 (benzodiazepine)*. JZP-2, a formulation of a benzodiazepine that is designed to enter the bloodstream faster than a dose from a conventional tablet form, is being developed for the acute, or short-term, treatment of panic attacks associated with panic disorder. Benzodiazepines are a class of psychoactive drugs with varying hypnotic, sedative, anti-anxiety, anticonvulsant, muscle relaxant and amnesic properties. According to the National Institute of Mental Health, approximately six million people in the United States suffer from panic disorder in any given year. We have developed a target formulation for JZP-2 and plan to commence one or more clinical trials of JZP-2 with this formulation in 2007.

We have an ongoing program for generating, identifying and conducting feasibility studies for new product candidates. Our JZP-2, JZP-7 and JZP-8 product candidates resulted from this program. Several other product candidates identified through this program are in various stages of early development, including the use of sodium oxybate, the active pharmaceutical ingredient in Xyrem, for the treatment of movement disorders. We are working on ways to expand our Xyrem franchise by developing improvements to Xyrem, such as new dosage forms that could be more convenient for patients. These activities are in the early stages of development.

Our executive management team has substantial experience in developing and commercializing novel therapeutic products. During their time working together as part of the executive management team at ALZA Corporation, a pharmaceutical company acquired by Johnson & Johnson in 2001, our executive management team participated in the successful development and commercialization of a broad portfolio of products and product candidates to address specialized markets.

Our Strategy

Our goal is to be a leading specialty pharmaceutical company developing and commercializing new medicines in neurology and psychiatry and, over the longer term, in additional specialty therapeutic areas. Key elements of our strategy to achieve this goal include:

- focusing on specialty markets, particularly neurology and psychiatry, in which a relatively small number of healthcare providers write a large percentage of prescriptions for the indications we target;
- expanding and leveraging our U.S. specialty sales force to promote our growing portfolio of commercial products;
- mitigating risks and reducing the costs and time associated with the development and commercialization of our products by focusing on known drug compounds, and compounds with the same mechanism of action or similar chemical structure as marketed products, and structuring our development and commercial relationships to minimize financial risk;
- expanding our portfolio to include additional products and product candidates that we believe have significant commercial potential through our internal research and development efforts and our acquisition and in-licensing activities; and
- leveraging the expertise of our experienced executive management team in developing and commercializing novel therapeutic products.

Risks Associated with Our Business

We are a specialty pharmaceutical company with historical net operating losses, and our operations to date have generated substantial and increasing needs for cash. Our business and our ability to execute on our business strategy are subject to many risks that you should be aware of before you decide to buy our common stock. These risks are discussed more fully in “Risk Factors” beginning on page 9. For example:

- Our clinical trials may fail to adequately demonstrate the safety and effectiveness of our product candidates. If a product candidate fails at any stage of development, we will not have the anticipated revenues from that product candidate to fund our operations, and we will not receive any return on our investment in that product candidate.
- The regulatory approval process is expensive, time consuming and uncertain and may prevent us or our partners from obtaining regulatory approvals for the commercialization of some or all of our product candidates. If we receive regulatory approval for our product candidates, we will be subject to ongoing significant regulatory obligations and oversight, which may result in significant additional expense and limit our ability to commercialize our products.
- Even if approved for sale by the appropriate regulatory authorities, our products may not achieve market acceptance. Market acceptance is dependent upon, among other things, the availability of adequate reimbursement by third parties and acceptance by physicians and patients of each of our products as a safe and effective treatment.
- We face competition from both generic and branded pharmaceutical products and if we are unable to demonstrate to physicians that, based on experience, clinical data, side-effect profiles and other factors, our products are preferable to other therapies, we may not generate meaningful revenues from sales of our products.
- Our ability to grow our business is dependent on our ability to successfully develop, acquire or in-license new products and product candidates.

- From our inception in 2003 through March 31, 2007, we incurred net losses of $191.5 million, and we expect to continue to incur net losses for the next several years. We are unable to predict with certainty the extent of any future losses or when we will become profitable. We will also need to raise additional funds to support our operations, and such funding may not be available to us on acceptable terms, if at all. If we are unable to raise additional funds when needed, we may not be able to continue development of our product candidates or we could be required to delay, scale back or eliminate some or all of our development programs and other operations.

Corporate Information

We were incorporated in California in March 2003, and we reincorporated in Delaware in January 2004. Our principal executive office is located at 3180 Porter Drive, Palo Alto, California 94304. Our telephone number is (650) 496-3777. Our website address is www.jazzpharmaceuticals.com. Information contained in, or accessible through, our website does not constitute a part of this prospectus.

Unless the context indicates otherwise, as used in this prospectus, the terms "Jazz Pharmaceuticals," "we," "us" and "our" refer to Jazz Pharmaceuticals, Inc., a Delaware corporation, and its subsidiaries. We use Jazz Pharmaceuticals™, Xyrem®, Antizol®, Luvox® and the Jazz Pharmaceuticals logo as trademarks in the United States and other countries. We have licensed the right to use the registered trademarks Antizol® from Mericon Investment Group, Inc. and Luvox® from Solvay Pharmaceuticals, Inc. All other trademarks or trade names referred to in this prospectus are the property of their respective owners.

Market Data

This prospectus contains market data and industry forecasts that were obtained from industry publications. We have not independently verified any of this information.

THE OFFERING

Common stock offered by us	6,000,000 shares
Common stock outstanding after this offering	24,550,554 shares
Over-allotment option	900,000 shares
Use of proceeds	We expect to use the net proceeds from this offering (1) to fund activities and make milestone payments related to the planned U.S. launch and commercialization of Luvox CR, (2) to fund our Phase III pivotal clinical trials of JZP-6, (3) to fund continued development and feasibility activities related to our portfolio of clinical and early-stage product candidates and (4) for working capital, capital expenditures and other general corporate purposes. See "Use of Proceeds."
Proposed NASDAQ Global Market symbol	JAZZ

The number of shares of common stock outstanding immediately after this offering is based on 18,550,554 shares of common stock outstanding as of March 31, 2007. This number excludes:

- 1,862,530 shares of common stock issuable upon the exercise of options outstanding as of March 31, 2007, having a weighted average exercise price of $21.34 per share;
- 215,792 shares of common stock reserved for future issuance under our 2003 Equity Incentive Plan as of March 31, 2007; provided, however, that immediately upon the signing of the underwriting agreement for this offering, our 2003 Equity Incentive Plan will terminate so that no further awards may be granted under our 2003 Equity Incentive Plan;
- an aggregate of up to 5,175,042 shares of common stock reserved for future issuance under our 2007 Equity Incentive Plan, 2007 Non-Employee Directors Stock Option Plan and 2007 Employee Stock Purchase Plan, each of which will become effective immediately upon the signing of the underwriting agreement for this offering; and
- 785,728 shares of common stock issuable upon the exercise of warrants outstanding as of March 31, 2007, having an exercise price of $20.36 per share.

Except as otherwise indicated, all information in this prospectus assumes:

- the conversion of all our outstanding shares of preferred stock into 17,921,551 shares of common stock immediately prior to the closing of this offering;
- the filing of our fourth amended and restated certificate of incorporation, which will occur immediately prior to the closing of this offering; and
- no exercise of the underwriters' over-allotment option.

We completed a 1-for-11.06701 reverse stock split of our common stock and preferred stock on May 15, 2007. All share and per share amounts have been retroactively adjusted to give effect to this stock split.

SUMMARY CONSOLIDATED FINANCIAL DATA

The following table summarizes our financial data. We have derived the following summary of our consolidated statements of operations data for the years ended December 31, 2004, 2005 and 2006 from our audited consolidated financial statements appearing elsewhere in this prospectus. The summary of our consolidated statements of operations data for the three months ended March 31, 2006 and 2007, and the consolidated balance sheet data as of March 31, 2007, have been derived from our unaudited consolidated financial statements included elsewhere in this prospectus, which in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary to state fairly our financial position and results of operations. Our historical results are not necessarily indicative of the results that may be expected in the future. The summary of our financial data set forth below should be read together with our consolidated financial statements and the related notes to those statements, as well as "Selected Consolidated Financial Data" and "Management's Discussion and Analysis of Financial Condition and Results of Operations," appearing elsewhere in this prospectus. The pro forma balance sheet data give effect to the conversion of all outstanding shares of convertible preferred stock into common stock immediately prior to the closing of this offering. The pro forma as adjusted balance sheet data give effect to the conversion of all outstanding shares of convertible preferred stock into common stock immediately prior to the closing of this offering, and to reflect the sale of shares of our common stock in this offering at an assumed initial public offering price of $25.00 per share, the mid-point of the range reflected on the cover page on this prospectus, after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

	Year Ended December 31,			Three Months Ended March 31,	
	2004	2005(1)	2006	2006	2007
				(Unaudited)	
	(In thousands, except per share amounts)				
Consolidated Statements of Operations Data:					
Revenues:					
Product sales, net	$ —	$ 18,796	$ 43,299	$ 9,771	$ 11,625
Royalties, net	—	146	594	66	211
Contract revenue	—	2,500	963	—	2,252
Total revenues	—	21,442	44,856	9,837	14,088
Operating expenses:					
Cost of product sales (excluding amortization of acquired developed technology)	—	4,292	6,968	1,569	2,003
Research and development	17,988	45,783	54,956	12,894	14,867
Selling, general and administrative	7,459	23,551	51,384	12,219	14,339
Amortization of intangible assets	—	4,960	9,600	2,400	2,362
Purchased in-process research and development	—	21,300	—	—	—
Total operating expenses	25,447	99,886	122,908	29,082	33,571
Loss from operations	(25,447)	(78,444)	(78,052)	(19,245)	(19,483)
Interest income	643	1,318	2,307	581	1,091
Interest expense (including $4,595 and $9,024 for the years ended December 31, 2005 and 2006, respectively, and $2,185 and $2,254 for the three months ended March 31, 2006 and 2007, respectively, pertaining to related parties)	—	(7,129)	(14,129)	(3,777)	(3,268)
Other income (expense)	—	(901)	(1,109)	62	(3,069)
Gain on extinguishment of development financing obligation	—	—	31,592	—	—
Gain on sale of product rights	—	—	—	—	5,145
Net loss	(24,804)	(85,156)	(59,391)	(22,379)	(19,584)
Beneficial conversion feature	—	—	(21,920)	(3,501)	—
Loss attributable to common stockholders	$ (24,804)	$ (85,156)	$ (81,311)	$ (25,880)	$ (19,584)
Loss per share attributable to common stockholders, basic and diluted	$(1,550.25)	$(14,192.67)	$(6,254.69)	$ (2,875.56)	$ (851.48)
Weighted-average common shares used in computing loss per share attributable to common stockholders, basic and diluted	16	6	13	9	23
Pro-forma loss per share attributable to common stockholders (unaudited), basic and diluted(2)			$ (6.04)		$ (1.11)
Weighted-average common shares used in computing pro forma loss per share attributable to common stockholders (unaudited), basic and diluted(2)			13,466		17,666

	As of March 31, 2007		
	Actual	Pro Forma (Unaudited)	Pro Forma As Adjusted(3)
	(In thousands, except per share data)		
Consolidated Balance Sheet Data:			
Cash and cash equivalents	$ 67,667	$ 67,667	$ 204,867
Working capital	46,673	58,261	195,461
Total assets	197,910	197,910	335,110
Senior secured notes (including $52,100 as of March 31, 2007 (unaudited), held by related parties)	74,429	74,429	74,429
Convertible preferred stock	263,852	—	—
Common stock subject to repurchase	8,749	12,954	12,954
Accumulated deficit	(197,227)	(197,227)	(197,227)
Total stockholders' equity (deficit)	(195,420)	75,815	213,015

(1) We acquired Orphan Medical on June 24, 2005, and the results of Orphan Medical are included in the consolidated financial statements from that date.
(2) Assumes the conversion of all outstanding shares of convertible preferred stock outstanding as of December 31, 2006 and March 31, 2007, as applicable, into common stock.
(3) Each $1.00 increase (decrease) in the assumed initial public offering price of $25.00 per share, would increase (decrease) each of cash and cash equivalents, working capital, total assets and total stockholders' equity by approximately $5.6 million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us. We may also increase or decrease the number of shares we are offering. Each increase (decrease) of one million shares in the number of shares offered by us would increase (decrease) each of cash and cash equivalents, working capital, total assets and total stockholders' equity by approximately $23.3 million, assuming that the assumed initial public offering price remains the same, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. The pro forma as adjusted information discussed above is illustrative only and will adjust based on the actual initial public offering price and other terms of this offering determined at pricing.

RISK FACTORS

You should carefully consider the risks described below, which we believe are the material risks of our business and this offering, before making an investment decision. Additional risks not presently known to us or that we currently deem immaterial may also impair our business operations. Our business could be harmed by any of these risks. The trading price of our common stock could decline due to any of these risks, and you may lose all or part of your investment. In assessing these risks, you should also refer to the other information contained in this prospectus, including our financial statements and related notes.

Risks Related to Our Business

The FDA may not approve Luvox CR for marketing in the United States, which could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

In January 2007, we licensed from Solvay the exclusive rights to market and distribute Luvox CR and Luvox in the United States. Solvay retains the rights to market and distribute Luvox CR outside of the United States. Luvox CR was developed by Solvay in collaboration with Elan Pharma International Limited. In December 2000, Solvay submitted an NDA to the FDA for Luvox CR for the treatment of obsessive compulsive disorder and social anxiety disorder. In June 2001, as a result of challenges related to Elan's scale-up of the process to manufacture commercial quantities of Luvox CR, Solvay and Elan mutually agreed to withdraw the NDA for Luvox CR. In April 2006, Solvay resubmitted the Luvox CR NDA to the FDA, requesting approval to market the product for the treatment of obsessive compulsive disorder and social anxiety disorder. Under our agreement with Solvay, Solvay has primary responsibility for the NDA for Luvox CR and communications with the FDA until after such time, if ever, as the FDA approves the NDA. In February 2007, the FDA issued an approvable letter to Solvay. The requirements set forth in the approvable letter include the completion of certain toxicology studies on the impurities that are generated by fluvoxamine maleate, the active pharmaceutical ingredient in Luvox CR, the submission of additional information relating to the chemistry, manufacturing and controls section of the NDA and the re-analysis by Solvay of certain data set forth in the NDA. Solvay must satisfy the conditions set forth in the letter in order to obtain FDA approval. If Solvay is unable to meet these conditions, or for other reasons, the FDA may not approve Luvox CR for marketing in the United States or the approval could be delayed.

Under the terms of our license agreement with Solvay, we made an initial payment of $2.0 million to Solvay. Although it is still uncertain when, or if, Luvox CR will be approved by the FDA, we intend to significantly expand our sales force, marketing and commercial operations departments and administrative staff in 2007 in anticipation of the commercial launch of Luvox CR. In addition, we have engaged numerous third party vendors, such as contract manufacturers, advertising agencies, market research firms and other service providers, to assist in the anticipated launch of Luvox CR, including Elan, who will manufacture quantities of Luvox CR sufficient for commercial launch. These expenses are significant and must be incurred prior to the approval of Luvox CR in order for us to be prepared to launch the product as soon as possible following approval. The costs cannot be recouped or applied to other products if the FDA does not approve Luvox CR. In addition, the failure to obtain FDA approval for Luvox CR would result in the loss of a major source of potential near-term revenue for us and postpone the time at which we could become profitable.

Our only product candidate currently in Phase III clinical trials is JZP-6 for the treatment of fibromyalgia syndrome. The Phase III clinical trials may not show JZP-6 to be safe and effective for the treatment of fibromyalgia syndrome or the FDA may not otherwise approve JZP-6 for marketing, which could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

We are currently conducting two Phase III pivotal clinical trials for the use of JZP-6 to treat fibromyalgia syndrome, both of which must have statistically significant positive results before we can submit an NDA to the FDA seeking approval of JZP-6 for the treatment of fibromyalgia syndrome. Our Phase III clinical program for

JZP-6 is costly, and we do not expect to complete the program until early 2009. We do not know if our ongoing Phase III pivotal clinical trials will show JZP-6 to be safe and effective for the treatment of fibromyalgia syndrome, or if the FDA or other regulatory authorities will approve JZP-6 for the treatment of fibromyalgia syndrome. Favorable results from our prior Phase II clinical trials with JZP-6 for the treatment of fibromyalgia syndrome may not be indicative of the clinical results from our Phase III pivotal clinical trials. Further, although JZP-6 has the same active pharmaceutical ingredient as Xyrem, which has been approved by the FDA for the treatment of cataplexy and excessive daytime sleepiness in patients with narcolepsy, this does not assure approval by the FDA, or any other regulatory authorities, of this active pharmaceutical ingredient for the treatment of fibromyalgia syndrome. Unsuccessful Phase III pivotal clinical trials or a failure to obtain FDA or other regulatory approval of JZP-6 for fibromyalgia syndrome could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

Even if the FDA approves JZP-6 for the treatment of fibromyalgia syndrome, the FDA is likely to require us to have a risk management program similar to the one we use for Xyrem. Under the Xyrem risk management program, Xyrem must be distributed through a single central pharmacy. The central pharmacy must maintain physician and patient registries, and the product may not be stocked in retail pharmacies. Each physician and patient must be educated about the risks and benefits of the product before the physician can prescribe, or a patient can receive, Xyrem. Whenever a prescription is received by the central pharmacy, the central pharmacy must verify the prescription and obtain additional information by contacting the physician's office and the patient's insurance company. The central pharmacy must also speak with the patient before it can ship any Xyrem to the patient. The central pharmacy must ship the product directly to the patient by a courier service, and the patient or his/her designee must sign for the package. The initial shipment may only be for a one-month supply, and patients may not receive more than a three-month supply at any time.

The Xyrem risk management program is labor intensive, complex and expensive to operate. Since Xyrem is currently prescribed for a relatively small number of patients, the risk management program does not prevent us from effectively supplying Xyrem to narcolepsy patients. However, significantly more patients are diagnosed with fibromyalgia syndrome, and if the same or a similar risk management program is required for JZP-6, scale-up of the risk management program could make it difficult for us to timely supply all of the patients who may be prescribed JZP-6 for the treatment of fibromyalgia syndrome. This could make JZP-6 less attractive to physicians and patients than other products that may be approved for the treatment of fibromyalgia syndrome, which could limit potential sales of JZP-6.

Many of our product candidates are in preclinical or early-stage clinical development. A failure to prove that our product candidates are safe and effective in clinical trials would require us to discontinue their development, which could materially and adversely affect our business, financial condition, results of operations and growth prospects.

Significant additional research and development, financial resources and additional personnel will be required to obtain necessary regulatory approvals for our product candidates and to develop them into commercially viable products. As a condition to regulatory approval, each product candidate must undergo extensive clinical trials to demonstrate to a statistically significant degree that the product candidate is safe and effective. The clinical trials for a product candidate can cost between $40.0 million and $100.0 million, and potentially even more. If a product candidate fails at any stage of development, we will not have the anticipated revenues from that product candidate to fund our operations, and we will not receive any return on our investment in that product candidate. For example, our Phase III clinical trial of JZP-3, a product candidate for the treatment of general anxiety disorder, was not successful after we incurred significant development costs, and we ceased further development of JZP-3.

Clinical testing can take many years to complete, and failure can occur any time during the clinical trial process. In addition, the results from early clinical trials may not be predictive of results obtained in later and larger clinical trials, and product candidates in later clinical trials may fail to show the desired safety and efficacy despite having progressed successfully through initial clinical testing. A number of companies in the pharmaceutical industry, including us, have suffered significant setbacks in clinical trials, even in advanced

clinical trials after showing positive results in earlier clinical trials. The completion of clinical trials for our product candidates may be delayed or halted for many reasons, including:

- delays in patient enrollment, and variability in the number and types of patients available for clinical trials;
- regulators or institutional review boards may not authorize us to commence or continue a clinical trial;
- our inability, or the inability of our partners, to manufacture or obtain from third parties materials sufficient to complete our clinical trials;
- delays or failure in reaching agreement on acceptable clinical trial contracts or clinical trial protocols with prospective sites;
- risks associated with trial design, which may result in a failure of the trial to show statistically significant results even if the product candidate is effective;
- difficulty in maintaining contact with patients after treatment commences, resulting in incomplete data;
- poor effectiveness of product candidates during clinical trials;
- safety issues, including adverse events associated with product candidates;
- the failure of patients to complete clinical trials due to adverse side effects, dissatisfaction with the product candidate, or other reasons;
- governmental or regulatory delays or changes in regulatory requirements, policy and guidelines; and
- varying interpretation of data by the FDA or foreign regulatory agencies.

In addition, our product candidates are subject to competition for clinical study sites and patients from other therapies under development that may delay the enrollment in or initiation of our clinical trials. For example, other companies have stated publicly that they are testing product candidates for the treatment of fibromyalgia syndrome. Some of these companies have more significant financial and human resources than we do.

The FDA or foreign regulatory authorities may require us to conduct unanticipated additional clinical trials, which could result in additional expense and delays in bringing our product candidates to market. Any failure or delay in completing clinical trials for our product candidates would prevent or delay the commercialization of our product candidates, which could materially and adversely affect our business, financial condition, results of operations and growth prospects.

We rely on third parties to conduct clinical trials for our product candidates, and if they do not properly and successfully perform their legal and regulatory obligations, as well as their contractual obligations to us, we may not be able to obtain regulatory approvals for our product candidates.

We design the clinical trials for our product candidates, but rely on contract research organizations and other third parties to assist us in managing, monitoring and otherwise carrying out these trials, including with respect to site selection, contract negotiation and data management. We do not control these third parties and, as a result, they may not treat our clinical studies as their highest priority, or in the manner in which we would prefer, which could result in delays.

Although we rely on third parties to conduct our clinical trials, we are responsible for confirming that each of our clinical trials is conducted in accordance with its general investigational plan and protocol. Moreover, the FDA and foreign regulatory agencies require us to comply with regulations and standards, commonly referred to as good clinical practices, for conducting, recording and reporting the results of clinical trials to ensure that the data and results are credible and accurate and that the trial participants are adequately protected. Our reliance on third parties does not relieve us of these responsibilities and requirements. The FDA enforces good clinical practices through periodic inspections of trial sponsors, principal investigators and trial sites. If we, our contract research organizations or our study sites fail to comply with applicable good clinical practices, the clinical data

generated in our clinical trials may be deemed unreliable and the FDA may require us to perform additional clinical trials before approving our marketing applications. We cannot assure you that, upon inspection, the FDA will determine that any of our clinical trials comply with good clinical practices. In addition, our clinical trials must be conducted with product produced under the FDA's current Good Manufacturing Practices, or cGMP, regulations. Our failure, or the failure of our contract manufacturers, to comply with these regulations may require us to repeat clinical trials, which would delay the regulatory approval process.

If third parties do not successfully carry out their duties under their agreements with us, if the quality or accuracy of the data they obtain is compromised due to failure to adhere to our clinical protocols or regulatory requirements, or if they otherwise fail to comply with clinical trial protocols or meet expected deadlines, our clinical trials may not meet regulatory requirements. If our clinical trials do not meet regulatory requirements or if these third parties need to be replaced, our clinical trials may be extended, delayed, suspended or terminated. If any of these events occur, we may not be able to obtain regulatory approval of our product candidates.

The commercial success of our products will depend upon attaining market acceptance by physicians, patients, third party payors and the medical community.

Even if our product candidates are approved for sale by the appropriate regulatory authorities, physicians may not prescribe our products, in which case we would not generate the revenues we anticipate. Market acceptance of any our products by physicians, patients, third party payors and the medical community will depend on:

- the clinical indications for which a product is approved;
- prevalence of the disease or condition for which the product is approved and the severity of side effects;
- acceptance by physicians and patients of each product as a safe and effective treatment;
- perceived advantages over alternative treatments;
- relative convenience and ease of administration;
- the cost of treatment in relation to alternative treatments, including generic products;
- the extent to which the product is approved for inclusion on formularies of hospitals and managed care organizations; and
- the availability of adequate reimbursement by third parties.

We depend upon UCB to market and promote Xyrem outside of the United States, and we are dependent upon our collaboration with UCB for the development and potential commercialization of JZP-6 for the treatment of fibromyalgia syndrome in major markets outside of the United States.

We have exclusively licensed to UCB the rights to market and promote Xyrem in 54 countries outside of the United States. If UCB does not obtain regulatory approvals for and launch Xyrem in its licensed countries in the time frames that we expect, or at all, our revenues would be adversely affected. If UCB terminates its relationship with us, we would need to find another party or parties to commercialize Xyrem in UCB's licensed territories. We may be unable to find another party or parties on acceptable terms, or at all, which could materially and adversely affect our business, financial condition, results of operations and growth prospects. In addition, under the terms of our collaboration with UCB, we granted UCB the exclusive right to commercialize JZP-6 for the treatment of fibromyalgia syndrome in the same territories that UCB has the right to market and promote Xyrem for patients with narcolepsy. We have relied and will continue to rely in part on milestone payments from UCB to reduce our development costs of JZP-6. UCB has the right to terminate our collaboration on 18 months' notice (or less in certain circumstances). If UCB terminates our collaboration, we would need to find another party or parties to commercialize JZP-6 in UCB's territories and may need to execute alternative

financing plans to help fund our development of JZP-6. We may be unable to do either of these on acceptable terms, or at all.

We depend on one central pharmacy distributor for Xyrem sales in the United States and the loss of that distributor or its failure to distribute Xyrem effectively would adversely affect sales of Xyrem.

As a condition of approval of Xyrem, the FDA mandated that we maintain a risk management program for Xyrem under which all Xyrem that we sell in the United States must be shipped directly to patients through a central pharmacy. The process under which patients receive Xyrem under our risk management program is cumbersome. While we have entered into an agreement with the central pharmacy for Xyrem, Express Scripts Specialty Distribution Services, Inc., if the central pharmacy does not fulfill its contractual obligations to us, or refuses or fails to adequately serve patients, shipments of Xyrem, and our sales, would be adversely affected. Changing central pharmacy distributors could take a significant amount of time and require FDA approval of the new central pharmacy distributor. In addition, sodium oxybate, the active pharmaceutical ingredient in Xyrem, is regulated by the U.S. Drug Enforcement Administration, or DEA, as a controlled substance. The new distributor would need to be registered with the DEA and would also need to develop the particular processes, procedures and activities necessary to distribute Xyrem, including the risk management program approved by the FDA. If we change distributors, new contracts might also be required with government and other insurers who pay for Xyrem. Transitioning to a new distributor could result in product shortages, which would adversely affect sales of Xyrem in the United States.

Our supplier of the active pharmaceutical ingredient and our product manufacturer must obtain DEA quotas in order to supply us with Xyrem, JZP-6 and sodium oxybate, and these quotas may not be sufficient to satisfy our clinical and commercial needs.

The DEA limits the quantity of certain Schedule I and II controlled substances that may be produced in the United States in any given calendar year through a quota system. Because sodium oxybate, the active pharmaceutical ingredient in Xyrem and JZP-6, is a Schedule I controlled substance, our supplier of the active pharmaceutical ingredient and our product manufacturer must obtain DEA quotas in order to supply us with sodium oxybate, Xyrem and JZP-6. Since the DEA typically grants quotas on an annual basis and requires a detailed submission and justification for each request, obtaining a DEA quota is a difficult and time consuming process. If our commercial or clinical requirements for sodium oxybate, Xyrem or JZP-6 exceed our supplier's and contract manufacturer's DEA quotas, our supplier and contract manufacturer would need quota increases from the DEA, which would be difficult and time consuming to obtain and might not ultimately be obtained on a timely basis, or at all. In cooperation with our manufacturing partners, we are seeking to significantly increase their 2007 quotas from the DEA for sodium oxybate, Xyrem and JZP-6 to satisfy the forecasted demand for Xyrem and to conduct our clinical studies of JZP-6. In the future, we intend to seek further increased quotas to supply and manufacture JZP-6 as necessary to complete our clinical trials and, if approved, to commercialize the product. However, our manufacturing partners may not be successful in obtaining increased quotas from the DEA, and without sufficient DEA quotas, there could be shortages of Xyrem for the marketplace or JZP-6 for use in our clinical studies, or both.

We depend on single source suppliers and manufacturers for each of our products and product candidates. The loss of any of these suppliers or manufacturers, or delays or problems in the supply or manufacture of our products for commercial sale or our product candidates for use in our clinical trials, could materially and adversely affect our business, financial condition, results of operations and growth prospects.

We do not have, and do not intend to establish in the near term, our own manufacturing or packaging capability for our products or product candidates, or their active pharmaceutical ingredients. Accordingly, we have entered into manufacturing and supply agreements with single source suppliers and manufacturers for our commercialized products and product candidates. Our suppliers and contract manufacturers may not be able to

manufacture our products or product candidates without interruption, or may not comply with their obligations to us under our supply and manufacturing arrangements. We may not have adequate remedies for any breach and their failure to supply us could result in a shortage of our products or product candidates.

The availability of our products for commercial sale is dependent upon our ability to procure the ingredients, packaging materials and finished products we need. If one of our suppliers or product manufacturers fails or refuses to supply us for any reason, it would take a significant amount of time and expense to qualify a new supplier or manufacturer. The loss of one of our suppliers or product manufacturers could require us to obtain regulatory clearance in the form of a "prior approval supplement" and to incur validation and other costs associated with the transfer of the active pharmaceutical ingredient or product manufacturing process. We believe that it could take as long as two years to qualify a new supplier or manufacturer. Should we lose either an active pharmaceutical ingredient supplier or a product manufacturer, we could run out of salable product to meet market demands or investigational product for use in clinical trials while we wait for FDA approval of a new active pharmaceutical ingredient supplier or product manufacturer. For Xyrem, JZP-6 or sodium oxybate, the new supplier or manufacturer would also need to be registered with the DEA and obtain a DEA quota. In addition, the FDA must approve suppliers of the active and inactive pharmaceutical ingredients and certain packaging materials used in our products, as well as suppliers of finished products. The qualification of new suppliers and manufacturers could potentially delay the manufacture of our products and product candidates and result in shortages in the marketplace or for our clinical trials, or both, particularly since we do not have secondary sources of supply of the active pharmaceutical ingredient or backup manufacturers for our products and product candidates. If there are delays in qualifying the new manufacturer or the new manufacturer is unable to obtain a sufficient quota from the DEA, there could be a shortage of Xyrem for the marketplace. For example, we entered into an agreement with Patheon Pharmaceuticals, Inc., or Patheon, in March 2007 for the supply of Xyrem in connection with the planned termination, effective January 1, 2008, of our supply agreement with our current supplier. Patheon has not yet been qualified by the FDA to manufacture Xyrem, and we cannot assure you that Patheon will be qualified by the FDA to manufacture Xyrem on a timely basis, or at all, nor can we assure you that Patheon will obtain a quota from the DEA, or a quota that is sufficient to satisfy our commercial requirements of Xyrem. Furthermore, we may not be able to obtain active pharmaceutical ingredients, packaging materials or finished products from new suppliers on acceptable terms and at reasonable prices, or at all.

Due to FDA-mandated dating requirements, DEA quotas relating to Xyrem and JZP-6, and the limited market size for our approved products, we are subject to complex manufacturing logistics and minimum order quantities that could result in excess inventory as determined under our accounting policy, unsalable inventory as a result of product expiring prior to use, and competition with others for manufacturing services when needed or expected. We have adopted a production planning program to assess and manage manufacturing logistics among the vendors supplying our requirements of active pharmaceutical ingredient, drug product and packaging; however, unexpected market requirements or problems with vendors' facilities, among other things, could result in shortages of one or more of our products for the marketplace or product candidates for use in our clinical studies, or both.

Failure by our third party manufacturers to comply with regulatory requirements could adversely affect their ability to supply products to us. All facilities and manufacturing techniques used for the manufacture of pharmaceutical products must be operated in conformity with cGMP requirements. In complying with cGMP requirements, our suppliers must continually expend time, money and effort in production, record-keeping and quality assurance and control to ensure that our products and product candidates meet applicable specifications and other requirements for product safety, efficacy and quality. DEA regulations also govern facilities where controlled substances such as sodium oxybate are manufactured. Manufacturing facilities are subject to periodic unannounced inspection by the FDA, the DEA and other regulatory authorities, including state authorities. Failure to comply with applicable legal requirements subjects the suppliers to possible legal or regulatory action, including shutdown, which may adversely affect their ability to supply us with the ingredients or finished products we need.

Any delay in supplying, or failure to supply, products by any of our suppliers could result in our inability to meet the commercial demand for our products or our needs for use in clinical trials, and could adversely affect our business, financial condition, results of operations and growth prospects. For example, under our agreement with Solvay, Solvay is responsible for providing fluvoxamine, the active pharmaceutical ingredient in Luvox CR, to us for use in the manufacture of Luvox CR by Elan. If Solvay fails to provide fluvoxamine in the quantities we need, our launch of Luvox CR could be delayed or there could be an interruption in the supply of Luvox CR to the market. In addition, under our agreements with UCB and Valeant, we are responsible for the supply of Xyrem and JZP-6 to UCB and Xyrem, and potentially JZP-6, to Valeant. Our failure to meet our contractual obligations to supply UCB and Valeant with adequate quantities of Xyrem and JZP-6 would result in lost revenues to us and, if material, could result in termination of our agreements by UCB or Valeant.

Our product candidates have never been manufactured on a commercial scale and there are risks associated with scaling up manufacturing to commercial scale.

Our product candidates have never been manufactured on a commercial scale and there are risks associated with scaling up manufacturing to commercial scale including, among others, cost overruns, potential problems with process scale-up, process reproducibility, stability issues, lot consistency and timely availability of raw materials. For example, if Luvox CR, for which we have obtained the exclusive rights to market and distribute in the United States from Solvay, is approved for commercial sale, Elan will manufacture Luvox CR for us in exchange for royalty and milestone payments and supply price payments. Luvox CR has never been produced on a commercial scale, and the NDA for Luvox CR was withdrawn in June 2001 by Solvay and Elan as a result of difficulties encountered during the scale-up of manufacturing of Luvox CR. Although the FDA has issued an approvable letter to Solvay, there is no assurance that Elan will be able to manufacture Luvox CR to specifications acceptable to the FDA, or if Luvox CR is approved, to produce it in sufficient quantities to meet the requirements for the potential launch of the product or to meet potential future demand. If our manufacturers are unable to produce sufficient quantities of our products for commercialization, our commercialization efforts would be impaired, which would have an adverse effect on our business, financial condition, results of operations and growth prospects.

We could be materially adversely affected if we or our products are subject to negative publicity. For example, sodium oxybate, the active pharmaceutical ingredient in Xyrem and JZP-6, is a derivative of gamma hydroxybutyrate, or GHB, which has been a drug of abuse and may not be sold legally in the United States. If physicians and patients perceive Xyrem and JZP-6 to be the same as or similar to GHB, sales of Xyrem and JZP-6 could be adversely affected.

From time to time, there is negative publicity about GHB and its effects, including with respect to illegal use, overdoses, serious injury and death and because sodium oxybate, the active pharmaceutical ingredient in Xyrem, is a derivative of GHB, Xyrem sometimes also receives negative mention in publicity relating to GHB. Because sodium oxybate is a derivative of GHB, patients, physicians and regulators may view Xyrem as the same as or similar to GHB. In addition, there are regulators and some law enforcement agencies that oppose the prescription and use of Xyrem generally. Xyrem's label includes information about adverse events from GHB, and we anticipate that if JZP-6 is approved, its label will include similar information. We could also be adversely affected if any of our products or any similar products distributed by other companies prove to be, or are asserted to be, harmful to consumers. Because of our dependence upon patient and physician perceptions, any adverse publicity associated with illness or other adverse effects resulting from the use or misuse of our products or any similar products distributed by other companies could materially and adversely affect our business, financial condition, results of operations and growth prospects.

An investigation by the U.S. Attorney's Office for the Eastern District of New York concerning the sales and marketing of Xyrem is likely to result in fines, penalties or other adverse consequences that could result in adverse publicity and could harm our business.

In April 2006, we and our subsidiary Orphan Medical received subpoenas from the U.S. Department of Justice, acting through the U.S. Attorney for the Eastern District of New York, in connection with the sale and marketing of Xyrem. In April 2006, a physician who was a speaker for Orphan Medical, and for a short time for us, was indicted by a federal grand jury in the U.S. District Court for the Eastern District of New York. The indictment includes allegations that the physician engaged in a scheme with Orphan Medical sales representatives and other Orphan Medical employees to promote and obtain reimbursement for Xyrem for medical uses not approved for marketing by the FDA. In March 2007, in the same federal court, a former Orphan Medical regional sales manager, who also worked for a short time for us, pled guilty based on similar allegations to introducing a misbranded drug into interstate commerce. This investigation has resulted in adverse publicity for Xyrem and for us.

We and Orphan Medical are discussing a possible settlement with the United States, acting through the Department of Justice, the U.S. Attorney's Office for the Eastern District of New York and other federal agencies, including the Office of Inspector General, U.S. Department of Health and Human Services, relating to this matter. If we complete a settlement on the terms that we are currently discussing, Orphan Medical would plead guilty to one felony count of introducing a misbranded drug into interstate commerce and would pay a total of approximately $20.5 million in civil and criminal payments over the next several years in connection with this matter. We would guarantee payment of these amounts by Orphan Medical.

If we complete a settlement on the terms that we are currently discussing, the U.S. Attorney has indicated that we would not be prosecuted. As part of the settlement, we would enter into a corporate integrity agreement with the Office of Inspector General, U.S. Department of Health and Human Services, which would require us to maintain a comprehensive compliance program. We would have additional ongoing compliance-related operating costs related to this compliance program.

The settlement terms described above are subject to the negotiation and execution of definitive agreements. These agreements, if executed, could result in additional negative publicity for us and for Xyrem. Even if we execute the definitive agreements, we might still be subject to regulatory and/or enforcement action by federal agencies that are not parties to the settlement, private insurers and states' attorneys general with respect to the activities covered by the settlement. We cannot assure you that the definitive agreements will be executed. If we do not execute them, we would be required to spend significant amounts defending ourselves and Orphan Medical. This could involve criminal charges and civil and criminal fines and penalties against Orphan Medical or us, or both. If we are unable to complete the settlement described above, we cannot predict or determine the outcome of this matter or reasonably estimate the amount of any fines or penalties that might result from an adverse outcome, and such an outcome could have a material adverse effect on our financial position, liquidity and results of operations.

Whether or not we resolve the ongoing investigation of Xyrem off-label promotion satisfactorily, there is no assurance that we will not be subject to future investigations. Many pharmaceutical companies have announced government investigations of their sales and marketing practices for many of their products. Even with compliance training and a company culture of compliance, our current or future practices may nonetheless become the subject of an investigation. A number of laws, often referred to as "whistleblower" statutes, provide for financial rewards to employees and others for bringing to the attention of the government sales and marketing practices that the government views as illegal or fraudulent. The costs of investigating any claims, responding to subpoenas of investigators, and any resulting fines, can be significant and could divert the attention of our management from operating our business.

Xyrem cannot be advertised directly to consumers, which could limit sales.

Because Xyrem is a derivative of GHB, a known drug of abuse, the FDA has required that Xyrem's label include a box warning regarding the risk of abuse. A box warning is the strongest type of warning that the FDA can require for a drug product and warns prescribers that the drug carries a significant risk of serious or even life-threatening adverse effects. A box warning also means, among other things, that the product cannot be advertised directly to consumers. Provigil (modafinil), the only other product approved by the FDA specifically for the treatment of excessive daytime sleepiness in patients with narcolepsy, does not have a box warning and can be advertised directly to consumers. In addition, Xyrem's type of FDA approval under the FDA's Subpart H regulations requires that all of the promotional materials for Xyrem be provided to the FDA for review at least 30 days prior to the intended time of first use. Unlike Xyrem, Provigil was not approved under the FDA's Subpart H regulations and is not subject to the pre-review requirements. Accordingly, promotional materials for Provigil are not subject to the same delays that we experience with respect to new promotional materials for Xyrem.

Since JZP-6 contains the same active pharmaceutical ingredient as Xyrem, we anticipate that the label for JZP-6, if approved by the FDA, will also include a box warning. Although there are no current FDA-approved treatments for fibromyalgia syndrome, future competing products may not be subject to this restriction, and the box warning may negatively affect potential JZP-6 sales if competing products can be advertised directly to consumers.

We face substantial competition from companies with greater resources than we have.

With respect to all of our existing and future products, we may compete with companies selling or working to develop products that may be more effective, safer or less costly than our products. The markets for which we are developing products are competitive and include generic and branded products, some of which are marketed by major pharmaceutical companies that have significantly greater financial resources and expertise in research and development, preclinical testing, conducting clinical trials, obtaining regulatory approvals, manufacturing and marketing and selling approved products than we do. While Xyrem is the only product approved by the FDA for the treatment of both cataplexy and excessive daytime sleepiness in patients with narcolepsy, cataplexy is often treated with tricyclic antidepressants and selective serotonin reuptake inhibitors, although none of these compounds has been approved by the FDA for the treatment of cataplexy. Other treatments for excessive daytime sleepiness in patients with narcolepsy consist primarily of stimulants and wakefulness promoting agents, including Provigil (modafinil), the only other FDA-approved product for the treatment of excessive daytime sleepiness in patients with narcolepsy.

We intend to market Luvox CR in the United States for the treatment of obsessive compulsive disorder and social anxiety disorder. Selective serotonin reuptake inhibitors are the standard treatment for anxiety disorders, including obsessive compulsive disorder and social anxiety disorder. Four branded products are currently approved by the FDA for the treatment of obsessive compulsive disorder, including three selective serotonin reuptake inhibitors: Paxil (paroxetine HCl), which is marketed by GlaxoSmithKline, Zoloft (sertraline HCl), which is marketed by Pfizer, and Prozac (fluoxetine hydrochloride), which is marketed by Eli Lilly. Anafranil (clomipramine hydrochloride), the other branded product approved by the FDA for the treatment of obsessive compulsive disorder, is a tricyclic antidepressant marketed by Mallinckrodt in the United States. Each of these products currently has generic equivalents. Generic products are generally sold at significantly lower prices than branded products, tending to both take market share away from branded products and put downward pricing pressure on branded products. Fluvoxamine, the generic equivalent of Luvox and a selective serotonin reuptake inhibitor, is the only other drug currently approved for the treatment of obsessive compulsive disorder. Four products are currently approved by the FDA for the treatment of social anxiety disorder, including three selective serotonin reuptake inhibitors: Zoloft, Paxil and Paxil CR, an extended release version of Paxil, and one serotonin-norepinephrine reuptake inhibitor, Effexor XR (venlafaxine HCl). Paxil CR and Effexor XR, developed and sold by GlaxoSmithKline and Wyeth, respectively, do not have generic competitors, whereas Paxil and Zoloft have generic competitors.

We are developing JZP-6 for the treatment of fibromyalgia syndrome. There are currently no products approved by the FDA for the treatment of fibromyalgia syndrome. In clinical practice, a variety of drugs is often prescribed to address individual symptoms of fibromyalgia syndrome, including antidepressants, pain medications, muscle relaxants, hypnotics and anticonvulsants. In addition to JZP-6, there are currently four programs that have completed or are in Phase III clinical development for the treatment of fibromyalgia syndrome, including programs being conducted by large pharmaceutical companies with far greater resources than we have. In particular, Lyrica (pregabalin), an anticonvulsant being developed by Pfizer, has previously been approved by the FDA for the treatment of partial seizures, post herpetic neuralgia and diabetic peripheral neuropathy. In December 2006, Pfizer submitted a supplemental NDA seeking FDA approval of Lyrica for the treatment of fibromyalgia syndrome, or certain symptoms associated with fibromyalgia syndrome.

Smaller or earlier stage companies may also prove to be significant competitors, particularly through collaborative arrangements with other large, established companies. Our commercial opportunities may be reduced or eliminated if our competitors develop and commercialize generic or branded products that are safer or more effective, have fewer side effects or are less expensive than our products.

Our competitors may obtain FDA or other regulatory approvals for their product candidates more rapidly than we may. For example, four major pharmaceutical companies are conducting, or have computed, Phase III clinical trials of product candidates for the treatment of fibromyalgia syndrome and Pfizer has submitted a supplemental NDA to the FDA with respect to one of these products, Lyrica. These product candidates may reach the market before JZP-6, or may be better accepted by physicians and patients. Thus, even if we successfully complete our Phase III clinical trials for JZP-6 for the treatment of fibromyalgia syndrome and achieve FDA approval, JZP-6 may not result in significant commercial revenues for us.

Our competitors may market their products more effectively than we do. If we are unable to demonstrate to physicians that, based on experience, clinical data, side-effect profiles and other factors, our products are preferable to other therapies, we may not generate meaningful revenues from the sales of our products.

If generic products that compete with any of our products are approved, sales of our products may be adversely affected.

Our products are or may become subject to competition from generic equivalents because there is no proprietary protection for some of our products or because our protection has expired or is not sufficiently broad. The FDA has granted orphan drug exclusivity for Xyrem until July 2009 for cataplexy in patients with narcolepsy, and until November 2012 for excessive daytime sleepiness in patients with narcolepsy. Once our orphan drug exclusivity periods for Xyrem expire, other companies could introduce generic equivalents of Xyrem if the generic equivalents do not infringe our existing patents covering Xyrem. Once our orphan drug exclusivity period for Xyrem for the treatment of cataplexy expires in July 2009, prescriptions for Xyrem, or if approved by the FDA, JZP-6, could possibly be filled with generic equivalents that have been approved for the treatment of cataplexy in patients with narcolepsy, even if the patient is diagnosed with excessive daytime sleepiness or fibromyalgia syndrome. Orphan exclusivity for Antizol for ethylene glycol poisoning expired in 2004 and the orphan exclusivity for Antizol for methanol poisoning will expire in December 2007. Patent protection is not available for the active pharmaceutical ingredient in most of our products and product candidates, including Xyrem, Luvox CR and JZP-6. Although Xyrem is covered by patents expiring in 2019 with claims covering the formula and process for manufacturing our commercial formulation of Xyrem, it is possible that other companies could manufacture generic equivalents of Xyrem in ways that are not covered by the claims of these patents.

Part of our business strategy includes the ongoing development of proprietary product improvements to Xyrem, including new and enhanced dosage forms. However, we may not be successful in developing or obtaining FDA and other regulatory approvals of these improvements. Although the active pharmaceutical ingredient in Xyrem and JZP-6 is a DEA scheduled compound for which a quota is required and the FDA has required a risk management program for its distribution, and therefore generic competition may be more difficult and expensive than it might be for other products not requiring a risk management program for distribution, our

competitors will not be prevented from introducing a generic equivalent. We have filed a patent application with claims covering the method for distributing sodium oxybate using a centralized distribution system, but we cannot assure you that this patent will issue or, if issued, whether it will provide any significant protection of Xyrem from generic competition.

Luvox CR is covered by a patent application filed by Elan with claims covering the orally administered extended release formulation of fluvoxamine. This patent may not issue, and even if this patent issues, it is possible that other companies could manufacture similar or therapeutically equivalent products in ways that are not covered by the claims of the patent. Further, there may be other patents that we are not aware of that cover some aspect of the Luvox CR formulation and that would prevent launch of the product or require us to pay royalties or other forms of consideration.

After the introduction of a generic competitor, a significant percentage of the prescriptions written for a product generally may be filled with the generic version at the pharmacy, resulting in a loss in sales of the branded product, including for indications for which the generic version has not been approved for marketing by the FDA. Generic competition often results in decreases in the prices at which branded products can be sold. In addition, legislation enacted in the United States allows for, and in a few instances in the absence of specific instructions from the prescribing physician mandates, the use of generic products rather than branded products where a generic equivalent is available. Generic competition for our products earlier than expected could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

We may not be able to enter into acceptable agreements to commercialize our products in international markets.

If appropriate regulatory approvals are obtained, we generally intend to commercialize our products in most markets outside of the United States through arrangements with third parties. If we decide to sell our products in markets outside of the United States, we may not be able to enter into any arrangements on acceptable terms, or at all. In addition, these arrangements could result in lower levels of income to us than if we promoted our products directly in international markets. If we choose to market our products directly in markets outside of the United States, we may not be able to develop an effective international sales force. If we fail to enter into marketing arrangements for our products and are unable to develop an effective international sales force, our ability to generate revenues outside of the United States would be limited. In either case, our marketing efforts (and those of our partners) outside of the United States may be subject to regulatory requirements and politico-economic climates that are dissimilar to those in the United States and which could impose unforeseen costs or restrictions on us or our partners.

We may not be able to successfully acquire or in-license additional products or product candidates as part of growing our business.

In order to grow our business, we intend to acquire or in-license additional products and product candidates that we believe have significant commercial potential. Any growth through acquisitions or in-licensing will be dependent upon the continued availability of suitable acquisition or in-license products and product candidates at favorable prices and upon advantageous terms and conditions. Even if such opportunities are present, we may not be able to successfully identify products or product candidates suitable for potential acquisition or in-licensing. Other companies, many of which may have substantially greater financial, marketing and sales resources, compete with us for the right to acquire and in-license such products or product candidates.

We currently have a small sales organization. If we are unable to appropriately expand our specialty sales force and sales organization in the United States to promote additional products, the commercial opportunity for our products may be diminished.

Our sales force is currently comprised of 55 sales professionals. Our potential future commercial products, including Luvox CR and JZP-6, will require an expanded sales force and a significant sales support organization,

and we will need to commit significant additional management and other resources to the growth of our sales organization before the commercial launch of those product candidates. We may not be able to achieve the necessary growth in a cost-effective manner or realize a positive return on our investment. We will also have to compete with other pharmaceutical and life sciences companies to recruit, hire, train and retain sales and marketing personnel. If we elect to rely on third parties to sell our products in the United States, we may receive less revenues or incur more expense than if we sold our products directly. In addition, we may have little or no control over the sales efforts of those third parties. If we are unable to appropriately expand our sales force or collaborate with third parties to sell our products, our ability to generate revenues would be adversely affected.

If we fail to attract and retain key personnel, or to retain our executive management team, we may be unable to successfully develop or commercialize our products.

Our success depends in part on our continued ability to attract, retain and motivate highly qualified personnel and on our ability to develop and maintain important relationships with leading academic institutions, clinicians and scientists. We are highly dependent upon our executive management team. The loss of services of any one or more of our members of executive management team or other key personnel could delay or prevent the successful completion of some of our key activities.

Competition for qualified personnel in the life sciences industry is intense. We will need to hire additional personnel as we expand our development, clinical and commercial activities. We may not be able to attract and retain quality personnel on acceptable terms. We do not carry "key person" insurance. Although the members of our executive management team have employment contracts with us through February 2009, each member of our executive management team and each of our other key employees may terminate his or her employment at any time without notice and without cause or good reason.

We will need to increase the size of our organization, and we may experience difficulties in managing growth.

We are a small company with 203 full-time employees as of March 31, 2007, approximately 36% of whom joined us in the last 12 months. To continue our commercialization and development activities, we will need to expand our employee base for managerial, operations, development, regulatory, sales, marketing, financial and other functions. It is particularly difficult to recruit new employees to the San Francisco Bay Area, where our offices are located, in large part due to high housing costs. If we cannot recruit qualified employees when we need them, our key activities could be delayed. Growth will impose significant added responsibilities on members of management, including the need to identify, recruit, maintain and integrate additional employees, particularly with respect to the expansion of our sales and marketing organization and related functions for the potential commercialization of Luvox CR and JZP-6. Our future financial performance and our ability to commercialize our products and to compete effectively will depend, in part, on our ability to manage any growth effectively, and our failure to do so could adversely affect our business, financial condition, results of operations and growth prospects.

Our offices are located near known earthquake fault zones, and the occurrence of an earthquake or other catastrophic disaster could damage our facilities, which could adversely affect our operations.

Our offices are located in the San Francisco Bay Area, near known earthquake fault zones and are therefore vulnerable to damage from earthquake. In October 1989, a major earthquake in our area caused significant property damage and a number of fatalities. We are also vulnerable to damage from other disasters such as power loss, fire, floods and similar events. If a significant disaster occurs, our ability to continue our operations could be seriously impaired and we may not have adequate insurance to cover any resulting losses. Any significant unrecoverable losses could seriously impair our operations and financial conditions.

Risks Related to Our Intellectual Property

It is difficult and costly to protect our proprietary rights, and we may not be able to ensure their protection.

Our commercial success will depend in part on obtaining and maintaining patent protection and trade secret protection of our product candidates, their use and the methods used to manufacture them, as well as successfully defending these patents against third party challenges. Our ability to protect our product candidates from unauthorized making, using, selling, offering to sell or importation by third parties is dependent upon the extent to which we have rights under valid and enforceable patents, or have trade secrets that cover these activities.

The patent position of pharmaceutical companies can be highly uncertain and involve complex legal and factual questions for which important legal principles remain unresolved. Changes in either the patent laws or in interpretations of patent laws in the United States and other countries may diminish the value of our intellectual property. Even if we are able to obtain patents covering our products and product candidates, any patent may be challenged, invalidated, held unenforceable or circumvented. The existence of a patent will not necessarily prevent other companies from developing similar or therapeutically equivalent products or protect us from claims of third parties that our products infringe their issued patents, which may require licensing and the payment of significant fees or royalties. Competitors may successfully challenge our patents, produce similar products that do not infringe our patents, or manufacture products in countries where we have not applied for patent protection or that do not respect our patents. Accordingly, we cannot predict the breadth of claims that may be allowed or enforced in our patents, our licensed patents or in third party patents.

The degree of future protection to be afforded by our proprietary rights is uncertain because legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep our competitive advantage. For example:

- others may be able to make products that are similar to our product candidates but that are not covered by the claims of our patents, or for which we are not licensed under our license agreements;
- we or our licensors or partners might not have been the first to make the inventions covered by our issued patents or pending patent applications or the pending patent applications or issued patents of our licensors or partners;
- we or our licensors or partners might not have been the first to file patent applications for these inventions;
- others may independently develop similar or alternative products without infringing our intellectual property rights;
- our pending patent applications may not result in issued patents;
- our issued patents and the issued patents of our licensors or partners may not provide us with any competitive advantages, or may be held invalid or unenforceable as a result of legal challenges by third parties;
- we may not develop additional proprietary products that are patentable; or
- the patents of others may have an adverse effect on our business.

We also may rely on trade secrets and other unpatented proprietary information to protect our technology, especially where we do not believe patent protection is appropriate or obtainable. However, trade secrets are difficult to protect. Although we use reasonable efforts to protect our trade secrets and other unpatented proprietary information, our employees, consultants, advisors and partners may unintentionally or willfully disclose our proprietary information to competitors, and we may not have adequate remedies for such disclosures. If our employees, consultants, advisors and partners develop inventions or processes independently, or jointly with us, that may be applicable to our products under development, disputes may arise about ownership

or proprietary rights to those inventions and processes. Enforcing a claim that a third party illegally obtained and is using any of our inventions or trade secrets is expensive and time consuming, and the outcome is unpredictable. In addition, courts outside of the United States are sometimes less willing to protect trade secrets. Moreover, our competitors may independently develop equivalent knowledge, methods and know-how.

Our research and development collaborators may have rights to publish data and other information to which we have rights. In addition, we sometimes engage individuals or entities to conduct research that may be relevant to our business. While the ability of these individuals or entities to publish or otherwise publicly disclose data and other information generated during the course of their research is subject to contractual limitations, these contractual provisions may be insufficient or inadequate to protect our trade secrets and may impair our patent rights. If we do not apply for patent protection prior to such publication, or if we cannot otherwise maintain the confidentiality of our innovations and other confidential information, then our ability to obtain patent protection or protect our proprietary information may be jeopardized. Moreover, a dispute may arise with our research and development collaborators over the ownership of rights to jointly developed intellectual property. Such disputes, if not successfully resolved, could lead to a loss of rights and possibly prevent us from pursuing certain new products or product candidates.

We may incur substantial costs as a result of litigation or other proceedings relating to patent and other intellectual property rights and we may be unable to protect our rights to, or commercialize, our products.

Our ability, and that of our partners, to commercialize any approved products will depend, in part, on our ability to obtain patents, enforce those patents and operate without infringing the proprietary rights of third parties. The patent positions of pharmaceutical companies can be highly uncertain and involve complex legal and factual questions. We have filed multiple U.S. patent applications and foreign counterparts, and may file additional U.S. and foreign patent applications related thereto. There can be no assurance that any issued patents we own or control will provide sufficient protection to conduct our business as presently conducted or as proposed to be conducted. Moreover, in part because of prior research performed and patent applications submitted in the same manner or similar fields, there can be no assurance that any patents will issue from the patent applications owned by us, or that we will remain free from infringement claims by third parties.

If we choose to go to court to stop someone else from pursuing the inventions claimed in our patents or in or our licensed patents or those of our partners, that individual or company has the right to ask the court to rule that these patents are invalid and/or should not be enforced against that third party. These lawsuits are expensive and would consume time and other resources even if we were successful in stopping the infringement of these patents. In addition, there is a risk that the court will decide that these patents are not valid and that we do not have the right to stop the other party from using the inventions. There is also the risk that, even if the validity of these patents is upheld, the court will refuse to stop the other party on the ground that the other party's activities do not infringe our rights to these patents or that it is in the public interest to permit the infringing activity.

Furthermore, a third party may claim that we or our manufacturing or commercialization partners are using inventions covered by the third party's patent rights and may go to court to stop us from engaging in our normal operations and activities, including making or selling our products. Patent infringement lawsuits are costly and could affect our results of operations and divert the attention of management and development personnel. There is a risk that a court could decide that we or our partners are infringing third party patent rights. In the event that we or our partners are found to infringe any valid claim of a patent held by a third party, we may, among other things, be required to:

- pay damages, including up to treble damages and the other party's attorneys' fees, which may be substantial;
- cease the development, manufacture, use and sale of our products that infringe the patent rights of others through a court-imposed sanction such as an injunction;
- expend significant resources to redesign our products so that they do not infringe others' patent rights, which may not be possible;

- discontinue manufacturing or other processes incorporating infringing technology; or
- obtain licenses to the infringed intellectual property, which may not be available to us on acceptable terms, or at all.

The pharmaceutical and life sciences industry has produced a proliferation of patents, and it is not always clear to industry participants, including us, which patents cover various types of products or methods. The coverage of patents is subject to interpretation by the courts, and the interpretation is not always uniform. If we are sued for patent infringement, we would need to demonstrate that our products or methods do not infringe the patent claims of the relevant patent and/or that the patent claims are invalid or unenforceable and we may not be able to do this. Proving invalidity, in particular, is difficult since it requires a showing of clear and convincing evidence to overcome the presumption of validity enjoyed by issued patents in the United States.

Because some patent applications in the United States may be maintained in secrecy until the patents are issued, because patent applications in the United States and many foreign jurisdictions are typically not published until 18 months after filing, and because publications in the scientific literature often lag behind actual discoveries, we cannot be certain that others have not filed patent applications for inventions covered by our licensors' or our issued patents or pending applications, or that we or our licensors were the first inventors. Our competitors may have filed, and may in the future file, patent applications covering subject matter similar to ours. Any such patent application may have priority over our or our licensors' patents or applications and could further require us to obtain rights to issued patents covering such subject matter. If another party has filed a U.S. patent application on inventions similar to ours, we may have to participate in an interference proceeding declared by the U.S. Patent and Trademark Office to determine priority of invention in the United States. The costs of these proceedings could be substantial, and it is possible that such efforts would be unsuccessful, resulting in a loss of our U.S. patent position with respect to such inventions.

Some of our competitors may be able to sustain the costs of complex patent litigation more effectively than we can because they have substantially greater resources. In addition, any uncertainties resulting from the initiation and continuation of any litigation could have a material adverse effect on our ability to raise the funds necessary to continue our operations.

Risks Related to Our Industry

The regulatory approval process is expensive, time consuming and uncertain and may prevent us or our partners from obtaining approvals for the commercialization of some or all of our product candidates.

The research, testing, manufacturing, selling and marketing of pharmaceutical products are subject to extensive regulation by FDA and other regulatory authorities in the United States and other countries, and regulations differ from country to country. Approval in the United States, or in any jurisdiction, does not ensure approval in other jurisdictions. The regulatory approval process is lengthy, expensive and uncertain, and we may be unable to obtain approval for our products. We are not permitted to market our product candidates in the United States until we receive approval from the FDA, generally of an NDA. The NDA must contain, among other things, data to demonstrate that the drug is safe and effective for its intended uses and that it will be manufactured to appropriate quality standards. Obtaining approval of an NDA can be a lengthy, expensive and uncertain process, and the FDA has substantial discretion in the approval process. In addition, failure to comply with FDA and other applicable U.S. and foreign regulatory requirements may subject our company to administrative or judicially imposed sanctions, including warning letters, untitled letters, civil and criminal penalties, injunctions, product seizure or detention, product recalls, total or partial suspension of production and refusal to approve pending NDAs or supplements to approved NDAs. If we are unable to obtain regulatory approval of our product candidates, we will not be able to commercialize them and recoup our research and development costs.

Even if we receive regulatory approval for our product candidates, we will be subject to ongoing significant regulatory obligations and oversight, which may result in significant additional expense and limit our ability to commercialize our products.

If we receive regulatory approvals to sell our products, the FDA and foreign regulatory authorities may impose significant restrictions on the indicated uses or marketing of our products, or impose requirements for burdensome post-approval study commitments. The terms of any product approval, including labeling, may be more restrictive than we desire and could affect the marketability of the product or otherwise reduce the size of the potential market for that product. Following any regulatory approval of our products, we will be subject to continuing regulatory obligations, such as safety reporting requirements and additional post-marketing obligations, including regulatory oversight of the promotion and marketing of our products. In addition, if the FDA approves any of our product candidates, the labeling, packaging, adverse event reporting, storage, advertising, promotion and recordkeeping for the product will be subject to extensive and ongoing regulatory requirements. If we become aware of previously unknown problems with any of our products in the United States or overseas or at our contract manufacturers' facilities, a regulatory agency may impose restrictions on our products, our contract manufacturers or on us, including requiring us to reformulate our products, conduct additional clinical trials, make changes in the labeling of our products, implement changes to, or obtain re-approvals of, our contract manufacturers' facilities, or withdraw the product from the market. In addition, we may experience a significant drop in the sales of the affected products and our product revenues and reputation in the marketplace may suffer, and we could become the target of lawsuits, including class action suits. The FDA and other governmental authorities also actively enforce regulations prohibiting promotion of off-label uses and the promotion of products for which marketing approval has not been obtained. The federal government has levied large civil and criminal fines against companies for alleged improper promotion and has enjoined several companies from engaging in off-label promotion. The FDA has also requested that companies enter into consent decrees or permanent injunctions under which specified promotional conduct is changed or curtailed.

We are also subject to regulation by regional, national, state and local agencies, including the DEA, the Department of Justice, the Federal Trade Commission, the Office of Inspector General of the U.S. Department of Health and Human Services and other regulatory bodies, as well as governmental authorities in those foreign countries in which we commercialize our products. The Federal Food, Drug, and Cosmetic Act, the Public Health Service Act and other federal and state statutes and regulations govern to varying degrees the research, development, manufacturing and commercial activities relating to prescription pharmaceutical products, including preclinical testing, approval, production, labeling, sale, distribution, import, export, post-market surveillance, advertising, dissemination of information and promotion. These statutes and regulations include antikickback statutes and false claims statutes.

The federal health care program antikickback statute prohibits, among other things, knowingly and willfully offering, paying, soliciting, or receiving remuneration to induce or in return for purchasing, leasing, ordering or arranging for the purchase, lease or order of any health care item or service reimbursable under Medicare, Medicaid or other federally financed healthcare programs. This statute has been interpreted to apply to arrangements between pharmaceutical companies on one hand and prescribers, purchasers and formulary managers on the other. Although there are a number of statutory exemptions and regulatory safe harbors protecting identified common activities from prosecution, the exemptions and safe harbors are drawn narrowly, and practices that involve remuneration intended to induce prescribing, purchases or recommendations may be subject to scrutiny if they do not qualify for an exemption or safe harbor. Our practices may not in all cases meet all of the criteria for safe harbor protection from antikickback liability.

Federal false claims laws prohibit any person from knowingly presenting, or causing to be presented, a false claim for payment to the federal government, or knowingly making, or causing to be made, a false statement to get a false claim paid. Recently, several pharmaceutical and other health care companies have been prosecuted under these laws for allegedly providing free product to customers with the expectation that the customers would bill federal programs for the product. Other companies have been prosecuted for causing false claims to be submitted because of the company's marketing of the product for unapproved, and thus non-reimbursable, uses. The majority

of states also have statutes or regulations similar to the federal antikickback law and false claims laws, which apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payor. Sanctions under these federal and state laws may include civil monetary penalties, exclusion of a company's products from reimbursement under government programs, criminal fines and imprisonment. Several states now require pharmaceutical companies to report expenses relating to the marketing and promotion of pharmaceutical products and the reporting of gifts to individual physicians in the states. Other states require the posting of information relating to clinical studies. In addition, California requires pharmaceutical companies to implement a comprehensive compliance program that includes a limit on expenditures for or payments to individual prescribers. Currently, several additional states are considering similar proposals. Compliance with these laws is difficult and time consuming and companies that do not comply with these state laws face civil penalties. Because of the breadth of these laws and the narrowness of the safe harbors, it is possible that some of our business activities could be subject to challenge under one or more of such laws. Such a challenge could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

If we or any of our partners fail to comply with applicable regulatory requirements, we or they could be subject to a range of regulatory actions that could affect our or our partners' ability to commercialize our products and could harm or prevent sales of the affected products, or could substantially increase the costs and expenses of commercializing and marketing our products. Any threatened or actual government enforcement action could also generate adverse publicity and require that we devote substantial resources that could otherwise be used in other aspects of our business.

If we fail to comply with our reporting and payment obligations under the Medicaid rebate program or other governmental pricing programs, we could be subject to additional reimbursement requirements, penalties, sanctions and fines which could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

We participate in the federal Medicaid rebate program established by the Omnibus Budget Reconciliation Act of 1990, as well as several state supplemental rebate programs. Under the Medicaid rebate program, we pay a rebate to each state Medicaid program for our products that are reimbursed by those programs. The minimum amount of the rebate for each unit of product is set by law at 15.1% of the average manufacturing price of that product, or if it is greater, the difference between the average manufacturing price and the best price we make available to any customer. The rebate amount also includes an inflation adjustment, if necessary.

Pricing and rebate calculations vary among products and programs. The calculations are complex and are often subject to interpretation by us, governmental or regulatory agencies and the courts. The Medicaid rebate amount is computed each quarter based on our submission to the Centers for Medicare & Medicaid Services at the U.S. Department of Health and Human Services of our current average manufacturing price and best prices for the quarter. If we become aware that our reporting for prior quarters was incorrect, or changed as a result of recalculation of the pricing data, we are obligated to resubmit the corrected average manufacturing price or best price for that quarter. Any corrections to our rebate calculations could result in an overage or underage in our rebate liability for past quarters, depending on the nature of the correction. In addition to retroactive rebates (and interest, if any), if we are found to have knowingly submitted false information to the government, we may be liable for civil monetary penalties in the amount of $100,000 per item of false information. Governmental agencies may also make changes in program interpretations, requirements or conditions of participation, some of which may have implications for amounts previously estimated or paid.

Federal law requires that any company that participates in the Medicaid rebate program extend comparable discounts to qualified purchasers under the Public Health Services' pharmaceutical pricing program requiring us to sell our products at prices lower than we otherwise might be able to charge. The Public Health Services pricing program extends discounts comparable to the Medicaid rebates to a variety of community health clinics and other entities that receive health services grants from the Public Health Services, as well as hospitals that serve a disproportionate share of poor patients and children.

Reimbursement may not be available for our products, which could diminish our sales or affect our ability to sell our products profitably.

In both U.S. and foreign markets, our ability to commercialize our products successfully, and to attract strategic partners for our products, depends in significant part on the availability of adequate financial coverage and reimbursement from third party payors, including, in the United States, governmental payors such as the Medicare and Medicaid programs, managed care organizations and private health insurers. Third party payors decide which drugs they will pay for and establish reimbursement levels. Third party payors are increasingly challenging the prices charged for medical products and services and examining their cost effectiveness, in addition to their safety and efficacy. In some cases, for example, third party payors try to encourage the use of less expensive generic products through their prescription benefits coverage and reimbursement policies. We may need to conduct expensive pharmacoeconomic studies in order to demonstrate the cost-effectiveness of our products. Even with studies, our products may be considered less safe, less effective or less cost-effective than existing products, and third party payors may not provide coverage and reimbursement for our products, in whole or in part. We cannot predict actions third party payors may take, or whether they will limit the coverage and level of reimbursement for our products or refuse to provide any coverage at all. For example, because Luvox CR will compete in a market with both branded and generic products, reimbursement by government and private payors may be more challenging than for new chemical entities. We cannot be sure that reimbursement amounts will not reduce the demand for, or the price of, our products. If reimbursement is not available or is available only to limited levels, we may not be able to effectively commercialize our products.

There have been a number of legislative and regulatory proposals in recent years to change the healthcare system in ways that could impact our ability to sell our products profitably. These proposals include prescription drug benefit proposals for Medicare beneficiaries and measures that would limit or prohibit payments for some medical treatments or subject the pricing of drugs to government control. For example, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 provides a new Medicare prescription drug benefit, that became effective in January 2006, and mandates other reforms. Although we cannot predict the full effect on our business of the implementation of this new legislation, it is possible that the new benefit, which is managed by private health insurers, pharmacy benefit managers and other managed care organizations, will result in decreased reimbursement for prescription drugs, which may further exacerbate industry-wide pressure to reduce the prices charged for prescription drugs. This could harm our ability to market our products and generate revenues. Currently, there are legislative proposals that would permit the U.S. Secretary of Health and Human Services to negotiate directly with pharmaceutical companies to obtain lower prices for drugs covered under Medicare Part D.

We expect to experience pricing pressures in connection with the sale of our products due to the trend toward managed health care, the increasing influence of health maintenance organizations and additional legislative proposals. If we fail to successfully secure and maintain reimbursement coverage for our products or are significantly delayed in doing so, we will have difficulty achieving market acceptance of our products and our business will be harmed.

Sales of our products in the United States may be adversely affected by consolidation among wholesale drug distributors and the growth of large retail drug store chains.

The market participants to whom we sell Antizol, which accounted for $12.5 million and $2.6 million in net product sales in 2006 and the first quarter of 2007, respectively, and the market participants to whom we expect to sell most of our future products, including Luvox CR, have undergone significant consolidation, marked by mergers and acquisitions among wholesale distributors and the growth of large retail drugstore chains. As a result, a small number of large wholesale distributors control a significant share of the market, and the number of independent drug stores and small drugstore chains has decreased. In addition, excess inventory levels held by large distributors can lead to periodic and unanticipated reductions in our revenues and cash flows. Consolidation of drug wholesalers and retailers, as well as any increased pricing pressure that those entities face from their customers, including the U.S. government, may increase pricing pressure and place other competitive pressures on drug manufacturers, including us.

Prescription drug importation from Canada and other countries could increase pricing pressure on our products and could decrease our revenues and profit margins.

Under current U.S. law, there is a general prohibition on imports of unapproved products. The FDA has published internal guidance that sets forth the agency's enforcement priorities for imported drugs. Under this policy, the FDA allows its personnel to use their discretion in permitting entry into the United States of personal use quantities of FDA-regulated products in personal baggage and mail when the product does not present an unreasonable risk to the user. Thus, individuals may import prescription drugs that are unavailable in the United States from Canada and other countries for their personal use under specified circumstances. Other imports, although illegal under U.S. law, also enter the country as a result of the resource constraints and enforcement priorities of the FDA and the U.S. Customs Services. In addition, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and will permit pharmacists and wholesalers to import prescription drugs into the United States from Canada under specified circumstances. These additional import provisions will not take effect until the Secretary of Health and Human Services makes a required certification regarding the safety and cost savings of imported drugs and the FDA has promulgated regulations setting forth parameters for importation. These conditions have not been met to date and the law has therefore not taken effect. However, legislative proposals have been introduced to remove these conditions and implement changes to the current import laws, or to create other changes that would allow foreign versions of our products priced at lower levels than in the United States to be imported or reimported to the United States from Canada, Europe and other countries. If these provisions take effect, the volume of prescription drug imports from Canada and elsewhere could increase significantly and our products could face competition from lower priced imports.

Even if these provisions do not take effect and alter current law, the volume of prescription drug imports from Canada and elsewhere could increase due to a variety of factors, including the further spread of internet pharmacies and actions by a number of state and local governments to facilitate Canadian and other imports. These imports may harm our business.

We recently licensed Xyrem to Valeant to distribute in Canada. Due to government price regulation in Canada, products are generally sold in Canada for lower prices than in the United States. Due to the risk management program for Xyrem and our agreement with Valeant, we believe that it is unlikely that Xyrem will be imported from Canada to the United States.

Product liability and product recalls could harm our business.

The development, manufacture, testing, marketing and sale of pharmaceutical products entail significant risk of product liability claims or recalls. Our products and product candidates are designed to affect important bodily functions and processes. Side effects of, or manufacturing defects in, the products sold by us could result in exacerbation of a patient's condition, further deterioration of a patient's condition or even death. This could result in product liability claims and/or recalls of one or more of our products. For example, studies and publications suggest that selective serotonin reuptake inhibitors, including the active pharmaceutical ingredient in Luvox CR and its immediate release formulation Luvox, may increase the risk of suicidal behavior in adults and adolescents. In addition, the current selective serotonin reuptake inhibitor products used to treat obsessive compulsive disorder and social anxiety disorder, particularly those formulated for immediate release, all have significant adverse side effects. Side effects associated with selective serotonin reuptake inhibitors include sexual dysfunction, adverse drug interaction and risk of hypertension. Claims may be brought by individuals seeking relief for themselves or by groups seeking to represent a class. While we have not had to defend against any product liability claims to date, as sales of our products increase, we believe that it is likely product liability claims will be made against us. We cannot predict the frequency, outcome or cost to defend any such claims.

Product liability insurance coverage is expensive, can be difficult to obtain and may not be available in the future on acceptable terms, if at all. Partly as a result of product liability lawsuits related to pharmaceutical products, product liability and other types of insurance have become more difficult and costly for pharmaceutical

companies to obtain. Our product liability insurance may not cover all of the future liabilities we might incur in connection with the development, manufacture or sale of our products. In addition, we may not continue to be able to obtain insurance on satisfactory terms or in adequate amounts.

A successful claim or claims brought against us in excess of available insurance coverage could subject us to significant liabilities and could have a material adverse effect on our business, financial condition, results of operations and growth prospects. Such claims could also harm our reputation and the reputation of our products, adversely affecting our ability to market our products successfully. In addition, defending a product liability lawsuit is expensive and can divert the attention of key employees from operating our business.

Product recalls may be issued at our discretion or at the discretion of our suppliers, the FDA, other government agencies and other entities that have regulatory authority for pharmaceutical sales. Any recall of our products could materially adversely affect our business by rendering us unable to sell that product for some time and by adversely affecting our reputation.

Risks Relating to Our Financial Condition

We have a history of net losses, which we expect to continue for at least several years and, as a result, we are unable to predict the extent of any future losses or when, if ever, we will become profitable.

We have a limited operating history and have incurred significant net losses since our inception in 2003, and we expect to continue to incur net losses for the next several years. Our net losses for the year ended December 31, 2006 and the quarter ended March 31, 2007 were $59.4 million and $19.6 million, respectively, and we had an accumulated deficit of $197.2 million at March 31, 2007. We expect our operating expenses to increase over the next several years as we develop additional products, acquire or in-license additional products, expand clinical trials for our product candidates currently in clinical development, expand our research and development activities, seek regulatory approvals and engage in commercialization preparation activities in anticipation of potential FDA approval of our product candidates. We will need to expand our commercial organization to launch additional products. It is very expensive to launch a product, and many expenses are incurred before revenues are received. We are unable to predict the extent of any future losses or when we will become profitable, if at all.

Even if we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis. If we are unable to achieve and sustain profitability, the market value of our common stock will likely decline.

Our operations have generated negative cash flows, and if we are unable to secure additional funding, we may be required to reduce operations.

As of March 31, 2007, we had approximately $67.7 million in cash, cash equivalents and marketable securities. Our cash flows used in operations were approximately $57.4 million and $20.9 million during 2006 and the first quarter of 2007, respectively. Substantially all of our $43.3 million and $11.6 million in net product sales during 2006 and the first quarter of 2007, respectively, resulted from sales of Xyrem and Antizol. Sales of either or both products could decrease due to adverse market conditions, introduction of generic products, negative publicity or other events outside our control. We must commit substantial resources to costly and time-consuming research, preclinical testing and clinical trials of our product candidates and significant funds to our commercial operations. While we believe that our current cash, cash equivalents and marketable securities and the anticipated net proceeds from this offering, and interest earned thereon, together with anticipated revenues from product sales, royalties and funding that we expect to receive from our current collaboration arrangement with UCB, will be sufficient to satisfy our current operations through at least the next 12 to 18 months, we expect to raise additional funds within this period of time through development financings, collaborations or public or private debt or equity financings. We have based this estimate on assumptions that may prove to be wrong, and

we could utilize our available financial resources sooner than we currently expect. Our future capital requirements will depend on many factors, including:

- the amount of sales and other revenues from our commercial products, including selling prices for products that we may begin selling and price increases for our current products;
- market acceptance of and the number of prescriptions written for our products;
- selling and marketing costs associated with Luvox CR and Xyrem in the United States, including the cost and timing of expanding our marketing and sales capabilities;
- revenues from current and potential future development and/or commercial collaboration partners;
- the scope, rate of progress, results and costs of our preclinical studies, clinical trials and other research and development activities;
- the number and characteristics of product candidates that we pursue;
- the cost and timing of establishing clinical and commercial supplies of our product candidates;
- the cost and timing of obtaining regulatory approval;
- payments of milestones to third parties;
- increased expenses associated with new employees hired to support our continued growth;
- the cost of investigations, litigation and/or settlements related to regulatory activities, in particular the ongoing investigation by the U.S. Attorney for the Eastern District of New York;
- the cost of preparing, filing, prosecuting, defending and enforcing patent claims and other intellectual property rights; and
- the extent to which we acquire, in-license or invest in new businesses, products or product candidates.

Although we generate product revenues, since our inception in 2003 we have financed our operations primarily through the sale of convertible preferred stock, the issuance of senior secured notes and warrants, a line of credit, development financing related to one of our previous product candidates and our collaboration with UCB related to Xyrem and JZP-6. In addition, our audit report in our 2006 consolidated financial statements contains an explanatory paragraph stating that our recurring losses from operations and cash used in operating activities raise substantial doubt about our ability to continue as a going concern. We believe that the successful completion of this offering will eliminate this doubt and enable us to continue as a going concern; however, if we are unable to successfully complete this offering, we will need to execute alternative financing or operational plans to continue as a going concern.

Even if the offering is successful, we will need to raise additional funds to support our operations, and such funding may not be available to us on acceptable terms, or at all. If we are unable to raise additional funds when needed, we may not be able to continue development of our product candidates or we could be required to delay, scale back or eliminate some or all of our development programs and other operations. We may also be required to license to third parties products and product candidates that we would prefer to develop and commercialize ourselves. We may seek to raise additional funds through development financings, collaborations, or public or private debt or equity financings. If we raise funds through collaborations, we may be required to relinquish, on terms that are not favorable to us, rights to some of our products or product candidates that we would otherwise seek to develop or commercialize ourselves. If we raise additional funds through the issuance of debt securities, these securities could have rights that are senior to holders of our common stock and could contain covenants that restrict our operations. Any additional equity financing may be dilutive to our stockholders. In addition, if we raise additional funds through the sale of equity securities, new investors could have rights superior to our existing stockholders. The terms of future financings may restrict our ability to raise additional capital, which could delay or prevent the further development or commercialization or our products. Our failure to raise capital when needed may harm our business and operating results.

We have a substantial amount of debt, which may adversely affect our cash flows and our ability to operate our business.

As of March 31, 2007, we had secured indebtedness of $83.1 million at face value, substantially all of which we incurred in connection with our acquisition of Orphan Medical. Our substantial debt combined with our other financial obligations and contractual commitments could have other important consequences. For example, it could:

- make us more vulnerable to adverse changes in general economic, industry and competitive conditions and adverse changes in government regulation;
- require us to dedicate a substantial portion of our cash flow from operations to payments on our indebtedness, thereby reducing the availability of our cash flows to fund working capital, capital expenditures, acquisitions and other general corporate purposes;
- limit our flexibility in planning for, or reacting to, changes in our business and our industry;
- place us at a competitive disadvantage compared to our competitors that have less debt; and
- limit our ability to borrow additional amounts for working capital, capital expenditures, acquisitions, debt service requirements, execution of our business strategy or other purposes.

Any of these factors could materially adversely affect our business, financial condition, results of operations and growth prospects. In addition, under specified circumstances, our lenders could demand repayment of all of our debt, which would have a material adverse effect on our business, financial condition and results of operations. If we do not have sufficient earnings to service our debt, we may be required to refinance all or part of our existing debt, sell assets, borrow more money or sell securities, none of which we can assure you that we would be able to do in a timely manner or at all.

The terms of our debt could restrict our operations, particularly our ability to respond to changes in our business or to take specified actions.

Our existing senior secured debt contains, and any future indebtedness would likely contain, a number of restrictive covenants that impose significant operating and financial restrictions on us, including restrictions on our ability to take actions that may be in our best interests. Our existing debt includes covenants, including requirements that we:

- generally not borrow additional amounts without the approval of our lenders;
- dispose of assets acquired in the Orphan Medical acquisition only in accordance with the terms of our existing senior secured debt;
- not impair our lenders' security interests in our assets; and
- maintain minimum cash balances.

Risks Relating to this Offering and Ownership of Our Common Stock

The market price of our common stock may be volatile, and the value of your investment could decline significantly.

Investors who purchase our common stock in this offering may not be able to sell their shares at or above the initial public offering price. Security prices for companies similar to us experience significant price and volume fluctuations. The following factors, in addition to other risks described in this prospectus, may have a significant effect on our common stock market price:

- the success of our development efforts and clinical trials;
- announcement of FDA approval or non-approval of our product candidates, or specific label indications for their use, or delays in the FDA review process;

- actual or expected fluctuations in our operating results, including as a result of fluctuating demand for our commercial products as a result of purchases by wholesalers in connection with product launches, stockpiling or inventory drawdowns by our customers, or otherwise;
- changes in the market prices for our products;
- the success of our efforts to acquire or in-license additional products or product candidates;
- introductions and announcements of new products by us, our commercialization partners, or our competitors, and the timing of these introductions or announcements;
- announcements by us or our competitors of significant acquisitions, strategic partnerships, joint ventures or capital commitments;
- announcements of product innovations by us, our partners or our competitors;
- changes in laws or regulations applicable to our products, including but not limited to clinical trial requirements;
- actions taken by regulatory agencies with respect to our products, clinical trials, manufacturing process or sales and marketing terms;
- developments concerning our collaborations, including but not limited to those with our sources of manufacturing supply and our commercialization partners;
- disputes or other developments relating to proprietary rights, including patents, litigation matters and our ability to obtain patent protection for our products;
- our ability or inability to raise additional capital and the terms on which we raise it;
- actual or anticipated changes in earnings estimates or changes in stock market analyst recommendations regarding our common stock, other comparable companies or our industry generally;
- conditions or trends in the pharmaceutical industry, the financial markets or the economy in general;
- the outcome of, and any expenses related to, the U.S. government investigation of the promotion of Xyrem;
- actual or expected changes in our growth rates or our competitors' growth rates;
- changes in the market valuation of similar companies;
- trading volume of our common stock; and
- sales of our common stock by us or our stockholders.

In addition, the stock market in general and the market for life sciences companies in particular have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. These broad market and industry factors may seriously harm the market price of our common stock, regardless of our operating performance. In the past, following periods of volatility in the market, securities class-action litigation has often been instituted against companies. Such litigation, if instituted against us, could result in substantial costs and diversion of management's attention and resources, which could materially and adversely affect our business, financial condition, results of operations and growth prospects.

Future sales of our common stock in the public market could cause our stock price to fall.

Sales of a substantial number of shares of our common stock in the public market after this offering, or the perception that these sales might occur, could depress the market price of our common stock and could impair our ability to raise capital through the sale of additional equity securities. Based on the number of shares of common stock outstanding as of March 31, 2007, upon completion of this offering, we will have 24,550,554

shares of common stock outstanding, or 25,450,554 shares if the underwriters exercise their over-allotment option in full, assuming no exercise of outstanding options or warrants.

All of the shares of common stock sold in this offering will be freely tradable without restrictions or further registration under the Securities Act of 1933, as amended, except for any shares purchased by our affiliates as defined in Rule 144 under the Securities Act of 1933, as amended. The remaining 18,550,554 shares of common stock outstanding after this offering, based on shares outstanding as of March 31, 2007, will be restricted as a result of securities laws or lock-up agreements. These remaining shares will generally become available for sale in the public market as follows:

- no restricted shares will be eligible for immediate sale upon the closing of this offering;
- approximately 14,219,877 shares, less shares subject to a repurchase option in our favor tied to the holders' continued service to us (which will be eligible for sale upon lapse of the repurchase option), will be eligible for sale upon expiration of lock-up agreements 180 days after the date of this prospectus; and
- the remainder of the restricted shares will be eligible for sale from time to time thereafter upon expiration of their respective one-year holding periods, but could be sold earlier if the holders exercise any available registration rights.

Morgan Stanley & Co. Incorporated and Lehman Brothers Inc., may, in their sole discretion, release all or some portion of the shares subject to lock-up agreements prior to expiration of the lock-up period. See "Shares Eligible for Future Sale."

After this offering, the holders of approximately 19,306,128 shares of common stock, based on shares outstanding as of March 31, 2007, including 785,728 shares underlying outstanding warrants, will be entitled to rights with respect to registration of such shares under the Securities Act of 1933, as amended. In addition, upon exercise of outstanding options by our executive officers, our executive officers will be entitled to rights with respect to registration of the shares of common stock acquired on exercise. If such holders, by exercising their registration rights, sell a large number of shares, they could adversely affect the market price for our common stock. If we file a registration statement and include shares held by these holders pursuant to the exercise of their registration rights, these sales may impair our ability to raise capital. In addition, prior to the consummation of this offering, we intend to file a registration statement on Form S-8 under Securities Act to register up to 5,175,042 shares of our common stock for issuance under our stock option and employee stock purchase plans.

Our principal stockholders and management own a significant percentage of our stock and will be able to exercise significant influence over matters subject to stockholder approval.

Our executive officers, directors and principal stockholders, together with their respective affiliates, beneficially owned approximately 83.5% of our capital stock as of March 31, 2007, and we expect that upon completion of this offering, that same group will beneficially own at least 64.0% of our capital stock, of which 7.1% will be beneficially owned by our executive officers. Accordingly, after this offering, our executive officers, directors and principal stockholders will be able to determine the composition of our board of directors, retain the voting power to approve all matters requiring stockholder approval, including mergers and other business combinations, and continue to have significant influence over our operations. This concentration of ownership could have the effect of delaying or preventing a change in our control or otherwise discouraging a potential acquirer from attempting to obtain control of us, which in turn could have a material adverse effect on the market value of our common stock, and may prevent attempts by our stockholders to replace or remove our board of directors or management.

We will incur significant increased costs as a result of operating as a public company, and our management will be required to devote substantial time to new compliance initiatives.

As a public company, we will incur significant legal, accounting and other expenses that we did not incur as a private company. In addition, the Sarbanes-Oxley Act of 2002, and rules of the Securities and Exchange Commission and the NASDAQ Stock Market, have imposed various requirements on public companies including requiring establishment and maintenance of effective disclosure and financial controls. Our management and other personnel will need to devote a substantial amount of time to these compliance initiatives. Moreover, these rules and regulations will increase our legal and financial compliance costs and will make some activities more time-consuming and costly. For example, we expect these rules and regulations to make it more difficult and more expensive for us to obtain director and officer liability insurance, and we may be required to incur substantial costs to maintain the same or similar coverage.

The Sarbanes-Oxley Act of 2002 requires, among other things, that we maintain effective internal control over financial reporting and disclosure controls and procedures. In particular, we must perform system and process evaluation and testing of our internal control over financial reporting to allow management and our independent registered public accounting firm to report on the effectiveness of our internal control over financial reporting, as required by Section 404 of the Sarbanes-Oxley Act, beginning with our annual report on Form 10-K for the fiscal year ended December 31, 2008. Our compliance with Section 404 of the Sarbanes-Oxley Act will require that we incur substantial accounting expense and expend significant management efforts. We currently do not have an internal audit group, and we will need to hire additional accounting and financial staff with appropriate public company experience and technical accounting knowledge. If we are not able to comply with the requirements of Section 404 in a timely manner, or if we or our independent registered public accounting firm identify deficiencies in our internal control over financial reporting that are deemed to be material weaknesses, the market price of our stock could decline and we could be subject to sanctions or investigations by NASDAQ, the SEC or other regulatory authorities, which would require additional financial and management resources.

Our ability to successfully implement our business plan and comply with Section 404 requires us to be able to prepare timely and accurate financial statements. We expect that we will need to continue to improve existing, and implement new operational and financial systems, procedures and controls to manage our business effectively. Any delay in the implementation of, or disruption in the transition to, new or enhanced systems, procedures or controls, may cause our operations to suffer and we may be unable to conclude that our internal control over financial reporting is effective and to obtain an unqualified report on internal controls from our auditors as required under Section 404 of the Sarbanes-Oxley Act. This, in turn, could have an adverse impact on trading prices for our common stock, and could adversely affect our ability to access the capital markets.

We have broad discretion to use the net proceeds from this offering and our investment of these proceeds may not yield a favorable return. We may invest the proceeds of this offering in ways you disagree with.

Our management has broad discretion as to how to spend and invest the proceeds from this offering and we may spend or invest these proceeds in a way with which our stockholders may disagree. Accordingly, you will need to rely on our judgment with respect to the use of these proceeds. We plan to invest the net proceeds of this offering in short-term, investment-grade, interest bearing securities. These investments may not yield a favorable return to our stockholders.

If we acquire or in-license products or product candidates, or acquire companies that we believe are complementary to our business, the process of integrating the acquired or in-licensed products or product candidates, or acquired companies may result in unforeseen difficulties and expenditures, and may require significant management attention that would otherwise be devoted to our existing business and products. We could fail to realize the anticipated benefits of any acquisition or in-licensing arrangement. Future acquisitions could reduce your percentage of ownership of us or the value of your common stock and could cause us to incur debt and expose us to liabilities.

An active trading market for our common stock may not develop.

Prior to this offering, there has been no public market for our common stock. Although we expect that our common stock will be approved for listing on the NASDAQ Global Market, an active trading market for our shares may never develop or be sustained following this offering. The initial public offering price for our common stock was determined through negotiations with the underwriters, and the negotiated price may not be indicative of the market price of the common stock after the offering. This initial public offering price may vary from the market price of our common stock after the offering. As a result of these and other factors, you may be unable to resell your shares of our common stock at or above the initial public offering price.

Some provisions of our charter documents and Delaware law may have anti-takeover effects that could discourage an acquisition of us by others, even if an acquisition would be beneficial to our stockholders, and may prevent attempts by our stockholders to replace or remove our current management.

Provisions in our certificate of incorporation and bylaws, as well as provisions of Delaware law, could make it more difficult for a third party to acquire us, or for a change in the composition of our board of directors or management to occur, even if doing so would benefit our stockholders. These provisions include:

- authorizing the issuance of "blank check" preferred stock, the terms of which may be established and shares of which may be issued without stockholder approval;
- dividing our board of directors into three classes;
- limiting the removal of directors by the stockholders;
- eliminating cumulative voting rights and therefore allowing the holders of a majority of the shares of our common stock to elect all of the directors standing for election, if they should so choose;
- prohibiting stockholder action by written consent, thereby requiring all stockholder actions to be taken at a meeting of our stockholders;
- eliminating the ability of stockholders to call a special meeting of stockholders; and
- establishing advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted upon at stockholder meetings.

In addition, we are subject to Section 203 of the Delaware General Corporation Law, which generally prohibits a Delaware corporation from engaging in any of a broad range of business combinations with an interested stockholder for a period of three years following the date on which the stockholder became an interested stockholder, unless such transactions are approved by our board of directors. This provision could have the effect of delaying or preventing a change of control, whether or not it is desired by or beneficial to our stockholders.

We have never declared or paid dividends on our capital stock and we do not anticipate paying dividends in the foreseeable future.

Our business requires significant funding, and we currently invest more in product development than we earn from sales of our products. In addition, the agreements governing our debt restrict our ability to pay dividends on our common stock. Therefore, we do not anticipate paying any cash dividends on our common stock in the foreseeable future. We currently plan to invest all available funds and future earnings in the development and growth of our business. As a result, capital appreciation, if any, of our common stock will be your sole source of potential gain for the foreseeable future.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

Some of the statements under "Prospectus Summary," "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business" and elsewhere in this prospectus contain forward-looking statements. In some cases, you can identify forward-looking statements by the following words: "may," "will," "could," "would," "should," "expect," "intend," "plan," "anticipate," "believe," "estimate," "predict," "project," "potential," "continue," "ongoing" or the negative of these terms or other comparable terminology, although not all forward-looking statements contain these words. These statements involve risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to be materially different from the information expressed or implied by these forward-looking statements. Although we believe that we have a reasonable basis for each forward-looking statement contained in this prospectus, we caution you that these statements are based on a combination of facts and factors currently known by us and our projections of the future, about which we cannot be certain. Many important factors affect our ability to achieve our objectives, including:

- the success and timing of our product development activities and clinical trials;
- our ability to obtain and maintain regulatory approval of our product candidates;
- the size and growth potential of the markets for our products, and our ability to serve those markets;
- our ability to successfully commercialize our products;
- the successful development and expansion of our specialty sales force and commercial organization;
- the rate and degree of market acceptance of our current products;
- the performance of our single source suppliers and manufacturers;
- the success of competing branded and generic drugs;
- our ability to identify, develop, acquire and in-license new products and product candidates and to attract appropriate collaboration partners;
- the loss of key personnel;
- regulatory developments in the United States and foreign countries;
- our use of the proceeds from this offering;
- the accuracy of our estimates regarding revenues, expenses, capital requirements and needs for additional financing, and our ability to obtain additional financing; and
- our ability to obtain and maintain intellectual property protection for our products.

In addition, you should refer to the "Risk Factors" section of this prospectus for a discussion of other important factors that may cause our actual results to differ materially from those expressed or implied by our forward-looking statements. As a result of these factors, we cannot assure you that the forward-looking statements in this prospectus will prove to be accurate. Furthermore, if our forward-looking statements prove to be inaccurate, the inaccuracy may be material. In light of the significant uncertainties in these forward-looking statements, you should not regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified time frame, or at all. We undertake no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law. The Private Securities Litigation Reform Act of 1995 and Section 27A of the Securities Act of 1933 do not protect any forward-looking statements that we make in connection with this offering.

USE OF PROCEEDS

We estimate that the net proceeds from the sale of the shares of our common stock in this offering will be approximately $137.2 million, or approximately $158.1 million if the underwriters exercise their over-allotment option in full, based upon an assumed initial public offering price of $25.00 per share, the mid-point of the range reflected on the cover page of this prospectus, and after deducting underwriting discounts and commissions and estimated offering expenses. Each $1.00 increase (decrease) in the assumed initial public offering price of $25.00 per share would increase (decrease) the net proceeds to us from this offering by approximately $5.6 million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same. We may also increase or decrease the number of shares we are offering. Each increase (decrease) of one million shares in the number of shares offered by us would increase (decrease) the net proceeds to us from this offering by approximately $23.3 million, assuming that the assumed initial public offering price remains the same, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. We do not expect that a change in the offering price or the number of shares by these amounts would have a material effect on our uses of the proceeds from this offering, although it may impact the amount of time prior to which we will need to seek additional capital.

We currently expect to use the net proceeds from this offering as follows:

- approximately $90.0 million to fund the planned U.S. launch and commercialization of Luvox CR, including $41.0 million for development and commercial milestone payments to Solvay in connection with the acquisition of our U.S. rights to Luvox CR, approximately $39.0 million for activities related to our preparation for marketing, promotion and expansion of our specialty sales force and approximately $10.0 million for production of initial commercial quantities of Luvox CR;
- approximately $25.0 million to fund our Phase III pivotal clinical trials of JZP-6 through the completion of the first Phase III clinical trial, after which, if the trial is successful, we would need an estimated $50.0 million to complete development and commercial launch of JZP-6; and
- the remainder to fund continued development of and feasibility activities for our portfolio of clinical and early-stage product candidates during the next 12 to 18 months, as well as working capital, capital expenditures and other general corporate purposes. The completion of development activities and commercial launch of each of our early stage product candidates would require substantial additional funds.

We may also use a portion of the proceeds for the potential acquisition or in-licensing of, or investment in, products, product candidates, or companies that complement our business, although we have no current understandings, commitments or agreements to do so.

We may also seek to obtain debt or other non-equity financing for a portion of the costs to launch and commercialize Luvox CR, to complete the development and planned commercial launch of JZP-6, to fund continued development and commercialization of our portfolio of clinical and early-stage product candidates and/or for the acquisition or in-licensing of, or investment in, products, product candidates, or companies that complement our business. We have no current understandings, commitments or agreements with respect to any such potential financing.

The expected use of net proceeds of this offering represents our current intentions based upon our present plans and business conditions. As of the date of this prospectus, we cannot specify with certainty all of the particular uses for the net proceeds to be received upon the closing of this offering. Accordingly, our management will have broad discretion in the application of the net proceeds, and investors will be relying on the judgment of our management regarding the application of the proceeds of this offering.

The amount and timing of our expenditures will depend on several factors, including whether and when Solvay obtains regulatory approval of Luvox CR, the success of our research and development programs and

clinical trials, expenditures to acquire or in-license additional products or product candidates, our ability to establish and maintain collaborative arrangements that reduce our expenses, any settlement of the U.S. Attorney's Office investigation of Orphan Medical's promotion of Xyrem, future sales growth, cash generated from future operations and actual expenses to operate our business. Pending their uses, we plan to invest the net proceeds of this offering in short- and intermediate-term, interest-bearing obligations, investment-grade instruments, certificates of deposit or direct or guaranteed obligations of the U.S. government.

While we believe that our current cash, cash equivalents and marketable securities and the net proceeds from this offering, and interest earned thereon, together with anticipated revenues from product sales, royalties and funding that we expect to receive from our current collaboration arrangement with UCB, will be sufficient to satisfy our current operations through at least the next 12 to 18 months, we expect to raise additional funds within this period of time through development financings, collaborations, or public or private debt or equity financings. In addition, we do not expect that our existing capital resources and the net proceeds from this offering will be sufficient to enable us to fund the completion of the development of our current product candidates, and we will need to raise substantial additional capital to fund our operations and to continue to develop our product portfolio, acquire or in-license additional products and product candidates, and launch and market our products.

DIVIDEND POLICY

We have never declared or paid any dividends on our common stock or any other securities. We anticipate that we will retain all of our future earnings, if any, for use in the expansion and operation of our business and do not anticipate paying cash dividends in the foreseeable future. In addition, the agreements covering our debt restrict our ability to pay dividends on our common stock. Any future determination relating to our dividend policy will be made at the discretion of our board of directors, based on our financial condition, results of operation, contractual restrictions, capital requirements, business prospects and other factors our board of directors may deem relevant.

CAPITALIZATION

The following table sets forth our cash, cash equivalents and capitalization as of March 31, 2007:

- on an actual basis;
- on a pro forma basis to reflect the conversion of all of our outstanding shares of preferred stock into 17,921,551 shares of common stock immediately prior to the closing of this offering, the transfer of common stock subject to repurchase from stockholders' equity to temporary equity and the reclassification of preferred stock warrant liability to additional paid-in capital upon conversion of the preferred stock underlying the warrants into common stock; and
- on a pro forma as adjusted basis to reflect the sale of 6,000,000 shares of common stock in this offering at an assumed initial public offering price of $25.00 per share, the mid-point of the range reflected on the cover page of this prospectus, after deducting underwriting discounts and commissions and estimated offering expenses.

You should read the information in this table together with "Selected Consolidated Financial Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes included elsewhere in this prospectus.

	As of March 31, 2007		
	Actual	Pro Forma (Unaudited)	Pro Forma As Adjusted(1)
	(In thousands, except per share data)		
Cash and cash equivalents	$ 67,667	$ 67,667	$ 204,867
Senior secured notes (including $52,100 as of March 31, 2007 held by related parties)	$ 74,429	$ 74,429	$ 74,429
Preferred stock warrant liability (including $8,469 as of March 31, 2007 held by related parties)	11,588	—	—
Convertible preferred stock, $.0001 par value; issuable in series, 27,851,839 authorized, 17,921,551 shares issued and outstanding, actual; 27,851,839 authorized, no shares issued and outstanding, pro forma and pro forma as adjusted	263,852	—	—
Common stock subject to repurchase	8,749	12,954	12,954
Stockholders' equity (deficit):			
Preferred stock, $.0001 par value, no shares authorized, issued and outstanding, actual and pro forma; 20,000,000 shares authorized, no shares issued and outstanding, pro forma as adjusted	—	—	—
Common stock, $.0001 par value, 22,835,080 shares authorized, 629,003 shares issued and outstanding, actual; 22,835,080 shares authorized, 18,550,554 shares issued and outstanding, pro forma (unaudited); 150,000,000 shares authorized, 24,550,554 shares issued and outstanding, pro forma as adjusted	—	2	2
Additional paid-in capital	1,807	273,040	410,240
Accumulated other comprehensive income	—	—	—
Accumulated deficit	(197,227)	(197,227)	(197,227)
Total stockholders' equity (deficit)	(195,420)	75,815	213,015
Total capitalization	$ 163,198	$ 163,198	$ 300,398

(1) Each $1.00 increase (decrease) in the assumed initial public offering price of $25.00 per share, the mid-point of the range reflected on the cover page of this prospectus, would increase (decrease) each of additional paid-in capital, total stockholders' equity and total

capitalization by approximately $5.6 million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting underwriting discounts and commissions and estimated offering expenses payable by us. We may also increase or decrease the number of shares we are offering. Each increase (decrease) of one million shares in the number of shares offered by us would increase (decrease) each of additional paid-in capital, total stockholders' equity and total capitalization by approximately $23.3 million, assuming that the assumed initial public offering price remains the same, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. The as adjusted information discussed above is illustrative only and will adjust based on the actual initial public offering price and other terms of this offering determined at pricing.

The outstanding share information in the table above excludes as of March 31, 2007:

- 1,862,530 shares of common stock issuable upon the exercise of outstanding options with a weighted average exercise price of $21.34 per share;
- 215,792 shares of common stock reserved for future issuance under our 2003 Equity Incentive Plan as of March 31, 2007; provided, however, that immediately upon the signing of the underwriting agreement for this offering, our 2003 Equity Incentive Plan will terminate so that no further awards may be granted under our 2003 Equity Incentive Plan;
- an aggregate of up to 5,175,042 shares of common stock reserved for future issuance under our 2007 Equity Incentive Plan, 2007 Non-Employee Directors Stock Option Plan and 2007 Employee Stock Purchase Plan, each of which will become effective immediately upon the signing of the underwriting agreement for this offering; and
- 785,728 shares of common stock issuable upon the exercise of outstanding warrants with an exercise price of $20.36 per share.

DILUTION

If you invest in our common stock in this offering, your ownership interest will be diluted to the extent of the difference between the initial public offering price per share and the pro forma net tangible book value per share of our common stock after this offering. Historical net tangible book value per share is determined by dividing our total tangible assets (total assets less intangible assets), less total liabilities, convertible preferred stock and common stock subject to repurchase, by the number of outstanding shares of our common stock. As of March 31, 2007, we had a historical net tangible book value (deficit) of our common stock of $(296.9) million, or approximately $(471.97) per share. The pro forma net tangible book value (deficit) of our common stock as of March 31, 2007 was approximately $(25.6) million, or approximately $(1.38) per share, based on the number of shares of common stock outstanding as of March 31, 2007, after giving effect to the conversion of all outstanding convertible preferred stock into shares of common stock and the reclassification of the preferred stock warranty liability to equity immediately prior to the closing of this offering.

Investors participating in this offering will incur immediate, substantial dilution. After giving effect to the sale of common stock offered in this offering at an assumed initial public offering price of $25.00 per share, the mid-point of the range reflected on the cover page of this prospectus, after deducting underwriting discounts and commissions and estimated offering expenses payable by us, our pro forma as adjusted net tangible book value as of March 31, 2007 would have been approximately $111.6 million, or approximately $4.54 per share of common stock. This represents an immediate increase in pro forma as adjusted net tangible book value of $5.92 per share to existing stockholders, and an immediate dilution of $20.46 per share to investors participating in this offering. The following table illustrates this per share dilution:

Assumed initial public offering price per share		$25.00
Historical net tangible book value (deficit) per share as of March 31, 2007	$(471.97)	
Pro forma increase in net tangible book value per share attributable to conversion of convertible preferred stock	470.59	
Pro forma net tangible book value (deficit) per share before this offering	$ (1.38)	
Pro forma increase in net tangible book value per share attributable to investors participating in this offering	5.92	
Pro forma as adjusted net tangible book value per share after this offering		4.54
Pro forma dilution per share to investors participating in this offering		$20.46

Each $1.00 increase (decrease) in the assumed initial public offering price of $25.00 per share would increase (decrease) our pro forma as adjusted net tangible book value by approximately $5.6 million, or approximately $.23 per share, and the pro forma dilution per share to investors in this offering by approximately $.77 per share, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting underwriting discounts and commissions and estimated offering expenses payable by us. We may also increase or decrease the number of shares we are offering. An increase of one million shares in the number of shares offered by us would increase our pro forma as adjusted net tangible book value by approximately $23.3 million, or $.73 per share, and the pro forma dilution per share to investors in this offering would be $19.72 per share, assuming that the assumed initial public offering price remains the same, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, a decrease of one million shares in the number of shares offered by us would decrease our pro forma as adjusted net tangible book value by approximately $23.3 million, or $.79 per share, and the pro forma dilution per share to investors in this offering would be $21.25 per share, assuming that the assumed initial public offering price remains the same, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. The pro forma as adjusted information discussed above is illustrative only and will adjust based on the actual initial public offering price and other terms of this offering determined at pricing.

If the underwriters exercise their option in full to purchase 900,000 additional shares of common stock in this offering, the pro forma as adjusted net tangible book value per share after the offering would be $5.21 per share, the increase in the pro forma net tangible book value per share to existing stockholders would be $6.59 per share and the pro forma dilution to new investors purchasing common stock in this offering would be $19.79 per share.

The following table summarizes, on a pro forma basis as of March 31, 2007, the differences between the number of shares of common stock purchased from us, the total consideration and the weighted average price per share paid by existing stockholders and by investors participating in this offering at an assumed initial public offering price of $25.00 per share, before deducting underwriting discounts and commissions and estimated offering expenses:

	Shares Purchased		Total Consideration		Weighted Average Price Per Share
	Number	Percent	Amount	Percent	
Existing stockholders before this offering	18,550,554	76%	$266,807,000	64%	$ 14.38
Investors participating in this offering	6,000,000	24	150,000,000	36	25.00
Total	24,550,554	100%	$416,807,000	100%	

The above discussion and tables are based on 18,550,554 shares of common stock outstanding as of March 31, 2007. This number excludes, as of March 31, 2007:

- 1,862,530 shares of common stock issuable upon the exercise of outstanding options with a weighted average exercise price of $21.34 per share;
- 215,792 shares of common stock reserved for future issuance under our 2003 Equity Incentive Plan; provided, however, that immediately upon the signing of the underwriting agreement for this offering, our 2003 Equity Incentive Plan will terminate so that no further awards may be granted under our 2003 Equity Incentive Plan;
- an aggregate of up to 5,175,042 shares of common stock reserved for future issuance under our 2007 Equity Incentive Plan, 2007 Non-Employee Directors Stock Option Plan and 2007 Employee Stock Purchase Plan, each of which will become effective immediately upon the signing of the underwriting agreement for this offering; and
- 785,728 shares of common stock issuable upon the exercise of outstanding warrants with an exercise price of $20.36 per share.

The following table summarizes, on a pro forma basis as of March 31, 2007, after giving effect to the exercise of all stock options and warrants outstanding as of March 31, 2007, the differences between the number of shares of common stock purchased from us, the total consideration and the weighted average price per share paid by existing stockholders and by investors participating in this offering at an assumed initial public offering price of $25.00 per share, before deducting underwriting discounts and commissions and estimated offering expenses:

	Shares Purchased		Total Consideration		Weighted Average Price Per Share
	Number	Percent	Amount	Percent	
Existing stockholders before this offering	21,198,812	78%	$322,550,000	68%	$15.22
Investors participating in this offering	6,000,000	22	150,000,000	32	25.00
Total	27,198,812	100%	$472,550,000	100%	

The number of shares of common stock outstanding in the table above is based on the pro forma number of shares outstanding as of March 31, 2007 and assumes no exercise of the underwriters' option to purchase

additional shares. If the underwriters' option to purchase additional shares is exercised in full, the number of shares of common stock held by existing stockholders will be reduced to 75% of the total number of shares of common stock to be outstanding after this offering, and the number of shares of common stock held by investors participating in this offering will be increased to 6,900,000 shares or 25% of the total number of shares of common stock to be outstanding after this offering.

Effective upon the closing of this offering, an aggregate of up to 5,175,042 shares of our common stock will be reserved for future issuance under our equity benefit plans, and these share reserves will also be subject to automatic annual increases in accordance with the terms of the plans. To the extent that new options are issued under our equity benefit plans or we issue additional shares of common stock in the future, there will be further dilution to investors participating in this offering.

SELECTED CONSOLIDATED FINANCIAL DATA

The following selected consolidated financial data should be read together with our consolidated financial statements and accompanying notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations" appearing elsewhere in this prospectus. The selected consolidated financial data in this section is not intended to replace our consolidated financial statements and the accompanying notes. Our historical results are not necessarily indicative of our future results.

The selected consolidated statements of operations data for the period from March 20, 2003 (date of inception) through December 31, 2003 and the selected consolidated balance sheet data as of December 31, 2003 and 2004 are derived from our audited consolidated financial statements not included in this prospectus. We derived the consolidated statements of operations data for the years ended December 31, 2004, 2005 and 2006 and the consolidated balance sheet data as of December 31, 2005 and 2006 from our audited consolidated financial statements appearing elsewhere in this prospectus. The selected consolidated statements of operations data for the three month periods ended March 31, 2006 and 2007, and the selected consolidated balance sheet data as of March 31, 2007, have been derived from our unaudited consolidated financial statements included elsewhere in this prospectus, which, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary to state fairly our financial position and results of operations.

	Period from March 20, 2003 (Inception) to December 31, 2003	Year Ended December 31,			Three Months Ended March 31,	
		2004	2005(1)	2006(2)	2006	2007
					(Unaudited)	
	(In thousands, except per share amounts)					
Consolidated Statements of Operations Data:						
Revenues:						
Product sales, net	$ —	$ —	$ 18,796	$ 43,299	$ 9,771	$ 11,625
Royalties, net	—	—	146	594	66	211
Contract revenue	—	—	2,500	963	—	2,252
Total revenues	—	—	21,442	44,856	9,837	14,088
Operating expenses:						
Cost of product sales (excluding amortization of acquired developed technology)	—	—	4,292	6,968	1,569	2,003
Research and development	—	17,988	45,783	54,956	12,894	14,867
Selling, general and administrative	2,538	7,459	23,551	51,384	12,219	14,339
Amortization of intangible assets	—	—	4,960	9,600	2,400	2,362
Purchased in-process research and development	—	—	21,300	—	—	—
Total operating expenses	2,538	25,447	99,886	122,908	29,082	33,571
Loss from operations	(2,538)	(25,447)	(78,444)	(78,052)	(19,245)	(19,483)
Interest income	10	643	1,318	2,307	581	1,091
Interest expense (including $4,595 and $9,024 for the years ended December 31, 2005 and 2006, respectively, and $2,185 and $2,254 for the three months ended March 31, 2006 and 2007 (unaudited), respectively, pertaining to related parties)	—	—	(7,129)	(14,129)	(3,777)	(3,268)
Other income (expense)	—	—	(901)	(1,109)	62	(3,069)
Gain on extinguishment of development financing obligation	—	—	—	31,592	—	—
Gain on sale of product rights	—	—	—	—	—	5,145
Net loss	(2,528)	(24,804)	(85,156)	(59,391)	(22,379)	(19,584)
Beneficial conversion feature	—	—	—	(21,920)	(3,501)	—
Loss attributable to common stockholders	$ (2,528)	$ (24,804)	$ (85,156)	$ (81,311)	$ (25,880)	$(19,584)
Loss per share attributable to common stockholders, basic and diluted	$ (81.55)	$(1,550.25)	$(14,192.67)	$(6,524.69)	$(2,875.56)	$(851.48)
Weighted-average common shares used in computing loss per share attributable to common stockholders, basic and diluted	31	16	6	13	9	23
Pro-forma loss per share attributable to common stockholders (unaudited), basic and diluted(3)				$ (6.04)		$ (1.11)
Weighted-average common shares used in computing pro-forma loss per share attributable to common stockholders (unaudited), basic and diluted				13,466		17,666

(1) We acquired Orphan Medical, Inc. on June 24, 2005, and the results of Orphan Medical are included in the consolidated financial statements from that date.
(2) Operating expenses include stock-based compensation expense of $3.5 million of which $8,000, $661,000 and $2.8 million were charged to cost of product sales, research and development and selling, general and administrative expense, respectively.
(3) Assumes the conversion of all outstanding shares of convertible preferred stock outstanding as of December 31, 2006 and March 31, 2007, as applicable, into common stock.

	As of December 31,				As of March 31, 2007
	2003	2004	2005	2006	(Unaudited)
Consolidated Balance Sheet Data:					
Cash and cash equivalents	$ 4,460	$ 33,678	$ 20,614	$ 78,948	$ 67,667
Working capital	4,488	36,663	8,048	61,043	46,673
Total assets	4,900	42,850	164,781	214,571	197,910
Senior secured notes (including $50,620 and $51,998 as of December 31, 2005 and 2006, respectively, and $52,100 as of March 31, 2007 (unaudited), held by related parties)	—	—	73,629	74,283	74,429
Convertible preferred stock	7,076	64,009	163,862	263,852	263,852
Common stock subject to repurchase	—	3,665	5,924	8,183	8,749
Accumulated deficit	(2,528)	(27,332)	(118,252)	(177,643)	(197,227)
Total stockholders' (deficit)	(2,512)	(30,923)	(118,248)	(176,296)	(195,420)

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read the following discussion and analysis together with our consolidated financial statements and the notes to those statements included elsewhere in this prospectus. This discussion contains forward-looking statements that involve risks and uncertainties. As a result of many factors, such as those set forth under "Risk Factors" and elsewhere in this prospectus, our actual results may differ materially from those anticipated in these forward-looking statements.

Overview

We are a specialty pharmaceutical company focused on identifying, developing and commercializing innovative products to meet unmet medical needs in neurology and psychiatry. Our goal is to build a broad portfolio of products through a combination of internal development and acquisition and in-licensing activities and to utilize our specialty sales force to promote our products in our target markets. We apply novel formulations and drug delivery technologies to known drug compounds, and compounds with the same mechanism of action or similar chemical structure as marketed products, to improve patient care by, among other things, improving efficacy, reducing adverse side effects or increasing patient compliance relative to existing therapies. By working with these drug compounds, we believe that we can substantially mitigate the risks and reduce the costs and time associated with product development and commercialization of new therapies with significant market opportunities. Through the application of novel formulations and drug delivery technologies available from third parties, we also explore potential new indications for known drug compounds. Since our inception in 2003, our experienced executive management team has built a commercial operation and assembled a portfolio of products and product candidates that currently includes two marketed products that generated net product sales of $41.9 million in 2006, one product candidate for which an approvable letter has been issued by the U.S. Food and Drug Administration, or FDA, and five product candidates in various stages of clinical development. We also have additional product candidates in earlier stages of development. In March 2007, we sold our rights to a third marketed product that generated net product sales of $1.4 million in 2006 for cash consideration of $9.0 million.

In March 2003, we were incorporated in the State of California and began operations. In April 2003, we entered into agreements with investors for a $15.0 million Series A preferred stock financing, the funds from which were received in 2003 and early 2004. In January 2004, we reincorporated in the State of Delaware. In February 2004, we entered into agreements with investors for a $250.0 million Series B preferred stock and Series B Prime preferred stock financing led by an affiliate of Kohlberg Kravis Roberts & Co., the funds from which were received in 2004, 2005 and 2006. All of our outstanding preferred stock will convert into common stock in connection with this offering. On June 24, 2005, we acquired Orphan Medical, Inc., including its three marketed products, Xyrem, Antizol and Cystadane, in order to complement our development portfolio with marketed products and to build our commercial organization.

Our marketed products in 2006 were:

- *Xyrem (sodium oxybate) oral solution*. Xyrem is the only product approved by the FDA for the treatment of both cataplexy and excessive daytime sleepiness in patients with narcolepsy. Net product sales of Xyrem were $29.0 million in 2006 and $8.6 million in the first quarter of 2007. We promote Xyrem in the United States to neurologists, psychiatrists, pulmonologists and sleep specialists through our 55 person specialty sales force. Xyrem is distributed in the United States by Express Scripts Specialty Distribution Services, or Express Scripts, a specialty pharmaceutical distribution company, which is our only customer for Xyrem. We have licensed the rights to commercialize Xyrem in 54 countries outside of the United States to UCB Pharma Limited, or UCB, and in Canada to Valeant Canada Limited, or Valeant. In October 2005, the European Agency for the Evaluation of Medical Products approved Xyrem for the treatment of cataplexy associated with narcolepsy and in March 2007, the European Agency for the Evaluation of Medical Products approved the product for the treatment of narcolepsy with cataplexy in adult patients. UCB has commercially launched Xyrem in 12 countries.

- *Antizol (fomepizole).* Antizol is the only FDA-approved antidote for suspected or confirmed ethylene glycol or methanol poisonings in humans. We market Antizol primarily to hospitals and emergency rooms. Net product sales of Antizol were $12.5 million in 2006 and $2.6 million in the first quarter of 2007. Antizol is distributed to wholesalers in the United States, and we retain the services of a third party to promote the product. Antizol is marketed by our distributors in Canada and Israel. We also market Antizol-Vet, an injectable formulation of fomepizole approved as an antidote for suspected or confirmed ethylene glycol poisoning in dogs. Net product sales of Antizol-Vet in 2006 were $313,000.
- *Cystadane (betaine anhydrous).* Cystadane is approved by the FDA for the treatment of homocystinuria, an inherited metabolic disease. Net product sales of Cystadane in 2006 were $1.4 million. In March 2007, we sold our rights to Cystadane to an unrelated third party for cash consideration of $9.0 million.

Our late-stage product candidates are:

- *Luvox CR (fluvoxamine maleate extended release capsules).* Our most advanced product candidate is Luvox CR, an extended release formulation of fluvoxamine, a selective serotonin reuptake inhibitor, which has been developed for the treatment of obsessive compulsive disorder and social anxiety disorder. We obtained the exclusive rights to market and distribute Luvox CR in the United States from Solvay Pharmaceuticals, Inc., or Solvay, in January 2007. Solvay retains the rights to market and distribute Luvox CR outside of the United States. Solvay submitted a new drug application, or NDA, to the FDA for Luvox CR in April 2006, and, in February 2007, the FDA issued an approvable letter. Under our agreement with Solvay, Solvay has primary responsibility for the NDA for Luvox CR and communications with the FDA until after such time, if ever, as the FDA approves the NDA for Luvox CR. Subject to the satisfaction of the requirements set forth in an approvable letter issued by the FDA to Solvay and FDA approval, we expect to commence promotion of Luvox CR in the United States in the first quarter of 2008 through an expanded specialty sales force. During 2007, we expect to make significant expenditures relating to the planned launch and commercialization of Luvox CR, including milestone payments to Solvay, activities related to our preparation for marketing and promotion, expansion of our specialty sales force and production of commercial quantities of Luvox CR.
- *JZP-6 (sodium oxybate).* We are developing a liquid dosage form of sodium oxybate, the active pharmaceutical ingredient in Xyrem, for the treatment of fibromyalgia syndrome. We have successfully completed a Phase II clinical trial of this product candidate for the treatment of fibromyalgia syndrome. We are currently conducting two pivotal Phase III clinical trials, and we expect preliminary data from the first Phase III pivotal clinical trial in the second half of 2008. We have granted to UCB the commercialization rights to JZP-6 in 54 countries outside of the United States.

In addition to our product candidates in late-stage development, our clinical development pipeline consists of the following product candidates:

- *JZP-4 (Type IIa sodium channel antagonist).* Subject to the results of a proof of concept clinical trial, formulation studies and long-term toxicology studies, we plan to commence a Phase II clinical trial of JZP-4 for the treatment of epilepsy in the fourth quarter of 2007. We are also developing JZP-4 for the treatment of bipolar disorder.
- *JZP-8 (benzodiazepine).* We plan to commence a Phase II clinical trial of JZP-8 for the treatment of acute repetitive seizure clusters in refractory epilepsy patients in the fourth quarter of 2007.
- *JZP-7 (dopamine agonist).* We intend to conduct an additional pharmacokinetic study of JZP-7 in 2007 prior to commencing Phase II clinical trials for the treatment of restless legs syndrome.
- *JZP-2 (benzodiazepine).* We have developed a target formulation for JZP-2 and plan to commence one or more clinical trials of JZP-2 for the acute treatment of panic attacks associated with panic disorder in 2007.

Although we generate product revenues, we have funded our operations primarily through the sale of convertible preferred stock, the issuance of senior secured notes and warrants, a line of credit, development financing related to one of our previous product candidates and our collaboration with UCB related to Xyrem and JZP-6. Our sources of funding have included the following:

- *Equity Financings*. Our preferred stock financings raised gross proceeds of $265.0 million.
- *Debt Financings*. In connection with our acquisition of Orphan Medical, we issued $80.0 million aggregate principal amount of senior secured notes and warrants to purchase 785,728 shares of our Series BB convertible preferred stock. Additionally, in September 2006, we entered into a one year line of credit agreement with a financial institution under which we may borrow up to 80% of eligible accounts receivable, up to a maximum borrowing limit of $5.0 million.
- *Development Financing*. In August 2005, we entered into an agreement with a third party under which the third party agreed to provide $30.0 million to fund a Phase III clinical trial of JZP-3, a product candidate then in development for the treatment of general anxiety disorder. Under that agreement, we received $15.0 million in 2005 and $15.0 million in 2006. In June 2006, following analysis of the results of the Phase III clinical trial, we notified the third party of our intention to discontinue development of the product candidate and not to seek product marketing approval from the FDA. As a result of our notification, we were not obligated to make any payments to the third party that otherwise would have been made upon regulatory approval, launch and commercialization of JZP-3.
- *Collaboration*. Under the terms of our agreement with UCB for Xyrem and JZP-6, we received an upfront payment of $5.0 million and a $10.0 million payment upon election by UCB to exercise its rights to develop and commercialize JZP-6 for the treatment of fibromyalgia syndrome. We are also entitled to additional development and commercialization milestone payments of up to $146.0 million and royalties on all commercial sales of Xyrem and JZP-6 by UCB.

Since our inception, we have incurred significant net losses, and we expect to continue to incur net losses for the next several years as we develop, acquire or in-license additional products or product candidates, expand clinical trials for our product candidates currently in clinical development, expand our research and development activities, seek regulatory approvals and engage in commercialization preparation activities in anticipation of potential FDA approval of our product candidates. We will need to expand our commercial organization to launch additional products. It is very expensive to launch a product, and many expenses are incurred before revenues are received. We are unable to predict the extent of any future losses or when we will become profitable, if at all.

While we believe that our current cash, cash equivalents and marketable securities and the anticipated net proceeds from this offering, and interest earned thereon, together with anticipated revenues from product sales, royalties and funding that we expect to receive from our current collaboration arrangement with UCB, will be sufficient to satisfy our current operations through at least the next 12 to 18 months, we expect to raise additional funds within this period of time through development financings, collaborations, or public or private debt or equity financings.

Revenues

Product Sales, Net

The following is a summary of our product sales, net for the years ended December 31, 2005 and 2006 and the three months ended March 31, 2006 and 2007. We had no product sales prior to our acquisition of Orphan Medical in June 2005.

	Year Ended December 31,		Three Months Ended March 31,	
	2005	2006	2006	2007
	(In thousands)			
Xyrem	$ 11,200	$ 29,049	$ 6,153	$ 8,624
Antizol(1)	6,782	12,813	3,131	2,636
Cystadane	814	1,437	487	365
Total	$ 18,796	$ 43,299	$ 9,771	$ 11,625

(1) Includes sales of Antizol-Vet, which were $99,000 and $313,000 in 2005 and 2006, respectively, and $80,000 and $65,000 in the three months ended March 31, 2006 and 2007, respectively.

Xyrem (sodium oxybate) oral solution. Revenues from sales of Xyrem represented primarily sales in the United States to Express Scripts. Revenues from sales of Xyrem under our agreements with UCB and Valeant have not been material. Orphan drug exclusivity for Xyrem expires in 2009 and in 2012 for the treatment of cataplexy and excessive daytime sleepiness in patients with narcolepsy, respectively.

Antizol (fomepizole). Revenues from sales of Antizol in the United States represented primarily sales to pharmaceutical wholesalers. Our sales of Antizol to distributors outside of the United States have not been material. The orphan drug exclusivity for Antizol expired for ethylene glycol poisoning in 2004 and is scheduled to expire in December 2007 for methanol poisoning. We expect annual sales to remain at approximately the 2006 level unless generic competition enters the market.

Cystadane (betaine anhydrous). We sold our rights to Cystadane in March 2007 for $9.0 million, and, accordingly, we will not receive future revenues from the sale of this product.

Royalties, Net

We receive royalties primarily from international distributors of our products, typically based on their net sales of our products. Approximately half of our royalties in the year ended December 31, 2006 resulted from minimum royalty payments under our agreement with UCB. Royalty income was $146,000 and $594,000 in the years ended December 31, 2005 and 2006, respectively, and $66,000 and $211,000 in the three months ended March 31, 2006 and 2007, respectively. We had no royalty revenues prior to the acquisition of Orphan Medical in June 2005. Although we do not expect royalty revenues to comprise a substantial portion of our revenues, we expect royalty revenues to increase in the future as UCB launches Xyrem in additional countries and Valeant launches Xyrem in Canada.

Contract Revenues

All of our contract revenues relate to upfront or milestone payments received from UCB. UCB made a nonrefundable development milestone payment to us of $2.5 million in November 2005 and nonrefundable commercial milestone payments of $500,000 and $2.0 million in June 2006 and March 2007, respectively, which we recognized upon achievement of the milestones. In connection with the expansion of our agreement with UCB in 2006, UCB made an upfront payment of $5.0 million and subsequently an additional payment of $10.0 million upon exercise of its rights to develop and commercialize JZP-6 for the treatment of fibromyalgia syndrome. These payments are being amortized through 2019, the estimated performance period of the contract. This amortization resulted in $463,000 and $252,000 of contract revenues during the year ended December 31, 2006 and the three months ended March 31, 2007, respectively.

Significant Customers

The following table presents a summary of revenues from significant customers as a percentage of our total revenues:

	Year Ended December 31,		Three Months Ended March 31,	
	2005	2006	2006	2007
Express Scripts	51%	65%	63%	61%
Cardinal Health	*	12%	15%	*
Amerisource Bergen	15%	*	*	*
UCB	12%	*	*	17%
McKesson Corporation	*	*	11%	*

* Less than 10% of our total revenues.

Research and Development Expenses

Our research and development expenses consist of expenses incurred in identifying, developing and testing our product candidates. These expenses consist primarily of fees paid to contract research organizations and other third parties to assist us in managing, monitoring and analyzing our clinical trials, clinical trial costs paid to sites and investigators' salaries, costs of non-clinical studies, including toxicity studies in animals, costs of contract manufacturing services, costs of materials used in clinical trials and non-clinical studies, fees paid to third parties for development candidates or drug delivery or formulation technologies that we have licensed, allocated expenses, such as facilities and information technology that support our research and development activities, and related personnel expenses, including stock-based compensation. Research and development costs are expensed as incurred, including payments made under our license agreements for product candidates in development.

Conducting a significant amount of research and development is central to our business model. Through March 31, 2007, we had incurred approximately $133.6 million in research and development expenses since our formation in 2003, and we plan to continue to make significant investments in research and development for the foreseeable future in order to realize the potential of our portfolio of development candidates and earlier-stage research and development projects. Product candidates in later-stage clinical development generally have higher development costs than those in earlier stages of development, primarily due to the significantly increased size and length of the clinical trials.

The following table summarizes our research and development expenses for each of the years ended December 31, 2004, 2005 and 2006 and the three months ended March 31, 2007. Prior to 2004, we did not undertake any substantial research and development efforts. We designate development projects to which we have allocated significant research and development resources with the term "JZP" and a unique number. All of the product candidates designated with "JZP" in the following table, other than JZP-3, remain in development. Development projects in addition to JZP-3 that were designated with a JZP number but later terminated are included in "Other terminated projects" in the following table. Earlier-stage development and product lifecycle extension projects are included in "Other projects" in the following table. Early product concept feasibility studies and other research activities are included in "R&D support" in the following table. The expenditures summarized in the following table reflect costs directly attributable to each development candidate and to our "Other projects." We do not allocate salaries, benefits or other indirect costs to our development candidates or "Other projects," and we have included these costs in "R&D support" in the following table.

	Year Ended December 31,			Three Months Ended March 31,	
	2004	2005	2006	2007	Total
			(In thousands)		
Luvox CR	$ —	$ —	$ —	$ 2,254	$ 2,254
Ongoing JZP Projects:					
JZP-6	—	—	14,209	5,219	19,428
JZP-4	2,077	2,141	6,699	1,963	12,880
JZP-8	—	313	1,403	162	1,878
JZP-7	4	150	1,328	386	1,868
JZP-2	58	1,570	395	272	2,295
Terminated Projects:					
JZP-3(1)	12,577	27,305	14,797	—	54,679
Other terminated projects	1,437	5,878	752	10	8,077
Other projects	1	97	1,834	151	2,083
R&D support	1,834	8,329	13,539	4,450	28,152
Total	$17,988	$45,783	$54,956	$ 14,867	$133,594

(1) Development has been terminated. This project was partially financed through $30.0 million of development financing discussed above.

In July 2004, we commenced our JZP-3 development efforts when we entered into a development and commercialization agreement, a product supply agreement and a technology transfer agreement with a pharmaceutical company and made a $1.0 million payment to this company. We made additional development milestone payments under these agreements of $2.0 million and $5.0 million in 2004 and 2005, respectively. We commenced a Phase III clinical trial of JZP-3 in late 2004. In June 2006, following analysis of the results of the Phase III clinical trial, we discontinued development of JZP-3 and terminated the program.

The process of developing and obtaining FDA approval of products is costly and time consuming. Development activities and clinical trials can take years to complete, and failure can occur any time during the clinical trial process. In addition, the results from early clinical trials may not be predictive of results obtained in later and larger clinical trials, and product candidates in later stages of clinical trials may fail to show the desired safety and efficacy despite having progressed successfully through initial clinical testing. For example, we ceased our development of JZP-3 after its Phase III clinical trial was not successful and after we had incurred significant development costs. Although our program for identifying and developing new product candidates is designed to mitigate risk, the successful development of our product candidates is highly uncertain. Further, even if our product candidates are approved for sale, we may be unable to successfully commercialize them in which case we would not generate the revenues we anticipate. Our ability to successfully develop, obtain FDA approval for and commercialize our products may be affected by a variety of factors including, among others:

- our ability, and the ability of our partners, to manufacture or obtain from third parties materials sufficient to complete our clinical trials;

- risks associated with trial design, which may result in a failure of the trial to show statistically significant results even if the product candidate is effective;
- safety issues, including adverse events associated with product candidates; and
- governmental or regulatory delays and changes in regulatory requirements, policy and guidelines.

Development timelines, probability of success and development costs vary widely among product candidates. As a result, we are unable to determine the time and completion costs related to the development of our product candidates or estimate when, or to what extent, we will generate revenues from the commercialization and sale of any of our product candidates other than Luvox CR, which we expect to commence promoting in the United States in the first quarter of 2008.

Critical Accounting Policies and Significant Estimates

Revenue Recognition

Revenues are recognized when there is persuasive evidence that an arrangement exists, delivery has occurred, the price is fixed and determinable and collection is reasonably assured. In evaluating arrangements with multiple elements we consider whether components of the arrangement represent separate units of accounting based upon whether certain criteria are met, including whether the delivered element has stand-alone value to the customer and whether there is objective and reliable evidence of the fair value of the undelivered items. This evaluation requires subjective determinations and requires management to make judgments about the fair value of individual elements and whether such elements are separable from other aspects of the contractual relationship. The consideration received in such arrangements is allocated among the separate units of accounting based on their respective fair values when there is reliable evidence of fair value for all elements of the arrangement. If there is no evidence of fair value for all the elements of the arrangement, consideration is allocated based on the residual value method for the delivered elements. Under the residual method, the amount of revenues allocated to the delivered elements equals the total arrangement consideration less the aggregate fair value of any undelivered elements. The applicable revenue recognition criteria are applied to each of the separate units. Payments received in advance of work performed are recorded as deferred revenues and recognized when earned.

Product Sales, Net

Revenues from sales of Xyrem within the United States are recognized upon transfer of title, which occurs when Express Scripts removes product from our consigned inventory location at its facility for shipment to a patient. Antizol is, and prior to the sale of our rights Cystadane was, shipped to our wholesaler customers in the United States with free on board destination shipping terms, and we recognize revenues when delivery occurs. Our international sales often have customer acceptance clauses and therefore we recognize revenues when we are notified of acceptance or the time to inspect and reject the shipment has lapsed. When sales to international customers do not have acceptance clauses, we recognize revenues when title transfers, which is generally when the product leaves our logistics providers' facilities.

Revenues from sales of products within the United States are recorded net of estimated allowances for specialty distributor and wholesaler fees, prompt payment discounts, Medicaid rebates, government chargebacks and a customer rebate. Calculating these items involves estimates and judgments based primarily on sales or invoice data and historical experience. Due to the nature of our current products, product returns have been infrequent and immaterial. Our allowances and adjustments to estimates for allowances have not historically been material.

Specialty Distributor and Wholesaler Fees. Express Scripts, our sole Xyrem distributor in the United States, provides services such as collecting patient registry information, providing reimbursement support, and distributing educational materials. The fee we pay to Express Scripts for these services is recorded as a reduction of Xyrem product sales and is based on actual invoices for services performed rather than estimates. Since the fee

is based primarily on product shipments, our allowance related to these fees would generally increase in proportion to increases in sales. Fees paid to Express Scripts totaled $546,000 and $1.4 million for the years ended December 31, 2005 and 2006, respectively, and $298,000 and $363,000 for the three months ended March 31, 2006 and 2007, respectively.

Our service agreements with certain U.S. wholesaler customers for Antizol require, and, prior to the sale of our rights, our service agreements for wholesale customers for Cystadane required, us to pay fees to the customer based on actual product sales made to such customer. If the gross product sales of Antizol sold to U.S. wholesaler customers with such service agreements increases, our allowance related to these discounts could increase. Wholesaler fees totaled $64,000 and $203,000 for the years ended December 31, 2005 and 2006, respectively, and $60,000 and $10,000 for the three months ended March 31, 2006 and 2007, respectively.

Prompt Payment Discounts. We offer Express Scripts and our U.S. wholesaler customers a 2% prompt payment discount as an incentive to remit payment within the first 30 days after the date of our invoice. Because Express Scripts and our U.S. wholesaler customers typically take the prompt payment discount, we accrue 100% of the prompt payment discounts, based on the gross amount of each invoice, at the time of our original sale to them, and we apply earned discounts at the time of payment. We adjust the allowance to reflect actual experience as necessary and, as a result, the actual amount recognized in any period may be slightly different from our allowance amount. Adjustments have not been material and we do not anticipate that changes to estimates will have a material impact on product sales, net. Prompt payment discounts were $381,000 and $880,000 for the years ended December 31, 2005 and 2006, respectively, and $198,000 and $240,000 for the three months ended March 31, 2006 and 2007, respectively.

Medicaid Rebates. Our products are subject to state government-managed Medicaid programs under which rebates are provided to participating state governments. We record accruals for rebates to be provided through the Medicaid drug rebate program as a reduction of product sales when the product is sold. We pay rebates to states for all eligible units purchased under the Medicaid program based on a rebate per unit calculation, which is derived from our average manufacturer price. We determine our estimate of the Medicaid rebate accrual primarily based on historical experience regarding Medicaid rebates, as well as current and historical prescription activity and our current sales prices. We also examine the historical rebate trends and any changes expected to these trends. We adjust the accrual throughout each period to reflect actual experience, expected changes in future prescription volumes and any changes in business circumstances or trends. Rebate amounts are generally invoiced quarterly in arrears and paid 30 days after they are invoiced. As a result, our accrual consists of an estimate of the amount expected to be incurred for the current quarter's prescriptions and an estimate for prior quarters' unpaid rebates. Based on our history of estimating Medicaid rebates, we do not anticipate that changes to our estimated allowance for Medicaid rebates for our current commercial products will have a material impact on product sales, net. Medicaid rebates totaled $135,000 and $229,000 for the years ended December 31, 2005 and 2006, respectively, and $108,000 and $94,000 for the three months ended March 31, 2006 and 2007, respectively.

Chargebacks. Our products are subject to certain programs with federal government entities under which pricing on our products is extended below U.S. wholesaler list price to participating entities. These entities purchase our products through U.S. wholesalers at the lower vendor price, and the U.S. wholesalers charge the difference between their acquisition cost and the lower vendor price back to us. We account for chargebacks by establishing an accrual in an amount equal to our estimate of chargeback claims. We determine our estimate of the chargebacks primarily based on historical experience regarding chargebacks and current contract prices under the vendor programs. We consider vendor payments and our claim processing time lag and adjust the accrual throughout each period to reflect actual experience and any changes in business circumstances or trends. Due to estimates and assumptions inherent in determining the amount of chargebacks, the actual amount of claims for chargebacks may be slightly different from our estimates. Based on our experience with chargebacks, we do not believe that a material change to our estimated allowance for chargebacks is reasonably likely or will have a material impact on product sales, net. Chargebacks from U.S. wholesalers were $57,000 and $212,000 for the

years ended December 31, 2005 and 2006, respectively, and $56,000 and $70,000 for the three months ended March 31, 2006 and 2007, respectively.

Customer Rebate. Under our agreement with our Antizol distributor in Canada, we pay a rebate, either in cash or as a credit against future purchases, based upon year-over-year unit sales increases. We account for the rebate by establishing an accrual equal to our estimate of the rebate amount. We determine our estimate of the rebate primarily based on historical experience regarding rebate payments and our Antizol distributor's current year sales forecast. The rebate was $44,000 for the year ended December 31, 2006 and $5,000 for the three months ended March 31, 2007. There was no rebate for the year ended December 31, 2005 or the three months ended March 31, 2006.

Royalties, Net

We receive royalties from third parties based on sales of our products under out-licensing and distributor arrangements. For those arrangements where royalties are reasonably estimable, we recognize revenues based on estimates of royalties earned during the applicable period and adjust for differences between the estimated and actual royalties in the following quarter. Historically, these adjustments have not been material. For those arrangements where royalties are not reasonably estimable, we recognize revenues upon receipt of royalty statements from our licensee or distributor.

Contract Revenues

Nonrefundable fees where we have no continuing performance obligations are recognized as revenues when collection is reasonably assured. In situations where we have continuing performance obligations, nonrefundable fees are deferred and recognized ratably over our projected performance period. We recognize at-risk milestone payments, which are typically related to regulatory, commercial or other achievements by us or our licensees and distributors, as revenues when the milestone is accomplished and collection is reasonably assured. Refundable fees are deferred and recognized as revenues upon the later of when they become nonrefundable or when our performance obligations are completed.

UCB Agreement

In June 2006, we entered into an agreement with UCB that amended and restated a prior agreement between Orphan Medical and UCB. Under the terms of the amended agreement, UCB has the right to market Xyrem for the treatment of narcolepsy and JZP-6 for the treatment of fibromyalgia syndrome in 54 countries outside of the United States. Under the prior agreement, UCB made a nonrefundable development milestone payment to us of $2.5 million in November 2005 and nonrefundable commercial milestone payments of $500,000 and $2.0 million in June 2006 and March 2007, respectively, which we recognized upon achievement of the milestones. UCB also made an upfront payment of $5.0 million upon execution of the amended agreement in June 2006 and an additional payment of $10.0 million in August 2006 upon exercise of its rights to develop and commercialize JZP-6 for the treatment of fibromyalgia syndrome. We recognized contract revenues of $463,000 and $252,000 related to these upfront payments during the year ended December 31, 2006 and the three months ended March 31, 2007, respectively. The remaining $14.3 million was recorded as deferred revenues as of March 31, 2007 and is being recognized ratably through 2019, the expected performance period under the agreement. There has been no change in the expected performance period since its establishment in 2006 at the time of the initial upfront payment. The amended agreement requires UCB to make additional milestone payments of up to $146.0 million, of which up to $6.0 million relate specifically to Xyrem for the treatment of narcolepsy, up to $40.0 million relate to the development and approval of JZP-6 for the treatment of fibromyalgia syndrome and up to $100.0 million relate primarily to the commercialization of JZP-6 for the treatment of fibromyalgia syndrome as well as additional sales of Xyrem for the treatment of narcolepsy.

Goodwill and Intangible and Long-Lived Assets

Goodwill represents the excess of the purchase price over the fair value of assets acquired and liabilities assumed. We have determined that we operate in a single segment and have a single reporting unit associated with the development and commercialization of pharmaceutical products. The annual test for goodwill impairment is a two-step process. The first step is a comparison of the fair value of the reporting unit with its carrying amount, including goodwill. If this step indicates an impairment, then the loss is measured as the excess of recorded goodwill over its implied fair value. Implied fair value is the excess of the fair value of the reporting unit over the fair value of all identified assets and liabilities. We test goodwill for impairment annually in October and have concluded that no impairment existed as of October 1, 2006. We will also test for impairment whenever events or changes in circumstances indicate that the carrying value may not be recoverable. There have been no changes since October 1, 2006 that would cause us to reevaluate our conclusion.

Intangible assets consist primarily of developed technology, agreements not to compete and trademarks. Intangible assets are amortized on a straight-line basis over their estimated useful lives, which range from three to ten years. The estimated useful lives associated with other intangible assets are consistent with underlying agreements, or the estimated lives of the products. Once an intangible asset is fully amortized, the gross costs and accumulated amortization are removed from the consolidated balance sheet. We evaluate purchased intangibles and other long-lived assets, other than goodwill, for impairment whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. The amount of any impairment is measured as the difference between the carrying value and the fair value of the impaired asset. An impairment loss would be recognized when estimated undiscounted future cash flows expected to result from the use of the asset and its eventual disposition are less than its carrying amount. The impairment loss, if recognized, would be based on the excess of the carrying value of the impaired asset over its respective fair value, calculated using discounted cash flows. Since our inception, there has been no such impairment.

As a result of our acquisition of Orphan Medical in June 2005, we had recorded goodwill and intangible assets at March 31, 2007 as follows:

	Gross Carrying Amount	Accumulated Amortization	Net Book Value	Weighted Average Remaining Useful Life
		(In thousands)		(Years)
Developed technology—Xyrem	$ 39,700	$ 7,370	$32,330	7.8
Developed technology—Antizol	31,100	5,773	25,327	7.8
Agreements not to compete	5,600	2,379	3,221	2.8
Trademarks	2,600	483	2,117	7.8
Other	400	156	244	2.8
Amortizable intangible assets	79,400	16,161	63,239	
Goodwill	38,213			
Total	$117,613			

Stock-Based Compensation

Stock-Based Compensation Under SFAS 123

Prior to January 1, 2006, we accounted for stock-based employee compensation arrangements using the intrinsic value method of Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees* ("APB 25") and related interpretations. Prior to January 1, 2006, we complied with the disclosure-only provisions of SFAS No. 123, *Accounting for Stock-Based Compensation*, ("SFAS 123") as amended by SFAS No. 148, *Accounting for Stock-Based Compensation, Transition and Disclosure, an amendment to SFAS Statement No. 123*. Under APB 25 compensation expense for employees is based on the excess, if any, of the fair value of our common stock over the exercise price of the option on the date of grant. No stock-based compensation expense was recorded under APB 25 during the years ended December 31, 2004 and 2005.

Change in Accounting Principle—Stock-Based Compensation Under SFAS 123R

Effective January 1, 2006, we adopted SFAS No. 123(R), *Share-Based Payment* ("SFAS 123R"), which requires compensation expense related to share-based transactions, including employee stock options, to be measured and recognized in the financial statements based on fair value. SFAS 123R revises SFAS 123, as amended, and supersedes APB 25. We adopted SFAS 123R using the modified prospective approach. Under the modified prospective approach, SFAS 123R applies to new awards and to awards modified, repurchased, or cancelled after the required effective date. Additionally, compensation cost for the portion of awards for which the requisite service has not been rendered that are outstanding as of the required effective date are recognized as the requisite service is rendered on or after the required effective date. The compensation expense for that portion of awards is based on the grant-date fair value of those awards. The compensation expense for awards with grant dates prior to January 1, 2006, are attributed to periods beginning on or after the effective date using the attribution method that was used under SFAS 123, except that the method of recognizing forfeitures only as they occur is not continued.

We are using the straight-line method to allocate compensation cost to reporting periods under SFAS 123 and SFAS 123R.

Under both SFAS 123 and SFAS 123R we elected to use the Black-Scholes valuation model to calculate the fair value of stock options. The fair value of stock options was estimated at the grant date using the following assumptions:

	Year Ended December 31,			Three Months Ended March 31,	
	2004	2005	2006	2006	2007
Weighted-average volatility	80%	60%	61%	61%	61%
Weighted-average expected term	5.0	5.0	6.0	6.0	6.5
Range of risk-free rates	3.0-4.0%	3.9-4.4%	4.6-5.1%	4.6%	4.5-4.8%
Expected dividend yield	0%	0%	0%	0%	0%

The weighted-average grant date fair value per share of employee stock options granted during the years ended December 31, 2004, 2005 and 2006 was $8.96, $8.66 and $10.68, respectively. The weighted-average grant date fair value per share of employee stock options granted during the three months ended March 31, 2006 and 2007 was $10.05 and $12.07, respectively.

Volatility. As we do not have any trading history for our common stock, the expected stock price volatility for our common stock was estimated by taking the median historic stock price volatility for industry peers based on daily price observations over a period equivalent to the expected term of the stock option grants. Industry peers consist of several public companies in the specialty pharmaceutical industry similar in size, stage of life cycle and financial leverage. We did not rely on the implied volatilities of traded options in our industry peers' common stock, because either the term of those traded options was much shorter than the expected term of our stock option grants, or the volume of activity was relatively low.

Expected Term. We have very little historical information to develop reasonable expectations about future exercise patterns and post-vesting employment termination behavior for our stock option grants. As a result, for stock option grants made during the year ended December 31, 2006 and the three months ended March 31, 2007, the expected term was estimated using the short-cut method allowed under Securities and Exchange Commission Staff Accounting Bulletin No. 107 *Share-Based Payment*. For stock options granted during the years ended December 31, 2004 and 2005 we estimated the expected term of stock options based on the expected term of options granted by publicly traded industry peers.

Risk-free Rate. The risk-free interest rate assumption was based on zero coupon U.S. Treasury instruments whose term was consistent with the expected term of our stock option grants.

Expected Dividend Yield. We have never declared or paid any cash dividends and do not presently plan to pay cash dividends in the foreseeable future. Consequently, we used an expected dividend yield of zero.

Common Stock Fair Value. The fair value of our common stock during the years ended December 31, 2004 and 2005 was determined by our board of directors with assistance from management. In May 2006, our board of directors directed management to perform an in-depth contemporaneous valuation of our common stock. In conducting this valuation, we used a two-step methodology that first estimated the fair value of the company as a whole, and then allocated a portion of the enterprise value to our common stock. This approach is consistent with the methods outlined in the AICPA Practice Aid *Valuation of Privately-Held-Company Equity Securities Issued as Compensation*. The valuation methodology utilized the "income approach" to estimate enterprise value. This enterprise value was then validated utilizing the "market approach." The income approach involved projecting future cash flows, discounting them to present value using a discount rate of 15% based upon a risk adjusted weighted average cost of capital of comparable companies, and applying probabilities for success of our product candidates to the resulting discounted cash flows. The projection of future cash flows, the determination of an appropriate discount rate and the estimates of probability for success of our product candidates each involved a significant degree of judgment. For product candidates other than JZP-6 and an alternative dosage form of Xyrem, the probabilities for success ranged from five percent to 30%. For JZP-6, a project for which we were preparing to commence Phase III clinical trials, the probability of success ranged from 60% to 70% and for an alternative dosage form of Xyrem, probabilities of success ranged from 50% to 100%. The present value of projected future cash flows after application of the discount rate and, for product candidates, our probabilities of success, ranged from $113.5 million to $124.1 million for our existing products, $112.8 to $156.1 million for JZP-6 and $66.7 million to $142.8 million for our other product candidates, including an alternative dosage form of Xyrem, resulting in a range of enterprise values from $293.0 million to $423.0 million. The market approach used to validate the determination of enterprise value involved selecting a range of possible valuations by comparing a group of 14 publicly-traded specialty pharmaceutical and biotechnology companies with products and product candidates in similar stages of development. The range of enterprise values derived through application of the market approach method was $300.0 million to $350.0 million. As these values fell within the range of enterprise values suggested by application of the income approach, we determined that the market approach provided an appropriate validation of our estimated enterprise value.

In order to allocate the enterprise value to the various securities that comprise our capital structure, the option-pricing method was used. For purposes of applying the option-pricing method, we estimated our stock price volatility to be 60% and our time to liquidity to be one year. A 10% discount was then applied to account for a lack of marketability of our common stock based upon the assumed time to liquidity. The contemporaneous valuation of our common stock suggested a range of probable fair values from $12.17 per share to $17.26 per share. On June 28, 2006, our board of directors made a determination that the fair market value of our common stock was $16.60 per share, after taking into consideration the contemporaneous valuation as well as other factors including our financial performance, the development status of our product candidates and our research and development efforts and the likelihood of achieving a liquidity event for the shares of common stock underlying stock options, such as an initial public offering or sale of the company, given prevailing market conditions. The fair market value determination made by our board of directors as of June 28, 2006 represents a discount of $8.40 per share from our assumed initial public offering price of $25.00 per share, which discount is attributable to our receipt of the FDA's approvable letter to Solvay for Luvox CR, our progress in the development of our product candidates and our financial performance in the period from June 28, 2006 to the date of this prospectus and our progress towards our initial public offering and the related reduction in market and liquidity risk associated with our common stock over the period from June 28, 2006 to the date of this prospectus.

In December 2006, our board of directors directed management to perform a second in-depth contemporaneous valuation with an effective date of December 31, 2006. In conducting this valuation, we used the same methodology and assumptions as in the prior contemporaneous valuation for determining enterprise value, with the exception of adjustments in our estimated future cash flows for certain of our existing products and product candidates and our estimated probabilities of success for certain of our product candidates for

purposes of the income approach. We also made modifications to the comparison group of companies utilized for the market approach to reflect business developments at comparable companies and achieve an appropriate sample size. The present value of projected future cash flows after application of the discount rate and, for product candidates, our probabilities of success ranged from $83.6 million to $93.2 million for our existing products, $138.5 to $186.0 million for JZP-6 and $94.9 million to $184.8 million for our other product candidates, including an alternative dosage form of Xyrem, resulting in a range of enterprise values from $317.0 million to $464.0 million. A number of companies included in the comparison group for purposes of the market approach in the June 28, 2006 contemporaneous valuation were not included in the comparison group as of December 31, 2006 as a result of material adverse events associated with significant development projects at these companies that we believe made their market values incomparable to our own. Appropriate specialty pharmaceutical and biotechnology companies were added to the comparison group for purposes of the December 31, 2006 contemporaneous valuation to provide an appropriate sample size of 13 comparable companies. The range of enterprise values derived through the application of the market approach method was $350.0 million to $425.0 million. As these values fell within the range of enterprise values suggested by application of the income approach, we determined that the market approach provided an appropriate validation of our estimated enterprise value.

For purposes of allocating enterprise value to our common stock, time to liquidity assumed in the option pricing method was reduced to six months and the discount for marketability was consequently reduced to five percent. In addition to the option-pricing method, we also considered the probability weighted expected return method. The application of this method yielded a result within the range of probable fair values suggested by the option pricing method. For purposes of applying the probability-weighted expected return method we considered six potential liquidity scenarios. Two potential scenarios were each given a probability of five percent and involved the distressed sale or liquidation of the company at alternative valuations of $10.0 million and $100.0 million. Two other potential scenarios were each given a probability of 7.5% and involved the sale of the company following the failure to achieve positive clinical trial results for certain of our product candidates at alternative valuations of $200.0 million and $270.0 million. The remaining potential scenarios involved the successful sale of the company or an initial public offering of our common stock at alternative valuations of $500.0 million and $800.0 million, which were given probabilities of 70% and five percent, respectively. The contemporaneous valuation of our common stock suggested a range of probable fair values from $13.94 per share to $21.36 per share. On February 13, 2007, our board of directors made a determination that the fair market value of our common stock was $19.37 per share after taking into consideration the contemporaneous valuation as well as other factors, including our financial performance, the development status of our product candidates and our research and development efforts, the likelihood of achieving a liquidity event for the shares of common stock underlying stock options, such as an initial public offering or sale of the company, given prevailing market conditions and initial estimates of the potential initial public offering price of our common stock based on initial valuation discussions by and between management and the proposed underwriters for our initial public offering. This determination was confirmed by the compensation committee of our board of directors as of February 27, 2007, the last date in the three month period ended March 31, 2007 on which we granted stock options. The fair market value determination made by our board of directors as of February 13, 2007, and confirmed as of February 27, 2007, represents a discount of $5.63 per share from our assumed initial public offering price of $25.00, which discount is primarily attributable to our receipt, on February 28, 2007, of the FDA's approvable letter to Solvay for Luvox CR, and, to a lesser extent, to our progress towards our initial public offering and the related reduction in market and liquidity risk associated with our common stock over the periods from February 13, 2007 and February 27, 2007 to the date of this prospectus and our progress in the development of our product candidates and our financial performance in the periods from February 13, 2007 and February 27, 2007 to the date of this prospectus.

In connection with the preparation of our financial statements for the year ended December 31, 2006, we reassessed the fair value of our common stock at option grant dates from June 28, 2006 through December 31, 2006 by reviewing our corporate developments from June 28, 2006 through February 13, 2007. In undertaking this assessment, we determined that the increase in value from June 28, 2006 to December 31, 2006 was

attributable to a decrease in expected timing to liquidity and general progress in the development status of our product candidates and not the achievement of any particular business milestones that individually would reasonably be expected to significantly change the relative timing or likelihood of expected future net cash flows. We also determined that no such milestones had been achieved during the period from December 31, 2006 to February 13, 2007. As a result, we concluded that a ratable increase to the estimated fair value of our common stock from $16.60 to $19.37 over the period from June 28, 2006 to December 31, 2006 for purposes of calculating stock-based compensation expense associated with our stock option grants under SFAS 123R was appropriate. In connection with the grant of stock options on February 27, 2007, the compensation committee of our board of directors confirmed that the fair market value of our common stock was $19.37 on the basis that we had not achieved any particular business milestone that would reasonably be expected to significantly change the relative timing or likelihood of expected future net cash flows in the period from February 13, 2007 to February 27, 2007. Therefore, we have determined that no reassessment of the fair value of our common stock as of February 27, 2007 was appropriate.

On February 28, 2007, Solvay informed us that the FDA had issued an approvable letter to Solvay for Luvox CR dated February 27, 2007. In April 2007, the audit committee of our board of directors determined that as of March 31, 2007, the fair value of our common stock was $24.79 per share after taking into account the valuation conducted in December 2006, the achievement of a significant business milestone associated with the issuance of the approvable letter for Luvox CR to Solvay, the likelihood of achieving a liquidity event for the shares of common stock underlying stock options, such as an initial public offering or sale of the company, given prevailing market conditions and our then ongoing process to prepare for an initial public offering, and estimates of the potential initial public offering price of our common stock based on valuation discussions by and between management and the proposed underwriters for our initial public offering. We did not perform a contemporaneous valuation of our enterprise value or common stock using the income approach or market approach as of March 31, 2007. The fair market value determination made by our board of directors as of March 31, 2007 was based on the midpoint of the valuation range then suggested by our proposed underwriters in connection with the contemplated initial public offering and represents a discount of $0.21 per share from our assumed initial public offering price of $25.00, which discount is primarily attributable to remaining risks related to the completion of our initial public offering.

Forfeitures. SFAS 123R requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. In determining our historic forfeiture rate, we have excluded stock option grants totaling 1,133,862 shares issued to executives in February 2004. We believe these stock option grants will not be cancelled due to termination, and therefore have applied a forfeiture rate of 0% for those stock option grants. The annualized forfeiture rate used for the remaining stock option grants was 7%. The forfeiture rate selected did not have a material impact on stock-based compensation expense in the year ended December 31, 2006 or the three months ended March 31, 2007. Prior to adoption of SFAS 123R, we accounted for forfeitures of stock option grants as they occurred.

As a result of our Black-Scholes option fair value calculations and the allocation of value to the vesting periods using the straight-line vesting attribution method, we recognized $3.5 million of stock-based compensation expense in 2006, of which $8,000, $661,000, and $2.8 million were charged to cost of product sales, research and development expenses and selling, general and administrative expense, respectively. During the three months ended March 31, 2007, we recognized $940,000 of stock-based compensation expense, of which $4,000, $201,000 and $735,000 were charged to cost of product sales, research and development and selling, general and administrative expense, respectively. During the three months ended March 31, 2006, we recognized $820,000 of stock-based compensation expense, of which $1,000, $144,000 and $675,000 were charged to cost of product sales, research and development and selling, general and administrative expense, respectively. The adoption of SFAS 123R caused basic and diluted net loss per common share to increase by $267.71 in 2006. No income tax benefit was recognized in the statement of operations for 2006. Compensation cost capitalized as a component of inventory during 2006 was $18,000.

The total compensation cost related to unvested stock option grants not yet recognized as of March 31, 2007 was $7.2 million, and the weighted-average period over which these grants are expected to vest is 2.7 years.

Based on an assumed initial public offering price of $25.00 per share, the intrinsic value of stock options outstanding at March 31, 2007 was $12.6 million, of which $7.0 million and $5.6 million related to stock options that were vested and unvested, respectively, at that date.

Beneficial Conversion Feature

We account for potentially beneficial conversion features under Emerging Issues Task Force No. 98-5, *Accounting for Convertible Securities with Beneficial Conversion Features or Contingently Adjustable Conversion Ratios* and EITF Issue No. 00-27, *Application of Issue 98-5 to Certain Convertible Instruments*. In January and December 2006, we issued 2,319,264 and 4,307,211 shares, respectively, of Series B preferred stock and Series B Prime preferred stock at a purchase price of $15.09 per share. At the time of each of these issuances, the value of the common stock into which the Series B preferred stock and Series B Prime preferred stock is convertible had a fair value greater than the proceeds for such issuances. Accordingly, we recorded a deemed dividend on the Series B preferred stock and Series B Prime preferred stock of $3.5 million in January 2006 and $18.4 million in December 2006, which equals the amount by which the estimated fair value of the common stock issuable upon conversion of the issued Series B preferred stock and Series B Prime preferred stock exceeded the proceeds from such issuances.

Accrued Expenses

As part of the process of preparing financial statements, we are required to estimate accrued expenses. This process involves identifying services that have been performed on our behalf and estimating the level of service performed and the associated cost incurred for such service as of each balance sheet date in our financial statements. Examples of estimated accrued expenses include marketing and promotional materials, professional service fees, such as fees to lawyers and accountants, and contract service fees, such as amounts paid to clinical monitors, data management organizations, clinical research organizations and fees paid to contract manufacturers in conjunction with the production of clinical materials. In connection with such service fees, our estimates are most affected by our understanding of the status and timing of services provided relative to the actual levels of services incurred by such service providers. The majority of our service providers invoice us monthly in arrears for services performed. In the event that we do not identify certain costs that have begun to be incurred or we under- or overestimate the level of services performed or the costs of such services, our reported expenses for such period would be too low or too high. The date on which certain services commence, the level of services performed on or before a given date and the cost of such services are often subject to our judgment. We make these judgments in accordance with the facts and circumstances known to us through our internal processes. Our internal processes require substantially all of our spending for services to be under contracts with our service providers and to be documented and tracked under internally-generated purchase orders based on designated spending authorizations. As of each balance sheet date, company personnel who are responsible for managing the contracts, and who are in contact with the outside service providers as to progress or stage of completion of the services and the agreed upon fee to be paid for such services, review current contracts and the related open purchase orders. We adjust for spending not already reflected in our accounting records in accordance with generally accepted accounting principles. To date, there have been no material differences between the amounts of expenses accrued at our balance sheet dates and the amount at which such expenses were subsequently invoiced. Although we do not expect our current estimates to be materially different when invoiced, our understanding of the status and timing of services provided relative to the actual timing and levels of service provided may vary and may result in adjustments in future periods.

In-Process Research and Development

In connection with the acquisition of Orphan Medical, we recorded a charge of $21.3 million in 2005 for acquired in-process research and development. This amount represented the estimated fair value related to three

incomplete product candidate development projects for which technological feasibility had not been established and that had no alternative future use at the time of the acquisition.

The fair value of the in-process research and development was determined using the "income approach." This method requires a forecast of all the expected future net cash flows associated with the in-process technology discounted to present value by applying an appropriate discount rate. The discount rate used reflects the weighted-average cost of capital for companies in our industry, as well as specific risks associated with the cash flows being discounted.

In January 2005, Orphan Medical submitted a supplemental New Drug Application, or sNDA, to the FDA seeking an expanded label indication for Xyrem for the treatment of excessive daytime sleepiness in patients with narcolepsy. At the time of the acquisition, the FDA had not yet approved the sNDA. We used a discount rate of 26% to calculate the fair value of the expanded label indication for Xyrem and accounted for $15.2 million associated with the expanded label indication as in-process research and development expense. The sNDA was approved by the FDA in November 2005. At the time of acquisition, Orphan Medical was also conducting a Phase II clinical trial to evaluate the use of sodium oxybate, the active pharmaceutical ingredient in Xyrem, to treat fibromyalgia syndrome. We used a 50% discount rate to calculate the fair value associated with this development project and accounted for $5.9 million associated with the project as in-process research and development. In August 2006, we initiated a Phase III clinical trial of sodium oxybate for the treatment of fibromyalgia syndrome. In addition, at the time of acquisition, Orphan Medical was conducting initial research into new dosage forms of Xyrem. We used a 50% discount rate to calculate the fair value of these research efforts and accounted for $200,000 associated with this research to in-process research and development expense.

Results of Operations

Comparison of Three Months Ended March 31, 2006 and 2007

	2006	2007	Increase/ (Decrease)	% Increase/ (Decrease)
		(In thousands)		
Product sales, net	$ 9,771	$11,625	$ 1,854	19%
Royalties, net	66	211	145	220%
Contract revenues	—	2,252	2,252	N/A(1)
Cost of product sales	1,569	2,003	434	28%
Research and development expenses	12,894	14,867	1,973	15%
Selling, general and administrative expenses	12,219	14,339	2,120	17%
Amortization of intangible assets	2,400	2,362	(38)	(2)%
Interest income	581	1,091	510	88%
Interest expense	3,777	3,268	(509)	(13)%
Other income (expense)	62	(3,069)	(3,131)	N/A(1)
Gain on sale of product	—	5,145	5,145	N/A(1)

(1) No comparable data for prior quarter or comparison to prior quarter is not meaningful.

Product Sales, Net

The increase in product sales, net in the three months ended March 31, 2007 compared to the three months ended March 31, 2006 was primarily due to the growth of our Xyrem product sales, which increased by $2.5 million. The increase in Xyrem product sales was attributable to an increase in the price we charge Express Scripts instituted in August 2006 and, we believe, our investments in Xyrem marketing programs and sales training programs during 2006. Sales of Antizol and Antizol-Vet decreased by $495,000 in the three months ended March 31, 2007 compared to the three months ended March 31, 2006. Antizol is stocked by hospitals for use in emergency poisonings and sales are typically uneven from quarter to quarter. Sales of Cystadane decreased

by $122,000 in the three months ended March 31, 2007 compared to the three months ended March 31, 2006. This decrease resulted from the sale of our rights to Cystadane in March 2007.

Royalties, Net

The increase in royalties, net in the three months ended March 31, 2007 compared to the three months ended March 31, 2006 was primarily due to an increase in royalties on sales of Xyrem by UCB from $19,000 in the three months ended March 31, 2006 to $127,000, the pro rata portion of the minimum royalty payable pursuant to the agreement with UCB, in the three months ended March 31, 2007.

Contract Revenues

Contract revenues in the three months ended March 31, 2007 consisted of a $2.0 million milestone payment from UCB in March 2007, triggered by regulatory approval of Xyrem in Europe for the treatment of narcolepsy with cataplexy, and $252,000 related to the amortization of deferred revenues on $15.0 million of payments received in the second half of 2006 from UCB related to JZP-6. There were no contract revenues recognized in the three months ended March 31, 2006.

Cost of Product Sales

The increase in cost of product sales in the three months ended March 31, 2007 compared to the three months ended March 31, 2006 was primarily due to an increase in product sales. Cost of product sales in the three months ended March 31, 2007 increased to 17.2% of product sales as compared to 16.1% of product sales in the three months ended March 31, 2006, primarily due to a failed production run of Antizol.

Research and Development Expenses

Higher research and development expenses in the three months ended March 31, 2007 as compared to the three months ended March 31, 2006 resulted primarily from our initial $2.0 million payment to Solvay in January 2007 for the exclusive right to market and distribute Luvox CR and Luvox in the United States under the terms of a product license agreement.

Selling, General and Administrative Expenses

Selling, general and administrative expenses were higher in the three months ended March 31, 2007 as compared to the three months ended March 31, 2006 primarily due to growth in headcount. This growth resulted in a $1.2 million increase in salaries and benefits and a $1.3 million related increase in departmental operating expenses. In addition, selling, general and administrative expenses in the three months ended March 31, 2007 include $1.0 million of legal costs associated with the U.S. Attorney's investigation of activities by Orphan Medical related to the promotion of Xyrem. These increases were partially offset by a decrease of $1.4 million in product launch costs associated with an expanded label indication of Xyrem for the treatment of excessive daytime sleepiness in patients with narcolepsy that we incurred in the three months ended March 31, 2006.

Amortization of Intangible Assets

Our intangible assets consist primarily of developed technology, agreements not to compete and trademarks, all of which were recorded as a result of the acquisition of Orphan Medical in June 2005, that are amortized on a straight-line basis over their estimated useful lives. Amortization costs in the three months ended March 31, 2007 were lower as compared to the three months ended March 31, 2006 as a result of the sale of our rights to Cystadane in March 2007.

Interest Income

Interest income was higher in the three months ended March 31, 2007 as compared to the three months ended March 31, 2006 primarily due to higher average cash balances.

Interest Expense

Interest expense in the three months ended March 31, 2007 primarily related to interest on our $80.0 million principal amount of senior secured notes. Interest on the notes was comprised of the accretion of a discount related to warrants that were issued in conjunction with the notes, amortization of debt issuance costs and quarterly cash payments for interest. In the three months ended March 31, 2006, interest expense also included $599,000 of accrued interest on the development financing of JZP-3.

Other Income (Expense)

On July 1, 2005, we adopted the provisions of Financial Accounting Standards Board, or FASB, Staff Position No. 150-5, *Issuer's Accounting under Statement No. 150 for Freestanding Warrants and Other Similar Instruments on Shares that are Redeemable*, or FSP 150-5, an interpretation of FASB Statement No. 150, *Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity*, which required us to classify our preferred stock warrants as current liabilities and adjust the carrying value to fair value at the end of each reporting period. This resulted in $3.1 million of expense and a benefit of $62,000 in the three months ended March 31, 2007 and March 31, 2006, respectively. We will continue to adjust the liability for changes in the fair value of the warrants until the earlier of the exercise of the warrants to purchase shares of convertible preferred stock, at which time the liability will be reclassified to temporary equity, or the conversion of the underlying Series BB preferred stock into common stock, at which time the liability will be reclassified to stockholders' equity (deficit). Upon completion of this offering, any outstanding warrants will automatically become warrants to purchase common stock, and the liabilities will be reclassified to stockholders' equity.

Gain on Sale of Product

In March 2007, we entered into an agreement under which an unrelated third party purchased our rights to Cystadane, along with the associated product registrations, commercial inventory and trademarks, for $9.0 million in cash. In connection with this transaction, we recorded a $5.1 million gain in the three months ended March 31, 2007.

Comparison of Years Ended December 31, 2005 and 2006

	2005	2006	Increase/ (Decrease)	% Increase/ (Decrease)
		(In thousands)		
Product sales, net	$18,796	$43,299	$ 24,503	130%
Royalties, net	146	594	448	307%
Contract revenues	2,500	963	(1,537)	(61)%
Cost of product sales	4,292	6,968	2,676	62%
Research and development expenses	45,783	54,956	9,173	20%
Selling, general and administrative expenses	23,551	51,384	27,833	118%
Purchased in-process research and development	21,300	—	(21,300)	N/A(1)
Amortization of intangible assets	4,960	9,600	4,640	94%
Interest income	1,318	2,307	989	75%
Interest expense	7,129	14,129	7,000	98%
Other expense	901	1,109	208	23%
Gain on extinguishment of development financing obligation	—	31,592	31,592	N/A(1)

(1) No comparable data for comparable year.

Product Sales, Net

The increase in product sales, net in 2006 compared to 2005 was primarily due to the inclusion of only approximately six months of product sales in 2005, subsequent to our acquisition of Orphan Medical in June 2005, compared to a full year in 2006. Other factors affecting this increase included:

- expansion of the Xyrem sales force from 36 to 55 employees in late 2005;
- receipt from the FDA in November 2005 of expanded marketing approval for Xyrem for the treatment of excessive daytime sleepiness in patients with narcolepsy and a corresponding launch of the new indication in early 2006;
- increases in the price that we charge our central pharmacy for Xyrem of 6.4% and 7.7% in December 2005 and August 2006, respectively; and
- increases in the price that we charge our wholesale customers for Antizol of 4.2% and 5.0% in December 2005 and November 2006, respectively.

Royalties, Net

The increase in royalties, net in 2006 compared to 2005 was principally due to an increase in royalties on sales of Xyrem by UCB from $9,000 in 2005 to $305,000 in 2006. Royalties we received from other products accounted for the remainder of the increase.

Contract Revenues

Contract revenues in 2006 primarily consisted of a $500,000 milestone payment from UCB in June 2006, triggered by pricing approval in France for Xyrem, and amortization of deferred revenues on payments totaling $15.0 million from UCB in 2006 related to JZP-6. Contract revenues in 2005 consisted of a $2.5 million milestone payment from UCB received in November 2005, triggered by the approval by the European Agency for the Evaluation of Medical Products of Xyrem for the treatment of cataplexy associated with narcolepsy.

Cost of Product Sales

The increase in the cost of product sales in 2006 compared to 2005 was primarily due to the inclusion of a full year of product sales in 2006 compared to approximately six months of product sales in 2005, subsequent to our acquisition of Orphan Medical in June 2005. Our gross margin increased from 77% in 2005 to 84% in 2006. The primary reason for this increase was a lower fair value adjustment to inventory acquired as part of the acquisition of Orphan Medical in 2006 compared to 2005. Our cost of product sales reflected a fair value adjustment of $1.6 million and $775,000 during 2005 and 2006, respectively. This fair value adjustment will not have a material impact on cost of product sales in future periods.

Research and Development Expenses

Higher research and development expenses in 2006 as compared to 2005 resulted primarily from higher spending in 2006 on early phase development and preclinical studies, along with higher salaries and benefits expenses related to a growth in research and development headcount during 2006. Research and development expenses did not increase substantially as a result of the Orphan Medical acquisition. Although total spending on late-stage programs did not change substantially from 2005 to 2006, the components of spending on late-stage programs changed. During 2005, a substantial portion of our research and development expenses related to JZP-3, and, during 2006, a substantial portion of our research and development expenses were attributable to JZP-3 and JZP-6.

Selling, General and Administrative Expenses

Selling, general and administrative expenses were higher in 2006 than in 2005 as a result of a number of factors, including:

- inclusion of only six months of Xyrem sales and marketing activities in 2005, compared to a full year of activities in 2006;
- costs associated with the launch of a new indication for Xyrem in early 2006;
- an increase in the Xyrem sales force from 36 at the time of the Orphan Medical acquisition to 55 in November 2005;
- outside legal costs of $5.4 million incurred during 2006 in connection with an investigation by the U.S. Attorney's Office of activities related to the promotion of Xyrem;
- building a medical affairs department; and
- an increase in headcount and related salaries and benefits.

Purchased In-process Research and Development

In connection with our June 2005 acquisition of Orphan Medical, we recorded a charge of $21.3 million for acquired in-process research and development, representing the estimated fair value related to three incomplete projects for which, at the time of the acquisition, technological feasibility had not been established and that had no alternative future use.

Amortization of Intangible Assets

Amortization expense was higher in 2006 as compared to 2005 primarily due to the inclusion of only six months of amortization in 2005 as compared to a full year of amortization in 2006.

Interest Income

Interest income was higher in 2006 as compared to 2005 primarily due to higher average balances of investable assets coupled with higher interest rates.

Interest Expense

Interest expense primarily related to interest on our $80.0 million principal amount of senior secured notes and interest on the development financing of JZP-3, both of which were recorded using the effective interest method. $5.6 million of the increase in interest expense in 2006 as compared to 2005 was attributable to the fact the notes were outstanding for the full year in 2006. Interest expense related to the development financing was $445,000 in 2005, compared with $1.1 million 2006.

Other Expense

We recorded $901,000 and $1.1 million of expense as a result of an increase in the fair value of our preferred stock warranty liability in 2006 and 2005, respectively.

Gain on Extinguishment of Development Financing Obligation

In August 2005, we entered into an agreement with a third party under which the third party agreed to provide $30.0 million to fund a Phase III clinical trial of JZP-3, a product candidate then in development. We were obligated to repay the third party $37.5 million subject to, and conditioned upon, approval by the FDA to market the product in the United States. In addition, we agreed to pay royalties at specified rates based on sales

of the product within the United States. Under that agreement, we received $15.0 million in 2005 and $15.0 million in 2006. In June 2006, following analysis of the results of the Phase III clinical trial, we notified the third party of our intention to discontinue development of JZP-3 and not to seek product marketing approval from the FDA. As of the date we notified the third party of our intention to discontinue development of JZP-3, we had recorded $31.6 million for future possible payments as a liability on our balance sheet, of which $30.0 million related to principal and $1.6 million related to interest accrued using the effective interest method. As a result of our notification, we were not obligated to make any payments to the third party that otherwise would have been made upon regulatory approval, launch and commercialization of JZP-3, and we recorded a gain of $31.6 million resulting from the extinguishment of liabilities related to this development financing.

Comparison of Years Ended December 31, 2004 and 2005

	2004	2005	Increase	% Increase
		(In thousands)		
Research and development expenses	$17,988	$45,783	$27,795	155%
Selling, general and administrative expenses	7,459	23,551	16,092	216%
Interest income	643	1,318	675	105%

Effect of Orphan Medical Acquisition

Our June 2005 acquisition of Orphan Medical caused a significant change in our business and results of operations. The following line items were not applicable to our 2004 results of operations but became applicable in 2005 as a result of the acquisition:

- all product sales, net and cost of product sales during 2005 related to sales of our Xyrem, Antizol and Cystadane products acquired in connection with our acquisition of Orphan Medical;
- royalties, net recorded in 2005 related primarily to a product that Orphan Medical had divested in 2003;
- contract revenues in 2005 consisted of a $2.5 million milestone payment from UCB in November 2005, triggered by the approval by the European Agency for the Evaluation of Medical Products of Xyrem for the treatment of cataplexy associated with narcolepsy;
- acquired in-process research and development charge recorded in 2005 represented the estimated fair value related to three incomplete projects for which, at the time of the Orphan Medical acquisition, technological feasibility had not been established and that had no alternative future use; for additional information regarding this in-process research and development charge, see Note 5 to our financial statements appearing elsewhere in this prospectus;
- amortization expense recorded during 2005 related to developed technology, agreements not to compete and trademarks, all of which were recorded as a result of the acquisition of Orphan Medical; see Note 5 to our financial statements appearing elsewhere in this prospectus for more information regarding intangible assets and related amortization;
- interest expense during 2005 related to interest on the $80.0 million principal amount of senior secured notes issued in connection with the Orphan Medical acquisition; and
- we adopted the provisions of FSP 150-5 on July 1, 2005, which required us to classify our preferred stock warrants as current liabilities and adjust the carrying value to fair value at the end of each reporting period. This resulted in $901,000 of expense in 2005 arising from the increase in value of preferred stock warrants.

Research and Development Expenses

The increase in research and development expenses in 2005 compared to 2004 was primarily due to more activity and higher spending in 2005 on the Phase III clinical development of JZP-3, a product candidate that we initiated in the second half of 2004 and discontinued in mid-2006. We made an initial payment of $5.0 million to

a third party in July 2005 for the North American rights to a product candidate, the development of which was terminated in late 2005. The remainder of the increase primarily related to salaries and benefits expenses associated with increased headcount.

Selling, General and Administrative Expenses

The majority of the increase in 2005 selling, general and administrative expenses compared to 2004 was due to selling expenses incurred following the acquisition of Orphan Medical in June 2005, primarily related to Xyrem promoting and marketing activities in the United States. At the time of the acquisition, we retained all of the Orphan Medical sales force, consisting of 32 specialty sales consultants and 4 sales managers focused on selling Xyrem. In November 2005, we added 19 additional employees to the sales force. In addition to these expenses, salaries and benefits expenses increased because of increases in headcount in our commercial and general and administrative organizations.

Interest Income

The increase in interest income in 2005 as compared to 2004 was driven primarily by higher interest rates in 2005 than in 2004.

Liquidity and Capital Resources

Since our inception, we have incurred significant net losses, and, as of March 31, 2007, we had an accumulated deficit of $197.2 million. We have not achieved profitability, and we anticipate that we will continue to incur net losses for the next several years. We expect that our development, selling, marketing and general and administrative expenses will continue to increase and, as a result, we will need to generate significant net product sales, royalty and other revenues to achieve profitability. Our audit report in our 2006 consolidated financial statements contains an explanatory paragraph stating that our recurring losses from operations and cash used in operating activities raise substantial doubt about our ability to continue as a going concern. We believe that the successful completion of this offering will eliminate this doubt and enable us to continue as a going concern. If we are unable to successfully complete this offering, we will need to execute alternative financing or operational plans to continue as a going concern.

Our operations have been financed primarily through the sale of convertible preferred stock, the issuance of senior secured notes and warrants, a line of credit, development financing related to one of our previous product candidates and our collaboration with UCB related to one of our products and product candidates. In addition to amounts received from UCB, we have raised a total of $375.0 million (net of issuance costs), as follows:

Date	Amount (In thousands)	Financing
April 2003	$ 2,078	Series A convertible preferred stock
August 2003	4,998	Series A convertible preferred stock
January 2004	7,850	Series A convertible preferred stock
February 2004	48,683	Series B and B Prime convertible preferred stock
April 2004	400	Series B convertible preferred stock
June 2005	99,853	Series B and B Prime convertible preferred stock
June 2005	77,999	Senior secured notes and warrants(1)
July 2005 – February 2006	30,000	Project-specific financing(2)
January 2006	34,990	Series B and B Prime convertible preferred stock
December 2006	65,000	Series B and B Prime convertible preferred stock
September 2006 – March 2007	3,104	Line of credit(3)

(1) In June 2005, we issued $80.0 million aggregate principal amount of 15% senior secured notes and warrants to purchase 785,728 shares of our Series BB convertible preferred stock to certain third parties, some of whom are affiliated with investors in our preferred stock. Cash interest payments of $12.0 million per year are due on the notes, payable quarterly in arrears. The principal of $80.0 million is due

in full in June 2011. Under the terms of the notes we are required to maintain a minimum cash balance of $12.0 million, which is shown as long-term restricted cash and investments on our consolidated balance sheet. The notes contain customary covenants, including limitations on our ability to pay dividends, make investments or other restricted payments, incur debt, grant liens, sell assets or enter into sale-leaseback transactions. Upon the occurrence of certain events, we may be required to repay the notes at a premium. At our option, the notes can be repaid prior to June 2011 by paying a premium, which was 28.3% of the principal amount of the notes as of March 31, 2007 and is reduced to zero ratably over the remaining term of the notes.

(2) In August 2005, we entered into an agreement with a third party under which the third party agreed to provide $30.0 million to fund a Phase III clinical trial of JZP-3, a product candidate then in development. Under that agreement, we received $15.0 million in 2005 and $15.0 million in 2006. In June 2006, following analysis of the results of the Phase III clinical trial, we notified the third party of our intention to discontinue development of JZP-3 and not to seek product marketing approval from the FDA. As a result of our notification, we were not obligated to make any payments to the third party that otherwise would have been made upon regulatory approval, launch and commercialization of JZP-3.

(3) In September 2006, we entered into a one year line of credit agreement with a financial institution under which we may borrow up to 80% of eligible accounts receivable, up to a maximum of $5.0 million of borrowings. Borrowings under the line of credit bear interest at the financial institution's prime rate, which was 8.25% as of March 31, 2007. At March 31, 2007, $3.1 million was outstanding under the agreement. See Note 7 to our financial statements appearing elsewhere in this prospectus for additional information.

As of March 31, 2007, we had $67.7 million in cash and cash equivalents, excluding $12.4 million in restricted cash required to be retained at all times pursuant to our senior secured notes and certain other agreements, held primarily in obligations of U.S. government agencies, corporate debt securities and money market funds.

The following table shows a summary of our cash flows for the periods indicated:

	Years ended December 31,			Three Months Ended March 31,	
	2004	2005	2006	2006	2007
			(In thousands)	(Unaudited)	
Cash provided by (used in):					
Operating activities	$(21,156)	$ (52,162)	$ (57,350)	$(21,913)	$(20,914)
Purchases of property and equipment	(992)	(1,413)	(1,682)	(121)	(271)
Acquisition of Orphan Medical	—	(146,116)	—	—	—
Other investing activities	(5,796)	(6,225)	175	—	8,915
Financing activities	57,162	192,852	117,191	49,994	989

Net cash used in operating activities during the three months ended March 31, 2007 primarily reflected the net loss and changes in working capital, offset in part by depreciation and amortization and the change in the preferred stock warrant liability. Net cash used in operating activities in 2006 primarily reflected the net loss, less the gain on extinguishment of development financing, offset in part by depreciation and amortization and changes in working capital. Net cash used in operating activities in 2005 primarily reflected the net loss offset in part by depreciation and amortization, in-process research and development and changes in working capital. Net cash used in investing activities related to the purchase, sale and maturity of short-term investments used to fund the day-to-day needs of the business. In addition, investing activities during the three months ended March 31, 2007 included proceeds of $9.0 million from the sale of our rights to Cystadane. Purchases of property and equipment have not been material to date. Net cash provided by financing activities was primarily attributable issuance of stock, notes and project specific financing, as discussed above.

We believe that our current cash, cash equivalents and marketable securities and the anticipated net proceeds from this offering, and interest earned thereon, together with anticipated revenues from product sales, royalties and funding that we expect to receive from our current collaboration arrangement with UCB, will be sufficient to satisfy our current operations through at least the next 12 to 18 months. We have based this estimate on assumptions that may prove to be wrong, and we could utilize our available financial resources sooner than we currently expect. Our future capital requirements will depend on many factors, including:

- the amount of sales and other revenues from our commercial products, including selling prices for products that we may begin selling and price increases for our current products;

- market acceptance of and the number of prescriptions written for our products;
- promotional and marketing costs associated with Luvox CR and Xyrem in the United States, including the cost and timing of expanding our marketing and sales capabilities;
- revenues from current and potential future development and/or commercial collaboration partners;
- the scope, rate of progress, results and costs of our preclinical studies, clinical trials and other research and development activities;
- the number and characteristics of product candidates that we pursue;
- the cost and timing of establishing clinical and commercial supplies of our product candidates;
- the cost and timing of obtaining regulatory approval;
- payments of milestones to third parties;
- hiring of new employees to support our continued growth;
- the cost of investigations, litigation and/or settlements, in particular the investigation by the U.S. Attorney for the Eastern District of New York;
- the cost of preparing, filing, prosecuting, defending and enforcing patent claims and other intellectual property rights; and
- the extent to which we acquire, in-license or invest in new businesses, products or product candidates.

We will need to raise additional funds to support our operations, and such funding may not be available to us on acceptable terms, or at all. If we are unable to raise additional funds when needed, we may not be able to continue development of our product candidates or we could be required to delay, scale back or eliminate some or all of our development programs and other operations. We may seek to raise additional funds through development financings, collaborations, or public or private debt or equity financings. If we raise funds through collaborations, we may be required to relinquish, on terms that are not favorable to us, rights to some of our product candidates that we would otherwise seek to develop or commercialize ourselves. If we raise additional funds through the issuance of debt securities, these securities could have rights that are senior to holders of our common stock and could contain covenants that restrict our operations. Any additional equity financing may be dilutive to our stockholders. In addition, if we raise additional funds through the sale of equity securities, new investors could have rights superior to our existing stockholders. The terms of future financings may restrict our ability to raise additional capital, which could delay or prevent the further development of our product candidates or commercialization of our products. Our failure to raise capital when needed may harm our business and operating results.

Contractual Obligations

The following table reflects a summary of our contractual obligations as of December 31, 2006:

	Payments due by period				
Contractual Obligations(1)	Total	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years
			(In thousands)		
Senior secured notes(2)	$ 133,800	$12,000	$24,000	$97,800	$ —
Line of credit	2,191	2,191	—	—	—
Operating lease obligations(3)	2,411	1,227	1,167	17	—
Other obligations(4)	1,543	1,543	—	—	—
Total	$139,945	$16,961	$25,167	$97,817	$ —

(1) Milestone payments and royalty payments under our license and collaboration agreements are not included in the table above because we cannot, at this time, determine when or if the related milestones will be achieved or the events triggering the commencement of payment obligations will occur.

(2) On June 24, 2005, to partially finance the acquisition of Orphan Medical, we issued $80.0 million of senior secured notes. The notes bear interest at a rate of 15% per annum, payable quarterly in arrears. The amounts in the table above include interest and principal repayments on these notes. See Note 7 to our consolidated financial statements appearing elsewhere in this prospectus for additional information.

(3) Includes the minimum rental payments for our corporate office building in Palo Alto, California and automobile lease payments for the sales force. In March 2007, we entered into a lease agreement for approximately 13,000 square feet of office space in Palo Alto, California, which is not reflected in the table above. The annual lease payments for this space are approximately $460,000. The fixed term expires in August 2008, after which we may extend the term for up to six months subject to certain conditions.

(4) Consists of commitments to third party manufacturers of two of our commercial products. Does not include obligations under contracts with a contract research organization that are not cancellable without the payment of liquidated damages of $3.1 million.

The table above reflects only payment obligations for development products that are fixed and determinable. We also have contractual payment obligations, the amount and timing of which are contingent upon future events. Amounts and estimated timing of significant payments related to licensing and other arrangements not included in the contractual obligations table above are as follows:

- In January 2007, we entered into a product license agreement with Solvay for the right to market and distribute Luvox and Luvox CR in the United States. Under the terms of the agreement, we made a $2.0 million payment upon execution of the agreement, and we are required to make additional payments of up to $138.0 million if various commercial and development milestones are achieved. These payments include $10.0 million triggered by FDA marketing approval for the first indication for Luvox CR, $5.0 million triggered by FDA marketing approval for the second indication for Luvox CR, $13.0 million triggered by the first commercial sale of Luvox CR, $8.0 million triggered by the first commercial sale of Luvox CR after FDA approval of the second indication and $5.0 million triggered by FDA approval of a Luvox CR label with expiration dating of at least 18 months, any or all of which could occur in late 2007 or early 2008. In addition, we agreed to pay royalties at specified rates based on net product sales.
- In October 2004, we entered into an agreement with GlaxoSmithKline to acquire worldwide rights to the active pharmaceutical ingredient in JZP-4. We paid $2.0 million upon execution of the agreement and $3.0 million in July 2006 upon achievement of a development milestone. We also agreed to pay up to $113.5 million upon the achievement of future development and commercial milestones and royalties at specified rates based on net product sales. We will owe a $5.0 milestone payment to GlaxoSmithKline upon the enrollment of the first patient in a JZP-4 Phase II clinical trial, which could occur as early as late 2007.

Recent Accounting Pronouncements

In July 2006, the FASB issued Interpretation No. 48, *Accounting for Uncertainty in Income Taxes, an interpretation of FASB Statement No. 109*, or FIN 48. FIN 48 clarifies the accounting for uncertainty in income taxes by prescribing the recognition threshold a tax position is required to meet before being recognized in the financial statements. It also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. FIN 48 is effective for fiscal years beginning after December 15, 2006. We adopted the provisions of FIN 48 effective January 1, 2007. No cumulative adjustment to our accumulated deficit was required upon adoption.

In September 2006, the SEC issued Staff Accounting Bulletin No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements*, or SAB 108. SAB 108 provides guidance on the consideration of the effects of prior year misstatements in quantifying current year misstatements for the purpose of a materiality assessment. SAB 108 establishes an approach that requires quantification of financial statement errors based on the effects on each of our balance sheets and statement of operations and the related financial statement disclosures. SAB 108 was adopted by us in the first quarter of 2007. We have determined that the adoption of SAB 108 has no material effect on our results of operations or financial position.

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements*, or SFAS 157. SFAS 157 provides guidance for using fair value to measure assets and liabilities. It also responds to investors' requests for expanded information about the extent to which companies measure assets and liabilities at fair value, the information used to measure fair value, and the effect of fair value measurements on earnings. SFAS 157 applies whenever other standards require (or permit) assets or liabilities to be measured at fair value, and does not expand the use of fair value in any new circumstances. SFAS 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007 and is required to be adopted by us effective January 1, 2008. We are currently evaluating the effect that the adoption of SFAS 157 will have on our results of operations and financial position.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities—Including an amendment of FASB Statement No. 115*, or SFAS 159. SFAS 159 provides companies with an option to report selected financial assets and liabilities at fair value. The objective of SFAS 159 is to reduce both complexity in accounting for financial instruments and the volatility in earnings caused by measuring related assets and liabilities differently. Most of the provisions in SFAS 159 are elective; however, the amendment to FASB Statement No. 115, Accounting for Certain Investments in Debt and Equity Securities, applies to all entities with available-for-sale and trading securities. SFAS 159 is effective as of the beginning of an entity's first fiscal year beginning after November 15, 2007. We are currently evaluating the effect that the adoption of SFAS 159 will have on our results of operations and financial position.

Off-Balance Sheet Arrangements

Since inception, except for standard operating leases, we have not engaged in any off-balance sheet arrangements, including the use of structured finance, special purpose entities or variable interest entities.

Quantitative and Qualitative Disclosures About Market Risk

Our exposure to market risk is confined to our cash, cash equivalents and restricted cash and investments, all of which have maturities of less than one year. The goals of our investment policy are liquidity and capital preservation. Our investment policy allows us to maintain a portfolio of cash equivalents and short-term investments in a variety of securities, including U.S. government agencies, corporate bonds, commercial paper and money market funds. Our cash and investments as of March 31, 2007 consisted primarily of obligations of United States government agencies and money market funds.

Our senior secured notes have fixed interest payments, and, therefore, we are not subject to market risk with respect to this debt. Our line of credit bears interest at the prime rate of the financial institution from which we borrow, which is subject to change. However, interest expense in connection with this facility is not material.

We have no operations outside the United States, and almost all of our operating expenses and capital expenditures are denominated in United States dollars. We receive royalties on certain net product sales that are denominated in other currencies, primarily in Euro, but these royalties comprise a small portion of our revenues.

BUSINESS

Overview

We are a specialty pharmaceutical company focused on identifying, developing and commercializing innovative products to meet unmet medical needs in neurology and psychiatry. Our goal is to build a broad portfolio of products through a combination of internal development and acquisition and in-licensing activities and to utilize our specialty sales force to promote our products in our target markets. We apply novel formulations and drug delivery technologies to known drug compounds, and compounds with the same mechanism of action or similar chemical structure as marketed products, to improve patient care by, among other things, improving efficacy, reducing adverse side effects or increasing patient compliance relative to existing therapies. By working with these drug compounds, we believe that we can substantially mitigate the risks and reduce the costs and time associated with product development and commercialization of new therapies with significant market opportunities. Through the application of novel formulations and drug delivery technologies, we also explore potential new indications for known drug compounds. Since our inception in 2003, our experienced executive management team has built a commercial operation and assembled a portfolio of products and product candidates that currently includes two marketed products that generated net product sales of $41.9 million in 2006, one product candidate for which an approvable letter has been issued by the U.S. Food and Drug Administration, or FDA, and five product candidates in various stages of clinical development. We also have additional product candidates in earlier stages of development.

Our marketed products and late-stage product candidates are:

- *Xyrem (sodium oxybate) oral solution*. Xyrem is the only product approved by the FDA for the treatment of both cataplexy and excessive daytime sleepiness in patients with narcolepsy. Narcolepsy is a chronic neurologic disorder caused by the brain's inability to regulate sleep-wake cycles normally. According to the National Institutes of Health, 150,000 or more individuals in the United States are affected by narcolepsy. We promote Xyrem in the United States to neurologists, psychiatrists, pulmonologists and sleep specialists through our 55 person specialty sales force. We have significantly increased domestic net product sales of Xyrem since our acquisition of Orphan Medical, Inc. We have licensed the rights to commercialize Xyrem in 54 countries outside of the United States to UCB Pharma Limited, or UCB, and in Canada to Valeant Canada Limited, or Valeant. UCB has commercially launched Xyrem in 12 countries. In 2006, Xyrem represented $29.0 million, or 69%, of our net product sales from our currently marketed products.
- *Antizol (fomepizole)*. Antizol is the only FDA-approved antidote for suspected or confirmed ethylene glycol or methanol poisonings in humans. We market Antizol primarily to hospitals and emergency rooms. Antizol is distributed to wholesalers in the United States, and we retain the services of a third party to promote the product. Antizol is marketed by our distributors in Canada and Israel. We also market Antizol-Vet, an injectable formulation of fomepizole approved as an antidote for suspected or confirmed ethylene glycol poisonings in dogs. In 2006, Antizol and Antizol-Vet represented $12.8 million, or 31%, of our net product sales from our currently marketed products.
- *Luvox CR (fluvoxamine maleate extended release capsules)*. Our most advanced product candidate is Luvox CR, an extended release formulation of fluvoxamine, a selective serotonin reuptake inhibitor, which has been developed for the treatment of obsessive compulsive disorder and social anxiety disorder. Selective serotonin reuptake inhibitors are a class of antidepressants used in the treatment of depression, anxiety disorders and some personality disorders. According to the National Institute of Mental Health, obsessive compulsive disorder and social anxiety disorder affect approximately 2.2 million and 15 million adults in the United States, respectively. Luvox CR was developed by Solvay Pharmaceuticals, Inc., or Solvay, in collaboration with Elan Pharma International Limited, or Elan. We obtained the exclusive rights to market and distribute Luvox CR in the United States from Solvay in January 2007. Solvay retains the rights to market and distribute Luvox CR outside of the United States. Solvay submitted a new drug application, or NDA, to the FDA for Luvox CR in April 2006, and, in February 2007, the FDA issued an approvable letter to Solvay. Subject to the satisfaction

of the requirements set forth in the approvable letter and FDA approval, we expect to commence promotion of Luvox CR in the United States in the first quarter of 2008 through a significantly expanded specialty sales force. During 2007, we expect to make significant expenditures relating to the planned commercial launch of Luvox CR.

- *JZP-6 (sodium oxybate).* We are developing a liquid dosage form of sodium oxybate, the active pharmaceutical ingredient in Xyrem, for the treatment of fibromyalgia syndrome. According to the American College of Rheumatology, between two and four percent of the U.S. population suffers from fibromyalgia syndrome. There are currently no products approved by the FDA for the treatment of fibromyalgia syndrome. We have successfully completed a Phase II clinical trial of this product candidate for the treatment of fibromyalgia syndrome. We are currently conducting two Phase III pivotal clinical trials, and we expect preliminary data from the first Phase III pivotal clinical trial in the second half of 2008. In Phase II clinical trials, JZP-6 demonstrated statistically significant improvement in the composite endpoint accepted by the FDA and the European Agency for the Evaluation of Medicinal Products as the primary endpoint for our Phase III pivotal clinical trials. Subject to successful completion of Phase III clinical trials, we plan to submit an NDA for JZP-6 by late 2009. If our NDA is approved by the FDA, we expect to market JZP-6 in the United States to rheumatologists and other specialists who treat fibromyalgia syndrome patients through an expanded specialty sales force. We have granted UCB the commercialization rights to JZP-6 in 54 countries outside of the United States.

In addition to our product candidates in late-stage development, our clinical development pipeline consists of the following product candidates:

- *JZP-4 (type IIa sodium channel antagonist).* JZP-4, a controlled release formulation of an anticonvulsant that is in the same chemical class as Lamictal (lamotrigine), an antiepileptic drug marketed by GlaxoSmithKline, or GSK, is being developed for the treatment of epilepsy and bipolar disorder. According to the Epilepsy Foundation, approximately 2.7 million people in the United States suffer from epilepsy, and, according to the National Institute of Mental Health, approximately 5.7 million people in the United States are affected by bipolar disorder.
- *JZP-8 (benzodiazepine).* JZP-8, a novel formulation incorporating a benzodiazepine, is being developed for the treatment of recurrent acute repetitive seizures in epilepsy patients who have been unresponsive to previous treatments. Recurrent acute repetitive seizures are bouts of multiple seizures occurring over a short period of time. According to an article published in the *New England Journal of Medicine*, approximately 30% of epilepsy patients are unresponsive, or refractory, to treatment despite being on an effective dose of an antiepilepsy regimen, and a subset of these refractory patients experience recurrent acute repetitive seizures.
- *JZP-7 (dopamine agonist).* JZP-7, a novel formulation incorporating a dopamine agonist, is being developed for the treatment of restless legs syndrome. Dopamine is naturally produced by the human body, and in the brain, dopamine functions to help nerve cells communicate. A dopamine agonist is a drug compound that mimics the effects of dopamine. According to the Restless Legs Syndrome Foundation, up to 10% of the U.S. population suffers from restless legs syndrome.
- *JZP-2 (benzodiazepine).* JZP-2, a formulation of a benzodiazepine that is designed to enter the bloodstream faster than a dose from a conventional tablet form, is being developed for the acute, or short-term, treatment of panic attacks associated with panic disorder. Benzodiazepines are a class of psychoactive drugs with varying hypnotic, sedative, anti-anxiety, anticonvulsant, muscle relaxant and amnesic properties. According to the National Institute of Mental Health, approximately six million people in the United States suffer from panic disorder in any given year.

We have an ongoing program for generating, identifying and conducting feasibility studies for new product candidates. Our JZP-2, JZP-7 and JZP-8 product candidates resulted from this program. Several other product candidates identified through this program are in various stages of early development, including the use of

sodium oxybate, the active pharmaceutical ingredient in Xyrem, for the treatment of movement disorders. We are working on ways to expand our Xyrem franchise by developing improvements to Xyrem, such as new dosage forms that could be more convenient for patients. These activities are in the early stages of development.

Our executive management team has substantial experience in developing and commercializing novel therapeutic products. During their ten years working together as part of the executive management team at ALZA Corporation, a pharmaceutical company acquired by Johnson & Johnson in 2001, our executive management team participated in the successful development and commercialization of a broad portfolio of products and product candidates to address specialized markets.

Our Strategy

Our goal is to be a leading specialty pharmaceutical company developing and commercializing new medicines in neurology and psychiatry and, over the longer term, in additional specialty therapeutic areas. Key elements of our strategy to achieve this goal include:

- *Focusing on specialty markets of neurology and psychiatry.* We will continue to focus our activities in specialty markets, particularly neurology and psychiatry, where our specialty sales force can establish strong relationships with the relatively small number of healthcare providers who write a large percentage of prescriptions for the indications we target. We have targeted neurology and psychiatry because we believe that these therapeutic areas provide numerous opportunities to improve upon existing treatments and to commercialize the products we develop through our commercial organization. In the future, we may seek to expand into additional specialty markets in which we believe there are attractive opportunities to develop novel therapies and to leverage our commercial organization.
- *Expanding and leveraging our focused U.S. sales and marketing capabilities.* We currently have a focused and experienced 55 person specialty sales force promoting Xyrem in the United States to neurologists, psychiatrists, pulmonologists and sleep specialists. We expect to expand and leverage this sales force to promote and sell additional products for target indications in which specialists significantly influence the market. For example, we expect to significantly expand our commercial organization, including our sales force, to market Luvox CR to psychiatrists in the United States, subject to receipt of FDA approval. We intend to complete our ongoing Phase III clinical trials of JZP-6 for the treatment of fibromyalgia syndrome and, subject to regulatory approval, to market this product in the United States to rheumatologists and potentially, through a co-promotion arrangement or contract sales organization, to primary care physicians. For international markets, we intend to establish commercialization partnerships with other pharmaceutical companies to accelerate the introduction of our products outside of the United States and to maximize the commercial opportunity for these products.
- *Mitigating risks and reducing the costs and time associated with the development and commercialization of products.* We seek to mitigate the risks and reduce the costs and time associated with product development by focusing on known drug compounds, and compounds with the same mechanism of action or similar chemical structure as marketed products. We intend to continue to apply rigorous development criteria designed to provide us with the basis to make efficient development decisions with respect to each of our product candidates as early as possible in the development process. We also seek to structure our development and commercial relationships, including our strategic licenses and acquisitions of products and product candidates, to minimize financial risk until we can effectively demonstrate a significant likelihood of commercial success.
- *Continuing to expand our product portfolio.* We will continue to identify and develop through our internal research and development efforts product candidates that we believe have significant commercial potential. We will also seek to continue to acquire and in-license product candidates and products to complement our portfolio, enabling us to make efficient use of our commercial

organization. We continually assess our existing portfolio to ensure a mix of late-stage and earlier-stage opportunities, advancement of product candidates in our target markets and a balance of expected risk and return.

- *Leveraging the expertise of our experienced executive management team.* We intend to continue to leverage the expertise of our experienced executive management team in developing and commercializing novel therapeutic products. We will also seek to capitalize on our executive management team's expertise in identifying and pursuing the most effective mix of financings and collaborations to address our capital needs and limit the risk profile of our product pipeline. Since our inception, we have raised over $400 million from a range of sources, including equity, debt and development financings, and we have engaged in various collaborations related to our product candidates to limit our product development risk.

Products and Product Candidates

Product/Product Candidate	Active Pharmaceutical Ingredient/Mechanism of Action	Primary Indication(s)	Status	Commercialization Rights
Xyrem	Sodium oxybate	Cataplexy and excessive daytime sleepiness in patients with narcolepsy	Marketed	U.S. and countries not licensed to UCB or Valeant
Antizol	Fomepizole	Ethylene glycol and methanol poisoning	Marketed	Worldwide
Luvox CR	Fluvoxamine maleate	Obsessive compulsive disorder Social anxiety disorder	Approvable letter issued	U.S.
Luvox	Fluvoxamine maleate	Obsessive compulsive disorder	Approvable letter issued	U.S.
JZP-6	Sodium oxybate	Fibromyalgia syndrome	Phase III	U.S. and countries not licensed to UCB
JZP-4	Type IIa sodium channel antagonist	Epilepsy Bipolar disorder	Phase I/II	Worldwide
JZP-8	Benzodiazepine	Recurrent acute repetitive seizures	Phase II	Worldwide
JZP-7	Dopamine agonist	Restless legs syndrome	Phase I/II	Worldwide
JZP-2	Benzodiazepine	Panic attacks	Phase I/II	Worldwide

Marketed Products

Xyrem (sodium oxybate oral solution)

Xyrem is a sodium oxybate oral solution approved in the United States for the treatment of cataplexy and excessive daytime sleepiness in patients with narcolepsy. Sodium oxybate, the active pharmaceutical ingredient in Xyrem, is a formulation of the sodium salt of g-hydroxybutyrate, an endogenous neurotransmitter and metabolite of g-aminobutyric acid. Xyrem is currently the only FDA-approved treatment for both cataplexy and excessive daytime sleepiness in patients with narcolepsy. In 2006, our net product sales of Xyrem were $29.0 million.

Market Opportunity

Narcolepsy is a chronic neurologic disorder caused by the brain's inability to regulate sleep-wake cycles normally. According to the National Institutes of Health, 150,000 or more individuals in the United States are

affected by narcolepsy. The primary symptoms of narcolepsy include excessive daytime sleepiness, cataplexy, sleep paralysis, hallucinations and fragmented nighttime sleep. These symptoms can lead to a variety of complications, such as limitations on education and employment opportunities, driving or machine accidents, difficulties at work resulting in disability, forced retirement or job dismissal, and depression.

Cataplexy. Cataplexy, the sudden loss of muscle tone, is the most well-recognized symptom of narcolepsy. According to a 1996 article published in *Neurologic Clinics,* cataplexy is present in between 60% and 100% of patients with narcolepsy. Cataplexy can range from slight weakness or a drooping of the face to the complete loss of muscle tone and it is often triggered by strong emotional reactions such as laughter, anger or surprise.

Excessive Daytime Sleepiness. Excessive daytime sleepiness is the most common symptom of narcolepsy and is present in all narcolepsy patients. Excessive daytime sleepiness results in the individual becoming drowsy or falling asleep, often at inappropriate times and places.

Attributes of Xyrem

Xyrem is the only product approved by the FDA to treat both cataplexy and excessive daytime sleepiness in patients with narcolepsy. Xyrem is administered at night and quickly metabolized so that during the daytime, very little of the active drug is present in the patient. Xyrem has a well established safety profile. As published in *SLEEP* in 2002, the Phase III clinical trial results indicated that Xyrem significantly increased daytime wakefulness and reduced cataplexy attacks in patients with narcolepsy. Approximately 80% of patients in Phase III clinical trials maintained concomitant stimulant use. As published in *Sleep Medicine* in 2004, clinical trial results indicated that Xyrem is an effective treatment for the long-term management of cataplexy in patients with narcolepsy.

Product Development

In June 2005, we obtained the rights to Xyrem as a result of our acquisition of Orphan Medical. Initial FDA approval for Xyrem as a treatment for cataplexy in patients with narcolepsy was obtained in July 2002. In November 2005, the FDA approved a supplemental NDA, or sNDA, for the treatment of excessive daytime sleepiness in patients with narcolepsy.

Commercialization

We promote Xyrem in the United States through our 55 person specialty sales force. Pursuant to an agreement originally executed in 2003 and subsequently amended, we have licensed to UCB the exclusive right to register and market Xyrem for the treatment of narcolepsy in 54 countries throughout Europe, South America, the Middle East and Asia in exchange for milestone and royalty payments to us. Pursuant to the original agreement, UCB and its predecessor paid upfront and milestone payments totaling $9.5 million in connection with Xyrem for the treatment of narcolepsy. UCB has commercially launched the product in 12 countries. In October 2005, the European Agency for the Evaluation of Medical Products approved the product for the treatment of cataplexy in adult patients with narcolepsy, and in March 2007, the European Agency for the Evaluation of Medical Products approved the product for the treatment of narcolepsy with cataplexy in adult patients. In December 2006, we licensed to Valeant the Canadian marketing rights to Xyrem for the treatment of narcolepsy, subject to our right to later reacquire these rights. We expect Valeant to launch the product in Canada in 2007.

In June 2006, we significantly expanded the scope of our agreement with UCB to cover JZP-6, our product candidate for the treatment of fibromyalgia syndrome in exchange for additional upfront and milestone payments. We are entitled to additional commercial milestone payments of up to $6.0 million specifically associated with Xyrem and royalties on all commercial sales of Xyrem and JZP-6 by UCB under this amended agreement. The term of our agreement with UCB, as it applies to Xyrem, extends to the later of the expiration of our associated patent rights in the territories covered by the agreement or ten years from the date of European

Agency for the Evaluation of Medical Products approval to commercially promote and distribute the product for the treatment of narcolepsy, subject to automatic extension unless and until UCB terminates the agreement upon not less than 12 months' notice. UCB may terminate our agreement for any reason upon 18 months' notice. We are responsible for supplying Xyrem to UCB and Valeant in exchange for supply price payments. Beginning in 2008, if we are materially unable to comply with our obligations to supply Xyrem to UCB, UCB has the right under certain circumstances to terminate our agreement upon nine months' notice.

The FDA has granted Xyrem orphan drug exclusivity in the United States for both cataplexy and excessive daytime sleepiness in patients with narcolepsy. This provides marketing exclusivity in the United States until July 2009 for the cataplexy indication and November 2012 for the excessive daytime sleepiness indication, which exclusivity periods run concurrently with a period of five-year new chemical entity exclusivity period expiring in July 2007. In addition to orphan drug exclusivity, Xyrem is covered by a formulation patent that is listed in the FDA's approved drug products with therapeutic equivalence evaluation document, or Orange Book, and expires in 2019, and a process patent that expires in 2019. The Orange Book, among other things, lists drug products approved by the FDA and identifies applicable patent and non-patent marketing exclusivities. The listing of our formulation patent in the Orange Book may require potential competitors to certify as to non-infringement or invalidity of the patent prior to FDA approval of their product candidates. A patent application covering Xyrem's distribution system is currently pending, and the patent, if issued, would expire in 2022. In addition, we believe that the strict manufacturing and distribution controls on sodium oxybate and Xyrem, and the complicated risk management procedures required to market and sell the product, may make it difficult for other companies to manufacture and market generic formulations of Xyrem.

Our marketing and sale of Xyrem is subject to a risk management program required by the FDA and the U.S. Drug Enforcement Agency, or DEA, in conjunction with Xyrem's approval by the FDA. Under the Xyrem risk management program, Xyrem must be distributed through a single central pharmacy, Express Scripts Specialty Distribution Services, Inc., or Express Scripts. The central pharmacy must maintain physician and patient registries, and the product may not be stocked in retail pharmacies. Each physician and patient must be educated about the risks and benefits of the product before the physician can prescribe, or a patient can receive, Xyrem. Whenever a prescription is received by the central pharmacy, the central pharmacy must verify the prescription and obtain additional information by contacting the physician's office and the patient's insurance company. The central pharmacy must also speak with the patient before it can ship any Xyrem to the patient. The central pharmacy must ship the product directly to the patient by a courier service, and the patient or his/her designee must sign for the package. The initial shipment may only be for a one-month supply, and patients may not receive more than a three-month supply at any time.

Pursuant to our agreement with Express Scripts, Express Scripts provides distribution and other customer support services to us related to the sale and marketing of Xyrem in the United States. We are billed monthly for the services performed by Express Scripts. The term of the agreement with Express Scripts expires on July 31, 2008, subject to automatic one-year extensions thereafter until either party provides notice to the other of its intent to terminate the agreement at least 120 days prior to the end of the term. We may terminate the agreement with Express Scripts upon five days' notice if Express Scripts is not in compliance with applicable regulatory requirements.

We have contracted separately with third parties to supply the sodium oxybate used to produce Xyrem and to manufacture the product. We rely on a single source for our supply of sodium oxybate. Quotas from the DEA are required in order to manufacture and package sodium oxybate. Since the DEA typically grants quota on an annual basis and requires a detailed submission and justification for the request, obtaining a DEA quota is a difficult and time consuming process.

Competition

As an alternative to Xyrem, cataplexy is often treated with tricyclic antidepressants and selective serotonin reuptake inhibitors, although none of these compounds has been approved by the FDA for the treatment of cataplexy. Tricyclic antidepressants are a class of antidepressant drugs first used in the 1950s. The use of these drugs can often result in somnolence, which exacerbates excessive daytime sleepiness already experienced by all patients with narcolepsy. Other treatments for excessive daytime sleepiness in patients with narcolepsy consist primarily of stimulants and wakefulness promoting agents, including Provigil (modafinil). Xyrem and Provigil are both approved for the treatment of excessive daytime sleepiness in patients with narcolepsy, but Xyrem is also approved for the treatment of cataplexy, the most well-recognized symptom of narcolepsy. Provigil is also approved for the treatment of excessive daytime sleepiness in patients with obstructive sleep apnea/hypopnea syndrome and shift work sleep disorder, which may help make it more well-known to physicians and patients.

Xyrem is a liquid solution that is taken twice nightly. Provigil is a pill that is usually taken once in the morning for excessive daytime sleepiness by patients with narcolepsy. Provigil is distributed by numerous pharmacies. Xyrem's risk management program requires that it be distributed in the United States through a single central pharmacy, and it takes longer for a patient to receive medicine under the Xyrem distribution system than it takes to fill a typical prescription at a pharmacy. Xyrem is administered at night and can be used in conjunction with Provigil, which is administered during the day. During the pivotal Phase III trials of Xyrem, approximately 80% of patients maintained concomitant stimulant use, and clinical trial results indicated that Xyrem reduced the severity of daytime sleepiness when used alone or in combination with stimulants during the day.

Antizol (fomepizole)

Antizol, an injectable formulation of fomepizole, is the only FDA-approved antidote for suspected or confirmed ethylene glycol or methanol poisonings in humans. According to the 2005 annual report of the American Association of Poison Control Centers, more than 6,000 exposures to ethylene glycol were reported in the United States in 2005, resulting in 41 fatalities. More than 2,300 exposures to methanol were reported in the United States in 2005, resulting in 13 fatalities. If ingested, ethylene glycol, commonly found in antifreeze, and methanol, commonly found in windshield wiper fluid, can lead to death or permanent, serious physical damage. When administered promptly after ingestion of either of these poisons, Antizol inhibits the formation of toxic metabolites and helps prevent renal damage or death. Guidelines issued by the American Academy of Clinical Toxicologists have established Antizol as the standard of care for such poisonings.

In 2006, our net product sales of Antizol were $12.5 million. We obtained the rights to Antizol in connection with our acquisition of Orphan Medical. Orphan Medical had obtained the worldwide rights to develop and market Antizol through a sublicense agreement with Mericon Investment Group. The license expires in July 2013, subject to a five-year renewal option that may be exercised by either party. We pay Mericon quarterly royalties on sales of Antizol through the duration of the sublicense.

Antizol is primarily used in a hospital setting, and we estimate that over one-third of all U.S. hospitals with emergency rooms currently stock the product. We market the product primarily to hospitals and emergency rooms. In addition to domestic sales, Antizol is marketed by our distributors in Canada and Israel.

We also market Antizol-Vet, an injectable formulation of fomepizole approved as an antidote for suspected or confirmed ethylene glycol poisonings in dogs. In 2006, our net product sales of Antizol-Vet were $313,000.

Product Candidates

Luvox CR (fluvoxamine maleate extended release capsules)

In January 2007, we licensed from Solvay the exclusive rights to market and distribute Luvox CR in the United States. Solvay retains the rights to market and distribute Luvox CR outside of the United States. Luvox CR, an extended release formulation of fluvoxamine maleate developed by Solvay in collaboration with Elan, is a selective serotonin reuptake inhibitor for which Solvay is seeking approval from the FDA for the treatment of obsessive compulsive disorder and social anxiety disorder. Luvox, an immediate release formulation of fluvoxamine maleate, was previously approved by the FDA and marketed by Solvay for the treatment of obsessive compulsive disorder, and generic fluvoxamine remains one of the leading treatments for the disorder. Luvox CR incorporates extended release beads designed to provide delivery of fluvoxamine with lower peak plasma levels compared to the immediate-release formulation. In February 2007, the FDA issued an approvable letter to Solvay for Luvox CR setting forth certain conditions necessary for receiving approval to market Luvox CR for the treatment of obsessive compulsive disorder and social anxiety disorder. Subject to satisfaction of the conditions set forth in the approvable letter and approval by the FDA, we expect to commence promotion of Luvox CR in the first quarter of 2008.

Market Opportunity

Obsessive Compulsive Disorder. Obsessive compulsive disorder is a chronic anxiety disorder characterized by persistent, unwanted thoughts, or obsessions, and repetitive behaviors or rituals, or compulsions. According to the National Institute of Mental Health, Obsessive compulsive disorder affects approximately 2.2 million adults in the United States. According to an article published in the *International Journal of Clinical Practice*, it is estimated that 60% of patients with obsessive compulsive disorder worldwide receive no treatment for their disorder. As physicians have improved their ability to recognize symptoms, the number of diagnosed cases of obsessive compulsive disorder has increased by 78% from 1995 to 2005, as measured by the 2005 Physicians Drug and Diagnosis Audit conducted by Verispan, Inc. Patients with obsessive compulsive disorder use rituals to help control anxiety related to their obsessive thoughts, and these rituals become disruptive to their daily life. While these patients often realize that their obsessions and compulsions are irrational or excessive, they frequently have little or no control over them. Typical obsessions include concerns with dirt, germs and contamination, fear of acting on violent or aggressive impulses or feeling overly responsible for the safety of others. Rituals adopted by obsessive compulsive disorder patients may provide them with transient relief from anxiety, but the rituals do not provide sustained comfort. Frequently, the rituals become so overwhelming that patients are unable to function normally in their daily lives. Symptoms of obsessive compulsive disorder typically appear in childhood, adolescence or early adulthood. According to an article published in the *Journal of Clinical Psychiatry*, a significant portion of obsessive compulsive disorder patients are believed to have one or more concomitant psychiatric disorders, such as depression or social anxiety disorder.

Social Anxiety Disorder. Social anxiety disorder is characterized by the fear and avoidance of social or performance situations where patients feel that others may scrutinize them and they may embarrass themselves. According to the National Institute of Mental Health, Social anxiety disorder affects approximately 15 million adults in the United States. Despite the prevalence of the disorder, social anxiety disorder remains underdiagnosed and undertreated by clinicians. Social anxiety disorder patients have anticipatory anxiety about these situations, and this anxiety can become so pronounced that patients cannot function normally in their daily lives. Social anxieties can be limited to a particular situation or apply to a variety of situations. In addition to anxiety, patients experience physical symptoms including blushing, sweating, trembling, and nausea. Symptoms of social anxiety disorder typically appear in childhood or adolescence with a mean age of onset of approximately 13 years, and the symptoms are often preceded by a history of social inhibition or shyness. According to an article published in the *Journal of Clinical Psychiatry*, mood and other anxiety disorders are prevalent among social anxiety disorder patients.

Competition

Selective serotonin reuptake inhibitors have become the standard treatment for anxiety disorders, including obsessive compulsive disorder and social anxiety disorder. According to the Pharmaceutical Audit Suite published by Wolters Kluwer Health, more than 142 million total prescriptions were written for selective serotonin reuptake inhibitors and serotonin-norepinephrine reuptake inhibitors in the United States in 2006, accounting for approximately $16 billion in sales. Serotonin-norepinephrine reuptake inhibitors are a class of antidepressants used in the treatment of clinical depression and sometimes used to treat anxiety disorders, obsessive compulsive disorder and other conditions. Since the approval of Prozac (fluoxetine) in the United States in 1987, the use of selective serotonin reuptake inhibitors and serotonin-norepinephrine reuptake inhibitors has increased dramatically due to their efficacy and reduced side effect profile relative to previously approved antidepressants. Based on available market data, we estimate that the majority of selective serotonin reuptake inhibitor and serotonin-norepinephrine reuptake inhibitor prescriptions are for the treatment of depression and that obsessive compulsive disorder and social anxiety disorder constitute approximately three percent of total selective serotonin reuptake inhibitor and serotonin-norepinephrine reuptake inhibitor prescriptions.

Four branded products are currently approved by the FDA for the treatment of obsessive compulsive disorder, including three selective serotonin reuptake inhibitors: Paxil (paroxetine HCl), which is marketed by GlaxoSmithKline, Zoloft (sertraline HCl), which is marketed by Pfizer, and Prozac (fluoxetine hydrochloride), which is marketed by Eli Lilly. Anafranil (clomipramine hydrochloride), the other branded product approved by the FDA for the treatment of obsessive compulsive disorder, is a tricyclic antidepressant marketed by Mallinckrodt in the United States. The relative use of each of these products for the treatment of obsessive compulsive disorder has varied over the past ten years, and each currently has generic equivalents. Generic products are generally sold at significantly lower prices than branded products, tending to both take market share away from branded products and put downward pricing pressure on branded products. Fluvoxamine, the generic equivalent of Luvox and a selective serotonin reuptake inhibitor, is the only other drug currently approved for the treatment of obsessive compulsive disorder.

Based on data from the 2006 Physicians Drug and Diagnosis Audit, we estimate that fluvoxamine use represented approximately 11% of total drug usage for the treatment of obsessive compulsive disorder in 2006. Prior to the introduction of generic fluvoxamine in 2000, Luvox was considered one of the preferred treatments of obsessive compulsive disorder. Based on data from the 2005 Physicians Drug and Diagnosis Audit, we estimate that Luvox accounted for 21% of total drug usage for the treatment of obsessive compulsive disorder in 1999.

The market for drugs to treat obsessive compulsive disorder is extremely fragmented. Based on data from the 2006 Physicians Drug and Diagnosis Audit, we estimate that Paxil, Zoloft, Prozac and Anafranil (and each of their generic equivalents) and fluvoxamine accounted for 48% of the total drug usage for the treatment of obsessive compulsive disorder in 2006. Although not FDA-approved for the treatment of obsessive compulsive disorder, based on data from the 2006 Physicians Drug and Diagnosis Audit, we estimate that more than 15 additional products and their generic equivalents accounted for over 47% of total drug usage for the treatment of obsessive compulsive disorder in 2006. Given the prevalence of generic products, in order to gain significant market acceptance, we will need to demonstrate that the benefits of Luvox CR to patients justify the higher price of a branded product.

Four products are currently approved by the FDA for the treatment of social anxiety disorder, including three selective serotonin reuptake inhibitors: Zoloft, Paxil and Paxil CR, an extended release version of Paxil, and one serotonin-norepinephrine reuptake inhibitor, Effexor XR (venlafaxine HCl). Paxil CR and Effexor XR, developed and sold by GlaxoSmithKline and Wyeth, respectively, do not have generic equivalents, whereas Paxil and Zoloft have generic equivalents. Paxil CR was approved for the treatment of social anxiety disorder in 2003, and Effexor XR was approved for the treatment of social anxiety disorder in 2003.

Based on limited data from the 2005 Physicians Drug and Diagnosis Audit, we estimate that Paxil CR use represented approximately 5%, and Effexor XR use represented approximately 9%, of total drug usage for the

treatment of social anxiety disorder in 2006. As is the case with obsessive compulsive disorder, the market for drugs to treat social anxiety disorder is extremely fragmented. Based on data from the 2006 Physicians Drug and Diagnosis Audit, we estimate that Zoloft, Paxil and their generic equivalents, and Paxil CR and Effexor XR, in the aggregate accounted for only 27% of the total drug usage for the treatment of social anxiety disorder in 2006. Although they are not approved for the treatment of social anxiety disorder, based on data from the 2006 Physicians Drug and Diagnosis Audit, we estimate that approximately 18 other products accounted for over 59% of total drug usage for the treatment of social anxiety disorder in 2006. As with obsessive compulsive disorder, in order to gain significant market acceptance, we will need to demonstrate that the benefits of Luvox CR to patients justify the higher price of a branded product.

The presence in a particular patient of more than one psychiatric condition is an important consideration by physicians in the selection of drugs to treat social anxiety disorder. For patients with multiple conditions, a selective serotonin reuptake inhibitor or a serotonin-norepinephrine reuptake inhibitor with demonstrated efficacy in multiple indications is generally the preferred treatment option. Zoloft, Paxil, Paxil CR and Effexor XR are approved for additional psychiatric disorders, such as depression, in addition to social anxiety disorder, which may give them broader recognition by physicians and patients. These products therefore may be more likely to be prescribed than Luvox CR which, if approved, would at most be indicated for the treatment of obsessive compulsive disorder and social anxiety disorder.

Although selective serotonin reuptake inhibitors have a favorable side-effect profile compared to other classes of agents, the current selective serotonin reuptake inhibitor products used to treat obsessive compulsive disorder and social anxiety disorder, particularly those formulated for immediate release, all have significant adverse side effects. Adverse side effects associated with selective serotonin reuptake inhibitors include nausea, sleep disturbances, sexual dysfunction, weight gain, adverse drug interactions, risk of hypertension and, in adolescents, increased suicidal tendencies. Selective serotonin reuptake inhibitors are known to have little effect on patients' disease condition during the initial six to eight weeks of therapy. As a result, multiple psychotropic drugs are often prescribed during this time period to provide patients with more immediate relief. Additional adverse effects associated with immediate release formulations of selective serotonin reuptake inhibitors include significant incidence of nausea and reduced compliance as a result of multiple daily dosing.

Attributes of Luvox CR

We believe that there is a significant market opportunity for the reintroduction of the Luvox brand for the treatment of obsessive compulsive disorder and for its introduction for the treatment of social anxiety disorder, and that Luvox CR offers a compelling opportunity to improve upon existing formulations of fluvoxamine, the active pharmaceutical ingredient in Luvox CR, in treating these disorders. Fluvoxamine, in its immediate release form, is already a broadly prescribed therapy for the treatment of obsessive compulsive disorder. The market potential for Luvox CR is demonstrated by the significant ongoing prescription rates for the generic formulations of fluvoxamine despite the absence of active marketing and sales activity. No extended release fluvoxamine products have been approved by the FDA, and if approved by the FDA, Luvox CR would be the first fluvoxamine product approved for the treatment of social anxiety disorder.

In a Phase III clinical trial for obsessive compulsive disorder, patients taking Luvox CR demonstrated a statistically significant improvement compared to patients receiving placebo as assessed by the Yale-Brown Obsessive Compulsive Scale as early as week two of the trial. In Phase III clinical trials for social anxiety disorder, patients receiving Luvox CR demonstrated statistically significant improvement compared to patients receiving placebo as assessed by the Liebowitz Social Anxiety Scale total score as early as week four of the trial. Patients taking Luvox CR also did not show an increase in hypertension.

We believe the once-a-day dosing regimen afforded by the extended release formulation of Luvox CR could significantly improve compliance and patient acceptability. Furthermore, we believe that Luvox CR has a favorable tolerability profile as a result of its altered pharmacokinetic profile and lower maximum plasma concentration of fluvoxamine.

Product Development

In January 2007, we licensed the exclusive rights to market and distribute Luvox CR in the United States from Solvay. Solvay submitted an NDA for Luvox CR in December 2000. As a result of difficulties associated with manufacturing large-scale batches of the product candidate, Solvay and Elan mutually agreed to withdraw the NDA for Luvox CR in June 2001. We believe that Solvay and Elan have adequately addressed these manufacturing difficulties and that Elan, the party responsible for the manufacturing of Luvox CR, will be able to manufacture the product in commercial quantities. In April 2006, Solvay resubmitted the NDA for Luvox CR for treatment of obsessive compulsive disorder and social anxiety disorder. Under our agreement with Solvay, Solvay retains primary responsibility for the NDA for Luvox CR and communications with the FDA until after such time, if ever, as the FDA approves the NDA. In February 2007, the FDA issued an approvable letter for Luvox CR to Solvay. The approvable letter sets forth the requirements that must be met in order for the FDA to approve Luvox CR for marketing in the United States. The requirements set forth in the approvable letter include the completion of certain toxicology studies on the impurities that are generated by fluvoxamine maleate, the active pharmaceutical ingredient in Luvox CR, and the submission of additional information relating to the chemistry, manufacturing and controls section of the NDA. The approvable letter also requires Solvay to re-analyze certain data set forth in the NDA. We will need to commit to conducting certain post-approval, or Phase IV, studies, including a pediatric study for social anxiety disorder and a long-term safety study. We, with Solvay, will also need to finalize product labeling with the FDA. Under the terms of our license agreement, Solvay is responsible for conducting the additional toxicology studies and submitting the information to the FDA. We expect that Solvay will submit its response to the requests in the approvable letter to the FDA in the second or third quarter of 2007.

Obsessive Compulsive Disorder Phase III Clinical Trial Results. Solvay conducted one Phase III pivotal clinical trial with Luvox CR for the treatment of obsessive compulsive disorder. Since fluvoxamine is currently approved for the treatment of obsessive compulsive disorder, the FDA only requires one successful Phase III trial for approval of the extended release formulation for use in obsessive compulsive disorder. In the 12-week, multi-center, placebo-controlled trial of roughly 250 patients, patients receiving Luvox CR demonstrated statistically significant improvements on the Yale-Brown Obsessive Compulsive Scale compared to patients receiving placebo as early as week two of the study. The Yale-Brown Obsessive Compulsive Scale is a ten-item clinician-administered scale developed to assess the severity of obsessions and compulsions, independent of the number and type of obsessions or compulsions present. The Yale-Brown Obsessive Compulsive Scale has been the primary outcome measure in virtually all multi-center clinical trials of selective serotonin reuptake inhibitors for the treatment of obsessive compulsive disorder. The Luvox CR group mean total change from baseline on the Yale-Brown Obsessive Compulsive Scale was -8.5 compared to -5.6 for placebo, for a p-value of $p<0.01$ at 12 weeks. A p-value is a statistical measure intended to predict when a result of a study is likely the result of an intended outcome, such as a drug having a therapeutic effect in a clinical trial, and not by random chance. A value of $p<0.05$ means the likelihood of a result by chance is less than five in 100. As p-values become smaller, the probability of a result by chance decreases and the standard convention is to consider a p-value of 0.05 or less a statistically significant result.

Social Anxiety Disorder Phase III Clinical Trial Results. The effectiveness of Luvox CR in the treatment of social anxiety disorder was demonstrated in two 12-week, multi-center, placebo-controlled Phase III clinical trials in over 550 patients. In both studies, the effectiveness of Luvox CR compared to placebo was evaluated on the basis of change from baseline in the Liebowitz Social Anxiety Scale. The Liebowitz Social Anxiety Scale was the first clinician-administered scale to evaluate the wide range of social situations that are difficult for individuals with social phobia. The scale contains 24 items, 13 concerning performance anxiety and 11 concerning social situations. The Liebowitz Social Anxiety Scale is used as an outcome measure in most pharmacological trials for social phobia, as well as in many studies of cognitive-behavioral treatment. Patients receiving Luvox CR demonstrated statistically significant improvement compared to patients receiving placebo as assessed by the Liebowitz Social Anxiety Scale total score as early as week four of the study. As presented in the *Journal of Clinical Pharmacology* in April 2004, in one study of 279 patients, mean change in the Liebowitz Social Anxiety Scale total score was -26.7 for Luvox CR and -12.9 for placebo, for a p-value of $p<0.01$ at 12

weeks. As presented in the *Journal of Clinical Pharmacology* in February 2004, in the other study of 300 patients, mean change in the Liebowitz Social Anxiety Scale total score was -36.1 for Luvox CR and -27.3 for placebo, for a p-value of $p<0.02$ at 12 weeks.

Commercialization Strategy

If Luvox CR is approved by the FDA, we expect to commence promotion in the United States in the first quarter of 2008. To effectively market Luvox CR, we intend to significantly expand our already established specialty sales force. A substantial majority of prescriptions for the treatment of obsessive compulsive disorder and social anxiety disorder are written by psychiatrists. We believe that this concentration provides an attractive, focused market opportunity for us.

Through our license agreement with Solvay, we have obtained the exclusive rights to market and distribute Luvox CR in the United States, and Solvay retained the rights to market and distribute Luvox CR outside of the United States. In addition, Solvay assigned to us its rights and obligations under its license and supply agreement with Elan, and we have sublicensed back to Solvay the rights under that agreement outside of the United States. If Solvay decides not to pursue marketing of Luvox CR in any countries to which it has rights, we have a right of first offer with respect to any license of rights to market and distribute Luvox CR in those countries. Pursuant to a supply agreement with Solvay, we are responsible for purchasing, and Solvay is responsible for providing us with, the active pharmaceutical ingredient necessary to manufacture Luvox CR. We are responsible for providing the active pharmaceutical ingredient free of charge to Elan pursuant to the license and supply agreement with Elan. Pursuant to that license and supply agreement with Elan, Elan has the right and obligation to manufacture the worldwide commercial requirements of Luvox CR. We will be responsible for satisfying Solvay's commercial requirements of Luvox CR outside of the United States in exchange for supply price payments to us. We paid Solvay $2.0 million upon signing of the license agreement, and we are obligated to pay Solvay up to $138.0 million in development and commercial milestone payments associated with Luvox CR, as well as royalties on any net product sales. Up to $41.0 million of the milestone payments are payable at or prior to commercial launch. We are obligated to pay Elan development and commercial milestone payments, royalties on net product sales and supply price payments for the supply of Luvox CR. Solvay will be responsible for paying us for a portion of any payments due to Elan under the license and supply agreement with Elan, including those payments that relate to the countries in which Solvay holds marketing and distribution rights, as well as certain remaining development milestones owed to Elan.

Our license and supply agreements with Solvay will remain in force until terminated by either us or Solvay as a result of an uncured breach by the other party. We may also terminate the agreements with Solvay if the FDA has not approved Luvox or Luvox CR by a date specified in the license agreement or upon 180 days' notice to Solvay. The license and supply agreement with Elan that was assigned to us by Solvay will expire upon the later of 10 years after commercial launch of Luvox CR, or the last to expire patent licensed under the agreement with Elan.

We expect Luvox CR will receive three years of new marketing exclusivity if approved by the FDA. In addition, a patent application has been filed by Elan covering the orally administered formulation of extended-release fluvoxamine that requires the release of fluvoxamine over a period of not less than 12 hours. If this patent issues in the United States, it could provide patent protection for this formulation until 2020.

Luvox (fluvoxamine maleate)

In January 2007, we licensed from Solvay the exclusive rights to market and distribute Luvox in the United States. Solvay retains the rights to market and distribute Luvox CR outside of the United States. Luvox, an immediate release formulation of fluvoxamine maleate, was approved by the FDA for the treatment of obsessive compulsive disorder in 1994. However, Solvay withdrew Luvox from the market in 2002 as a result of discrepancies in data identified by the FDA. Solvay resubmitted the NDA for Luvox to the FDA in June 2002 and received an approvable letter from the FDA in February 2004. In May 2006, Solvay submitted its response to the approvable letter and in

November 2006, the FDA issued a second approvable letter for Luvox setting forth certain conditions necessary for receiving approval to market Luvox for treatment of obsessive compulsive disorder. The second approvable letter requires certain standard toxicology studies on the impurities present in the drug product to be conducted. No carcinogenicity or other studies are required. Because numerous generic formulations of fluvoxamine are on the market, and no serious adverse events associated with toxicity have been reported, we do not believe that the required testing poses a significant risk for the ultimate approval of Luvox. Pursuant to the terms of our license agreement, Solvay is responsible for conducting the additional tests and submitting the information to the FDA. We expect that Solvay will submit the additional data to the FDA in the second or third quarter of 2007.

Through our license agreement with Solvay, we have the right to market and distribute Luvox in the United States and to manufacture or to have manufactured Luvox for use and sale in the United States, but we have not yet determined if we will market Luvox if it is approved by the FDA for the treatment of obsessive compulsive disorder. In the event that we market Luvox supplied to us by Solvay in the United States, we will make a milestone payment to Solvay of $2.0 million and royalties on commercial sales.

JZP-6 (sodium oxybate)

We are developing a liquid dosage form of sodium oxybate, the active pharmaceutical ingredient in Xyrem, for the treatment of fibromyalgia syndrome. We are currently conducting two Phase III pivotal clinical trials for JZP-6 in fibromyalgia syndrome. We have completed a Phase II clinical trial for JZP-6 in which fibromyalgia syndrome patients taking sodium oxybate achieved a statistically significant improvement compared to placebo on the composite endpoint accepted by the FDA and the European Agency for the Evaluation of Medicinal Products as the primary endpoint for our Phase III pivotal clinical trials.

Market Opportunity

Fibromyalgia syndrome is a chronic pain syndrome defined by widespread pain lasting at least three months. According to the American College of Rheumatology between two and four percent of the U.S. population suffers from fibromyalgia syndrome. Fibromyalgia syndrome is believed to be a central nervous system condition. In addition to pain, fibromyalgia syndrome patients often suffer from a combination of muscle stiffness, fatigue, disturbed sleep, restless legs and impaired memory and concentration. Although physicians do not understand the cause of fibromyalgia syndrome, it may be triggered by physical trauma, emotional stress or infection. The criteria established by the American College of Rheumatology for the classification of fibromyalgia require the application of pressure at 18 different points on the body and measurement of pain induced by such pressure. If at least 11 of the 18 points are painful and have been painful for three months, the patient is diagnosed with fibromyalgia syndrome.

Competition

There are currently no products approved by the FDA for the treatment of fibromyalgia syndrome. In clinical practice, a variety of drugs are often prescribed to address individual symptoms of fibromyalgia syndrome, including antidepressants, pain medications, muscle relaxants, hypnotics and anticonvulsants. Based on available market data, we estimate that more than 6.3 million total prescriptions were written to treat fibromyalgia syndrome symptoms in 2006, of which approximately 32% were for antidepressants, 25% were for opioids and 30% were for muscle relaxants. Physicians generally prescribe one or more drug therapies based on the dominant symptom or symptoms of fibromyalgia syndrome in a particular patient. This “polypharmacy” approach has significant limitations as none of the current therapies used to address the symptoms of fibromyalgia syndrome is designed to comprehensively address the syndrome and many of its related symptoms.

In addition to JZP-6, there are currently four programs that have completed or are in Phase III clinical development for the treatment of fibromyalgia syndrome. These include Lyrica (pregabalin), an anticonvulsant being developed by Pfizer, which has previously been approved by the FDA for the treatment of partial seizures,

post herpetic neuralgia and diabetic peripheral neuropathy. In December 2006, Pfizer submitted a supplemental NDA seeking FDA approval of Lyrica for the treatment of fibromyalgia syndrome, or certain symptoms associated with fibromyalgia syndrome.

Attributes of JZP-6

JZP-6 is being developed to provide an effective treatment for fibromyalgia syndrome and pain associated with fibromyalgia syndrome. While the primary symptom of fibromyalgia syndrome is widespread pain, fatigue and mood disturbances are also common symptoms. We believe that JZP-6 will provide significant advantages over current treatments by offering improvements in pain relief and physical functioning that may address the overall syndrome and many of its related symptoms.

The primary endpoint for our pivotal trials measuring the efficacy of JZP-6 is a composite of change from baseline in three co-primary measures of patients' pain: the pain visual analog scale, the fibromyalgia impact questionnaire and patient global impression of change. This composite of change endpoint was accepted by the FDA and the European Agency for the Evaluation of Medical Products as the primary endpoint for our Phase III pivotal clinical trials. An efficacious response by a patient in the trial for each of the three co-primary measures of patient's pain is defined as follows: by the FDA as a greater than 20%, and by the European Agency for the Evaluation of Medical Products as a greater than 30%, reduction in the pain visual analog scale; by the FDA as a greater than 20%, and by the European Agency for the Evaluation of Medical Products as a greater than 30%, improvement in the fibromyalgia impact questionnaire score; and by the FDA and the European Agency for the Evaluation of Medical Products as a self-rating describing themselves as "very much better" or "much better" on the patient global impression of change.

Product Development

Phase II Clinical Trial Results. In August 2005, we completed a Phase II clinical trial of 195 patients with fibromyalgia syndrome in a randomized, double blind placebo-controlled safety and efficacy study. Patients received a fixed dose of 4.5 grams of sodium oxybate divided into two nightly doses, 6.0 grams of sodium oxybate divided into two nightly doses, or placebo twice nightly for an eight-week period. The primary endpoint for this trial was a composite of change from baseline in three co-primary measures of patients' pain: the pain visual analog scale, the fibromyalgia impact questionnaire and patient global impression of change. Secondary endpoints included measurement of a tender point count, tender point index, Epworth sleepiness scale, Jenkins scale for sleep, global score on the functional outcome of sleep questionnaire, severity of fatigue and clinical global impression of change. The Phase II clinical trial demonstrated significant improvement in the composite endpoint results in both dosage strengths. In addition, the study demonstrated significant improvements in secondary measures of fatigue, sleepiness and sleep quality. There were no unexpected adverse events in the study.

JZP-6 also demonstrated statistically significant improvement in each of the co-primary measures that comprise the composite endpoint in either one or both dosage strengths. The visual analog scale is a self-assessed measurement of pain in which zero is no pain at all and 100 is the worst pain experienced. The baseline pain for the fibromyalgia syndrome patients in the trial was roughly 65. Patients on both dosage strengths experienced a statistically significant improvement in pain at eight weeks. In addition, the study measured pain throughout the day. Patients experienced pain relief in the morning, at midday and in the evening, which represents an important clinical benefit for patients. The fibromyalgia impact questionnaire is a 20 item questionnaire that asks patients to assess their ability to complete activities of daily living such as shopping, preparing a meal, visiting or doing housework. The total score is normalized to 100 points. The questionnaire also has a single inquiry about anxiety and depression. The Phase II clinical trial results demonstrated that patients on both dosage strengths experienced statistically significant improvement in the total score. The patient global impression of change is a seven point scale on which patients assess how much better or worse they feel throughout the trial. Our Phase II clinical trial demonstrated a statistically significant improvement for this measure for patients on the 4.5 gram dose.

Ongoing Phase III Clinical Trials. We are currently conducting two Phase III pivotal clinical trials, each in approximately 525 patients, and an open-label continuation trial in at least 500 patients, to confirm the results of our Phase II clinical trial. The primary endpoint in both of our ongoing Phase III pivotal clinical trials is the same as in our Phase II clinical trial. Each of our Phase III pivotal clinical trials involve randomized, double blind studies. The first of these trials commenced in September 2006 and is ongoing in 45 sites located exclusively in the United States. As of March 31, 2007, more than 100 patients had been enrolled in the first trial. Screening for the second trial commenced in February 2007. Between 30% and 40% of the subjects for the second trial are expected to reside outside of the United States. We expect to commence clinical pharmacology studies in the fourth quarter of 2007. Dosages being studied in the ongoing Phase III trials are consistent with our Phase II clinical trial with the exception that subjects assigned to higher doses will be titrated from the lower dose to the higher dose over a period of two weeks. We believe this titration regimen will provide for a more clinically relevant comparison of the relative safety, efficacy and tolerability of the dosages being studied and assist in determining the benefits, if any, of flexible dosing.

We expect preliminary data from the first Phase III pivotal clinical trial in the second half of 2008. Based on the results of our Phase III clinical trials and further discussions with the FDA, we will determine when and if we will submit an NDA for JZP-6 for the treatment of fibromyalgia syndrome or other, more limited indications such as pain associated with fibromyalgia syndrome.

Commercialization Strategy

If JZP-6 is approved by the FDA, we believe that the majority of prescriptions for the product to treat fibromyalgia syndrome will be written by rheumatologists, with some prescriptions written by neurologists and psychiatrists. Because the number of rheumatologists in the United States is relatively small we expect to be able to expand our specialty sales force to promote JZP-6 in the United States. We may also identify one or more pharmaceutical company partners or a contract sales organization to promote JZP-6 to other audiences, including primary care physicians who are treating patients with fibromyalgia syndrome.

In 2006, we amended our agreement with UCB to grant UCB the right to market JZP-6 for the treatment of fibromyalgia syndrome in 54 countries throughout Europe, South America, the Middle East and Asia. Under the terms of the amended agreement, UCB paid us $15.0 million to develop and commercialize JZP-6 for the treatment of fibromyalgia syndrome. We are entitled to up to $40.0 million in additional development milestone payments associated with JZP-6, and additional commercial milestone payments of up to $100.0 million related primarily to JZP-6 for the treatment of fibromyalgia syndrome as well as Xyrem for the treatment of narcolepsy. The term of our agreement with UCB, as it applies to JZP-6, extends to the later of the expiration of our associated patent rights in the territories covered by the agreement or ten years from the date of European Agency for the Evaluation of Medical Products approval to commercially promote and distribute the product for the treatment of fibromyalgia syndrome, subject to automatic extension unless UCB provides 12 months' notice. UCB may terminate our agreement for any reason upon 18 months' notice. We are responsible for supplying commercial quantities of JZP-6 to UCB in exchange for supply price payments. If we are unable to comply with our obligations to supply JZP-6 to UCB, UCB has the right under certain circumstances to terminate our agreement upon nine months' notice.

Pursuant to our agreement with Valeant, Valeant has the option to acquire the rights to market JZP-6 for treatment of fibromyalgia syndrome in Canada if it is then commercializing Xyrem for narcolepsy in Canada, subject to our right to later reacquire these rights. We are responsible for supplying commercial quantities of JZP-6 to Valeant in exchange for supply price payments.

We have contracted with our current supplier of sodium oxybate for the manufacture of Xyrem and our current manufacturer of Xyrem for the manufacture of JZP-6 to conduct our clinical trials. Because sodium oxybate is a controlled substance requiring manufacturing quotas from the DEA, our current active pharmaceutical ingredient supplier and contract manufacturer may be unable to provide us with sufficient clinical

and commercial quantities. In cooperation with our manufacturing partners, we intend to seek increased quotas from the DEA to supply and manufacture JZP-6 to complete our clinical trials and, if it is approved, to commercialize the product. We expect that the manufacture and distribution of JZP-6 will be subject to similar restrictions and risk management policies as our existing processes in place for Xyrem. These restrictions may present a meaningful obstacle for the eventual introduction of generic versions of JZP-6.

We expect that our patents associated with Xyrem will cover JZP-6. In addition, we hold a U.S. patent and patents in 29 other countries that cover the use of sodium oxybate for the treatment of fibromyalgia syndrome. Our U.S. patent expires in 2017 and our patents in other countries expire in 2018.

JZP-4 (type IIa sodium channel antagonist)

We are developing JZP-4, a controlled release formulation of an anticonvulsant that has a similar chemical structure and is believed to work through the same mechanism of action as Lamictal (lamotrigine), an antiepileptic drug marketed by GSK for the treatment of epilepsy and bipolar disorder. We have completed a number of preclinical studies related to antiepileptic activity that suggest that JZP-4 may be effective in treating epilepsy. Subject to the results of a proof of concept clinical trial, long-term toxicology studies and formulation studies, we plan to commence a Phase II clinical trial for the treatment of epilepsy in the fourth quarter of 2007.

Market Opportunity

Epilepsy. Epilepsy, a seizure disorder, is a serious neurological illness affecting people of all ages. A seizure is a sudden surge of electrical activity in the brain that affects how a person feels or acts for a short time. According to the Epilepsy Foundation, approximately 2.7 million people in the United States suffer from epilepsy. In 2005, over $6.0 billion of seizure disorder drugs were sold in the United States as measured by the Pharmaceutical Audit Suite. Based on available market data, we estimate that approximately $2.3 billion of these drugs were prescribed for the treatment of epilepsy. Epileptic seizures are classified as either partial or generalized depending upon how the abnormal brain activity begins. Partial seizures begin with abnormal activity in part of the brain. Generalized seizures have abnormal activity in most or all of the brain. Seizure symptoms may be hardly noticeable, such as confusion and staring, or totally disabling, such as convulsions, shaking and falling down.

Bipolar disorder. Bipolar disorder is a serious, chronic psychiatric disorder that causes shifts in mood, energy and ability to function. According to National Institute of Mental Health, approximately 5.7 million people in the United States are affected by bipolar disorder. Based on available market data, we estimate that approximately $1.3 billion of antiepileptic drugs were sold for the treatment of bipolar disorder in 2005. People suffering from the condition experience dramatic mood swings from an overly “high” mania state to an overly “low” or depressive state, often with periods of normal mood in between.

Competition

Epilepsy. Seizures in epileptic patients are typically controlled by treatment with one or more antiepileptic drugs. In 2006, there were approximately 6.2 million prescriptions written for Lamictal. While up to 70% of epilepsy patients respond to therapy and become seizure-free with chronic treatment with antiepileptic drugs, the remaining patients fail treatment either because the drugs do not stop their seizures or because they cannot tolerate the side effects. These patients usually end up taking more than one antiepileptic drug at a time and are therefore more susceptible to adverse effects associated with drug interactions. Selection of the appropriate medication for an individual patient is typically based on the type of epilepsy from which a patient suffers, the genesis of the disease, and the patient’s age and gender. Side effects and tolerability are significant concerns with currently available antiepileptic drugs. Side effects for most antiepileptic drugs include sleepiness, cognitive impairment, weight gain, mood changes, dizziness and potentially life-threatening immune system reactions. Doctors generally start their patients on a low dose of antiepileptic drugs, and titration may take up to 12 weeks. During this period, patients often continue to suffer from epileptic seizures of various severities.

Bipolar Disorder. Bipolar disorder is typically managed with drugs from a variety of different drug classes. While treatment duration varies for each patient, treatment of an acute phase of the disease generally lasts approximately three weeks, followed by a continuation phase of approximately two months, and a maintenance phase of up to 18 months. Generally, the treatment is chosen based on the mood episode a patient is experiencing at a particular time. Treatment for patients in the acute mania phase includes a mood stabilizer, such as lithium or an antiepileptic drug, in addition to an atypical antipsychotic. Patients in the acute depression phase are initially treated with Lamictal, Symbyax (olanzapine and fluoxetine HCl capsules), a combination antidepressant and antipsychotic, or Seroquel (quetiapine), an antipsychotic. For long-term maintenance, the same medications that were effective for the acute episodes are typically continued at the same or lower doses. Many of the drugs currently used in the treatment of bipolar disorder have adverse drug interactions affecting each drug's efficacy and safety as well as adverse tolerability and other negative side effects such as sedation, weight gain, involuntary movements, tremors, stiffness orthostatic hypotension and potentially life-threatening immune system reactions. These side effects discourage compliance and may pose serious health risks. Antidepressants are also often prescribed to treat bipolar depression, even though they are not indicated for such treatment and there is a risk that such antidepressants can induce a bipolar patient to switch from depression to mania.

Attributes of JZP-4

We are developing JZP-4 to address the unmet needs of epilepsy and bipolar patients for a more effective drug with fewer side effects. JZP-4 is being developed as a controlled release product that can be taken once a day, with a shorter titration schedule and fewer interactions with other drugs than current therapies. JZP-4 is an antiepileptic drug in the same class of drugs, and with a similar chemical structure, as Lamictal, an antiepileptic drug approved for the treatment of epilepsy and bipolar disorder. We believe that JZP-4 has the potential to provide the demonstrated efficacy of antiepileptic drugs in treating these conditions while addressing many of the adverse side effects of current therapies. In particular, our pharmacokinetic studies indicate that the active pharmaceutical ingredient in JZP-4 may result in a favorable titration schedule. Preclinical studies also indicate that the active pharmaceutical ingredient in JZP-4 may have fewer adverse drug interactions than current therapies. In addition, we believe that JZP-4 has the potential to be effective in treating bipolar depression with minimal sedation, low incidence of weight gain and limited risk of causing mood switches, thereby addressing a significant unmet need for this patient population.

Product Development

We acquired the worldwide rights to the active pharmaceutical ingredient in JZP-4 from GSK in 2004. Since acquiring these rights, we have completed our initial early preclinical development to show that the drug can be formulated as a once-a-day product, and we have conducted preclinical studies which we believe have confirmed studies previously completed by GSK showing that the drug has central nervous system activity comparable to Lamictal and other antiepileptic drugs.

Our preclinical development has involved a range of preclinical studies to determine how the active pharmaceutical ingredient in JZP-4 works and its potential to treat epilepsy. The results of these studies indicate that the active pharmaceutical ingredient in JZP-4 is a broad spectrum antiepileptic drug with sodium and calcium channel blockade as the primary mechanisms of action. From the results of these preclinical studies, we believe that the active pharmaceutical ingredient has a broad spectrum of activity, which indicates that it may be effective in treating many different types of epileptic seizures. We have also completed preliminary toxicology and pharmacology tests that have provided early indications of safety and a low potential for adverse drug interactions. These tests involved exposure of more than 170 healthy individuals in eight single dose and multi-dose studies. We have developed a prototype formulation and tested it in a pharmacokinetic study that showed the viability of once-a-day dosing. Following completion of this study we are continuing development activities for a once-a-day formulation, and we currently expect to complete these activities in the fourth quarter of 2007.

In addition, we have designed two proof of concept clinical trials designed to provide evidence of therapeutic activity for JZP-4. The first, a transcranial magnetic stimulation study, is a non-randomized, single blind placebo-

controlled study of JZP-4 in healthy volunteers with lamotrigine as a positive control. The transcranial magnetic stimulation model is predictive of central nervous system activity and efficacy in partial epilepsy. Three patients have completed all four doses of JZP-4 and one dose of lamotrigine. Results from these subjects indicate potential central nervous system activity of JZP-4. The second, a photic-induced paroxysmal electroencephalographic study in photosensitive epilepsy patients, is a non-randomized, single blind placebo- controlled study of JZP-4 with a higher dose of baseline antiepileptic drug as a positive control. The results from this study will provide information on the effective dose range in epilepsy patients and possible adverse drug interactions with other antiepileptic drugs. Initial dosing for this study is expected to commence in the third quarter of 2007.

Our completed toxicology studies support use of the active pharmaceutical ingredient in JZP-4 in humans for up to 13 weeks. We began additional long-term toxicology studies in March 2006 and expect to receive results from these studies in the second quarter of 2007. Subject to satisfactory results from these long-term toxicology studies, formulation studies, a proof of concept study and certain drug-drug interaction studies, we plan to commence a Phase II clinical trial of JZP-4 for the treatment of epilepsy beginning in the fourth quarter of 2007. We believe that the initial results of this trial will be available in mid-2008.

Commercialization Strategy

Our strategy to market any approved formulation of JZP-4 will depend on the outcome of our clinical trials, the nature of any indications it is approved to treat and the specialties of the physicians most likely to prescribe the product. Any such sales efforts may involve the utilization of our internal sales force, collaborations with partners, or a combination of both. Pursuant to our agreement with GSK, we have paid upfront and development milestone payments of $5.0 million and will pay up to $113.5 million in additional development and commercial milestone payments as well as royalties on commercial sales.

We have identified and are in the process of qualifying a manufacturer to produce clinical trial materials for all late-stage clinical trials of JZP-4. Following development of our once-a-day formulation we intend to seek a contract manufacturer for commercial quantities of JZP-4.

The composition of matter for the active pharmaceutical ingredient in JZP-4 is covered by patents in 53 countries, including in the United States and countries in Europe. The U.S. composition of matter patent expires in 2018. In addition, we hold a U.S. patent covering the use of the active pharmaceutical ingredient in JZP-4 for the treatment of bipolar disorder that expires in 2018, and a U.S. patent that covers the process used for preparing of the active pharmaceutical ingredient in JZP-4 that expires in 2021. A patent application covering a sustained release composition for delivering the active pharmaceutical ingredient in JZP-4 is currently pending in the U.S. Patent and Trademark Office and would, if issued, expire in 2026.

JZP-8 (benzodiazepine)

We are developing JZP-8, a novel formulation incorporating a benzodiazepine, for the treatment of recurrent acute repetitive seizures in refractory epilepsy patients. Our initial development work suggests that JZP-8 has the potential to provide fast-acting efficacy associated with currently available therapies while addressing problems associated with administration that make such therapies largely impractical to employ.

Market Opportunity

Recurrent acute repetitive seizures are bouts of acute seizure activity within a 24-hour period in adults and a 12-hour period in children. According to the Epilepsy Foundation, approximately 2.7 million people in the United States have epilepsy. According to an article published in the *New England Journal of Medicine*, approximately 30% of epilepsy patients are refractory to treatment despite being on an effective dose of an antiepilepsy regimen, and a subset of these refractory patients experience recurrent acute repetitive seizures. Recurrent acute repetitive seizures are an acute and repetitive reaction to the abnormal electrical activity that

builds up and releases in the brain. Epilepsy patients and their caregivers are usually able to distinguish between a regular seizure and the first seizure in a series of recurrent acute repetitive seizures.

Competition

Quick identification and treatment of the first seizure in a series of recurrent acute repetitive seizures can often interrupt the ongoing seizure, reduce its severity, and prevent subsequent seizures. Interrupting a seizure cluster may also lessen the severity of post-seizure symptoms. In the United States, Diastat (diazepam rectal gel), marketed by Valeant Pharmaceuticals, is the only FDA-approved, acute, outpatient treatment for patients on stable antiepileptic drugs who experience bouts of increased seizure activity. In 2006, sales of Diastat totaled approximately $73.0 million in the United States as measured by the Pharmaceutical Audit Suite. Although generally considered safe and effective for patients of all ages, because it is a rectally administered gel, Diastat is currently prescribed primarily for children under the age of ten and is administered to them by caregivers or parents. Diastat's rectal administration has made it impractical for most of the adolescent, adult and elderly population. Patients with seizure clusters who do not use Diastat have no other outpatient treatment option and thus, typically, are treated through the emergency medical system.

In paramedic and hospital settings, benzodiazepines such as diazepam, lorazepam and midazolam are the first line of emergency treatment for patients presenting with recurrent acute repetitive seizures. These medications, all available in intravenous formulations, provide rapid onset of action and known efficacy for patients. However, treatment in an emergency room setting results in significantly increased costs to the individual and health care system as well as the potential increased harm and danger associated with the time delay in obtaining emergency treatment.

Attributes of JZP-8

JZP-8 is being developed as a fast-acting benzodiazepine, or a benzodiazepine that enters the bloodstream faster than a dose from a conventional tablet form. Like other benzodiazepines, JZP-8 will likely be regulated as a controlled substance by the DEA if approved for marketing by the FDA. We believe JZP-8 will provide a far easier means of administration while patients are actively seizing and a delivery form that will be accepted for use by adolescent and adult patients as well as caregivers. In addition, we believe that JZP-8 will have sufficient duration of action to prevent recurrence of subsequent seizures.

Product Development

We have completed development activities to select the active pharmaceutical ingredient for this product candidate and are conducting further development activities related to formulation, safety and tolerance. We have completed a pharmacokinetics and pharmacodynamics study in healthy volunteers. Pharmacokinetics deals with the absorption, distribution, biotransformation and excretion of drugs, which, coupled with dosage, determines the concentration of a drug in the body and, hence, the intensity of its effects as a function of time. Pharmacodynamics is the study of the biochemical and physiological effects of drugs and their mechanisms of action. These pharmacokinetic and pharmacodynamic results demonstrate that JZP-8 has an acceptable plasma profile. We plan to commence a Phase II clinical trial of JZP-8 for the treatment of recurrent acute repetitive seizures in refractory epilepsy patients in the fourth quarter of 2007. Subject to satisfactory results from this clinical trial, we plan to begin Phase III clinical trial activities for JZP-8 in the second quarter of 2008.

Commercialization Strategy

Our marketing strategy for JZP-8 will depend on the outcome of our clinical trials, the nature of any indications JZP-8 is approved to treat and the specialties of the physicians most likely to prescribe the product. Any sales efforts may involve the utilization of our internal sales force, collaborations with sales partners or a combination of both.

We have entered into a license agreement with a technology provider for the development of JZP-8. Pursuant to that agreement we are obligated to make clinical and commercial milestone payments to this provider and to pay royalties on commercial sales of the product.

We have contracted for the supply of the active pharmaceutical ingredient in JZP-8 in sufficient quantities to complete clinical trials. We intend to seek a contract manufacturer for commercial quantities of JZP-8.

JZP-7 (dopamine agonist)

We are developing JZP-7, a novel formulation incorporating a dopamine agonist, for the treatment of restless legs syndrome. Based on our preclinical development, we believe JZP-7 offers the potential for effective treatment of restless legs syndrome while reducing adverse effects associated with existing treatments.

Market Opportunity

Restless legs syndrome is a common, underdiagnosed neurological disorder that frequently manifests itself as a sleep disorder. According to the Restless Legs Syndrome Foundation, up to ten percent of the U.S. population suffers from restless legs syndrome. A study published in the May 2004 issue of Sleep Medicine indicated that approximately ten percent of patients visiting primary care physicians in the United States and four European countries experience restless legs syndrome symptoms at least weekly, with approximately two percent of patients visiting primary care physicians suffering from symptoms severe enough to disrupt their quality of life. Patients who suffer from restless legs syndrome experience an irresistible urge to move their legs. This urge is usually accompanied by unpleasant sensations of burning, creeping, tugging or tingling inside the patients' legs, ranging in severity from uncomfortable to painful. These restless legs syndrome-related symptoms typically begin or worsen during periods of rest or inactivity, particularly when lying down or sitting, and may be temporarily relieved by movement such as walking or massaging the legs. Symptoms often worsen at night and disturbed sleep is a common result of restless legs syndrome. Left untreated, restless legs syndrome may cause exhaustion, daytime fatigue, inability to concentrate and impaired memory.

Competition

Requip (ropinirole), marketed by GSK, was the first product approved by the FDA for the treatment of restless legs syndrome. In 2006, Mirapex (pramipexole), marketed by Boehringer Ingelheim, was approved by the FDA for the treatment of moderate to severe restless legs syndrome. Schwarz Pharma is also developing a rotigotine transdermal patch for restless legs syndrome under the trade name Neupro, for which the FDA has issued an approvable letter. The symptoms of restless legs syndrome are also currently treated by dopamine agonists, opioids, benzodiazepines and anticonvulsants. While Requip and Mirapex have been shown to be effective in treating restless legs syndrome, they have been associated with adverse side effects, including nausea, vomiting, orthostatic hypotension and sudden onset of sleep. In a study of patients on dopamine agonist treatments reported in the *Archives of Neurology*, approximately 48% of patients who had continued treatment for longer than six months developed augmentation, with approximately 22% of these patients having severe augmentation. Augmentation refers to the earlier onset of symptoms, increase in symptoms, and spread of symptoms to involve other extremities. For these patients, physicians often add an additional, earlier dose of the existing treatment, increase dosage, or switch to an alternative therapy.

Attributes of JZP-7

We are developing JZP-7 as a novel formulation incorporating a dopamine agonist to provide the effective treatment of restless legs syndrome while addressing adverse events associated with current therapies. We are seeking to develop JZP-7 as a once daily formulation. We believe this formulation has the potential to significantly reduce the titration schedule associated with Requip and adverse events associated with more commonly dosed products, including nausea, vomiting, orthostatic hypotension and sudden onset of sleep. JZP-7

may also have the potential to provide extended relief of restless legs syndrome for those patients needing longer symptom relief than may be provided by existing oral therapies.

Product Development

We have completed development activities to select the active pharmaceutical ingredient for this product candidate and are conducting further development activities related to formulation, safety and tolerance. We have completed a pharmacokinetic study in healthy volunteers. The pharmacokinetic results demonstrated that our JZP-7 product has a pharmacokinetic profile consistent with our development target. We intend to conduct an additional pharmacokinetic study in 2007 prior to commencing Phase II clinical trials for the treatment of restless legs syndrome.

Commercialization Strategy

Our marketing strategy for JZP-7 will depend on the outcome of our clinical trials, the nature of any indications JZP-7 is approved to treat, and the specialties of the physicians most likely to prescribe the product. Any sales efforts may involve the utilization of our internal sales force, collaborations with partners, or a combination of both.

We have entered into an agreement with technology provider to conduct feasibility studies associated with the formulation and method of delivery of JZP-7. If these studies are successful we have the option to enter into a license agreement that will provide for clinical milestone payments to this technology provider and royalties on commercial sales of the product.

We have contracted for the supply of the active pharmaceutical ingredient in JZP-7 in sufficient quantities to complete clinical trials. We intend to seek a contract manufacturer for commercial quantities of JZP-7.

JZP-2 (benzodiazepine)

We are developing JZP-2, a fast-acting formulation of a benzodiazepine, for the acute treatment of panic attacks associated with panic disorder. There are currently no products approved for the treatment of panic attacks.

Market Opportunity

A panic attack is an isolated period of intense fear or discomfort that is associated with numerous symptoms, including feelings of imminent danger, heart palpitations, sweating, shortness of breath, chest pain, nausea and a fear of dying. According to the National Institute of Mental Health, approximately six million people in the United States suffer from panic disorder in any given year. A panic attack typically starts without warning, building to maximum intensity within ten to 15 minutes. A panic attack is distinguished from other forms of anxiety by its intensity and its sudden occurrence. To be diagnosed with panic disorder, patients must have two or more unexpected panic attacks, and develop persistent concerns or worries about having subsequent attacks.

Competition

Currently there is no drug approved for the acute treatment of a panic attack. The current leading treatments for panic disorder are selective serotonin reuptake inhibitors taken prophylactically on a daily basis. Alternative treatments to selective serotonin reuptake inhibitors include drugs in other classes, such as benzodiazepines, tricyclic antidepressants and monoamine oxidase inhibitors. Based on data from the 2005 Physicians Drug and Diagnosis Audit, we estimate that approximately 27% of drug usages for benzodiazepines are taken on an “as-needed” basis, indicating a level of ineffective treatment with selective serotonin reuptake inhibitors alone. In

addition, patients initiating selective serotonin reuptake inhibitor drug therapy often take several weeks to experience therapeutic effects and during this time, continue to experience panic attacks. According to an article published in the American Family Physician, approximately 30% of patients treated with selective serotonin reuptake inhibitors cannot tolerate these medications or will have an unfavorable or incomplete response to treatment. Benzodiazepines are well-understood drugs, and physicians continue to prescribe them despite the availability of a number of selective serotonin reuptake inhibitors in the market. Long-term benzodiazepine use is considered to be safe and effective treatment for panic disorder patients who have no history of substance abuse. We believe that some physicians may prescribe oral benzodiazepines for patients to take as needed, when they feel a panic attack coming on, or during an attack. However, because the symptoms of a panic attack typically have a rapid onset and last less than 30 minutes, we believe oral benzodiazepines often do not work quickly enough to provide patients with adequate relief. In addition, patients treated with benzodiazepines often develop increased tolerance to the activity of the drug over time, requiring substantial increases in dosages to obtain and maintain clinical effectiveness.

Attributes of JZP-2

We believe that JZP-2 has the potential to provide rapid relief from a panic attack and enable the patient to quickly resume functionality after an attack. We are developing JZP-2 as a fast-acting formulation of a benzodiazepine. Like other benzodiazepines, JZP-2 will likely be regulated as a controlled substance by the DEA if approved for marketing by the FDA. We believe JZP-2 could be used as an adjunct to chronic treatment with selective serotonin reuptake inhibitors. In addition, severe panic disorder patients continue to experience multiple panic attacks per week while on chronic selective serotonin reuptake inhibitor treatment and other therapies. JZP-2 could be used as a supplementary therapy on an as-needed basis for patients on chronic medication who continue to experience panic attacks. Patients using JZP-2 on an as-needed basis would have reduced exposure to the active pharmaceutical ingredient. As a result, we believe that JZP-2 has the potential to have a favorable tolerance profile.

Product Development

We have developed a target formulation for JZP-2 and plan to commence one or more clinical trials of JZP-2 in 2007 with this formulation for the acute treatment of panic attacks associated with panic disorders. The first clinical trial will evaluate how fast the product gets into the bloodstream in human subjects. Subject to the successful completion of this trial, we expect to commence a Phase II clinical trial of JZP-2. If successful, the outcome from these clinical trials will be used to determine clinical endpoints for Phase III clinical trials. The focus of our completed and ongoing development activities on JZP-2 has been to identify the preferred formulation of benzodiazepine and most effective delivery technology while balancing sedative effects, panic alleviation, risks and speed of action.

Commercialization Strategy

Our marketing strategy for JZP-2 will depend on the outcome of our clinical trials, the nature of any indications JZP-2 is approved to treat, and the specialties of the physicians most likely to prescribe the product. Any sales efforts may involve the utilization of our internal sales force, collaborations with partners, or a combination of both.

We have entered into an agreement with a technology provider to conduct feasibility studies associated with the formulation and method of delivery of JZP-2. If these studies are successful, we have the option to enter into a license agreement that will provide for the payment of royalties to our technology provider on commercial sales.

We currently have an agreement for supply of the active pharmaceutical ingredient in JZP-2 and ongoing manufacture of the drug product in sufficient quantities to complete clinical trials. Pursuant to our agreement, our technology provider will manufacture commercial quantities of JZP-2.

New Product Candidate Identification and Development

Our program for identifying and developing new product candidates involves many disciplines across our company. We identify unmet patient needs and opportunities to improve upon existing therapies through market research, new product planning activities, interactions with thought leaders in neurology and psychiatry, and research and development. Once a potential product candidate is identified, we conduct feasibility activities to help us determine whether we can develop a product that may improve patients' lives. In developing new product candidates, we access a broad range of available technologies and services from third party providers to help ensure our products will have the characteristics we desire.

Through our feasibility activities and proof of concept studies, we attempt to determine if a product candidate has the requisite pharmacological activity, would be valuable to patients and healthcare providers, and could be developed within the timeframe and budget we find acceptable. We focus our early-stage activities on obtaining proof of concept for each product candidate at a relatively low cost, in order to eliminate some risks before we incur significant development expenses for the product candidate. We then execute a development program with a defined set of goals for the product candidate, and a series of development milestones by which we measure progress. The activities at each stage of development are designed to reduce risk, so that as a product candidate moves through the stages of development we can more confidently allocate additional resources to it.

Our program is designed to shorten the development cycle for our product candidates as compared with most new chemical entities. Because we generally work with known drug compounds, and compounds with the same mechanism of action or similar chemical structure as marketed products, we can often move from a proof of concept study directly into pivotal clinical trials. In certain cases where we develop new formulations of existing marketed compounds, we may only be required to complete one Phase III clinical trial, rather than the two Phase III clinical trials generally required for new chemical entities. If we are able to complete product development with fewer clinical trials than are required for a new chemical entity, we may have lower costs of development and shorter development timelines.

Our JZP-2, JZP-7 and JZP-8 product candidates resulted from this program. We currently have several other product candidates identified through this program in various stages of early development, including the use of sodium oxybate, the active pharmaceutical ingredient in Xyrem, for the treatment of movement disorders. We are also conducting activities intended to develop new dosage forms of sodium oxybate.

We expect to begin more early-stage projects than will progress into later-stage development. If a product candidate does not successfully meet our requirements at any stage of development, we terminate the project. We also review our portfolio periodically to ensure that we have a balanced mix of product candidates moving into later stages of development across our therapeutic areas on a regular basis.

Sales and Marketing

We have a specialty sales force consisting of 55 full-time sales professionals, including five regional sales managers, who promote Xyrem. Our sales representatives are experienced, with an average of five years of specialty selling experience. Our sales management team has an average of nine years of specialty sales management experience. Our sales force calls on neurologists, psychiatrists, pulmonologists and sleep specialists. In the near term, we anticipate more than doubling our specialty sales force to prepare for the commercial launch, subject to receipt of FDA approval, of Luvox CR, with additional sales professionals focusing on psychiatrists who treat obsessive compulsive disorder and social anxiety disorder. If JZP-6 is approved by the FDA, we expect to further expand our specialty sales force to include additional sales professionals who would focus on rheumatologists treating fibromyalgia syndrome.

We have established marketing and commercial operations departments to support our sales efforts. Our marketing and commercial operations departments consist of marketing professionals who are responsible for

brand management and market research, and commercial operations professionals who are responsible for business analytics and commercial technology, commercial administration, training and development, pharmacy relations and patient affairs. Our marketing team develops and implements brand strategies to maximize product uptake and adoption with our target physician audiences in accordance with our approval labeling. We expect to significantly expand commercial operations in 2007 to accommodate promotional and marketing activities necessary to prepare for the potential commercial launch of Luvox CR, including the addition of a trade relations team and a national accounts, or managed care, team. We also employ numerous third party vendors, such as advertising agencies, market research firms and suppliers of marketing and other sales support related services.

Medical Affairs Department

We have a Medical Affairs department consisting of approximately ten professionals that provides medical information regarding our products to health care providers and handles related medical issues. Our Medical Affairs Department answers medical questions from health care professionals and provides them with publications on request. The medical education activities of our Medical Affairs department focus on grants for continuing medical education activities and the creation of enduring educational materials. Our five Medical Affairs scientists, who are based around the country, foster our relationships with thought leaders and work with investigators who are interested in exploring novel uses of our products.

Manufacturing

We do not have, and do not intend to establish in the near term, any of our own manufacturing capability for our products or product candidates, or their active pharmaceutical ingredients, or the capability to package our products. We have entered into manufacturing and supply agreements with third parties for our marketed products. For each of our marketed products, we utilize a single supplier for the active pharmaceutical ingredient and a separate drug product manufacturer. We have agreements with these suppliers and manufacturers for Xyrem, Antizol and Antizol-Vet.

Pursuant to an agreement with Lonza, Inc., or Lonza, which was originally executed in November 1996 and subsequently amended, we must purchase our worldwide supply of sodium oxybate, the active pharmaceutical ingredient in Xyrem, from Lonza. Our purchase price for this supply is volume-based. Our agreement with Lonza will continue until August 1, 2008 and will automatically extend for three-year terms thereafter until either party gives notice of its intent to terminate the agreement at least 18 months prior to the end of any such term. We may terminate the agreement upon 30 days' notice if Lonza is unable to meet our minimum requirements or timeframes for supply. We also have an agreement with DSM Pharmaceuticals, Inc., or DSM, under which DSM supplies us with Xyrem. We and DSM have mutually agreed to terminate our agreement, effective January 1, 2008. In connection with this planned termination, we entered into an agreement with Patheon Pharmaceuticals, Inc., or Patheon, in March 2007 under which we agreed to purchase, and Patheon agreed to supply us with Xyrem commencing in 2008. Under the agreement with Patheon, our price for the manufacture and supply of Xyrem is volume-based. The initial term of the agreement with Patheon will extend until five years following the commencement of manufacturing activities by Patheon, and may be extended, at our option, for additional two-year terms.

We believe that qualified suppliers and manufacturers for our marketed products will continue to be available in the future, at a reasonable cost to us, although there can be no assurance that this will be the case.

We are also seeking, have identified or have entered into manufacturing and supply arrangements for our product candidates. In particular, if Luvox CR is approved, Solvay will supply us with the active pharmaceutical ingredient, and Elan will manufacture our commercial requirements, for Luvox CR. We are also obligated under our agreement with Solvay to supply Solvay with its commercial requirements of Luvox CR for sale outside of the United States. We have contracted with our existing contract manufacturers of Xyrem for the active pharmaceutical ingredient and drug product for our clinical requirements of JZP-6. As with Xyrem, we will be

responsible for supplying JZP-6 to UCB and, if applicable, to Valeant. We are also seeking or have identified qualified suppliers and contract manufacturers for JZP-4, JZP-8, JZP-7 and JZP-2.

Because sodium oxybate is a controlled substance subject to manufacturing quotas by the DEA, our supplier and contract manufacturer of Xyrem and JZP-6 may be unable to provide us with sufficient quantities necessary to complete our clinical trials or, if approved, commercialize the product. The DEA requires substantial evidence and documentation of expected need before assigning quotas to manufacturers. Therefore, obtaining sufficient quotas can be very difficult and time consuming, which may provide a meaningful obstacle for the introduction of generic formulations of Xyrem and the eventual introduction of generic versions of JZP-6.

In an effort to minimize the risks associated with shortages of our products and product candidates for commercial and clinical trial needs, we have adopted a production planning program to assess and manage manufacturing logistics among the vendors supplying the required finished product components of active pharmaceutical ingredient, drug product and packaging.

Manufacturers and suppliers of our products and product candidates are subject to the FDA's current Good Manufacturing Practices, or cGMP, requirements, DEA regulations and other rules and regulations prescribed by foreign regulatory authorities. We depend on our third party suppliers and manufacturers for continued compliance with cGMP requirements and applicable foreign standards.

Government Regulation

The testing, manufacturing, labeling, advertising, promotion, distribution, export and marketing of our products are subject to extensive regulation by governmental authorities in the United States and in other countries. In the United States, the FDA, under the Federal Food, Drug and Cosmetic Act, or FDCA, and its implementing regulations, regulates pharmaceutical products. Several of our products and product candidates are regulated as controlled substances and are subject to additional regulation by the DEA under the Controlled Substances Act. Failure to comply with applicable U.S. requirements may subject us to administrative or judicial sanctions, such as FDA refusal to approve pending NDAs, withdrawal of approval of approved products, warning letters, untitled letters, product recalls, product seizures, total or partial suspension of production or distribution, injunctions, civil penalties and/or criminal prosecution.

Drug Approval Process

To obtain FDA approval of a product candidate, we must, among other things, submit data supporting safety and efficacy as well as detailed information on the manufacture and composition of the product candidate and proposed labeling. The testing and collection of data and the preparation of necessary applications are expensive and time-consuming. The FDA may not act quickly or favorably in reviewing these applications, and we may encounter significant difficulties or costs in our efforts to obtain FDA approvals that could delay or preclude us from marketing our products.

The steps required before a drug may be approved for marketing in the United States generally include:

- preclinical laboratory tests and animal tests;
- submission to the FDA of an Investigational New Drug Application, or IND, for human clinical testing, which must become effective before human clinical trials commence;
- adequate and well-controlled human clinical trials to establish the safety and efficacy of the drug product for each indication;
- the submission to the FDA of an NDA;
- satisfactory completion of an FDA inspection of the manufacturing facilities at which the product is made to assess compliance with cGMP;

- potential FDA audit of the nonclinical and clinical trial sites that generated the data in support of the NDA; and
- FDA review and approval of the NDA.

Preclinical studies may include laboratory evaluations of the product chemistry, toxicity, and formulation, as well as animal studies to assess the potential safety and efficacy of the product candidate. The conduct of the preclinical tests and formulation of the compounds for testing must comply with federal regulations and requirements. The results of the preclinical studies, together with manufacturing information and analytical data, are submitted to the FDA as part of the IND, which must become effective before clinical trials may be commenced. The IND will become effective automatically 30 days after receipt by the FDA, unless the FDA raises concerns or questions about the conduct of the clinical trials as outlined in the IND prior to that time. In this case, the IND sponsor and the FDA must resolve any outstanding concerns before clinical trials can proceed.

Clinical trials involve the administration of the product candidate to healthy volunteers or patients under the supervision of a qualified principal investigator. Clinical trials are conducted under protocols detailing the objectives of the study, the parameters to be used in monitoring safety, and the effectiveness criteria to be evaluated. Each protocol must be submitted to the FDA as part of the IND. Clinical trials must be conducted in accordance with the FDA's good clinical practices requirements. Further, each clinical trial must be reviewed and approved by an independent institutional review board, or IRB, at or servicing each institution at which the clinical trial will be conducted. The IRB will consider, among other things, clinical trial design, patient informed consent, ethical factors, the safety of human subjects, and the possible liability of the institution. The FDA may order the partial, temporary or permanent discontinuation of a clinical trial at any time or impose other sanctions if it believes that the clinical trial is not being conducted in accordance with FDA requirements or presents an unacceptable risk to the clinical trial subjects. The IRB may also require the clinical trial at that site to be halted, either temporarily or permanently, for failure to comply with the IRB's requirements, or may impose other conditions.

Clinical trials typically are conducted in three sequential phases prior to approval, but the phases may overlap. A fourth, or post-approval, phase may include additional clinical studies. These phases generally include the following:

- *Phase I.* Phase I clinical trials involve the initial introduction of the drug into human subjects, frequently healthy volunteers. These studies are designed to determine the metabolism and pharmacologic actions of the drug in humans, the adverse effects associated with increasing doses, and, if possible, to gain early evidence of effectiveness. In Phase I, the drug is usually tested for safety, including adverse effects, dosage tolerance, absorption, distribution, metabolism, excretion and pharmacodynamic properties.
- *Phase II.* Phase II clinical trials usually involve studies in a limited patient population to evaluate the efficacy of the drug for specific, targeted indications, to determine dosage tolerance and optimal dosage, and to identify possible adverse effects and safety risks. Although there are no statutory or regulatory definitions for Phase IIa and Phase IIb, Phase IIa is commonly used to describe a Phase II clinical trial evaluating efficacy, adverse effects, and safety risks and Phase IIb is commonly used to describe a subsequent Phase II clinical trial that also evaluates dosage tolerance and optimal dosage. Some of our product candidates, particularly those using the same active pharmaceutical ingredient as products already on the market, may be able to skip or have abbreviated Phase II studies.
- *Phase III.* If a compound is found to be potentially effective and to have an acceptable safety profile in Phase II (or sometimes Phase I) studies, the clinical trial program will be expanded to further demonstrate clinical efficacy, optimal dosage and safety within an expanded patient population at geographically dispersed clinical trial sites. Phase III studies usually include several hundred to several thousand patients. Generally, two adequate and well-controlled Phase III clinical trials are required by the FDA for approval of an NDA, but for some product candidates, particularly those using the same active pharmaceutical ingredient as products already on the market, only one Phase III trial may be required.

- *Phase IV.* Phase IV clinical trials are studies required of or agreed to by a sponsor that are conducted after the FDA has approved a product for marketing. These studies are used to gain additional experience from the treatment of patients in the intended therapeutic indication and to document a clinical benefit in the case of drugs approved under accelerated approval regulations. If the FDA approves a product while a company has ongoing clinical trials that were not necessary for approval, a company may be able to use the data from these clinical trials to meet all or part of any Phase IV clinical trial requirement. These clinical trials are often referred to as Phase III/IV post approval clinical trials. Failure to promptly conduct Phase IV clinical trials could result in withdrawal of approval for products approved under accelerated approval regulations.

The applicant must submit to the FDA the results of the preclinical and clinical trials, together with, among other things, detailed information on the manufacture and composition of the product candidate and proposed labeling, in the form of an NDA, including payment of a user fee. The FDA reviews all NDAs submitted before it accepts them for filing and may request additional information rather than accepting an NDA for filing. Once the submission is accepted for filing, the FDA begins an in-depth review of the NDA. Under the goals and policies agreed to by the FDA under the Prescription Drug User Fee Act, or PDUFA, the FDA has ten months in which to complete its initial review of a standard NDA and respond to the applicant, and six months for a priority NDA. The FDA does not always meet its PDUFA goal dates for standard and priority NDAs. The review process and the PDUFA goal date may be extended by three months if the FDA requests or the NDA sponsor otherwise provides additional information or clarification regarding information already provided in the submission within the last three months before the PDUFA goal date. If the FDA's evaluations of the NDA and the clinical and manufacturing procedures and facilities are favorable, the FDA may issue either an approval letter or an approvable letter, which contains the conditions that must be met in order to secure final approval of the NDA. If and when those conditions have been met to the FDA's satisfaction, the FDA will issue an approval letter, authorizing commercial marketing of the drug for certain indications. If the FDA's evaluation of the NDA submission and the clinical and manufacturing procedures and facilities is not favorable, the FDA may refuse to approve the NDA and issue a not approvable letter. Sponsors that receive either an approvable letter or a not approvable letter may submit to the FDA information that represents a complete response to the issues identified by the FDA. Such resubmissions are classified under PDUFA as either Class 1 or Class 2. The classification of a resubmission is based on the information submitted by an applicant in response to an action letter. Under the goals and policies agreed to by the FDA under PDUFA, the FDA has two months to review a Class 1 resubmission, and six months to review a Class 2 resubmission. The FDA may also refer an application to the appropriate advisory committee, typically a panel of clinicians, for review, evaluation and a recommendation as to whether the application should be approved. The FDA is not bound by the recommendations of the advisory committee.

The FDA has various programs, including fast track, priority review, and accelerated approval (Subpart H), that are intended to expedite or simplify the process for reviewing drugs, and/or provide for approval on the basis surrogate endpoints or restricted distribution. Generally, drugs that may be eligible for one or more of these programs are those for serious or life-threatening conditions, those with the potential to address unmet medical needs, and those that provide meaningful benefit over existing treatments. We cannot be sure that any of our drug candidates will qualify for any of these programs, or that, if a drug does qualify, that the review time will be shorter than a standard review.

After approval, certain changes to the approved product, such as adding new indications, making certain manufacturing changes, or making certain additional labeling claims, are subject to further FDA review and approval. Obtaining approval for a new indication generally requires that additional clinical studies be conducted. We cannot be sure that any additional approval for new indications for any product will be approved on a timely basis, or at all.

Often times, even after a drug has been approved by the FDA for sale, the FDA may require that certain post-approval requirements be satisfied, including the conduct of additional clinical studies. If such post-approval

conditions are not satisfied, the FDA may withdraw its approval of the drug. In addition, holders of an approved NDA are required to:

- report certain adverse reactions to the FDA;
- submit annual and periodic reports summarizing product information and safety data;
- comply with certain requirements concerning advertising and promotional labeling for their products; and
- continue to have quality control and manufacturing procedures conform to cGMP after approval.

The FDA periodically inspects the sponsor's records related to safety reporting and/or manufacturing facilities; this latter effort includes assessment of compliance with cGMP. Accordingly, manufacturers must continue to expend time, money, and effort in the area of production and quality control to maintain cGMP compliance. Discovery of problems with a product after approval may result in restrictions on a product, manufacturer, or holder of an approved NDA, including withdrawal of the product from the market.

Section 505(b)(1) New Drug Applications

The approval process described above is premised on the applicant being the owner of, or having obtained a right of reference to, all of the data required to prove the safety and effectiveness of a drug product. This type of marketing application, sometimes referred to as a "full" or "stand-alone" NDA, is governed by Section 505(b)(1) of the FDCA. A Section 505(b)(1) NDA contains full reports of investigations of safety and effectiveness, which includes the results of preclinical studies and clinical trials, together with detailed information on the manufacture and composition of the product, in addition to other information.

Section 505(b)(2) New Drug Applications

As an alternate path to FDA approval of, for example, new indications or improved formulations of previously-approved products, a company may submit a Section 505(b)(2) NDA, instead of a "stand-alone" or "full" NDA filing under Section 505(b)(1). Section 505(b)(2) of the FDCA was enacted as part of the Drug Price Competition and Patent Term Restoration Act of 1984, otherwise known as the Hatch-Waxman Act. Section 505(b)(2) permits the submission of an NDA where at least some of the information required for approval comes from studies not conducted by or for the applicant and for which the applicant has not obtained a right of reference. For example, the Hatch-Waxman Act permits the applicant to rely upon the FDA's findings of safety and effectiveness for an approved product. The FDA may also require companies to perform additional studies or measurements to support the change from the approved product. The FDA may then approve the new drug product for all or some of the label indications for which the referenced product has been approved, or for a new indication sought by the Section 505(b)(2) applicant.

To the extent that the Section 505(b)(2) applicant is relying on the FDA's findings for an already-approved drug product, the applicant is required to certify that there are no Orange Book-listed patents for that drug product or that for each Orange Book-listed patent that:

- the listed patent has expired;
- the listed patent has not expired, but will expire on a particular date and approval is sought after patent expiration; or
- the listed patent is invalid or will not be infringed by the manufacture, use or sale of the new product.

A certification that the new product will not infringe the already approved product's Orange Book-listed patents or that such patents are invalid is called a paragraph IV certification. If the applicant does not challenge the listed patents, the Section 505(b)(2) application will not be approved until all the listed patents claiming the referenced product have expired, as well as any additional period of exclusivity that might be obtained for

completing pediatric studies pursuant to the FDA's written request. The Section 505(b)(2) application may also not be approved until any applicable non-patent exclusivity, such as exclusivity for obtaining approval of a new chemical entity, listed in the Orange Book for the referenced product has expired.

If the applicant has provided a paragraph IV certification to the FDA, the applicant must also send notice of the paragraph IV certification to the holder of the NDA and the relevant patent holders once the 505(b)(2) NDA has been accepted for filing by the FDA. The NDA and patent holders may then initiate a legal challenge to the paragraph IV certification. The filing of a patent infringement lawsuit within 45 days of their receipt of a paragraph IV certification automatically prevents the FDA from approving the Section 505(b)(2) NDA until the earliest of 30 months, expiration of the patent, settlement of the lawsuit or a decision in the infringement case that is favorable to the Section 505(b)(2) applicant. For drugs with five-year exclusivity, such as Xyrem, if an action for patent infringement is initiated after year four of that exclusivity period, then the 30-month stay period is extended by such amount of time so that 7.5 years has elapsed since the approval of the NDA with the five-year exclusivity period. This period could be extended by six months if the NDA sponsor obtains pediatric exclusivity. Thus, a Section 505(b)(2) applicant may invest a significant amount of time and expense in the development of its products only to be subject to significant delay and patent litigation before its products may be commercialized. Alternatively, if the listed patent holder does not file a patent infringement lawsuit within the required 45-day period, the applicant's 505(b)(2) NDA will not be subject to the 30-month stay.

Notwithstanding the approval of many products by the FDA pursuant to Section 505(b)(2), over the last few years, certain brand-name pharmaceutical companies and others have objected to the FDA's interpretation of Section 505(b)(2). If the FDA changes its interpretation of Section 505(b)(2), this could delay or even prevent the FDA from approving any Section 505(b)(2) NDA that we submit.

In the NDA submissions for our product candidates, we intend to follow the development pathway permitted under the FDCA that we believe will maximize the commercial opportunities for these product candidates.

The Hatch-Waxman Act

Under the Hatch-Waxman Act, newly-approved drugs and indications may benefit from a statutory period of non-patent marketing exclusivity. The Hatch-Waxman Act provides five-year marketing exclusivity to the first applicant to gain approval of an NDA for a new chemical entity, meaning that the FDA has not previously approved any other new drug containing the same active moiety. The Hatch-Waxman Act prohibits the submission of an abbreviated new drug application, or ANDA, or a Section 505(b)(2) NDA for another version of such drug during the five-year exclusive period; however, as explained above, submission of an ANDA or Section 505(b)(2) NDA containing a paragraph IV certification is permitted after four years, which may trigger a 30-month stay of approval of the ANDA or Section 505(b)(2) NDA. Protection under the Hatch-Waxman Act will not prevent the submission or approval of another "full" NDA; however, the applicant would be required to conduct its own preclinical and adequate and well-controlled clinical trials to demonstrate safety and effectiveness. The Hatch-Waxman Act also provides three years of marketing exclusivity for the approval of new and supplemental NDAs, including Section 505(b)(2) NDAs, for, among other things, new indications, dosages, or strengths of an existing drug, if new clinical investigations that were conducted or sponsored by the applicant are determined by the FDA to be essential to the approval of the application.

In addition to non-patent marketing exclusivity, the Hatch-Waxman Act amended the FDCA to require each NDA sponsor to submit with its application information on any patent that claims the active pharmaceutical ingredient, drug product (formulation and composition), and method-of-use for which the applicant submitted the NDA and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug. Generic applicants that wish to rely on the approval of a drug listed in the Orange Book must certify to each listed patent, as discussed above. We intend to submit for Orange Book listing all relevant patents for our product candidates, and to vigorously defend any Orange Book-listed patents for our approved drug products.

The Hatch-Waxman Act also permits a patent term extension of up to five years as compensation for patent term lost during product development and the FDA regulatory review process. However, a patent term extension cannot extend the remaining term of a patent beyond a total of 14 years after the FDA approves a marketing application. The patent term extension period is generally equal to the sum of one-half the time between the effective date of an IND and the submission date of an NDA, and all of the time between the submission date of an NDA and the approval of that application, up to a total of five years. Only one patent applicable to an approved drug, that represents the first commercial marketing of that active pharmaceutical ingredient, is eligible for the extension, and it must be applied for prior to expiration of the patent. The U.S. Patent and Trademark Office, in consultation with the FDA, reviews and approves the application for patent term extension. We will consider applying for a patent term extension for some of our patents, to add patent life beyond the expiration date, depending on our ability to meet certain legal requirements permitting such extension, and the expected length of clinical trials and other factors involved in the submission of an NDA.

Orphan Drug Designation and Exclusivity

Some jurisdictions, including Europe and the United States, may designate drugs for relatively small patient populations as orphan drugs. The FDA grants orphan drug designation to drugs intended to treat a rare disease or condition that affects fewer than 200,000 individuals in the United States or more than 200,000 individuals in the United States and for which there is no reasonable expectation that the cost of developing and making available in the United States a drug for this type of disease or condition will be recovered from sales in the United States for that drug. In the United States, orphan drug designation must be requested before submitting an application for marketing approval. An orphan drug designation does not shorten the duration of the regulatory review and approval process. If a product which has an orphan drug designation subsequently receives the first FDA approval for the indication for which it has such designation, the product is entitled to orphan drug exclusivity, which means the FDA may not approve any other application to market the same drug for the same indication for a period of seven years, except in limited circumstances, such as a showing of clinical superiority to the product with orphan exclusivity. Competitors may receive approval of different drugs or biologics for the indications for which the orphan product has exclusivity.

Xyrem is currently protected by five years of new chemical entity exclusivity, which expires in July 2007. The FDA designated and approved Xyrem as an orphan drug for each of cataplexy and excessive daytime sleepiness in patients with narcolepsy. The periods of orphan drug exclusivity, which run concurrently with the period of five-year new chemical entity exclusivity, expire in July 2009 and November 2012, respectively for cataplexy and excessive daytime sleepiness in patients with narcolepsy. We anticipate receiving three years of marketing exclusivity for Luvox CR if the FDA approves the marketing application for Luvox CR, and if the FDA determines that the requirements for granting three-year exclusivity are met.

Pediatric Exclusivity

The FDCA provides an additional six months of non-patent marketing exclusivity and patent protection for any such protections listed in the Orange Book for new or marketed drugs for specific pediatric studies conducted at the written request of the FDA. The Pediatric Research Equity Act of 2003 authorizes the FDA to require pediatric studies for drugs to ensure the drugs' safety and efficacy in children. The Pediatric Research Equity Act of 2003 requires that certain new NDAs or supplements to NDAs contain data assessing the safety and effectiveness for the claimed indication in all relevant pediatric subpopulations. Dosing and administration must be supported for each pediatric subpopulation for which the drug is safe and effective. The FDA may also require this data for approved drugs that are used in pediatric patients for the labeled indication, or where there may be therapeutic benefits over existing products. The FDA may grant deferrals for submission of data, or full or partial waivers from the Pediatric Research Equity Act of 2003. Unless otherwise required by regulation, the Pediatric Research Equity Act of 2003 does not apply to any drug for an indication with orphan designation. We plan to work with the FDA to determine the need for pediatric studies for our product candidates, and may consider attempting to obtain pediatric exclusivity for some of our product candidates.

Fast Track Designation

The FDA's fast track program is intended to facilitate the development and to expedite the review of drugs that are intended for the treatment of a serious or life-threatening condition and that demonstrate the potential to address unmet medical needs. Under the fast track program, applicants may seek traditional approval for a product based on data demonstrating an effect on a clinically meaningful endpoint, or approval based on a well-established surrogate endpoint. The sponsor of a new drug candidate may request the FDA to designate the drug candidate for a specific indication as a fast track drug at the time of original submission of its IND, or at any time thereafter prior to receiving marketing approval of a marketing application. The FDA will determine if the drug candidate qualifies for fast track designation within 60 days of receipt of the sponsor's request.

If the FDA grants fast track designation, it may initiate review of sections of an NDA before the application is complete. This so-called "rolling review" is available if the applicant provides and the FDA approves a schedule for the submission of the remaining information and the applicant has paid applicable user fees. The FDA's PDUFA review clock for both a standard and priority NDA for a fast track product does not begin until the complete application is submitted. Additionally, fast track designation may be withdrawn by the FDA if it believes that the designation is no longer supported by emerging data, or if the designated drug development program is no longer being pursued.

In some cases, a fast track designated drug candidate may also qualify for priority NDA review. When appropriate, we intend to seek fast track designation or priority review for our product candidates. We cannot predict whether any of our product candidates will obtain fast track or priority review designation, or the ultimate impact, if any, of these expedited review mechanisms on the timing or likelihood of the FDA approval of any of our product candidates.

Other Regulatory Requirements

In addition to regulation by the FDA and certain state regulatory agencies, the DEA imposes various registration, recordkeeping and reporting requirements, procurement and manufacturing quotas, labeling and packaging requirements, security controls and a restriction on prescription refills on certain pharmaceutical products under the Controlled Substances Act. A principal factor in determining the particular requirements, if any, applicable to a product is the actual or potential abuse profile. The DEA regulates drug substances as Schedule I, II, III, IV or V substances, with Schedule I substances considered to present the highest risk of substance abuse and Schedule V substances the lowest risk. Sodium oxybate in its base form is regulated by the DEA as a Schedule I controlled substance but when contained in a drug product approved by FDA it is regulated as a Schedule III controlled substance. Xyrem is a Schedule III controlled substance and JZP-6, along with certain of our early-stage product candidates, contains sodium oxybate. These product candidates, if approved for marketing by FDA, will also likely be Schedule III controlled substances. In addition, JZP-8, JZP-2 and certain of our early-stage product candidates will likely be regulated as controlled substances if approved for marketing by the FDA. Controlled substances are subject to DEA regulations relating to manufacturing, storage, distribution and physician prescription procedures, and the DEA regulates the amount of the scheduled substance that would be available for clinical trials and commercial distribution. Sodium oxybate, as a Schedule I substance, is subject to additional controls, including quotas on the amount of product that can be manufactured. As a Schedule III drug, Xyrem is subject to limitations on prescription refills. The third parties who perform our clinical and commercial manufacturing for Xyrem and JZP-6 have received necessary registrations from the DEA. The DEA periodically inspects facilities for compliance with its rules and regulations. Failure to comply with current and future regulations of the DEA could lead to a variety of sanctions, including revocation or denial of renewal of DEA registrations, fines, injunctions, or civil or criminal penalties, and could harm our business and financial condition.

We are also subject to a variety of foreign regulations governing clinical trials and the marketing of other products. Outside of the United States, our ability to market a product depends upon receiving a marketing authorization from the appropriate regulatory authorities. The requirements governing the conduct of clinical

trials, marketing authorization, pricing and reimbursement vary widely from country to country. In any country, however, we will only be permitted to commercialize our products if the appropriate regulatory authority is satisfied that we have presented adequate evidence of safety, quality and efficacy. Whether or not FDA approval has been obtained, approval of a product by the comparable regulatory authorities of foreign countries must be obtained prior to the commencement of marketing of the product in those countries. The time needed to secure approval may be longer or shorter than that required for FDA approval. The regulatory approval and oversight process in other countries includes all of the risks associated with regulation by the FDA and certain state regulatory agencies as described above.

Pharmaceutical Pricing and Reimbursement

In both U.S. and foreign markets, our ability to commercialize our products successfully, and to attract commercialization partners for our products, depends in significant part on the availability of adequate financial coverage and reimbursement from third party payors, including, in the United States, governmental payors such as the Medicare and Medicaid programs, managed care organizations, and private health insurers. Third party payors are increasingly challenging the prices charged for medicines and examining their cost effectiveness, in addition to their safety and efficacy. We may need to conduct expensive pharmacoeconomic studies in order to demonstrate the cost effectiveness of our products. Even with studies, our products may be considered less safe, less effective or less cost-effective than existing products, and third party payors may not provide coverage and reimbursement for our product candidates, in whole or in part.

Political, economic and regulatory influences are subjecting the healthcare industry in the United States to fundamental changes. There have been, and we expect there will continue to be, legislative and regulatory proposals to change the healthcare system in ways that could significantly affect our business. We anticipate that the U.S. Congress, state legislatures and the private sector will continue to consider and may adopt healthcare policies intended to curb rising healthcare costs. These cost containment measures include:

- controls on government funded reimbursement for drugs;
- controls on healthcare providers;
- challenges to the pricing of drugs or limits or prohibitions on reimbursement for specific products through other means;
- reform of drug importation laws; and
- expansion of use of managed care systems in which healthcare providers contract to provide comprehensive healthcare for a fixed cost per person.

We are unable to predict what additional legislation, regulations or policies, if any, relating to the healthcare industry or third party coverage and reimbursement may be enacted in the future or what effect such legislation, regulations or policies would have on our business. Any cost containment measures, including those listed above, or other healthcare system reforms that are adopted could have a material adverse effect on our ability to operate profitably.

We may also face competition for our products from lower priced products from foreign countries that have placed price controls on pharmaceutical products. Proposed federal legislative changes may expand consumers' ability to import lower priced versions of our and competing products from Canada. Further, several states and local governments have implemented importation schemes for their citizens, and, in the absence of federal action to curtail such activities, we expect other states and local governments to launch importation efforts. The importation of foreign products that compete with our own products could negatively impact our business and prospects.

Patents and Proprietary Rights

We actively seek to patent, or to obtain licenses to or to acquire third party patents, to protect our products, inventions and improvements that we consider important to the development of our business. We own seven issued U.S. patents. In addition to the issued U.S. patents, we own or have rights to 13 pending U.S. patent applications and more than 100 issued and pending foreign patents and patent applications. Our owned and licensed patents and patent applications cover formulations of our products and product candidates, uses of our products and product candidates to treat particular conditions, drug delivery technologies and delivery profiles relating to our products and product candidates and methods for producing our products and product candidates. However, patent protection is not available for the active pharmaceutical ingredients in most of our products and product candidates, including Xyrem, Luvox CR and JZP-6. Patents extend for varying periods according to the date of the patent filing or grant and the legal term of patents in the various countries where patent protection is obtained. The actual protection afforded by a patent, which can vary from country to country, depends on the type of patent, the scope of its coverage and the availability of legal remedies in the country. The patents and patent applications that relate to our products and product candidates include the following:

- *Xyrem*. Xyrem is covered by a U.S. formulation patent that will expire on December 22, 2019. Our Xyrem formulation patent has issued in 17 other countries and will expire on December 22, 2019. It is currently pending in three additional countries. Xyrem is also covered by a U.S. patent that covers a process for preparing the formulation that expires on December 22, 2019. We also have filed a U.S. patent application with claims covering the method for distributing sodium oxybate using a centralized distribution system that, if issued, would expire on December 17, 2022.
- *Luvox CR*. Luvox CR is covered by a U.S. patent application filed by Elan with claims covering the orally administered formulation of extended release fluvoxamine that requires the release of fluvoxamine over a period of not less than 12 hours that, if issued, would expire on May 10, 2020. We obtained a license to this patent application and any resulting patent that issues as a result of Solvay's assignment of its license and supply agreement with Elan to us in connection with our exclusive license of the rights to market and distribute Luvox CR in the U.S.
- *JZP-6.* We expect that our current patents associated with Xyrem will be applicable to JZP-6. We also own patents with claims covering the use of sodium oxybate for the treatment of fibromyalgia syndrome that will expire in the United States on August 29, 2017 and in 29 other countries on August 27, 2018.
- *JZP-4.* JZP-4 is covered by a U.S. composition of matter patent that we acquired from GSK that will expire on February 26, 2018. The JZP-4 composition of matter is covered by patents in 52 other countries that expire in 2018. In addition, we hold a U.S. patent that covers the use of JZP-4 for the treatment of bipolar disorder, pain or functional bowel disorder that will expire on February 26, 2018, and a U.S. patent that covers the preparation of the active pharmaceutical ingredient in JZP-4 that will expire on May 2, 2021. Further, we have filed a U.S. patent application with claims covering a sustained release composition for delivering JZP-4 that, if issued, would expire on February 14, 2026.
- *JZP-8.* We have filed a provisional U.S. patent application with claims covering JZP-8. A patent claiming priority from this application would, if issued, expire in 2027. The claims do not cover the JZP-8 composition of matter.
- *JZP-7.* We have filed a provisional U.S. patent application with claims covering JZP-7. A patent claiming priority from this application would, if issued, expire in 2027. The claims do not cover the JZP-7 composition of matter.
- *JZP-2.* We have an option for an exclusive license to four U.S. formulation patents covering JZP-2 from the technology provider with which we are conducting feasibility studies associated with JZP-2. These patents will expire on August 1, 2017.

Because the patent positions of pharmaceutical companies are highly uncertain and involve complex legal and factual questions, the patents we own and license, or any further patents we may own or license, may not prevent other companies from developing similar or therapeutically equivalent products or ensure that others will not be issued patents that may prevent the sale of our products or require licensing and the payment of significant fees or royalties. In addition, we cannot be certain that any of our patent applications, or those of our licensors, will result in issued patents. Furthermore, to the extent that any of our future products or methods is not patentable or infringe the patents of third parties, or in the event that our patents or future patents fail to give us an exclusive position in the subject matter claimed by those patents, our business could be adversely affected. We may be unable to avoid infringement of third party patents and may have to obtain a license, defend an infringement action, or challenge the validity of the patents in court. A license may be unavailable on terms and conditions acceptable to us, if at all. Patent litigation is costly and time consuming, and we may be unable to prevail in any such patent litigation or devote sufficient resources to even pursue such litigation. If we do not obtain a license under necessary patents, are found liable for infringement, or are not able to have such patents declared invalid, we may be liable for significant money damages, encounter significant delays in bringing products to market, or be precluded from participating in the manufacture, use or sale of products or methods of treatment requiring such licenses.

We have also applied for a number of trademarks and service marks to further protect the proprietary position of our products. We own 18 registered trademarks and service marks in the United States and 29 registered trademarks and service marks in other countries. We also have 9 pending trademark and service mark applications in the United States and 11 pending trademark and service mark applications in other countries. We also rely on our trade secrets and those of our licensors, as well as other unpatented proprietary information, to protect our products. To the extent that our products have a competitive edge as a result of our reliance on trade secrets and unpatented know-how, our competitive position may be compromised if others independently develop products using the same or similar technologies or trade secrets. We seek to protect our trade secrets and proprietary knowledge in part through confidentiality agreements with our employees, consultants, advisors and collaboration partners. Nevertheless, these agreements may not effectively prevent disclosure of our confidential information and may not provide us with an adequate remedy in the event of unauthorized disclosure of our confidential information. If our employees, consultants, advisors or collaboration partners develop inventions or processes independently or jointly with us that may be applicable to our products under development, disputes may arise about ownership or proprietary rights to those inventions and processes. Such inventions and processes will not necessarily become our property, but may remain the property of those third parties or their employers. Protracted and costly litigation could be necessary to enforce and determine the scope of our proprietary rights. Failure to obtain or maintain patent and trade secret protection, for any reason, could have a material adverse effect on our business.

Competition

The pharmaceutical industry is highly competitive and characterized by a number of established, large pharmaceutical companies, such as Pfizer and GlaxoSmithKline, as well as specialty pharmaceutical companies that market psychiatry and neurology products. Most of these companies have financial resources and marketing capabilities substantially greater than ours. Our ability to remain competitive in the marketplace is also impacted by our ability to compete successfully with other specialty pharmaceutical companies for product and product candidate acquisition and in-licensing opportunities. Some of these competitors include Cephalon, Inc., Shire Pharmaceuticals Group plc, Endo Pharmaceuticals Holdings Inc. and Forest Laboratories. These established companies may have a competitive advantage over us due to their size and financial resources.

Our products and product candidates may also compete with new products currently under development by others, alternate therapies during the period of patent protection and generic equivalents once patent protection is no longer available. Any products that we develop are likely to be in a highly competitive market, and many of our competitors may succeed in developing products that may render our products obsolete or noncompetitive. In

particular, our most significant marketed product and late stage product candidates face competition from the following products:

- *Xyrem*. We believe that the primary competition for Xyrem is Provigil, a wakefulness promoting agent and the only other FDA-approved product for the treatment of excessive daytime sleepiness in patients with narcolepsy.
- *Luvox CR*. We believe that the primary competition for Luvox CR in the treatment of obsessive compulsive disorder is Prozac, Zoloft and Paxil, and their generic equivalents. In the treatment of social anxiety disorder, we believe that Luvox CR's primary competition will also include Paxil CR and Effexor XR.
- *JZP-6*. Although there currently are no FDA-approved treatments for fibromyalgia syndrome, several large pharmaceutical companies, including Pfizer and Eli Lilly, have stated that they have products for the treatment of fibromyalgia syndrome in development. In particular, in December 2006, Pfizer filed a supplemental NDA for Lyrica for the treatment of fibromyalgia syndrome.

For a more detailed description of current products that compete with Xyrem, please see "—Marketed Products—Xyrem (sodium oxybate oral solution)—Competition." For a more detailed description of current products that may be competitive with our product candidates, please see the descriptions under the headings "—Competition" for each our product candidates described under "—Product Candidates."

With respect to our current and potential future product candidates, we believe that our ability to successfully compete will depend on, among other things:

- efficacy, safety and reliability of our product candidates;
- the timing and scope of regulatory approvals;
- product acceptance by physicians and other health care providers;
- our ability to expand and grow our specialty sales force;
- protection of our proprietary rights and the level of generic competition;
- the speed at which we develop product candidates;
- our ability to complete clinical development and obtaining regulatory approvals for our product candidates;
- our ability to supply commercial quantities of a product to the market;
- obtaining reimbursement for product use in approved indications;
- our ability to recruit and retain skilled employees; and
- availability of substantial capital resources to fund development and commercialization activities.

Employees

As of March 31, 2007, we had 203 full-time employees. Of the full-time employees, 87 were engaged in sales and marketing, 66 were engaged in manufacturing, product development and clinical activities, and 50 were engaged in general and administrative activities. We plan to continue to expand our product development programs and product commercialization activities. To support this growth, we will need to expand managerial, operations, development, manufacturing, regulatory, sales, marketing, financial and other functions. In particular, our potential future commercial products, including Luvox CR and JZP-6, will require a significantly expanded sales force and a significant sales support organization. None of our employees is represented by a labor union, and we consider our employee relations to be good. We currently utilize TriNet Employer Group, Inc., an employer services company, to provide human resource services. TriNet is the employer of record for payroll, benefits, employee relations and other employment-related administration.

Facilities

Our corporate headquarters are located in Palo Alto, California, where we occupy approximately 44,000 square feet of office space. The annual lease payments for corporate headquarters building are approximately $735,000. Thereafter, at our option, we may extend the term for up to an additional nine years to August 2017. We also lease approximately 13,000 square feet of additional office space in Palo Alto, California. The annual lease payments for this space are approximately $460,000. The fixed lease term expires in August 2008, after which we may extend the term for up to six months subject to certain conditions. We believe that the facilities that we currently lease are sufficient for approximately the next three months and that anticipated future growth thereafter can be accommodated by leasing additional space near our current facilities.

Legal Proceedings

In April 2006, we and our subsidiary Orphan Medical received subpoenas from the U.S. Department of Justice, acting through the U.S. Attorney for the Eastern District of New York, in connection with the sale and marketing of Xyrem. In April 2006, a physician who was a speaker for Orphan Medical, and for a short time for us, was indicted by a federal grand jury in the U.S. District Court for the Eastern District of New York. The indictment includes allegations that the physician engaged in a scheme with Orphan Medical sales representatives and other Orphan Medical employees to promote and obtain reimbursement for Xyrem for medical uses not approved for marketing by the FDA. In March 2007, in the same federal court, a former Orphan Medical regional sales manager, who also worked for a short time for us, pled guilty based on similar allegations to introducing a misbranded drug into interstate commerce. This investigation has resulted in adverse publicity for Xyrem and for us.

We and Orphan Medical are discussing a possible settlement with the United States, acting through the Department of Justice, the U.S. Attorney's Office for the Eastern District of New York and other federal agencies, including the Office of Inspector General, U.S. Department of Health and Human Services, relating to this matter. If we complete a settlement on the terms that we are currently discussing, Orphan Medical would plead guilty to one felony count of introducing a misbranded drug into interstate commerce and would pay a total of approximately $20.5 million in civil and criminal payments over the next several years in connection with this matter, with approximately $1.5 million payable in 2007, $2.0 million payable in 2008, $2.5 million payable in 2009, $3.0 million payable in 2010, $3.0 million payable in 2011 and $8.5 million payable in 2012. We would guarantee payment of these amounts by Orphan Medical.

If we complete a settlement on the terms that we are currently discussing, the U.S. Attorney has indicated that we would not be prosecuted. As part of the settlement, we would enter into a corporate integrity agreement with the Office of Inspector General, U.S. Department of Health and Human Services, which would require us to maintain a comprehensive compliance program. We previously have implemented, in certain cases prior to learning of the investigation, some of the compliance obligations likely to be included in a corporate integrity agreement, such as designation of a senior-level compliance officer and adoption of sales and marketing compliance policies. We would have additional ongoing compliance-related operating costs related to this compliance program, which we do not expect to be material, as a result of the corporate integrity agreement.

The settlement terms described above are subject to the negotiation and execution of definitive agreements. Even if we reach a settlement agreement with the U.S. Attorney's Office, we might still be subject to regulatory and/or enforcement action by federal agencies that are not parties to the settlement, private insurers and states' attorneys general with respect to activities covered by the settlement. If we do not reach a settlement, we could be required to spend significant amounts to defend ourselves and Orphan Medical, and the investigation could involve criminal charges, as well as criminal and/ or civil fines and penalties, against us, Orphan Medical, or both. If we are unable to complete the settlement described above, we cannot predict or determine the outcome of this matter or reasonably estimate the amount of any fines or penalties that might result from an adverse outcome, and such an outcome could have a material adverse effect on our financial position, liquidity and results of operations.

In April 2006, Little Gem Life Sciences LLC, individually and purportedly on behalf of a class of persons similarly situated, filed a complaint against Orphan Medical, John H. Bullion, and Timothy G. McGrath in the U.S. District Court for the District of Minnesota. The case is captioned Little Gem Life Sciences LLC v. Orphan Medical, Inc., John H. Bullion, and Timothy G. McGrath, Civ. Action No. 06-CV-1377 (ADM/AJB). The complaint alleges that the defendants made false and misleading statements in the proxy statement prepared by Orphan Medical in connection with the solicitation of proxies to be voted at the special meeting of Orphan Medical stockholders held on June 22, 2005 for the purpose of considering and voting upon a proposal to adopt the definitive merger agreement pursuant to which we acquired Orphan Medical. The plaintiff seeks damages for itself and the putative class, in an unspecified amount, together with interest, litigation costs and expenses, and its attorneys' fees and other disbursements, as well as unspecified other and further relief. On October 25, 2006, the defendants filed a motion to dismiss the complaint and oral argument on the motion was heard by the U.S. District Court for the District of Minnesota. On February 16, 2007, the U.S. District Court for the District of Minnesota granted the defendants' motion to dismiss the complaint, but granted the plaintiff a one-month leave to amend the plaintiff's complaint. On March 14, 2007, the plaintiff filed an amended complaint, and the defendants responded with a motion to dismiss on March 16, 2007. We are unable to predict the outcome of this lawsuit and amounts ultimately payable, if any, resulting from an adverse outcome in this lawsuit cannot be reasonably estimated.

MANAGEMENT

Directors and Executive Officers

The following table sets forth certain information concerning our directors and executive officers as of March 31, 2007:

Name	Age	Position
Bruce C. Cozadd	43	Executive Chairman and Director
Samuel R. Saks, M.D.	52	Chief Executive Officer and Director
Robert M. Myers	43	President
Matthew K. Fust	42	Senior Vice President and Chief Financial Officer
Carol A. Gamble	54	Senior Vice President, General Counsel and Corporate Secretary
Janne L.T. Wissel	51	Senior Vice President of Development
Adam H. Clammer	36	Director
Samuel D. Colella(2)(3)	67	Director
Bryan C. Cressey	57	Director
Michael W. Michelson(2)	56	Director
James C. Momtazee(1)(3)	35	Director
Kenneth W. O'Keefe(1)	40	Director
Jaimin R. Patel	25	Director
Alan M. Sebulsky(1)	48	Director
James B. Tananbaum, M.D.(2)	44	Director

(1) Member of audit committee.
(2) Member of compensation committee.
(3) Member of nominating and corporate governance committee.

Executive Officers

Bruce C. Cozadd is a co-founder and has served as our Executive Chairman since 2003. From 2001 to 2003, he served as a consultant to companies in the biopharmaceutical industry and worked on a part-time basis for Prospect Ventures Partners and Versant Ventures, both venture capital firms. From 1991 until 2001, he held various positions with ALZA Corporation, a pharmaceutical company now owned by Johnson & Johnson, most recently as its Executive Vice President and Chief Operating Officer, with responsibility for research and development, manufacturing and sales and marketing. Previously at ALZA Corporation he held the roles of Chief Financial Officer and Vice President, Corporate Planning and Analysis. He serves on the boards of Cerus Corporation, a biopharmaceutical company, Threshold Pharmaceuticals, a biotechnology company, The Nueva School and Stanford Hospital and Clinics, both non-profit organizations, as well as the Stanford Molecular Imaging Advisory Board. He received a B.S. from Yale University and an M.B.A. from the Stanford Graduate School of Business.

Samuel R. Saks, M.D. is a co-founder and has served as our Chief Executive Officer since 2003. From 2001 until 2003, he was Company Group Chairman of ALZA Corporation and served as a member of the Johnson & Johnson Pharmaceutical Group Operating Committee. From 1992 until 2001, he held various positions with ALZA Corporation, most recently as its Chief Medical Officer and Group Vice President, where he was responsible for clinical and commercial activities. He serves on the board of Trubion Pharmaceuticals, a biopharmaceutical company. He received a B.S. and an M.D. from the University of Illinois.

Robert M. Myers is a co-founder and was appointed as our President in March 2007. From 2003 until 2007, he served as our Executive Vice President and Chief Business Officer. From 2002 until 2003, he served as Executive Vice President, Pharmaceuticals at Exelixis, Inc., a biotechnology company. He previously held various positions with ALZA Corporation from 1992 to 2001, most recently as its Senior Vice President,

Commercial Development. In this role, he was responsible for ALZA Corporation's corporate development, mergers and acquisitions, new product planning and corporate planning. He received B.S. and M.S. degrees from Stanford University and an M.B.A. from the Stanford Graduate School of Business.

Matthew K. Fust was appointed as our Senior Vice President in 2004 and has served as our Chief Financial Officer since 2003. From 2002 to 2003, he served as Chief Financial Officer at Perlegen Sciences, a biopharmaceutical company. He previously held various positions with ALZA Corporation from 1996 to 2002, most recently as its Chief Financial Officer. He serves on the board of Sunesis Pharmaceuticals, a biopharmaceutical company. He received a B.A. from the University of Minnesota and an M.B.A. from the Stanford Graduate School of Business.

Carol A. Gamble was appointed as our Senior Vice President in 2004 and has served as our General Counsel and Corporate Secretary since 2003. From 2002 to 2003, she served as a consultant to various companies in the pharmaceutical industry. From 2000 to 2002, she served as General Counsel and Corporate Secretary of Aerogen, Inc., a biopharmaceutical company acquired by Nektar Therapeutics. From 1988 to 2000, she held various positions with ALZA Corporation, most recently as its Senior Vice President and Chief Corporate Counsel. She received a B.S. from Syracuse University and a J.D. from the University of California, Berkeley, Boalt Hall.

Janne L. T. Wissel has served as our Senior Vice President of Development since 2004. From 2003 to 2004, she served as our Vice President of Development. From 1981 to 2003, she held various positions at ALZA Corporation, most recently as its Senior Vice President, Operations, with responsibility for ALZA Corporation's global regulatory, quality, general operations and manufacturing activities. She has led the development, registration and launch of more than 20 pharmaceutical products in the neurology, pediatric psychiatry, endocrinology, urology and oncology areas. She received a B.S. from the University of California, Davis and an M.B.A. from the University of Phoenix.

Directors

Adam H. Clammer has served as a member of our board of directors since 2004. Since 1995, he has been employed by Kohlberg Kravis Roberts & Co. L.P., where he is a Member of its general partner, KKR & Co. L.L.C. He serves on the boards of MedCath Corporation, a cardiovascular services company and several privately-held technology companies. He received a B.S. from the University of California and an M.B.A. from Harvard Business School.

Samuel D. Colella has served as a member of our board of directors since 2004. Since 1999, he has served as Managing Member of Versant Ventures, a venture capital firm, which he co-founded. He serves on the boards of Alexza Pharmaceuticals, Inc., a pharmaceutical company, Genomic Health Inc., a molecular diagnostics company, Symyx Technologies, Inc., a research technology company, Thermage, Inc., a aesthetic medicine company, and several privately-held companies. He received a B.S. from the University of Pittsburgh and an M.B.A. from the Stanford Graduate School of Business.

Bryan C. Cressey has served as a member of our board of directors since 2006. Since 1998, he has been a Partner of Thoma Cressey Bravo, Inc., a private equity firm, of which he is a founder. He serves on the boards of Belden CDT, Inc., a division of Belden Cable, a cable technology company, Select Medical Corporation, a healthcare services company, and several privately-held healthcare services companies. He received a B.A. from the University of Washington, a J.D. from Harvard Law School and an M.B.A. from Harvard Business School.

Michael W. Michelson has served as a member of our board of directors since 2004. Since 1981, he has been employed by Kohlberg Kravis Roberts & Co. L.P., where he is a Member of its general partner, KKR & Co. L.L.C. and also serves on KKR's Investment and Operating committees. He serves on the boards of Alliance Imaging, Inc., a diagnostic imaging services company, HCA Inc., a healthcare services company, and Accellant

Inc., a manufacturing and engineering services company. He received an A.B. from Harvard College and a J.D. from Harvard Law School.

James C. Momtazee has served as a member of our board of directors since 2004. Since 1996, he has been employed by Kohlberg Kravis Roberts & Co. L.P., where he is a Director. He serves on the boards of Alliance Imaging, Inc., a diagnostic imaging services company, HCA Inc., a healthcare services company, and Accellent Inc., a manufacturing and engineering services company. He received an A.B. from Stanford University and an M.B.A. from the Stanford Graduate School of Business.

Kenneth W. O'Keefe has served as a member of our board of directors since 2004. Since 1997, he has been Managing Director of Beecken Petty O'Keefe & Company, a private equity firm, which he co-founded. He serves on the boards of several privately-held healthcare companies. He received a B.A. from Northwestern University and an M.B.A. from the University of Chicago.

Jaimin R. Patel has served as a member of our board of directors since 2007. Since June 2006, he has been employed by Kohlberg Kravis Roberts & Co. L.P., where he is an Associate. From August 2004 to June 2006, Mr. Patel was an analyst with UBS Securities LLC. Prior to that, Mr. Patel was a full-time student at the University of Pennsylvania where he received a B.S. in 2004.

Alan M. Sebulsky has served as a member of our board of directors since 2004. Since 2003, he has served as a Managing Partner of Apothecary Capital LLC, an investment advisory firm. From 2002 to 2003, he was an independent investor. From 1994 to 2002, he held various positions, most recently as a Managing Director, at Lincoln Capital Management, a private investment management firm, where he was responsible for investments in the health care industry. He received a B.B.A. and an M.S. from the University of Wisconsin-Madison.

James B. Tananbaum, M.D. has served as a member of our board of directors since 2003. Since 2000, Dr. Tananbaum has been a Managing Member of Prospect Venture Partners, a venture capital firm he co-founded. He serves on the boards of Critical Therapeutics, Inc., a biopharmaceutical company, Infinity Pharmaceuticals, Inc., a drug discovery company, Novavax, Inc., a biotechnology company, and Vanda Pharmaceuticals Inc., a biopharmaceutical company, as well as several private companies. Dr. Tananbaum was also the founder of GelTex, Inc. and Theravance, Inc. He received a B.S.E.E. from Yale University, and an M.D. and an M.B.A. from Harvard University.

Board Composition

Our board of directors currently consists of ten members. Our board of directors has determined that all of our directors, other than Mr. Cozadd and Dr. Saks, are "independent" within the meaning of applicable NASDAQ listing standards.

Effective upon the completion of this offering, we will divide our board of directors into three classes, as follows:

- Class I, which will consist of Dr. Tananbaum and Messrs. Clammer, Cressey and Patel, and whose term will expire at our annual meeting of stockholders to be held in 2008;
- Class II, which will consist of Dr. Saks and Messrs. Colella and Momtazee, and whose term will expire at our annual meeting of stockholders to be held in 2009; and
- Class III, which will consist of Messrs. Cozadd, Michelson, O'Keefe and Sebulsky, and whose term will expire at our annual meeting of stockholders to be held in 2010.

At each annual meeting of stockholders to be held after the initial classification, the successors to directors whose terms then expire will serve until their successors are duly elected and qualified at the third annual meeting following their election. The authorized number of directors may be changed only by resolution of the

board of directors. This classification of the board of directors may have the effect of delaying or preventing changes in our control or management. Under Delaware law, our directors may be removed for cause by the affirmative vote of the holders of at least a majority of our voting stock.

Board Committees

Our board of directors currently has an audit committee, a compensation committee and a nominating and corporate governance committee. The composition and primary responsibilities of each committee are described below.

Audit Committee. The members of our audit committee are Messrs. Momtazee, O'Keefe and Sebulsky. Mr. O'Keefe chairs the audit committee. Our board of directors has determined that Messrs. O'Keefe and Sebulsky meet the independence requirements of Rule 10A-3 of the Exchange Act and NASDAQ listing standards. Our board of directors has also determined that Mr. O'Keefe qualifies as an audit committee financial expert within the meaning of SEC regulations and the NASDAQ listing standards. In making this determination, our board of directors considered the nature and scope of experience Mr. O'Keefe has had with reporting companies and his employment in the corporate finance sector.

The primary purpose of the audit committee is to discharge the responsibilities of our board of directors with respect to our accounting, financial and other reporting and internal control practices and to oversee our independent registered public accounting firm. Specific responsibilities of our audit committee include:

- evaluating the performance of our independent registered public accounting firm and determining whether to retain or terminate their services;
- determining and pre-approving the engagement of our independent registered public accounting firm to perform audit services and any permissible non-audit services, other than immaterial aggregate amounts of non-audit services as excepted under applicable laws and rules;
- reviewing and discussing with management and our independent registered public accounting firm, as appropriate, the results of the annual audit and the independent registered public accounting firm's review of our annual and quarterly financial statements and reports;
- reviewing with management and our independent registered public accounting firm significant issues that arise regarding accounting principles and financial statement presentation;
- conferring with management and our independent registered public accounting firm, as appropriate, regarding the scope, adequacy and effectiveness of our internal control over financial reporting; and
- establishing procedures for the receipt, retention and treatment of complaints received by us regarding accounting, internal control or auditing matters.

Compensation Committee. The members of our compensation committee are Messrs. Colella and Michelson and Dr. Tananbaum. Mr. Michelson chairs the compensation committee. Each member of the compensation committee is independent within the meaning of applicable NASDAQ listing standards, is a "non-employee director" as defined in Rule 16b-3 promulgated under the Securities Exchange Act of 1934, as amended, or the Exchange Act, and is an "outside director" as that term is defined in Section 162(m) of the Internal Revenue Code of 1986, as amended. The purpose of our compensation committee is to discharge the responsibilities of our board of directors to oversee our compensation policies, plans and programs, and to review and determine the compensation to be paid to our executive officers and other senior management. Specific responsibilities of our compensation committee include:

- recommending to our board of directors for approval the compensation and other terms of employment of our Executive Chairman and our Chief Executive Officer;
- determining the compensation and other terms of employment of our other executive officers and senior management;

- reviewing and approving corporate performance goals and objectives relevant to the compensation of our executive officers and other senior management;
- evaluating and recommending to our board of directors for approval the compensation plans and programs advisable for us, and evaluating and recommending the modification or termination of existing plans and programs; and
- reviewing and approving the terms of any employment agreements, severance arrangements, change of control protections and any other compensatory arrangements for our executive officers and other senior management.

Nominating and Corporate Governance Committee. The members of our nominating and corporate governance committee are Messrs. Colella and Momtazee. Mr. Colella chairs the nominating and corporate governance committee. Each member of the nominating and corporate governance committee is independent within the meaning of applicable NASDAQ listing standards. The specific responsibilities of our nominating and corporate governance committee include:

- identifying, reviewing, evaluating and recommending for selection candidates for membership to our board of directors;
- reviewing, evaluating and considering the recommendation for nomination of incumbent members of our board of directors for reelection to our board of directors and monitoring the size of our board of directors;
- evaluating nominations by stockholders of candidates for election to our board of directors;
- reviewing, discussing and reporting to our board of directors an assessment of our board's performance;
- recommending director compensation; and
- determining adherence to our Code of Conduct.

Compensation Committee Interlocks and Insider Participation

In 2006, our compensation committee consisted of Messrs. Colella and Michelson and Dr. Tananbaum. David Mayer, one of our former directors, served on the compensation committee until his resignation from our board of directors in October 2006. None of the members of the compensation committee is currently or has been at any time one of our officers or employees. None of our officers currently serves, or has served during the last completed fiscal year, as a member of the board of directors or compensation committee of any entity that has one or more officers serving as a member of our board of directors or compensation committee.

Executive Compensation

Compensation Discussion and Analysis

Overview

Our executive compensation program is designed to help us attract, as needed, talented individuals to manage and operate all aspects of our business, to reward those individuals fairly over time, and to retain those individuals who continue to meet our high expectations. The goals of our executive compensation program are to align our executive officers' compensation with our business objectives and the interests of our stockholders, to incentivize and reward our executive officers for our success, and to reflect the teamwork philosophy of our executive management team. Specifically, we have created an executive compensation program that combines short and long-term components, cash and equity, and fixed and contingent payments, in the proportions that we believe are the most appropriate to incentivize and reward our executive officers for achieving our objectives. Our executive compensation program is also intended to make us competitive in the San Francisco Bay Area, and

in the pharmaceutical and biotechnology industry, where there is significant competition for talented employees, and to be fair relative to other professionals within our organization. We believe that we must provide competitive compensation packages to attract and retain executive officers and to help our executive management function as a stable team over the longer term.

As discussed in further detail below, our executive compensation program consists of the following three principal components:

- *Base Salary*. Base salary for our executive officers is set each year, effective March 1. For 2006, our executive officers' base salaries were set by reviewing their then current salaries in light of 2005 company performance and individual performance, base salary benchmarking against comparable companies, and general economic factors. We also considered, as we have since our inception, compensation equity among our executive officers.
- *Bonus*. We have an annual cash bonus plan for our employees under which bonuses may be paid shortly after the end of each year, at the discretion of our board of directors, based on our performance in meeting our corporate objectives for the year and each individual's performance and contribution in meeting our corporate objectives.
- *Stock Option Grants*. Our employees and executive officers receive stock option grants as long-term incentives to ensure that a portion of compensation is linked to our long-term success.

The compensation committee does not have any formal policies for allocating compensation among salary, bonus and stock option grants. However, the compensation of our executive officers is based in part on the terms of employment agreements we entered into with each of our executive officers in February 2004 which set forth the initial base salaries for our executive officers as well as the target bonuses under our annual cash bonus plan (subject, in each case, to increases approved by our board of directors or compensation committee).

Role of the Compensation Committee in Setting Executive Compensation

The compensation committee determines the salary, annual cash bonus awards and stock option grants for our executive officers. The compensation committee considers recommendations from Samuel Saks, our Chief Executive Officer, and Bruce Cozadd, our Executive Chairman, in determining executive compensation. While Dr. Saks and Mr. Cozadd discuss their recommendations with the compensation committee, they do not participate in determining their own compensation or that of one another. In making their recommendations, Dr. Saks and Mr. Cozadd receive input from our Human Resources department and have access to various third party compensation surveys and compensation data of publicly-traded we obtained from SEC filings. This information is also available to our compensation committee. Carol Gamble, our General Counsel, participates in compensation committee meetings, but does not participate in any discussions of her own compensation. None of our other executive officers participates in the compensation committee's executive compensation discussions. The compensation committee does not delegate any of its functions to others in determining executive compensation.

The compensation committee has not historically engaged consultants with respect to executive compensation matters. However, the compensation committee engaged Compensia, Inc., a compensation consulting firm located in San Jose, California, to provide the compensation committee with certain benchmarking material to assist it in determining appropriate salary, bonus and long-term equity compensation for our executive officers for 2007. Compensia provided the compensation committee with compensation data for 17 publicly-traded companies in the pharmaceuticals and biotechnology industry, some smaller than our company, some of similar size, and some larger, including Alexza Pharmaceuticals, Inc., Alkermes, Inc., CV Therapeutics, Inc., Endo Pharmaceuticals Holdings, Inc., Indevus Pharmaceuticals, Inc., InterMune, Inc., Medicis Pharmaceutical Corporation and Theravance, Inc. The companies in the survey were chosen because they were generally similar to ours in terms of industry, capital structure, financial attributes, geographic location and/or competition for talent. However, because certain aspects of our business and management team are unique, the

compensation committee used the peer company data as one resource in determining executive compensation for 2007 and not as a stand-alone tool. The compensation committee reviewed the data from Compensia and discussed it, along with other publicly-available compensation data, with Compensia, Dr. Saks and Mr. Cozadd in determining compensation for our executive officers for 2007.

Executive Compensation Program

Our executive compensation program consists of three principal components: base salary, annual cash bonuses (if approved by our board of directors) and long-term incentive compensation in the form of stock options. Our executive officers are also eligible to participate, on the same basis as other employees, in our 401(k) plan and our other benefit programs generally available to all employees. Our executive officers do not receive any perquisites.

Base Salary. Each of our executive officers entered into an employment agreement with us in February 2004 that provides for an initial base salary, subject to annual increases determined by the compensation committee. We review company and individual performance annually, shortly after the end of each calendar year. As discussed above, Dr. Saks and Mr. Cozadd review the executive officers' salaries with the compensation committee in connection with that annual performance review. For 2006, our executive officers' base salaries were set by reviewing their then current salaries against company and individual performance, base salary benchmarking against comparable companies, as well as general economic factors. We also considered, as we have since our inception, compensation equity among our executive officers. Since our inception, we have reviewed the compensation of our executive officers as a group, and have minimized the differences among their salaries. One of the core values of our company is fostering the teamwork philosophy of our management team, which is reflected in our policy of providing compensation equity among our executive officers.

Our compensation committee targets our executives' base salaries as a group in the 75th percentile of salaries for executive officers in similar positions with similar responsibilities at companies of similar size in our industry that have both commercial products and significant product development activities. Our compensation committee believes this is appropriate for several reasons. We have a complex business model and are pursuing multiple commercial and product development opportunities simultaneously with a relatively small organization relative to our level of investment in research and development. We do not have laboratories or manufacturing facilities, and therefore we conduct our development, manufacturing and clinical activities through arrangements with third parties. As a result, our executives are required to manage both internal and significant external resources. Competition for executive talent is intense in our industry and in our geographic area. Our executives have many years of valuable experience in our industry, and their continued leadership is critical to our short-term and long-term success.

Cash Bonuses. We have an annual cash bonus plan under which cash bonuses may be paid annually to all of our employees, including our executive officers, shortly after the end of the calendar year. Target bonus levels under the plan are assigned based on various categories of employees and with respect to our executive officers, are based on the terms of the employment agreements we entered into with them. For 2006, the target bonus level for our Executive Chairman, Chief Executive Officer and Executive Vice President was 50% of base salary; for Senior Vice Presidents, the target was 40% of salary; for Vice Presidents, 20-35% of salary; and lower percentage ranges for directors, managers and others. The actual bonus awarded in any year, if any, may be more or less than the target, depending on individual performance and the achievement of our corporate objectives. Whether or not a bonus is paid for any year is within the discretion of our board of directors. Our compensation committee also determines the size of the total bonus pool under the plan, which is based in large part on our board of directors' determination of our success in achieving our corporate objectives for the plan year. The compensation committee determines the portion of the pool, if any, that will be allocated to the executive officers as a group and the bonuses for each of our executive officers and vice presidents. Dr. Saks and Mr. Cozadd provide input to the compensation committee with respect to bonuses for executive officers.

For 2006, our corporate objectives fell generally in the following categories: achieving certain sales targets, reaching certain development milestones, achieving certain financial targets (for example, spending and EBITDA), completing important milestones in employee training and development and achieving and sustaining company-wide ethical and compliant behavior. The bonus plan does not give a particular weight to any particular corporate objective, nor does it set any formula for determining bonuses. Each employee, including each executive officer, has individual objectives for the year which are designed to contribute to the achievement of our corporate objectives.

The compensation committee has not determined whether it would attempt to recover bonuses from our executive officers if the performance objectives that led to the bonus determination were to be restated, or found not to have been met to the extent originally believed by the compensation committee. However, as a public company, if we are required to restate our financial results due to our material noncompliance with any financial reporting requirements under the federal securities laws, as a result of misconduct, our Chief Executive Officer and Chief Financial Officer may be legally required to reimburse us for any bonus or other incentive-based or equity-based compensation they receive in accordance with the provisions of Section 304 of the Sarbanes-Oxley Act of 2002.

We have not paid any significant signing or promotion bonuses to our executive officers, nor have we guaranteed any bonuses to our executive officers.

Long-term Equity Compensation. Our salary and bonus programs are intended to compensate our executive officers for short-term performance. We also have an equity incentive program intended to reward longer-term performance and to help align the interests of our executive officers with those of our stockholders. We believe that long-term performance is achieved through an ownership culture that rewards such performance by our executive officers through the use of equity incentives. Our current long-term incentives consist solely of stock option grants under our 2003 Equity Incentive Plan. However, our executive officers have also acquired equity in our company through direct investment in our common stock and in our prior preferred stock offerings. The common stock acquired directly by our executive officers is subject to our right of repurchase which lapses on a vesting schedule over a period of four years as described under "—Executive Employment Agreements—Unvested Share Repurchase Right" below. Vested shares are also subject to our repurchase right until February 2009 upon specified termination events as described under "—Executive Employment Agreements—Vested Share Repurchase Right; Executive Put Right" below. The compensation committee believes that the use of stock options offers the best approach to achieve our compensation goals with respect to long-term compensation and currently provides tax and other advantages to our employees relative to other forms of equity compensation. We believe that our stock option program is an important retention tool for our employees. With respect to determining the size of stock option grants, the compensation committee has approved target ranges of stock options for new vice presidents, directors, managers and others, and it reviews those ranges at least annually. The target ranges are intended to set appropriate stock option incentive levels for the various levels of responsibility.

Our executive officers were granted stock option options under our 2003 Equity Incentive Plan in February 2004, which will be fully vested in February 2008 (but any vested shares acquired upon exercise of the options are subject to our repurchase right until February 2009). In connection with its compensation review for 2007, the compensation committee granted additional stock options to our executive officers in February 2007 as described in more detail under "—Compensation Actions for our Executive Officers" below. These options vest as to one-third of the shares subject to the option in February 2010, and the remaining two-thirds of the shares subject to the option vest monthly over two years thereafter. The exercise price of the options is equal to the fair market value of our common stock as determined by the compensation committee on the date of grant. In the absence of a public trading market for our common stock, the compensation committee determined the fair market value of our common stock in good faith based upon consideration of a number of relevant factors including the status of our development and commercialization efforts, results of operations, market conditions and a contemporaneous valuation of our common stock as of December 31,

2006. In determining the number of stock options granted to the executive officers, the compensation committee took into account each executive officer's position, scope of responsibility, ability to affect stockholder value, the individual's historic and recent performance, and our policy of providing compensation equity among our executive officers.

In connection with this offering, our board of directors has adopted new equity benefit plans described under "—Employee Benefit Plans" below. The 2007 Equity Incentive Plan will replace our existing 2003 Equity Incentive Plan immediately upon the signing of the underwriting agreement for this offering. In connection with our transition to a publicly-traded company, the compensation committee intends to evaluate an annual stock option grant program for executive officers to continue aligning the interests of our executive officers with those of our stockholders. Participation in our 2007 Employee Stock Purchase Plan that we have adopted and that will become effective immediately upon the signing of the underwriting agreement for this offering will also be available to all executive officers following this offering on the same basis as our other employees.

Employment Agreements. Our executive officers, each of whom is a party to an employment agreement with us, will continue, following this offering, to be parties to these agreements in their current form until such time as our compensation committee agrees with the executive officers to revise the employment agreements, or until they expire in February 2009. The material terms of these employment agreements are described under "—Executive Employment Agreements" below.

Severance and Change of Control Benefits. Under their employment agreements, our executive officers are entitled to certain severance and change of control benefits, the terms of which are described in detail below under "Executive Employment Agreements—Severance and Change of Control Benefits." With respect to change of control benefits, we provide severance compensation if an executive officer is terminated in connection with a change of control transaction to further promote the ability of our executive officers to act in the best interests of our stockholders even though they could be terminated as a result of the transaction. We also believe that the other severance benefits are appropriate, particularly with respect to a termination by us without cause since in that scenario, we and the executive have a mutually-agreed-upon severance package that is in place prior to any termination event which provides us with more flexibility to make a change in executive management if such a change is in our stockholders' best interests.

Other Benefits. We have a 401(k) plan in which substantially all of our employees are entitled to participate. Employees contribute their own funds, as salary deductions, on a pre-tax basis. Contributions may be made up to plan limits, subject to government limitations. The plan permits us to make matching contributions if we choose; however, to date, we have not made any matching contributions. We provide health care, dental and vision benefits to all full-time employees, including our executive officers. We also have a flexible benefits healthcare plan and a flexible benefits childcare plan under which employees can set aside pre-tax funds to pay for qualified health care expenses and qualified childcare expenses not reimbursed by insurance. These benefits are available to all employees, subject to applicable laws.

Compensation Actions for Our Executive Officers

Samuel Saks, M.D.—Chief Executive Officer. Dr. Saks' base salary effective as March 1, 2006 was $410,000, or a 5% increase over his base salary for the prior 12-month period. After review of the data from Compensia and other publicly-available compensation data, including chief executive officer salaries of public companies in our industry and other companies in the San Francisco Bay Area, the compensation committee increased Dr. Saks' salary to $450,000 effective March 1, 2007. Dr. Saks received a bonus of $102,000 for 2006. In setting the bonus pool for 2006, our board of directors determined that we had met many of our important objectives, but not all of our 2006 objectives, and approved a bonus payout of 56% of the total target bonus pool. The compensation committee determined Dr. Saks' bonus to be approximately 50% of target based on his performance and contributions to meeting our objectives for 2006, as well as his leadership during key challenges, and, at his and Mr. Cozadd's suggestion, the allocation of a portion of the available bonus pool to

executives other than Dr. Saks and Mr. Cozadd that could have otherwise been awarded to Dr. Saks and Cozadd. In February 2007, the compensation committee granted Dr. Saks an option to purchase 40,662 shares of common stock with the vesting schedule described above. The option has an exercise price of $19.37 per share, the fair market value of our common stock determined by the compensation committee on the date of grant. As with all of our executive officers, this option was granted in part due to the fact that Dr. Saks had not received any stock option grants since February 2004, and Dr. Saks' option granted in 2004 will be fully vested in February 2008 (but any vested shares acquired upon exercise of the options are subject to our repurchase right until February 2009). The new stock option is intended to provide a strong retention incentive well into the future, and to help align Dr. Saks' long-term interests with those of our stockholders.

Bruce Cozadd—Executive Chairman. Mr. Cozadd's base salary effective March 1, 2006 was $310,000, or a 6% increase over his base salary for the prior 12-month period. Mr. Cozadd currently devotes 75% of his professional time to his role as our Executive Chairman. Since our inception in 2003, Mr. Cozadd and Dr. Saks have had approximately the same salary on a full-time equivalent basis. Mr. Cozadd's salary effective as of March 1, 2007 is $338,000 for 75% time. Mr. Cozadd's base salary was determined by the compensation committee as part of its compensation review described above, with reference to Dr. Saks' base salary. Mr. Cozadd's bonus for 2006 was $77,000, or approximately 50% of his target bonus. The bonus for Mr. Cozadd was determined by the compensation committee based on his performance, contributions and leadership in 2006 and, at his and Dr. Saks' suggestion, the allocation of a portion of the available bonus pool to executives other than Dr. Saks and Mr. Cozadd that could have otherwise been awarded to Dr. Saks and Cozadd. In February 2007, the compensation committee granted Mr. Cozadd an option to purchase 40,662 shares of common stock with the vesting schedule described above. The option has an exercise price of $19.37 per share, the fair market value of our common stock determined by the compensation committee on the date of grant.

Robert Myers—President. Mr. Myers' base salary effective March 1, 2006 was $410,000, or a 5% increase over his salary for the prior 12-month period. Mr. Myers received a 4% salary increase effective March 1, 2007. Mr. Myers' bonus for 2006 was $120,000, or approximately 60% of his target bonus. The bonus for Mr. Myers was determined by the compensation committee based on Mr. Myers' leadership of our commercial team through a number of key transactions during the year, the expansion of our sales and marketing activities and the significant achievements of our commercial organization during 2006. In February 2007, partly in recognition of his promotion from Executive Vice President and Chief Business Officer to President, the compensation committee granted Mr. Myers an option to purchase 31,625 shares of common stock with vesting schedule described above. The option has an exercise price of $19.37 per share, the fair market value of our common stock determined by the compensation committee on the date of grant.

Senior Vice Presidents. The base salary effective March 1, 2006 for each of our remaining executive officers was $330,000, or a 5.6% increase over their salaries for the prior 12-month period. They received a 4% salary increase effective March 1, 2007. The 2006 bonuses for these executive officers, as determined by the compensation committee and based on the recommendations of Dr. Saks and Mr. Cozadd, were $70,000 for Mr. Fust, $80,000 for Ms. Gamble and $66,000 for Ms. Wissel. With these bonuses, the Compensation Committee recognized the efforts of each of these executive officers in connection with our key corporate objectives for 2006. In February 2007, the compensation committee granted each of these executive officers an option to purchase 22,590 shares of common stock with the vesting schedule described above. The options have an exercise price of $19.37 per share, the fair market value of our common stock determined by the compensation committee on the date of grant.

Accounting and Tax Considerations

Effective January 1, 2006, we adopted the fair value provisions of Financial Accounting Standards Board Statement No. 123(R) (revised 2004), "Share-Based Payment," or SFAS 123R. Under SFAS 123R, we are required to estimate and record an expense for each award of equity compensation (including stock options) over the vesting period of the award. The compensation committee has determined to retain for the foreseeable future

our stock option program as the sole component of its long-term compensation program, and, therefore, to record this expense on an ongoing basis according to SFAS 123R. The compensation committee has considered, and may in the future consider, the grant of restricted stock to our executive officers in lieu of stock option grants in light of the accounting impact of SFAS 123R with respect to stock option grants and other considerations.

Section 162(m) of the Internal Revenue Code of 1986 limits our deduction for federal income tax purposes to not more than $1 million of compensation paid to certain executive officers in a calendar year. Compensation above $1 million may be deducted if it is "performance-based compensation." The compensation committee has not yet established a policy for determining which forms of incentive compensation awarded to our executive officers shall be designed to qualify as "performance-based compensation." To maintain flexibility in compensating our executive officers in a manner designed to promote our objectives, the compensation committee has not adopted a policy that requires all compensation to be deductible. However, the compensation committee intends to evaluate the effects of the compensation limits of Section 162(m) on any compensation it proposes to grant, and the compensation committee intends to provide future compensation in a manner consistent with our best interests and those of our stockholders.

Summary Compensation Table

The following table sets forth all of the compensation awarded to, earned by, or paid to our principal executive officer, principal financial officer and our four other highest paid executive officers for the year ended December 31, 2006. The officers listed in the table below are referred to in this prospectus as the "named executive officers."

2006 Summary Compensation Table

Name and Principal Position	Year	Salary ($)	Option Awards ($)(1)	Non-Equity Incentive Plan Compensation ($)(2)	All Other Compensation ($)(3)	Total ($)
Bruce C. Cozadd(4) Executive Chairman	2006	307,236	605,818	77,000	234	990,288
Samuel R. Saks, M.D. Chief Executive Officer	2006	406,853	605,818	102,000	234	1,114,905
Robert M. Myers President	2006	406,853	605,818	120,000	234	1,132,905
Matthew K. Fust Senior Vice President and Chief Financial Officer	2006	327,159	231,268	70,000	234	628,661
Carol A. Gamble Senior Vice President, General Counsel and Corporate Secretary	2006	327,159	231,268	80,000	234	638,661
Janne L.T. Wissel Senior Vice President of Development	2006	327,159	231,268	66,000	234	624,661

(1) We did not grant any stock option awards to our named executive officers in 2006. The dollar amounts in this column represent the compensation cost for the year ended December 31, 2006 of stock option awards granted in prior years. These amounts have been calculated in accordance with FASB Statement No. 123 (revised), "Share-Based Payment," or SFAS No. 123R, using the Black-Scholes option-pricing model. Pursuant to SEC rules, the amounts shown exclude the impact of estimated forfeitures related to service-based vesting conditions. For a discussion of valuation assumptions, see Note 14 to our consolidated financial statements included elsewhere in this prospectus.
(2) See footnote (1) to the 2006 Grants of Plan-Based Awards Table below.
(3) Represents group term life insurance premiums paid by us.
(4) Mr. Cozadd currently devotes 75% of his professional time to his role as our Executive Chairman.

Grants of Plan-Based Awards in Fiscal 2006

The following table sets forth certain information regarding grants of plan-based awards to the named executive officers during the year ended December 31, 2006.

2006 Grants of Plan-Based Awards Table

Name	Estimated Possible Payouts Under Non-Equity Incentive Plan Awards Target ($)(1)
Bruce C. Cozadd	153,618
Samuel R. Saks, M.D.	203,427
Robert M. Myers	203,427
Matthew K. Fust	130,864
Carol A. Gamble	130,864
Janne L.T. Wissel	130,864

(1) This column sets forth the target bonus amount for each named executive officer for the year ended December 31, 2006 under our annual cash bonus plan established by our board of directors, which for Dr. Saks and Messrs. Cozadd and Myers was 50% of their respective salaries earned for fiscal year ended December 31, 2006. The target bonus amount for Mr. Fust, Ms. Gamble and Ms. Wissel was 40% of their respective salaries earned for fiscal year ended December 31, 2006. The actual cash bonus award earned for the year ended December 31, 2006 for each named executive officer is set forth in the 2006 Summary Compensation Table above. As such, the amounts set forth in this column do not represent additional compensation earned by the named executive officers for the year ended December 31, 2006. For a description of our annual cash bonus plan, please see "—Compensation Discussion and Analysis—Executive Compensation Program—Cash Bonuses" above.

Executive Employment Agreements

General

In February 2004, we entered into employment agreements with each of our named executive officers. Each of the employment agreements provides for an initial annual base salary subject to annual increases approved by our board of directors. The employment agreements set forth an initial base salary of $375,000 for Mr. Cozadd, $375,000 for Dr. Saks, $375,000 for Mr. Myers and $300,000 for each of Mr. Fust, Ms. Gamble and Ms. Wissel. Mr. Cozadd's annual base salary is pro-rated based on full-time employment. Mr. Cozadd currently devotes 75% of his professional time to his role as our Executive Chairman. Dr. Saks and Messrs. Cozadd and Myers are each eligible to receive an annual performance bonus determined in accordance with our annual cash bonus plan and targeted at 50% of their respective annual base salaries, subject to increases approved by our board of directors. Mr. Fust, Ms. Gamble and Ms. Wissel are each eligible to receive an annual performance bonus determined in accordance with our annual cash bonus plan and targeted at 40% of their respective annual base salaries, subject to increases approved by our board of directors. Each of the named executive officers is also eligible to participate in our general employee benefits plans for executives or key management employees in accordance with the terms and conditions of these plans.

Term

Each employment agreement provides that the terms and conditions of the agreement will apply to the named executive officers' employment until the fifth anniversary of the date of the agreement. However, each employment agreement also provides that the employment of the named executive officer may be terminated at any time by us or by the named executive officer, subject to the named executive officer's right to receive certain severance and other benefits, and our right to repurchase shares of our common stock held by the named executive officer.

Unvested Share Repurchase Right

In the event a named executive officer's employment is terminated by us or the named executive officer, we have the right to repurchase at cost all or any portion of the shares of common stock that were held by the named executive officer on the date of the employment agreement, which we refer to in this prospectus as the "founder shares." Our right of repurchase with respect to the founder shares lapses on an equal monthly basis over a period of four years, subject to acceleration in certain termination scenarios as described under "—Severance and Change of Control Benefits" and subject to our right to repurchase vested shares as described under "—Vested Share Repurchase Right; Executive Put Right."

Vested Share Repurchase Right; Executive Put Right

In the event a named executive officer is terminated by us for "cause" or is terminated by the named executive officer without "good reason," as those terms are defined in the employment agreements, we have the right to repurchase any vested shares of common stock held by the named executive officer at the lesser of cost or fair market value. If the named executive officer's employment is terminated without cause or for good reason, we have the right to repurchase the named executive officer's vested shares at fair market value. Finally, if the named executive officer's employment is terminated because of death or disability, we have the right to repurchase, and the named executive officer (or his or her estate) has the right to require us to repurchase, the named executive officer's vested shares at fair market value. Our right to repurchase these vested shares terminates in February 2009, or earlier upon the completion of a change of control event; however, our vested share repurchase rights terminate on the date one year after our initial public offering as to 20% of the vested shares then held by each named executive officer.

Severance and Change of Control Benefits

Cash Severance Payments. In the event a named executive officer is terminated by us without cause or is terminated by the named executive officer for good reason, the named executive officer is entitled, subject to our receipt of an effective waiver and release of claims executed by the named executive officer, to the following cash severance payments:

- an amount, payable in accordance with our customary payroll practices, equal to $1/12^{th}$ of the named executive officer's base salary at the time of termination for each month in a severance period of up to 24 months;
- COBRA premiums for the number of months in a severance period of up to 24 months, payable on a monthly basis;
- an amount, payable when bonus payments for the year of termination are paid to other employees, equal to the sum of:
  - the product of the named executive officer's base salary at the time of termination (prorated to reflect the number of days remaining in the year of termination after the date of termination) multiplied by the lesser of (a) the named executive officer's historical bonus rate (based on the average ratio of bonus paid to salary paid) or (b) the named executive officer's target bonus rate for the year of termination (which may be reduced based on the ratio of bonuses paid to target bonuses for the remaining named executive officers in the year of termination), which lesser amount we refer to in this prospectus as the "severance bonus rate", plus
  - the product of the named executive officer's base salary at the time of termination (prorated to reflect the number of days elapsed in the year of termination including the date of termination) multiplied by one-half of the severance bonus rate; and
- an amount, payable when bonus payments for the year following the year of termination are paid to other employees, equal to the product of the named executive officer's base salary at the time of termination (prorated to reflect the number of days elapsed in the year of termination including the date

of termination) multiplied by the lesser of (a) the named executive officer's historical bonus rate or (b) the named executive officer's target bonus rate for the year of following termination (which may be reduced based on the ratio of bonuses paid to target bonuses for the remaining named executive officers in the year following termination).

The employment agreements also provide for the payment of the cash severance payments described above if a named executive officer voluntarily terminates his or her employment within one year after the effective date of (a) a change of control event or (b) in the case of the named executive officers other than Dr. Saks, a significant transaction, such as our acquisition of another entity, where the members of our board of directors prior to the significant transaction constitute a majority of the board of directors after the transaction and the employment of 50% or more of the existing members of our executive management team, including our Chief Executive Officer, is terminated in connection with the significant transaction.

The following table estimates the amount of compensation payable to each named executive officer in the event of a termination described above, in each case as if the named executive officer's employment had terminated on December 29, 2006, the last business day of our prior fiscal year. The actual amounts that would be paid out in any termination event can only be determined at the time of the termination of the named executive officer's employment with us.

Name	Salary Continuation ($)	COBRA Premiums ($)	Bonus Payment for the Year of Termination ($)	Bonus Payment for the Year Following Termination ($)(1)
Bruce C. Cozadd	465,000	21,320	24,823	49,104
Samuel R. Saks, M.D.	615,000	33,049	30,735	60,801
Robert M. Myers	615,000	25,485	44,323	87,679
Matthew K. Fust	495,000	6,043	29,676	58,706
Carol A. Gamble	495,000	21,228	22,926	45,352
Janne L.T. Wissel	467,500	12,493	22,926	45,352

(1) For purposes of calculating the amounts set forth in this column, applicable bonus rates in the year of termination and the year following termination are assumed to be the same.

The employment agreements further provide that if a named executive officer's employment is terminated (a) by the named executive officer due to a relocation of our executive office of more than 20 miles from our current executive office, (b) without cause by us or for good reason by the named executive officer in connection with a change of control or a significant transaction, or (c) in the case of the named executive officers other than Dr. Saks, without cause by us or for good reason by the named executive officer prior to the first anniversary of the effective date of a significant transaction in connection with which the employment of 50% or more of the existing members of our executive management team, including our Chief Executive Officer, is terminated, then, and in each such case, the named executive officer is entitled, subject to our receipt of an effective waiver and release of claims executed by the named executive officer, to the following cash severance payments:

- a single lump sum payment equal to $1/12^{th}$ of the named executive officer's base salary at the time of termination for each month in a severance period of up to 24 months;
- a single lump sum payment equal to the product of the named executive officer's base salary at the time of termination (prorated to reflect the number of days elapsed in the year of termination including the date of termination) multiplied by the named executive officer's historical bonus rate;
- a single lump sum payment equal to the product of (a) $1/12^{th}$ of the named executive officer's base salary at the time of termination multiplied by (b) the named executive officer's historical bonus rate multiplied by (c) the number of months in a severance period of up to 24 months; and
- COBRA premiums for the number of months in a severance period of up to 24 months, payable on a monthly basis.

The following table estimates the amount of compensation payable to each named executive officer in the event of a termination described above, in each case as if the named executive officer's employment had terminated on December 29, 2006, the last business day of our prior fiscal year. The actual amounts that would be paid out in any termination event can only be determined at the time of the termination of the named executive officer's employment with us.

Name	Lump Sum Salary Payment ($)	COBRA Premiums ($)	Lump Sum Bonus Payment ($)
Bruce C. Cozadd	465,000	21,320	123,167
Samuel R. Saks, M.D.	615,000	33,049	152,505
Robert M. Myers	615,000	25,485	219,922
Matthew K. Fust	495,000	6,043	147,249
Carol A. Gamble	495,000	21,228	113,754
Janne L.T. Wissel	467,500	12,493	109,954

In the event a named executive officer's employment is terminated by reason of death or disability, the named executive officer will be entitled to a cash payment equal to the named executive officer's accrued bonus (if any) at the rate in effect at the time of termination. As described above, each of named executive officer (or his or her estate) would also be entitled to require us to repurchase the named executive officer's vested shares at fair market value. The following table estimates the amount of compensation payable to each named executive officer in the event of a termination by reason of death or disability, in each case as if the named executive officer's employment had terminated on December 29, 2006, the last business day of our prior fiscal year. The actual amounts that would be paid out in any termination event can only be determined at the time of the termination of the named executive officer's employment with us.

Name	Accrued Bonus ($)	Executive Put Right ($)(1)
Bruce C. Cozadd	76,578	4,100,000
Samuel R. Saks, M.D.	101,441	5,466,675
Robert M. Myers	119,342	2,081,525
Matthew K. Fust	69,616	667,800
Carol A. Gamble	79,562	621,200
Janne L.T. Wissel	65,638	605,675

(1) The value of the put right is calculated assuming a price per share of $25.00 which is the mid-point of the range reflected on the cover page of this prospectus, with respect to vested shares of common stock.

Vesting Acceleration. The employment agreements provide that if the named executive officer's employment is terminated (a) without cause by us or for good reason by the named executive officer in connection with change of control or significant transaction, or within 12 months following a change of control, or (b) in the case of the named executive officers other than Dr. Saks, without cause by us or for good reason by the named executive officer prior to the first anniversary of the effective date of a significant transaction in connection with which the employment of 50% or more of the existing members of our executive management team, including our Chief Executive Officer, is terminated, then all unvested founder shares will immediately vest and our unvested share repurchase right will immediately lapse with respect to those shares. These provisions also govern the terms of the stock options granted to our named executive officers under our 2003 Equity Incentive Plan such that in the event of one of these termination scenarios, the options granted to our named executive officers under our 2003 Equity Incentive Plan would immediately vest and become exercisable and would no longer be subject to our unvested share repurchase right.

In addition, the employment agreements provide that if the named executive officer's employment is terminated without cause by us or for good reason by the named executive officer prior to and not in connection

with or more than 12 months following, a change in control, then 1/4th of the founder shares (or the actual number of unvested founder shares immediately prior to the termination, if less) will immediately vest and our unvested share repurchase right will immediately lapse with respect to those shares. These provisions are not applicable to the stock options granted to our named executive officers under our 2003 Equity Incentive Plan.

The following table estimates the value of the vesting acceleration provisions described above with respect to each named executive officer in the event of a termination described above, in each case as if the named executive officer's employment had terminated on December 29, 2006, the last business day of our prior fiscal year. The actual value of vesting acceleration in any termination event can only be determined at the time of the termination of the named executive officer's employment with us.

	Full Vesting Acceleration		Partial Vesting Acceleration	
Name	Founder Share Acceleration ($)(1)	Option Acceleration ($)(2)	Founder Share Acceleration ($)(1)	Option Acceleration ($)
Bruce C. Cozadd	372,750	260,102	93,188	—
Samuel R. Saks, M.D.	496,975	260,102	124,244	—
Robert M. Myers	284,725	260,102	71,181	—
Matthew K. Fust	77,650	99,290	19,413	—
Carol A. Gamble	56,475	99,290	14,119	—
Janne L.T. Wissel	139,775	99,290	34,944	—

(1) The value of vesting acceleration is calculated assuming a price per share of $25.00, which is the mid-point of the range reflected on the cover page of this prospectus, with respect to unvested founder shares subject to acceleration.
(2) The value of vesting acceleration is calculated assuming a price per share of $25.00, which is the mid-point of the range reflected on the cover page of this prospectus, with respect to unvested option shares subject to acceleration minus the exercise price of these unvested option shares.

Employee Benefit Plans

2003 Equity Incentive Plan

Our board of directors adopted, and our stockholders approved, the 2003 Equity Incentive Plan, or 2003 plan, in March 2003. An aggregate of 2,125,042 shares of our common stock is reserved for issuance under the 2003 plan. The 2003 plan provides for the grant of incentive stock options, nonstatutory stock options, stock appreciation rights, stock issuances and cash awards. As of March 31, 2007, options to purchase 1,862,530 shares of our common stock at a weighted average exercise price per share of $21.34 remained outstanding under the 2003 plan. No stock appreciation rights, stock issuances, or cash awards have been granted under the 2003 plan. As of March 31, 2007, 215,792 shares of our common stock remained available for future issuance under the 2003 plan.

Our board of directors has the authority to administer the 2003 plan and the awards granted under it. Upon the signing of the underwriting agreement for this offering, the 2003 plan will terminate so that no further awards may be granted under the 2003 plan. Although the 2003 plan will terminate, all outstanding awards will continue to be governed by their existing terms.

Stock Options. The 2003 plan provides for the grant of incentive stock options under the federal tax laws or nonstatutory stock options. Incentive stock options may be granted only to employees. Nonstatutory stock options may be granted to employees, non-employee directors and consultants. The exercise price of incentive stock options may not be less than 100% of the fair market value of our common stock on the date of grant. The exercise price of nonstatutory stock options may not be less than 85% of the fair market value of our common stock on the date of grant. Shares subject to options under the 2003 plan generally vest in a series of installments over an optionee's period of service, with a minimum vesting rate as to non-executive employees of at least 20% per year over five years from the date of grant.

In general, the maximum term of options granted under the 2003 plan is ten years. Unless the terms of an optionee's stock option agreement provide otherwise, if an optionee's service relationship with us, or any of our affiliates, ceases for any reason other than for cause, disability or death, the optionee may exercise the vested portion of any option for three months after the date of such termination. If an optionee's service relationship with us, or any of our affiliates, terminates by reason of disability or death, the optionee or a personal representative may exercise the vested portion of any option for 12 months after the date of such termination. In no event, however, may an option be exercised beyond the expiration of its term.

Corporate Transactions. In the event of certain significant corporate transactions, our board of directors has the discretion to take one or more of the following actions: (a) arrange for the assumption or substitution of outstanding awards, (b) accelerate the vesting and termination of outstanding awards in whole or in part, (c) cancel or arrange for the cancellation of awards in exchange for cash payments and (d) arrange for any repurchase rights applicable to award shares to apply to any substituted securities issued in the transaction. Our board of directors need not take the same action for each award.

Changes in Control. In general, the vesting and exercisability of options granted to non-executive employees under the 2003 plan will accelerate with respect to an additional 25% of the option shares if (a) a change in control occurs and (b) the individual's employment is terminated by us without cause within 12 months thereafter. In addition, pursuant to our Executive Change in Control and Severance Benefit Plan, in which our non-executive officer vice presidents are participants, if a participant's employment with us terminates due to an involuntary termination without cause or a constructive termination, in each case within 12 months following a change in control, the vesting and exercisability of all options held by the participant will accelerate in full. In general, under our employment agreements with our executive officers, the vesting and exercisability of options granted to executive officers under the 2003 plan will accelerate in full (a) if a change in control or significant transaction occurs and the officer's employment is terminated by us without cause or the officer resigns for good reason in connection therewith or within 12 months thereafter or (b) if the employment of the officer (other than Dr. Saks) is terminated by us without cause or the officer (other than Dr. Saks) resigns for good reason within one year of a significant transaction where the employment of 50% or more of the members of our executive management team, including the employment of Dr. Saks, are terminated in connection with such significant transaction. See "—Executive Employment Agreements—Severance and Change of Control Benefits."

2007 Equity Incentive Plan

Our board of directors adopted the 2007 Equity Incentive Plan, or 2007 incentive plan, in May 2007, and our stockholders approved the 2007 incentive plan in May 2007. The 2007 incentive plan will become effective immediately upon the signing of the underwriting agreement for this offering. The 2007 incentive plan will terminate on April 30, 2017, unless sooner terminated by our board of directors.

Stock Awards. The 2007 incentive plan provides for the grant of incentive stock options, nonstatutory stock options, restricted stock awards, restricted stock unit awards, stock appreciation rights, performance stock awards and other forms of equity compensation, which may be granted to employees, including officers, non-employee directors, and consultants.

Share Reserve. Following this offering, the aggregate number of shares of our common stock that may be issued initially pursuant to stock awards under the 2007 incentive plan is 4,625,042 shares. The share reserve consists of (i) the 2,125,042 shares reserved for issuance under the 2003 plan, plus (ii) an additional 2,500,000 shares reserved for issuance under the 2007 incentive plan. The aggregate reserve number will be reduced by any unused shares of our common stock remaining available for the future grant of stock awards under the 2003 plan on the effective date of the 2007 incentive plan. The number of shares of our common stock reserved for issuance will automatically increase on January 1st, from January 1, 2008 through January 1, 2017, by the lesser of (a) 4.5% of the total number of shares of our common stock outstanding on December 31st of the preceding calendar year and (b) 3,000,000 shares. The maximum number of shares that may be issued pursuant

to the exercise of incentive stock options under the 2007 incentive plan is equal to the total share reserve, as increased from time to time pursuant to annual increases and shares subject to options granted under the 2003 plan that expire without being exercised in full.

No person may be granted awards covering more than 2,000,000 shares of our common stock under the 2007 incentive plan during any calendar year pursuant to an appreciation-only stock award. An appreciation-only stock award is a stock award whose value is determined by reference to an increase over an exercise or strike price of at least 100% of the fair market value of our common stock on the date of grant. A stock option with an exercise price equal to the value of the stock on the date of grant is an example of an appreciation-only award. Such limitation is designed to help assure that any deductions to which we would otherwise be entitled upon the exercise of an appreciation-only stock award or upon the subsequent sale of shares purchased under such an award, will not be subject to the $1,000,000 limitation on the income tax deductibility of compensation paid per covered executive officer imposed by Section 162(m) of the Internal Revenue Code.

If a stock award granted under the 2007 incentive plan expires or otherwise terminates without being exercised in full, the shares of our common stock not acquired pursuant to the stock award again become available for subsequent issuance under the 2007 incentive plan. In addition, the following types of shares under the 2007 incentive plan will become available for the grant of new stock awards under the 2007 incentive plan: (a) shares that are forfeited to or repurchased by us prior to becoming fully vested, (b) shares withheld to satisfy income and employment withholding taxes, (c) shares used to pay the exercise price of an option in a net exercise arrangement, (d) shares tendered to us to pay the exercise price of an option and (e) shares that are cancelled pursuant to an exchange or repricing program. Shares issued under the 2007 incentive plan may be previously unissued shares or reacquired shares bought on the open market. As of the date hereof, no shares of our common stock have been issued under the 2007 incentive plan.

Administration. Our board of directors has delegated its authority to administer the 2007 incentive plan to our compensation committee. Subject to the terms of the 2007 incentive plan, our board of directors or an authorized committee, referred to as the plan administrator, determines recipients, dates of grant, the numbers and types of stock awards to be granted, and the terms and conditions of the stock awards, including the period of their exercisability and vesting. Subject to the limitations set forth below, the plan administrator will also determine the exercise price of options granted, the consideration to be paid for restricted stock awards, and the strike price of stock appreciation rights.

The plan administrator has the authority to:

- reduce the exercise price of any outstanding option or the strike price of any outstanding stock appreciation right;
- cancel any outstanding option or stock appreciation right and to grant in exchange one or more of the following:
  - new options or stock appreciation rights covering the same or a different number of shares of common stock,
  - new stock awards,
  - cash, and/or
  - other valuable consideration; or
- engage in any action that is treated as a repricing under generally accepted accounting principles.

Stock Options. Incentive and nonstatutory stock options are granted pursuant to incentive and nonstatutory stock option agreements adopted by the plan administrator. The plan administrator determines the exercise price for a stock option provided that the exercise price of an incentive stock option and nonstatutory stock option cannot be less than 100% of the fair market value of our common stock on the date of grant. Options granted under the 2007 incentive plan vest at the rate specified by the plan administrator.

Generally, the plan administrator determines the term of stock options granted under the 2007 incentive plan, up to a maximum of ten years (except in the case of certain incentive stock options, as described below). Unless the terms of an optionee's stock option agreement provide otherwise, if an optionee's relationship with us, or any of our affiliates, ceases for any reason other than disability or death, the optionee may exercise any vested options for a period of three months following the cessation of service. If an optionee's service relationship with us, or any of our affiliates, ceases due to disability or death (or an optionee dies within a certain period following cessation of service), the optionee or a beneficiary may exercise any vested options for a period of 12 months in the event of disability, and 18 months in the event of death. The option term may be extended in the event that exercise of the option following termination of service is prohibited by applicable securities laws. In no event, however, may an option be exercised beyond the expiration of its term.

Acceptable consideration for the purchase of common stock issued upon the exercise of a stock option will be determined by the plan administrator and may include (a) cash or check, (b) a broker-assisted cashless exercise, (c) the tender of common stock previously owned by the optionee, (d) a net exercise of the option and (e) other legal consideration approved by the plan administrator.

Unless the plan administrator provides otherwise, options generally are not transferable except by will, the laws of descent and distribution, or pursuant to a domestic relations order. An optionee may designate a beneficiary, however, who may exercise the option following the optionee's death.

Tax Limitations on Incentive Stock Options. Incentive stock options may be granted only to our employees. The aggregate fair market value, determined at the time of grant, of shares of our common stock with respect to incentive stock options that are exercisable for the first time by an optionee during any calendar year under all of our stock plans may not exceed $100,000. No incentive stock option may be granted to any person who, at the time of the grant, owns or is deemed to own stock possessing more than 10% of our total combined voting power or that of any of our affiliates unless (a) the option exercise price is at least 110% of the fair market value of the stock subject to the option on the date of grant and (b) the term of the incentive stock option does not exceed five years from the date of grant.

Restricted Stock Awards. Restricted stock awards are granted pursuant to restricted stock award agreements adopted by the plan administrator. Restricted stock awards may be granted in consideration for (a) cash or check, (b) past or future services rendered to us or our affiliates or (c) any other form of legal consideration. Shares of common stock acquired under a restricted stock award may, but need not, be subject to a share repurchase option in our favor in accordance with a vesting schedule to be determined by the plan administrator. Rights to acquire shares under a restricted stock award may be transferred only upon such terms and conditions as set by the plan administrator.

Restricted Stock Unit Awards. Restricted stock unit awards are granted pursuant to restricted stock unit award agreements adopted by the plan administrator. Restricted stock unit awards may be granted in consideration for any form of legal consideration. A restricted stock unit award may be settled by cash, delivery of stock, a combination of cash and stock as deemed appropriate by the plan administrator, or in any other form of consideration set forth in the restricted stock unit award agreement. Additionally, dividend equivalents may be credited in respect to shares covered by a restricted stock unit award. Except as otherwise provided in the applicable award agreement, restricted stock units that have not vested will be forfeited upon the participant's cessation of continuous service for any reason.

Stock Appreciation Rights. Stock appreciation rights are granted pursuant to stock appreciation rights agreements adopted by the plan administrator. The plan administrator determines the strike price for a stock appreciation right which cannot be less than 100% of the fair market value of our common stock on the date of grant. Upon the exercise of a stock appreciation right, we will pay the participant an amount equal to the product of (a) the excess of the per share fair market value of our common stock on the date of exercise over the strike price, multiplied by (b) the number of shares of common stock with respect to which the stock appreciation right

is exercised. A stock appreciation right granted under the 2007 incentive plan vests at the rate specified by the plan administrator.

The plan administrator determines the term of stock appreciation rights granted under the 2007 incentive plan, up to a maximum of ten years. If a participant's service relationship with us, or any of our affiliates, ceases, then the participant, or the participant's beneficiary, may exercise any vested stock appreciation right for three months (or such longer or shorter period specified in the stock appreciation right agreement) after the date such service relationship ends. In no event, however, may a stock appreciation right be exercised beyond the expiration of its term.

Performance Stock Awards. The 2007 incentive plan permits the grant of performance stock awards that may qualify as performance-based compensation that is not subject to the $1,000,000 limitation on the income tax deductibility of compensation paid per covered executive officer imposed by Section 162(m) of the Internal Revenue Code. To assure that the compensation attributable to one or more performance stock awards will so qualify, our compensation committee can structure one or more such awards so that stock will be issued or paid pursuant to such award only upon the achievement of certain pre-established performance goals during a designated performance period. The maximum benefit to be received by a participant in any calendar year attributable to performance stock awards may not exceed 2,000,000 shares of our common stock.

Other Stock Awards. The plan administrator may grant other awards based in whole or in part by reference to our common stock. The plan administrator will set the number of shares under the award and all other terms and conditions of such awards.

Changes to Capital Structure. In the event that there is a specified type of change in our capital structure, such as a stock split, appropriate adjustments will be made to (a) the number of shares reserved under the 2007 incentive plan, (b) the maximum number of shares by which the share reserve may increase automatically each year, (c) the maximum number of appreciation-only stock awards and performance stock awards that can be granted in a calendar year and (d) the number of shares and exercise price or strike price, if applicable, of all outstanding stock awards.

Corporate Transactions. In the event of certain significant corporate transactions, our board of directors has the discretion to take one or more of the following actions with respect to outstanding stock awards:

- arrange for assumption, continuation, or substitution of a stock award by a surviving or acquiring entity (or its parent company);
- arrange for the assignment of any reacquisition or repurchase rights applicable to any shares of our common stock issued pursuant to a stock award to the surviving or acquiring corporation (or its parent company);
- accelerate the vesting and exercisability of a stock award followed by the termination of the stock award;
- arrange for the lapse of any reacquisition or repurchase rights applicable to any shares of our common stock issued pursuant to a stock award;
- cancel or arrange for the cancellation of a stock award, to the extent not vested or not exercised, in exchange for appropriate cash consideration; and
- arrange for the surrender of a stock award in exchange for a payment equal to the excess of (a) the value of the property the holder of the stock award would have received upon the exercise of the stock award, over (b) any exercise price payable by such holder in connection with such exercise.

Our board of directors need not take the same action for each stock award.

Changes in Control. The form of option agreement adopted by our board under the 2007 incentive plan provides that in the event an optionee's service relationship with us or a successor entity is terminated, actually without cause or constructively, within 12 months following, or one month prior to, the effective date of certain specified change in control transactions, the vesting and exercisability of the option will accelerate in full. Our board of directors has the discretion to provide additional acceleration of vesting and exercisability upon or after a change in control transaction as may be provided in a stock award agreement or any other written agreement between us or any of our affiliates and a participant.

2007 Employee Stock Purchase Plan

Our board of directors adopted our 2007 Employee Stock Purchase Plan, or 2007 purchase plan, in May 2007 and our stockholders approved the 2007 purchase plan in May 2007. The 2007 purchase plan will become effective immediately upon the signing of the underwriting agreement for this offering.

Share Reserve. Following this offering, the 2007 purchase plan authorizes the issuance of 350,000 shares of our common stock pursuant to purchase rights granted to our employees or to employees of any of our designated affiliates. The number of shares of our common stock reserved for issuance will automatically increase on January 1st, from January 1, 2008 through January 1, 2017, by the lesser of (a) 1.5% of the total number of shares of our common stock outstanding on December 31st of the preceding calendar year or (b) 350,000 shares. The 2007 purchase plan is intended to qualify as an "employee stock purchase plan" within the meaning of Section 423 of the Internal Revenue Code. As of the date hereof, no shares of our common stock have been purchased under the 2007 purchase plan.

Administration. Our board of directors has delegated its authority to administer the 2007 purchase plan to our compensation committee. The 2007 purchase plan is implemented through a series of offerings of purchase rights to eligible employees. Under the 2007 purchase plan, we may specify offerings with a duration of not more than 27 months, and may specify shorter purchase periods within each offering. Each offering will have one or more purchase dates on which shares of our common stock will be purchased for employees participating in the offering.

Payroll Deductions. Generally, all regular employees, including executive officers, employed by us or by any of our affiliates may participate in the 2007 purchase plan and may contribute, normally through payroll deductions, up to 15% of their earnings for the purchase of our common stock under the 2007 purchase plan. Unless otherwise determined by our board of directors, common stock will be purchased for accounts of employees participating in the 2007 purchase plan at a price per share equal to the lower of (a) 85% of the fair market value of a share of our common stock on the first date of an offering or (b) 85% of the fair market value of a share of our common stock on the date of purchase.

Reset Feature. Our board of directors may specify that if the fair market value of a share of our common stock on any purchase date within a particular offering period is less than the fair market value on the start date of that offering period, then the employees in that offering period will automatically be transferred and enrolled in a new offering period which will begin on the next day following such a purchase date.

Limitations. Employees may have to satisfy one or more of the following service requirements before participating in the 2007 purchase plan, as determined by our board of directors: (a) customarily employed for more than 20 hours per week, (b) customarily employed for more than five months per calendar year or (c) continuous employment with us or one of our affiliates for a period of time not to exceed two years. No employee may purchase shares under the 2007 purchase plan at a rate in excess of $25,000 worth of our common stock valued based on the fair market value per share of our common stock at the beginning of an offering for each year such a purchase right is outstanding. Finally, no employee will be eligible for the grant of any purchase rights under the 2007 purchase plan if immediately after such rights are granted, such employee has voting power over 5% or more of our outstanding capital stock measured by vote or value.

Changes to Capital Structure. In the event that there is a specified type of change in our capital structure, such as a stock split, appropriate adjustments will be made to (a) the number of shares reserved under the 2007 purchase plan, (b) the maximum number of shares by which the share reserve may increase automatically each year, and (c) the number of shares and purchase price of all outstanding purchase rights.

Corporate Transactions. In the event of certain significant corporate transactions, any then-outstanding rights to purchase our stock under the 2007 purchase plan will be assumed, continued or substituted for by any surviving or acquiring entity (or its parent company). If the surviving or acquiring entity (or its parent company) elects not to assume, continue or substitute for such purchase rights, then the participants' accumulated contributions will be used to purchase shares of our common stock within ten business days prior to such corporate transaction, and such purchase rights will terminate immediately thereafter.

Cash Bonus Plan

We maintain an annual cash bonus plan to reward executive officers and other employees for successful achievement of company-wide and individual performance objectives. For more information regarding our annual cash bonus plan, please see "—Compensation Discussion and Analysis—Executive Compensation Program—Cash Bonuses."

401(k) Plan

Our employees are eligible to participate in our 401(k) plan. Our 401(k) plan is intended to qualify as a tax qualified plan under Section 401 of the Code. Our 401(k) plan provides that each participant may contribute a portion of his or her pretax compensation, up to a statutory limit, which for most employees is $15,500 in 2007 (with a larger "catch up" limit for older employees). Employee contributions are held and invested by the plan's trustee. Our 401(k) plan also permits us to make discretionary contributions and matching contributions, subject to established limits and a vesting schedule. To date, we have not made any contributions to the plan on behalf of participating employees.

Outstanding Equity Awards at Fiscal Year-End

The following table shows, for the fiscal year ended December 31, 2006, certain information regarding outstanding equity awards at fiscal year end for our named executive officers.

2006 Outstanding Equity Awards at Fiscal Year-End Table

	Option Awards(1)				Stock Awards(2)	
Name	Number of Securities Underlying Unexercised Options (#) Exercisable	Number of Securities Underlying Unexercised Options (#) Unexercisable	Option Exercise Price ($)	Option Expiration Date	Number of Shares or Units of Stock That Have Not Vested (#)	Market Value of Shares or Units of Stock That Have Not Vested ($)(3)
Bruce C. Cozadd	116,254	47,866	15.09	02/18/14	—	—
	38,753	15,954	30.18	02/18/14	—	—
	38,753	15,954	45.27	02/18/14	—	—
	—	—	—	—	14,910	372,750
Samuel R. Saks, M.D.	116,254	47,866	15.09	02/18/14	—	—
	38,753	15,954	30.18	02/18/14	—	—
	38,753	15,954	45.27	02/18/14	—	—
	—	—	—	—	19,879	496,975
Robert M. Myers	116,254	47,866	15.09	02/18/14	—	—
	38,753	15,954	30.18	02/18/14	—	—
	38,753	15,954	45.27	02/18/14	—	—
	—	—	—	—	11,389	284,725
Matthew K. Fust	44,380	18,272	15.09	02/18/14	—	—
	14,794	6,090	30.18	02/18/14	—	—
	14,794	6,090	45.27	02/18/14	—	—
	—	—	—	—	2,485	62,125
Carol A. Gamble	44,380	18,272	15.09	02/18/14	—	—
	14,794	6,090	30.18	02/18/14	—	—
	14,794	6,090	45.27	02/18/14	—	—
	—	—	—	—	2,259	56,475
Janne L.T. Wissel	44,380	18,272	15.09	02/18/14	—	—
	14,794	6,090	30.18	02/18/14	—	—
	14,794	6,090	45.27	02/18/14	—	—
	—	—	—	—	5,591	139,775

(1) For each named executive officer, the shares listed in the table above under "Option Awards" are subject to a single stock option award carrying the varying exercise prices as set forth in the table above. The shares subject to each stock option vest over a four year period, with 25% of the shares subject to the option vesting after one year, an additional 12.5% vesting six months thereafter, and the remaining shares subject to the stock option vesting on an equal monthly basis over the following 30 months. On each vesting date, the number of shares subject to each stock option award vest proportionately based on the exercise price associated with the shares, such that 60% of the shares vesting on each vesting date carry an exercise price equal to $15.09 per share, 20% carry an exercise price equal to $30.18 per share, and 20% carry an exercise price equal to $45.27 per share. All shares of common stock that are issued to a named executive officer pursuant to the exercise of his or her stock option award are subject to a right of repurchase, on the same terms as "vested shares" as described under "—Executive Employment Agreements."

(2) For each named executive officer, our right to repurchase the unvested shares listed in the table above under "Stock Awards" lapses on a monthly basis at the rate of 2.08% per month.

(3) The market value of the unvested shares has been calculated assuming a price per share of $25.00, which is the mid-point of the range reflected on the cover page of this prospectus, multiplied by the number of unvested shares.

Option Exercises and Stock Vested

Our named executive officers did not exercise any stock options during the year ended December 31, 2006. The following table shows certain information regarding stock vested during the year ended December 31, 2006 for our named executive officers.

2006 Option Exercises and Stock Vested Table

	Stock Awards	
Name	Number of Shares Acquired on Vesting (#)	Value Realized on Vesting ($)(1)
Bruce C. Cozadd	44,727	1,118,175
Samuel R. Saks, M.D.	59,637	1,490,925
Robert M. Myers	23,663	591,575
Matthew K. Fust	7,455	186,375
Carol A. Gamble	6,777	169,425
Janne L.T. Wissel	7,455	186,375

(1) The value realized on vesting has been calculated assuming a price per share of $25.00, which is the mid-point of the range reflected on the cover page of this prospectus, multiplied by the number of shares vested.

Pension Benefits

Our named executive officers did not participate in, or otherwise receive any benefits under, any pension or retirement plan sponsored by us during the year ended December 31, 2006.

Nonqualified Deferred Compensation

During the year ended December 31, 2006, our named executive officers did not contribute to, or earn any amounts with respect to, any defined contribution or other plan sponsored by us that provides for the deferral of compensation on a basis that is not tax-qualified.

Non-Employee Director Compensation

Cash Compensation Arrangements

The non-employee members of our board of directors are reimbursed for travel and other reasonable expenses incurred in attending board or committee meetings. Other than respect to Mr. Sebulsky, members of our board of directors do not currently receive cash compensation for attending board or committee meetings. Mr. Sebulsky currently receives $1,500 for each board meeting he attends and $500 for each committee meeting he attends.

After this offering, we will continue to reimburse our non-employee directors for their travel and other reasonable expenses incurred in attending board or committee meetings. In addition, each non-employee director will receive an annual retainer of $30,000. The chair of the audit committee will receive a supplemental annual retainer of $15,000, the chair of the compensation committee will receive a supplemental annual retainer of $10,000, and the chair of each other committee of the board will receive a supplement annual retainer of $5,000.

Directors Deferred Compensation Plan

Our board of directors adopted the Directors Deferred Compensation Plan, or deferred plan, in 2007. The deferred plan allows each non-employee director to elect to defer receipt of all or a portion of his or

her annual retainer fees to a future date or dates. Any amounts deferred under the deferred plan are credited to a phantom stock account. The number of phantom shares of our common stock credited to each director's phantom stock account each year will be determined based on the amount of the compensation deferred during any given year, divided by the fair market value of our common stock on the date the retainer fees are due to be paid. Upon a separation from our board of directors or the occurrence of a change in control, each non-employee director will receive (or commence receiving, depending upon whether the director has elected to receive distributions from his or her phantom stock account in a lump sum or in installments over time) a distribution of his or her phantom stock account, in either cash or shares of our common stock (subject to the prior election of each such director). Any distributions in shares of our common stock will be paid with shares reserved under our 2007 Non-Employee Directors Stock Option Plan, which is described below. The deferred plan may be amended or terminated at any time by our board of directors, and in form and operation is intended to be compliant with Section 409A of the Internal Revenue Code of 1986, as amended.

2007 Non-Employee Directors Stock Option Plan

Our board of directors adopted our 2007 Non-Employee Directors Stock Option Plan, or 2007 directors plan, in May 2007, and our stockholders approved the 2007 directors plan in May 2007. The 2007 directors plan will become effective immediately upon the signing of the underwriting agreement for this offering. The 2007 directors plan provides for the automatic grant of nonstatutory stock options to purchase shares of common stock to our non-employee directors over their period of service on our board. In addition, the 2007 directors plan provides a source of shares to fund distributions under the deferred plan.

Share Reserve. Following this offering, the aggregate number of shares of common stock that may be issued initially under the 2007 directors plan is 200,000 shares. The number of shares of common stock reserved for issuance will automatically increase on January 1st, from January 1, 2008 through January 1, 2017, by the sum of (a) the excess of (i) the number of shares of common stock subject to options granted during the preceding calendar year, over (ii) the number of shares added back to the share reserve during the preceding calendar year and (b) the aggregate number of shares credited to our non-employee directors' stock accounts under the deferred plan. In no event may the amount of such annual increase exceed 200,000 shares.

If any option expires or terminates for any reason, in whole or in part, without having been exercised in full, the shares of common stock not acquired under such option will become available for future issuance under the 2007 directors plan. The following types of shares issued under the 2007 directors plan may again become available for the grant of new options: (a) any shares withheld to satisfy withholding taxes, (b) any shares used to pay the exercise price of an option in a net exercise arrangement and (c) shares tendered to us to pay the exercise price of an option. As of the date hereof, no shares of common stock have been issued under the 2007 directors plan.

Administration. All options granted under the 2007 directors plan are made in strict compliance with its express provisions. Subject to the provisions of the 2007 directors plan, our board of directors has the authority to construe and interpret the 2007 directors plan and the stock options granted under it, and to establish rules for its administration.

Initial Option. Pursuant to the terms of the 2007 directors plan, any individual who first becomes a non-employee director after the completion of this offering will automatically be granted an option to purchase 30,000 shares of our common stock. Each initial option will vest with respect to one-third of the shares on the first anniversary of the date of grant, and the balance in a series of 24 successive equal monthly installments thereafter.

Annual Option. Pursuant to the terms of the 2007 directors plan, each individual who is serving as a non-employee director on the first trading day on or after August 15 of each year, commencing on August 15, 2007, will automatically be granted an option to purchase 10,000 shares of our common stock on such date.

The shares subject to each such annual option vest in a series of 12 successive equal monthly installments measured from the date of grant.

Terms of All Options. The exercise price of each option granted under the 2007 directors plan is equal to 100% of the fair market value of our common stock on the date of grant. The maximum term of options granted under the 2007 directors plan is ten years. If a non-employee director's service relationship with us, or any of our affiliates, whether as a non-employee director or subsequently as an employee, director or consultant of ours or an affiliate, ceases for any reason other than disability or death, or after any 12-month period following a change in control, the optionee may exercise any vested options for a period of three months following the cessation of service. If such an optionee's service relationship with us, or any of our affiliates, ceases due to disability or death (or an optionee dies within a certain period following cessation of service), the optionee or a beneficiary may exercise the option for a period of 12 months in the event of disability, and 18 months in the event of death. If such an optionee's service terminates within 12 months following a specified change in control transaction, the optionee may exercise the option for a period of 12 months following the effective date of such a transaction. The option term may be extended in the event that exercise of the option following termination of service is prohibited by applicable securities laws. In no event, however, may an option be exercised beyond the expiration of its term.

Transferability of Options. Options granted under the 2007 directors plan are generally not transferable except by will, the laws of descent and distribution, or pursuant to a domestic relations order. However, an option may be transferred for no consideration upon written consent of our board of directors if (a) at the time of transfer, a Form S-8 registration statement under the Securities Act is available for the issuance of shares upon the exercise of such transferred option or (b) the transfer is to the optionee's employer or its affiliate at the time of transfer.

Changes to Capital Structure. In the event that there is a specified type of change in our capital structure, such as a stock split, appropriate adjustments will be made to (a) the number of shares reserved under the 2007 directors plan, (b) the maximum number of shares by which the share reserve may increase automatically each year, (c) the number of shares for which options are to be subsequently made to new and continuing non-employee directors and (d) the number of shares and exercise price of all outstanding options.

Corporate Transactions. In the event of certain significant corporate transactions, all outstanding options under the 2007 directors plan may be assumed, continued or substituted for by any surviving or acquiring entity (or its parent company). If the surviving or acquiring entity (or its parent company) elects not to assume, continue or substitute for such options, then (a) with respect to any such options that are held by optionees then performing services for us or our affiliates, the vesting and exercisability of such options will be accelerated in full and such options will be terminated if not exercised prior to the effective date of the corporate transaction and (b) all other outstanding options will terminate if not exercised prior to the effective date of the corporate transaction. Our board of directors may also provide that the holder of an outstanding option not assumed in the corporate transaction will surrender such option in exchange for a payment equal to the excess of (a) the value of the property that the optionee would have received upon exercise of the option, over (b) the exercise price otherwise payable in connection with the option.

Changes in Control. The vesting and exercisability of options held by non-employee directors who are either (a) required to resign their position in connection with a specified change in control transaction or (b) removed from their position in connection with such a change in control will be accelerated in full.

Director Compensation Table

The following table shows for the fiscal year ended December 31, 2006 certain information with respect to the compensation of all of our non-employee directors.

2006 Director Compensation Table

Name	Fees Earned or Paid in Cash ($)	Option Awards ($)(2)(3)	Total ($)
Adam H. Clammer	—	—	—
Samuel D. Colella	—	—	—
Bryan C. Cressey(1)	—	—	—
David Mayer(1)	—	—	—
Michael W. Michelson	—	—	—
James C. Momtazee	—	—	—
Kenneth W. O'Keefe	—	—	—
Jaimin R. Patel(4)	—	—	—
Alan M. Sebulsky	9,500(5)	22,475	31,975
James B. Tananbaum, M.D.	—	—	—

(1) Mr. Cressey joined our board of directors in October 2006 following the resignation of Mr. Mayer.
(2) We did not grant any stock option awards to our directors in 2006. The dollar amount in this column represents the compensation cost for the year ended December 31, 2006 of a stock option award granted in 2004. This amount has been calculated in accordance with SFAS No. 123R using the Black-Scholes option-pricing model. Pursuant to SEC rules, the amount shown excludes the impact of estimated forfeiture related to service-based vesting conditions. For a discussion of valuation assumptions, see Note 14 to our consolidated financial statements included elsewhere in this prospectus.
(3) At December 31, 2006, Mr. Sebulsky held a stock option exercisable for 9,036 shares of our common stock carrying an exercise price of $15.09 per share, 4,518 shares of which were vested and exercisable at December 31, 2006. In addition, on May 1, 2007, the board approved the grant of a stock option to Mr. Sebulsky to purchase 17,500 shares of our common stock, such option to be granted on the date of the signing of the underwriting agreement for this offering and to have an exercise price equal to the initial public offering price. The stock option vests as to one-third of the shares on the first anniversary of the date of the signing of the underwriting agreement for this offering, and the balance in series of 24 successive equal monthly installments thereafter. None of the other directors listed in the table above held any outstanding stock options at December 31, 2006.
(4) Mr. Patel joined our board of directors in May 2007.
(5) Consists of fees earned for board and committee meeting attendance.

Limitation of Liability and Indemnification

Our fourth amended and restated certificate of incorporation and amended and restated bylaws to be in effect upon the closing of this offering limit the liability of our directors, officers, employees and other agents to the fullest extent permitted by Delaware law; provided, however, that we indemnify any such person in connection with a proceeding initiated by such person only if such indemnification is expressly required by law, the proceeding was authorized by our board of directors, the indemnification is provided by us, in our sole discretion, pursuant to the Delaware General Corporation Law or other applicable law or is otherwise expressly required by our amended and restated bylaws. Section 145 of the Delaware General Corporation Law permits indemnification of officers, directors and other agents under certain circumstances and subject to certain limitations. Delaware law also permits a corporation to not hold its directors personally liable for monetary damages for breach of their fiduciary duties as directors, except for liability for: (1) breach of their duty of loyalty to the corporation or its stockholders, (2) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (3) unlawful payments of dividends or unlawful stock repurchases or redemptions and (4) any transaction from which the director derived an improper personal benefit. This limitation of liability does not apply to liabilities arising under the federal or state securities laws and does not affect the availability of equitable remedies such as injunctive relief or rescission.

Our amended and restated bylaws also permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in this capacity. We have obtained directors and officers' liability insurance to cover certain liabilities described above. Messrs. Clammer, Michelson, Momtazee and Patel are further insured by liability insurance that has been purchased by Kohlberg Kravis Roberts & Co. L.P. on their behalf for any excess liabilities that are not covered by our liability insurance. Mr. Colella is insured by liability insurance purchased on his behalf by, and indemnified pursuant to the governing agreements of, Versant Ventures for his service on our board of directors.

We have entered into indemnity agreements with each of our directors and executive officers that require us to indemnify such persons against any and all expenses (including attorneys' fees), witness fees, judgments, fines, settlements and other amounts incurred (including expenses of a derivative action) in connection with any action, suit or proceeding or alternative dispute resolution mechanism, inquiry hearing or investigation, whether threatened, pending or completed, to which any such person may be made a party by reason of the fact that such person is or was a director, an officer or an employee of us or any of our affiliated enterprises, provided that such person's conduct did not constitute a breach of his or her duty of loyalty to us or our stockholders, and was not an act or omission not in good faith or which involved intentional misconduct or a knowing violation of laws. The indemnity agreements also set forth certain procedures that will apply in the event of a claim for indemnification thereunder. We believe that these provisions and agreements are necessary to attract and retain qualified persons as officers and directors of our company.

At present, there is no pending litigation or proceeding involving a director or officer of our company for which indemnification is required or permitted, and we are not aware of any threatened litigation or proceeding that may result in a claim for indemnification.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted by directors, executive officers or persons controlling us, we have been informed that in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

The following is a summary of transactions since our inception to which we have been a party in which the amount involved exceeded $120,000 and in which any of our executive officers, directors or beneficial holders of more than 5% of our capital stock had or will have a direct or indirect material interest, other than compensation arrangements which are described under the section of this prospectus entitled "Management—Executive Compensation."

Related Party Transaction Policy

In 2007, we adopted a Related Party Transaction Policy that sets forth our procedures for the identification, review, consideration and approval or ratification of "related-person transactions." The policy will become effective immediately upon the signing of the underwriting agreement for this offering. For purposes of our policy only, a "related-person transaction" is a transaction, arrangement or relationship (or any series of similar transactions, arrangements or relationships) in which we and any "related person" are, were or will be participants in which the amount involves exceeds $120,000. Transactions involving compensation for services provided to us as an employee or director are not covered by this policy. A "related person" is any executive officer, director or beneficial owner of more than 5% of any class of our voting securities, including any of their immediate family members and any entity owned or controlled by such persons.

Under the policy, if a transaction has been identified as a related-person transaction (including any transaction that was not a related-person transaction when originally consummated or any transaction that was not initially identified as a related-person transaction prior to consummation), our management must present information regarding the related-person transaction to our audit committee (or, if audit committee approval would be inappropriate, to another independent body of our board of directors) for review, consideration and approval or ratification. The presentation must include a description of, among other things, the material facts, the interests, direct and indirect, of the related persons, the benefits to us of the transaction and whether the transaction is on terms that are comparable to the terms available to or from, as the case may be, an unrelated third party or to or from employees generally. Under the policy, we will, on an annual basis, collect information that our general counsel deems reasonably necessary from each director, executive officer and (to the extent feasible) significant stockholder to enable us to identify any existing or potential related-person transactions and to effectuate the terms of the policy. In addition, under our Code of Conduct, our employees and directors have an affirmative responsibility to disclose any transaction or relationship that reasonably could be expected to give rise to a conflict of interest to our general counsel, or, if the employee is an executive officer, to our board of directors. In considering related-person transactions, our audit committee (or other independent body of our board of directors) will take into account the relevant available facts and circumstances including, but not limited to:

- the risks, costs and benefits to us;
- the impact on a director's independence in the event that the related person is a director, immediate family member of a director or an entity with which a director is affiliated;
- the terms of the transaction;
- the availability of other sources for comparable services or products; and
- the terms available to or from, as the case may be, unrelated third parties or to or from employees generally.

The policy requires that, in determining whether to approve, ratify or reject a related-person transaction, our audit committee (or other independent body of our board of directors) must consider, in light of known circumstances, whether the transaction is in, or is not inconsistent with, our best interests and those of our stockholders, as our audit committee (or other independent body of our board of directors) determines in the good faith exercise of its discretion. All of the transactions described below were entered into prior to the adoption of the policy and were approved by our board of directors.

Sales of Securities

The shares of common stock set forth in the table below were purchased by our executive officers and directors in March 2003 at a per share price of $.03, in April 2003 at per share prices of $.06 and $.11, in October 2003 at a per share price of $1.11, in January 2004 at a per share price of $1.11 and in September 2004 at a per share price of $15.09, for aggregate consideration of $338,033.

During the period from April 2003 through January 2004, we issued and sold an aggregate of 1,355,377 shares of our Series A preferred stock at a per share price of $11.07 for aggregate consideration of $15.0 million. During the period from February 2004 through December 2006, we issued and sold an aggregate of 7,951,755 shares of our Series B preferred stock at a per share price of $15.09 for aggregate consideration of approximately $120.0 million. During the period from February 2004 through December 2006, we also issued and sold an aggregate of 8,614,419 shares of our Series B Prime preferred stock at a per share price of $15.09 for aggregate consideration of approximately $130.0 million.

In June 2005, we issued warrants to purchase an aggregate of 785,728 shares of our Series BB preferred stock in connection with the issuance of senior secured notes in the aggregate principal amount of $80.0 million. The warrants have an exercise price of $20.36 per share. In connection with the conversion of all our outstanding shares of preferred stock into common stock immediately prior to the closing of this offering, the warrants will automatically become exercisable for shares of common stock. These warrants will terminate on June 24, 2012, unless exercised earlier.

We believe that the terms obtained or consideration that we paid or received, as applicable, in connection with the transactions described were comparable to terms available or the amounts that would be paid or received, as applicable, in arm's-length transactions.

Purchaser	Common Stock	Series A Preferred Stock	Series B Preferred Stock	Series B Prime Preferred Stock	Series BB Preferred Stock Warrants
Executive Officers and Directors					
Bruce C. Cozadd(1)	178,910	—	66,264	—	—
Samuel R. Saks, M.D.(2)	238,546	13,553	66,264	—	—
Robert M. Myers(3)	94,650	—	46,385	—	—
Matthew K. Fust(4)	29,818	—	19,879	—	—
Carol A. Gamble(5)	27,107	—	—	—	—
Janne L.T. Wissel(6)	29,818	—	66,264	—	—
Alan M. Sebulsky(7)	13,252	—	—	—	—
Principal Stockholders(8)					
Entities affiliated with Kohlberg Kravis Roberts & Co. L.P.(9)	—	—	—	8,614,419	245,540
Entities affiliated with Thoma Cressey Bravo, Inc.(10)	—	—	1,987,942	—	—
Entities affiliated with Beecken Petty O'Keefe & Company(11)	—	—	1,325,295	—	—
Entities affiliated with Prospect Venture Partners(12)	—	670,912	563,249	—	—
Entities affiliated with Versant Ventures(13)	—	670,912	563,249	—	—
Entities affiliated with Golden Gate Capital(14)	—	—	993,969	—	—
Entities affiliated with Lehman Brothers Holdings Inc.(15)	—	—	662,645	—	304,469

(1) Includes 3,728 shares of common stock that are subject to our right of repurchase as of March 31, 2007, which such right of repurchase lapsed in full on April 1, 2007.

(2) Includes 4,970 shares of common stock that are subject to our right of repurchase as of March 31, 2007, which such right of repurchase lapsed in full on April 1, 2007.
(3) Includes 5,474 shares of common stock that are subject to our right of repurchase as of March 31, 2007, which such right of repurchase lapses in full on December 18, 2007.
(4) Includes 622 shares of common stock that are subject to our right of repurchase as of March 31, 2007, which such right of repurchase lapses in full on April 30, 2007.
(5) Includes 565 shares of common stock that are subject to our right of repurchase as of March 31, 2007, which such right of repurchase lapsed in full on April 18, 2007.
(6) Includes 3,728 shares of common stock that are subject to our right of repurchase as of March 31, 2007, which such right of repurchase lapses in full on September 3, 2007.
(7) Includes 4,418 shares of common stock that are subject to our right of repurchase as of March 31, 2007, which such right of repurchase lapses in full on July 13, 2008.
(8) Certain of our directors are associated with our principal stockholders as indicated in the table below:

Director	Principal Stockholder
Adam H. Clammer	Entities affiliated with Kohlberg Kravis Roberts & Co. L.P.
Samuel D. Colella	Entities affiliated with Versant Ventures
Bryan C. Cressey	Entities affiliated with Thoma Cressey Bravo
Michael W. Michelson	Entities affiliated with Kohlberg Kravis Roberts & Co. L.P.
James C. Momtazee	Entities affiliated with Kohlberg Kravis Roberts & Co. L.P.
Kenneth W. O'Keefe	Entities affiliated with Beecken Petty O'Keefe & Company
Jaimin R. Patel	Entities affiliated with Kohlberg Kravis Roberts & Co. L.P.
James B. Tananbaum, M.D.	Entities affiliated with Prospect Venture Partners

(9) Consists of 8,577,974 shares of Series B Prime preferred stock held by KKR JP LLC, 36,445 shares of Series B Prime preferred stock held by KKR JP III LLC and warrants to purchase 245,540 shares of Series BB preferred stock held by KKR TRS Holdings, Inc.
(10) Consists of 1,957,380 shares of Series B preferred stock held by Thoma Cressey Fund VII, LP and 30,562 shares of Series B preferred stock held by Thoma Cressey Friends Fund VII, LP.
(11) Consists of 1,325,295 shares of Series B preferred stock held by Jazz Investors LLC.
(12) Consists of 660,849 shares of Series A preferred stock and 554,801 shares of Series B preferred stock held by Prospect Venture Partners II, L.P. and 10,063 shares of Series A preferred stock and 8,448 shares of Series B preferred stock held by Prospect Associates II, L.P.
(13) Consists of 652,693 shares of Series A preferred stock and 547,954 shares of Series B preferred stock held by Versant Venture Capital II, L.P., 12,386 shares of Series A preferred stock and 10,398 shares of Series B preferred stock held by Versant Affiliates Fund II-A, L.P., and 5,833 shares of Series A preferred stock and 4,897 shares of Series B preferred stock held by Versant Side Fund II, L.P.
(14) Consists of 860,336 shares of Series B preferred stock held by CCG Investment Fund, LP, 43,461 shares of Series B preferred stock held by CCG AV, LLC-Series C, 47,269 shares of Series B preferred stock held by CCG Associates-QP, LLC, 11,499 shares of Series B preferred stock held by CCG AV, LLC-Series A, 11,525 shares of Series B preferred stock held by CCG Investment Fund-AI, LP, and 19,879 shares of Series B preferred stock held by CCG CI, LLC.
(15) Consists of 165,661 shares of Series B preferred stock held by Lehman Brothers HealthCare Venture Capital LP, 317,076 shares of Series B preferred stock held by Lehman Brothers PA LLC, 142,858 shares of Series B preferred stock held by Lehman Brothers Partnership Account 2000/2001, LP, 37,050 shares of Series B preferred stock held by Lehman Brothers Offshore Partnership Account 2000/2001 LP, and warrants to purchase 304,469 shares of Series BB Preferred Stock held by LB I Group Inc. Lehman Brothers Holdings Inc. is affiliated with Lehman Brothers Inc., which is acting as a representative of the underwriters of this offering.

Senior Secured Notes

In June 2005, we issued senior secured notes in the aggregate principal amount of $80.0 million with interest payable on the notes at the rate of 15% per year, payable quarterly in arrears. The notes are due and payable on June 24, 2011. As of March 31, 2007, KKR TRS Holdings, Inc., an entity affiliated with Kohlberg Kravis Roberts & Co. L.P., and LB I Group, an entity affiliated with Lehman Brothers Holdings Inc., both of which are significant stockholders, held $25.0 million and $31.0 million, respectively, in principal amount of these senior secured notes which represented the largest aggregate amount of principal balance outstanding to date for each of these note holders. The interest payments made to KKR TRS Holdings, Inc. during the fiscal years ended December 31, 2005 and 2006 and the three months ended March 31, 2007 were approximately $1.9 million, $3.8 million and $.9 million, respectively. The interest payments made to LB I Group during the fiscal years ended December 31, 2005 and 2006 and the three months ended March 31, 2007 were approximately $2.3 million, $4.6 million and $1.2 million, respectively. There were no payments of principal made in either of these periods. Lehman Brothers Inc., one of the representatives of the underwriters of this offering, is affiliated with Lehman Brothers Holdings Inc. In connection with the issuance of the senior secured notes, we issued warrants

to purchase 245,540 and 304,469 shares of our Series BB preferred stock to KKR TRS Holdings, Inc. and LB I Group, respectively.

Third Amended and Restated Investor Rights Agreement

We entered into an investor rights agreement with certain purchasers of our common stock, preferred stock and warrants to purchase our Series BB preferred stock, including our principal stockholders with which certain of our directors are affiliated. As of March 31, 2007, the holders of 19,306,128 shares of our common stock, including the shares of common stock issuable upon the conversion of our preferred stock and exercise of outstanding warrants, are entitled to rights with respect to the registration of their shares under the Securities Act. In addition, upon exercise of outstanding options by our executive officers, our executive officers will be entitled to rights with respect to registration of the shares of common stock acquired upon exercise. For a description of these registration rights, see "Description of Capital Stock—Registration Rights."

Second Amended and Restated Voting Agreement

The election of the members of our board of directors is governed by a voting agreement with certain of the purchasers of our outstanding common stock, preferred stock and warrants to purchase our Series BB preferred stock, including our principal stockholders with which certain of our directors are affiliated, and by related provisions of our second amended and restated certificate of incorporation. The parties to the voting agreement have agreed, subject to certain conditions, to vote their shares so as to elect as directors the nominees designated by certain of our investors, including KKR JP LLC and its affiliated funds, Thoma Cressey Fund VII, L.P. and its affiliated funds, Jazz Investors LLC, Versant Venture Capital II, L.P. and its affiliated funds, and Prospect Venture Partners II, L.P. and its affiliated funds. In addition, so long as Mr. Cozadd and Dr. Saks are employed by us, the parties to the voting agreement have agreed to vote their shares so as to elect each of Mr. Cozadd and Dr. Saks to our board of directors. The parties further agreed to vote their shares so as to elect up to three persons who are not affiliates of us or any of our stockholders, and which nominees are nominated by at least two-thirds of our board of directors. Upon the signing of the underwriting agreement for this offering, the obligations of the parties to the voting agreement to vote their shares so as to elect as these nominees will terminate and none of our stockholders will have any special rights regarding the nomination, election or designation of members of our board of directors.

Other Transactions

We have entered into employment agreements with our executive officers that, among other things, provide for certain severance and change of control benefits. For a description of these agreements, see "Management—Executive Compensation—Executive Employment Agreements."

We have granted stock options to our executive officers and to one of our directors. For a description of these options, see "Management—Non-Employee Director Compensation" and "—Executive Compensation."

We have entered into indemnity agreements with our directors and executive officers. For a description of these agreements, see "Management—Limitation of Liability and Indemnification."

PRINCIPAL STOCKHOLDERS

The following table sets forth the beneficial ownership of our common stock as of March 31, 2007 by:

- each person, or group of affiliated persons, who is known by us to beneficially own more than 5% of our common stock;
- each of the named executive officers;
- each of our directors; and
- all of our executive officers and directors as a group.

The percentage ownership information shown in the table is based upon 18,550,554 shares outstanding as of March 31, 2007, assuming the conversion of all outstanding shares of our preferred stock as of March 31, 2007, and the issuance of 6,000,000 shares of common stock in this offering. The percentage ownership information assumes no exercise of the underwriters' overallotment option.

Information with respect to beneficial ownership has been furnished by each director, officer or beneficial owner of more than 5% of our common stock. We have determined beneficial ownership in accordance with the rules of the SEC. These rules generally attribute beneficial ownership of securities to persons who possess sole or shared voting power or investment power with respect to those securities. In addition, the rules include shares of common stock issuable pursuant to the exercise of stock options or warrants that are either immediately exercisable or exercisable on or before May 30, 2007, which is 60 days after March 31, 2007. These shares are deemed to be outstanding and beneficially owned by the person holding those options or a warrant for the purpose of computing the percentage ownership of that person, but they are not treated as outstanding for the purpose of computing the percentage ownership of any other person. Unless otherwise indicated, the persons or entities identified in this table have sole voting and investment power with respect to all shares shown as beneficially owned by them, subject to applicable community property laws.

Except as otherwise noted below, the address for person or entity listed in the table is c/o Jazz Pharmaceuticals, Inc., 3180 Porter Drive, Palo Alto, California 94304.

Name of Beneficial Owner	Number of Shares Beneficially Owned	Percentage of Shares Beneficially Owned	
		Before Offering	After Offering
5% Stockholders			
Entities affiliated with Kohlberg Kravis Roberts & Co. L.P.			
KKR JP, LLC(1)	8,577,974	46.24%	34.94%
KKR JP III LLC(1)	36,445	*	*
KKR TRS Holdings, Inc.(2)	245,540	1.31	*
Entities affiliated with Thoma Cressey Bravo, Inc.(3)	1,987,942	10.72	8.10
Entities affiliated with Beecken Petty O'Keefe & Company(4)	1,325,295	7.14	5.40
Entities affiliated with Prospect Venture Partners(5)	1,234,161	6.65	5.03
Entities affiliated with Versant Ventures(6)	1,234,161	6.65	5.03
Entities affiliated with Golden Gate Capital(7)	993,969	5.36	4.05
Entities affiliated with Lehman Brothers Holdings Inc.(8)	967,114	5.13	3.89
Named Executive Officers and Directors			
Bruce C. Cozadd(9)	467,425	2.49	1.89
Samuel R. Saks, M.D.(10)	540,614	2.88	2.18
Robert M. Myers(11)	363,286	1.94	1.47
Matthew K. Fust(12)	134,538	*	*
Janne L.T. Wissel(13)	180,923	*	*
Carol A. Gamble(14)	111,948	*	*
Adam H. Clammer(15)	—	—	—
Samuel D. Colella(16)	1,234,161	6.65	5.03
Bryan C. Cressey(17)	1,987,942	10.72	8.10
Michael W. Michelson(18)	8,859,959	47.14	35.73
James C. Momtazee(19)	—	—	—
Kenneth W. O'Keefe(20)	1,325,295	7.14	5.40
Jaimin R. Patel(21)	—	—	—
Alan M. Sebulsky(22)	17,770	*	*
James B. Tananbaum, M.D.(23)	1,234,161	6.65	5.03
All directors and executive officers as a group (15 persons)(24)	16,458,022	83.45%	63.98%

* Represents beneficial ownership of less than 1%.

(1) All of the outstanding equity interests of KKR JP LLC are owned directly by KKR Millennium Fund L.P. KKR Millennium GP LLC is the general partner of KKR Associates Millennium L.P., which is the general partner of KKR Millennium Fund L.P. All of the outstanding equity interests of KKR JP III LLC are owned directly by KKR Partners III, L.P. KKR III GP LLC is the general partner of KKR Partners III, L.P. The entities named in this footnote (1) are sometimes referred to as the KKR Funds. KKR Millennium GP LLC and KKR III GP LLC are limited liability companies, the managing members of which are Messrs. Henry R. Kravis and George R. Roberts, and the other members of which are James H. Greene, Jr., Paul E. Raether, Mr. Michelson, Perry Golkin, Johannes P. Huth, Todd A. Fisher, Alexander Navab, Marc Lipschultz, Jacques Garaialde, Reinhard Gorenflos, Michael M. Calbert and Scott C. Nuttall. Mr. Michelson is a member of our board of directors. Each of such individuals may be deemed to share beneficial ownership of any shares beneficially owned by KKR Millennium GP LLC and KKR III GP LLC, but disclaim beneficial ownership of such shares. Mr. Clammer is a member of our board of directors and is a member of KKR & Co. L.L.C. which is the general partner of Kohlberg Kravis Roberts & Co. L.P., which is an affiliate of the KKR Funds. Mr. Momtazee is a member of our board of directors and is an executive of Kohlberg Kravis Roberts & Co. L.P. Mr. Patel is a member of our board of directors and is an associate of Kohlberg Kravis Roberts & Co. L.P. Each of Messrs. Clammer, Momtazee and Patel disclaim beneficial ownership of any shares beneficially owned by the KKR Funds. The address of the KKR Funds and Messrs. Kravis, Raether, Golkin, Navab, Lipschultz and Nuttall is c/o Kohlberg Kravis Roberts & Co. L.P., 9 West 57th Street, New York, NY 10019. The address of Messrs. Roberts, Michelson, Greene, Calbert, Clammer, Momtazee and Patel is 2800 Sand Hill Road, Suite 200, Menlo Park, CA 94025. The address of Messrs. Fisher, Huth, Gorenflos and Garaialde is c/o Kohlberg Kravis Roberts & Co. Ltd., Stirling Square, 7 Carlton Garden, London SW1Y 5AD, England.

(2) Consists of 245,540 shares that KKR TRS Holdings, Inc. has the right to acquire within 60 days of March 31, 2007 through the exercise of a warrant. All of the outstanding equity interests of KKR TRS Holdings, Inc. are owned by KKR Financial Corp. KKR Financial Advisors LLC is the manager of KKR Financial Corp. KKR Financial LLC is the sole member of KKR Financial Advisors LLC. Kohlberg Kravis Roberts & Co. L.P. owns a majority of the outstanding equity interests of KKR Financial LLC. KKR & Co. L.L.C. is the general partner of Kohlberg Kravis Roberts & Co. L.P. The investment committee of KKR Financial Advisors LLC reviews the investments held by KKR Financial Corp. Mr. Nuttall is one of four members of the investment committee, and Messrs. Kravis and Roberts are ad hoc members of the investment committee. The members of KKR & Co. L.L.C. consist of the individuals named in footnote (1) above (other than Messrs. Momtazee and Patel) and other executives of Kohlberg Kravis Roberts & Co. L.P., and in such capacity may be deemed to share beneficial ownership of any shares beneficially owned by KKR & Co. L.L.C., but disclaim beneficial ownership of such shares. The address of KKR TRS Holdings, Inc., KKR Financial Corp. and KKR Financial LLC is 555 California Street, 50th Floor, San Francisco, CA 94104.

(3) Consists 1,957,380 shares held by Thoma Cressey Fund VII, LP and 30,562 shares held by Thoma Cressey Friends Fund VII, LP. Mr. Cressey, Orlando Bravo, Lee Mitchell and Carl Thoma are partners of Thoma Cressey Bravo, Inc., which is the general partner of each of Thoma Cressey Fund VII, LP and Thoma Cressey Friends Fund VII, LP., or the Thoma Cressey Funds, and are deemed to have shared voting and investment power over the shares held by the Thoma Cressey Funds. Each of Messrs. Cressey, Bravo, Mitchell and Thoma disclaim beneficial ownership of the shares held by the Thoma Cressey Funds, except to the extent of each of their pecuniary interest therein. The address for all entities and individuals affiliated with Thoma Cressey Bravo is Sears Tower, 92nd Floor, 22 South Wacker Drive, Chicago, IL 60606.

(4) Consists of 1,325,295 shares held by Jazz Investors LLC. Mr. O'Keefe, David K. Beecken, William G. Petty, Jr., Thomas A. Schlesinger, David J. Cooney, Gregory A. Moerschel and John W. Kneen are partners of Beecken Petty O'Keefe & Company, which is the general partner of Jazz Investors LLC, and are deemed to have shared voting and investment power over the shares held by Jazz Investors LLC. Each of Messrs. O'Keefe, Beecken, Petty, Schlesinger, Cooney, Moerschel and Kneen disclaim beneficial ownership of the shares held by Jazz Investors LLC, except to the extent of each of their pecuniary interest therein. The address for all entities and individuals affiliated with Beecken Petty O'Keefe & Company is 131 South Dearborn Street, Ste. 2800, Chicago, IL 60603.

(5) Consists of 1,215,650 shares held by Prospect Venture Partners II, L.P. and 18,511 shares held by Prospect Associates II, L.P. Dr. Tananbaum is a managing member of Prospect Management Co. II, L.L.C., which is the general partner of each of Prospect Venture Partners II, L.P. and Prospect Associates II, L.P., or the Prospect Funds. The managing members of Prospect Management Co. II, L.L.C. are deemed to have shared voting and investment power over the shares held by the Prospect Funds. Dr. Tananbaum disclaims beneficial ownership of the shares held by the Prospect Funds, except to the extent of his pecuniary interest therein. The address for all entities and individuals affiliated with Prospect Venture Partners is 435 Tasso Street, Suite 200, Palo Alto, CA 94301.

(6) Consists of 1,200,647 shares held by Versant Venture Capital II, L.P., 22,784 shares held by Versant Affiliates Fund II-A, L.P. and 10,730 shares held by Versant Side Fund II, L.P. Mr. Colella is a managing member of Versant Ventures II, LLC, which is the general partner of each of Versant Venture Capital II, L.P., Versant Affiliates Fund II-A, L.P. and Versant Side Fund II, L.P., or the Versant Funds, and is deemed to have shared voting and investment power over the shares held by the Versant Funds. Mr. Colella disclaims beneficial ownership of the shares held by the Versant Funds, except to the extent of his pecuniary interest therein. The address for all entities and individuals affiliated with Versant Ventures II LLC is 3000 Sand Hill Road, Building 4, Ste. 210, Menlo Park, CA 94025.

(7) Consists of 47,269 shares held by CCG Associates-QP, LLC, 11,499 shares held by CCG AV, LLC-Series A, 43,461 shares held by CCG AV, LLC-Series C, 19,879 shares held by CCG CI, LLC, 860,336 shares held by CCG Investment Fund, LP and 11,525 shares held by CCG Investment Fund-AI, LP. Golden Gate Capital Management, L.L.C. is the general partner or managing member of CCG Associates-QP, LLC, CCG AV, LLC-Series A, CCG AV, LLC-Series C, CCG CI, LLC, CCG Investment Fund, LP and CCG Investment Fund–AI, LP, or the CCG Funds. Messrs. David C. Dominik and Jesse T. Rogers, as principal managing members of Golden Gate Capital Management, L.L.C., are deemed to have shared voting and investment power over the shares held by the CCG Funds. Each of Messrs. Dominik and Rogers disclaim beneficial ownership of the shares held by the CCG Funds, except to the extent of each of their pecuniary interest therein. The address for all entities and individuals affiliated with Golden Gate Capital is One Embarcadero Center, 33rd Floor, San Francisco, CA 94111.

(8) Consists of 165,661 shares held by Lehman Brothers HealthCare Venture Capital LP, 317,076 shares held by Lehman Brothers PA LLC, 142,858 shares held by Lehman Brothers Partnership Account 2000/2001, LP, 37,050 shares held by Lehman Brothers Offshore Partnership Account 2000/2001 LP, and warrants to purchase 304,469 shares held by LB I Group Inc. Each of the foregoing entities is managed by a subsidiary of Lehman Brothers Holdings Inc. The address for all entities and individuals affiliated with Lehman Brothers Holdings Inc. is 399 Park Avenue, New York, NY 10022. Lehman Brothers Holdings Inc. is affiliated with Lehman Brothers Inc., which is acting as a representative of the underwriters of this offering.

(9) Includes 222,251 shares Mr. Cozadd has the right to acquire within 60 days of March 31, 2007 through the exercise of options.

(10) Includes 222,251 shares Dr. Saks has the right to acquire within 60 days of March 31, 2007 through the exercise of options.

(11) Includes 222,251 shares Mr. Myers has the right to acquire within 60 days of March 31, 2007 through the exercise of options, and 3,064 shares subject to our unvested share repurchase right within 60 days of March 31, 2007.

(12) Includes 84,841 shares Mr. Fust has the right to acquire within 60 days of March 31, 2007 through the exercise of options.

(13) Includes 84,841 shares Ms. Wissel has the right to acquire within 60 days of March 31, 2007 through the exercise of options, and 2,485 shares subject to our unvested share repurchase right within 60 days of March 31, 2007.

(14) Includes 84,841 shares Ms. Gamble has the right to acquire within 60 days of March 31, 2007 through the exercise of options.

(15) See Notes (1) and (2) above.

(16) Consists solely of the shares described in Note (6) above. Mr. Colella disclaims beneficial ownership of these shares, except to the extent of his pecuniary interest therein.

(17) Consists solely of the shares described in Note (3) above. Mr. Cressey disclaims beneficial ownership of these shares, except to the extent of his pecuniary interest therein.
(18) Consists solely of the shares described in Notes (1) and (2) above. Mr. Michelson disclaims beneficial ownership of these shares.
(19) See Notes (1) and (2) above.
(20) Consists solely of the shares described in Note (4) above. Mr. O'Keefe disclaims beneficial ownership of these shares, except to the extent of his pecuniary interest therein.
(21) See Notes (1) and (2) above.
(22) Includes 4,518 shares Mr. Sebulsky has the right to acquire within 60 days of March 31, 2007 through the exercise of options, and 3,865 shares subject to our unvested share repurchase right within 60 days of March 31, 2007.
(23) Consists solely of the shares described in Note (5) above. Dr. Tananbaum disclaims beneficial ownership of these shares, except to the extent of his pecuniary interest therein.
(24) Includes 14,641,518 shares held by entities affiliated with certain of our directors, 925,794 shares that certain of our executive officers and directors have the right to acquire within 60 days of March 31, 2007 through the exercise of options and 9,414 shares subject to our unvested share repurchase right within 60 days of March 31, 2007.

DESCRIPTION OF CAPITAL STOCK

Upon the closing of this offering and the filing of our fourth amended and restated certificate of incorporation, our authorized capital stock will consist of 150,000,000 shares of common stock, par value $.0001 per share, and 20,000,000 shares of preferred stock, par value $.0001 per share.

The following is a summary of the rights of our common stock and preferred stock. This summary is not complete. For more detailed information, please see our fourth amended and restated certificate of incorporation and amended and restated bylaws, which are filed as exhibits to the registration statement of which this prospectus is a part.

Common Stock

Outstanding Shares

Based on 629,003 shares of common stock outstanding as of March 31, 2007, the conversion of outstanding preferred stock as of March 31, 2007 into 17,921,551 shares of common stock upon the completion of this offering, the issuance of 6,000,000 shares of common stock in this offering, and no exercise of options or warrants, there will be 24,550,554 shares of common stock outstanding upon the closing of this offering. As of March 31, 2007, assuming the conversion of all outstanding preferred stock into common stock upon the closing of this offering, we had approximately 47 record holders of our common stock.

As of March 31, 2007, there were 785,728 shares of common stock subject to outstanding warrants, assuming the conversion of all outstanding preferred stock into common stock upon the closing of this offering, and 1,862,530 shares of common stock subject to outstanding options.

Voting Rights

Each holder of common stock is entitled to one vote for each share on all matters submitted to a vote of the stockholders, including the election of directors. Our fourth amended and restated certificate of incorporation and amended and restated bylaws do not provide for cumulative voting rights. Because of this, the holders of a majority of the shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they should so choose.

Dividends

Subject to preferences that may be applicable to any then outstanding preferred stock, holders of common stock are entitled to receive dividends, if any, as may be declared from time to time by our board of directors out of legally available funds.

Liquidation

In the event of our liquidation, dissolution or winding up, holders of common stock will be entitled to share ratably in the net assets legally available for distribution to stockholders after the payment of all of our debts and other liabilities and the satisfaction of any liquidation preference granted to the holders of any then outstanding shares of preferred stock.

Rights and Preferences

Holders of common stock have no preemptive, conversion, subscription or other rights, and there are no redemption or sinking fund provisions applicable to the common stock. The rights, preferences and privileges of the holders of common stock are subject to and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that we may designate in the future.

Fully Paid and Nonassessable

All of our outstanding shares of common stock are, and the shares of common stock to be issued pursuant to this offering will be, fully paid and nonassessable.

Preferred Stock

Upon the closing of this offering, all outstanding shares of preferred stock will have been converted into shares of common stock. See Note 12 to our consolidated financial statements for a description of the currently outstanding preferred stock. Following this offering, our fourth amended and restated certificate of incorporation will be amended and restated to delete all references to such shares of preferred stock. Under our fourth amended and restated certificate of incorporation, our board of directors will have the authority, without further action by the stockholders, to issue up to 20,000,000 shares of preferred stock in one or more series, to establish from time to time the number of shares to be included in each such series, to fix the rights, preferences and privileges of the shares of each wholly unissued series and any qualifications, limitations or restrictions thereon and to increase or decrease the number of shares of any such series (but not below the number of shares of such series then outstanding).

Our board of directors may authorize the issuance of preferred stock with voting or conversion rights that could adversely affect the voting power or other rights of the holders of the common stock. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions and other corporate purposes, could, among other things, have the effect of delaying, deferring or preventing a change in our control and may adversely affect the market price of the common stock and the voting and other rights of the holders of common stock. We have no current plans to issue any shares of preferred stock.

Warrants

As of March 31, 2007, warrants exercisable for 785,728 shares of our Series BB preferred stock at an exercise price of $20.36 per share were outstanding. These warrants were issued in June 2005 under a senior secured note and warrant purchase agreement entered into in connection with our acquisition of Orphan Medical. In connection with the conversion of all our outstanding shares of preferred stock into common stock immediately prior to the closing of this offering, the warrants will automatically become exercisable for shares of common stock. The warrants have a net exercise provision under which their holders may, in lieu of payment of the exercise price in cash, surrender the warrant and receive a net amount of shares based on the fair market value of our stock at the time of exercise of the warrants after deduction of the aggregate exercise price. The warrants contain provisions for the adjustment of the exercise price and the number of shares issuable upon the exercise of the warrants in the event of certain stock dividends, stock splits, reorganizations, reclassifications and consolidations. The warrants will terminate on June 24, 2012 if not exercised earlier.

Registration Rights

Under our investor rights agreement, following the closing of this offering, the holders of approximately 19,306,128 shares of common stock, including warrants to purchase 785,728 shares of common stock, or their transferees, have the right to require us to register their shares with the SEC so that those shares may be publicly resold, or to include their shares in any registration statement we file, in each case as described below. If our executive officers exercise outstanding stock options, the shares of common stock acquired on exercise would have the registration rights described below.

Demand Registration Rights

At any time after six months following the effective date of the registration statement for this offering, the holders of at least 40% of the shares having registration rights (or a lesser number if the anticipated aggregate amount of shares to be sold is expected to not be less than $25.0 million), and each holder who was an original

purchaser of at least 4,517,932 shares of our Series B preferred stock and/or Series B Prime preferred stock, each have the right to demand that we file one registration statement. These registration rights are subject to specified conditions and limitations, including the right of the underwriters to limit the number of shares included in any such registration under certain circumstances.

Form S-3 Registration Rights

At any time after we are qualified to file a registration statement on Form S-3, the holders of at least 20% of the shares having registration rights and each holder who is an original purchaser of $40.0 million in original issue price of shares having registration rights, each have the right to demand that we file a registration statement on Form S-3 so long as the aggregate amount of shares to be sold under the registration statement on Form S-3 is at least $25.0 million. A holder who was an original purchaser of $40.0 million in original issue price of our shares having registration rights has the right to demand one registration statement for each $40.0 million in original issue price of such shares having registration rights that the holder purchased. We are only obligated to file up to two registration statement on Form S-3 in any 12 month period. These registration rights are subject to specified conditions and limitations, including the right of the underwriters to limit the number of shares included in any such registration under certain circumstances.

Piggyback Registration Rights

At any time after the closing of this offering, if we propose to register any of our securities under the Securities Act either for our own account or for the account of other stockholders, a stockholder with registration rights will have the right, subject to certain exceptions, to include their shares of common stock in the registration statement. These registration rights are subject to specified conditions and limitations, including the right of the underwriters to limit the number of shares included in any such registration under certain circumstances, but not below 30% of the total number of shares included in the registration statement.

Expenses of Registration

We will pay all expenses relating to any demand registrations, Form S-3 registrations and piggyback registrations, other than underwriting discounts and commissions.

Termination

The registration rights and our obligations terminate upon the earlier of either February 18, 2016, or as to a given holder of registration rights, when such holder of registration rights can sell all of such holder's registrable securities in a three month period pursuant to Rule 144 promulgated under the Securities Act.

Delaware Anti-Takeover Law and Certain Provisions of Our Fourth Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws

Delaware Law

We are subject to Section 203 of the Delaware General Corporation Law. Section 203 generally prohibits a public Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years after the date of the transaction in which the person became an interested stockholder, unless:

- prior to the date of the transaction, the board of directors of the corporation approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the number of shares

outstanding (a) shares owned by persons who are directors and also officers and (b) shares owned by employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

- on or subsequent to the date of the transaction, the business combination is approved by the board and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock which is not owned by the interested stockholder.

Section 203 defines a business combination to include:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, pledge or other disposition involving the interested stockholder of 10% or more of the assets of the corporation;
- subject to exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; and
- the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 203 defines an interested stockholder as any entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with or controlling or controlled by the entity or person.

Fourth Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws

Provisions of our fourth amended and restated certificate of incorporation and amended and restated bylaws, which will become effective upon the closing of this offering, may delay or discourage transactions involving an actual or potential change in our control or change in our management, including transactions in which stockholders might otherwise receive a premium for their shares, or transactions that our stockholders might otherwise deem to be in their best interests. Therefore, these provisions could adversely affect the price of our common stock. Among other things, our fourth amended and restated certificate of incorporation and amended and restated bylaws:

- permit our board of directors to issue up to 20,000,000 shares of preferred stock, with any rights, preferences and privileges as they may designate, including the right to approve an acquisition or other change in our control;
- provide that the authorized number of directors may be changed only by resolution of the board of directors;
- provide that all vacancies, including newly created directorships, may, except as otherwise required by law, be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum;
- divide our board of directors into three classes;
- require that any action to be taken by our stockholders must be effected at a duly called annual or special meeting of stockholders and not be taken by written consent;
- provide that stockholders seeking to present proposals before a meeting of stockholders or to nominate candidates for election as directors at a meeting of stockholders must provide notice in writing in a timely manner, and also specify requirements as to the form and content of a stockholder's notice;

- do not provide for cumulative voting rights (therefore allowing the holders of a majority of the shares of common stock entitled to vote in any election of directors to elect all of the directors standing for election, if they should so choose);
- provide that special meetings of our stockholders may be called only by the chairman of the board, our chief executive officer or by the board of directors pursuant to a resolution adopted by a majority of the total number of authorized directors; and
- provide that stockholders will be permitted to amend our amended and restated bylaws only upon receiving at least 66 2/3% of the votes entitled to be cast by holders of all outstanding shares then entitled to vote generally in the election of directors, voting together as a single class.

The amendment of any of these provisions would require approval by the holders of at least 66 2/3% of our then outstanding common stock, voting as a single class.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Computershare Trust Company, N.A. The transfer agent and registrar's address is 250 Royall Street, Canton, MA 02021.

NASDAQ Global Market Listing

We have applied for quotation of our common stock on the NASDAQ Global Market under the trading symbol "JAZZ."

SHARES ELIGIBLE FOR FUTURE SALE

Immediately prior to this offering, there has been no public market for our common stock. Future sales of substantial amounts of common stock in the public market could adversely affect prevailing market prices. Furthermore, since only a limited number of shares will be available for sale shortly after this offering because of contractual and legal restrictions on resale described below, sales of substantial amounts of common stock in the public market after the restrictions lapse could adversely affect the prevailing market price for our common stock as well as our ability to raise equity capital in the future.

Based on the number of shares of common stock outstanding as of March 31, 2007, upon completion of this offering, 24,550,554 shares of common stock will be outstanding, assuming no exercise of the underwriters' over-allotment option and no exercise of options or warrants. All of the shares sold in this offering will be freely tradable unless purchased by our affiliates. Except as set forth below, the remaining shares of common stock outstanding after this offering will be restricted as a result of securities laws or lock-up agreements. These remaining shares will generally become available for sale in the public market as follows:

- no restricted shares will be eligible for immediate sale upon the closing of this offering;
- approximately 14,219,877 shares, less shares subject to a repurchase option in our favor tied to the holders' continued service to us (which will be eligible for sale upon lapse of the repurchase option), will be eligible for sale upon expiration of lock-up agreements 180 days after the date of this prospectus; and
- the remainder of the restricted shares will be eligible for sale from time to time thereafter upon expiration of their respective one-year holding periods, but could be sold earlier if the holders exercise any available registration rights.

Rule 144

In general, under Rule 144 under the Securities Act of 1933, as in effect on the date of this prospectus, a person who has beneficially owned shares of our common stock for at least one year would be entitled to sell within any three-month period a number of shares that does not exceed the greater of:

- 1% of the number of shares of our common stock then outstanding, which will equal approximately 245,506 shares immediately after this offering; or
- the average weekly trading volume of our common stock on the NASDAQ Global Market during the four calendar weeks preceding the filing of a notice on Form 144 with respect to the sale.

Sales under Rule 144 are also subject to manner of sale provisions and notice requirements and to the availability of current public information about us.

Rule 144(k)

Under Rule 144(k) of the Securities Act as in effect on the date of this prospectus, a person who is not deemed to have been one of our affiliates at any time during the 90 days preceding a sale, and who has beneficially owned the shares proposed to be sold for at least two years, including the holding period of any prior owner other than an affiliate, is entitled to sell the shares without complying with the manner of sale, public information, volume limitation or notice provisions of Rule 144. Approximately 1,954,058 shares of our common stock will qualify for resale under Rule 144(k) within 180 days of the date of this prospectus.

Rule 701

Rule 701 under the Securities Act, as in effect on the date of this prospectus, permits resales of shares in reliance upon Rule 144 but without compliance with certain restrictions of Rule 144, including the holding period requirement. Most of our employees, executive officers or directors who purchased shares under a written

compensatory plan or contract may be entitled to rely on the resale provisions of Rule 701, but all holders of Rule 701 shares are required to wait until 90 days after the date of this prospectus before selling their shares. However, substantially all Rule 701 shares are subject to lock-up agreements as described below and under "Underwriters" and will become eligible for sale upon the expiration of the restrictions set forth in those agreements.

Lock-up Agreements

We, along with our directors, executive officers and substantially all of our other stockholders, optionholders and warrantholders have agreed with the underwriters that for a period of 180 days following the date of this prospectus, we or they will not offer, sell, assign, transfer, pledge, contract to sell or otherwise dispose of or hedge any shares of our common stock or any securities convertible into or exchangeable for shares of common stock, subject to specified exceptions. Morgan Stanley & Co. Incorporated and Lehman Brothers Inc. may, in their sole discretion, at any time without prior notice, release all or any portion of the shares from the restrictions in any such agreement.

The 180-day restricted period described in the preceding paragraph will be extended if:

- during the last 17 days of the 180-day restricted period we issue an earnings release or material news or a material event relating to us is publicly announced; or
- prior to the expiration of the 180-day restricted period, we announce that we will release earnings results during the 16-day period beginning on the last day of the 180-day period,

in which case the restrictions described in the preceding paragraph will continue to apply until the expiration of the 18-day period beginning on the issuance of the release or the occurrence of the material news or material event, except in no event will the restrictions extend past 214 days after the date of this prospectus.

Registration Rights

Upon the closing of this offering, the holders of approximately 19,306,128 shares of our common stock, including warrants exercisable for shares of our common stock will be entitled to rights with respect to the registration of their shares under the Securities Act, subject to the 180-day lock-up arrangement described above. Shares acquired upon exercise of outstanding options by our executive officers would have these registration rights. Registration of these shares under the Securities Act would result in the shares becoming freely tradable without restriction under the Securities Act (except for shares held by affiliates) immediately upon the effectiveness of this registration. Any sales of securities by these stockholders could adversely effect on the trading price of our common stock. See "Description of Capital Stock—Registration Rights."

Equity Incentive Plans

We intend to file with the SEC a registration statement under the Securities Act covering the shares of common stock subject to outstanding stock options granted under our 2003 Equity Incentive Plan, as well as the shares of common stock reserved for issuance under our 2007 Equity Incentive Plan, 2007 Non-Employee Directors Stock Option Plan and 2007 Employee Stock Purchase Plan. The registration statement is expected to be filed and become effective as soon as practicable after the closing of this offering. Accordingly, shares registered under the registration statement will be available for sale in the open market following its effective date, subject to Rule 144 volume limitations applicable to our affiliates and the lock-up agreements described above.

MATERIAL U.S. TAX CONSEQUENCES FOR NON-U.S. HOLDERS OF COMMON STOCK

The following is a general discussion of the material U.S. federal income and estate tax consequences of the ownership and disposition of our common stock by a non-U.S. holder. For purposes of this discussion, you are a "non-U.S. holder" if you are a beneficial owner of our common stock and you are not, for U.S. federal income tax purposes:

- an individual who is a citizen or resident of the United States;
- a corporation created or organized in or under the laws of the United States, or of any political subdivision of the United States;
- an estate whose income is subject to U.S. federal income taxation regardless of its source; or
- a trust, in general, if a U.S. court is able to exercise primary supervision over the administration of the trust and one or more U.S. persons have authority to control all substantial decisions of the trust or if the trust has made a valid election to be treated as a U.S. person under applicable U.S. Treasury regulations.

If you are an individual, you may be treated as a resident of the United States in any calendar year for U.S. federal income tax purposes, instead of a nonresident, by, among other ways, being present in the United States for at least 31 days in that calendar year and for an aggregate of at least 183 days during a three-year period ending in the current calendar year. For purposes of this calculation, you would count all of the days present in the current year, one-third of the days present in the immediately preceding year and one-sixth of the days present in the second preceding year. Residents are taxed for U.S. federal income tax purposes as if they were U.S. citizens. If a partnership or other flow-through entity is a beneficial owner of our common stock, the tax treatment of a partner in the partnership or owner of the entity will generally depend on the status of the partner or owner and the activities of the partnership or entity. Such holders and their partners or owners should consult their own tax advisors regarding U.S. federal, state, local and non-U.S. income and other tax consequences of acquiring, holding and disposing of shares of our common stock.

This discussion does not purport to address all aspects of U.S. federal income and estate taxes or specific facts and circumstances that may be relevant to a particular non-U.S. holder's tax position, including:

- U.S. state or local or any non-U.S. tax consequences;
- the tax consequences for the stockholders, partners or beneficiaries of a non-U.S. holder;
- special tax rules that may apply to particular non-U.S. holders, such as financial institutions, insurance companies, tax-exempt organizations, U.S. expatriates, broker-dealers and traders in securities; and special tax rules that may apply to a non-U.S. holder that holds our common stock as part of a "straddle," "hedge," "conversion transaction," "synthetic security" or integrated investment.

The following discussion is based on provisions of the U.S. Internal Revenue Code of 1986, as amended, existing and proposed U.S. Treasury regulations and administrative and judicial interpretations, all as of the date of this prospectus, and all of which are subject to change, possibly with retroactive effect. The following summary assumes that you hold our common stock as a capital asset. **Each non-U.S. holder should consult a tax advisor regarding the U.S. federal, state, local and non-U.S. income and other tax consequences of acquiring, holding and disposing of shares of our common stock.**

Dividends

We do not anticipate paying cash dividends on our common stock in the foreseeable future. See "Dividend Policy." In the event, however, that we pay dividends on our common stock, we will have to withhold a

U.S. federal withholding tax at a rate of 30%, or a lower rate under an applicable income tax treaty, from the gross amount of the dividends paid to you. You should consult your tax advisors regarding your entitlement to benefits under a relevant income tax treaty. Generally, in order for us to withhold tax at a lower treaty rate, you must provide us with a properly executed Form W-8BEN certifying your eligibility for the lower treaty rate. However:

- in the case of common stock held by a foreign partnership, the certification requirement will generally be applied to partners and the partnership will be required to provide certain information;
- in the case of common stock held by a foreign trust, the certification requirement will generally be applied to the trust or the beneficial owners of the trust, depending on whether the trust is a "foreign complex trust," "foreign simple trust" or "foreign grantor trust" as defined in the U.S. Treasury regulations; and
- look-through rules apply for tiered partnerships, foreign simple trusts and foreign grantor trusts.

A non-U.S. holder that is a foreign partnership or a foreign trust is urged to consult its tax advisor regarding its status under these U.S. Treasury regulations and the certification requirements applicable to it.

If you are eligible for a reduced rate of U.S. federal withholding tax under an income tax treaty, you may obtain a refund or credit of any excess amounts withheld by filing an appropriate claim for a refund with the U.S. Internal Revenue Service.

If the dividend is effectively connected with your conduct of a trade or business in the United States and, if an income tax treaty applies, is attributable to a permanent establishment that you maintain in the United States, the dividend will generally be exempt from the U.S. federal withholding tax, provided that you supply us with a properly executed Form W-8ECI. In this case, the dividend will be taxed on a net income basis at the regular graduated rates and in the manner applicable to U.S. persons and, if you are a foreign corporation, you may be subject to an additional branch profits tax at a rate of 30% or a lower rate as may be specified by an applicable income tax treaty.

Gain on Dispositions of Common Stock

You generally will not be subject to U.S. federal income tax on gain recognized on a disposition of our common stock unless:

- the gain is effectively connected with your conduct of a trade or business in the United States and, if an income tax treaty applies, the gain is attributable to a permanent establishment maintained by you in the United States; in this case, the gain will be taxed on a net income basis at the regular graduated rates and in the manner applicable to U.S. persons and, if you are a foreign corporation, you may be subject to an additional branch profits tax at a rate of 30% or a lower rate as may be specified by an applicable income tax treaty;
- you are an individual who is present in the United States for 183 days or more in the taxable year of the disposition and meets other requirements; or
- we are or have been a "U.S. real property holding corporation" for U.S. federal income tax purposes at any time during the shorter of the five-year period ending on the date of disposition or the period that you held our common stock; in this case, subject to the discussion below, the gain will be taxed on a net income basis in the manner described in the first bullet paragraph above.

Generally, a corporation is a "U.S. real property holding corporation" if the fair market value of its "U.S. real property interests" equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests plus its other assets used or held for use in a trade or business. The tax relating to stock in a "U.S. real property holding corporation" generally will not apply to a non-U.S. holder whose holdings, direct and

indirect, at all times during the applicable period, constituted 5% or less of our common stock, provided that our common stock was regularly traded on an established securities market. We believe that we are not currently, and we do not anticipate becoming in the future, a "U.S. real property holding corporation" for U.S. federal income tax purposes.

Federal Estate Tax

Common stock owned or treated as owned by an individual who is a non-U.S. holder (as specially defined for U.S. federal estate tax purposes) at the time of death will be included in the individual's gross estate for U.S. federal estate tax purposes, unless an applicable estate tax or other treaty provides otherwise and, therefore, may be subject to U.S. federal estate tax.

Information Reporting and Backup Withholding

Information returns will be filed with the U.S. Internal Revenue Service in connection with payments of dividends and the proceeds from a sale or other disposition of our common stock. Dividends paid to you may be subject to information reporting and U.S. backup withholding. You generally will be exempt from such backup withholding if you provide a properly executed Form W-8BEN or otherwise meet documentary evidence requirements for establishing that you are a non-U.S. holder or otherwise establish an exemption.

The gross proceeds from the disposition of our common stock may be subject to information reporting and backup withholding. If you sell your shares of our common stock outside of the United States through a non-U.S. office of a non-U.S. broker and the sales proceeds are paid to you outside of the United States, then the U.S. backup withholding and information reporting requirements generally (except as provided in the following sentence) will not apply to that payment. However, information reporting, but not backup withholding, will apply to a payment of sales proceeds, even if that payment is made outside of the United States, if you sell our common stock through a non-U.S. office of a broker that:

- is a U.S. person;
- derives 50% or more of its gross income in specific periods from the conduct of a trade or business in the United States;
- is a "controlled foreign corporation" for U.S. tax purposes; or
- is a foreign partnership, if at any time during its tax year, one or more of its partners are U.S. persons who in the aggregate hold more than 50% of the income or capital interests in the partnership, or the foreign partnership is engaged in a U.S. trade or business,

unless the broker has documentary evidence in its files that you are a non-U.S. person and various other conditions are met or you otherwise establish exemption.

If you receive payments of the proceeds of a sale of our common stock to or through a U.S. office of a broker, the payment is subject to both U.S. backup withholding and information reporting unless you provide a properly executed Form W-8BEN certifying that you are a non-U.S. person and various other conditions are met or you otherwise establish an exemption.

You generally may obtain a refund of any amount withheld under the backup withholding rules that exceeds your income tax liability by filing a refund claim with the U.S. Internal Revenue Service.

UNDERWRITERS

Under the terms and subject to the conditions contained in an underwriting agreement dated the date of this prospectus, the underwriters named below, for whom Morgan Stanley & Co. Incorporated and Lehman Brothers Inc. are acting as representatives and joint book-running managers, have severally agreed to purchase, and we have agreed to sell to them, severally, the number of shares indicated below:

Name	Number of Shares
Morgan Stanley & Co. Incorporated	
Lehman Brothers Inc.	
Credit Suisse Securities (USA) LLC	
Natexis Bleichroeder Inc.	
Total	6,000,000

The underwriters are offering the shares of common stock subject to their acceptance of the shares from us and subject to prior sale. The underwriting agreement provides that the obligations of the several underwriters to pay for and accept delivery of the shares of common stock offered by this prospectus are subject to the approval of certain legal matters by their counsel and to certain other conditions. The underwriters are obligated to take and pay for all of the shares of common stock offered by this prospectus if any such shares are taken. However, the underwriters are not required to take or pay for the shares covered by the underwriters' over-allotment option described below.

The underwriters initially propose to offer part of the shares of common stock directly to the public at the public offering price listed on the cover page of this prospectus and part to certain dealers at a price that represents a concession not in excess of $ a share under the public offering price. After the initial offering of the shares of common stock, the offering price and other selling terms may from time to time be varied by the representatives.

We have granted to the underwriters an option, exercisable for 30 days from the date of this prospectus, to purchase up to an aggregate of 900,000 additional shares of common stock at the public offering price listed on the cover page of this prospectus, less underwriting discounts and commissions. The underwriters may exercise this option solely for the purpose of covering over-allotments, if any, made in connection with the offering of the shares of common stock offered by this prospectus. To the extent the option is exercised, each underwriter will become obligated, subject to certain conditions, to purchase approximately the same percentage of the additional shares of common stock as the number listed next to the underwriter's name in the preceding table bears to the total number of shares of common stock listed next to the names of all underwriters in the preceding table. If the underwriters' option is exercised in full, the total price to the public would be $, the total underwriters' discounts and commissions would be $ and the total proceeds to us would be $.

The underwriters have informed us that they do not intend sales to discretionary accounts to exceed five percent of the total number of shares of common stock offered by them.

Application has been made to have our common stock listed on the NASDAQ Global Market under the symbol "JAZZ".

We and our directors, executive officers and certain other stockholders have agreed that, without the prior written consent of Morgan Stanley & Co. Incorporated and Lehman Brothers Inc. on behalf of the underwriters, we and they will not, during the period ending 180 days after the date of this prospectus:

- offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of directly or indirectly, any shares of common stock or any securities convertible into or exercisable or exchangeable for common stock;

- file any registration statement with the SEC relating to the offering of any shares of common stock or any securities convertible into or exercisable or exchangeable for common stock; or
- enter into any swap or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of the common stock;

whether any such transaction described above is to be settled by delivery of common stock or such other securities, in cash or otherwise.

The restrictions described in the preceding paragraph do not apply to:

- in our case, (1) the sale of shares to the underwriters, (2) the issuance of shares of common stock upon the exercise of an option or a warrant or the conversion of a security outstanding on the date of this prospectus of which the underwriters have been advised in writing and (3) the issuance of shares of common stock in connection with (a) any strategic transaction that includes a commercial or development relationship involving us and other entities or (b) any equipment loan or leasing arrangement, real property leasing arrangement or debt financing from a bank or similar financial institution; *provided* that, in the case of any issuance pursuant to clause (3), (i) each recipient shall sign and deliver in respect of such shares of common stock a lock-up agreement substantially in the form of the agreement entered into by our directors and officers and (ii) the aggregate number of shares so issued shall not exceed 5% of the number of shares of common stock issued and outstanding immediately following completion of this offering;
- in the case of our directors, officers and stockholders, (1) transactions relating to shares of common stock or other securities acquired in open market transactions after the completion of this offering, provided that no filing under Section 16(a) of the Securities and Exchange Act of 1934, as amended, shall be required or shall be voluntarily made in connection with subsequent sales of common stock or other securities acquired in such open market transactions, (2) transfers of shares of common stock or any security convertible into common stock as a bona fide gift, or (3) distributions of shares of common stock or any security convertible into common stock to limited partners or stockholders of such persons; *provided* that in the case of any transfer or distribution pursuant to clause (1) or (2), (i) each donee, distributee or transferee shall sign and deliver in respect of shares of common stock and any security convertible into common stock so transferred or distributed, a lock-up agreement substantially in the form of the agreement entered into by our directors and officers and (ii) no filing under Section 16(a) of the Securities Exchange Act of 1934, as amended, reporting a reduction in beneficial ownership of shares of common stock, shall be required or shall be voluntarily made during the 180-day restricted period referred to in the preceding paragraph; and
- in the case of any of our executive officers, dispositions by such executive officer or such executive officer's estate of such executive officer's vested shares of restricted common stock to us in connection with such executive officer's death or complete disability as described under "Management—Executive Employment Agreements—Vested Share Repurchase Right; Executive Put Right".

The 180-day restricted period described in the preceding paragraph will be extended if:

- during the last 17 days of the 180-day restricted period we issue a release regarding earnings or regarding material news or events relating to us, or
- prior to the expiration of the 180-day restricted period, we announce that we will release earnings results during the 16-day period beginning on the last day of the 180-day period,

in which case the restrictions described in the preceding paragraph will continue to apply until the expiration of the 18-day period beginning on the issuance of the release or the occurrence of the material news or material event; provided, however, that the restrictions described in the preceding paragraph will not extend beyond 214 days after the date of this prospectus.

In order to facilitate the offering of the common stock, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of the common stock. Specifically, the underwriters may sell more shares than they are obligated to purchase under the underwriting agreement, creating a short position. A short sale is covered if the short position is no greater than the number of shares available for purchase by the underwriters under the over-allotment option. The underwriters can close out a covered short sale by exercising the over-allotment option or purchasing shares in the open market. In determining the source of shares to close out a covered short sale, the underwriters will consider, among other things, the open market price of shares compared to the price available under the over-allotment option. The underwriters may also sell shares in excess of the over-allotment option, creating a naked short position. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the common stock in the open market after pricing that could adversely affect investors who purchase in the offering. As an additional means of facilitating the offering, the underwriters may bid for, and purchase, shares of common stock in the open market to stabilize the price of the common stock. The underwriting syndicate may also reclaim selling concessions allowed to an underwriter or a dealer for distributing the common stock in the offering, if the syndicate repurchases previously distributed common stock to cover syndicate short positions or to stabilize the price of the common stock. These activities may raise or maintain the market price of the common stock above independent market levels or prevent or retard a decline in the market price of the common stock. The underwriters are not required to engage in these activities, and may end any of these activities at any time.

The underwriters may in the future provide investment banking services to us for which they would receive customary compensation. In addition, entities affiliated with Lehman Brothers Inc. have entered into certain transactions with us, including the acquisition of shares of our capital stock and warrants to purchase shares of our capital stock, as described under “Certain Relationships and Related Party Transactions.”

We and the underwriters have agreed to indemnify each other against certain liabilities, including liabilities under the Securities Act.

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive, each underwriter has represented and agreed that with effect from and including the date on which the Prospectus Directive is implemented in that Member State it has not made and will not make an offer of shares of common stock to the public in that Member State, except that it may, with effect from and including such date, make an offer of shares of common stock to the public in that Member State:

- at any time to legal entities which are authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities;
- at any time to any legal entity which has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than €43,000,000 and (3) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts; or
- at any time in any other circumstances which do not require the publication by us of a prospectus pursuant to Article 3 of the Prospectus Directive.

For the purposes of the above, the expression an “offer of shares of common stock to the public” in relation to any shares of common stock in any Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the shares of common stock to be offered so as to enable an investor to decide to purchase or subscribe the shares of common stock, as the same may be varied in that Member State by any measure implementing the Prospectus Directive in that Member State and the expression Prospectus Directive means Directive 2003/71/EC and includes any relevant implementing measure in that Member State.

Each underwriter has represented and agreed that it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment

activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000) in connection with the issue or sale of the common stock in circumstances in which Section 21(1) of such Act does not apply to us and it has complied and will comply with all applicable provisions of such Act with respect to anything done by it in relation to any shares of common stock in, from or otherwise involving the United Kingdom.

Pricing of the Offering

Prior to this offering, there has been no public market for the shares of common stock. The initial public offering price will be determined by negotiations between us and the representatives of the underwriters. Among the factors to be considered in determining the initial public offering price will be our future prospects and our industry in general, our sales, earnings and certain other financial operating information in recent periods, and the price-earnings ratios, price-sales ratios, market prices of securities and certain financial and operating information of companies engaged in activities similar to ours. The estimated initial public offering price range set forth on the cover page of this preliminary prospectus is subject to change as a result of market conditions and other factors.

LEGAL MATTERS

The validity of the shares of common stock being offered by this prospectus will be passed upon for us by Cooley Godward Kronish LLP, Palo Alto, California. The underwriters are being represented by Davis Polk & Wardwell, Menlo Park, California.

EXPERTS

Ernst & Young LLP, independent registered public accounting firm, has audited our consolidated financial statements and schedule at December 31, 2005 and 2006, and for each of the three years in the period ended December 31, 2006, as set forth in their report (which contains an explanatory paragraph describing conditions that raise substantial doubt about our ability to continue as a going concern as described in Note 2 to the consolidated financial statements). We have included our consolidated financial statements and schedule in the prospectus and elsewhere in the registration statement in reliance on Ernst & Young LLP's report, given on their authority as experts in accounting and auditing.

Ernst & Young LLP, independent auditors, has audited the financial statements of Orphan Medical, Inc. for the period from January 1, 2005 to June 24, 2005, as set forth in their report. We have included Orphan Medical, Inc.'s financial statements in the prospectus and elsewhere in the registration statement in reliance on Ernst & Young LLP's report, given on their authority as experts in accounting and auditing.

WHERE YOU CAN FIND ADDITIONAL INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act of 1933, as amended, with respect to the shares of common stock being offered by this prospectus. This prospectus does not contain all of the information in the registration statement and its exhibits. For further information with respect to Jazz Pharmaceuticals and the common stock offered by this prospectus, we refer you to the registration statement and its exhibits. Statements contained in this prospectus as to the contents of any contract or any other document referred to are not necessarily complete, and in each instance, we refer you to the copy of the contract or other document filed as an exhibit to the registration statement. Each of these statements is qualified in all respects by this reference.

You can read our SEC filings, including the registration statement, over 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 at its public reference facilities at 100 F Street, N.E., Washington, D.C. 20549. You may also obtain copies of these 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.

Upon completion of this offering, we will be subject to the information reporting requirements of the Securities Exchange Act of 1934, as amended, and we will file reports, proxy statements and other information with the SEC. These reports, proxy statements and other information will be available for inspection and copying at the public reference room and web site of the SEC referred to above. We also maintain a website at *http://www.jazzpharmaceuticals.com*, at which you may access these materials free of charge as soon as reasonably practicable after they are electronically filed with, or furnished to, the SEC. The information contained in, or that can be accessed through, our website is not part of this prospectus.

JAZZ PHARMACEUTICALS, INC.

Index to Consolidated Financial Statements

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
Jazz Pharmaceuticals, Inc.

We have audited the accompanying consolidated balance sheets of Jazz Pharmaceuticals, Inc. as of December 31, 2005 and 2006, and the related consolidated statements of operations, convertible preferred stock and stockholders' deficit, and cash flows for each of the three years in the period ended December 31, 2006. Our audits also included the financial statement schedule listed in Item 16(b) of this Registration Statement. These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audits included consideration of the internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Jazz Pharmaceuticals, Inc. at December 31, 2005 and 2006, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2006, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

As discussed in Note 2 to the consolidated financial statements, Jazz Pharmaceuticals Inc.'s recurring losses from operations and cash used in operating activities raise substantial doubt about its ability to continue as a going concern. Management's plans as to these matters also are described in Note 2. The 2006 financial statements do not include any adjustments that might result from the outcome of this uncertainty.

As discussed in Note 2 to the consolidated financial statements, Jazz Pharmaceuticals, Inc. changed its method of accounting for stock-based compensation in accordance with guidance provided in Statement of Financial Accounting Standards No. 123(R), "Share-Based Payment", on January 1, 2006.

/s/ Ernst & Young LLP

Palo Alto, California
March 6, 2007
except for the seventh paragraph of Note 2,
as to which the date is May 15, 2007

JAZZ PHARMACEUTICALS, INC.

CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share amounts)

	December 31, 2005	December 31, 2006	March 31, 2007 (Unaudited)	Pro Forma March 31, 2007 (Unaudited)
ASSETS				
Current assets:				
Cash and cash equivalents	$ 20,614	$ 78,948	$ 67,667	$ 67,667
Restricted cash	300	275	275	275
Accounts receivable, net of allowances of $122, $198 and $244 at December 31, 2005 and 2006 and March 31, 2007 (unaudited), respectively	3,597	5,380	6,167	6,167
Inventories	3,262	3,026	2,303	2,303
Prepaid expenses	3,240	3,447	2,174	2,174
Other current assets	371	487	680	680
Total current assets	31,384	91,563	79,266	79,266
Property and equipment, net	1,941	2,107	2,116	2,116
Intangible assets, net—purchased developed technology	71,023	63,130	57,657	57,657
Intangible assets, net—other	7,717	6,010	5,582	5,582
Goodwill	38,883	38,213	38,213	38,213
Long-term restricted cash and investments	12,000	12,000	12,085	12,085
Other long-term assets	1,833	1,548	2,991	2,991
Total assets	$ 164,781	$ 214,571	$ 197,910	$ 197,910
LIABILITIES, CONVERTIBLE PREFERRED STOCK, AND STOCKHOLDERS' EQUITY (DEFICIT)				
Current liabilities:				
Line of credit	$ —	$ 2,191	$ 3,104	$ 3,104
Accounts payable	4,786	5,443	3,145	3,145
Accrued liabilities	11,121	12,943	13,097	13,097
Deferred revenue	—	1,422	1,659	1,659
Preferred stock warrant liability (including $5,107, $5,965 and $8,469 as of December 31 2005, December 31, 2006 and March 31, 2007 (unaudited), respectively, held by related parties)	7,429	8,521	11,588	—
Total current liabilities	23,336	30,520	32,593	21,005
Liability for early exercise of options and unvested restricted common stock	184	98	77	77
Deferred rent	649	436	387	387
Non-current portion of deferred revenue	—	13,495	13,243	13,243
Senior secured notes (including $50,620, $51,998 and $52,100 as of December 31, 2005 and 2006 and March 31, 2007 (unaudited), respectively, held by related parties)	73,629	74,283	74,429	74,429
Development financing obligation	15,445	—	—	—
Commitments and contingencies (Note 8)				
Convertible preferred stock, $.0001 par value; 27,851,839 authorized at December 31, 2005 and 2006 and March 31, 2007 (unaudited), none pro forma (unaudited); 11,295,076, 17,921,551 and 17,921,551 shares issued and outstanding at December 31, 2005 and 2006 and March 31, 2007 (unaudited), respectively, none pro forma (unaudited); aggregate liquidation preference of $165,000 at December 31, 2005 and $265,000 at December 31, 2006 and March 31, 2007	163,862	263,852	263,852	—
Common stock subject to repurchase	5,924	8,183	8,749	12,954
Stockholders' equity (deficit):				
Common stock, $.0001 par value; 22,835,080 shares authorized at December 31, 2005, December 31, 2006 and March 31, 2007 (unaudited), respectively; 617,974, 623,986 and 629,003 shares issued and outstanding at December 31, 2005, December 31, 2006 and March 31, 2007 (unaudited), respectively; 18,550,554 issued and outstanding pro forma (unaudited)	—	—	—	2
Additional paid-in capital	—	1,335	1,807	273,040
Accumulated other comprehensive income	4	12	—	—
Accumulated deficit	(118,252)	(177,643)	(197,227)	(197,227)
Total stockholders' equity (deficit)	(118,248)	(176,296)	(195,420)	75,815
Total liabilities, convertible preferred stock and stockholders' equity (deficit)	$ 164,781	$ 214,571	$ 197,910	$ 197,910

The accompanying notes are an integral part of these financial statements.

JAZZ PHARMACEUTICALS, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except per share amounts)

	Year Ended December 31,			Three Months Ended March 31,	
	2004	2005	2006	2006	2007
				(Unaudited)	
Revenues:					
Product sales, net	$ —	$ 18,796	$ 43,299	$ 9,771	$ 11,625
Royalties, net	—	146	594	66	211
Contract revenue	—	2,500	963	—	2,252
Total revenues	—	21,442	44,856	9,837	14,088
Operating expenses:					
Cost of product sales (excluding amortization of acquired developed technology)	—	4,292	6,968	1,569	2,003
Research and development	17,988	45,783	54,956	12,894	14,867
Selling, general and administrative	7,459	23,551	51,384	12,219	14,339
Amortization of intangible assets	—	4,960	9,600	2,400	2,362
Purchased in-process research and development	—	21,300	—	—	—
Total operating expenses	25,447	99,886	122,908	29,082	33,571
Loss from operations	(25,447)	(78,444)	(78,052)	(19,245)	(19,483)
Interest income	643	1,318	2,307	581	1,091
Interest expense (including $4,595 and $9,024 for the years ended December 31, 2005 and 2006, respectively, and $2,185 and $2,254 for the three months ended March 31, 2006 and 2007 (unaudited), respectively, pertaining to related parties)	—	(7,129)	(14,129)	(3,777)	(3,268)
Other income (expense)	—	(901)	(1,109)	62	(3,069)
Gain on extinguishment of development financing obligation	—	—	31,592	—	—
Gain on sale of product rights	—	—	—	—	5,145
Net loss	(24,804)	(85,156)	(59,391)	(22,379)	(19,584)
Beneficial conversion feature	—	—	(21,920)	(3,501)	—
Loss attributable to common stockholders	$ (24,804)	$ (85,156)	$ (81,311)	$ (25,880)	$ (19,584)
Loss per share attributable to common stockholders, basic and diluted	$ (1,550.25)	$ (14,192.67)	$ (6,524.69)	$ (2,875.56)	$ (851.48)
Weighted-average common shares used in computing loss per share attributable to common stockholders, basic and diluted	16	6	13	9	23
Pro-forma loss per share attributable to common stockholders (unaudited), basic and diluted			$ (6.04)		$ (1.11)
Weighted-average common shares used in computing pro-forma loss per share attributable to common stockholders (unaudited), basic and diluted			13,466		17,666

The accompanying notes are an integral part of these financial statements.

JAZZ PHARMACEUTICALS, INC.

CONSOLIDATED STATEMENTS OF CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT
(In thousands, except share and per share amounts)

	Convertible Preferred Stock						Common Stock Subject to Repurchase	Stockholders' Deficit					
	Series A		Series B		Series B Prime			Common Stock		Additional Paid-in Capital	Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount	Shares	Amount	Amount	Shares	Amount				
Balance at January 1, 2004	646,060	$ 7,076	—	$ —	—	$ —	$ —	577,841	$ 16	$ —	$ —	$ (2,528)	$ (2,512)
Reincorporation in Delaware and reissuance of common stock with $.0001 par value	—	—	—	—	—	—	—	—	(16)	16	—	—	—
Issuance of common stock subject to repurchase rights for cash	—	—	—	—	—	—	—	40,133	—	230	—	—	230
Transfer of common stock subject to repurchase to temporary equity	—	—	—	—	—	—	1,773	—	—	(21)	—	(1,752)	(1,773)
Vesting of common stock subject to repurchase	—	—	—	—	—	—	1,892	—	—	(24)	—	(1,839)	(1,863)
Repurchase rights to shares issued under restricted stock purchase agreements	—	—	—	—	—	—	—	—	—	(201)	—	—	(201)
Issuance of Series A convertible preferred stock net of issuance costs of $0	709,317	7,850	—	—	—	—	—	—	—	—	—	—	—
Issuance of Series B convertible preferred stock, net of issuance costs of $441	—	—	1,590,334	23,560	—	—	—	—	—	—	—	—	—
Issuance of Series B Prime convertible preferred stock, net of issuance costs of $477	—	—	—	—	1,722,883	25,523	—	—	—	—	—	—	—
Net loss and comprehensive loss	—	—	—	—	—	—	—	—	—	—	—	(24,804)	(24,804)
Balance at December 31, 2004	1,355,377	14,926	1,590,334	23,560	1,722,883	25,523	3,665	617,974	—	—	—	(30,923)	(30,923)
Lapse of repurchase rights to shares issued under restricted stock purchase agreements	—	—	—	—	—	—	—	—	—	53	—	—	53
Vesting of common stock subject to repurchase	—	—	—	—	—	—	2,259	—	—	(53)	—	(2,173)	(2,226)
Issuance of Series B convertible preferred stock, net of issuance costs of $11	—	—	3,180,714	47,989	—	—	—	—	—	—	—	—	—
Issuance of Series B Prime convertible preferred stock, net of issuance costs of $136	—	—	—	—	3,445,768	51,864	—	—	—	—	—	—	—
Comprehensive loss:													
Net loss	—	—	—	—	—	—	—	—	—	—	—	(85,156)	(85,156)
Gain on available-for-sale securities	—	—	—	—	—	—	—	—	—	—	4	—	4
Comprehensive loss													(85,152)
Balance at December 31, 2005	1,355,377	14,926	4,771,048	71,549	5,168,651	77,387	5,924	617,974	—	—	4	(118,252)	(118,248)

JAZZ PHARMACEUTICALS, INC.

CONSOLIDATED STATEMENTS OF CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' DEFICIT—(Continued)
(In thousands, except share and per share amounts)

	Convertible Preferred Stock						Common Stock Subject to Repurchase	Stockholders' Deficit					
	Series A		Series B		Series B Prime			Common Stock		Additional Paid-in Capital	Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Deficit
	Shares	Amount	Shares	Amount	Shares	Amount	Amount	Shares	Amount				
Balance at December 31, 2005	1,355,377	$ 14,926	4,771,048	$ 71,549	5,168,651	$ 77,387	$ 5,924	617,974	$ —	$ —	$ 4	$(118,252)	$ (118,248)
Lapse of repurchase rights to shares issued under restricted stock purchase agreements	—	—	—	—	—	—	—	—	—	53	—	—	53
Vesting of common stock subject to repurchase	—	—	—	—	—	—	2,259	—	—	(2,226)	—	—	(2,226)
Issuance of Series B convertible preferred stock, net of issuance costs of $5	—	—	3,180,707	47,995	—	—	—	—	—	—	—	—	—
Issuance of Series B Prime convertible preferred stock, net of issuance costs of $5	—	—	—	—	3,445,768	51,995	—	—	—	—	—	—	—
Issuance of common stock for cash upon exercise of stock options	—	—	—	—	—	—	—	6,012	—	10	—	—	10
Stock-based compensation	—	—	—	—	—	—	—	—	—	3,498	—	—	3,498
Beneficial conversion feature—deemed dividend on issuance of Series B preferred stock	—	—	—	—	—	—	—	—	—	21,920	—	—	21,920
Beneficial conversion feature	—	—	—	—	—	—	—	—	—	(21,920)	—	—	(21,920)
Comprehensive loss:													
Net loss	—	—	—	—	—	—	—	—	—	—	—	(59,391)	(59,391)
Gain on available-for-sale securities	—	—	—	—	—	—	—	—	—	—	8	—	8
Comprehensive loss													(59,383)
Balance at December 31, 2006	1,355,377	14,926	7,951,755	119,544	8,614,419	129,382	8,183	623,986	—	1,335	12	(177,643)	(176,296)
Lapse of repurchase rights to shares issued under restricted stock purchase agreements (unaudited)	—	—	—	—	—	—	—	—	—	13	—	—	13
Vesting of common stock subject to repurchase (unaudited)	—	—	—	—	—	—	566	—	—	(557)	—		(557)
Issuance of common stock for cash upon exercise of stock options (unaudited)	—	—	—	—	—	—	—	5,017	—	76	—	—	76
Stock-based compensation expense (unaudited)	—	—	—	—	—	—	—	—	—	940	—	—	940
Comprehensive loss:													
Net loss (unaudited)	—	—	—	—	—	—	—	—	—	—	—	(19,584)	(19,584)
Loss on available-for-sale securities (unaudited)	—	—	—	—	—	—	—	—	—	—	(12)	—	(12)
Comprehensive loss (unaudited)													(19,596)
Balance at March 31, 2007 (unaudited)	1,355,377	$ 14,926	7,951,755	$119,544	8,614,419	$129,382	$ 8,749	629,003	$ —	$ 1,807	$ —	$(197,227)	$ (195,420)

The accompanying notes are an integral part of these financial statements.

JAZZ PHARMACEUTICALS, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Year Ended December 31,			Three Months Ended March 31,	
	2004	2005	2006	2006	2007
				(Unaudited)	
Operating activities					
Net loss	$(24,804)	$ (85,156)	$ (59,391)	$ (22,379)	$ (19,584)
Adjustments to reconcile net loss to net cash used in operating activities:					
Depreciation and amortization	122	479	710	161	262
Amortization of intangible assets	—	4,960	9,600	2,400	2,362
Loss on disposal of property and equipment	—	—	481	—	—
Fair value adjustment to acquired finished goods	—	1,584	775	400	54
Purchased in-process research and development	—	21,300	—	—	—
Excess of cash paid over accrued for interest	—	476	949	178	219
Revaluation of preferred stock warrant liability	—	901	1,092	(62)	3,067
Stock-based compensation expense	—	—	3,480	820	940
Interest on development financing	—	445	1,147	599	—
Gain on extinguishment of development financing	—	—	(31,592)	—	—
Gain on sale of product rights	—	—	—	—	(5,145)
Changes in assets and liabilities:					
Accounts receivable	—	(249)	(1,783)	(1,099)	(778)
Inventories	—	(219)	(521)	(121)	344
Prepaid expenses and other current assets	(1,915)	1,158	(473)	(253)	1,080
Other assets	(151)	—	323	(2)	(1,528)
Accounts payable	1,564	2,408	657	(143)	(2,298)
Accrued liabilities	3,340	(210)	2,492	(2,361)	155
Deferred revenue	—	—	14,917	—	(15)
Deferred rent	688	(39)	(213)	(51)	(49)
Net cash used in operating activities	(21,156)	(52,162)	(57,350)	(21,913)	(20,914)
Investing activities					
Purchases of property and equipment	(992)	(1,413)	(1,682)	(121)	(271)
Proceeds from sale of property and equipment	—	—	150	—	—
Purchases of available-for-sale securities	(45,946)	—	(1,705)	—	—
Proceeds from sales of available-for-sale securities	40,000	3,450	—	—	—
Proceeds from maturities of available-for-sale securities	—	2,500	—	—	—
Cash paid for shares of Orphan Medical, Inc., net of cash acquired	—	(146,116)	—	—	—
Proceeds from maturities of long term restricted cash equivalents	—	—	1,705	—	—
Decrease (increase) in restricted cash and investments	150	(12,175)	25	—	(85)
Proceeds from sale of product rights	—	—	—	—	9,000
Net cash provided by (used in) investing activities	(6,788)	(153,754)	(1,507)	(121)	8,644
Financing activities					
Proceeds from issuances of Convertible Preferred Stock, net of issuance costs	56,933	99,853	99,990	34,994	—
Proceeds from issuances of Common Stock, net of issuance costs	58	—	10	—	76
Proceeds from issuances of Common Stock with repurchase rights and the early exercise of stock options	171	—	—	—	—
Proceeds from line of credit	—	—	3,283	—	6,077
Repayments under line of credit	—	—	(1,092)	—	(5,164)
Proceeds from sale of senior secured notes, net of issuance costs (including $53,624 from related parties)	—	77,999	—	—	—
Proceeds from development financing	—	15,000	15,000	15,000	—
Net cash provided by financing activities	57,162	192,852	117,191	49,994	989
Net increase (decrease) in cash and cash equivalents	29,218	(13,064)	58,334	27,960	(11,281)
Cash and cash equivalents, at beginning of period	4,460	33,678	20,614	20,614	78,948
Cash and cash equivalents, at end of period	$ 33,678	$ 20,614	$ 78,948	$ 48,574	$ 67,667
Supplemental disclosure of cash flow information:					
Cash paid for interest (including $4,263 and $4,556 for the years ended December 31, 2005 and 2006, respectively, and $2,063 and $2,100 for each of the three months ended March 31, 2006, and 2007 (unaudited), paid to related parties)	$ —	$ 6,200	$ 12,000	$ 3,000	$ 3,000
Supplemental disclosure of non-cash financing activities:					
Warrants to purchase Series BB Convertible Preferred Stock issued in conjunction with senior secured notes	$ —	$ 6,696	$ —	$ —	$ —
Beneficial conversion feature—deemed dividend attributable to preferred stockholders	$ —	$ —	$ 21,920	$ 3,501	$ —

The accompanying notes are an integral part of these financial statements.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Organization and Description of Business

Jazz Pharmaceuticals, Inc. ("the Company") was incorporated in California in March 2003 and reincorporated in Delaware in January 2004. The Company is a specialty pharmaceutical company focused on identifying, developing and commercializing innovative products to meet unmet medical needs in neurology and psychiatry. The Company's goal is to build a broad portfolio of products through a combination of internal development activities and acquisition and in-licensing opportunities, and to utilize its specialty sales force to promote its products in specific therapeutic markets.

Since its inception, the Company has built a commercial operation and assembled a portfolio that currently includes two marketed products, two product candidates for which new drug applications ("NDAs") have been submitted to the U.S. Food and Drug Administration ("FDA") and five product candidates in various stages of clinical development. The Company also has additional product candidates in early-stage development and feasibility activities. In March 2007, the Company sold its rights to a third marketed product.

2. Summary of Significant Accounting Policies

Basis of Presentation

The consolidated financial statements include the accounts of Jazz Pharmaceuticals, Inc. and its wholly-owned subsidiary, Orphan Medical, Inc. ("Orphan Medical"), after elimination of intercompany transactions and balances.

Significant Risks and Uncertainties

The Company has incurred significant losses from operations since its inception and expects losses to continue for the next several years. To achieve profitable operations, the Company must successfully identify, develop and commercialize its products. Products developed by the Company will require approval of the FDA or a foreign regulatory authority prior to commercial sales. The regulatory approval process is expensive, time consuming and uncertain, and any denial or delay of approval could have a material adverse effect on the Company. Even if approved, the Company's products may not achieve market acceptance and will face competition from both generic and branded pharmaceutical products. The Company will need to raise additional funds to support its operations, and such funding may not be available to it on acceptable terms, or at all. The Company's board of directors has approved the filing of a registration statement on Form S-1 with respect to a proposed initial public offering of its common stock. The Company may seek additional sources of financing through development financings, collaborations or public or private debt or equity financings, and may also seek to reduce expenses related to its operations.

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern, which contemplates the realization of assets and the settlement of liabilities and commitments in the normal course of business. The 2006 financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or the amounts and classification of liabilities that may result from uncertainty related to the Company's ability to continue as a going concern.

Use of Estimates

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts and disclosures reported in the consolidated financial statements and accompanying notes. Management bases its estimates on historical experience and on assumptions believed to be reasonable under the circumstances. Actual results could differ materially from those estimates.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Unaudited Interim Financial Data

The accompanying consolidated balance sheet as of March 31, 2007, the consolidated statements of operations and of cash flows for the three months ended March 31, 2006 and 2007 and the consolidated statements of convertible preferred stock and stockholders' deficit for the three months ended March 31, 2007 are unaudited. The unaudited interim financial statements have been prepared on the same basis as the annual financial statements and, in the opinion of management, reflect all adjustments, which include only normal recurring adjustments, necessary to state fairly the Company's financial position as of March 31, 2007 and the results of its operations and cash flows for the three months ended March 31, 2006 and 2007. The financial data and other information disclosed in these notes to the financial statements related to the three month periods are unaudited. The results for the three months ending March 31, 2007 are not necessarily indicative of the results to be expected for the year ending December 31, 2007 or for any other interim period or for any future year.

Unaudited Pro Forma Balance Sheet

In February 2007, the board of directors authorized management of the Company to file a registration statement with the Securities and Exchange Commission permitting the Company to sell shares of its common stock to the public. The unaudited pro forma balance sheet as of March 31, 2007 and pro forma basic and diluted loss per share attributable to common stockholders reflect the automatic conversion of all of the Series A, Series B and Series B Prime convertible preferred stock outstanding at March 31, 2007 into 17,921,551 shares of common stock immediately prior to the closing of the Company's initial public offering. In addition, the unaudited pro forma balance sheet as of March 31, 2007 reflects the impact of the reclassification of the preferred stock warrant liability into additional paid-in capital as a result of the automatic conversion of warrants to purchase preferred stock into warrants to purchase common stock immediately prior to the closing of the Company's initial public offering and the reclassification of convertible preferred stock owned by certain executive officers, which is subject to a right of repurchase as discussed in Note 13, into common stock subject to repurchase.

Reverse Stock Split

On May 15, 2007, the Company filed a third amended and restated certificate of incorporation with the Delaware Secretary of State effecting a 1-for-11.06701 reverse split of the Company's preferred and common stock. All share and per share amounts have been retroactively restated in these financial statements and notes for all periods presented.

Concentration of Credit Risks and Fair Value of Financial Instruments

Financial instruments that potentially subject the Company to concentrations of credit risk consist of cash equivalents, restricted cash, marketable securities and accounts receivable. The Company's investment policy limits investments to certain types of debt securities issued by the U.S. government, its agencies and institutions with investment-grade credit ratings and places restrictions on maturities and concentration by type and issuer. The Company is exposed to credit risk in the event of a default by the financial institutions holding its cash, cash equivalents and marketable securities and issuers of investments to the extent recorded on the balance sheet.

The Company monitors its exposure within accounts receivable and records a reserve against uncollectible accounts receivable as necessary. The Company extends credit to pharmaceutical companies, pharmaceutical wholesale distributors and a specialty pharmaceutical distribution company primarily in the U.S. in the normal course of business. Customer creditworthiness is monitored and collateral is not normally required. Historically, the Company has not experienced significant credit losses on its accounts receivable. The Company's five largest

customers accounted for an aggregate of approximately 88%, 90% and 93% of gross accounts receivable as of December 31, 2005, December 31, 2006 and March 31, 2007, respectively.

The fair value of financial instruments, including cash, cash equivalents, marketable investments, accounts receivable, accounts payable, accrued liabilities and senior secured notes approximate their carrying value.

Cash Equivalents, Restricted Cash and Available-for-Sale Securities

The Company considers all highly liquid investments, readily convertible to cash, that mature within three months or less from date of purchase to be cash equivalents. Restricted cash and available-for-sale securities consist of cash equivalents and available-for-sale securities, the use of which is restricted either by contract or agreement. At December 31, 2006 and March 31, 2007, the Company held a money market account in the amount of $275,000 as collateral securing a letter of credit. The Company has a $12.0 million investment account which is restricted under the agreement governing the Company's senior secured notes. Available-for-sale securities are investments in debt securities with maturities of less than one year from the balance sheet date, or securities with maturities of greater than one year that are specifically identified to fund current operations. Collectively, cash equivalents, restricted cash and available-for-sale securities are classified as available-for-sale and are recorded at fair value, based on quoted market prices. Unrealized gains and losses, net of tax, are recorded in other comprehensive income and included as a separate component of stockholders' deficit. The Company uses the specific-identification method for calculating realized gains and losses on securities sold. Realized gains and losses and declines in value judged to be other than temporary on available-for-sale securities are included in interest income in the statement of operations. Realized gains and losses on sales of available-for-sale securities have not been material.

Inventories

Inventories are valued at the lower of cost or market. Cost is determined using the first-in, first-out method for all inventories. The Company's policy is to write down inventory that has become obsolete, inventory that has a cost basis in excess of its expected net realizable value and inventory in excess of expected requirements.

Property and Equipment

Property and equipment are stated at cost, less accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the assets, generally three to five years. Leasehold improvements are amortized over the shorter of the noncancelable term of the Company's operating lease or their economic useful lives. Maintenance and repairs are charged to operations as incurred.

Goodwill and Intangible and Long-Lived Assets

Goodwill represents the excess of the purchase price over the fair value of assets acquired and liabilities assumed. The Company has determined that it operates in a single segment and has a single reporting unit associated with the development and commercialization of pharmaceutical products. The annual test for goodwill impairment is a two-step process. The first step is a comparison of the fair value of the reporting unit with its carrying amount, including goodwill. If this step indicates an impairment, then the loss is measured as the excess of recorded goodwill over its implied fair value. Implied fair value is the excess of the fair value of the reporting unit over the fair value of all identified assets and liabilities. Management tests goodwill for impairment annually in October and concluded that no impairment existed as of October 1, 2006. Management will also test for impairment whenever events or changes in circumstances indicate that the carrying value may not be

recoverable. There have been no changes since October 1, 2006 that would cause management to reevaluate its conclusion.

Intangible assets consist primarily of purchased developed technology, agreements not to compete and trademarks. Intangible assets are amortized on a straight-line basis over their estimated useful lives, which range from three to ten years. The estimated useful lives associated with intangible assets are consistent with underlying agreements, or the estimated lives of the products. Once an intangible asset is fully amortized, the gross costs and accumulated amortization are removed from the consolidated balance sheet. The Company evaluates purchased intangibles and other long-lived assets, other than goodwill, for impairment whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. The amount of any impairment is measured as the difference between the carrying value and the fair value of the impaired asset. An impairment loss would be recognized when estimated undiscounted future cash flows expected to result from the use of the asset and its eventual disposition are less than its carrying amount. The impairment loss, if recognized, would be based on the excess of the carrying value of the impaired asset over its respective fair value, calculated using discounted cash flows. Since the Company's inception, there has been no such impairment loss recognized.

Preferred Stock Warrant Liability

Effective July 1, 2005, the Company adopted the provisions of Financial Accounting Standards Board ("FASB") Staff Position ("FSP") No. 150-5, *Issuer's Accounting under Statement No. 150 for Freestanding Warrants and Other Similar Instruments on Shares that are Redeemable* ("FSP 150-5"), an interpretation of FASB Statement No. 150, *Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity*. Pursuant to FSP 150-5, freestanding warrants for shares that are puttable, or warrants for shares that are redeemable are classified as liabilities on the consolidated balance sheet at fair value. At the end of each reporting period, changes in fair value during the period are recorded as other expense.

Upon adoption of FSP 150-5, the Company reclassified the fair value of its warrants to purchase shares of convertible preferred stock from equity to a liability. There was no cumulative effect on adoption. The Company recorded other expense of $901,000 and $1.1 million during the years ended December 31, 2005 and 2006, respectively, and $3.1 million during the three months ended March 31, 2007, to reflect the increase in the fair value of the warrants. The Company recorded a benefit of $62,000 during the three months ended March 31, 2006 to reflect a decrease in the fair value of the warrants. The Company will continue to adjust the preferred stock warrant liability for changes in the fair value of the warrants until the earlier of the exercise of the warrants, at which time the liability will be reclassified to temporary equity, or the conversion of the underlying convertible preferred stock issuable into common stock, at which time the liability will be reclassified to stockholders' equity (deficit).

Deferred Rent

The Company recognizes rent expense on a straight-line basis over the noncancelable term of its operating lease and, accordingly, records the difference between cash rent payments and the recognition of rent expense as a deferred rent liability. The Company also records landlord-funded lease incentives, such as reimbursable leasehold improvements, as a deferred rent liability which is amortized as a reduction of rent expense over the noncancelable terms of its operating lease.

Revenue Recognition

Revenues are recognized when there is persuasive evidence that an arrangement exists, delivery has occurred, the price is fixed and determinable and collection is reasonably assured. In evaluating arrangements

with multiple elements the Company considers whether components of the arrangement represent separate units of accounting based upon whether certain criteria are met, including whether the delivered element has stand-alone value to the customer and whether there is objective and reliable evidence of the fair value of the undelivered items. This evaluation requires subjective determinations and requires management to make judgments about the fair value of individual elements and whether such elements are separable from other aspects of the contractual relationship. The consideration received in such arrangements is allocated among the separate units of accounting based on their respective fair values when there is reliable evidence of fair value for all elements of the arrangement. If there is no evidence of fair value for all the elements of the arrangement consideration is allocated based on the residual value method for the delivered elements. Under the residual method, the amount of revenues allocated to the delivered elements equals the total arrangement consideration less the aggregate fair value of any undelivered elements. The applicable revenue recognition criteria are applied to each of the separate units. Payments received in advance of work performed are recorded as deferred revenues and recognized when earned.

Product Sales, Net

Revenues from sales of Xyrem within the U.S. are recognized upon transfer of title, which occurs when the Company's specialty pharmaceutical distributor removes product from the Company's consigned inventory location at its facility for shipment to a patient. Antizol is, and prior to our sale of the Company's rights Cystadane was, shipped to the Company's wholesaler customers in the U.S. with free on board destination shipping terms, and the Company recognizes revenues when delivery occurs. The Company's international sales often have customer acceptance clauses and therefore the Company recognizes revenues when it is notified of acceptance or the time to inspect and reject the shipment has lapsed. When sales to international customers do not have acceptance clauses, the Company recognizes revenues when title transfers, which is generally when the product leaves the Company's logistics provider's facilities.

Revenues from sales of products within the U.S. are recorded net of estimated allowances for specialty distributor and wholesaler fees, prompt payment discounts, Medicaid rebates, government chargebacks and a customer rebate. Calculating these items involves estimates and judgments based on sales or invoice data and historical experience. Due to the nature of the Company's current products, product returns have been infrequent and immaterial.

Royalties, Net

The Company receives royalties from third parties based on sales of its products under out-licensing and distributor arrangements. For those arrangements where royalties are reasonably estimable, the Company recognizes revenues based on estimates of royalties earned during the applicable period, and adjusts for differences between the estimated and actual royalties in the following quarter. Historically, these adjustments have not been material. For those arrangements where royalties are not reasonably estimable, the Company recognizes revenues upon receipt of royalty statements from the licensee or distributor.

Contract Revenues

Nonrefundable fees where the Company has no continuing performance obligations are recognized as revenues when collection is reasonably assured. In situations where the Company has continuing performance obligations, nonrefundable fees are deferred and recognized ratably over the performance period. The Company recognizes at-risk milestone payments, which are typically related to regulatory, commercial or other achievements by the Company or its licensees and distributors, as revenues when the milestone is accomplished

and collection is reasonably assured. Refundable fees are deferred and recognized as revenues upon the later of when they become nonrefundable or when performance obligations are completed.

Cost of Product Sales and Concentrations of Supply Risk

Cost of product sales includes third party manufacturing and distribution costs, the cost of drug substance, royalties due to third parties on product sales, product liability insurance, FDA user fees, freight, shipping, handling and storage costs, and salaries and related costs of employees involved with production. The Company's product exchange policy for Antizol allows and, prior to our sale of our rights to Cystadane, our product exchange policy for Cystadane allowed, customers to return expired product for exchange up to six months before or after the product's expiration date. These expiration date returns are exchanged for replacement product, and the estimated cost of such exchanges is included in cost of product sales. Amounts accrued for replacement product have not been material to date. In addition, as part of the acquisition of Orphan Medical, the Company recorded finished goods on-hand at the acquisition date at fair value, which is defined as inventory valued at estimated selling prices less the sum of (a) costs of disposal and (b) reasonable profit allowance for the selling effort of the acquiring entity. The fair value of inventory acquired is recorded as cost of product sales when the related product revenues are recorded. Excluded from cost of product sales as shown on the face of the consolidated statements of operations is amortization of developed technology of $4.1 million and $7.9 million for the years ended December 31, 2005 and 2006, respectively, and $2.0 million and $1.9 million for the three months ended March 31, 2006 and 2007, respectively.

The Company relies on certain sole suppliers for drug substance and certain sole manufacturing partners for each of its marketed products and certain of its product candidates. The Company attempts to mitigate this risk by establishing contractual relationships where appropriate.

Research and Development

The Company's research and development expenses consist of expenses incurred in identifying, developing and testing its product candidates. These expenses consist primarily of fees paid to contract research organizations and other third parties to assist us in managing, monitoring and analyzing our clinical trials, clinical trial costs paid to sites and investigators' salaries, costs of non-clinical studies, including toxicity studies in animals, costs of contract manufacturing services, costs of materials used in clinical trials and non-clinical studies, fees paid to third parties for development candidates or drug delivery or formulation technologies that the Company has licensed, allocated expenses, such as facilities and information technology that support the Company's research and development activities, and related personnel expenses, including stock-based compensation. Research and development costs are expensed as incurred, including payments made under the Company's license agreements. For products that have not been approved by the FDA, inventory used in clinical trials is expensed at the time of production and recorded as research and development expense. For products that have been approved by the FDA, inventory used in clinical trials is expensed at the time the inventory is packaged for the trial and therefore is not included in inventory.

In-Process Research and Development

In connection with the acquisition of Orphan Medical, the Company recorded a charge of $21.3 million for acquired in-process research and development during the year ended December 31, 2005. This amount represented the estimated fair value related to three incomplete product candidate development projects for which, at the time of the acquisition, technological feasibility had not been established and there was no alternative future use.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Advertising Expenses

The Company expenses the costs of advertising, including promotional expenses, as incurred. Advertising expenses for the years ended December 31, 2004, 2005 and 2006 were zero, $551,000, and $2.3 million, respectively. Advertising expenses for the three months ended March 31, 2006 and 2007 were $442,000 and $820,000, respectively.

Income Taxes

The Company utilizes the liability method of accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on differences between financial reporting and the tax bases of assets and liabilities and are measured using enacted tax rates and laws that will be in effect when the differences are expected to reverse. A valuation allowance is provided when it is more likely than not that some portion or all of a deferred tax asset will not be realized.

Comprehensive Loss

Comprehensive loss includes net loss and all changes in stockholders' deficit during a period, except for those changes resulting from investments by stockholders or distributions to stockholders. For the years ended December 31, 2005 and 2006 and the three months ended March 31, 2006 and 2007, the difference between comprehensive loss and net loss represented unrealized gains on available-for-sale securities. For the year ended December 31, 2004, comprehensive loss was equal to the net loss.

Loss Per Common Share

Basic and diluted loss per common share is computed using the weighted average number of shares of common stock outstanding during the period. Potentially dilutive securities consisting of convertible preferred stock, stock options, common stock subject to repurchase and warrants were not included in the diluted loss per share attributable to common stockholders for all periods presented because the inclusion of such shares would have had an antidilutive effect.

The calculation of pro forma basic and diluted net loss per common share assumes conversion of all outstanding shares of preferred stock into shares of common stock using the as-if-converted method as if such conversion had occurred at the beginning of the period or the original issuance date, if later.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

	Year Ended December 31,			Three Months Ended March 31,	
	2004	2005	2006	2006	2007
				(Unaudited)	
	(In thousands, except per share data)				
Historic					
Numerator:					
Loss attributable to common stockholders	$ (24,804)	$ (85,156)	$ (81,311)	$ (25,880)	$ (19,584)
Denominator:					
Weighted-average common shares outstanding	607	618	620	618	627
Less: weighted-average common shares outstanding subject to repurchase	(591)	(612)	(607)	(609)	(604)
Weighted-average common shares used in computing loss per share attributable to common stockholders, basic and diluted	16	6	13	9	23
Loss per share attributable to common stockholders, basic and diluted	$ (1,550.25)	$ (14,192.67)	$ (6,254.69)	$ (2,875.56)	$ (851.48)
Pro Forma					
Weighted-average shares used in computation of basic and diluted loss per share applicable to common stockholders above			13		23
Pro forma adjustments to reflect assumed conversion of convertible preferred stock (unaudited)			13,453		17,643
Weighted-average shares used to compute pro forma basic and diluted loss per share attributable to common stockholders (unaudited)			13,466		17,666
			$ (6.04)		$ (1.11)

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following convertible preferred stock, stock options, common stock subject to repurchase and warrants were excluded from the computation of diluted loss per share attributable to common stockholders for the periods presented because including them would have an antidilutive effect (in thousands):

	Year Ended December 31,			Three Months Ended March 31,	
	2004	2005	2006	2006	2007
				(Unaudited)	
Series A convertible preferred stock (as if converted)	1,355	1,355	1,355	1,355	1,355
Series B convertible preferred stock (as if converted)	1,590	4,771	7,952	5,884	7,952
Series B Prime convertible preferred stock (as if converted)	1,723	5,169	8,614	6,375	8,614
Warrants to purchase Series BB convertible preferred stock (as if exercised and converted)	—	786	786	786	786
Options to purchase common stock	1,277	1,457	1,597	1,515	1,863
Early exercise of options and unvested restricted common stock	371	217	62	178	24
Common shares subject to repurchase	243	393	542	430	580

Stock-Based Compensation

Prior to January 1, 2006, the Company accounted for stock-based employee compensation arrangements using the intrinsic value method of Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees* ("APB 25") and related interpretations, and complied with the disclosure-only provisions of SFAS No. 123, *Accounting for Stock-Based Compensation*, ("SFAS 123") as amended by SFAS No. 148, *Accounting for Stock-Based Compensation, Transition and Disclosure, an amendment to SFAS Statement No. 123* ("SFAS 148"). Under APB 25 compensation expense for employees is based on the excess, if any, of the fair value of the Company's common stock over the exercise price of the option on the date of grant. No stock-based compensation expense was recorded under APB 25 during the years ended December 31, 2004 and 2005.

Effective January 1, 2006, the Company adopted SFAS No. 123(R), *Share-Based Payment* ("SFAS 123R"), which requires compensation expense related to share-based transactions, including employee stock options, to be measured and recognized in the financial statements based on fair value. SFAS 123R revises SFAS 123, as amended, and supersedes APB 25. The Company adopted SFAS 123R using a modified version of prospective application. Under modified prospective application, SFAS 123R applies to new awards and to awards modified, repurchased, or cancelled after the required effective date. Additionally, compensation cost for the portion of awards for which the requisite service has not been rendered that are outstanding as of the required effective date are recognized as the requisite service is rendered on or after the required effective date. The compensation expense for that portion of awards is based on the grant-date fair value of those awards. The compensation expense for awards with grant dates prior to January 1, 2006, are attributed to periods beginning on or after the effective date using the attribution method that was used under SFAS 123, except that the method of recognizing forfeitures only as they occur is not continued.

The Company is using the straight-line method to allocate compensation cost to reporting periods under SFAS 123 and SFAS 123R.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Beneficial Conversion Feature—Series B Preferred Stock and Series B Prime Preferred Stock

The Company accounts for potentially beneficial conversion features under EITF Issue No. 98-5, *Accounting for Convertible Securities with Beneficial Conversion Features or Contingently Adjustable Conversion Ratios* ("EITF 98-5") and EITF Issue No. 00-27, *Application of Issue No. 98-5 to Certain Convertible Instruments*. Issuances of convertible preferred stock during the year ended December 31, 2006 were deemed to result in a beneficial conversion feature calculated in accordance with EITF 98-5. For additional information regarding this beneficial conversion feature, see Note 12.

Reclassifications

Certain reclassifications have been made to the prior year amounts in order to conform to the current year presentation. Convertible preferred stock, which in prior year financial statements had been classified as part of stockholders' deficit, is now classified as temporary equity in accordance with EITF Topic D-98, *Classification and Measurement of Redeemable Securities*. Previously the Company had recorded the original purchase price of unvested shares of common stock subject to a right of repurchase by the Company as a liability and reclassified amounts to stockholders' deficit at the original purchase price as these shares vested. In the financial statements as reclassified, all vested shares of common stock subject to repurchase held by the Company's executive officers have been classified as temporary equity at fair value as of the date the Company entered into certain executive employment agreements. Certain payments to a customer for services performed, which had previously been classified as part of selling, general and administrative expense, have been reclassified as a reduction of revenue. These reclassifications did not impact previously reported net loss.

Recent Accounting Pronouncements

In July 2006, the FASB issued Interpretation No. 48, *Accounting for Uncertainty in Income Taxes, an interpretation of FASB Statement No. 109* ("FIN 48"). FIN 48 clarifies the accounting for uncertainty in income taxes by prescribing the recognition threshold a tax position is required to meet before being recognized in the financial statements. It also provides guidance on derecognition, classification, interest and penalties, accounting in interim periods, disclosure, and transition. FIN 48 is effective for fiscal years beginning after December 15, 2006. The Company adopted the provisions of FIN 48 effective January 1, 2007. No cumulative adjustment to the Company's accumulated deficit was required upon adoption.

In September 2006, the Securities and Exchange Commission issued Staff Accounting Bulletin No. 108, *Considering the Effects of Prior Year Misstatements when Quantifying Misstatements in Current Year Financial Statements* ("SAB 108"). SAB 108 provides guidance on the consideration of the effects of prior year misstatements in quantifying current year misstatements for the purpose of a materiality assessment. SAB 108 establishes an approach that requires quantification of financial statement errors based on the effects on each of the Company's balance sheets and statement of operations and the related financial statement disclosures. SAB 108 was adopted by the Company in the first quarter of 2007. The Company has determined that the adoption of SAB 108 had no material effect on its results of operations and financial position.

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements* ("SFAS 157"). SFAS 157 provides guidance for using fair value to measure assets and liabilities. It also responds to investors' requests for expanded information about the extent to which companies measure assets and liabilities at fair value, the information used to measure fair value, and the effect of fair value measurements on earnings. SFAS 157 applies whenever other standards require (or permit) assets or liabilities to be measured at fair value, and does not expand the use of fair value in any new circumstances. SFAS 157 is effective for financial statements issued for fiscal years beginning after November 15, 2007 and is required to be adopted by the Company effective

January 1, 2008. The Company is currently evaluating the effect that the adoption of SFAS 157 will have on its results of operations and financial position.

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities - Including an amendment of FASB Statement No. 115* ("SFAS 159"). SFAS 159 provides companies with an option to report selected financial assets and liabilities at fair value. The objective of SFAS 159 is to reduce both complexity in accounting for financial instruments and the volatility in earnings caused by measuring related assets and liabilities differently. Most of the provisions in Statement 159 are elective; however, the amendment to FASB Statement No. 115, Accounting for Certain Investments in Debt and Equity Securities, applies to all entities with available-for-sale and trading securities. SFAS 159 is effective as of the beginning of an entity's first fiscal year beginning after November 15, 2007. The Company is currently evaluating the effect that the adoption of SFAS 159 will have on its results of operations and financial position.

3. Cash, Cash Equivalents, Restricted Cash and Available-For-Sale Securities

Cash, cash equivalents, restricted cash and available-for-sale securities, all of which are classified as available-for-sale securities, consisted of the following as of December 31, 2005 and 2006 and March 31, 2007 (in thousands):

	December 31, 2005			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Cash	$ 5,189	$ —	$ —	$ 5,189
Obligations of U.S. government agencies	15,484	2	—	15,486
Corporate debt securities	7,578	2	—	7,580
Other debt securities, primarily money market funds	4,659	—	—	4,659
Total available-for-sale securities	$ 32,910	$ 4	$ —	$ 32,914
Amounts classified as cash and cash equivalents				$ 20,614
Amounts classified as restricted cash				300
Amounts classified as long-term restricted cash and available-for-sale securities				12,000
Total				$ 32,914

	December 31, 2006			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Cash	$ 11,799	$ —	$ —	$ 11,799
Obligations of U.S. government agencies	35,106	10	—	35,116
Corporate debt securities	17,180	2	—	17,182
Other debt securities, primarily money market funds	27,126	—	—	27,126
Total available-for-sale securities	$ 91,211	$ 12	$ —	$ 91,223
Amounts classified as cash and cash equivalents				$ 78,948
Amounts classified as restricted cash				275
Amounts classified as long-term restricted cash and available-for-sale securities				12,000
Total				$ 91,223

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

	March 31, 2007			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
		(Unaudited)		
Cash	$ 12,641	$ —	$ —	$ 12,641
Obligations of U.S. government agencies	39,503	—	—	39,503
Corporate debt securities	13,319	—	—	13,319
Other debt securities, primarily money market funds	14,564	—	—	14,564
Total available-for-sale securities	$ 80,027	$ —	$ —	$ 80,027
Amounts classified as cash and cash equivalents				67,667
Amounts classified as restricted cash				275
Amounts classified as long-term restricted cash and available-for-sale securities				12,085
				$ 80,027

All available-for-sale securities held as of December 31, 2005 and 2006 had contractual maturities of less than one year.

Since inception, there have been no material realized gains or losses on available-for-sale securities. No available-for-sale securities held as of December 31, 2005 or 2006 had been in a continuous unrealized loss position for more than 12 months. The aggregate fair value of available-for-sale securities held at December 31, 2005 and 2006 which had unrealized losses was $1.5 million and $1.6 million, respectively. The amount of the unrealized loss at December 31, 2005 and 2006 was immaterial and the Company does not believe that the impairment is other than temporary.

4. Certain Balance Sheet Items

Inventories consist of the following (in thousands):

	December 31,		March 31,
	2005	2006	2007
			(Unaudited)
Raw materials	$1,109	$ 541	$ 550
Finished goods	2,153	2,485	1,753
Total inventories	$3,262	$3,026	$ 2,303

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Property and equipment consist of the following (in thousands):

	December 31, 2005	December 31, 2006	March 31, 2007 (Unaudited)
Leasehold improvements	$ 616	$ 700	$ 704
Computer equipment	707	873	961
Computer software	558	1,271	1,413
Furniture and fixtures	160	182	208
Construction-in-progress	506	316	327
Total	2,547	3,342	3,613
Less accumulated depreciation and amortization	(606)	(1,235)	(1,497)
Property and equipment, net	$1,941	$ 2,107	$ 2,116

Accrued liabilities consists of the following (in thousands):

	December 31, 2005	December 31, 2006	March 31, 2007 (Unaudited)
Accrued research and development expense	$ 4,166	$ 5,119	$ 4,499
Accrued compensation	3,329	4,322	2,950
Accrued sales and marketing expense	2,231	783	2,071
Accrued general and administrative expense	365	1,440	1,397
Other	1,030	1,279	2,180
Total accrued liabilities	$11,121	$12,943	$ 13,097

5. Acquisition of Orphan Medical

On June 24, 2005, the Company acquired Orphan Medical, a developer and marketer of orphan drug products, primarily to establish a commercial presence through a specialty pharmaceutical sales organization focused on neurologists and psychiatrists. Orphan Medical marketed and sold three products and was conducting clinical trials in order to expand the potential use of one of those products to additional indications. The acquisition was accounted for as a business combination using the purchase method of accounting. Accordingly, the results of Orphan Medical are included in the Company's consolidated financial statements since the date of acquisition.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The purchase price was comprised of cash consideration (net of cash acquired) of $145.4 million plus direct acquisition costs of $750,000 and was allocated to the assets purchased and liabilities assumed based upon their respective fair values as follows (in thousands):

Accounts receivable	$ 3,348
Inventories	4,717
Other current assets	2,714
Noncurrent assets	112
Liabilities	(7,988)
Intangible assets	83,700
Goodwill	38,213
In-process research and development	21,300
Total fair value of assets acquired, net of liabilities assumed	$146,116

Liabilities of $8.0 million as shown above included $4.0 million of restructuring charges related primarily to employee severance payments and the closure of facilities, of which no amounts remained unpaid as of December 31, 2006.

Management performed a valuation of identifiable intangible assets acquired in the transaction. The estimated fair value of intangible assets identified and the useful lives assigned at the time of acquisition are as follows (in thousands):

	Gross Carrying Amount	Weighted-Average Estimated Useful Life (Years)
Developed technology—Xyrem	$39,700	9.5
Developed technology—Antizol	31,100	9.5
Developed technology—Cystadane	4,300	9.5
Agreements not to compete	5,600	4.4
Trademarks	2,600	9.5
Other	400	4.5
Amortizable intangible assets	$83,700	9.1

During the year ended December 31, 2005, the Company recorded a charge of $21.3 million for acquired in-process research and development. This amount represented the estimated fair value related to three incomplete product candidate development projects for which technological feasibility had not been established and that had no alternative future use at the time of acquisition. This charge is not deductible for federal tax purposes. The fair value of the in-process research and development was determined using the “income approach.” This method requires a forecast of all the expected future net cash flows associated with the in-process technology discounted to present value by applying an appropriate discount rate. The discount rate used reflects the weighted-average cost of capital for companies in the Company’s industry, as well as specific risks associated with the cash flows being discounted.

In January 2005, Orphan Medical submitted a supplemental New Drug Application, or sNDA, to the FDA seeking an expanded label indication for Xyrem for the treatment of excessive daytime sleepiness in patients with narcolepsy. At the time of the acquisition, the FDA had not yet approved the sNDA. The Company used a

discount rate of 26% to calculate the fair value of the expanded label indication for Xyrem and accounted for $15.2 million associated with the expanded label indication as in-process research and development expense. The sNDA was approved by the FDA in November 2005. At the time of acquisition, Orphan Medical was also conducting a Phase II clinical trial to evaluate the use of sodium oxybate, the active pharmaceutical ingredient in Xyrem, to treat fibromyalgia syndrome. The Company used a 50% discount rate to calculate the fair value associated with this development project and accounted for $5.9 million associated with the project as in-process research and development. In August 2006, the Company initiated a Phase III clinical trial of sodium oxybate for the treatment of fibromyalgia syndrome. In addition, at the time of acquisition, Orphan Medical was conducting initial research into new dosage forms of Xyrem. The Company used a 50% discount rate to calculate the fair value of these research efforts and accounted for $200,000 associated with this research as in-process research and development expense.

The excess of the purchase price over the fair value of the net tangible and identifiable intangible assets was recorded as goodwill. The primary factors contributing to the existence of goodwill relate to Orphan Medical's sales force and commercial infrastructure. During the year ended December 31, 2006 the Company finalized its estimates of the assets acquired and liabilities assumed and recorded a decrease in goodwill of $670,000. The total amount of goodwill recorded in connection with the acquisition was $38.2 million, none of which will be deductible for federal tax purposes.

In March 2007, the Company sold its rights to Cystadane, a product acquired in connection with the acquisition of Orphan Medical. See Note 19 for a further discussion of this transaction.

The following unaudited pro forma information presents the results of continuing operations and net income of Jazz Pharmaceuticals and Orphan Medical for the years ended December 31, 2004 and 2005 as if the acquisition of Orphan Medical had been consummated as of January 1, 2004 and 2005, respectively. The pro forma results exclude the nonrecurring charge for purchased in-process research and development that resulted directly from the June 24, 2005 acquisition of Orphan Medical by the Company. The unaudited pro forma condensed combined financial information does not reflect any incremental direct costs, including any restructuring charges to be recorded in connection with the acquisition, or any potential cost savings that may result from the consolidation of certain operations of the Company and Orphan Medical. Accordingly, the unaudited pro forma financial information is presented for illustrative purposes and not necessarily indicative of the results of operations of the combined company that would have occurred had the acquisition occurred at the beginning of each period presented, nor is it necessarily indicative of future operating results. The unaudited pro forma information is as follows (in thousands, except per share data):

	Year Ended December 31,	
	2004	2005
Revenues	$ 23,768	$ 37,275
Net loss	(60,318)	(77,643)
Loss per common share	$(3,769.88)	$(12,940.50)

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

6. Goodwill and Intangible Assets

The gross carrying amount and net book value of goodwill and intangible assets is as follows (in thousands):

	December 31, 2005			December 31, 2006			March 31, 2007		
	Gross Carrying Amount	Accum-ulated Amorti-zation	Net Book Value	Gross Carrying Amount	Accum-ulated Amorti-zation	Net Book Value	Gross Carrying Amount	Accum-ulated Amorti-zation (Unaudited)	Net Book Value
Developed technology—Xyrem	$ 39,700	$2,155	$37,545	$ 39,700	$ 6,327	$33,373	$ 39,700	$ 7,370	$32,330
Developed technology—Antizol	31,100	1,688	29,412	31,100	4,956	26,144	31,100	5,773	25,327
Developed technology—Cystadane	4,300	234	4,066	4,300	687	3,613	—	—	—
Agreements not to compete	5,600	696	4,904	5,600	2,042	3,558	5,600	2,379	3,221
Trademarks	2,600	141	2,459	2,600	414	2,186	2,600	483	2,117
Other	400	46	354	400	134	266	400	156	244
Amortizable intangible assets	83,700	4,960	78,740	83,700	14,560	69,140	79,400	16,161	63,239
Goodwill	38,883			38,213			38,213		
Total	$122,583			$121,913			$117,613		

Future amortization costs per year for the Company's existing intangible assets other than goodwill as of December 31, 2006 are estimated as follows (in thousands):

Year Ended December 31,	Estimated Amortization Expense
2007	$ 9,600
2008	9,307
2009	9,033
2010	8,542
2011	8,164

In March 2007, as discussed more fully in note 19, the Company sold its rights to the Cystadane product and as a result reduced the gross carrying amount and accumulated amortization of this intangible asset by $4.3 million and $761,000, respectively.

7. Debt and Financing Obligations

Line of Credit

In September 2006, the Company entered into a one year line of credit agreement with a financial institution under which the Company may borrow up to 80% of eligible receivables up to a maximum borrowing limit of $5.0 million. Borrowings under the line of credit bear interest at the lender's prime rate. The Company is subject to certain financial and operating covenants under the credit agreement. The lender has a security interest in all of the Company's assets, with the exception of intellectual property. As of December 31, 2006 and March 31, 2007, $2.2 million and $3.1 million, respectively, was outstanding under the line of credit with interest accruing at a rate of 8.25% per year.

Senior Secured Notes

In order to partially finance the acquisition of Orphan Medical, a wholly-owned subsidiary of the Company issued $80.0 million aggregate principal amount of senior secured notes (the "notes") and warrants to purchase

785,728 shares of the Company's Series BB preferred stock exercisable at $20.36 per share (the "warrants") to certain third parties, some of whom are affiliated with preferred stock investors in June 2005. The notes accrue interest at a rate of 15% per annum, payable quarterly in arrears. The principal on the notes is due in full on June 24, 2011 and can be repaid by the Company at any time, at certain premiums over the principal amount.

The Company estimated the fair value of the warrants to be $6.7 million using the Black-Scholes option pricing model with the following assumptions at the time of issuance: risk free interest rate of 3.96%, volatility of 60%, dividend yield of 0%, and an expected life of seven years. For additional information on the determination of fair value for the warrants as of December 31, 2005 and 2006 and March 31, 2007, see Note 11. The discount to the notes is being accreted to zero over the life of the notes using the effective interest rate method and is included as a component of interest expense. Total issuance costs of $2.0 million were allocated to the notes and the warrants based on their relative fair values. Of the total issuance costs, $1.8 million was allocated to the notes and included in other assets and is being amortized to interest expense using the effective interest method.

The Company and all existing and future domestic subsidiaries fully and unconditionally guarantee repayment of the notes. The notes and each guarantee are secured by a lien and security interest in substantially all of the Company's and each subsidiary's assets. The subsidiary of the Company that issued the notes is required to maintain a minimum cash balance equal to 15% of the outstanding principal amount on the notes. This amount was $12.0 million at December 31, 2005 and 2006 and March 31, 2007 and is reflected as long-term restricted cash and investments on the Company's consolidated balance sheet. The notes contain customary covenants including limitations on the Company's ability to pay dividends, make investments or other restricted payments, incur debt, grant liens, sell assets and enter into sale-leaseback transactions. Upon the occurrence of certain events of default under the notes, including a default by the Company in payment of principal or interest on the notes, a bankruptcy filing by the Company, or a change in control of the Company, the Company may be required to repay the notes at a premium. The repayment premium was 30.0% and 28.3% of the principal amount of the notes as of December 31, 2006 and March 31, 2007, respectively, and is reduced to zero ratably over the term of the notes.

Development Financing Obligation

In August 2005, the Company entered into an agreement pursuant to which a third party agreed to provide $30.0 million to partially fund a Phase III clinical trial of a product candidate in development in exchange for the Company's agreement to repay the third party $37.5 million subject to, and conditional upon, approval by the FDA to market the product in the U.S. In addition, the Company agreed to pay royalties at specified rates based on sales of the product within the U.S. The Company received $15.0 million in 2005 and $15.0 million in 2006 under the agreement. In June 2006, following analysis of the results of the Phase III clinical trial, the Company notified the third party of its intention to discontinue development of the product candidate. As a result, the Company recorded a gain of $31.6 million resulting from the extinguishment of liabilities related to this transaction, which represented principal and interest accrued as of the date notice that development would be discontinued was provided to the third party. Prior to this extinguishment of liabilities, the Company had recorded interest of $445,000, $1.1 million and $599,000 during the years ended December 31, 2005 and 2006 and the three months ended March 31, 2006, respectively, using the effective interest method.

8. Commitments and Contingencies

Indemnification

In the normal course of business, the Company enters into contracts and agreements that contain a variety of representations and warranties and provide for general indemnification, including indemnification associated

with product liability or infringement of intellectual property rights. The Company's exposure under these agreements is unknown because it involves future claims that may be made against the Company that may be, but have not yet been, made. To date, the Company has not paid any claims or been required to defend any action related to these indemnification obligations except as set forth in the description of legal proceedings below.

The Company has agreed to indemnify its officers and directors and the officers and directors of Orphan Medical for losses and costs incurred in connection with certain events or occurrences, including advancing money to cover certain costs, subject to certain limitations. The maximum potential amount of future payments the Company could be required to make under this indemnification is unlimited; however, the Company maintains insurance policies that may limit its exposure and may enable it to recover a portion of any future amounts paid. Assuming the applicability of coverage, the willingness of the insurer to assume coverage, and subject to certain retention, loss limits and other policy provisions, the Company believes the fair value of these indemnification obligations is not material. Accordingly, the Company has not recognized any liabilities relating to these obligations as of December 31, 2005 and 2006 and March 31, 2007. No assurances can be given that the covering insurers will not attempt to dispute the validity, applicability, or amount of coverage without expensive litigation against these insurers, in which case the Company may incur substantial liabilities as a result of these indemnification obligations.

Lease and Other Commitments

In June 2004, the Company entered into a noncancelable operating lease for an office facility in Palo Alto, California which expires in August 2008. The lease is renewable through 2017 at the Company's option. In addition to these lease payments, the Company is obligated to pay for operating expenses for the leased property. The Company is also obligated to make payments under noncancelable operating leases for cars used by its sales force. Rent expense under all operating leases was $435,000, $930,000 and $1.3 million for the years ended December 31, 2004, 2005 and 2006, respectively. Rent expense under all operating leases was $268,000 and $361,000 for the three months ended March 31, 2006 and 2007, respectively. Future minimum lease payments under the Company's noncancelable operating leases at December 31, 2006, are as follows (in thousands):

Year ended December 31,	Lease Payments
2007	$ 1,227
2008	929
2009	238
2010	17
Total future minimum lease payments	$ 2,411

Future minimum lease payments under the Company's noncancelable operating leases at March 31, 2007, are as follows (unaudited) (in thousands):

Year ended December 31,	Lease Payments (Unaudited)
Remainder of 2007	$ 1,242
2008	1,338
2009	343
2010	57
Total future minimum lease payments	$ 2,980

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The Company uses third party contract manufacturers to manufacture products. As of December 31, 2006 and March 31, 2007, the Company had $1.5 million and $1.7 million, respectively, of noncancelable purchase commitments under agreements with contract manufacturers due in 2007.

Legal Proceedings

In April 2006, a physician who was a speaker for Orphan Medical (and for a short time for the Company), was indicted by a federal grand jury in the U.S. District Court for the Eastern District of New York. The indictment alleges that the physician engaged in a scheme with Orphan Medical sales representatives and other Orphan Medical employees to promote and obtain reimbursement for Xyrem for medical uses not approved for marketing by the FDA. Also in April 2006, the Department of Justice, acting through the U.S. Attorney for the Eastern District of New York, issued to the Company and Orphan Medical subpoenas for documents relating to Xyrem. The Company is cooperating with this investigation and has provided documents to the U.S. Attorney's Office. As a result of the Company's acquisition of Orphan Medical, the Government may seek to hold the Company responsible for Orphan Medical's conduct. The Company has been in discussions with the U.S. Attorney's Office regarding the possible settlement of any potential government claims against Orphan Medical and/or the Company. It is currently unknown if any such settlement will be reached on reasonable terms, or at all. The Company cannot predict or determine the outcome of this matter or reasonably estimate the amount of any fines or penalties that might result from an adverse outcome. Therefore, in accordance with Statement of Financial Accounting Standard No. 5, *Accounting for Contingencies* ("SFAS 5"), the Company has not recorded an associated liability. The Company will recognize a liability, if any, when it has an adequate basis to estimate any probable exposure, if any.

On April 10, 2006, Little Gem Life Sciences LLC, individually and purportedly on behalf of a class of persons similarly situated, filed a complaint against Orphan Medical and former officers of Orphan Medical in the U.S. District Court for the District of Minnesota. The complaint alleges that the defendants made false and misleading statements in the proxy statement prepared by Orphan Medical in connection with the solicitation of proxies to be voted at the special meeting of Orphan Medical stockholders held on June 22, 2005 for the purpose of considering and voting upon a proposal to adopt the definitive merger agreement pursuant to which the Company acquired Orphan Medical. The plaintiff seeks damages for itself and the putative class, in an unspecified amount, together with interest, litigation costs and expenses, and its attorneys' fees and other disbursements, as well as unspecified other and further relief. On October 25, 2006, the defendants filed a motion to dismiss the complaint and oral argument on the motion was heard by the U.S. District Court for the District of Minnesota. On February 16, 2007, the U.S. District Court for the District of Minnesota granted the defendants' motion to dismiss the complaint, with leave to amend. On March 14, 2007, the plaintiff filed an amended complaint, and the defendants responded with a motion to dismiss on March 16, 2007. The Company cannot predict or determine the outcome of this matter or reasonably estimate the amount of any judgments or payments that might result from an adverse outcome. Therefore, in accordance with SFAS 5 the Company has not recorded an associated liability. The Company will recognize a liability, if any, when it has an adequate basis to estimate any probable exposure, if any.

From time to time the Company is involved in legal proceedings arising in the ordinary course of business. The Company believes there is no other litigation pending that could have, individually or in the aggregate, a material adverse effect on the Company's results of operations or financial condition.

9. Collaboration and License Agreements

In October 2004, the Company entered into an agreement with GlaxoSmithKline to purchase worldwide rights to the active pharmaceutical ingredient in JZP-4. The Company paid and recorded research and development

expense of $2.0 million upon execution of the agreement and $3.0 million in July 2006 upon achievement of a development milestone. The Company also agreed to pay up to $113.5 million upon the achievement of future development and commercial milestones and royalties at specified rates based on net sales.

The Company paid and expensed as research and development $3.0 million and $10.4 million during the years ended December 31, 2004 and 2005, respectively, upon achievement of development milestones under the terms of three agreements which have since been terminated and under which no future obligations existed at December 31, 2006. In connection with its product development activities, the Company may enter into agreements with third party technology providers, patent holders and others. Patent licenses may require upfront payments, patent prosecution and maintenance fees and royalties on sales of products covered by the patents. Agreements with technology providers often provide for upfront payments and milestone payments based upon the achievement of specified development and commercial milestones and royalties based on sales of the products the Company develops with the technology provider. The Company currently has two such agreements pursuant to which it has agreed to pay up to $8.2 million upon achievement of development and commercial milestones.

10. Product License

In June 2006, the Company entered into an agreement with UCB Pharma Limited (“UCB”) that amended and restated a prior agreement between Orphan Medical and UCB. Under the terms of the amended agreement, UCB has the right to market Xyrem for the treatment of narcolepsy and JZP-6 for the treatment of fibromyalgia syndrome in 54 countries outside of the U.S. Under the prior agreement, UCB made a nonrefundable development milestone payment of $2.5 million in November 2005 and nonrefundable commercial milestone payments of $500,000 and $2.0 million in June 2006 and March 2007, respectively, which the Company recognized upon achievement of the milestones. UCB also made upfront payments of $5.0 million upon execution of the amended agreement in June 2006 and $10.0 million in August 2006 upon exercise of its rights to develop and commercialize JZP-6 for the treatment of fibromyalgia syndrome. The Company recognized revenues of $463,000 and $252,000 related to these upfront payments during the year ended December 31, 2006 and the three months ended March 31, 2007, respectively. The remaining $14.3 million was recorded as deferred revenues as of March 31, 2007 and is being recognized ratably through 2019, the expected performance period under the agreement. There has been no change in the expected performance period since its establishment in 2006 at the time of the initial upfront payment. The amended agreement requires UCB to make additional milestone payments of up to $146.0 million, of which up to $6.0 million relate specifically to Xyrem for the treatment of narcolepsy, up to $40.0 million relate to the development and approval of JZP-6 for the treatment of fibromyalgia syndrome and up to $100.0 million relate primarily to the commercialization of JZP-6 for the treatment of fibromyalgia syndrome as well as additional sales of Xyrem for the treatment of narcolepsy.

11. Convertible Preferred Stock Warrant Liability

In June 2005 in connection with the issuance of the notes referenced in Note 7, the Company issued warrants to purchase 785,728 shares of Series BB preferred stock at an exercise price of $20.36 per share. The warrants are exercisable, at the option of the holders, at any time until June 24, 2012, and are recorded as preferred stock warrant liability. The warrants may be exercised using the net exercise method. Under this method, the number of shares issued upon exercise is reduced by an amount equal to the product of the number of shares subject to the exercise and the exercise price per share, divided by the fair value of the Series BB preferred stock on the date of the exercise. The number of shares issuable upon exercise of the warrants, and the exercise price per share, are adjustable in the event of stock splits, dividends and similar fundamental changes. The preferred stock warrant liability is revalued at the end of each reporting period to fair value using the Black- Scholes option pricing model to determine the fair value of the warrants. The fair value of the warrants was

estimated to be $7.4 million, $8.5 million and $11.6 million as of December 31, 2005, December 31, 2006 and March 31, 2007, respectively, using the following assumptions:

	December 31, 2005	December 31, 2006	March 31, 2007 (Unaudited)
Series BB preferred stock fair value	$ 16.60	$ 19.37	$ 24.79
Volatility	60%	59%	57%
Contractual term	6.5	5.5	5.2
Risk-free rate	4.3%	4.7%	4.5%
Expected dividend yield	0%	0%	0%

The Company recorded other expense of $901,000 and $1.1 million during the years ended December 31, 2005 and 2006, respectively, and $3.1 million during the three months ended March 31, 2007, to reflect increases in the fair value of the preferred stock warrant liability. The Company recorded a benefit of $62,000 during the three months ended March 31, 2006 to reflect a decrease in the fair value of the preferred stock warrant liability. The Company will continue to adjust the preferred stock warrant liability for changes in the fair value of the warrants until the earlier of the exercise of the warrants to purchase Series BB preferred stock, at which time the liability will be reclassified to temporary equity, or the conversion of the underlying Series BB preferred stock into common stock, at which time the liability will be reclassified to stockholders' equity (deficit).

12. Convertible Preferred Stock

The Company's Second Amended and Restated Certificate of Incorporation authorizes the Company to issue shares of Series A preferred stock, Series B preferred stock, Series B Prime preferred stock and Series BB preferred stock, which hereinafter are collectively referred to as preferred stock.

As of December 31, 2005, the preferred stock is comprised of the following (in thousands, except share amounts):

	Shares Authorized	Shares Issued and Outstanding	Carrying Amount	Aggregate Liquidation Preference
Series A	1,355,380	1,355,377	$ 14,926	$ 15,000
Series B	17,096,311	4,771,048	71,549	72,000
Series B Prime	8,614,420	5,168,651	77,387	78,000
Series BB	785,728	—	—	—
Total	27,851,839	11,295,076	$ 163,862	$ 165,000

As of December 31, 2006 and March 31, 2007, the preferred stock is comprised of the following (in thousands, except share amounts):

	Shares Authorized	Shares Issued and Outstanding	Carrying Amount	Aggregate Liquidation Preference
Series A	1,355,380	1,355,377	$ 14,926	$ 15,000
Series B	17,096,311	7,951,755	119,544	120,000
Series B Prime	8,614,420	8,614,419	129,382	130,000
Series BB	785,728	—	—	—
Total	27,851,839	17,921,551	$ 263,852	$ 265,000

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The Company initially recorded the preferred stock at their fair values on the dates of issuance, net of issuance costs. A redemption event will only occur upon a liquidation or winding up of the Company or a change of control as defined in the Company's Second Amended and Restated Certificate of Incorporation. All shares of preferred stock have been presented outside of permanent equity in accordance with EITF Topic D-98, *Classification and Measurement of Redeemable Securities*. The Company has elected not to adjust the carrying values of the preferred stock to their redemption value since it is uncertain whether or when a redemption event will occur. Subsequent adjustments to increase the carrying values to the redemption values will be made when it becomes probable that such redemption will occur.

As of December 31, 2006 and March 31, 2007, the Company has reserved 8,614,420 shares of Series B preferred stock for conversion of the Series B Prime preferred stock.

In January and December 2006, the Company issued 2,319,264 and 4,307,211 shares, respectively, of Series B preferred stock and Series B Prime preferred stock at a purchase price of $15.09 per share. At the time of each of these issuances, the value of the common stock into which the Series B preferred stock and Series B Prime preferred stock is convertible had a fair value greater than the proceeds for such issuances. Accordingly, the Company recorded a deemed dividend on the Series B preferred stock and Series B Prime preferred stock of $3.5 million in January 2006 and $18.4 million in December 2006, which equals the amount by which the estimated fair value of the common stock issuable upon conversion of the issued Series B preferred stock and Series B Prime preferred stock exceeded the proceeds from such issuances.

The significant rights, privileges and preferences of the preferred stock are as follows:

Election of Directors

The Company has two classes of directors on the Company's board of directors, designated as standard directors and Series B Prime directors. The holders of Series A preferred stock, Series B preferred stock, Series B Prime preferred stock, Series BB preferred stock and common stock, voting together as a single class on an as-if-converted to common stock basis, are entitled to elect the standard directors. The holders of Series B Prime preferred stock, voting as a single class on an as-if-converted-to-common-stock basis, are entitled to elect Series B Prime directors. The number of Series B Prime directors which the holders of Series B Prime preferred stock are entitled to elect and the number of votes which each Series B Prime director is entitled to cast with respect to any action of the Board of Directors is dependent upon (i) the total number of authorized directors; (ii) the ratio of outstanding Series B Prime preferred stock to the total outstanding shares of Series B preferred stock and Series B Prime preferred stock collectively, including common stock issued on conversion thereof; and (iii) the ratio of total capital committed by holders of Series B Prime preferred stock to the total capital commitments of all holders of Series B preferred stock and Series B Prime preferred stock.

Conversion

Each share of Series B Prime preferred stock is convertible into one share of Series B preferred stock at the option of the holder or automatically at any time that the holder, together with its affiliates, owns less than 8.7% of the aggregate total shares of Series B preferred stock and Series B Prime preferred stock, including common stock issued upon conversion thereof. Each share of Series A preferred stock, Series B preferred stock, Series B Prime preferred stock, and Series BB preferred stock is convertible into one share of common stock, subject to adjustment for stock dividends, stock splits, subdivisions, combinations, reclassifications and similar matters affecting the common stock. Each share of preferred stock will automatically be converted into common stock at the conversion price then in effect upon the earlier of (i) the closing of a firm commitment underwritten public offering with aggregate proceeds to the Company in excess of $60 million and a per share price not less than

$4.09; or (ii) the consent of the holders of at least 55% of the total outstanding shares of preferred stock, voting together as a single class on an as-if-converted to common stock basis.

Voting Rights

The holder of each share of preferred stock is entitled to the number of votes equal to the number of shares of common stock into which the share of preferred stock could be converted. Other than as stated in the Second Amended and Restated Certificate of Incorporation or as required by law, holders of preferred stock vote together with holders of common stock and not as a separate class or series.

Dividends

Holders of the preferred stock are entitled to receive on a pari passu basis, prior and in preference to any declaration or payment of any dividend on the common stock, noncumulative dividends out of any assets legally available at an annual rate of 8% of the respective original purchase prices for the shares of preferred stock, when and if declared by the board of directors. No dividends on preferred stock have been declared through December 31, 2006 or March 31, 2007.

Liquidation

In the event of any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, or any change of control of the Company, the holders of Series A preferred stock, Series B preferred stock, Series B Prime preferred stock and Series BB preferred stock are entitled to receive, in preference to distributions to holders of common stock, an amount per share equal to $11.07, $15.09, $15.09 and $20.36, respectively, plus any declared but unpaid dividends with respect to such shares of preferred stock. If the assets of the Company are insufficient to permit payment of the liquidation amount in full to all holders of preferred stock, the assets of the Company will be distributed ratably to holders of all series of preferred stock in proportion to the preferential amount each such holder would otherwise be entitled to receive. A change of control of the Company is defined in the Company's Second Amended and Restated Certificate of Incorporation as (i) a sale of all or substantially all the Company's assets other than to certain holders of Series B Prime preferred stock, their affiliates, a group including such holders or affiliates, or entities controlled by the existing stockholders of the Company; (ii) a transaction or series of transactions resulting in more than 50% of the Company's voting power being led by certain holders of Series B Prime preferred stock, their affiliates or a group including such holders or affiliates; or (iii) a merger or consolidation with an entity other than certain holders of Series B Prime preferred stockholders, their affiliates, or a group including such holder or affiliates if after such merger or consolidation the directors immediately prior to such merger or consolidation do not constitute a majority of the directors of the surviving entity or its parent.

13. Common Stock

The Company's Second Amended and Restated Certificate of Incorporation authorizes the Company to issue 22,835,080 shares of common stock. The Company has issued certain shares of its common stock under restricted stock purchase agreements with its executives and a non-employee director and upon the early exercise of stock options. Under the terms of these restricted stock purchase agreements and exercised stock options, the Company has the option to repurchase unvested shares of common stock at the initial purchase price upon the termination of a holder's services to the Company. The number of shares subject to repurchase is reduced ratably over 48 months from the date of purchase or, in the case of stock options early exercised, the date of grant of the stock option.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Unvested shares are subject to a right of repurchase at cost upon termination of employment. The original purchase price paid for these shares are recorded as a liability. Prior to 2004 these amounts were reclassified to permanent equity as these shares vested. In February 2004, each of the Company's executive officers entered into an employment agreement which permits the executive officer or the officer's estate to require the Company to repurchase vested shares at fair market value upon termination of the executive officer's employment due to death or disability. The fair value of vested shares held by the Company's executive officers as of the date of such agreements (the "Agreement Date Fair Value") was recorded as temporary equity and following the date of such agreements, the Agreement Date Fair Value of shares held by the Company's executive officers is recorded as temporary equity as such shares vest. The excess of the Agreement Date Fair Value over the original purchase price paid for such shares is charged against additional paid-in capital or, to the extent additional paid-in capital is insufficient, as an increase to stockholders' deficit. As of December 31, 2005 and 2006 and March 31, 2007 the Company had recorded a liability of $184,000, $98,000 and $77,000, respectively, associated with 216,622, 62,127 and 23,505 unvested shares, respectively. As of December 31, 2005 and 2006 and March 31, 2007, the Company had recorded $5.9 million, $8.2 million and $8.7 million as temporary equity, respectively, associated with 242,911, 392,622 and 542,336 vested shares held by executive officers, respectively.

The Company has reserved the following shares of authorized but unissued Common Stock:

	As of December 31, 2006	As of March 31, 2007 (Unaudited)
Reserved for conversion of Series A preferred stock	1,355,380	1,355,380
Reserved for conversion of Series B, Series B Prime and Series BB preferred stock	17,882,039	17,882,039
Reserved for the Company's equity incentive plan	2,083,339	2,078,322
Total reserved shares of common stock	21,320,758	21,315,741

14. Stock-Based Compensation

2003 Equity Incentive Plan

In March 2003, the board of directors adopted and the stockholders approved the 2003 Equity Incentive Plan (the "2003 Plan"). The 2003 Plan provides for the grant of incentive and nonstatutory stock options, stock issuances, cash awards and certain other equity-related awards to employees, directors and consultants of the Company. An aggregate of 2,125,042 shares of common stock is reserved under the 2003 plan. Incentive stock options may be granted by the board of directors or a committee of the board of directors to employees with an exercise price not less than 100% of the fair value of the common stock on the date of grant. Nonstatutory stock options may be granted to employees, directors and consultants with an exercise price not less than 85% of the fair market value of the common stock on the date of grant. Option grants to employees generally vest 25% upon the first anniversary of the date of hire and ratably each month thereafter for the next three years. The only activity under the 2003 Plan since adoption has related to the grant of stock options to employees and a non-employee director, all of which expire ten years from the date of grant if not exercised.

Change in Accounting Principle—Stock Based Compensation Under SFAS 123R

Effective January 1, 2006, the Company adopted SFAS 123R, which requires compensation costs related to share-based transactions, including employee stock options, to be recognized in the financial statements based on fair value.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Under both SFAS 123 and SFAS 123R the Company elected to use the Black-Scholes valuation model to calculate the fair value of stock options. The fair value of stock options was estimated at the grant date with using the following assumptions:

	Year Ended December 31,			Three Months Ended March 31, (Unaudited)	
	2004	2005	2006	2006	2007
Weighted-average volatility	80%	60%	61%	61%	61%
Weighted-average expected term	5.0	5.0	6.0	6.0	6.5
Range of risk-free rates	3.0-4.0%	3.9-4.4%	4.6-5.1%	4.6%	4.5-4.8%
Expected dividend yield	0%	0%	0%	0%	0%

The weighted-average grant date fair value per share of employee stock options granted during the years ended December 31, 2004, 2005 and 2006 and the three months ended March 31, 2006 and 2007 was $8.96, $8.66, $10.68, $10.05 and $12.07, respectively.

Volatility

As the Company does not have any trading history for its common stock, the expected stock price volatility for the Company's common stock was estimated by taking the median historic stock price volatility for industry peers based on daily price observations over a period equivalent to the expected term of the stock option grants. Industry peers consist of several public companies in the biopharmaceutical industry similar in size, stage of life cycle and financial leverage. The Company did not rely on the implied volatilities of traded options in its industry peers' common stock, because either the term of those traded options was much shorter than the expected term of the Company's stock option grants, or the volume of activity was relatively low.

Expected Term

The Company has very little historical information to develop reasonable expectations about future exercise patterns and post-vesting employment termination behavior for its stock option grants. As a result, for stock option grants made during the year ended December 31, 2006 and the three months ended March 31, 2007, the expected term was estimated using the short-cut method allowed under Securities and Exchange Commission SAB No. 107 *Share-Based Payment*. For stock options granted during the years ended December 31, 2004 and 2005 the Company estimated the expected term of stock options based on the expected terms of options granted by publicly traded industry peers.

Risk-Free Rate

The risk-free interest rate assumption was based on zero coupon U.S. Treasury instruments whose term was consistent with the expected term of the Company's stock option grants.

Expected Dividend Yield

The Company has never declared or paid any cash dividends and does not presently plan to pay cash dividends in the foreseeable future. Consequently, the Company used an expected dividend yield of zero.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Common Stock Fair Value

The fair value of the Company's common stock during the years ended December 31, 2004 and 2005 was determined by its board of directors with assistance from management. In May 2006, the Company's board of directors directed management to perform an in-depth contemporaneous valuation of its common stock. In conducting this valuation, the Company used a two-step methodology that first estimated the fair value of the company as a whole, and then allocated a portion of the enterprise value to its common stock. This approach is consistent with the methods outlined in the AICPA Practice Aid *Valuation of Privately-Held-Company Equity Securities Issued as Compensation*. The valuation methodology utilized the "income approach" to estimate enterprise value. This enterprise value was then validated utilizing the "market approach." The income approach involved projecting future cash flows, discounting them to present value using a discount rate of 15% based upon a risk adjusted weighted average cost of capital of comparable companies, and applying probabilities for success of its product candidates to the resulting discounted cash flows. The projection of future cash flows, the determination of an appropriate discount rate and the estimates of probability for success of its product candidates each involved a significant degree of judgment. For product candidates other than JZP-6 and an alternative dosage form of Xyrem, the probabilities for success ranged from five percent to 30%. For JZP-6, a project for which the Company was preparing to commence Phase III clinical trials, the probability of success ranged from 60% to 70% and for an alternative dosage form of Xyrem, probabilities of success ranged from 50% to 100%. The present value of projected future cash flows after application of the discount rate and, for product candidates, the Company's probabilities of success, ranged from $113.5 million to $124.1 million for its existing products, $112.8 to $156.1 million for JZP-6 and $66.7 million to $142.8 million for its other product candidates, including an alternative dosage form of Xyrem, resulting in a range of enterprise values from $293.0 million to $423.0 million. The market approach used to validate the determination of enterprise value involved selecting a range of possible valuations by comparing a group of 14 publicly-traded specialty pharmaceutical and biotechnology companies with products and product candidates in similar stages of development. The range of enterprise values derived through application of the market approach method was $300.0 million to $350.0 million. As these values fell within the range of enterprise values suggested by application of the income approach, the Company determined that the market approach provided an appropriate validation of its estimated enterprise value.

In order to allocate the enterprise value to the various securities that comprise the Company's capital structure, the option-pricing method was used. For purposes of applying the option-pricing method, the Company estimated its stock price volatility to be 60% and its time to liquidity to be one year. A 10% discount was then applied to account for a lack of marketability of its common stock based upon the assumed time to liquidity. The contemporaneous valuation of its common stock suggested a range of probable fair values from $12.17 per share to $17.26 per share. On June 28, 2006, the Company's board of directors made a determination that the fair market value of its common stock was $16.60 per share, after taking into consideration the contemporaneous valuation as well as other factors including its financial performance, the development status of its product candidates and research and development efforts and the likelihood of achieving a liquidity event for the shares of common stock underlying stock options, such as an initial public offering or sale of the Company, given prevailing market conditions.

In December 2006, the Company's board of directors directed management to perform a second in-depth contemporaneous valuation with an effective date of December 31, 2006. In conducting this valuation, the Company used the same methodology and assumptions as in the prior contemporaneous valuation for determining enterprise value, with the exception of adjustments in its estimated future cash flows for certain of its existing products and product candidates and the Company's estimated probabilities of success for certain of its product candidates for purposes of the income approach. The Company also made modifications to the comparison group of companies utilized for the market approach to reflect business developments at comparable

companies and to achieve an appropriate sample size. The present value of projected future cash flows after application of the discount rate and, for product candidates, the Company's probabilities of success ranged from $83.6 million to $93.2 million for its existing products, $138.5 to $186.0 million for JZP-6 and $94.9 million to $184.8 million for its other product candidates, including an alternative dosage form of Xyrem, resulting in a range of enterprise values from $317.0 million to $464.0 million. A number of companies included in the comparison group for purposes of the market approach in the June 28, 2006 contemporaneous valuation were not included in the comparison group as of December 31, 2006 as a result of material adverse events associated with significant development projects at those companies that the Company believed made their market values incomparable to its own. Appropriate specialty pharmaceutical and biotechnology companies were added to the comparison group for purposes of the December 31, 2006 contemporaneous valuation to provide an appropriate sample size of 13 comparable companies. The range of enterprise values derived through the application of the market approach method was $350.0 million to $425.0 million. As these values fell within the range of enterprise values suggested by application of the income approach, the Company determined that the market approach provided an appropriate validation of its estimated enterprise value.

For purposes of allocating enterprise value to the Company's common stock, time to liquidity assumed in the option pricing method was reduced to six months and the discount for marketability was consequently reduced to five percent. In addition to the option-pricing method, the Company also considered the probability weighted expected return method. The application of this method yielded a result within the range of probable fair values suggested by the option pricing method. For purposes of applying the probability-weighted expected return method the Company considered six potential liquidity scenarios. Two potential scenarios were each given a probability of five percent and involved the distressed sale or liquidation of the company at alternative valuations of $10.0 million and $100.0 million. Two other potential scenarios were each given a probability of 7.5% and involved the sale of the company following the failure to achieve positive clinical trial results for certain of the Company's product candidates at alternative valuations of $200.0 million and $270.0 million. The remaining potential scenarios involved the successful sale of the Company or an initial public offering of the Company's common stock at alternative valuations of $500.0 million and $800.0 million, which were given probabilities of 70% and five percent, respectively. The contemporaneous valuation of the Company's common stock suggested a range of probable fair values from $13.94 per share to $21.36 per share. On February 13, 2007, the Company's board of directors made a determination that the fair market value of its common stock was $19.37 per share after taking into consideration the contemporaneous valuation as well as other factors, including its financial performance, the development status of its product candidates and research and development efforts, the likelihood of achieving a liquidity event for the shares of common stock underlying stock options, such as an initial public offering or sale of the Company, given prevailing market conditions and initial estimates of the potential initial public offering price of its common stock based on initial valuation discussions by and between management and the proposed underwriters for the Company's initial public offering. This determination was confirmed by the compensation committee of the Company's board of directors as of February 27, 2007, the last date in the three month period ended March 31, 2007 that the Company granted stock options.

In connection with the preparation of the Company's financial statements for the year ended December 31, 2006, it reassessed the fair value of its common stock at option grant dates from June 28, 2006 through December 31, 2006 by reviewing its corporate developments from June 28, 2006 through February 13, 2007. In undertaking this assessment, the Company determined that the increase in value from June 28, 2006 to December 31, 2006 was attributable to a decrease in expected timing to liquidity and general progress in the development status of the Company's product candidates and not the achievement of any particular business milestones which would reasonably be expected to significantly change the relative timing or likelihood of expected future net cash flows. The Company also determined that no such milestones had been achieved during the period from December 31, 2006 to February 13, 2007. As a result, the Company concluded that a ratable

increase to the estimated fair value of its common stock from $16.60 to $19.37 over the period from June 28, 2006 to December 31, 2006 for purposes of calculating stock-based compensation expense associated with its stock option grants under SFAS 123R was appropriate. In connection with the grant of stock options on February 27, 2007, the compensation committee of the Company's board of directors confirmed that the fair market value of our common stock was $19.37 on the basis that we had not achieved any particular business milestone that would reasonably be expected to significantly change the relative timing or likelihood of expected future net cash flows in the period from February 13, 2007 to February 27, 2007. Therefore, the Company determined that no reassessment of the fair value of our common stock as of February 27, 2007 was appropriate.

On February 28, 2007, Solvay informed the Company that the FDA had issued an approvable letter to Solvay for Luvox and Luvox CR dated February 27, 2007. In April 2007, the audit committee of the Company's board of directors determined that as of March 31, 2007, the fair value of the Company's common stock was $24.79 per share after taking into account the contemporaneous valuation conducted in December 2006, the achievement of a significant business milestone associated with the issuance of the approvable letter for Luvox and Luvox CR to Solvay, the likelihood of achieving a liquidity event for the shares of common stock underlying stock options, such as an initial public offering or sale of the company, given prevailing market conditions, and further estimates of the potential initial public offering price of the Company's common stock based on valuation discussions by and between management and the proposed underwriters for the offering. The Company did not perform a contemporaneous valuation of its enterprise value or common stock using the income approach or market approach as of March 31, 2007. The fair market value determination made by the Company's board of directors as of March 31, 2007 was based on the midpoint of the valuation range then suggested by the Company's proposed underwriters in connection with the contemplated initial public offering.

Forfeitures

SFAS 123R requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. In determining the Company's historic forfeiture rate, the Company has excluded stock option grants totaling 1,133,862 shares issued to executives of the Company in February 2004. The Company believes these stock option grants will not be cancelled due to termination, and therefore has applied a forfeiture rate of 0% for those stock option grants. The annualized forfeiture rate used for the remaining stock option grants was 7%. The forfeiture rate selected did not have a material impact on stock-based compensation expense in the year ended December 31, 2006. Prior to adoption of SFAS 123R, the Company accounted for forfeitures of stock option grants as they occurred.

As a result of the Company's Black-Scholes option fair value calculations and the allocation of value to the vesting periods using the straight-line vesting attribution method, the Company recognized $3.5 million of stock-based compensation expense during the year ended December 31, 2006, of which $8,000, $661,000, and $2.8 million were charged to cost of product sales, research and development and selling, general and administrative expense, respectively. The adoption of SFAS 123R caused basic and diluted net loss per common share to increase by $267.71 in 2006. No income tax benefit was recognized in the statement of operations for the year ended December 31, 2006. Compensation cost capitalized as a component of inventory during 2006 was $18,000. During the three months ended March 31, 2007, the Company recognized $940,000 of stock-based compensation expense, of which $4,000, $201,000 and $735,000 were charged to cost of product sales, research and development and selling, general and administrative expense, respectively. During the three months ended March 31, 2006, the Company recognized $820,000 of stock-based compensation expense, of which $1,000, $144,000 and $675,000 were charged to cost of product sales, research and development and selling, general and administrative expense, respectively.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The total compensation cost related to unvested stock option grants not yet recognized as of December 31, 2006 was $5.5 million and the weighted-average period over which these grants are expected to vest is 1.9 years.

The total compensation cost related to unvested stock option grants not yet recognized as of March 31, 2007 was $7.2 million and the weighted-average period over which these grants are expected to vest is 2.7 years.

Certain information regarding employee stock option grants during the 12 months prior to March 31, 2007 is as follows:

Grant Date	Shares Underlying Option Grants	Exercise Price Per Share	Fair Value Per Share for Accounting Purposes	Black-Scholes Fair Value Per Share
April 2006	22,680	$ 16.60	$ 16.60	$ 10.12
June 2006	6,146	$ 16.60	$ 16.60	$ 10.15
August 2006	49,922	$ 16.60	$ 17.49	$ 10.80
October 2006	21,279	$ 16.60	$ 18.48	$ 11.61
December 2006	16,807	$ 16.60	$ 19.37	$ 12.38
February 2007 (unaudited)	100,259	$ 19.37	$ 19.37	$ 11.84
February 2007 (unaudited)	180,719	$ 19.37	$ 19.37	$ 12.19

The following table summarizes activity under the Company's stock option plans from January 1, 2004 through March 31, 2007:

	Shares Available for Grant	Shares Subject to Outstanding Options	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value ($000)
Outstanding at December 31, 2003	—	33,658	$ 1.11		
Shares authorized through Plan amendment	2,061,566	—			
Options granted	(1,249,254)	1,249,254	23.31		
Options exercised	—	(5,873)	1.11		
Outstanding at December 31, 2004	812,312	1,277,039	22.83		
Options granted	(209,509)	209,509	15.79		
Options forfeited	27,426	(27,426)	13.50		
Options expired	1,807	(1,807)	1.11		
Outstanding at December 31, 2005	632,036	1,457,315	22.02		
Options granted	(177,432)	177,432	16.60		
Options exercised	—	(6,012)	1.63		
Options forfeited	30,482	(30,482)	15.28		
Options expired	919	(919)	15.29		
Outstanding at December 31, 2006	486,005	1,597,334	21.62	7.5	$ 4,722
Options granted (unaudited)	(280,978)	280,978	19.37		
Options exercised (unaudited)	—	(5,017)	15.14		
Options forfeited (unaudited)	1,510	(1,510)	16.33		
Options expired (unaudited)	9,255	(9,255)	15.09		
Outstanding at March 31, 2007 (unaudited)	215,792	1,862,530	21.34	7.7	$ 12,297
Vested and expected to vest at March 31, 2007 (unaudited)		1,763,688	21.53	7.6	$ 11,625
Exercisable at March 31, 2007 (unaudited)		1,042,158	22.57	7.0	$ 6,856

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

At December 31, 2006 options to purchase 1,552,592 shares with a weighted-average exercise price of $21.78 per share, a weighted-average remaining contractual term of 7.5 years and aggregate intrinsic value of $4.6 million were vested or expected to vest. At December 31, 2006 options to purchase 956,073 shares with a weighted-average exercise price of $22.55 per share, a weighted-average remaining contractual term of 7.2 years and aggregate intrinsic value of $2.9 million were exercisable.

Aggregate intrinsic value shown is equal to the difference between the exercise price of the underlying stock options and the fair value of the Company's common stock for stock options that were in the money.

During 2004, stock options exercised had no intrinsic value. No options were exercised during 2005. The aggregate intrinsic value of options exercised during 2006 and the three months ended March 31, 2007 was $90,000 and $8,000, respectively.

The following table summarizes information about stock options outstanding as of December 31, 2006:

	Options Outstanding		Options Exercisable
Exercise Price	Number of Shares	Weighted-Average Remaining Contractual Life (Years)	Number of Shares
$ 1.11	15,586	6.6	15,586
15.09	871,585	7.2	585,463
16.60	256,617	9.1	33,742
30.18	226,773	7.1	160,641
45.27	226,773	7.1	160,641
	1,597,334	7.5	956,073

The following table summarizes information about stock options outstanding as of March 31, 2007:

	Options Outstanding		Options Exercisable
Exercise Price	Number of Shares	Weighted-Average Remaining Contractual Life (Years)	Number of Shares
		(Unaudited)	
$ 1.11	15,586	6.3	15,586
15.09	857,217	7.1	624,643
16.60	255,203	9.0	52,315
19.37	280,978	9.9	—
30.18	226,773	6.9	174,807
45.27	226,773	6.9	174,807
	1,862,530	7.7	1,042,158

The Company has issued new shares of common stock upon all exercises of stock options to date and does not currently expect to repurchase shares of common stock in future years to reserve for issuance upon exercise of stock options.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Accounting and Disclosures Under APB 25 and SFAS 123

Prior to January 1, 2006, the Company accounted for stock-based employee compensation arrangements using the intrinsic value method of APB 25 and related interpretations in accounting for its employee stock options and complied with the disclosure-only provisions of SFAS 123, as amended by SFAS 148. No stock-based compensation expense was recorded under APB 25 during the years ended December 31, 2004 and 2005.

The pro forma information required to be disclosed under SFAS 123 for the years ended December 31, 2004 and 2005 is as follows:

	Year Ended December 31,	
	2004	2005
	(In thousands except per share data)	
Loss attributable to common stockholders, as reported	$ (24,804)	$ (85,156)
Add: Employee stock-based compensation using the intrinsic value method	—	—
Deduct: Total employee stock compensation calculated using the fair-value method	(2,325)	(2,934)
Pro forma loss attributable to common stockholders	$ (27,129)	$ (88,090)
Loss per share attributable to common stockholders, basic and diluted		
As reported	$(1,550.25)	$(14,192.67)
Pro forma	$(1,695.56)	$(14,681.67)

The Company estimated fair value of stock options at the grant date using the assumptions set forth above. The Company granted options with exercise prices equal to fair value per share with weighted-average exercise price per share and fair value per share of $15.09 and $15.79 during the years ended December 31, 2004 and 2005, respectively. The Company granted options to purchase 453,546 shares with exercise prices greater than fair value per share with a weighted-average exercise price per share of $37.73 and weighted-average fair value per share of $15.09 during the year ended December 31, 2004.

15. Income Taxes

The Company has a history of losses and therefore has made no provision for income taxes. All of the Company's losses result from domestic operations.

Deferred income taxes reflect the tax effects of net operating loss and tax credit carryforwards and the net temporary differences between the carrying amounts of assets and liabilities for financial reporting and the amounts used for income tax purposes.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Significant components of the Company's deferred tax assets and liabilities are as follows (in thousands):

	December 31,	
	2005	2006
Deferred tax assets:		
Federal and state net operating loss carryforwards	$ 48,552	$ 58,474
Federal and state tax credit carryforwards	8,420	9,876
Deferred contract revenues	—	5,453
Acquired capitalized research and development	4,256	3,889
Other	1,996	2,631
Total deferred tax assets	63,224	80,323
Deferred tax liabilities:		
Acquired intangible assets	(27,559)	(24,328)
Other	—	(457)
Total deferred tax liabilities	(27,559)	(24,785)
Valuation allowance	(35,665)	(55,538)
Net deferred tax assets	$ —	$ —

Realization of the deferred tax assets is dependent upon the generation of future taxable income, if any, the amount and timing of which are uncertain. Based on available objective evidence, management believes it more likely than not that the Company's deferred tax assets are not recognizable. Accordingly, the net deferred tax assets have been fully offset by a valuation allowance. The valuation allowance increased by $10.0 million, $24.6 million and $19.9 million for the years ended December 31, 2004, 2005 and 2006, respectively.

At December 31, 2006, the Company had net operating loss carryforwards for federal income tax purposes of approximately $161.0 million which expire in the period from 2008 to 2026, and federal tax credits of approximately $8.0 million which expire in the period from 2008 to 2026. The Company also has state net operating loss carryforwards of approximately $73.0 million which expire beginning in 2013 and state tax credits of approximately $2.0 million which have no expiration date. Utilization of the Company's net operating loss carryforwards and tax credit carryforwards are subject to annual limitation due to the ownership change limitations provided by the Internal Revenue Code and similar state provisions. Such an annual limitation may result in the expiration of the net operating loss before utilization. Because our acquisition of Orphan Medical triggered an ownership change, approximately $37.0 million of the net operating loss carryforward is only available ratably through 2018 based upon the annual limitation under Section 382 of the Internal Revenue Code. Similarly, approximately $5.0 million of tax credits are only available from 2019 to 2024.

The Company adopted Financial Accounting Standards Board Interpretation No. 48 *Accounting for Uncertainties in Income Taxes—an interpretation of FASB Statement No. 109 ("FIN 48")* effective January 1, 2007. FIN 48 requires that the Company recognize the financial statement effects of a tax position when it is more likely than not, based on the technical merits, that the position will be sustained upon examination. No cumulative adjustment to the Company's accumulated deficit was required upon our adoption of FIN 48.

As of January 1, 2007, the Company had approximately $1.5 million of unrecognized tax benefits, substantially all of which would, if recognized, affect our tax expense. We do not anticipate that the amount of existing unrecognized tax benefits will significantly increase or decrease within the next 12 months. Because of net operating loss carryforwards, substantially all of the Company's tax years remain open to tax federal

examination. We file income tax returns in the United States and various states, which typically have three tax years open at any point in time.

16. Related Party Transactions

In June 2005, the Company issued senior secured notes in the aggregate principal amount of $80.0 million with interest payable on the notes at the rate of 15% per year, payable quarterly in arrears. The notes are due and payable on June 24, 2011. As of both December 31, 2006 and March 31, 2007, KKR TRS Holdings, Inc., an entity affiliated with Kohlberg Kravis Roberts & Co. L.P., and LB I Group, an entity affiliated with Lehman Brothers Holdings Inc., both of which are significant stockholders, held $25.0 million and $31.0 million, respectively, in principal amount of these senior secured notes. The interest expense recognized with respect to notes held by KKR TRS Holdings, Inc. during the years ended December 31, 2005 and 2006 was $2.1 million and $4.0 million, respectively, and $1.0 million during each of the three months ended March 31, 2006 and 2007. The interest expense recognized with respect to notes held by LB I Group during the fiscal years ended December 31, 2005 and 2006 was $2.5 million and $5.0 million, respectively, and $1.2 million during each of the three months ended March 31, 2006 and 2007. No payments of principal were made in either of these periods. As of December 31, 2006 and March 31, 2007, warrants to purchase 245,540 and 304,469 shares of our Series BB preferred stock were owned by KKR TRS Holdings, Inc. and LB I Group, respectively.

17. 401(k) Plan

The Company provides a qualified 401(k) savings plan for its employees. All employees are eligible to participate, provided they meet the requirements of the plan. While the Company may elect to match employee contributions, no such matching contributions have been made through December 31, 2006.

18. Segment and Other Information

Management has determined that the Company operates in one business segment which is the development and commercialization of pharmaceutical products.

The following table presents a summary of product sales (in thousands):

	Year Ended December 31,		Three Months Ended March 31,	
	2005	2006	2006	2007
			(Unaudited)	
Xyrem	$ 11,200	$ 29,049	$ 6,153	$ 8,624
Antizol	6,782	12,813	3,131	2,636
Cystadane	814	1,437	487	365
Total	$ 18,796	$ 43,299	$ 9,771	$ 11,625

The Company had no product sales or other revenues prior to the acquisition of Orphan Medical in June 2005. In March 2007, the Company sold its rights to Cystadane. See Note 19 for a further discussion of this transaction.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following table presents a summary of total revenues attributed to domestic and foreign sources (in thousands):

	Year Ended December 31,		Three Months Ended March 31,	
	2005	2006	2006	2007
			(Unaudited)	
United States	$ 18,305	$ 42,326	$ 9,350	$11,513
Europe	3,020	1,757	231	2,524
All other	117	773	256	51
Total	$ 21,442	$ 44,856	$ 9,837	$14,088

The following table presents a summary of revenues from significant customers as a percentage of the Company's total revenues:

	Year Ended December 31,		Three Months Ended March 31,	
	2005	2006	2006	2007
			(Unaudited)	
Express Scripts	51%	65%	63%	61%
Cardinal Health	*	12%	15%	*
Amerisource Bergen	15%	*	*	*
UCB	12%	*	*	17%
McKesson Corporation	*	*	11%	*

* Less than 10% of the Company's total revenues.

19. Subsequent Events

Product License Agreement

In January 2007, the Company entered into a product license agreement with Solvay Pharmaceuticals, Inc. ("Solvay") for the rights to market Luvox CR and Luvox in the United States. The Company made a $2.0 million payment upon execution of the agreement, and agreed to make additional payments of up to $138.0 million upon achievement of development and commercial milestones. Up to $41.0 million of these milestone payments are payable at or prior to commercial launch of Luvox CR and $2.0 million of these milestone payments are payable if the Company commercially launches Luvox. As the initial $2.0 million payment has no alternative future use, the Company has expensed this amount as research and development expense in the three months ended March 31, 2007. In addition, the Company is required to pay Solvay royalties at specified rates on commercial sales.

Facilities Lease

In March 2007, the Company entered into a lease agreement for approximately 13,000 square feet of office space in Palo Alto, California. The annual lease payments for this space are approximately $460,000. The fixed term expires in August 2008, after which the Company may extend the term for up to six months subject to certain conditions.

Divestiture of Cystadane

In March 2007, the Company signed a Product Acquisition Agreement with an unrelated third party under which that third party purchased the Company's rights to Cystadane for cash consideration of $9.0 million, along

with its associated product registrations, commercial inventory and trademarks. The unrelated third party was also assigned certain contracts related to Cystadane, and assumed substantially all liabilities associated with Cystadane arising subsequent to March 1, 2007. The Company and the third party concurrently entered into a Transition Services Agreement under which the Company has agreed to perform substantially all of the ongoing services necessary for the sale and promotion of Cystadane on behalf of the third party for up to 90 days following the date of the transaction, subject to certain conditions. The Company recorded a gain of approximately $5.1 million on the sale of the rights to Cystadane in the first quarter of 2007.

Legal Proceedings

In April 2006, the Company and its subsidiary Orphan Medical received subpoenas from the U.S. Department of Justice, acting through the U.S. Attorney for the Eastern District of New York, in connection with the sale and marketing of Xyrem. In April 2006, a physician who was a speaker for Orphan Medical, and for a short time for the Company, was indicted by a federal grand jury in the U.S. District Court for the Eastern District of New York. The indictment includes allegations that the physician engaged in a scheme with Orphan Medical sales representatives and other Orphan Medical employees to promote and obtain reimbursement for Xyrem for medical uses not approved for marketing by the FDA. In March 2007, in the same federal court, a former Orphan Medical regional sales manager, who also worked for a short time for the Company, pled guilty based on similar allegations to introducing a misbranded drug into interstate commerce.

The Company and Orphan Medical have been in discussions regarding a possible settlement with the United States, acting through the Department of Justice, the U.S. Attorney's Office for the Eastern District of New York and other federal agencies, including the Office of Inspector General, U.S. Department of Health and Human Services, relating to this matter. If the Company completes a settlement on the terms that the Company is currently discussing, Orphan Medical would plead guilty to one felony count of introducing a misbranded drug into interstate commerce and would pay a total of approximately $20.5 million in civil and criminal payments over the next several years in connection with this matter, with approximately $1.5 million payable in 2007, $2.0 million payable in 2008, $2.5 million payable in 2009, $3.0 million payable in 2010, $3.0 million payable in 2011 and $8.5 million payable in 2012. The Company would guarantee payment of these amounts by Orphan Medical.

If the Company completes a settlement on the terms that the Company is currently discussing, the U.S. Attorney has indicated that the Company would not be prosecuted. As part of the settlement, the Company would enter into a corporate integrity agreement with the Office of Inspector General, U.S. Department of Health and Human Services, which would require the Company to maintain a comprehensive compliance program. The Company would have additional ongoing compliance-related operating costs related to this compliance program, which the Company does not expect to be material, as a result of the corporate integrity agreement.

The settlement terms described above are subject to the negotiation and execution of definitive agreements. Even if the Company reaches a settlement agreement with the U.S. Attorney's Office, the Company might still be subject to regulatory and/or enforcement action by federal agencies that are not parties to the settlement, private insurers and states' attorneys general with respect to activities covered by the settlement. If the Company does not reach a settlement, the Company could be required to spend significant amounts to defend itself and Orphan Medical, and the investigation could involve criminal charges, as well as criminal and/ or civil fines and penalties, against the Company, Orphan Medical, or both. If the Company is unable to complete the settlement described above, the Company cannot predict or determine the outcome of this matter or reasonably estimate the amount of any fines or penalties that might result from an adverse outcome, and such an outcome could have a material adverse effect on the Company's financial position, liquidity and results of operations. Therefore, in accordance with SFAS 5, the Company has not recorded an associated liability. The Company will recognize a liability, if any, when it has an adequate basis to estimate any probable exposure, if any.

Report of Independent Auditors

The Board of Directors and Stockholders
Jazz Pharmaceuticals, Inc.

We have audited the accompanying statements of operations and cash flows of Orphan Medical, Inc. for the period from January 1, 2005 to June 24, 2005. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audit included consideration of the internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the results of operations and cash flows of Orphan Medical, Inc. for the period January 1, 2005 to June 24, 2005, in conformity with accounting principles generally accepted in the United States.

/s/ Ernst & Young LLP

Palo Alto, California
March 6, 2007

ORPHAN MEDICAL, INC.

STATEMENT OF OPERATIONS
(In thousands, except per share amounts)

	Period from January 1, 2005 to June 24, 2005
Revenues:	
Product sales, net	$ 12,966
Royalties, net	71
Contract revenues	1,806
Total revenues	14,843
Operating expenses:	
Cost of product sales	1,975
Research and development	4,212
Selling, general and administrative	12,155
Total operating expenses	18,342
Loss from operations	(3,499)
Interest income	111
Interest expense	(13)
Net loss	(3,401)
Less: Preferred stock dividends	491
Loss attributable to common stockholders	$ (3,892)

The accompanying notes are an integral part of these financial statements.

ORPHAN MEDICAL, INC.

STATEMENT OF CASH FLOWS
(In thousands)

	Period from January 1, 2005 to June 24, 2005
Operating activities	
Net loss	$ (3,401)
Adjustments to reconcile net loss to net cash used in operating activities:	
Depreciation	196
Stock compensation expense for non-employee	25
Loss on disposal of property and equipment	37
Changes in assets and liabilities:	
Prepaid expenses and other current assets	(2,074)
Accounts receivable	(1,045)
Inventories	115
Accounts payable	(1,241)
Accrued liabilities	(510)
Deferred revenue	(806)
Net cash used in operating activities	(8,704)
Investing activities	
Purchases of property and equipment	(5)
Restricted cash	(1)
Net cash used in investing activities	(6)
Financing activities	
Proceeds from employee stock purchase plan	16
Proceeds from exercise of stock options	164
Payments on capital lease obligations	(9)
Payments on premium finance note	(683)
Preferred stock dividend payments	(388)
Net cash used in financing activities	(900)
Net decrease in cash and cash equivalents	(9,610)
Cash and cash equivalents, at beginning of period	12,709
Cash and cash equivalents, at end of period	$ 3,099
Schedule of non-cash financing activities:	
Issuance of preferred stock dividends	$ 491
Supplemental disclosure of cash flow information:	
Cash paid for interest	$ 4

The accompanying notes are an integral part of these financial statements.

ORPHAN MEDICAL, INC.

NOTES TO FINANCIAL STATEMENTS

1. Description of Business

Orphan Medical, Inc. (the "Company") acquires, develops, and markets products of high medical value intended to treat sleep disorders, pain and other central nervous system disorders that are addressed by physician specialists. On June 24, 2005, Jazz Pharmaceuticals, Inc. acquired the Company for cash consideration (net of cash acquired) of $145.4 million plus direct acquisition costs of $750,000. At the time of acquisition, the Company had three pharmaceutical products approved for marketing by the U.S. Food and Drug Administration ("FDA").

2. Summary of Significant Accounting Policies

Basis of Presentation

The Statement of Operations and Statement of Cash Flows have been prepared in accordance with U.S. generally accepted accounting principles. These statements were prepared for the purpose of complying with Regulation S-X, Rule 3.05 of the Securities and Exchange Commission and are being included in the Form S-1 of Jazz Pharmaceuticals, Inc.

Use of Estimates

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts and disclosures reported in the financial statements and accompanying notes. Management bases its estimates on historical experience and on assumptions believed to be reasonable under the circumstances. Actual results could differ materially from those estimates.

Revenue Recognition

Revenues are recognized when there is persuasive evidence that an arrangement exists, delivery has occurred, the price is fixed and determinable and collection is reasonably assured. In evaluating arrangements with multiple elements the Company considers whether components of the arrangement represent separate units of accounting based upon whether certain criteria are met, including whether the delivered element has stand-alone value to the customer and whether there is objective and reliable evidence of the fair value of the undelivered items. This evaluation requires subjective determinations and requires management to make judgments about the fair value of individual elements and whether such elements are separable from other aspects of the contractual relationship. The consideration received in such arrangements is allocated among the separate units of accounting based on their respective fair values when there is reliable evidence of fair value for all elements of the arrangement. If there is no evidence of fair value for all the elements of the arrangement consideration is allocated based on the residual value method for the delivered elements. Under the residual method, the amount of revenues allocated to the delivered elements equals the total arrangement consideration less the aggregate fair value of any undelivered elements. The applicable revenue recognition criteria are applied to each of the separate units. Payments received in advance of work performed are recorded as deferred revenues and recognized when earned.

Product Sales, Net

Revenues from sales of Xyrem within the United States are recognized upon transfer of title, which occurs when the Company's specialty pharmaceutical distributor removes product from the Company's consigned inventory location at its facility for shipment to a patient. Antizol is and, prior to our sale of the Company's

rights, and Cystadane was shipped to the Company's wholesaler customers in the United States with free on board destination shipping terms, and the Company recognizes revenues when delivery occurs. The Company's international sales often have customer acceptance clauses and therefore the Company recognizes revenues when it is notified of acceptance or the time to inspect and reject the shipment has lapsed. When sales to international customers do not have acceptance clauses, the Company recognizes revenues when title transfers, which is generally when the product leaves the Company's logistics provider's facilities.

Revenues from sales of products within the United States are recorded net of estimated allowances for prompt payment discounts, wholesaler and speciality distributor fees, government chargebacks and rebates. Significant judgment is inherent in the selection of assumptions and in the interpretation of historical experience, as well as the identification of external and internal factors affecting the estimates. Because Xyrem is sold to one distributor in the United States, allowances and adjustments to estimates for allowances have not historically been material.

Royalties, Net

The Company receives royalties from third parties based on sales of its products under out-licensing and distributor arrangements. For those arrangements where royalties are reasonably estimable, the Company recognizes revenues based on estimates of royalties earned during the applicable period, and adjusts for differences between the estimated and actual royalties in the following quarter. Historically, these adjustments have not been material. For those arrangements where royalties are not reasonably estimable, the Company recognizes revenues upon receipt of royalty statements from the licensee or distributor.

Contract Revenues

Nonrefundable fees where the Company has no continuing performance obligations are recognized as revenues when collection is reasonably assured. In situations where the Company has continuing performance obligations, nonrefundable fees are deferred and recognized ratably over the performance period. The Company recognizes at-risk milestone payments, which are typically related to regulatory, commercial or other achievements by the Company or its licensees and distributors, as revenues when the milestone is accomplished and collection is reasonably assured. Refundable fees are deferred and recognized as revenues upon the later of when they become nonrefundable or when performance obligations are completed.

Cost of Product Sales

Cost of product sales includes third party manufacturing and distribution costs, the cost of drug substance, royalties due to third parties on product sales, product liability insurance, FDA user fees, freight, shipping, handling and storage costs. The Company's product exchange policy for Antizol and Cystadane allows customers to return expired product for exchange up to six months before or after the product's expiration date. These expiration date returns are exchanged for replacement product, and the estimated cost of such exchanges is included in cost of product sales. Amounts accrued for replacement product have not been material.

Research and Development

The Company's research and development expenses consist of expenses incurred in identifying, developing and testing its product candidates. These expenses consist primarily of fees paid to contract research organizations and other third parties to assist us in managing, monitoring and analyzing our clinical trials, clinical trial costs paid to sites and investigators' salaries, costs of non-clinical studies, including toxicity studies in animals, costs of contract manufacturing services, costs of materials used in clinical trials and non-clinical

studies, fees paid to third parties for development candidates, allocated expenses, such as facilities and information technology that support the Company's research and development activities and related personnel expenses. For products that have not been approved by the FDA, inventory used in clinical trials is expensed at the time of production and recorded as research and development expense. Research and development costs are expensed as incurred, including payments made under the Company's license agreements. For products that have been approved by the FDA, inventory used in clinical trials is expensed at the time the inventory is packaged for the trial and therefore not included in inventory.

Income Taxes

The Company utilizes the liability method of accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on differences between financial reporting and the tax basis of assets and liabilities and are measured using enacted tax rates and laws that will be in effect when the differences are expected to reverse. A valuation allowance is provided when it is more likely than not that some portion or all of a deferred tax asset will not be realized. The Company has a history of losses and therefore has made no provision for income taxes.

Stock-Based Compensation

The Company accounts for stock-based employee compensation arrangements using the intrinsic value method of Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees*, ("APB 25") and complies with the disclosure-only provisions of Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation*, ("SFAS 123") as amended by Statement of Financial Accounting Standards No. 148, *Accounting for Stock-Based Compensation, Transition and Disclosure, an amendment to SFAS Statement No. 123 ("SFAS 148")*. Under APB 25 compensation expense for employees is based on the excess, if any, of the fair value of the Company's common stock over the exercise price of the option on the date of grant. No stock-based compensation expense was recorded under APB 25 during the period January 1, 2005 to June 24, 2005. The following table illustrates the effect on net loss and loss per common share if the Company had applied the fair value recognition provisions of SFAS 123 as amended by SFAS 148 to stock-based employee compensation.

	Period from January 1, 2005 to June 24, 2005
Loss attributable to common stockholders, as reported	$ (3,892)
Add: Employee stock-based compensation using the intrinsic value method	—
Deduct: Total employee stock compensation calculated using the fair-value method	(1,240)
Pro forma loss attributable to common stockholders	$ (5,132)

ORPHAN MEDICAL, INC.

NOTES TO FINANCIAL STATEMENTS—(Continued)

The Company estimated the fair value of the stock options using the Black-Scholes method in accordance with SFAS No. 123 as amended by SFAS 148. The fair value of the stock options was estimated at the grant date with the following assumptions:

	Period from January 1, 2005 to June 24, 2005
Expected dividend yield	0%
Expected stock price volatility	65%
Risk-free interest rate	4%
Expected life of option (in years)	8

3. Product License

In October 2003, the Company entered into an agreement with Celltech Pharmaceuticals, Inc., which was subsequently acquired by UCB Pharma Limited ("UCB"), pursuant to which the Company has licensed to UCB all European sales and marketing rights for Xyrem for the treatment of narcolepsy. The Company received $2.5 million upon execution of the agreement which is being amortized on a straight-line basis as contract revenues through September 2005, the expected regulatory approval period. The Company recognized $806,000 of contract revenues in the period from January 1, 2005 to June 24, 2005 related to the upfront payment. UCB also made two $1.0 million milestone payments related to the filing of an application for marketing approval for Xyrem for the treatment of cataplexy in patients with narcolepsy with the European Agency for the Evaluation of Medicinal Products and to the Company's delivery to UCB of a supplemental new drug application package for Xyrem for the treatment the excessive daytime sleepiness in patients with narcolepsy. These payments were recognized as revenues upon the achievement of the milestones in March 2004 and January 2005, respectively.

4. Segment and Other Information

Management has determined that the Company operates in one business segment, which is the development and commercialization of pharmaceutical products.

The following table presents a summary of product sales (in thousands):

	Period from January 1, 2005 to June 24, 2005
Xyrem	$ 8,034
Antizol	4,267
Cystadane	665
Total	$ 12,966

ORPHAN MEDICAL, INC.

NOTES TO FINANCIAL STATEMENTS—(Continued)

The following table presents a summary of total revenues attributed to domestic and foreign sources (in thousands):

	Period from January 1, 2005 to June 24, 2005
United States	$ 12,464
Europe	2,107
All other	272
Total	$ 14,843

The following table presents a summary of revenues from significant customers as a percentage of the Company's total revenues:

	Period from January 1, 2005 to June 24, 2005
ExpressScripts	54%
UCB	12%
Cardinal Health	11%
Amerisource Bergen	10%

5. Subsequent Events

Legal Proceedings

In April 2006, a physician who was a speaker for the Company was indicted by a federal grand jury in the U.S. District Court for the Eastern District of New York. The indictment alleges that the physician engaged in a scheme with the Company's sales representatives and other Company employees to promote and obtain reimbursement for Xyrem for medical uses not approved for marketing by the FDA. Also in April 2006, the Department of Justice, acting through the U.S. Attorney for the Eastern District of New York, issued to the Company and Jazz Pharmaceuticals subpoenas for documents relating to Xyrem. The Company is cooperating with this investigation and has provided documents to the U.S. Attorney's Office. There have been discussions with the U.S. Attorney's Office regarding the possible settlement of any potential government claims. It is currently unknown if any such settlement will be reached on reasonable terms, or at all. The Company cannot predict or determine the outcome of this matter or reasonably estimate the amount of any fines or penalties that might result from an adverse outcome. Therefore, in accordance with Statement of Financial Accounting Standard No. 5, *Accounting for Contingencies* ("SFAS 5"), the Company has not recorded an associated liability. The Company will recognize a liability, if any, when it has an adequate basis to estimate any probable exposure, if any.

On April 10, 2006, Little Gem Life Sciences LLC, individually and purportedly on behalf of a class of persons similarly situated, filed a complaint against the Company and former officers of the Company in the U.S. District Court for the District of Minnesota. The complaint alleges that the defendants made false and misleading statements in the proxy statement prepared by the Company in connection with the solicitation of proxies to be voted at the special meeting of Company stockholders held on June 22, 2005 for the purpose of considering and voting upon a proposal to adopt the definitive merger agreement pursuant to which the Company was acquired by Jazz Pharmaceuticals. The plaintiff seeks damages for itself and the putative class, in an unspecified amount, together with interest, litigation costs and expenses, and its attorneys' fees and other disbursements, as well as

unspecified other and further relief. On October 25, 2006, the defendants filed a motion to dismiss the complaint and oral argument on the motion was heard by the U.S. District Court for the District of Minnesota. On February 16, 2007, the U.S. District Court for the District of Minnesota granted the defendants' motion to dismiss the complaint, but granted the plaintiff a one-month leave to amend the plaintiff's complaint. On March 14, 2007, the plaintiff filed an amended complaint, and the defendants responded with a motion to dismiss on March 16, 2007. The Company cannot predict or determine the outcome of this matter or reasonably estimate the amount of any judgments or payments that might result from an adverse outcome. Therefore, in accordance with SFAS 5 the Company has not recorded an associated liability. The Company will recognize a liability, if any, when it has an adequate basis to estimate any probable exposure, if any.

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PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table sets forth all costs and expenses, other than underwriting discounts and commissions, payable by us in connection with the sale of the common stock being registered. All amounts shown are estimates except for the SEC registration fee, the NASD filing fee and the NASDAQ Global Market filing fee.

	Amount to be Paid
SEC registration fee	$ 5,508
NASD filing fee	18,400
NASDAQ Global Market initial listing fee	120,000
Blue sky qualification fees and expenses	15,000
Printing and engraving expenses	125,000
Legal fees and expenses	950,000
Accounting fees and expenses	950,000
Transfer agent and registrar fees and expenses	20,000
Miscellaneous expenses	96,052
Total	$ 2,300,000

Item 14. Indemnification of Directors and Officers.

We are incorporated under the laws of the State of Delaware. Section 145 of the Delaware General Corporation Law provides that a Delaware corporation may indemnify any persons who are, or are threatened to be made, parties to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person was an officer, director, employee or agent of such corporation, or is or was serving at the request of such person as an officer, director, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided that such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was illegal. A Delaware corporation may indemnify any persons who are, or are threatened to be made, a party to any threatened, pending or completed action or suit by or in the right of the corporation by reason of the fact that such person was a director, officer, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit provided such person acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the corporation's best interests except that no indemnification is permitted without judicial approval if the officer or director is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him or her against the expenses that such officer or director has actually and reasonably incurred. Our fourth amended and restated certificate of incorporation and our amended and restated bylaws, each of which will become effective upon the closing of this offering, provide for the indemnification of our directors and officers to the fullest extent permitted under the Delaware General Corporation Law.

Section 102(b)(7) of the Delaware General Corporation Law permits a corporation to provide in its certificate of incorporation that a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duties as a director, except for liability for any:

- transaction from which the director derives an improper personal benefit;
- act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payment of dividends or redemption of shares; or
- breach of a director's duty of loyalty to the corporation or its stockholders.

Our fourth amended and restated certificate of incorporation and amended and restated bylaws include such a provision. Expenses incurred by any officer or director in defending any such action, suit or proceeding in advance of its final disposition shall be paid by us upon delivery to us of an undertaking, by or on behalf of such director or officer, to repay all amounts so advanced if it shall ultimately be determined that such director or officer is not entitled to be indemnified by us.

Section 174 of the Delaware General Corporation Law provides, among other things, that a director who willfully or negligently approves of an unlawful payment of dividends or an unlawful stock purchase or redemption may be held liable for such actions. A director who was either absent when the unlawful actions were approved, or dissented at the time, may avoid liability by causing his or her dissent to such actions to be entered in the books containing minutes of the meetings of the board of directors at the time such action occurred or immediately after such absent director receives notice of the unlawful acts.

As permitted by the Delaware General Corporation Law, we have entered into indemnity agreements with each of our directors and officers that require us to indemnify such persons against any and all expenses (including attorneys' fees), witness fees, judgments, fines, settlements and other amounts incurred (including expenses of a derivative action) in connection with any action, suit or proceeding or alternative dispute resolution mechanism, inquiry hearing or investigation, whether threatened, pending or completed, to which any such person may be made a party by reason of the fact that such person is or was a director, an officer or an employee of Jazz Pharmaceuticals or any of its affiliated enterprises, provided that such person's conduct did not constitute a breach of his or her duty of loyalty to us or our stockholders, and was not an act or omission not in good faith or which involved intentional misconduct or a knowing violation of laws. The indemnity agreements also set forth certain procedures that will apply in the event of a claim for indemnification thereunder.

At present, there is no pending litigation or proceeding involving any of our directors or officers as to which indemnification is required or permitted, and we are not aware of any threatened litigation or proceeding that may result in a claim for indemnification.

We have an insurance policy covering our officers and directors with respect to certain liabilities, including liabilities arising under the Securities Act or otherwise. Messrs. Clammer, Michelson, Momtazee and Patel are further insured by liability insurance that has been purchased by Kohlberg Kravis Roberts & Co. L.P. on their behalf for any excess liabilities that are not covered by our liability insurance. Mr. Colella is insured by liability insurance purchased on his behalf by, and indemnified pursuant to the governing agreements of, Versant Ventures for his service on our board of directors.

We plan to enter into an underwriting agreement that provides that the underwriters are obligated, under some circumstances, to indemnify our directors, officers and controlling persons against specified liabilities, including liabilities under the Securities Act.

Item 15. Recent Sales of Unregistered Securities.

The following list sets forth information regarding all unregistered securities sold by us since our inception through March 31, 2007.

(1) Since our inception through March 31, 2007, we had granted options under our 2003 Equity Incentive Plan to purchase 1,980,649 shares of common stock to employees and directors, having exercise prices ranging from $1.11 to $45.27 per share. Of these, options to purchase 46,720 shares of common stock had been exercised for aggregate consideration of $125,333, at exercise prices ranging from $1.11 to $16.60 per share. As of March 31, 2007, we had cancelled options to purchase 71,399 shares of common stock.

(2) On March 20, 2003, we issued and sold an aggregate of 357,819 shares of common stock to two of our executive officers for aggregate consideration of $9,108.

(3) On March 31, 2003, we issued and sold 73,642 shares of common stock to one of our executive officers for aggregate consideration of $1,874.50.

(4) On April 18, 2003, we issued and sold 27,107 shares of common stock to one of our executive officers for aggregate consideration of $1,500.

(5) On April 23, 2003, we issued and sold 29,818 shares of common stock to one of our executive officers for aggregate consideration of $3,300.

(6) On April 30, 2003, we issued and sold an aggregate of 194,268 shares of Series A preferred stock to a total of six accredited investors for aggregate consideration of $2,150,000.

(7) On August 29, 2003, we issued and sold an aggregate of 451,792 shares of Series A preferred stock to a total of five accredited investors for aggregate consideration of $5,000,000.

(8) On October 30, 2003, we issued and sold 59,637 shares of common stock to one of our executive officers for aggregate consideration of $66,000.

(9) On January 9, 2004, we issued and sold an aggregate of 21,008 shares of common stock to one of our executive officers for aggregate consideration of $23,250.

(10) On January 14, 2004, we issued and sold an aggregate of 709,317 shares of Series A preferred stock to a total of five accredited investors for aggregate consideration of $7,850,000.

(11) On February 18, 2004, we issued and sold an aggregate of 1,563,829 shares of Series B preferred stock to a total of thirty-one accredited investors for aggregate consideration of $23,599,999.74.

(12) On February 18, 2004, we issued and sold an aggregate of 1,722,883 shares of Series B Prime preferred stock to a total of two institutional and accredited investors for aggregate consideration of $25,999,999.83.

(13) On April 6, 2004, we issued and sold an aggregate of 26,505 shares of Series B preferred stock to a total of two accredited investors for aggregate consideration of $399,999.79.

(14) On September 24, 2004, we issued and sold an aggregate of 13,252 shares of common stock to one of our directors for aggregate consideration of $200,000.58.

(15) On June 20, 2005, we issued and sold an aggregate of 3,180,714 shares of Series B preferred stock to a total of thirty-four accredited investors for aggregate consideration of $47,999,997.69.

(16) On June 20, 2005, we issued and sold an aggregate of 3,445,768 shares of Series B Prime preferred stock to a total of two accredited investors for aggregate consideration of $52,000,001.02.

(17) On June 24, 2005, in connection with the issuance of our senior secured notes in the aggregate principal amount of $80,000,000, we issued and sold warrants to purchase an aggregate of 785,728 shares of Series BB preferred stock to a total of eight accredited investors. Pursuant to the terms of

the agreement governing the issuance of the senior secured notes and warrants, the aggregate consideration allocated to the warrants was $5,360,000.00.

(18) On January 26, 2006, we issued and sold an aggregate of 1,113,245 shares of Series B preferred stock to a total of thirty-two accredited investors for aggregate consideration of $16,799,996.53.

(19) On January 26, 2006, we issued and sold an aggregate of 1,206,019 shares of Series B Prime preferred stock to a total of two accredited investors for aggregate consideration of $18,200,000.56.

(20) On December 14, 2006, we issued and sold an aggregate of 2,067,462 shares of Series B preferred stock to a total of thirty-two institutional and accredited investors for aggregate consideration of $31,199,983.44.

(21) On December 14, 2006, we issued and sold an aggregate of 2,239,749 shares of Series B Prime preferred stock to a total of two institutional and accredited investors for aggregate consideration of $33,799,997.74.

The offers, sales and issuances of the securities described in Item 15(1) were exempt from registration under the Securities Act under either (1) Rule 701 in that the transactions were under compensatory benefit plans and contracts relating to compensation as provided under Rule 701 or (2) Section 4(2) of the Securities Act as transactions by an issuer not involving any public offering. The recipients of such securities were our employees or directors and received the securities under our 2003 Equity Incentive Plan. The recipients of securities in each of these transactions represented their intention to acquire the securities for investment only and not with view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the securities issued in these transactions. Each of the recipients of securities in these transactions had adequate access, through employment or business relationships, to information about us.

The offers, sales, and issuances of the securities described in Items 15(2) through 15(21) were exempt from registration under the Securities Act under Section 4(2) of the Securities Act and Regulation D promulgated thereunder as transactions by an issuer not involving a public offering. The recipients of securities in each of these transactions acquired the securities for investment only and not with a view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the securities issued in these transactions. Each of the recipients of securities in these transactions was an accredited or sophisticated person and had adequate access, through employment, business or other relationships, to information about us.

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits.

Exhibit Number	Description of Document
1.1*	Form of Underwriting Agreement.
2.1*	Agreement and Plan of Merger dated as of April 18, 2005, by and among the Registrant, Twist Merger Sub, Inc. and Orphan Medical, Inc.
3.1	Third Amended and Restated Certificate of Incorporation of the Registrant, currently in effect.
3.2	Form of Fourth Amended and Restated Certificate of Incorporation of the Registrant to be effective upon the closing of this offering.
3.3*	Amended and Restated Bylaws of the Registrant, currently in effect.
3.4	Form of Amended and Restated Bylaws of the Registrant to be effective upon the closing of this offering.
4.1	Reference is made to exhibits 3.1 through 3.4.
4.2	Specimen Common Stock Certificate.

Exhibit Number	Description of Document
4.3.1+*	Second Amended and Restated Investor Rights Agreement, dated as of June 24, 2005, by and between the Registrant and the other parties named therein.
4.3.2+	Form of Third Amended and Restated Investor Rights Agreement, by and between the Registrant and the other parties named therein, to be effective upon the closing of this offering.
4.4*	Senior Secured Note and Warrant Purchase Agreement, dated as of June 24, 2005, by and among the Registrant, Twist Merger Sub, Inc. and the Purchasers.
4.5*	Form of Senior Secured Note of the Registrant.
4.6*	Form of Series BB Preferred Stock Warrant of the Registrant.
5.1†	Opinion of Cooley Godward Kronish LLP.
10.1+	Form of Indemnification Agreement between the Registrant and its officers and directors.
10.2+*	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Bruce Cozadd.
10.3+*	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Samuel Saks.
10.4+*	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Robert Myers.
10.5+*	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Matthew Fust.
10.6+*	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Carol Gamble.
10.7+*	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Janne Wissel.
10.8+*	Stock Purchase Agreement, dated as of September 24, 2004, by and between the Registrant and Alan Sebulsky.
10.9+*	Common Stock Purchase Agreement, dated as of March 20, 2003, by and between the Registrant and Bruce Cozadd.
10.10+*	Stock Restriction Agreement, dated as of April 30, 2003, by and between the Registrant and Bruce Cozadd.
10.11+*	Amendment to Stock Restriction Agreement, dated as of October 30, 2003, by and between the Registrant and Bruce Cozadd.
10.12+*	Common Stock Purchase Agreement, dated as of October 30, 2003, by and between the Registrant and Bruce Cozadd.
10.13+*	Common Stock Purchase Agreement, dated as of March 20, 2003, by and between the Registrant and Samuel Saks.
10.14+*	Stock Restriction Agreement, dated as of April 30, 2003, by and between the Registrant and Samuel Saks.
10.15+*	Amendment to Stock Restriction Agreement, dated as of October 30, 2003, by and between the Registrant and Samuel Saks.
10.16+*	Amended and Restated Stock Purchase Agreement, dated as of April 30, 2003, by and between the Registrant and Robert Myers.
10.17+*	Amendment No. 1 to Amended and Restated Stock Purchase Agreement, dated as of December 18, 2003, by and between the Registrant and Robert Myers.

Exhibit Number	Description of Document
10.18+*	Common Stock Purchase Agreement, dated as of January 9, 2004, by and between the Registrant and Robert Myers.
10.19+*	Amended and Restated Stock Purchase Agreement, dated as of April 30, 2003, by and between the Registrant and Matthew Fust.
10.20+*	Amended and Restated Stock Purchase Agreement, dated as of April 30, 2003, by and between the Registrant and Carol Gamble.
10.21+	2003 Equity Incentive Plan, as amended.
10.22+	Form of Option Exercise and Stock Purchase Agreement and Forms of Grant Notices under the 2003 Equity Incentive Plan.
10.23+	2007 Equity Incentive Plan.
10.24+†	Form of Option Agreement and Form of Option Grant Notice under the 2007 Equity Incentive Plan.
10.25+	2007 Non-Employee Directors Stock Option Plan.
10.26+	Form of Stock Option Agreement and Form of Option Grant Notice under the 2007 Non-Employee Directors Stock Option Plan.
10.27+	2007 Employee Stock Purchase Plan.
10.28+	Form of 2007 Employee Stock Purchase Plan Offering Document.
10.29+*	Jazz Pharmaceuticals, Inc. Cash Bonus Plan.
10.30#*	Asset Purchase Agreement, dated as of October 4, 2004, by and among the Registrant, Glaxo Group Limited and SmithKline Beecham Corporation dba GlaxoSmithKline.
10.31#*	Sodium Gamma Hydroxybutyrate Development and Supply Agreement, dated as of November 6, 1996, by and between Orphan Medical, Inc. and Lonza, Inc.
10.32#*	Amendment No. 1 to Sodium Gamma Hydroxybutyrate Development and Supply Agreement, dated as of February 7, 2005, by and between Orphan Medical, Inc. and Lonza, Inc.
10.33#*	Amended and Restated Services Agreement, dated as of May 31, 2005, by and between Orphan Medical, Inc. and Express Scripts Specialty Distribution Services, Inc.
10.34#*	Consent and Addendum to Amended and Restated Master Services Agreement, dated as of June 1, 2006, by and between the Registrant and Express Scripts Specialty Distribution Services, Inc.
10.35#*	Addendum No. 2 to Amended and Restated Master Services Agreement, dated as of June 22, 2006, by and between the Registrant and Express Scripts Specialty Distribution Services, Inc.
10.36#*	Addendum No. 3 to Amended and Restated Master Services Agreement, dated as of August 17, 2006, by and between the Registrant and Express Scripts Specialty Distribution Services, Inc.
10.37#*	Xyrem Supply Agreement, dated as of June 30, 2000, by and between Orphan Medical, Inc. and Catalytica Pharmaceuticals, Inc.
10.38#*	Letter Amendment No. 1, dated as of November 9, 2000, by and between Orphan Medical, Inc. and Catalytica Pharmaceuticals, Inc.
10.39#*	Amendment No. 2 to the Xyrem Supply Agreement, dated as of August 19, 2002, by and between Orphan Medical, Inc. and DSM Pharmaceuticals, Inc. (formerly Catalytica Pharmaceuticals, Inc.).
10.40#*	Amendment No. 3 to the Xyrem Supply Agreement, dated as of March 21, 2005, by and between Orphan Medical, Inc. and DSM Pharmaceuticals, Inc. (formerly Catalytica Pharmaceuticals, Inc.).
10.41#*	Amended and Restated Xyrem License and Distribution Agreement, dated as of June 30, 2006, by and between the Registrant and UCB Pharma Limited.

Exhibit Number	Description of Document
10.42#*	License Agreement, dated as of January 31, 2007, by and between the Registrant and Solvay Pharmaceuticals, Inc.
10.43#*	Supply Agreement, dated as of January 31, 2007, by and between the Registrant and Solvay Pharmaceuticals, Inc.
10.44#*	Trademark License Agreement, dated as of January 31, 2007, by and between the Registrant and Solvay Pharmaceuticals, Inc.
10.45*	Assignment, Assumption and Consent, dated as of January 31, 2007, by and among the Registrant, Solvay Pharmaceuticals, Inc and Elan Pharma International Limited.
10.46#*	License Agreement, dated as of December 22, 1997, by and between Solvay Pharmaceuticals, Inc and Elan Corporation plc.
10.47#*	Amendment to License Agreement, dated as of March 1, 1999, by and between Solvay Pharmaceuticals, Inc and Elan Corporation plc.
10.48#*	Letter Amendment No. 2 to License Agreement, dated April 13, 2000, by and between Solvay Pharmaceuticals, Inc and Elan Pharmaceutical Technologies.
10.49#*	Amendment Agreement No. 3 to License Agreement, dated as of November 7, 2006, by and between Solvay Pharmaceuticals, Inc. and Elan Corporation plc.
10.50#*	Xyrem Manufacturing Services and Supply Agreement, dated as of March 13, 2007, by and between the Registrant and Patheon Pharmaceuticals, Inc.
10.51#*	Quality Agreement, dated as of March 13, 2007, by and between the Registrant and Patheon Pharmaceuticals, Inc.
10.52*	Commercial Lease, dated as of June 2, 2004, by and between the Registrant and The Board of Trustees of the Leland Stanford Junior University.
10.53*	Sublease Agreement, dated as of February 25, 2007, by and between Xerox Corporation and the Registrant.
10.54#*	Amendment No. 2 to Sodium Gamma Hydroxybutyrate Development and Supply Agreement, dated as of March 30, 2007, by and between Registrant and Lonza, Inc.
10.55+	Directors Deferred Compensation Plan.
10.56+	Non-Employee Director Compensation Arrangements.
21.1*	Subsidiaries of the Registrant.
23.1	Consent of Independent Registered Public Accounting Firm.
23.2	Consent of Independent Auditors.
23.3†	Consent of Cooley Godward Kronish LLP (included in Exhibit 5.1).
24.1*	Power of Attorney (see page II-10 to the Registration Statement on Form S-1 (File No. 333-141164) filed with the SEC on March 9, 2007).
24.2	Power of Attorney of Jaimin R. Patel.

* Previously filed.
† To be filed by amendment.
\+ Indicates management contract or compensatory plan.
\# Confidential treatment has been requested with respect to certain portions of this exhibit. Omitted portions have been filed separately with the Securities and Exchange Commission.

(b) Financial Statement Schedules. The following financial statement schedule is included herewith:

Schedule II

Valuation and Qualifying Accounts
(In thousands)

	Balance at beginning of period	Additions(3)	Additions charged to costs and expenses(4)	Deductions	Balance at end of period
For the year ended December 31, 2006					
Allowance for doubtful accounts(1)	$ 25	$ —	$ 28	$ (3)	$ 50
Allowance for sales discounts(1)	71	—	880	(857)	94
Allowance for chargebacks(1)	26	—	212	(233)	5
Allowance for customer rebates(1)	—	—	44	(26)	18
Allowance for wholesaler fees(1)	153	—	203	(325)	31
Allowance for government rebates(2)	88	—	229	(254)	63
For the year ended December 31, 2005					
Allowance for doubtful accounts(1)	$ —	$ 25	$ 14	$ (14)	$ 25
Allowance for sales discounts(1)	—	62	381	(372)	71
Allowance for chargebacks(1)	—	25	57	(56)	26
Allowance for customer rebates(1)	—	—	—	—	—
Allowance for wholesaler fees(2)	—	134	64	(45)	153
Allowance for government rebates(2)	—	115	135	(162)	88
For the year ended December 31, 2004					
Allowance for doubtful accounts	$ —	$ —	$ —	$ —	$ —
Allowance for sales discounts	—	—	—	—	—
Allowance for chargebacks	—	—	—	—	—
Allowance for customer rebates	—	—	—	—	—
Allowance for wholesaler fees	—	—	—	—	—
Allowance for government rebates	—	—	—	—	—

Notes
(1) shown as a reduction of accounts receivable
(2) included in accrued liabilities
(3) amounts represent the liabilities assumed as a result of the acquisition of Orphan Medical, Inc. on June 24, 2005
(4) all charges except doubtful accounts are reflected as a reduction of revenue

All other schedules are omitted because they are inapplicable or the requested information is shown in the consolidated financial statements of the registrant or related notes thereto.

Item 17. Undertakings.

The undersigned Registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement, certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred

or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned Registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this Registration Statement in reliance upon Rule 430A and contained in a form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this Registration Statement as of the time it was declared effective.

(2) For the purpose of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the Registrant has duly caused this Amendment No. 3 to the Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Palo Alto, State of California, on the 16th day of May, 2007.

JAZZ PHARMACEUTICALS, INC.

By: /s/ Matthew K. Fust

Matthew K. Fust
Senior Vice President and
Chief Financial Officer

Pursuant to the requirements of the Securities Act of 1933, this Amendment No. 3 to the Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
*	Chief Executive Officer and Member of the Board of Directors (*Principal Executive Officer*)	May 16, 2007
Samuel R. Saks, M.D.		
/s/ MATTHEW K. FUST	Senior Vice President and Chief Financial Officer (*Principal Accounting and Financial Officer*)	May 16, 2007
Matthew K. Fust		
*	Director	May 16, 2007
Adam H. Clammer		
*	Director	May 16, 2007
Samuel D. Colella		
*	Director	May 16, 2007
Bruce C. Cozadd		
*	Director	May 16, 2007
Bryan C. Cressey		
*	Director	May 16, 2007
Michael W. Michelson		
*	Director	May 16, 2007
James C. Momtazee		
*	Director	May 16, 2007
Kenneth W. O'Keefe		
*	Director	May 16, 2007
Jaimin R. Patel		
*	Director	May 16, 2007
Alan M. Sebulsky		
*	Director	May 16, 2007
James B. Tananbaum, M.D.		

*By: /s/ MATTHEW K. FUST
Matthew K. Fust
Attorney-in-Fact

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EXHIBIT INDEX

Exhibit Number	Description of Document
1.1*	Form of Underwriting Agreement.
2.1*	Agreement and Plan of Merger dated as of April 18, 2005, by and among the Registrant, Twist Merger Sub, Inc. and Orphan Medical, Inc.
3.1	Third Amended and Restated Certificate of Incorporation of the Registrant, currently in effect.
3.2	Form of Fourth Amended and Restated Certificate of Incorporation of the Registrant to be effective upon the closing of this offering.
3.3*	Amended and Restated Bylaws of the Registrant, currently in effect.
3.4	Form of Amended and Restated Bylaws of the Registrant to be effective upon the closing of this offering.
4.1	Reference is made to exhibits 3.1 through 3.4.
4.2	Specimen Common Stock Certificate.
4.3.1+*	Second Amended and Restated Investor Rights Agreement, dated as of June 24, 2005, by and between the Registrant and the other parties named therein.
4.3.2+	Form of Third Amended and Restated Investor Rights Agreement, by and between the Registrant and the other parties named therein, to be effective upon the closing of this offering.
4.4*	Senior Secured Note and Warrant Purchase Agreement, dated as of June 24, 2005, by and among the Registrant, Twist Merger Sub, Inc. and the Purchasers.
4.5*	Form of Senior Secured Note of the Registrant.
4.6*	Form of Series BB Preferred Stock Warrant of the Registrant.
5.1†	Opinion of Cooley Godward Kronish LLP.
10.1+	Form of Indemnification Agreement between the Registrant and its officers and directors.
10.2+*	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Bruce Cozadd.
10.3+*	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Samuel Saks.
10.4+*	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Robert Myers.
10.5+*	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Matthew Fust.
10.6+*	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Carol Gamble.
10.7+*	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Janne Wissel.
10.8+*	Stock Purchase Agreement, dated as of September 24, 2004, by and between the Registrant and Alan Sebulsky.
10.9+*	Common Stock Purchase Agreement, dated as of March 20, 2003, by and between the Registrant and Bruce Cozadd.
10.10+*	Stock Restriction Agreement, dated as of April 30, 2003, by and between the Registrant and Bruce Cozadd.
10.11+*	Amendment to Stock Restriction Agreement, dated as of October 30, 2003, by and between the Registrant and Bruce Cozadd.
10.12+*	Common Stock Purchase Agreement, dated as of October 30, 2003, by and between the Registrant and Bruce Cozadd.

Exhibit Number	Description of Document
10.13+*	Common Stock Purchase Agreement, dated as of March 20, 2003, by and between the Registrant and Samuel Saks.
10.14+*	Stock Restriction Agreement, dated as of April 30, 2003, by and between the Registrant and Samuel Saks.
10.15+*	Amendment to Stock Restriction Agreement, dated as of October 30, 2003, by and between the Registrant and Samuel Saks.
10.16+*	Amended and Restated Stock Purchase Agreement, dated as of April 30, 2003, by and between the Registrant and Robert Myers.
10.17+*	Amendment No. 1 to Amended and Restated Stock Purchase Agreement, dated as of December 18, 2003, by and between the Registrant and Robert Myers.
10.18+*	Common Stock Purchase Agreement, dated as of January 9, 2004, by and between the Registrant and Robert Myers.
10.19+*	Amended and Restated Stock Purchase Agreement, dated as of April 30, 2003, by and between the Registrant and Matthew Fust.
10.20+*	Amended and Restated Stock Purchase Agreement, dated as of April 30, 2003, by and between the Registrant and Carol Gamble.
10.21+	2003 Equity Incentive Plan, as amended.
10.22+	Form of Option Exercise and Stock Purchase Agreement and Forms of Grant Notices under the 2003 Equity Incentive Plan.
10.23+	2007 Equity Incentive Plan.
10.24+†	Form of Option Agreement and Form of Option Grant Notice under the 2007 Equity Incentive Plan.
10.25+	2007 Non-Employee Directors Stock Option Plan.
10.26+	Form of Stock Option Agreement and Form of Option Grant Notice under the 2007 Non-Employee Directors Stock Option Plan.
10.27+	2007 Employee Stock Purchase Plan.
10.28+	Form of 2007 Employee Stock Purchase Plan Offering Document.
10.29+*	Jazz Pharmaceuticals, Inc. Cash Bonus Plan.
10.30#*	Asset Purchase Agreement, dated as of October 4, 2004, by and among the Registrant, Glaxo Group Limited and SmithKline Beecham Corporation dba GlaxoSmithKline.
10.31#*	Sodium Gamma Hydroxybutyrate Development and Supply Agreement, dated as of November 6, 1996, by and between Orphan Medical, Inc. and Lonza, Inc.
10.32#*	Amendment No. 1 to Sodium Gamma Hydroxybutyrate Development and Supply Agreement, dated as of February 7, 2005, by and between Orphan Medical, Inc. and Lonza, Inc.
10.33#*	Amended and Restated Services Agreement, dated as of May 31, 2005, by and between Orphan Medical, Inc. and Express Scripts Specialty Distribution Services, Inc.
10.34#*	Consent and Addendum to Amended and Restated Master Services Agreement, dated as of June 1, 2006, by and between the Registrant and Express Scripts Specialty Distribution Services, Inc.
10.35#*	Addendum No. 2 to Amended and Restated Master Services Agreement, dated as of June 22, 2006, by and between the Registrant and Express Scripts Specialty Distribution Services, Inc.
10.36#*	Addendum No. 3 to Amended and Restated Master Services Agreement, dated as of August 17, 2006, by and between the Registrant and Express Scripts Specialty Distribution Services, Inc.
10.37#*	Xyrem Supply Agreement, dated as of June 30, 2000, by and between Orphan Medical, Inc. and Catalytica Pharmaceuticals, Inc.
10.38#*	Letter Amendment No. 1, dated as of November 9, 2000, by and between Orphan Medical, Inc. and Catalytica Pharmaceuticals, Inc.

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Exhibit Number	Description of Document
10.39#*	Amendment No. 2 to the Xyrem Supply Agreement, dated as of August 19, 2002, by and between Orphan Medical, Inc. and DSM Pharmaceuticals, Inc. (formerly Catalytica Pharmaceuticals, Inc.).
10.40#*	Amendment No. 3 to the Xyrem Supply Agreement, dated as of March 21, 2005, by and between Orphan Medical, Inc. and DSM Pharmaceuticals, Inc. (formerly Catalytica Pharmaceuticals, Inc.).
10.41#*	Amended and Restated Xyrem License and Distribution Agreement, dated as of June 30, 2006, by and between the Registrant and UCB Pharma Limited.
10.42#*	License Agreement, dated as of January 31, 2007, by and between the Registrant and Solvay Pharmaceuticals, Inc.
10.43#*	Supply Agreement, dated as of January 31, 2007, by and between the Registrant and Solvay Pharmaceuticals, Inc.
10.44#*	Trademark License Agreement, dated as of January 31, 2007, by and between the Registrant and Solvay Pharmaceuticals, Inc.
10.45*	Assignment, Assumption and Consent, dated as of January 31, 2007, by and among the Registrant, Solvay Pharmaceuticals, Inc and Elan Pharma International Limited.
10.46#*	License Agreement, dated as of December 22, 1997, by and between Solvay Pharmaceuticals, Inc and Elan Corporation plc.
10.47#*	Amendment to License Agreement, dated as of March 1, 1999, by and between Solvay Pharmaceuticals, Inc and Elan Corporation plc.
10.48#*	Letter Amendment No. 2 to License Agreement, dated April 13, 2000, by and between Solvay Pharmaceuticals, Inc and Elan Pharmaceutical Technologies.
10.49#*	Amendment Agreement No. 3 to License Agreement, dated as of November 7, 2006, by and between Solvay Pharmaceuticals, Inc. and Elan Corporation, plc.
10.50#*	Xyrem Manufacturing Services and Supply Agreement, dated as of March 13, 2007, by and between the Registrant and Patheon Pharmaceuticals, Inc.
10.51#*	Quality Agreement, dated as of March 13, 2007, by and between the Registrant and Patheon Pharmaceuticals, Inc.
10.52*	Commercial Lease, dated as of June 2, 2004, by and between the Registrant and The Board of Trustees of the Leland Stanford Junior University.
10.53*	Sublease Agreement, dated as of February 25, 2007, by and between Xerox Corporation and the Registrant.
10.54#*	Amendment No. 2 to Sodium Gamma Hydroxybutyrate Development and Supply Agreement, dated as of March 30, 2007, by and between Registrant and Lonza, Inc.
10.55+	Directors Deferred Compensation Plan.
10.56+	Non-Employee Director Compensation Arrangements.
21.1*	Subsidiaries of the Registrant.
23.1	Consent of Independent Registered Public Accounting Firm.
23.2	Consent of Independent Auditors.
23.3†	Consent of Cooley Godward Kronish LLP (included in Exhibit 5.1).
24.1*	Power of Attorney (see page II-10 to the Registration Statement on Form S-1 (File No. 333-141164) filed with the SEC on March 9, 2007).
24.2	Power of Attorney of Jaimin R. Patel.

* Previously filed.
† To be filed by amendment.
\+ Indicates management contract or compensatory plan.
\# Confidential treatment has been requested with respect to certain portions of this exhibit. Omitted portions have been filed separately with the Securities and Exchange Commission.

Exhibit 3.1

THIRD AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
JAZZ PHARMACEUTICALS, INC.

Jazz Pharmaceuticals, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "***Corporation***") does hereby certify that:

1. The original Certificate of Incorporation was filed with the Secretary of State of Delaware on January 20, 2004.
2. An Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on February 17, 2004.
3. A Second Amended and Restated Certificate of Incorporation was filed with the Secretary of State of Delaware on June 22, 2005.
4. The Third Amended and Restated Certificate of Incorporation in the form attached hereto as Exhibit A has been duly adopted in accordance with the provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware by the directors and stockholders of the Corporation.
5. The Third Amended and Restated Certificate of Incorporation so adopted reads in full as set forth in Exhibit A attached hereto and is hereby incorporated herein by this reference.

IN WITNESS WHEREOF, Jazz Pharmaceuticals, Inc. has caused this Third Amended and Restated Certificate of Incorporation to be signed by the Secretary on this day, May 15, 2007.

Jazz Pharmaceuticals, Inc.

By: /s/ Carol A. Gamble
Carol A. Gamble, Secretary

EXHIBIT A

THIRD AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
JAZZ PHARMACEUTICALS, INC.

ARTICLE 1. NAME

The name of the Corporation is Jazz Pharmaceuticals, Inc.

ARTICLE 2. ADDRESS

The address of the registered office of the Corporation in the State of Delaware is 615 S. Dupont Highway, Dover, DE, County of Kent. The name of its registered agent at such address is National Corporate Research, Ltd.

ARTICLE 3. PURPOSE

The purpose of the Corporation is to engage in any lawful acts or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware, as amended from time to time.

ARTICLE 4. AUTHORIZED CAPITAL; REVERSE STOCK SPLIT

1. The Corporation is authorized to issue two classes of shares, designated "Common Stock" and "Preferred Stock" respectively. The total number of shares of Common Stock which the Corporation is authorized to issue is 22,835,081, with a par value of $.0001 per share, and the total number of shares of Preferred Stock which the Corporation is authorized to issue is 27,851,841, with a par value of $.0001 per share. 1,355,380 of the shares of Preferred Stock are designated "Series A Preferred Stock" (the "***Series A Preferred***"), 17,096,312 of the shares of Preferred Stock are designated "Series B Preferred Stock" (the "***Series B Preferred***"), 8,614,421 of the shares of Preferred Stock are designated as "Series B Prime Preferred Stock" (the "***Series B/P Preferred***") and 785,728 of the shares of Preferred Stock are designated as "Series BB Preferred Stock" (the "***Series BB Preferred***"). The Series A Preferred, the Series B Preferred, the Series B/P Preferred and the Series BB Preferred shall together be referred to hereinafter as the "***Preferred Stock***."

2. Notwithstanding the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware, the number of authorized shares of Common Stock may be increased or decreased upon the vote or written consent of a majority in voting power of the outstanding shares of the Common Stock and Preferred Stock of the Corporation, voting together as a single class on an as-if converted to Common Stock basis.

3. Effective upon the filing of this Third Amended and Restated Certificate of Incorporation:

(a) Each 11.06701 shares of the Corporation's Common Stock, $.0001 par value ("Old Common Stock"), that are then issued and outstanding shall, automatically and without any action on the part of the holder thereof, be combined and changed into one share of Common Stock, $.0001 par value, of the Corporation ("New Common Stock"). For purposes of the foregoing, all shares of Old Common Stock held of record by a single holder immediately prior to the filing of this Third Amended and Restated Certificate of Incorporation shall be aggregated for purposes of determining the number of whole shares of New Common Stock to be issued to such holder, and, if after such aggregation, there shall remain a fraction of a share of New Common Stock, the Corporation shall, in lieu of issuing such fractional share, pay cash to such holder in an amount equal to the product of such fraction multiplied by the fair market value of one share of New Common Stock (after giving effect to the foregoing reverse stock split) as determined by the Corporation's Board of Directors on the date of its approval of this Third Amended and Restated Certificate of Incorporation.

(b) Each 11.06701 shares of the Corporation's Series A Preferred Stock, $.0001 par value ("Old Series A Stock"), that are then issued and outstanding shall, automatically and without any action on the part of the holder thereof, be combined and changed into one share of Series A Preferred Stock, $.0001 par value, of the Corporation ("New Series A Stock"). For purposes of the foregoing, all shares of Old Series A Stock held of record by a single holder immediately prior to the filing of this Third Amended and Restated Certificate of Incorporation shall be aggregated for purposes of determining the number of whole shares of New Series A Stock to be issued to such holder, and, if after such aggregation, there shall remain a fraction of a share of New Series A Stock, the Corporation shall, in lieu of issuing such fractional share, pay cash to such holder in an amount equal to the product of such fraction multiplied by the fair market value of one share of New Series A Stock (after giving effect to the foregoing reverse stock split) as determined by the Corporation's Board of Directors on the date of its approval of this Third Amended and Restated Certificate of Incorporation.

(c) Each 11.06701 shares of the Corporation's Series B Preferred Stock, $.0001 par value ("Old Series B Stock"), that are then issued and outstanding shall, automatically and without any action on the part of the holder thereof, be combined and changed into one share of Series B Preferred Stock, $.0001 par value, of the Corporation ("New Series B Stock"). For purposes of the foregoing, all shares of Old Series B Stock held of record by a single holder immediately prior to the filing of this Third Amended

and Restated Certificate of Incorporation shall be aggregated for purposes of determining the number of whole shares of New Series B Stock to be issued to such holder, and, if after such aggregation, there shall remain a fraction of a share of New Series B Stock, the Corporation shall, in lieu of issuing such fractional share, pay cash to such holder in an amount equal to the product of such fraction multiplied by the fair market value of one share of New Series B Stock (after giving effect to the foregoing reverse stock split) as determined by the Corporation's Board of Directors on the date of its approval of this Third Amended and Restated Certificate of Incorporation.

(d) Each 11.06701 shares of the Corporation's Series B/P Preferred Stock, $.0001 par value ("Old Series B/P Stock"), that are then issued and outstanding shall, automatically and without any action on the part of the holder thereof, be combined and changed into one share of Series B/P Preferred Stock, $.0001 par value, of the Corporation ("New Series B/P Stock"). For purposes of the foregoing, all shares of Old Series B/P Stock held of record by a single holder immediately prior to the filing of this Third Amended and Restated Certificate of Incorporation shall be aggregated for purposes of determining the number of whole shares of New Series B/P Stock to be issued to such holder, and, if after such aggregation, there shall remain a fraction of a share of New Series B/P Stock, the Corporation shall, in lieu of issuing such fractional share, pay cash to such holder in an amount equal to the product of such fraction multiplied by the fair market value of one share of New Series B/P Stock (after giving effect to the foregoing reverse stock split) as determined by the Corporation's Board of Directors on the date of its approval of this Third Amended and Restated Certificate of Incorporation.

(e) Each 11.06701 shares of the Corporation's Series BB Preferred Stock, $.0001 par value ("Old Series BB Stock"), that are then issued and outstanding shall, automatically and without any action on the part of the holder thereof, be combined and changed into one share of Series BB Preferred Stock, $.0001 par value, of the Corporation ("New Series BB Stock"). For purposes of the foregoing, all shares of Old Series BB Stock held of record by a single holder immediately prior to the filing of this Third Amended and Restated Certificate of Incorporation shall be aggregated for purposes of determining the number of whole shares of New Series BB Stock to be issued to such holder, and, if after such aggregation, there shall remain a fraction of a share of New Series BB Stock, the Corporation shall, in lieu of issuing such fractional share, pay cash to such holder in an amount equal to the product of such fraction multiplied by the fair market value of one share of New Series BB Stock (after giving effect to the foregoing reverse stock split) as determined by the Corporation's Board of Directors on the date of its approval of this Third Amended and Restated Certificate of Incorporation.

ARTICLE 5. RIGHTS, PREFERENCES, PRIVILEGES AND RESTRICTIONS OF CAPITAL STOCK

The relative rights, preferences, privileges, and restrictions granted to or imposed upon the respective classes of the shares of capital stock or the holders thereof are as follows:

1. Dividend Preference.

(a) The holders of Preferred Stock shall be entitled to receive, out of funds legally available therefor, dividends at an annual rate equal to (i) $0.8854 (appropriately adjusted for combinations, consolidations, subdivisions, recapitalizations, stock splits and the like with respect to such shares occurring after the filing of this Third Amended and Restated Certificate of Incorporation) for each outstanding share of Series A Preferred held by them, (ii) $1.2074 (appropriately adjusted for combinations, consolidations, subdivisions, recapitalizations, stock splits and the like with respect to such shares occurring after the filing of this Third Amended and Restated Certificate of Incorporation) for each outstanding share of Series B Preferred and each outstanding share of Series B/P Preferred held by them and (iii) $1.6291 for each outstanding share of Series BB Preferred held by them, payable when and if declared by the Corporation's Board of Directors, in preference and priority to the payment of dividends or distributions on any shares of Common Stock (other than those payable solely in Common Stock or involving the repurchase of shares of Common Stock from terminated directors, officers, employees, consultants or advisors of the Corporation or its subsidiaries pursuant to contractual arrangements or a stock or option plan of the Corporation approved by the Corporation's Board of Directors). No dividends shall be declared and paid on the Series A Preferred, the Series B Preferred, the Series B/P Preferred or the Series BB Preferred unless dividends are declared and paid at the same time on all such series of Preferred Stock. In the event dividends are paid to the holders of Series A Preferred, Series B Preferred, Series B/P Preferred and/or Series BB Preferred that are less than the full amounts to which such holders are entitled pursuant to this Section 1(a), such holders shall share ratably in the total amount of dividends paid according to the respective amounts due each such holder if such dividends were paid in full. The dividends payable to the holders of the Preferred Stock shall not be cumulative, and no right shall accrue to the holders of the Preferred Stock by reason of the fact that dividends on the Preferred Stock are not declared or paid in any previous fiscal year of the Corporation, whether or not the net profits or surplus of the Corporation were sufficient to pay such dividends in whole or in part.

(b) After payment of dividends to the holders of Series A Preferred, the Series B Preferred, the Series B/P Preferred and the Series BB Preferred as set forth above, dividends may be declared and paid to all holders of Common Stock; provided,

however, that no dividend may be declared and distributed among holders of Common Stock at a per share rate greater than the per share rate at which dividends are paid to the holders of Preferred Stock based on the number of shares of Common Stock into which such shares of Preferred Stock are convertible on the date such dividend is declared.

(c) In the event that the Corporation shall have declared but unpaid dividends outstanding immediately prior to, and in the event of, a conversion of Preferred Stock (as provided in Section 4 of this Article 5), the Corporation shall, at the option of the Corporation, pay in cash to the holders of Preferred Stock subject to conversion an amount equal to the full amount of any such dividends or allow such dividends to be converted into Common Stock in accordance with, and pursuant to the terms specified in, Section 4 of this Article 5.

2. Liquidation Preference.

(a) In the event of (i) any liquidation, dissolution or winding up of the Corporation, whether voluntary or not, or (ii) a Change of Control (each a "***Liquidation Event***"), distributions to the Corporation's stockholders shall be made in the following manner:

(i) Each holder of Preferred Stock shall be entitled to receive, prior and in preference to any distribution of any of the assets or surplus funds of the Corporation to the holders of the Common Stock, by reason of their ownership of such stock, the amount of (a) $20.3633 (appropriately adjusted for combinations, consolidations, subdivisions, recapitalizations, stock splits and the like with respect to such shares occurring after the filing of this Third Amended and Restated Certificate of Incorporation) (the "***Original Series BB Issue Price***") for each share of Series BB Preferred then held by such holder, plus an amount equal to all declared but unpaid dividends on such share of Series BB Preferred (collectively, the "***Series BB Preference***"), (b) $15.0910 (appropriately adjusted for combinations, consolidations, subdivisions, recapitalizations, stock splits and the like with respect to such shares occurring after the filing of this Third Amended and Restated Certificate of Incorporation) (the "***Original Series B Issue Price***") for each share of Series B Preferred then held by such holder, plus an amount equal to all declared but unpaid dividends on such share of Series B Preferred (collectively, the "***Series B Preference***"), (c) $15.0910 (appropriately adjusted for combinations, consolidations, subdivisions, recapitalizations, stock splits and the like with respect to such shares occurring after the filing of this Third Amended and Restated Certificate of Incorporation) (the "***Original Series B/P Issue Price***") for each share of Series B/P Preferred then held by such holder, plus an amount equal to all declared but unpaid dividends on such share of Series B/P Preferred (collectively, the "***Series B/P Preference***"), and (d) $11.0670 (appropriately adjusted for combinations, consolidations, subdivisions, recapitalizations, stock splits and the like

with respect to such shares occurring after the filing of this Third Amended and Restated Certificate of Incorporation) (the "***Original Series A Issue Price***") for each share of Series A Preferred then held by such holder, plus an amount equal to all declared but unpaid dividends on such share of Series A Preferred (collectively, the "***Series A Preference***"). If, upon the occurrence of a Liquidation Event, the assets and funds available to be distributed among the holders of the Preferred Stock shall be insufficient to permit the payment to such holders of the full preferential amounts set forth in this Section 2(a)(i), then the entire assets and funds of the Corporation legally available for distribution to such holders shall be distributed ratably based on the total preferential amount due each such holder under this Section 2(a)(i).

(ii) After payment has been made to the holders of Preferred Stock of the full amounts to which they are entitled pursuant to Section 2(a)(i) above, the remaining assets of the Corporation available for distribution to stockholders shall be distributed ratably among the holders of Common Stock.

(iii) Notwithstanding the above, for purposes of determining the amount each holder of shares of Preferred Stock is entitled to receive with respect to a Liquidation Event, each such holder of shares of a series of Preferred Stock shall be deemed to have converted (regardless of whether such holder actually converted) such holder's shares of such series into shares of Common Stock immediately prior to the Liquidation Event if, as a result of an actual conversion, such holder would receive, in the aggregate, an amount greater than the amount that would be distributed to such holder if such holder did not convert such series of Preferred Stock into shares of Common Stock. If any such holder shall be deemed to have converted shares of a series of Preferred Stock into Common Stock pursuant to this paragraph, then such holder shall not be entitled to receive any distribution that would otherwise be made to holders of such series of Preferred Stock that have not converted (or have not been deemed to have converted) into shares of Common Stock.

(iv) "***Change of Control***" means (i) a sale of all or substantially all of the assets of the Corporation to a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or to a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder, or a sale of all or substantially all of the assets of the Corporation to a Person in which the stockholders of the Corporation immediately prior to such transaction do not control more than 50% of the voting power immediately following the transaction; (ii) a transaction or series of related transactions by the Corporation (other than transaction(s) determined by the Board of Directors to be primarily for cash financing purposes) or by any stockholder or stockholders of the Corporation resulting in more than 50% of the voting power of the Corporation being held by a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or by a Group that does not include an Initial B/P Holder or an Affiliate of an

Initial B/P Holder; (iii) a merger or consolidation of the Corporation with or into a Person that is neither an Initial B/P Holder nor an Affiliate of an Initial B/P Holder, or with or into a Group that does not include an Initial B/P Holder or an Affiliate of an Initial B/P Holder, if and only if, after such merger or consolidation, directors of the Corporation immediately prior to such merger or consolidation do not constitute a majority of the directors of the surviving entity or its parent.

(v) "***Initial B/P Holder***" means a Person who holds any shares of Series B/P Preferred as of the date the first share of Series B/P Preferred is issued. "***Group***" means two or more Persons acting together as a partnership, limited partnership, syndicate or other group for the purpose of acquiring, holding or disposing of or voting securities of the Corporation. "***Affiliate***" means, with respect to any Person, a Person directly or indirectly controlling, controlled by, or under common control with, such Person; provided, however, that no Series BB Holder shall be considered an Affiliate of any other Person except to the extent, and only to the extent, that such Series BB Holder holds Series A Preferred, Series B Preferred or Series B/P Preferred (or shares of Common Stock issued upon conversion thereof). "***Person***" means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature, and "control" has the meaning given such term under Rule 405 of the Securities Act of 1933, as amended (the "***Securities Act***"). "***Series BB Holder***" means a holder of Series BB Preferred or warrants to purchase Series BB Preferred. "***Affiliated Fund***" means an investment fund that is an Affiliate of a Person.

(b) Notwithstanding anything herein to the contrary, the Corporation may repurchase shares of Common Stock issued to or held by former directors, officers, employees, consultants or advisors of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements (whether now existing or hereafter entered into) providing for the right of said repurchase between the Corporation and such persons, which agreements were authorized by the Board of Directors of the Corporation or the administrator of any of the Corporation's equity incentive plans.

(c) The value of securities and property paid or distributed pursuant to this Section 2 shall be computed at fair market value at the time of payment to the Corporation or at the time made available to stockholders, all as determined in good faith by the Board of Directors, provided that (i) if such securities are listed on any established stock exchange or a national market system, their fair market value shall be the closing sales price for such securities as quoted on such system or exchange (or the largest such exchange) for the date the value is to be determined (or if there are no sales for such date, then for the last preceding business day on which there were sales), as reported in the Wall Street Journal or similar publication, and (ii) if such securities are regularly quoted by a recognized securities dealer but selling prices are not reported, their fair market value

shall be the mean between the closing bid and asked prices for such securities on the date the value is to be determined (or if there are no quoted prices for such date, then for the last preceding business day on which there were quoted prices).

(d) Nothing hereinabove set forth shall affect in any way the right of each holder of Preferred Stock to convert such shares at any time and from time to time into Common Stock in accordance with Section 4 of this Article 5.

(e) The Corporation shall not enter into any agreement in contravention of the distribution provisions set forth in this Section 2.

3. Voting Rights.

Except as otherwise required by law or elsewhere in this Certificate of Incorporation, the holder of each share of Common Stock issued and outstanding shall have one vote and the holder of each share of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which such share of Preferred Stock could be converted at the record date for determination of the stockholders entitled to vote on such matters, or, if no such record date is established, at the date such vote is taken or the effective date of any written consent of stockholders, such votes to be counted together with all other shares of stock of the Corporation having general voting power and not separately as a class. Fractional votes by the holders of Preferred Stock shall not, however, be permitted and any fractional voting rights shall (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) be rounded to the nearest whole number (with one-half being rounded upward). Holders of Common Stock and Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the Corporation's Bylaws.

4. Conversion Rights.

The holders of Preferred Stock shall have conversion rights as follows:

(a) ***Right to Convert to Common Stock***. Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for such Preferred Stock as follows:

(i) Each share of Series A Preferred shall be convertible into such number of fully-paid and non-assessable shares of Common Stock as is determined by dividing the Original Series A Issue Price by the then effective Conversion Price for such Series A Preferred, determined as hereinafter provided, in effect at the time of conversion. The price at which shares of Common Stock shall be deliverable upon conversion of the Series A Preferred (the "***Series A Conversion Price***") shall initially be the Original Series A Issue Price. The initial Series A Conversion Price shall be subject to adjustment as provided in accordance with Section 4(d) below.

(ii) Each share of Series B Preferred shall be convertible into such number of fully-paid and non-assessable shares of Common Stock as is determined by dividing the Original Series B Issue Price by the then effective Conversion Price for such Series B Preferred, determined as hereinafter provided, in effect at the time of conversion. The price at which shares of Common Stock shall be deliverable upon conversion of the Series B Preferred (the "***Series B Conversion Price***") shall initially be the Original Series B Issue Price. The initial Series B Conversion Price shall be subject to adjustment as provided in accordance with Section 4(d) below.

(iii) Each share of Series B/P Preferred shall be convertible into such number of fully-paid and non-assessable shares of Common Stock as is determined by dividing the Original Series B/P Issue Price by the then effective Conversion Price for such Series B Preferred, determined as hereinafter provided, in effect at the time of conversion. The price at which shares of Common Stock shall be deliverable upon conversion of the Series B/P Preferred (the "***Series B/P Conversion Price***") shall initially be the Original Series B/P Issue Price. The initial Series B/P Conversion Price shall be subject to adjustment as provided in accordance with Section 4(d) below.

(iv) Each share of Series BB Preferred shall be convertible into such number of fully-paid and non-assessable shares of Common Stock as is determined by dividing the Original Series BB Issue Price by the then effective Conversion Price for such Series BB Preferred, determined as hereinafter provided, in effect at the time of conversion. The price at which shares of Common Stock shall be deliverable upon conversion of the Series BB Preferred (the "***Series BB Conversion Price***") shall initially be the Original Series BB Issue Price. The initial Series BB Conversion Price shall be subject to adjustment as provided in accordance with Section 4(d) below.

(b) ***Automatic Conversion***. Each share of Preferred Stock shall automatically be converted into such number of fully paid and nonassessable shares of Common Stock as determined by dividing the applicable Original Issue Price by the then effective applicable Conversion Price upon the earlier of: (i) the closing of a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, (the "***Securities Act***") covering the offer and sale of Common Stock for the account of the Corporation to the public with aggregate proceeds to the Corporation of at least $60,000,000 (before deduction of underwriters commissions and expenses) and a per share price not less than $45.26 per share (appropriately adjusted for combinations, consolidations, subdivisions, recapitalizations, stock splits or other similar transaction occurring after the filing of this Third Amended and Restated Certificate of Incorporation) and (ii) the affirmative vote or

written consent of at least 55% in voting power of the then outstanding shares of Preferred Stock, voting as a single class on an as-if converted to Common Stock basis (each such event is an "***Automatic Conversion***"). In the event of an Automatic Conversion of the Preferred Stock upon a public offering as aforesaid, the person(s) entitled to receive the Common Stock issuable upon such conversion of such Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior and subject to the closing of such public sale of securities.

(c) ***Mechanics of Conversion***. No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair value of such share, as determined in good faith by the Board of Directors. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock and to receive certificates therefor, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same; provided, however, that in the event of an Automatic Conversion pursuant to Section 4(b) above, the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; and provided further that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion unless the certificates evidencing such shares of Preferred Stock are either delivered to the Corporation or its transfer agent, as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after such delivery, or such agreement and indemnification in the case of a lost certificate, issue and deliver at such office to such holder, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid and a check payable to the holder in the amount of any cash amounts payable in lieu of a conversion into fractional shares of Common Stock. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, or in the case of Automatic Conversion, on the date of closing of the offering or the date of the affirmative vote or written consent of the Preferred Stock, as applicable, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date.

(d) ***Adjustments to Conversion Price***.

(i) ***Adjustments for Dividends, Stock Splits, Subdivisions, Combinations or Consolidations with respect to Common Stock***. In the event the outstanding shares of Common Stock shall be increased by stock dividend payable in Common Stock, stock split, subdivision or other similar transaction occurring after the filing of this Third Amended and Restated Certificate of Incorporation into a greater number of shares of Common Stock, the Conversion Prices then in effect shall, concurrently with the effectiveness of such event, be decreased in proportion to the percentage increase in the outstanding number of shares of Common Stock. In the event the outstanding shares of Common Stock shall be decreased by a reverse stock split, combination, consolidation or other similar transaction occurring after the filing of this Third Amended and Restated Certificate of Incorporation into a lesser number of shares of Common Stock, the Conversion Prices then in effect shall, concurrently with the effectiveness of such event, be increased in proportion to the percentage decrease in the outstanding number of shares of Common Stock.

(ii) ***Adjustments for Other Distributions***. In the event the Corporation shall, at any time or from time to time after the filing of this Third Amended and Restated Certificate of Incorporation, declare a distribution payable in securities of the Corporation not referred to in Section 4(d)(i) or securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights not referred to in Section 4(d)(i), then, in each such case for the purpose of this Section 4(d)(ii), the holders of Preferred Stock shall be entitled to a proportionate share of any such distribution as though they were the holders of the number of shares of Common Stock into which their shares of Preferred Stock are convertible as of the record date fixed for the determination of the holders of Common Stock entitled to receive such distribution.

(iii) ***Adjustments for Reclassification, Exchange and Substitution***. If the Common Stock issuable upon conversion of the Preferred Stock shall, after the filing of this Third Amended and Restated Certificate of Incorporation, be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification, exchange, substitution or otherwise (other than a subdivision or combination of shares provided for above or a Liquidation Event), the Conversion Prices then in effect shall, concurrently with the effectiveness of such reorganization, reclassification, exchange, substitution or other transaction, be proportionately adjusted such that the Preferred Stock shall be convertible into, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive, a number of shares of such other class or classes of stock equivalent to the number of shares of Common Stock that would have been subject to receipt by the holders upon conversion of such Preferred Stock immediately before that change.

(e) ***Certificate as to Adjustments***. Upon the occurrence of each adjustment or readjustment of the Conversion Prices pursuant to Section 4(d) above, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the applicable Conversion Price for such series of Preferred Stock at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of such series of Preferred Stock.

(f) ***Special Adjustment to Conversion Price and Mandatory Conversion to Common Stock; Optional and Mandatory Conversion of Series B/P Preferred into Series B Preferred***.

(i) Notwithstanding anything to the contrary set forth in Section 4(c), if at any time after the date on which the first share of Series B Preferred is issued (the "***Series B Original Issue Date***"),

(1) the Corporation provides notice to a holder of Series B Preferred and/or Series B/P Preferred that the Corporation is selling additional shares of Series B Preferred and/or Series B/P Preferred in accordance with the terms and conditions of that certain Preferred Stock Purchase Agreement, dated January 27, 2004, between the Corporation and the investors named therein (as the same may be amended from time to time in accordance with the terms thereof, the "***Purchase Agreement***"), a copy of which agreement is and shall be on file with the Corporation;

(2) such holder is obligated to purchase additional shares of Series B Preferred and/or Series B/P Preferred pursuant to the terms and conditions of the Purchase Agreement; and

(3) such holder fails to purchase all such shares;

then, without the need for any further action, the Conversion Price then in effect for all of such holder's shares of Series B Preferred and Series B/P Preferred shall be increased by 100%, and, immediately after such increase, all of such holder's shares of Series B Preferred and Series B/P Preferred shall automatically be converted into shares of Common Stock effective as of the date of closing of such sale of additional shares of Series B Preferred and/or Series B/P Preferred under the Purchase Agreement, whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent.

(ii) Each share of Series B/P Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for such Series B/P Preferred into one share of Series B Preferred. At such time that a holder of Series B/P Preferred, together with any Affiliate Fund(s) of such holder, holds a number of shares of Series B/P Preferred that is less than 8-2/3% of the number of Total B and B/P Shares, all shares of Series B/P Preferred held by such holder or any Affiliated Fund of such holder shall automatically be converted into shares of Series B Preferred at a one for one ratio. For purposes of this Certificate of Incorporation, "***Total B and B/P Shares***" means (a) all shares of Series B/P Preferred that have been issued by the Corporation at any time, including for these purposes any shares of Series B/P Preferred that have been issued and later converted into shares of Series B Preferred and any shares of Series B/P Preferred that have been issued and later converted into shares of Common Stock and (b) all shares of Series B Preferred that have been issued by the Corporation at any time, including for these purposes shares of Series B Preferred that have been issued and later converted into shares of Common Stock, but not including any shares of Series B Preferred that have been issued upon conversion of Series B/P Preferred.

(iii) The holder of any shares of Series B/P Preferred converted pursuant to Section 4(f)(i) or 4(f)(ii) above shall surrender the certificate or certificates for the shares to be converted, duly endorsed, at the office of the Corporation or any transfer agent for the Series B/P Preferred. As promptly as practicable thereafter, the Corporation shall issue and deliver to such holder, at an address designated by such holder, a certificate or certificates for the number of shares of Common Stock (determined pursuant to Section 4(f)(i) above) or Series B Preferred (determined pursuant to Section 4(f)(ii) above), as applicable; provided, however, that in the event of an automatic conversion pursuant to Section 4(f)(i) or 4(f)(ii) above, the outstanding shares of Series B/P Preferred shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, further, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock or Series B Preferred, as applicable, issuable upon conversion unless the certificates evidencing such shares of Series B/P Preferred are either delivered to the Corporation or its transfer agent, as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. The Corporation shall, as soon as practicable after such delivery, or such agreement and indemnification in the case of a lost certificate, issue and deliver at such office to such holder, a certificate or certificates

for the number of shares of Common Stock or Series B Preferred, as applicable, to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Series B/P Preferred to be converted, or, in the case of an automatic conversion pursuant to Section 4(f)(i) above, as of the close of business on the date of the closing of additional shares of Series B Preferred and/or Series B/P Preferred under the Purchase Agreement, or, in the case of an automatic conversion pursuant to Section 4(f)(ii) above, as of the close of business on the date that the holder of Series B/P Preferred, together with any Affiliate Fund(s), holds a number of shares of Series B/P Preferred that is less than 8-2/3% of the number of Total B and B/P Shares, and the person or persons entitled to receive the shares of Series B Preferred issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Series B Preferred as of the close of business on such date.

(g) ***Notices of Record Date***. In the event that the Corporation shall propose at any time:

(i) to declare any dividend or distribution upon its Common Stock, whether in cash, property, stock, or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights;

(iii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(iv) to merge or consolidate with or into any other Person, or sell, lease, or convey all or substantially all its assets, property or business, or to liquidate, dissolve, or wind up or otherwise consummate a Liquidation Event; then, in connection with each such event, the Corporation shall send to the holders of the Preferred Stock:

(1) at least 20 days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in (iii) and (iv) above; and

(2) in the case of the matters referred to in (iii) and (iv) above, at least 20 days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event or the record date for the determination of such holders if such record date is earlier).

Each such written notice shall be delivered personally or via overnight courier, or given by first class mail, postage prepaid, addressed to the holders of the Preferred Stock at the address for each such holder as shown on the books of the Corporation.

(h) ***Issue Taxes***. The Corporation shall pay any and all issue and other taxes (other than income taxes) that may be payable in respect of any issue or delivery of shares of Common Stock or Series B Preferred on conversion of shares of Preferred Stock pursuant hereto; provided, however, that the Corporation shall not be obligated to pay any transfer taxes resulting from any transfer requested by any holder in connection with any such conversion.

(i) ***Reservation of Stock Issuable Upon Conversion***. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Preferred Stock such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of Preferred Stock, the Corporation shall take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to its Certificate of Incorporation. In addition, the Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Series B Preferred, solely for the purpose of effecting the conversion of the shares of the Series B/P Preferred, such number of its shares of Series B Preferred as shall from time to time be sufficient to effect the conversion of all outstanding shares of Series B/P Preferred.

(j) ***Status of Converted Preferred Stock***. In the event that any shares of any series of Preferred Stock shall be converted pursuant to this Section 4, the shares so converted, upon such conversion, shall not be available for reissuance.

5. Redemption Rights.

The Series A Preferred, the Series B Preferred, the Series B/P Preferred and the Series BB Preferred are not redeemable.

6. Covenants.

In addition to any other rights provided by law, the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of at least 55% in voting power of the then outstanding shares of Preferred Stock, voting as a single class on an as-if converted to Common Stock basis, take any action (whether by merger, consolidation or otherwise) that:

(a) alters or changes the preferences, rights, privileges or powers of any series of Preferred Stock; provided, however, that any alteration or change that affects the preferences, rights, privileges or powers of any series of Preferred Stock, but that does not so affect the preferences, rights, privileges or powers of all other series of Preferred Stock, shall also require the affirmative vote or written consent of the holders of a majority in voting power of the then outstanding shares of such affected series of Preferred Stock, voting as a separate class (for example, Article 6 hereof may not be altered or changed without the affirmative vote or written consent of the holders of a majority in voting power of shares of Series B/P Preferred, voting as a separate class); provided further, however, that if the affirmative vote or written consent of the holders of a majority in voting power of the Series B Preferred shall be required pursuant to the prior "provided, however" clause, and if at that time all of the issued shares of Series B/P Preferred shall have been converted into shares of Series B Preferred, the requirement shall be increased to 55% of the voting power of the Series B Preferred;

(b) increases the authorized number of shares of Preferred Stock;

(c) authorizes, or otherwise obligates the Corporation to issue, any new class or series of stock or other securities exercisable or exchangeable for any class or series of stock (other than Common Stock or options to purchase Common Stock issued to directors, officers, employees, consultants or advisors of the Corporation pursuant to a stock option plan or other agreement or arrangement approved by the Corporation's Board of Directors);

(d) causes any merger, consolidation or any other transaction or series of related transactions constituting a Liquidation Event;

(e) amends, waives or repeals any provision of, or adds any provision to, its Certificate of Incorporation or Bylaws;

(f) makes any change in the authorized number of members of the Board of Directors; or

(g) declares or pays dividends on or makes any distributions with respect to Common Stock or Preferred Stock or results in any repurchase thereof (other than repurchases of restricted stock from terminated directors, officers, employees, consultants or advisors of the Corporation or its subsidiaries pursuant to contractual arrangements or a stock or option plan of the Corporation approved by the Corporation's Board of Director).

7. Residual Rights.

All rights accruing to the outstanding shares of the Corporation not expressly provided for to the contrary herein are vested in the Common Stock.

ARTICLE 6. BOARD OF DIRECTORS

In furtherance and not in limitation of the powers conferred by Delaware law:

1. Bylaws. Except as otherwise provided herein or in the Bylaws of the Corporation, the Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation.

2. Election of Directors; Term. The election of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide. Each director, including a director elected to fill a vacancy, shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal.

3. Classes of Directors. So long as the holders of Series B/P Preferred have the right to elect Series B/P Directors (as defined below) in accordance with Sections 4 and 6 below, the Corporation shall have two classes of directors on the Corporation's Board of Directors designated as "***Series B/P Directors***" and "***Standard Directors***". Series B/P Directors shall be those directors elected in accordance with Section 4 below. Standard Directors shall be those directors who are not Series B/P Directors. The authorized total number of directors shall be fixed in accordance with the Corporation's Bylaws, provided that the authorized total number of Series B/P Directors shall be determined as set forth in Section 6 below.

4. Right to Elect. The holders of Series B/P Preferred, voting as a separate class, shall be entitled to elect the Series B/P Directors, and the holders of Preferred Stock and the holders of Common Stock, voting together as a single class on an as-if converted to Common Stock basis, shall be entitled to elect the Standard Directors. In the case of any vacancy in the office of a director elected by a specified group of stockholders, a successor shall be elected to hold office for the unexpired term of such director by the affirmative vote of a majority in voting power of the shares of such specified group given at a special meeting of such stockholders duly called or by an action by written consent for that purpose. Any director who shall have been elected by a specified group of stockholders may be removed during the aforesaid term of office, without cause, by, and only by, the affirmative vote of the holders of a majority in voting power of the shares of such specified group, given at a special meeting of such stockholders duly called or by an action by written consent for that purpose, and any such vacancy thereby created, may be filled by the vote of the holders of the shares of such specified group represented at such meeting or in such consent.

5. Board Action. The Series B/P Directors shall have an aggregate number of votes determined in the manner set forth in Section 6 below with respect to all matters to be acted upon by the Board of Directors of the Corporation. The number of such votes held by each Series B/P Director shall be determined as provided in Section 6 below. Each Standard Director shall have one vote each with respect to all matters to be acted upon by the Board of Directors of the Corporation. The act of a majority of the votes present at any meeting at which there is a quorum shall be the act of the Board of Directors; provided, however, that such majority may not consist entirely of votes from directors who are Affiliates of or have been designated, nominated or elected by a single stockholder and/or such stockholder's Affiliates. A quorum shall consist of a majority of the number of votes of the Board of Directors.

6. Number of Votes of Series B/P Directors; Number of Series B/P Directors.

(a) The Series B/P Directors, without regard to the number of Series B/P Directors, shall have the aggregate number of votes determined as follows:

(i) If the number of outstanding shares of Series B/P Preferred equals or exceeds Z times the number of Total B and B/P Shares, then the Series B/P Directors shall have in the aggregate the number of votes equal to (X-1), where X equals the total number of authorized Standard Directors of the Corporation.

(ii) If the number of outstanding shares of Series B/P Preferred is less than Z times the number of Total B and B/P Shares, then the Series B/P Directors shall have in the aggregate the number of votes equal to [(X-1) multiplied by (Y/Z)], rounded to the nearest whole number (rounded up where the fraction is .50); where:

(1) X equals the total number of authorized Standard Directors of the Corporation,

(2) Y is a fraction the numerator of which is the number of outstanding shares of Series B/P Preferred and the denominator of which is the number of Total B and B/P Shares,

(3) and Z equals the Total Capital Commitment of the Initial B/P Holder divided by the aggregate Total Capital Commitments of all Investors, where Total Capital Commitment and Investors have the meanings given in the Purchase Agreement.

For example, if X were 7, Y were 0.40 and Z were 0.52, the aggregate number of votes held by the Series B/P Directors would be 5; if X were 9, and Y were 0.40 and Z were 0.52, the aggregate number of votes held by the Series B/P Directors would be 6.

(iii) Each Series B/P Director shall have the number of votes (including fractional votes) determined by dividing the aggregate number of Series B/P Directors votes by the aggregate number of Series B/P Directors; provided, however, that the aggregate number of votes of the Series B/P Directors shall always be a whole number as provided in Section 6(a)(ii) above of this Article 6; provided, further, that the aggregate number of votes of the Series B/P Directors shall never be more than the aggregate number of votes calculated as if all of the shares of Series B/P Preferred were held by a single holder.

(b) If the aggregate number of votes calculated pursuant to Section 6(a) above of this Article 6 is greater than or equal to three, the authorized number of Series B/P Directors shall be three. If the aggregate number of votes calculated pursuant to Section 6(a) above of this Article 6 is equal to two, the authorized number of Series B/P Directors shall be two. If the aggregate number of votes calculated pursuant to Section 6(a) above of this Article 6 is equal to one, the authorized number of Series B/P Directors shall be one. If the aggregate number of votes calculated pursuant to Section 6(a) above of this Article 6 is less than one, the authorized number of Series B/P Directors shall be zero. If the authorized number of Series B/P Directors is reduced at any time, the Corporation shall hold an election of directors to elect the appropriate number of Series B/P Directors.

ARTICLE 7. LIMITATION OF DIRECTORS' LIABILITY; INDEMNIFICATION

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of the State of Delaware, or (iv) for any transaction from which the director derived any improper personal benefit. If the General Corporation Law of the State of Delaware is amended hereafter to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of the State of Delaware, as so amended.

The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he, his testator or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation.

Any amendment, repeal or modification of this Article 7 by the stockholders of the Corporation shall not adversely affect any right or protection of a director or officer of the Corporation existing at the time of such amendment, repeal or modification.

ARTICLE 8. RESERVATION OF RIGHTS

The Corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon a stockholder herein are granted subject to this reservation.

FOURTH AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

JAZZ PHARMACEUTICALS, INC.

JAZZ PHARMACEUTICALS, INC., a corporation organized and existing under the General Corporation Law of the State of Delaware, does hereby certify as follows:

FIRST: The name of the corporation is Jazz Pharmaceuticals, Inc.

SECOND: The date of filing of the original Certificate of Incorporation of this corporation with the Secretary of State of the State of Delaware is January 20, 2004.

THIRD: An Amended and Restated Certificate of Incorporation of this corporation was filed with the Secretary of State of the State of Delaware on February 17, 2004.

FOURTH: A Second Amended and Restated Certificate of Incorporation of this corporation was filed with the Secretary of State of the State of Delaware on June 22, 2005.

FIFTH: A Third Amended and Restated Certificate of Incorporation of this corporation was filed with the Secretary of State of the State of Delaware on May 15, 2007.

SIXTH: The Third Amended and Restated Certificate of Incorporation of this corporation is hereby amended and restated to read as follows:

I.

The name of this corporation is Jazz Pharmaceuticals, Inc. (the "***Company***").

II.

The address of the registered office of the Company in the State of Delaware is 615 South Dupont Highway, City of Dover, 19901, County of Kent, and the name of the registered agent of the Company in the State of Delaware at such address is National Corporate Research, Ltd.

III.

The purpose of the Company is to engage in any lawful act or activity for which a corporation may be organized under the Delaware General Corporation Law ("***DGCL***").

IV.

A. The Company is authorized to issue two classes of stock to be designated, respectively, "***Common Stock***" and "***Preferred Stock***." The total number of shares which the Company is authorized to issue is one hundred seventy million (170,000,000) shares. One hundred fifty million (150,000,000) shares shall be Common Stock, each having a par value of one hundredth of one cent ($0.0001). Twenty million (20,000,000) shares shall be Preferred Stock, each having a par value of one hundredth of one cent ($0.0001).

B. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the Company (the "***Board of Directors***") is hereby expressly authorized to provide for the issue of all of any of the shares of the Preferred Stock in one or more series, and to fix the number of shares and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designation, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issuance of such shares and as may be permitted by the DGCL. The Board of Directors is also expressly authorized to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be decreased in accordance with the foregoing sentence, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series. The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the Common Stock, without a vote of the holders of the Preferred Stock, or of any series thereof, unless a vote of any such holders is required pursuant to the terms of any certificate of designation filed with respect to any series of Preferred Stock.

C. Each outstanding share of Common Stock shall entitle the holder thereof to one vote on each matter properly submitted to the stockholders of the Company for their vote; *provided, however*, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon by law or pursuant to this Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock).

V.

For the management of the business and for the conduct of the affairs of the Company, and in further definition, limitation and regulation of the powers of the Company, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

A.

1. MANAGEMENT OF BUSINESS

The management of the business and the conduct of the affairs of the Company shall be vested in its Board of Directors. The number of directors which shall constitute the Board of Directors shall be fixed exclusively by resolutions adopted by a majority of the authorized number of Directors constituting the Board of Directors.

2. BOARD OF DIRECTORS

a. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, the directors shall be divided into three classes designated as Class I, Class II and Class III, respectively. At the first annual meeting of stockholders following the closing of the initial public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock to the public (the "***Initial Public Offering***"), the term of office of the Class I directors shall expire and Class I directors shall be elected for a full term of three years. At the second annual meeting of stockholders following the Initial Public Offering, the term of office of the Class II directors shall expire and Class II directors shall be elected for a full term of three years. At the third annual meeting of stockholders following the Initial Public Offering, the term of office of the Class III directors shall expire and Class III directors shall be elected for a full term of three years. At each succeeding annual meeting of stockholders, directors shall be elected for a full term of three years to succeed the directors of the class whose terms expire at such annual meeting.

b. Notwithstanding the foregoing provisions of this section, each director shall serve until his successor is duly elected and qualified or until his death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

3. REMOVAL OF DIRECTORS

a. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, following the closing of the Initial Public Offering, neither the Board of Directors nor any individual director may be removed without cause.

b. Subject to any limitation imposed by law, any individual director or directors may be removed with cause by the affirmative vote of the holders of at least a majority of the voting power of all then-outstanding shares of capital stock of the Company entitled to vote generally at an election of directors.

4. VACANCIES

Subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors, shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by the stockholders, except as otherwise provided by law, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining director, and not by

the stockholders. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified.

B.

1. BYLAW AMENDMENTS

The Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the Company. Any adoption, amendment or repeal of the Bylaws of the corporation by the Board of Directors shall require the approval of a majority of the authorized number of directors. The stockholders shall also have power to adopt, amend or repeal the Bylaws of the Company; *provided, however*, that, in addition to any vote of the holders of any class or series of stock of the Company required by law or by this Certificate of Incorporation, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all of the then-outstanding shares of the capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the Bylaws of the Company.

2. BALLOTS

The directors of the Company need not be elected by written ballot unless the Bylaws so provide.

3. ACTION BY STOCKHOLDERS

No action shall be taken by the stockholders of the Company except at an annual or special meeting of stockholders called in accordance with the Bylaws, and no action shall be taken by the stockholders by written consent or electronic transmission.

4. ADVANCE NOTICE

Advance notice of stockholder nominations for the election of directors and of business to be brought by stockholders before any meeting of the stockholders of the Company shall be given in the manner provided in the Bylaws of the Company.

VI.

A. The liability of the directors for monetary damages shall be eliminated to the fullest extent under applicable law. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Company shall be eliminated to the fullest extent permitted by the DGCL, as so amended.

B. Any repeal or modification of this Article VI shall be prospective and shall not affect the rights under this Article VI in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability or indemnification.

VII.

A. The Company reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, except as provided in paragraph B. of this Article VII, and all rights conferred upon the stockholders herein are granted subject to this reservation.

B. Notwithstanding any other provisions of this Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the Company required by law or by this Certificate of Incorporation or any certificate of designation filed with respect to a series of Preferred Stock, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then-outstanding shares of capital stock of the Company entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend or repeal Articles V, VI and VII.

SEVENTH: This Fourth Amended and Restated Certificate of Incorporation has been duly approved by the Board of Directors.

EIGHTH: This Fourth Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL by the Board of Directors and the stockholders of the Company. This Fourth Amended and Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of the Company in accordance with Section 228 of the DGCL.

IN WITNESS WHEREOF, Jazz Pharmaceuticals, Inc., has caused this Fourth Amended and Restated Certificate of Incorporation to be signed by its Secretary in Palo Alto, California this __ day of _____, 2007.

JAZZ PHARMACEUTICALS, INC.

By: _____
Carol A. Gamble
Secretary

AMENDED AND RESTATED

BYLAWS

OF

JAZZ PHARMACEUTICALS, INC.

(A DELAWARE CORPORATION)

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AMENDED AND RESTATED

BYLAWS

OF

JAZZ PHARMACEUTICALS, INC.

(A DELAWARE CORPORATION)

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of the corporation in the State of Delaware shall be in the City of Dover, County of Kent.

Section 2. Other Offices. The corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

ARTICLE II

CORPORATE SEAL

Section 3. Corporate Seal. The Board of Directors may adopt a corporate seal. The corporate seal shall consist of a die bearing the name of the corporation and the inscription, "Corporate Seal-Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE III

STOCKHOLDERS' MEETINGS

Section 4. Place Of Meetings. Meetings of the stockholders of the corporation may be held at such place, either within or without the State of Delaware, as may be determined from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law ("***DGCL***").

Section 5. Annual Meetings.

(a) The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may lawfully come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors. Nominations of persons for election to the Board of Directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders: (i) pursuant to the corporation's notice of meeting of stockholders; (ii) by or at the direction of the Board of Directors; or (iii) by any stockholder of the corporation who was a stockholder of record at the time of giving the stockholder's notice provided for in the following paragraph, who is entitled to vote at the meeting and who complied with the notice procedures set forth in Section 5.

(b) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 5(a) of these Bylaws, (i) the stockholder must have given timely notice thereof in writing to the Secretary of the corporation, (ii) such other business must be a proper matter for stockholder action under DGCL, (iii) if the stockholder, or the beneficial owner on whose behalf any such proposal or nomination is made, has provided the corporation with a Solicitation Notice (as defined in clause (iii) of the last sentence of this Section 5(b)), such stockholder or beneficial owner must, in the case of a proposal, have delivered a proxy statement and form of proxy to holders of at least the percentage of the corporation's voting shares required under applicable law to carry any such proposal, or, in the case of a nomination or nominations, have delivered a proxy statement and form of proxy to holders of a percentage of the corporation's voting shares reasonably believed by such stockholder or beneficial owner to be sufficient to elect the nominee or nominees proposed to be nominated by such stockholder, and must, in either case, have included in such materials the Solicitation Notice, and (iv) if no Solicitation Notice relating thereto has been timely provided pursuant to this section, the stockholder or beneficial owner proposing such business or nomination must not have solicited a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this Section 5. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; *provided, however,* that in the event that the date of the annual meeting is advanced more than thirty (30) days prior to or delayed by more than thirty (30) days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth: (A) as to each person whom the stockholder proposed to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the ***"1934***

Act") and Rule 14a-4(d) thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, (ii) the class and number of shares of the corporation which are owned beneficially and of record by such stockholder and such beneficial owner, and (iii) whether either such stockholder or beneficial owner intends to deliver a proxy statement and form of proxy to holders of, in the case of the proposal, at least the percentage of the corporation's voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the corporation's voting shares to elect such nominee or nominees (an affirmative statement of such intent, a ***"Solicitation Notice"***).

(c) Notwithstanding anything in the third sentence of Section 5(b) of these Bylaws to the contrary, in the event that the number of directors to be elected to the Board of Directors of the corporation is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the corporation at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 5 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth (10^{th}) day following the day on which such public announcement is first made by the corporation.

(d) Only such persons who are nominated in accordance with the procedures set forth in this Section 5 shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 5. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, to declare that such defective proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded.

(e) Notwithstanding the foregoing provisions of this Section 5, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders' meeting, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to matters set forth in this Section 5. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act.

(f) For purposes of this Section 5, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the 1934 Act.

Section 6. Special Meetings.

(a) Special meetings of the stockholders of the corporation may be called, for any purpose or purposes, by (i) the Chairman of the Board of Directors, (ii) the Chief Executive Officer, or (iii) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption). If a special meeting is properly called by any person other than the Board of Directors, the request shall be in writing, specifying the general nature of the business proposed to be transacted, and shall be delivered personally or sent by certified or registered mail, return receipt requested, to the Secretary of the corporation.

(b) The Board of Directors shall determine the time and place of such special meeting. Upon determination of the time and place of the meeting, the Secretary shall cause a notice of meeting to be given to the stockholders entitled to vote, in accordance with the provisions of Section 7 of these Bylaws. No business may be transacted at such special meeting otherwise than specified in the notice of meeting. Nothing contained in this paragraph (b) shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

(c) Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the corporation's notice of meeting (i) by or at the direction of the Board of Directors or (ii) by any stockholder of the corporation who is a stockholder of record at the time of giving notice provided for in this paragraph who shall be entitled to vote at the meeting and who complies with the notice procedures set forth in Section 5 of these Bylaws. In the event the corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the corporation's notice of meeting, if the stockholder's notice required by Section 5(b) of these Bylaws shall be delivered to the Secretary at the principal executive offices of the corporation not earlier than the close of business on the one hundred twentieth (120^{th}) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90^{th}) day prior to such meeting or the tenth (10^{th}) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment of a special meeting commence a new time period for the giving of a stockholder's notice as described above.

(d) Notwithstanding the foregoing provisions of this Section 6, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder with respect to matters set forth in this Section 6. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act.

Section 7. Notice Of Meetings. Except as otherwise provided by law, notice, given in writing or by electronic transmission, of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date and hour, in the case of special meetings, the purpose or purposes of the meeting, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at any such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. Notice of the time, place, if any, and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof, or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his attendance thereat in person, by remote communication, if applicable, or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

Section 8. Quorum. At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute or by applicable stock exchange or NASDAQ rules, or by the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, the affirmative vote of the majority of shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the subject matter shall be the act of the stockholders. Except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the election of directors. Where a separate vote by a class or classes or series is required, except where otherwise provided by the statute or by the Certificate of Incorporation or these Bylaws, a majority of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, shall constitute a quorum entitled to take action with respect to that vote on that matter. Except where otherwise provided by statute or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the majority (plurality, in the case of the election of directors) of shares of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at the meeting shall be the act of such class or classes or series.

Section 9. Adjournment And Notice Of Adjourned Meetings. Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

Section 10. Voting Rights. For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 12 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period.

Section 11. Joint Owners Of Stock. If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the DGCL, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest.

Section 12. List Of Stockholders. The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. The list shall be open to examination of any stockholder during the time of the meeting as provided by law.

Section 13. Action Without Meeting. No action shall be taken by the stockholders except at an annual or special meeting of stockholders called in accordance with these Bylaws, and no action shall be taken by the stockholders by written consent or by electronic transmission.

Section 14. Organization.

(a) At every meeting of stockholders, the Chairman of the Board of Directors, or, if a Chairman of the Board of Directors has not been appointed or is absent, the Chief Executive Officer, or, if the Chief Executive Officer is absent, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his or her absence, an Assistant Secretary directed to do so by the Chief Executive Officer or the Executive Chairman shall act as secretary of the meeting.

(b) The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

ARTICLE IV

DIRECTORS

Section 15. Number And Term Of Office. The authorized number of directors of the corporation shall be fixed in accordance with the Certificate of Incorporation. Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws.

Section 16. Powers. The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

Section 17. Classes of Directors. Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, following the closing of the initial public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock of the corporation to the public (the "***Initial Public Offering***"), the directors shall be divided into three classes designated as Class I, Class II and Class III, respectively. At the first annual meeting of stockholders following the closing of the Initial Public Offering, the term of office of the Class I directors shall expire and Class I directors shall be elected for a full term of three years. At the second annual meeting of stockholders following the Initial Public Offering, the term of office of the Class II directors shall expire and Class II directors shall be elected for a full term of three years. At the third annual meeting of stockholders following the Initial Public Offering, the term of office of the Class III directors shall expire and Class III directors shall be elected for a full term of three years. At each succeeding annual meeting of stockholders, directors shall be elected for a full term of three years to succeed the directors of the class whose terms expire at such annual meeting.

Notwithstanding the foregoing provisions of this section, each director shall serve until his successor is duly elected and qualified or until his earlier death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

Section 18. Vacancies. Unless otherwise provided in the Certificate of Incorporation, and subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors, or by a sole remaining director, *provided, however,* that whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the Certificate of Incorporation, vacancies and newly created directorships of such class or classes or series shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this Bylaw in the case of the death, removal or resignation of any director.

Section 19. Resignation. Any director may resign at any time by delivering his or her notice in writing or by electronic transmission to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to

take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the Director whose place shall be vacated and until his successor shall have been duly elected and qualified.

Section 20. Removal.

(a) Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, following the closing of the Initial Public Offering, neither the Board of Directors nor any individual director may be removed without cause.

(b) Subject to any limitation imposed by law, any individual director or directors may be removed with cause by the affirmative vote of the holders of at least a majority of the voting power of all then-outstanding shares of capital stock of the corporation entitled to vote generally at an election of directors.

Section 21. Meetings.

(a) Regular Meetings. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may be held at any time or date and at any place within or without the State of Delaware which has been designated by the Board of Directors and publicized among all directors, either orally or in writing, by telephone, including a voice-messaging system or other system designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means. No further notice shall be required for regular meetings of the Board of Directors.

(b) Special Meetings. Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board of Directors, the Chief Executive Officer or a majority of the authorized number of directors.

(c) Meetings by Electronic Communications Equipment. Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(d) Notice of Special Meetings. Notice of the time and place of all special meetings of the Board of Directors shall be orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting. If notice is sent by US mail, it shall be sent by first class mail, charges prepaid, at least three (3) days before the date of the meeting. Notice of any meeting may be waived in writing, or by electronic transmission, at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

(e) Waiver of Notice. The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 22. Quorum And Voting.

(a) Unless the Certificate of Incorporation requires a greater number, and except with respect to questions related to indemnification arising under Section 44 for which a quorum shall be one-third of the exact number of directors fixed from time to time, a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation; *provided, however,* at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws.

Section 23. Action Without Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 24. Fees And Compensation. Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

Section 25. Committees.

(a) Executive Committee. The Board of Directors may appoint an Executive Committee to consist of one (1) or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in the resolution or resolutions of the Board of Directors shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any Bylaw of the corporation.

(b) Other Committees. The Board of Directors may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws.

(c) Term. The Board of Directors, subject to any requirements of any outstanding series of Preferred Stock and the provisions of subsections (a) or (b) of this Section 25, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) Meetings. Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 25 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by the Chairman of such committee, or, if no Chairman has been appointed, by a majority of the authorized number of members of such committee, upon notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any

business because the meeting is not lawfully called or convened. Unless otherwise provided by the Board of Directors in the resolutions authorizing the creation of the committee, a majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

Section 26. Lead Independent Director. The Chairman of the Board of Directors, or if the Chairman of the Board of Directors is not an independent director, one of the independent directors, may be designated by the Board of Directors as lead independent director to serve until replaced by the Board of Directors (the "***Lead Independent Director***"). The Lead Independent Director will, with the Chairman of the Board of Directors, establish the agenda for regular Board meetings and serve as chairman of Board of Directors meetings in the absence of the Chairman of the Board of Directors; establish the agenda for meetings of the independent directors; coordinate with the committee chairs regarding meeting agendas and informational requirements; preside over meetings of the independent directors; preside over any portions of meetings of the Board of Directors at which the evaluation or compensation of the Chief Executive Officer or the Executive Chairman is presented or discussed; preside over any portions of meetings of the Board of Directors at which the performance of the Board of Directors is presented or discussed; and coordinate the activities of the other independent directors and perform such other duties as may be established or delegated by the Chairman of the Board of Directors**.**

Section 27. Organization. At every meeting of the directors, the Chairman of the Board of Directors, or, if a Chairman of the Board of Directors has not been appointed or is absent, Lead Independent Director, or if the Lead Independent Director is absent, the Chief Executive Officer (if a director), or, if a Chief Executive Officer is absent, the President (if a director), or if the President is absent, the most senior Vice President (if a director), or, in the absence of any such person, a chairman of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his absence, any Assistant Secretary or other officer or director directed to do so by the Chief Executive Officer or the Executive Chairman, shall act as secretary of the meeting.

ARTICLE V

OFFICERS

Section 28. Officers Designated. The officers of the corporation shall include, if and when designated by the Board of Directors, the Chairman of the Board of Directors, the Executive Chairman, the Chief Executive Officer, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer and the Treasurer. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors.

Section 29. Tenure And Duties Of Officers.

(a) General. All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors.

(b) Duties of Chairman of the Board of Directors. The Chairman of the Board of Directors, when present, shall preside at all meetings of the stockholders and the Board of Directors. The Chairman of the Board of Directors shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time. To the extent that an Executive Chairman has been appointed, all references in these Bylaws to the Chairman of the Board of Directors shall be deemed references to the Executive Chairman.

(c) Duties of Executive Chairman. The Executive Chairman shall perform such duties commonly incident to the office of Chairman of the Board of Directors and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time. Unless another officer has been appointed Chief Executive Officer of the corporation, the Executive Chairman shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. To the extent that an Executive Chairman has been appointed, all references in these Bylaws to the Chairman of the Board of Directors shall be deemed references to the Executive Chairman.

(d) Duties of Chief Executive Officer. The Chief Executive Officer shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, unless the Chairman of the Board of Directors has been appointed and is present or the Lead Independent Director has been appointed and is present. Unless another officer has been appointed Chief Executive Officer of the corporation, the Executive Chairman shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The Chief Executive Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

(e) Duties of President. The President shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, unless the Chairman of the Board of Directors, the Lead Independent Director, or the Chief Executive Officer has been appointed and is present. In the event that neither the Chief Executive Officer nor the Executive Chairman has been appointed, all references in these Bylaws to the Chief Executive Officer shall be deemed references to the President and the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The President shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

(f) Duties of Vice Presidents. The Vice Presidents may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. The Vice Presidents shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer or the Executive Chairman shall designate from time to time.

(g) Duties of Secretary. The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the corporation. The Secretary shall cause notice to be given in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties provided for in these Bylaws and other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time. The Chief Executive Officer or the Executive Chairman may direct any Assistant Secretary or other officer to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer or Executive Chairman shall designate from time to time.

(h) Duties of Chief Financial Officer. The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors, the Chief Executive Officer or the Executive Chairman. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer or the Executive Chairman shall designate from time to time. Unless another officer has been appointed Treasurer, the Chief Financial Officer shall be the Treasurer of the corporation. The Chief Executive Officer or the Executive Chairman may direct the Treasurer or any Assistant Treasurer, or the Controller or any Assistant Controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each Controller and Assistant Controller shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer or the Executive Chairman shall designate from time to time.

Section 30. Delegation Of Authority. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

Section 31. Resignations. Any officer may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors, the Executive Chairman, the Chief Executive Officer or the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in

which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

Section 32. Removal. Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee or by the Chief Executive Officer or the Executive Chairman, or by other superior officers upon whom such power of removal may have been conferred by the Board of Directors.

ARTICLE VI

EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

Section 33. Execution Of Corporate Instruments. The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation.

All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 34. Voting Of Securities Owned By The Corporation. All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman of the Board of Directors, the Chief Executive Officer, the President, or any Vice President.

ARTICLE VII

SHARES OF STOCK

Section 35. Form And Execution Of Certificates. The shares of the corporation shall be represented by certificates, or shall be uncertificated. Certificates for the shares of stock, if any, shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock represented by certificate in the corporation shall be entitled to have a

certificate signed by or in the name of the corporation by the Chairman of the Board of Directors, the Chief Executive Officer, the President or any Vice President, and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him in the corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

Section 36. Lost Certificates. A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to agree to indemnify the corporation in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

Section 37. Transfers.

(a) Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and, in the case of stock represented by certificate, upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

(b) The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

Section 38. Fixing Record Dates.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, subject to applicable law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however,* that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 39. Registered Stockholders. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VIII

OTHER SECURITIES OF THE CORPORATION

Section 40. Execution Of Other Securities. All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 35), may be signed by the Chairman of the Board of Directors, the Chief Executive Officer, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; *provided, however,* that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

ARTICLE IX

DIVIDENDS

Section 41. Declaration Of Dividends. Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law.

Section 42. Dividend Reserve. Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

ARTICLE X

FISCAL YEAR

Section 43. Fiscal Year. The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

ARTICLE XI

INDEMNIFICATION

Section 44. Indemnification Of Directors and Officers, and Other Employees And Agents.

(a) Directors and Officers. The corporation shall indemnify its directors and officers to the fullest extent not prohibited by the DGCL or any other applicable law; *provided, however,* that the corporation may modify the extent of such indemnification by individual contracts with its directors and officers; and, *provided, further,* that the corporation shall not be required to indemnify any director or officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the DGCL or any other applicable law or (iv) such indemnification is required to be made under subsection (d).

(b) Other Employees and Agents. The corporation shall have power to indemnify its other employees and agents as set forth in the DGCL or any other applicable law. The Board of Directors shall have the power to delegate the determination of whether indemnification shall be given to any such person to such officers or other persons as the Board of Directors shall determine.

(c) Expenses. The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or officer in connection with such proceeding; *provided, however*, that if the DGCL requires, an advancement of expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking (hereinafter an "undertaking"), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a "final adjudication") that such indemnitee is not entitled to be indemnified for such expenses under this Section 44 or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this Section 44, no advance shall be made by the corporation to an officer of the corporation (except by reason of the fact that such officer is or was a director of the corporation in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made (i) by a majority vote of directors who were not parties to the proceeding, even if not a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

(d) Enforcement. Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and officers under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or officer. Any right to indemnification or advances granted by this Section 44 to a director or officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the corporation to indemnify the claimant for the amount claimed. In connection with any claim by an officer of the corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such officer is or was a director of the corporation) for advances, the

corporation shall be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation, or with respect to any criminal action or proceeding that such person acted without reasonable cause to believe that his conduct was lawful. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In any suit brought by a director or officer to enforce a right to indemnification or to an advancement of expenses hereunder, the burden of proving that the director or officer is not entitled to be indemnified, or to such advancement of expenses, under this Section 44 or otherwise shall be on the corporation.

(e) Non-Exclusivity of Rights. The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL, or by any other applicable law.

(f) Survival of Rights. The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) Insurance. To the fullest extent permitted by the DGCL or any other applicable law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Section 44.

(h) Amendments. Any repeal or modification of this Section 44 shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

(i) Saving Clause. If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and officer to the full extent not prohibited by any applicable portion of this Section 44 that shall not have been invalidated, or by any other applicable law. If this Section 44 shall be invalidated due to the application of the indemnification provisions of another jurisdiction, then the corporation shall indemnify each director and officer to the full extent under any other applicable law.

(j) Certain Definitions. For the purposes of this Bylaw, the following definitions shall apply:

(1) The term "proceeding" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(2) The term "expenses" shall be broadly construed and shall include, without limitation, court costs, attorneys' fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(3) The term "the corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Section 44 with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(4) References to a "director," "officer," "employee," or "agent" of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, officer, employee, trustee, or agent of another corporation, partnership, joint venture, trust or other enterprise.

(5) References to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Section 44.

ARTICLE XII

NOTICES

Section 45. Notices.

(a) Notice to Stockholders. Written notice to stockholders of stockholder meetings shall be given as provided in Section 7 herein. Without limiting the manner by which

notice may otherwise be given effectively to stockholders under any agreement or contract with such stockholder, and except as otherwise required by law, written notice to stockholders for purposes other than stockholder meetings may be sent by US mail or nationally recognized overnight courier, or by facsimile, telegraph or telex or by electronic mail or other electronic means.

(b) Notice to Directors. Any notice required to be given to any director may be given by the method stated in subsection (a), as otherwise provided in these Bylaws, or by overnight delivery service, facsimile, telex or telegram, except that such notice other than one which is delivered personally shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

(c) Affidavit of Mailing. An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained.

(d) Methods of Notice. It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

(e) Notice to Person with Whom Communication Is Unlawful. Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

(f) Notice to Stockholders Sharing an Address. Except as otherwise prohibited under DGCL, any notice given under the provisions of DGCL, the Certificate of Incorporation or the Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Such consent shall have been deemed to have been given if such stockholder fails to object in writing to the corporation within 60 days of having been given notice by the corporation of its intention to send the single notice. Any consent shall be revocable by the stockholder by written notice to the corporation.

ARTICLE XIII

AMENDMENTS

Section 46. Amendments. Subject to the limitations set forth in Section 44(h) of these Bylaws or the provisions of the Certificate of Incorporation, the Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the corporation. Any adoption, amendment or repeal of the Bylaws of the corporation by the Board of Directors shall require the approval of a majority of the authorized number of directors. The stockholders also shall have power to adopt, amend or repeal the Bylaws of the corporation; *provided, however*, that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by the Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class.

ARTICLE XIV

LOANS TO OFFICERS

Section 47. Loans To Officers. Except as otherwise prohibited by applicable law, the corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a Director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in these Bylaws shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

Exhibit 4.2

COMMON STOCK

PAR VALUE $ 0.0001

COMMON STOCK

THIS CERTIFICATE IS TRANSFERABLE
IN CANTON, MA AND JERSEY CITY, NJ

Certificate Number
ZQ 000000

Jazz Pharmaceuticals

Shares
Specimen*
****Specimen***
*****Specimen****
******Specimen***

JAZZ PHARMACEUTICALS, INC.
INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE

THIS CERTIFIES THAT

CUSIP 472147 10 7

SEE REVERSE FOR CERTAIN DEFINITIONS

Is the owner of

FULLY-PAID AND NON-ASSESSABLE SHARES OF THE COMMON STOCK OF

Jazz Pharmaceuticals, Inc. (hereinafter called the "Corporation") , transferable on the books of the Corporation in person or by duly authorized attorney, upon surrender of this Certificate properly endorsed. This Certificate, and the shares represented hereby, are issued and shall be held subject to all of the provisions of the Certificate of Incorporation, as amended, and the Bylaws, as amended, of the Corporation (copies of which are on file with the Corporation and with the Transfer Agent), to all of which each holder, by acceptance hereof, assents. This Certificate is not valid unless countersigned and registered by the Transfer Agent and Registrar.

Witness the facsimile seal of the Corporation and the facsimile signatures of its duly authorized officers.

Chief Executive Officer

Secretary

DATED <<MONTH DAY YEAR>>

COUNTERSIGNED AND REGISTERED
COMPUTERSHARE TRUST COMPANY, N.A.
TRANSFER AGENT AND REGISTRAR,

JAZZ PHARMACEUTICALS, INC.

THE CORPORATION WILL FURNISH WITHOUT CHARGE TO EACH STOCKHOLDER WHO SO REQUESTS, A SUMMARY OF THE POWERS, DESIGNATIONS, PREFERENCES AND RELATIVE, PARTICIPATING, OPTIONAL OR OTHER SPECIAL RIGHTS OF EACH CLASS OF STOCK OF THE CORPORATION AND THE QUALIFICATIONS, LIMITATIONS OR RESTRICTIONS OF SUCH PREFERENCES AND RIGHTS, AND THE VARIATIONS IN RIGHTS, PREFERENCES AND LIMITATIONS DETERMINED FOR EACH SERIES, WHICH ARE FIXED BY THE CERTIFICATE OF INCORPORATION OF THE CORPORATION, AS AMENDED, AND THE RESOLUTIONS OF THE BOARD OF DIRECTORS OF THE CORPORATION, AND THE AUTHORITY OF THE BOARD OF DIRECTORS TO DETERMINE VARIATIONS FOR FUTURE SERIES. SUCH REQUEST MAY BE MADE TO THE OFFICE OF THE SECRETARY OF THE CORPORATION OR TO THE TRANSFER AGENT. THE BOARD OF DIRECTORS MAY REQUIRE THE OWNER OF A LOST OR DESTROYED STOCK CERTIFICATE, OR HIS LEGAL REPRESENTATIVES, TO GIVE THE CORPORATION A BOND TO INDEMNIFY IT AND ITS TRANSFER AGENTS AND REGISTRARS AGAINST ANY CLAIM THAT MAY BE MADE AGAINST THEM ON ACCOUNT OF THE ALLEGED LOSS OR DESTRUCTION OF ANY SUCH CERTIFICATE.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM	-	as tenants in common
TEN ENT	-	as tenants by the entireties
JT TEN	-	as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT- _____ Custodian _____
(Cust) (Minor)
under Uniform Gifts to Minors Act _____
(State)
UNIF TRF MIN ACT _____ Custodian (until age __) _____
(Cust) (Minor)
under Uniform Transfers to Minors Act _____
(State)

Additional abbreviations may also be used though not in the above list.

For Value Received, _____ hereby sell, assign and transfer unto

PLEASE INSERT
SOCIAL SECURITY
OR OTHER IDENTIFYING
NUMBER OF ASSIGNEE

_____

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING POSTAL ZIP CODE, OF ASSIGNEE)

_____

_____

shares of the common stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

_____ Attorney

to transfer the said stock on the books of the within-named Company with full power of substitution in the premises.

Dated:_____, 20__

_____
Signature:

_____
Signature:
Notice: The signature to this assignment must correspond with the name as written upon the face of the Certificate, in every particular, without alteration or enlargement, or any change whatever.

Signature(s) Guaranteed: Medallion Guarantee Stamp

THE SIGNATURE(S) SHOULD BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (Banks, Stockbrokers, Savings and Loan Associations and Credit Unions) WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM, PURSUANT TO S.E.C. RULE 17Ad-15.

JAZZ PHARMACEUTICALS, INC.

THIRD AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT

JAZZ PHARMACEUTICALS, INC.

THIRD AMENDED AND RESTATED
INVESTOR RIGHTS AGREEMENT

THIS THIRD AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT (the "***Agreement***") is made effective as of the Effective Date (as defined below), by and among Jazz Pharmaceuticals, Inc., a Delaware corporation (the "***Company***"), and the holders of Common Stock, Preferred Stock and/or warrants to purchase the Series BB Preferred Stock of the Company listed on Exhibit A hereto (collectively, the "***Investors***").

RECITALS

WHEREAS, the Company and the Investors are parties to that certain Second Amended and Restated Investor Rights Agreement, dated as of June 24, 2005 (the "***Prior Agreement***");

WHEREAS, the Company and the Investors who have executed this Agreement (for and on behalf of all Investors) wish to amend and restate the Prior Agreement in its entirety as set forth below; and

WHEREAS, Investors who are holders of at least 60% of the Registrable Securities held by all Investors, together with Managers holding a majority of the Registrable Securities held by all Managers and the Company, have the right, pursuant to Section 19.5 of the Prior Agreement, to amend and restate the Prior Agreement in its entirety as set forth below.

NOW, THEREFORE, in consideration of the mutual agreements, covenants and considerations contained herein, the Company and the Investors who have executed this Agreement (for and on behalf of all Investors) hereby agree to amend and restate the Prior Agreement in its entirety as follows:

1. ***Certain Definitions***. As used in this Agreement, the following terms shall have the following respective meanings:

1.1 "***Affiliate***" shall mean, with respect to any Person, a Person directly or indirectly controlling, controlled by, or under common control with, such Person; provided, however, that, except for purposes of Section 11.2, no Series BB Holder shall be considered an Affiliate of any other Person except to the extent, and only to the extent, that such Series BB Holder holds Convertible Securities (or shares of Common Stock issued upon conversion thereof) other than Series BB Preferred Stock (or shares of Common Stock issued upon conversion thereof).

1.2 "***Commission***" shall mean the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

1.3 "***Control***" shall have the meaning given such term under Rule 405 of the Securities Act.

1.4 "***Convertible Securities***" shall mean the shares of the Company's Series A Preferred Stock, Series B Preferred Stock, Series B Prime Preferred Stock ("***Series B/P Preferred Stock***") and Series BB Preferred Stock held from time to time by the Investors and their permitted assigns.

1.5 "***Effective Date***" shall mean the date of the closing of the Initial Public Offering.

1.6 "***Exchange Act***" shall mean the Securities Exchange Act of 1934, as amended.

1.7 "***Form S-1***" shall mean Form S-1 issued by the Commission or any comparable or successor form or forms then in effect.

1.8 "***Form S-3***" shall mean Form S-3 issued by the Commission or any comparable or successor form or forms then in effect.

1.9 "***Group***" means two or more Persons acting together as a partnership, limited partnership, syndicate or other group for the purpose of acquiring, holding or disposing of or voting securities of the Company.

1.10 "***Holder***" shall mean any holder of outstanding Registrable Securities which have not been sold to the public, but only if such holder is one of the Investors or an assignee or transferee of registration rights as permitted by Section 11.

1.11 "***Initial B/P Holder***" shall mean a Person that holds any shares of Series B/P Preferred Stock as of the date the first share of Series B/P Preferred Stock is issued.

1.12 "***Initial Public Offering***" shall mean the Company's first firm commitment underwritten public offering of its Common Stock registered under the Securities Act

1.13 "***KKR***" shall mean Kohlberg Kravis Roberts & Co. L.P. and its Affiliates.

1.14 "***Managers***" shall mean Samuel R. Saks, Bruce C. Cozadd, Robert M. Myers, Matthew K. Fust, Carol A. Gamble and Janne L.T. Wissel.

1.15 "***Material Adverse Event***" shall mean any change, event or effect that is materially adverse to the general affairs, business, operations, assets, prospects, condition (financial or otherwise) or results of operations of the Company and its subsidiaries taken as a whole.

1.16 "***Person***" means an individual, partnership, corporation, limited liability company, limited partnership, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

1.17 The term "***Preferred Stock***" shall mean the Series A Preferred Stock, Series B Preferred Stock, Series B/P Preferred Stock and Series BB Preferred Stock of the Company.

1.18 The terms "***Register***", "***Registered***", and "***Registration***" refer to a registration effected by preparing and filing a registration statement on Form S-1, S-2 or S-3 in compliance with the Securities Act ("***Registration Statement***"), and the declaration or ordering of the effectiveness of such Registration Statement.

1.19 "***Registrable Securities***" shall mean (i) any Common Stock now owned or hereafter acquired by a Manager, (ii) the Common Stock issued or issuable upon conversion of the Convertible Securities, and (iii) any Common Stock issued (or issuable upon conversion or exercise of any warrant, right or other security which is issued) upon stock dividends, subdivisions, stock splits, recapitalization, merger or other distributions with respect to, or in exchange for, or in replacement of, such securities identified in clauses (i) and (ii) and this clause (iii), provided, however, that no shares of Common Stock shall be deemed Registrable Securities for purposes of this Agreement to the extent that such shares of Common Stock (A) have been sold to the public through a Registration Statement or pursuant to Rule 144; (B) have been sold, transferred or otherwise disposed by a person in a transaction in which its rights under this Agreement were not assigned; (C) are held by a Holder or Investors whose rights to cause the Company to register securities pursuant to this Agreement have terminated in accordance with Section 6 of this Agreement.

1.20 "***Registration Expenses***" shall mean (a) all expenses incurred by the Company or its subsidiaries in complying with Sections 3 or 4 of this Agreement, including, without limitation, all federal and state registration, qualification, and filing fees, printing expenses, fees and disbursements of counsel for the Company, blue sky fees and expenses, and the expense of any regular or special audits incident to or required by any such registration, and (b) the expenses of one special counsel for all Holders (if different from counsel to the Company) up to $45,000 and one special counsel for all Managers (if different from counsel to the Company) up to $45,000.

1.21 "***Securities Act***" shall mean the Securities Act of 1933, as amended, or any similar federal statute, and the rules and regulations of the Commission thereunder, all as the same shall be in effect at the time.

1.22 "***Selling Expenses***" shall mean all underwriting discounts and selling commissions applicable to the sale of Registrable Securities pursuant to this Agreement, and all fees and disbursements of counsel to the Holders and the Managers that are not included in Registration Expenses.

1.23 "***Series BB Holder***" means a holder of warrants issued under the Stock Purchase Agreement, dated January 27, 2004 between the Company and certain Investors (as the same may be amended from time to time in accordance with the terms thereof, the "***Purchase Agreement***") to purchase shares of the Company's Series BB Preferred Stock ("***Series BB Warrants***") or Series BB Preferred Stock (or shares of Common Stock issued upon conversion thereof).

1.24 "***Special Registration Statement***" shall mean (i) any registration statement relating to any employee benefit plan; (ii) with respect to any corporate reorganization or transaction under Rule 145 of the Securities Act, any registration statement related to the

issuance or resale of securities issued in such a transaction; (iii) any registration statement related to stock issued upon conversion of debt securities; or (iv) any WKSI Shelf Registration Statement that the Company's Board of Directors shall, in its sole discretion, designate as a "Special Registration Statement" for purposes of this Agreement.

1.25 "***WKSI Shelf Registration Statement***" shall mean a registration statement on Form S-3 under the Securities Act (or any successor form to Form S-3) which registration statement shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act (or any successor or similar rule under the Securities Act adopted by the Commission).

2. ***Confidentiality***. Each Investor agrees that it will keep confidential and will not use (except in connection with the evaluation or monitoring of its investment or its representative's service on the Board of Directors of the Company), disclose or divulge for a period of three years after receipt of any information regarding the Company and its business which such Investor obtained from the Company pursuant to Section 2 of the Prior Agreement, and which the Company has marked or otherwise specifically identified to the Investor as being confidential either orally or in writing, unless such information is known, or until such information becomes known, to the public through no fault of such Investor or its agents, or unless the Board of Directors, Chief Executive Officer, President or General Counsel of the Company gives his or her written consent to the Investor's release of such information, except that no such written consent shall be required (and the Investor shall be free to release such information) if such information is to be provided to the Investor's counsel or accountant, or to an officer, director, general partner, limited partner, stockholder, investment counselor or advisor of an Investor or such Investor's Affiliate, or employee of an Investor or such Investor's Affiliate with a need to know such information; provided that any such counsel, accountant, officer, director, general partner, limited partner, stockholder, investment counselor or advisor, or employee is subject to confidentiality obligations no less restrictive in any material respects than the provisions of this Section 2. Notwithstanding the foregoing, this Section 2 shall not apply (a) to information which an Investor learns from a third party with the right to make such disclosure, provided such Investor complies with the restrictions imposed by the third party, (b) to information which is in an Investor's possession prior to the time of disclosure by the Company and not acquired by such Investor under a confidentiality obligation, (c) to the extent (after requesting and pursuing confidential treatment to the extent reasonably possible) an Investor is required to disclose such information by law or a governmental regulatory authority, (d) to the extent (after requesting and pursuing confidential treatment to the extent reasonably possible) an Investor is required to disclose such information by court order, (e) to general and summary information disclosed to an Investor's or such Investor's Affiliates' general partners, limited partners, members, and/or stockholders in such Investor's or such Affiliates' periodic reporting to such parties or to an Investor's or such Investor's Affiliates' prospective investors in such Investor's or such Affiliates' marketing activities, in a manner consistent with the custom and practice of the private venture capital and/or private equity industries, provided that such Investor or such Affiliate advise such parties that the information disclosed is confidential, and provided further that the information disclosed does not include any proprietary information of the Company, and (f) to an Investor's disclosure of the fact that such Investor has made an investment in the Company, the amount and general nature thereof, the identity of such Investor's co-investors in the Company if previously disclosed by the Company or such co-investor, and to such Investor's disclosure of the general business and goals of the Company.

3. ***Demand Registrations***.

3.1 ***Requests for Registration on Form Other Than Form S-3***.

(a) Subject to the terms of this Agreement, in the event that the Company shall receive from a Holder or Holders (not including any Managers) of at least 40% of the Registrable Securities (or a lesser percentage of such shares if the anticipated aggregate price to the public of such shares, net of Selling Expenses, would not be less than $25,000,000) at any time after six months after the effective date of the Registration Statement with respect to the Initial Public Offering, a notice requesting that the Company effect any Registration with respect to at least 20% of the then outstanding shares of Registrable Securities (or a lesser percentage of such shares if the anticipated aggregate price to the public of such shares, net of Selling Expenses, would not be less than $25,000,000) on a form other than Form S-3, the Company shall (i) promptly give notice of the proposed Registration to all other Holders and (ii) as soon as practicable, and in any event, within 90 days from receipt of notice from the Holders requesting Registration, use reasonable best efforts to effect Registration of the Registrable Securities specified in such request, together with any Registrable Securities of any Holder joining in such request as are specified in a notice given within 20 days after notice from the Company. So long as the Company is a registrant qualified to use Form S-3, the Company shall not be obligated to take any action to effect any such registration pursuant to this Section 3.1(a) after the Company has effected one such Registration pursuant to this Section 3.1(a) and such Registration has been declared effective; provided, however, that the demand registration under this Section 3.1(a) shall be in addition to the demand registration provided for under Section 3.1(b).

(b) Subject to the terms of this Agreement, in the event that the Company shall receive from a Holder who originally committed to purchase (and did not default in any purchase) at least 50,000,000 shares of Series B Preferred Stock and/or Series B/P Preferred Stock (appropriately adjusted for combinations, consolidations, subdivisions, recapitalizations, stock splits and the like with respect to such shares) at any time after six months after the effective date of the Registration Statement with respect to the Initial Public Offering, a notice requesting that the Company effect any Registration with respect to at least 20% of the then outstanding shares of Registrable Securities (or a lesser percentage of such shares if the anticipated aggregate price to the public of such shares, net of Selling Expenses, would not be less than $25,000,000) on a form other than Form S-3, the Company shall (i) promptly give notice of the proposed Registration to all other Holders and (ii) as soon as practicable, and in any event, within 90 days from receipt of notice from the Holder requesting Registration, use reasonable best efforts to effect Registration of the Registrable Securities specified in such request, together with any Registrable Securities of any Holder joining in such request as are specified in a notice given within 20 days after notice from the Company. So long as the Company is a registrant qualified to use Form S-3, the Company shall not be obligated to take any action to effect any such registration pursuant to this Section 3.1(b) after the Company has effected one such Registration pursuant to this Section 3.1(b) and such Registration has been declared effective; provided, however, that the demand registration under this Section 3.1(b) shall be in addition to the demand registration provided for under Section 3.1(a).

(c) Notwithstanding anything to the contrary in Sections 3.1(a) and 3.1(b), the right of Managers to participate in demand registrations shall be limited as follows: No Manager may sell a number of shares in a registered offering under Section 3.1(a) or 3.1(b) that exceeds X; where X equals the number of Registrable Securities held by such Manager times the greater of Y or Z; Y equals the number of shares requested to be sold by KKR divided by the total number of shares of Registrable Securities held by KKR; and Z equals the number of shares requested to be sold by all Holders (other than Managers) divided by the total number of shares of Registrable Securities (including for this purpose shares that would be Registrable Securities but for clause (B) of Section 1.17) held by such Holders (other than Managers). This paragraph (c) shall terminate and be of no force and effect from such time, if any, as KKR ceases to own either Convertible Securities or Registrable Securities.

3.2 ***Request for Registration on Form S-3***.

(a) If a Holder or Holders (not including any Managers) of at least 20% of the outstanding shares of Registrable Securities requests that the Company file a Registration Statement on Form S-3 for an offering of shares of Registrable Securities, the anticipated aggregate price to the public of which, net of Selling Expenses, would not be less than $25,000,000, and the Company is a registrant qualified to use Form S-3, the Company shall (i) promptly give notice of the proposed Registration to all other Holders and (ii) as soon as practicable, use reasonable best efforts to effect a Registration of the Registrable Securities on such form, together with the Registrable Securities of any Holder joining in such request as are specified in a notice given within 20 days after notice from the Company; provided, however, that the Company shall not be required to effect more than two Registrations pursuant to Section 3.2 in any 12 month period. All of the provisions of Section 3.5 shall be applicable to each Registration initiated under this Section 3.2.

(b) For each $40,000,000 in original issue price of Registrable Securities purchased by a Holder (a "***Principal Holder***"), such Principal Holder may request that the Company file a Registration Statement on Form S-3 for an offering of shares of Registrable Securities, and provided that the anticipated aggregate price to the public of such shares, net of Selling Expenses, would not be less than $25,000,000 and the Company is a registrant qualified to use Form S-3, the Company shall (i) promptly give notice of the proposed Registration to all other Holders and (ii) as soon as practicable, use reasonable best efforts to effect a Registration of the Registrable Securities on such form, together with the Registrable Securities of any Holder joining in such request as are specified in a notice given within 20 days after notice from the Company; provided, however, that the Company shall not be required to effect more than two Registrations pursuant to Section 3.2 in any 12 month period. A Principal Holder shall have the right to demand one Registration under this Section 3.2(b) for each $40,000,000 in original issue price of Registrable Securities purchased by such Holder. All of the provisions of Section 3.5 shall be applicable to each Registration initiated under this Section 3.2.

(c) Notwithstanding anything to the contrary in Sections 3.2(a) and 3.2(b), the right of Managers to participate in demand registrations shall be limited as follows: No Manager may sell a number of shares in a registered offering under Section 3.2(a) or 3.2(b) that exceeds X; where X equals the number of Registrable Securities held by such Manager times the greater of Y or Z; Y equals the number of shares requested to be sold by KKR divided by the

total number of shares of Registrable Securities held by KKR; and Z equals the number of shares requested to be sold by all Holders (other than Managers) divided by the total number of shares of Registrable Securities (including for this purpose shares that would be Registrable Securities but for clause (B) of Section 1.17) held by all Holders (other than Managers). This paragraph (c) shall terminate and be of no force and effect from such time, if any, as KKR ceases to own Convertible Securities or Registrable Securities.

3.3 ***Right of Deferral***.

(a) Notwithstanding the foregoing, the Company shall not be obligated to file a Registration Statement pursuant to Section 3:

(i) if the Company, within ten days of the receipt of the request from Holders, gives notice of its bona fide intention to effect the filing of a Registration Statement with the Commission subject to Section 4 hereof within 60 days of receipt of such request (other than to a Registration of securities in a Rule 145 transaction or with respect to an employee benefit plan), provided that the Company is actively employing all reasonable best efforts to cause such Registration Statement to become effective;

(ii) within 120 days immediately following the effective date of any Registration Statement pertaining to the securities of the Company (other than a registration of securities in a Rule 145 transaction or with respect to an employee benefit plan); or

(b) Notwithstanding the foregoing, the Company shall not be obligated to file a Registration Statement pursuant to Section 3 if the Company shall furnish to the requesting Holders a certificate signed by the Chief Executive Officer of the Company stating that in the good faith judgment of the Board of Directors it would be seriously detrimental to the Company or its stockholders for a Registration Statement to be filed in the near future, then the Company's obligation to use all reasonable best efforts to file a Registration Statement shall be deferred for a period not to exceed 120 days from the receipt of the request to file such registration by such Holders; provided, however, that the Company shall not exercise the deferral rights contained in these Sections 3.3(a)(i) and 3.3(b) more than once in any 12-month period.

3.4 ***Registration of Other Securities in Demand Registration***. Any Registration Statement filed pursuant to the request of the Holders under this Section 3 may, subject to the provisions of Section 3.5, include securities of the Company other than Registrable Securities.

3.5 ***Underwriting in Demand Registration***.

(a) ***Notice of Underwriting***. If the Holders intend to distribute the Registrable Securities covered by their request made pursuant to this Section 3 by means of an underwriting, they shall so advise the Company as a part of their request, and the Company shall include such information in the notice referred to in Sections 3.1 and 3.2. The right of any Holder to Registration pursuant to Section 3 shall be conditioned upon such Holder's agreement to participate in such underwriting and the inclusion of such Holder's eligible Registrable Securities in the underwriting.

(b) ***Selection of Underwriter in Demand Registration***. If a Registration requested pursuant to Section 3.1 or 3.2 is to be underwritten, the Company shall (together with all Holders proposing to distribute their securities through such underwriting) enter into an underwriting agreement and related agreements with the representative ("***Underwriter's Representative***") of the underwriter or underwriters selected for such underwriting by the Holders of a majority of the Registrable Securities being registered by the Holders and reasonably acceptable to the Company.

(c) ***Marketing Limitation in Demand Registration***. If the Underwriter's Representative advises the Holders in writing that market factors (including, without limitation, the aggregate number of shares of Common Stock requested to be Registered, the general condition of the market, and the status of the persons proposing to sell securities pursuant to the Registration) require a limitation of the number of shares to be underwritten, then the number of shares of Registrable Securities that may be included in the Registration and underwriting shall be allocated among all Holders in proportion, as nearly as practicable, to the respective amounts of Registrable Securities held by such Holders at the time of filing the Registration Statement. No Registrable Securities or other securities excluded from the underwriting by reason of this Section 3.5(c) shall be included in such Registration Statement.

(d) ***Right of Withdrawal in Demand Registration***. If any Holder of Registrable Securities disapproves of the terms of the underwriting, such person may elect to withdraw therefrom by notice to the Company, the Underwriter's Representative and the Holders requesting Registration delivered at least ten days prior to the effective date of the Registration Statement. The securities so withdrawn shall also be withdrawn from the Registration Statement.

4. ***Piggyback Registration***.

4.1 ***Notice of Piggyback Registration and Inclusion of Registrable Securities***; ***Special Limitation for Managers.***

(a) Subject to the terms of this Agreement, if the Company decides to Register any of its Common Stock on a form that would be suitable for a registration of Registrable Securities, other than a Special Registration Statement, whether pursuant to a demand registration contemplated by this Agreement or otherwise, the Company will: (i) promptly give each Holder notice thereof (which shall include a list of the jurisdictions in which the Company intends to attempt to qualify such securities under the applicable Blue Sky or other state securities laws) and (ii) subject to Section 4.2, include in such Registration (and any related qualification under Blue Sky laws or other compliance), and in any underwriting involved therein, all the Registrable Securities specified in a notice delivered to the Company by any Holder within 20 days after delivery of such notice from the Company.

(b) Notwithstanding anything to the contrary in Section 4.1(a), the right of Managers to participate in demand registrations shall be limited as follows: No Manager may sell a number of shares in a registered offering under Section 4.1 that exceeds X; where X equals the number of Registrable Securities held by such Manager times the greater of Y or Z; Y equals the number of shares requested to be sold by KKR divided by the total number of shares of

Registrable Securities held by KKR; and Z equals the number of shares requested to be sold by all Holders (other than Managers) divided by the total number of shares of Registrable Securities (including for this purpose shares that would be Registrable Securities but for clause (B) of Section 1.17) held by all Holders (other than the Managers). This paragraph (b) shall terminate and be of no force and effect from such time, if any, as KKR ceases to own Convertible Securities or Registrable Securities.

4.2 ***Underwriting in Piggyback Registration***.

(a) ***Notice of Underwriting in Piggyback Registration***. If the Registration of which the Company gives notice is for a Registered public offering involving an underwriting, the Company shall so advise the Holders as a part of the notice given pursuant to Section 4.1. In such event, the right of any Holder to Registration shall be conditioned upon such underwriting and the inclusion of such Registrable Securities in such underwriting to the extent provided in this Section 4. All Holders proposing to distribute their securities through such underwriting shall (together with the Company) enter into an underwriting agreement and related agreements with the Underwriter's Representative for such offering. The Holders shall have no right to participate in the selection of the underwriters for an offering pursuant to this Section 4.

(b) ***Marketing Limitation in Piggyback Registration***. If the Underwriter's Representative advises the Holders seeking registration of Registrable Securities pursuant to this Section 4 in writing that market factors (including, without limitation, the aggregate number of shares of Common Stock requested to be Registered, the general condition of the market, and the status of the persons proposing to sell securities pursuant to the Registration) require a limitation of the number of shares to be underwritten, the Underwriter's Representative (subject to the allocation priority set forth in Section 4.2(c)) may:

(i) in the case of the Initial Public Offering, exclude some or all of the Registrable Securities from such registration and underwriting; and

(ii) in the case of any Registered public offering subsequent to the Initial Public Offering, limit the number of shares of Registrable Securities to be included in such Registration and underwriting to not less than 30% of the securities included in such Registration.

(c) ***Allocation of Shares in Piggyback Registration***. If the Underwriter's Representative limits the number of shares to be included in a Registration pursuant to Section 4.2(b), the number of shares to be included in such Registration shall be allocated among all Holders, in proportion, as nearly as practicable, to the respective amounts of Registrable Securities which such Holders hold at the time of filing the Registration Statement. No Registrable Securities or other securities excluded from the underwriting by reason of this Section 4.2(c) shall be included in the Registration Statement.

(d) ***Withdrawal in Piggyback Registration***. If any Holder disapproves of the terms of any such underwriting, such person may elect to withdraw therefrom by notice to the Company and the Underwriter's Representative delivered at least ten days prior to the effective date of the Registration Statement. Any Registrable Securities or other securities excluded or withdrawn from such underwriting shall be withdrawn from such Registration.

5. ***Expenses of Registration***.All Registration Expenses incurred in connection with Registrations pursuant to Section 3.1, 3.2 and 4, shall be borne by the Company. All Registration Expenses incurred in connection with any other Registration, qualification, or compliance, shall be apportioned among the Company and the Holders of the securities so registered on the basis of the number of shares so registered. Notwithstanding the above, the Company shall not be required to pay for any expenses of any Registration proceeding begun pursuant to Section 3 if the Registration request is subsequently withdrawn at the request of the Holders of a majority of the Registrable Securities to be registered (which Holders shall bear such expenses), unless the Holders of a majority of the Registrable Securities agree to forfeit their right to one Registration pursuant to Section 3; provided, however, that if at the time of such withdrawal, the Holders have learned of a Material Adverse Event not known to the Holders at the time of their request, then the Holders shall not be required to pay any of such expenses and shall retain their rights pursuant to Section 3. All Selling Expenses shall be borne by the holders of the securities Registered pro rata on the basis of the number of shares Registered.

6. ***Termination of Registration Rights***. The rights to cause the Company to register securities granted under Sections 3 and 4 of this Agreement and to receive notices pursuant to Section 4 of this Agreement shall terminate, with respect to each Holder, on the earlier of (i) the twelfth anniversary of the date that the first share of Series B Preferred Stock is sold and issued by the Company, and (ii) with respect to each Holder if such Holder is eligible to sell all of such Holder's Registrable Securities under Rule 144 of the Securities Act (excluding Rule 144(k) thereunder) within any three month period without volume limitations.

7. ***Registration Procedures and Obligations***. Whenever required under this Agreement to effect any Registration of securities, the Company shall, as expeditiously as reasonably possible:

(a) Prepare and file with the Commission a Registration Statement with respect to such securities and use its reasonable best efforts to cause such Registration Statement to become effective, and, in the case of a Registration pursuant to Section 3 or Section 4, upon the request of the sellers of a majority of the Registrable Securities registered thereunder, keep such Registration Statement effective for up to two years.

(b) Furnish to each seller of Registrable Securities a copy of any information contained in the Registration Statement about such seller for the purpose of allowing the seller to verify the information.

(c) Prepare and file as expeditiously as reasonably practicable with the Commission such amendments and supplements to such Registration Statement and the prospectus used in connection with such Registration Statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such Registration Statement.

(d) Furnish to the sellers of Registrable Securities such numbers of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Registrable Securities owned by them.

(e) Use its reasonable best efforts to register and qualify the Registrable Securities covered by such Registration Statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the sellers of Registrable Securities, provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business in any jurisdiction where it is not so qualified or to file a general consent to service of process in any such states or jurisdictions, and provided further that in the event any jurisdiction in which the securities shall be qualified imposes a non-waivable requirement that expenses incurred in connection with the qualification of the securities be borne by selling stockholders, such expenses shall be payable pro rata by selling stockholders.

(f) In the event of any underwritten public offering, enter into and perform its obligations under an underwriting agreement and related agreements, in usual and customary form, with the managing underwriter of such offering. Each seller of Registrable Securities participating in such underwriting shall also enter into and perform its obligations under such an agreement and related agreements.

(g) Promptly notify each seller of Registrable Securities covered by such Registration Statement at any time when a prospectus relating thereto is required to be delivered under the Securities Act of the happening of any event as a result of which the prospectus included in such Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing.

(h) Provide a transfer agent and registrar for all securities registered pursuant to such Registration Statement and a CUSIP number for all such securities, in each case not later than the effective date of such registration.

(i) Furnish, at the request of any Holder requesting Registration of Registrable Securities pursuant to this Agreement, on the date that such Registrable Securities are delivered for sale in connection with a Registration pursuant to this Agreement, (i) an opinion, dated such date, of the counsel representing the Company for the purposes of such Registration, in form and substance as is customarily given to underwriters (with an information copy provided to each Holder selling Registrable Securities) in an underwritten public offering, and (ii) a letter dated such date, from the independent certified public accountants of the Company, in form and substance as is customarily given by independent certified public accountants to underwriters in an underwritten public offering, addressed to the underwriters (with an information copy provided to each holder of Registrable Securities).

(j) Use all reasonable best efforts to list the securities covered by such Registration Statement with NASDAQ or any securities exchange on which the Common Stock of the Company is then listed, or NASDAQ or such securities exchange as shall be selected by the Company.

(k) Notify each seller of Registrable Securities under such Registration Statement of (i) the effectiveness of such Registration Statement, (ii) the filing of any post-effective amendments to such Registration Statement, or (iii) the filing of a supplement to such Registration Statement.

(l) Make available for inspection upon reasonable notice during the Company's regular business hours by each seller of Registrable Securities, any underwriter participating in any distribution pursuant to such Registration Statement, and any attorney, accountant or other agent retained by such seller or underwriter, all material financial and other records, pertinent corporate documents and properties of the Company, and cause the Company's officers, directors and employees to supply all information reasonably requested by any such seller, underwriter, attorney, accountant or agent in connection with such Registration Statement. Each seller of Registrable Securities agrees to use the same degree of care as such seller uses to protect its own confidential information, but in no event less than reasonable care, to keep confidential any information furnished to it by the Company pursuant to this Subsection 7(l) for a period of 3 years (so long as such information is not in the public domain); provided, however, such seller's obligation to keep information confidential under this Subsection 7(l) shall not apply (a) to information which such seller learns from a third party with the right to make such disclosure, provided the seller complies with the restrictions imposed by the third party, (b) to information which is in seller's possession prior to the time of disclosure by the Company and not acquired by seller under a confidentiality obligation, (c) to the extent (after requesting and pursuing confidential treatment to the extent reasonably possible) the seller is required to disclose such information by law or a governmental regulatory authority, (d) to the extent (after requesting and pursuing confidential treatment to the extent reasonably possible) seller is required to disclose such information by court order, and (e) to information disclosed to any partner, subsidiary, parent, legal counsel or advisor of such seller for the purpose of evaluating or monitoring its investment in the Company. Notwithstanding anything herein to the contrary, any party to this Agreement (and any employee, representative, or other agent of any party to this Agreement) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to it relating to such tax treatment and tax structure.

(m) Cause the senior executive officers of the Company to participate in the customary "road show" presentations that may be reasonably requested by the Holders or the managing underwriter in any underwritten offering and otherwise to facilitate, cooperate with, and participate in each underwritten offering.

(n) Cooperate with each seller of Registrable Securities and each underwriter or agent, if any, participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with the National Association of Securities Dealers, Inc.

8. ***Information Furnished by Holder***. It shall be a condition precedent of the Company's obligations under Sections 3 and 4 of this Agreement that each Holder holding Registrable Securities included in any Registration furnish to the Company such information regarding such Holder and the distribution proposed by such Holder(s) as the Company may reasonably request.

9. ***Indemnification***.

9.1 ***Company's Indemnification of Holders***. To the extent permitted by law, the Company will indemnify and hold harmless each Holder, each of its officers, directors, and constituent partners and members, legal counsel for the Holders, and each person controlling such Holder, with respect to which Registration, qualification, or compliance of Registrable Securities has been effected pursuant to this Agreement, and each underwriter, if any, and each person who controls any underwriter against all claims, losses, damages, liabilities, or actions in respect thereof (collectively, "***Damages***") to the extent such Damages arise out of or are based upon any untrue statement (or alleged untrue statement) of a material fact contained in any prospectus or other document (including any related Registration Statement) incident to any such Registration, qualification, or compliance, or are based on any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or any violation by the Company of any rule or regulation promulgated under the Securities Act applicable to the Company and relating to action or inaction required of the Company in connection with any such Registration, qualification, or compliance; and the Company will reimburse each such Holder, each such underwriter, and each person who controls any such Holder or underwriter, for any legal and any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability, or action; provided, however, that the indemnity contained in this Section 9.1 shall not apply to amounts paid in settlement of any such Damages if settlement is effected without the consent of the Company (which consent shall not unreasonably be withheld or delayed); and provided, further, that the Company will not be liable (i) in any such case to the extent that any such Damages arise out of or are based upon any untrue statement or omission based upon written information furnished to the Company by such Holder, underwriter, or controlling person and stated to be for use in connection with the offering of securities of the Company or (ii) in the case of a sale directly by a Holder of Registrable Securities (including a sale of such Registrable Securities through any underwriter retained by such Holder engaging in a distribution solely on behalf of such Holder), if such untrue statement or alleged untrue statement or omission or alleged omission was contained in a preliminary prospectus and corrected in a final or amended prospectus, and such Holder failed to deliver a copy of the final or amended prospectus at or prior to the confirmation of the sale of the Registrable Securities to the person asserting any such loss, claim, damage, liability or action in any case in which such delivery is required by the Securities Act.

9.2 ***Holder's Indemnification of Company***. To the extent permitted by law, each Holder will, if Registrable Securities held by such Holder are included in the securities as to which such Registration, qualification or, compliance is being effected pursuant to this Agreement, indemnify and hold harmless the Company, each of its directors and officers, each legal counsel and independent accountant of the Company, each underwriter, if any, of the Company's securities covered by such a Registration Statement, each person who controls the Company or such underwriter within the meaning of the Securities Act, and each other seller of Registrable Securities and each of its officers, directors, and constituent partners, and each person controlling such other seller, against all Damages arising out of or based upon any untrue

statement (or alleged untrue statement) of a material fact contained in any such Registration Statement, prospectus, offering circular, or other document, or any omission (or alleged omission) to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, or any violation by such Holder of any rule or regulation promulgated under the Securities Act applicable to such Holder and relating to action or inaction required of such Holder in connection with any such Registration, qualification, or compliance, and will reimburse the Company, such other sellers of Registrable Securities, such directors, officers, partners, persons, law and accounting firms, underwriters or control persons for any legal and any other expenses reasonably incurred in connection with investigating or defending any such claim, loss, damage, liability, or action, in each case to the extent, but only to the extent, that such untrue statement (or alleged untrue statement) or omission (or alleged omission) is made in such Registration Statement, prospectus, offering circular, or other document in reliance upon and in conformity with written information furnished to the Company by such Holder and stated to be specifically for use in connection with the offering of securities of the Company, provided, however, that the indemnity contained in this Section 9.2 shall not apply to amounts paid in settlement of any such Damages if settlement is effected without the consent of such Holder (which consent shall not be unreasonably withheld or delayed); and provided, further, that each Holder's liability under this Section 9.2 shall not exceed such Holder's net proceeds from the offering of securities made in connection with such Registration.

9.3 ***Indemnification Procedure***. Promptly after receipt by an indemnified party under this Section 9 of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against an indemnifying party under this Section 9, notify the indemnifying party in writing of the commencement thereof and generally summarize such action. The indemnifying party shall have the right to participate in and to assume the defense of such claim; provided, however, that the indemnifying party shall be entitled to select counsel for the defense of such claim with the approval of any parties entitled to indemnification, which approval shall not be unreasonably withheld or delayed; provided further, however, that if either party reasonably determines that there may be a conflict between the position of the Company and the Investors in conducting the defense of such action, suit, or proceeding by reason of recognized claims for indemnity under this Section 9, then counsel for such party shall be entitled to conduct the defense to the extent reasonably determined by such counsel to be necessary to protect the interest of such party. The failure to notify an indemnifying party promptly of the commencement of any such action, if prejudicial to the ability of the indemnifying party to defend such action, shall relieve such indemnifying party, to the extent so prejudiced, of any liability to the indemnified party under this Section 9, but the omission so to notify the indemnifying party will not relieve such party of any liability that such party may have to any indemnified party otherwise than under this Section 9.

9.4 ***Contribution***. If the indemnification provided for in this Section 9 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any Damages referred to therein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such Damages in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and of the indemnified party on the other in connection with the statements or omissions that resulted in such Damages as well as any other relevant equitable considerations; provided, however, that in no event shall any contribution by a

Holder under this Section 9.4 exceed the net proceeds from the offering received by such Holder, except in the case of willful fraud by such Holder. The relative fault of the indemnifying party and of the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission.

9.5 ***Conflicts***. Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in the underwriting agreement entered into in connection with the underwritten public offering are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

9.6 ***Survival of Obligations***. The obligations of the Company and Holders under this Section 9 shall survive the completion of any offering of Registrable Securities in a Registration Statement under this Agreement or otherwise.

10. ***Limitations on Registration Rights Granted to Other Securities***. From and after the date of this Agreement, so long as at least 10,000,000 shares of the Convertible Securities (including shares of Common Stock issued upon conversion thereof and as adjusted for combinations, consolidations, subdivisions, stock splits and the like with respect to such shares) remain issued and outstanding, the Company shall not enter into any agreement with any holder or prospective holder of any securities of the Company providing for the granting to such holder of any Registration rights, except that, with the consent of the Holders holding at least 55% of the Registrable Securities then held by the Holders, additional persons may be added as parties to this Agreement with regard to any or all securities of the Company held by them. Any such additional parties shall execute a counterpart of this Agreement, and upon execution by such additional parties and by the Company, shall be considered a Holder for all purposes of this Agreement and any Common Stock held by them or issued or issuable upon conversion of any securities held by them, and any Common Stock issued (or issuable upon conversion or exercise of any warrant, right or other security which is issued) upon stock dividends, subdivisions, stock splits, recapitalization, merger or other distributions with respect to, or in exchange for, or in replacement of, such securities identified in this clause, excluding, however, any securities previously sold to the public and any securities sold by a person in a transaction in which its rights under this Agreement are not assigned, shall be considered Registrable Securities. The additional parties and the additional Registrable Securities shall be identified in an amendment to Exhibit A hereto.

11. ***Transferability***.

11.1 ***Limitations on Transferability***. Each Investor covenants that in no event will it dispose of any of the Convertible Securities or Registrable Securities (other than pursuant to Rule 144 promulgated by Commission under the Securities Act ("***Rule 144***") or other exemption from registration, or except in connection with an Investor's exercise of its Registration rights under this Agreement) unless and until (a) the Investor shall have notified the Company of the proposed disposition and shall have furnished the Company with a statement of the circumstances surrounding the proposed disposition, and (b) if reasonably requested by the

Company, the Investor shall have furnished the Company with an opinion of counsel reasonably satisfactory in form and substance to the Company and the Company's counsel to the effect that (x) such disposition will not require registration under the Securities Act and (y) appropriate action necessary for compliance with the Securities Act and any applicable state, local, or foreign law has been taken. Notwithstanding the limitations set forth in the foregoing sentence, if the Investor is a partnership or limited liability company it may transfer the Convertible Securities or Registrable Securities to its constituent partners or members or its Affiliates, or a retired partner or member of such partnership or limited liability company who retires after the date hereof, or to the estate of any such partner or member or retired partner or retired member or transfer by gift, will, or intestate succession to any such partner's or member's spouse, domestic partner, lineal descendants or ancestors without the necessity of registration or opinion of counsel if the transferee agrees in writing to be subject to the terms of the Transactional Agreements, as applicable, to the same extent if such transferee were an Investor; provided, however, that Investor hereby covenants not to effect such transfer if such transfer either would invalidate the securities laws exemptions pursuant to which the Convertible Securities or Registrable Securities were originally offered and sold or would itself require registration and/or qualification under the Securities Act or applicable state securities laws. Notwithstanding the foregoing, an Investor who is a Manager shall not dispose of any Convertible Securities or Registrable Securities in contravention of the Transactional Agreements (as defined herein). Each certificate evidencing the Convertible Securities or Registrable Securities transferred as provided above shall bear the appropriate restrictive legend set forth in Section 5.1 of the Purchase Agreement, except that such certificate shall not bear such legend if the transfer was made in compliance with Rule 144 or if the opinion of counsel referred to above is to the further effect that such legend is not required in order to establish compliance with any provisions of the Securities Act.

11.2 ***Transfer of Rights***. The right to cause the Company to Register securities granted by the Company to the Holders under Sections 3 and 4 of this Agreement may be assigned by any Investor or its Affiliates to a transferee or assignee of any Convertible Securities or Registrable Securities not sold to the public acquiring the lesser of (a) at least 50% of the Registrable Securities and Convertible Securities then held by such Investor or its Affiliates with respect to the first transfer by such Investor or its Affiliates to a non-Affiliate, 100% of the Registrable Securities and Convertible Securities then held by such Investor or its Affiliates with respect to any subsequent transfer by such Investor or its Affiliates to a non-Affiliate, or 100% of the Registrable Securities and Convertible Securities held by a transferee or assignee of a Holder to a non-Affiliate of such transferee or assignee, and (b) at least 2,000,000 shares (or such lesser number of shares as would be held by an Investor who has a Total Capital Commitment of $2,727,200 as defined in the Purchase Agreement, and who has not sold any shares acquired under the Purchase Agreement) of the Convertible Securities or Registrable Securities (as adjusted for combinations, consolidations, subdivisions, stock splits and the like with respect to such shares) to a non-Affiliate; provided, however, that (i) the Company must receive notice prior to the time of said transfer, stating the name and address of said transferee or assignee and identifying the securities with respect to which such rights are being assigned, (ii) the Board of Directors must consent to the assignment, which consent shall not be unreasonably withheld, and (iii) such transferee or assignee must agree in writing to be bound by the terms and conditions of this Agreement. Notwithstanding the limitation set forth in the foregoing sentence respecting the minimum number of shares which must be transferred, any Holder which is a corporation, partnership or limited liability company may transfer such Holder's Registration rights under Sections 3 and 4 to such Holder's Affiliates, as the case may be, without restriction as to the number or percentage of shares acquired by any such Affiliates.

12. ***Market Standoff***. Each Holder hereby agrees that, if so requested by the Company and the Underwriter's Representative (if any), such Holder shall not sell, make any short sale of, loan, grant any option for the purchase of, or otherwise transfer or dispose of any Registrable Securities or other securities of the Company ("***Market Standoff***") without the prior written consent of the Company and the Underwriter's Representative for such period of time (a) not to exceed 180 days following the effective date of a Registration Statement of the Company filed under the Securities Act in the case of the Initial Public Offering or (b) commencing with the date the Company provides notice to the Holders of a proposed follow-on offering pursuant to Section 4.1 (including Registrations initiated pursuant to Section 3) and ending 90 days after the effective date of the Registration Statement or, in the event of a shelf registration, the date of the prospectus for such follow-on offering, as may be requested by the Underwriter's Representative; provided, however, that a Holder shall not be required to agree to a Market Standoff for a period of time that commences less than 30 days after the expiration of another period of time during which the Holder has agreed to a Market Standoff. The obligations of the Holders under this Section 12 shall be conditioned upon similar agreements being in effect with each other stockholder who is an officer, or director or, with respect only to the Initial Public Offering, greater than 1% stockholder of the Company prior to such Initial Public Offering.

13. ***Conversion of Preferred Stock***. The Registration rights of the Holders of the Registrable Securities set forth in this Agreement are conditioned upon the conversion of the Registrable Securities with respect to which registration is sought into Common Stock immediately prior to the closing of the offering of such Registrable Securities pursuant to an effective Registration Statement.

14. ***Reports Under the Exchange Act***. With a view to making available to the Holders the benefits of Rule 144 promulgated under the Securities Act and any other rule or regulation of the Commission that may at any time permit a Holder to sell securities of the Company to the public without Registration or pursuant to a registration on Form S-3, the Company agrees, for as long as a Holder holds Registrable Securities, to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144, at all times after the effective date of the first Registration Statement filed by the Company for the offering of its securities to the public;

(b) take such action as is necessary to enable the Holders to utilize Form S-3 for the sale of their Registrable Securities, such action to be taken as soon as practicable after the end of the fiscal year in which the first Registration Statement filed by the Company for the offering of its securities to the general public is declared effective;

(c) file with the Commission in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act;

(d) furnish to any Holder, so long as the Holder owns any Registrable Securities, promptly upon request (i) a written statement by the Company that it has complied

with the reporting requirements of Rule 144 (at any time after 90 days after the effective date of the first Registration Statement filed by the Company), the Securities Act, and the Exchange Act (at any time after it has become subject to such reporting requirements), or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3 (at any time after it so qualifies), (ii) a copy of the most recent annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested in availing any Holder of any rule or regulation of the Commission which permits the selling of any such securities without Registration or pursuant to such form; and

(e) at any time, at the request of any Holder of Registrable Securities, make available to such Holder and to any prospective transferee of such Registrable Securities the information concerning the Company described in Rule 144A(d)(4) under the Securities Act.

15. ***Miscellaneous***.

15.1 ***Governing Law***. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California excluding those laws that direct the application of the laws of another jurisdiction.

15.2 ***Counterparts***. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15.3 ***Headings***. The headings of the Sections of this Agreement are for convenience and shall not by themselves determine the interpretation of this Agreement.

15.4 ***Notices***. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile if sent during normal business hours of the recipient, or if not, then on the next business day; or (iii) one day after deposit with a nationally (or internationally) recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices to the Company shall be sent to the Company's principal place of business. All notices to other parties to this Agreement shall be sent to the address as set forth on the signature page or at such other address as such party may designate by ten days advance notice to the other parties.

15.5 ***Amendment and Waiver of Agreement***. Except as otherwise provided herein, any provision of this Agreement may be amended or waived only by a written instrument signed by the Company and Holders holding at least 60% of the Registrable Securities then held by all Holders. Notwithstanding the foregoing, neither Subsections 3.1(b) or 3.2(b), or this sentence of Section 15.5, may be amended or waived without the consent of all Holders who have demand rights under Subsections 3.1(b) and 3.2(b). In addition, this Agreement may not be amended to increase any material financial obligations of any Investor hereunder without the prior written consent of such Investor. Any waiver, amendment, modification or termination of any provision of this Agreement shall be binding on all parties hereto and their respective successors and permitted assigns.

15.6 ***Severability***. In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

15.7 ***Entire Agreement; Successors and Assigns***. This Agreement and the Transactional Agreements (as defined below) constitute the entire agreement between the parties regarding the subject matter hereof and thereof and supersede and replace any and all prior negotiations, correspondence, understandings and agreements, including without limitation the Prior Agreement, between the parties regarding the subject matter hereof and thereof. For purposes of this Agreement, the "***Transactional Agreements***" shall mean the Purchase Agreement and the Second Amended and Restated Right of First Refusal and Co-Sale Agreement, each dated as of June 24, 2005, among the Company and other parties identified therein, the Second Amended and Restated Voting Agreement, dated as of June 24, 2005, among the Company and the parties identified therein, and the Employment Agreements dated as of February 18, 2004 between the Company and each of the Executives named in Section 6.10 of the Purchase Agreement, each as may be amended in accordance with its terms. Subject to the exceptions specifically set forth in this Agreement, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective executors, administrators, heirs, successor, and permitted assigns of the parties.

15.8 ***Aggregation***. All outstanding shares of capital stock of the Company held or acquired by an Affiliate of a Person shall be aggregated together with all other shares of capital stock held by such Person for the purpose of determining the availability of any rights under this Agreement.

15.9 ***Cumulative Remedies***. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

15.10 ***Specific Performance***. The parties hereto hereby declare that it is impossible to measure in money the damages that will accrue to a party hereto or to their heirs, personal representatives, or assigns by reason of a failure to perform any of the obligations under this Agreement and agree that the terms of this Agreement shall be specifically enforceable. If any party hereto or his heirs, personal representatives, or assigns institutes any action or proceeding to specifically enforce the provisions hereof, any person against whom such action or proceeding is brought hereby waives the claim or defense therein that such party or such personal representative has an adequate remedy at law, and such person shall not offer in any such action or proceeding the claim or defense that such remedy at law exists.

15.11 ***Accession; Amendment of Exhibit***. Any person that becomes an Investor as defined in the Purchase Agreement or a registered holder of a Series BB Warrant shall become a party to this Agreement by executing and delivering to the Company a counterpart signature pages to this Agreement and shall thereupon be deemed an "Investor" for all purposes of this

Agreement. The number of shares of Convertible Securities, Registrable Securities owned by each Investor, and the number of shares (if any) of Series BB Preferred Stock subject to Series BB Warrants held by each Investor, as of the date hereof is set forth on Exhibit A, which exhibit may be amended from time to time by the Company upon notice to the Investors to reflect changes in the number of shares of Convertible Securities or Registrable Securities owned by the Investors; provided, however, that no such notice shall be required upon the exercise of the Series BB Warrants by any of the Investors; provided further, however, that the failure to so amend Exhibit A shall have no effect on the rights of the Investors under this Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned have executed this **THIRD AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT** effective as of the Effective Date.

COMPANY:

JAZZ PHARMACEUTICALS, INC.

Signature: _____

Print Name: _____

Title: _____

IN WITNESS WHEREOF, the undersigned have executed this **THIRD AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT** effective as of the Effective Date.

INVESTORS:

KKR JP LLC

Signature: _____
Print Name: _____
Title: _____

KKR JP III LLC

Signature: _____
Print Name: _____
Title: _____

KKR TRS HOLDINGS, INC.

Signature: _____
Print Name: _____
Title: _____

IN WITNESS WHEREOF, the undersigned have executed this **THIRD AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT** effective as of the Effective Date.

INVESTORS:

PROSPECT VENTURE PARTNERS II, L.P.

By: Prospect Management Co. II, LLC,
its General Partner

Signature: _____
Print Name: _____
Title: _____

PROSPECT ASSOCIATES II, L.P.

By: Prospect Management Co. II, LLC,
its General Partner

Signature: _____
Print Name: _____
Title: _____

IN WITNESS WHEREOF, the undersigned have executed this **THIRD AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT** effective as of the Effective Date.

INVESTORS:

VERSANT VENTURE CAPITAL II, L.P.

By: Versant Ventures II, L.L.C.,
its General Partner

Signature: _____
Print Name: _____
Title: _____

VERSANT SIDE FUND II, L.P.

By: Versant Ventures II, L.L.C.,
its General Partner

Signature: _____
Print Name: _____
Title: _____

VERSANT AFFILIATES FUND II-A, L.P.

By: Versant Ventures II, L.L.C.,
its General Partner

Signature: _____
Print Name: _____
Title: _____

IN WITNESS WHEREOF, the undersigned have executed this **THIRD AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT** effective as of the Effective Date.

INVESTORS:

THOMA CRESSEY FUND VII, L.P.

By: TC Partners VII, L.P.
Its: General Partner

By: Thoma Cressey Bravo Inc.
Its: General Partner

Signature: _____
Print Name: _____
Title: _____

THOMA CRESSEY FRIENDS FUND VII, L.P.

By: TC Partners VII, L.P.
Its: General Partner

By: Thoma Cressey Bravo Inc.
Its: General Partner

Signature: _____
Print Name: _____
Title: _____

IN WITNESS WHEREOF, the undersigned have executed this **THIRD AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT** effective as of the Effective Date.

INVESTORS:

JAZZ INVESTORS, L.L.C.

By: Beecken Petty & Company, LLC.,
its Manager

Signature: _____

Print Name: _____

Title: _____

IN WITNESS WHEREOF, the undersigned have executed this **THIRD AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT** effective as of the Effective Date.

INVESTORS:

CCG INVESTMENT FUND, L.P.

By: Golden Gate Capital Management, L.L.C.
Its: Authorized Representative

By: _____
Its: Managing Director

CCG AV, LLC-SERIES C

By: Golden Gate Capital Management, L.L.C.
Its: Authorized Representative

By: _____
Its: Managing Director

CCG ASSOCIATES-QP, LLC

By: Golden Gate Capital Management, L.L.C.
Authorized Representative

By: _____
Its: Managing Director

CCG INVESTMENT FUND-AI, LP

By: Golden Gate Capital Management, L.L.C.
Its: Authorized Representative

By: _____
Its: Managing Director

CCG CI, LLC

By: Golden Gate Capital Management, L.L.C.
Its: Authorized Representative

By: _____
Its: Managing Director

CCG AV, LLC – SERIES A

By: Golden Gate Capital Management, L.L.C.
Its: Authorized Representative

By: _____
Its: Managing Director

IN WITNESS WHEREOF, the undersigned have executed this **THIRD AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT** effective as of the Effective Date.

INVESTORS:

LB I GROUP INC.

Signature: _____

Print Name: _____
Title: _____

LEHMAN BROTHERS HEALTHCARE VENTURE CAPITAL L.P.

By: Lehman Brothers HealthCare Venture Capital Associates L.P., its General Partner
By: LB I Group Inc., its General Partner

Signature: _____
Print Name: _____
Title: _____

LEHMAN BROTHERS P.A. LLC

Signature: _____
Print Name: _____
Title: _____

LEHMAN BROTHERS PARTNERSHIP ACCOUNT 2000/2001, L.P.

By: LB I Group Inc., its General Partner

Signature: _____
Print Name: _____
Title: _____

LEHMAN BROTHERS OFFSHORE PARTNERSHIP ACCOUNT 2000/2001, L.P.

By: Lehman Brothers Offshore Partners Ltd., its General Partner

Signature: _____
Print Name: _____
Title: _____

IN WITNESS WHEREOF, the undersigned have executed this **THIRD AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT** effective as of the Effective Date.

INVESTORS:

BVCF IV, L.P.

By: Adams Street Partners, LLC, its General Partner

Signature: _____
Print Name: _____
Title: _____

ADAMS STREET V, L.P.

By: Adams Street Partners, LLC, its General Partner

Signature: _____
Print Name: _____
Title: _____

IN WITNESS WHEREOF, the undersigned have executed this **THIRD AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT** effective as of the Effective Date.

INVESTORS:

EGS PRIVATE HEALTHCARE PARTNERSHIP II, L.P.

By: EGS Private Healthcare Investments, L.L.C., its General Partner

Signature: _____
Print Name: _____
Title: _____

EGS PRIVATE HEALTHCARE INVESTORS II, L.P.

By: EGS Private Healthcare Investments, L.L.C., its General Partner

Signature: _____
Print Name: _____
Title: _____

EGS PRIVATE HEALTHCARE CANADIAN PARTNERS, L.P.

By: EGS Private Healthcare Investments, L.L.C., its General Partner

Signature: _____
Print Name: _____
Title: _____

EGS PRIVATE HEALTHCARE PRESIDENTS FUND, L.P.

By: EGS Private Healthcare Investments, L.L.C., its General Partner

Signature: _____
Print Name: _____
Title: _____

IN WITNESS WHEREOF, the undersigned have executed this **THIRD AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT** effective as of the Effective Date.

INVESTORS:

CARDINAL FUND I, L.P.

By: Cardinal Management I, L.P., General Partner
By: Cardinal MGP, L.L.C., General Partner

Signature: _____
Print Name: _____
Title: _____

FW JAZZ PHARMA INVESTORS, L.P.

By: Group VI, 31, L.L.C., General Partner

Signature: _____
Print Name: _____
Title: _____

IN WITNESS WHEREOF, the undersigned have executed this **THIRD AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT** effective as of the Effective Date.

INVESTORS:

WAUD CAPITAL PARTNERS, L.P.

By: Waud Capital Partners, L.L.C.
Its: General Partner

Signature: _____
Print Name: _____
Title: _____

WAUD CAPITAL AFFILIATES, L.L.C.

Signature: _____
Print Name: _____
Title: _____

DEEP COVE MEZZANINE, LLC

Signature: _____
Print Name: _____
Title: _____

IN WITNESS WHEREOF, the undersigned have executed this **THIRD AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT** effective as of the Effective Date.

INVESTORS:

LERNER ENTERPRISES, L.P.

By: Oak Hill Advisors, L.P., as Investment Manager for Lerner Enterprises, L.P.

Signature: _____
Print Name: _____
Title: _____

OAK HILL CREDIT ALPHA FINANCE I (OFFSHORE), LTD.

Signature: _____
Print Name: _____
Title: _____

OAK HILL CREDIT OPPORTUNITIES FINANCING, LTD.

Signature: _____
Print Name: _____
Title: _____

COAST DL FUNDING LLC

Signature: _____
Print Name: _____
Title: _____

OAK HILL CREDIT ALPHA FINANCE I, LLC

By: Oak Hill Credit Alpha Fund, L.P., its Member
By: Oak Hill Credit Alpha Gen Par, L.P., its General Partner
By: Oak Hill Credit Alpha MGP, LLC., its General Partner

Signature: _____
Print Name: _____
Title: _____

IN WITNESS WHEREOF, the undersigned have executed this **THIRD AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT** effective as of the Effective Date.

INVESTORS:

GENERAL ELECTRIC PENSION TRUST

By: GE Asset Management Incorporated
Its Investment Manager

Signature: _____
Print Name: _____
Title: _____

IN WITNESS WHEREOF, the undersigned have executed this **THIRD AMENDED AND RESTATED INVESTOR RIGHTS AGREEMENT** effective as of the Effective Date.

INVESTORS:

SAMUEL R. SAKS

BRUCE C. COZADD

ROBERT M. MYERS

JANNE L.T. WISSEL

MATTHEW K. FUST

CAROL A. GAMBLE

Exhibit A

SCHEDULE OF INVESTORS

Name and Address	Securities
KKR JP LLC 9 W. 57th Street, 42nd Floor New York, NY 10019	8,577,974 shares of Series B/P Preferred Stock
KKR JP III LLC 9 W. 57th Street, 42nd Floor New York, NY 10019	36,445 shares of Series B/P Preferred Stock
Thoma Cressey Fund VII, L.P. Sears Tower, 92nd Floor 233 South Wacker Drive Chicago, IL 60606	1,957,380 shares of Series B Preferred Stock
Thoma Cressey Friends Fund VII, L.P. Sears Tower, 92nd Floor 233 South Wacker Drive Chicago, IL 60606	30,562 shares of Series B Preferred Stock
CCG Investment Fund, LP c/o Golden Gate Capital One Embarcadero Center, 33rd Floor San Francisco, CA 94111	860,336 shares of Series B Preferred Stock
CCG AV, LLC-Series C c/o Golden Gate Capital One Embarcadero Center, 33rd Floor San Francisco, CA 94111	43,461 shares of Series B Preferred Stock
CCG Associates-QP, LLC c/o Golden Gate Capital One Embarcadero Center, 33rd Floor San Francisco, CA 94111	47,269 shares of Series B Preferred Stock
CCG Investment Fund-AI, LP c/o Golden Gate Capital One Embarcadero Center, 33rd Floor San Francisco, CA 94111	11,525 shares of Series B Preferred Stock

Name and Address	Securities
CCG AV, LLC-Series A c/o Golden Gate Capital One Embarcadero Center, 33rd Floor San Francisco, CA 94111	11,499 shares of Series B Preferred Stock
CCG CI, LLC c/o Golden Gate Capital One Embarcadero Center, 33rd Floor San Francisco, CA 94111	19,879 shares of Series B Preferred Stock
Jazz Investors, LLC c/o Beecken Petty & Company Healthcare Equity Partners 200 W. Madison Street, Suite 1910 Chicago, IL 60606	1,325,295 shares of Series B Preferred Stock
Lehman Brothers HealthCare Venture Capital L.P. 399 Park Avenue New York, NY 10022 Attention: Fred Steinberg	165,661 shares of Series B Preferred Stock
Lehman Brothers P. A. L.L.C. 399 Park Avenue New York, NY 10022 Attention: Fred Steinberg	317,076 shares of Series B Preferred Stock
Lehman Brothers Partnership Account 2000/2001, L.P. 399 Park Avenue New York, NY 10022 Attention: Fred Steinberg	142,858 shares of Series B Preferred Stock
Lehman Brothers Offshore Partnership Account 2000/2001, L.P. 399 Park Avenue New York, NY 10022 Attention: Fred Steinberg	37,050 shares of Series B Preferred Stock
Prospect Venture Partners II, L.P. 435 Tasso Street, Suite 200 Palo Alto, CA 94301	660,849 shares of Series A Preferred Stock 554,801 shares of Series B Preferred Stock

Name and Address	Securities
Prospect Associates II, L.P. 435 Tasso Street, Suite 200 Palo Alto, CA 94301	10,063 shares of Series A Preferred Stock 8,448 shares of Series B Preferred Stock
Versant Venture Capital II, L.P. 3000 Sand Hill Road Building 4, Suite 210 Menlo Park, CA 94025	652,693 shares of Series A Preferred Stock 547,954 shares of Series B Preferred Stock
Versant Side Fund II, L.P. 3000 Sand Hill Road Building 4, Suite 210 Menlo Park, CA 94025	5,833 shares of Series A Preferred Stock 4,897 shares of Series B Preferred Stock
Versant Affiliates Fund II-A, L.P. 3000 Sand Hill Road Building 4, Suite 210 Menlo Park, CA 94025	12,386 shares of Series A Preferred Stock 10,398 shares of Series B Preferred Stock
BVCF IV, L.P. One North Wacker Drive, Suite 2200 Chicago, IL 60606	198,794 shares of Series B Preferred Stock
Adams Street V, L.P. One North Wacker Drive, Suite 2200 Chicago, IL 60606	198,794 shares of Series B Preferred Stock
Cardinal Fund I, L.P. 201 Main Street, Suite 2415 Fort Worth, TX 76102 Attention: Ray Pinson	265,059 shares of Series B Preferred Stock Warrant to Purchase 7,857 shares of Series BB Preferred Stock
FW Jazz Pharma Investors, L.P. 201 Main Street, Suite 3100 Fort Worth, TX 76102 Attention: John H. Fant	132,529 shares of Series B Preferred Stock Warrant to Purchase 3,929 shares of Series BB Preferred Stock
EGS Private Healthcare Partnership II, L.P. 105 Rowayton Ave. Rowayton, CT 06853	200,838 shares of Series B Preferred Stock

Name and Address	Securities
EGS Private Healthcare Investors II, L.P. 105 Rowayton Ave. Rowayton, CT 06853	31,674 shares of Series B Preferred Stock
EGS Private Healthcare Canadian Partners, L.P. 105 Rowayton Ave. Rowayton, CT 06853	30,221 shares of Series B Preferred Stock
EGS Private Healthcare Presidents Fund, L.P. 105 Rowayton Ave. Rowayton, CT 06853	2,324 shares of Series B Preferred Stock
Samuel R. Saks	238,546 shares of Common Stock 13,553 shares of Series A Preferred Stock 66,264 shares of Series B Preferred Stock
Bruce C. Cozadd	178,910 shares of Common Stock 66,264 shares of Series B Preferred Stock
Robert M. Myers	94,650 shares of Common Stock 46,385 shares of Series B Preferred Stock
Janne L.T. Wissel	29,818 shares of Common Stock 66,264 shares of Series B Preferred Stock
Matthew K. Fust	29,818 shares of Common Stock 19,879 shares of Series B Preferred Stock
Carol A. Gamble	27,107 shares of Common Stock
Waud Capital Partners, L.P. 560 Oakwood Avenue, Suite 203 Lake Forest, IL 60045	477,106 shares of Series B Preferred Stock

Name and Address	Securities
Waud Capital Affiliates, L.L.C. 560 Oakwood Avenue, Suite 203 Lake Forest, IL 60045	53,011 shares of Series B Preferred Stock
Deep Cove Mezzanine, LLC 560 Oakwood Ave, Suite 203 Lake Forest, IL 60045	Warrants to purchase 49,108 shares of Series BB Preferred Stock
Lerner Enterprises, LLP c/o Oak Hill Advisors LP 65 East 55th Street, 32nd Floor New York, NY 10022	Warrants to purchase 6,472 shares of Series BB Preferred Stock
LB I Group Inc. c/o Lehman Brothers 399 Park Avenue, 9th Floor New York, NY 10022	Warrants to purchase 304,469 shares of Series BB Preferred Stock
KKR TRS Holdings, Inc. c/o KKR Financial Corp. 4 Embarcadero Center, Suite 2050 San Francisco, CA 94111	Warrants to purchase 245,540 shares of Series BB Preferred Stock
General Electric Pension Trust c/o GE Asset Management Incorporated 3001 Summer Road P.O. Box 7900 Stamford, CT 06904-7900	Warrants to purchase 78,573 shares of Series BB Preferred Stock
Coast DL Funding LLC c/o Oak Hill Advisors LP 65 East 55th Street, 32nd Floor New York, NY 10022	Warrants to purchase 40,102 shares of Series BB Preferred Stock
Oak Hill Credit Opportunities Financing, Ltd. c/o Oak Hill Advisors LP 65 East 55th Street, 32nd Floor New York, NY 10022	Warrants to purchase 26,597 shares of Series BB Preferred Stock

Name and Address	Securities
Oak Hill Credit Alpha Finance I (Offshore), Ltd. c/o Oak Hill Advisors LP 65 East 55th Street, 32nd Floor New York, NY 10022	Warrants to purchase 17,453 shares of Series BB Preferred Stock
Oak Hill Credit Alpha Finance I, LLC c/o Oak Hill Advisors LP 65 East 55th Street, 32nd Floor New York, NY 10022	Warrants to purchase 5,628 shares of Series BB Preferred Stock

Exhibit 10.1

INDEMNIFICATION AGREEMENT

AGREEMENT, made this __ day of _____, 2007, between Jazz Pharmaceuticals, Inc., a Delaware corporation (the "Company"), and _____ (the "Indemnitee").

W I T N E S S E T H:

WHEREAS, the Indemnitee is a director and/or officer of the Company.

WHEREAS, highly competent persons have become more reluctant to serve corporations as directors or in other capacities unless they are provided with adequate protection through insurance or adequate indemnification against inordinate risks of claims and actions against them arising out of their service to and activities on behalf of the corporation.

WHEREAS, in recognition of Indemnitee's need for substantial protection against personal liability in order to enhance Indemnitee's continued service to the Company in an effective manner and Indemnitee's reliance on the provisions of the Company's Certificate of Incorporation ("Certificate of Incorporation") and the Company's Bylaws (the "Bylaws") requiring indemnification of the Indemnitee to the fullest extent permitted by law, and in part to provide Indemnitee with specific contractual assurance that the protection promised by such Certificate of Incorporation and Bylaws will be available to Indemnitee (regardless of, among other things, any amendment to or revocation of such Certificate of Incorporation or Bylaws or any change in the composition of the Company's Board of Directors or acquisition transaction relating to the Company), the Company wishes to provide in this Agreement for the indemnification of and the advancing of expenses to Indemnitee to the fullest extent (whether partial or complete) permitted by law and as set forth in this Agreement.

[WHEREAS, the Company and Indemnitee entered into an Indemnification Agreement dated _____, 2003 (the "Prior Indemnification Agreement"), at which time the Company was a California corporation.]

WHEREAS, the Company subsequently reincorporated in the State of Delaware.

WHEREAS, the Certificate of Incorporation, the Bylaws and the General Corporation Law of the State of Delaware ("DGCL") expressly provide that the indemnification provisions set forth therein are not exclusive and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification.

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified.

WHEREAS, this Agreement is a supplement to and in furtherance of the Certificate of Incorporation and Bylaws and any resolutions adopted pursuant thereto and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

WHEREAS, the Company and Indemnitee desire to supersede and replace the Prior Indemnification Agreement with this Agreement.

NOW, THEREFORE, in consideration of the premises and of Indemnitee agreeing to serve or continuing to serve the Company directly or, at its request, with another enterprise, and intending to be legally bound hereby, the parties hereto agree as follows:

Section 1. Basis Indemnification Agreement. (a) In the event Indemnitee was, is or becomes a party to or witness or other participant in, or is threatened to be made a party to or witness or other participant in, a Claim (as defined in Section 9(b) herein) by reason of (or arising in part out of) an Indemnifiable Event (as defined in Section 9(d) herein), the Company shall indemnify Indemnitee (including its respective directors, officers, partners, members, employees and agents, as applicable) and each person who controls any of them or who may be liable within the meaning of Section 15 the Securities Act of 1933, as amended (the "Securities Act") or Section 20 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), to the fullest extent permitted by law as soon as practicable but in any event no later than 30 days after written demand is presented to the Company, against any and all Expenses (as defined in Section 9(c) herein), judgments, fines, penalties and amounts paid in settlement (including all interest, assessments and other charges paid or payable in connection therewith) of such Claim actually and reasonably incurred by or on behalf of Indemnitee in connection with such Claim and any federal, state, local or foreign taxes imposed on Indemnitee as a result of the actual or deemed receipt of any payments under this Agreement. Subject to Section 6, if requested by Indemnitee in writing, the Company shall advance (within ten business days of such written request) any and all Expenses to Indemnitee (an "Expense Advance"). Notwithstanding anything in this Agreement to the contrary, and except as provided in Section 3, Indemnitee shall not be entitled to indemnification or any Expense Advance pursuant to this Agreement in connection with any Claim (i) initiated by Indemnitee against the Company or any director or officer of the Company unless the Company has joined in or consented to the initiation of such Claim or such Claim relates to a matter described in Section 3, (ii) made on account of Indemnitee's conduct which is determined by final judgment or other final adjudication to have constituted a breach of Indemnitee's duty of loyalty to the Company or its stockholders or an act or omission not in good faith or which involved intentional misconduct or a knowing violation of the law, (iii) if such indemnification or advancement of Expenses would cause the Company to act in violation of applicable law or any undertaking appearing in and required by the rules and regulations promulgated under the Securities Act or any registration statement filed with the Securities and Exchange Commission ("SEC") under the Securities Act, or (iv) for which final judgment or adjudication is rendered against Indemnitee for an accounting, disgorgement or repayment of profits made from the purchase or sale by Indemnitee of securities of the Company against Indemnitee, or in connection with a settlement by or on behalf of Indemnitee to the extent it is acknowledged by Indemnitee and the Company that such amount paid in settlement resulted from Indemnitee's conduct from which Indemnitee received monetary personal profit, pursuant to the provisions of Section 16(b) of the Exchange Act.

(b) Notwithstanding the foregoing, (i) the indemnification obligations of the Company under Section 1(a) shall be subject to the condition that the Reviewing Party shall not have determined (in a written opinion, in any case in which the special independent counsel referred to in Section 2 hereof is involved) that Indemnitee would not be permitted to be indemnified under applicable law or the terms of this Agreement, and (ii) the obligation of the Company to make an Expense Advance pursuant to Section 1(a) shall be subject to the condition that the Company receives an undertaking that, if, when and to the extent that the Reviewing Party determines that Indemnitee would not be permitted to be so indemnified under applicable law, the Company shall be entitled to be reimbursed by Indemnitee (who hereby agrees to reimburse the Company) for all such amounts theretofore paid; provided, however, that if Indemnitee has commenced legal proceedings in the Court of Chancery of the State of Delaware (the "Delaware Court") to secure a determination that Indemnitee should be indemnified under applicable law, any determination made by the Reviewing Party that Indemnitee would not be permitted to be indemnified under applicable law shall not be binding and Indemnitee shall not be required to reimburse the Company for any Expense Advance until a final judicial determination is made with respect thereto (as to which all rights of appeal therefrom have been exhausted or lapsed). Indemnitee's obligation to reimburse the Company for Expense Advances shall be unsecured and no interest shall be charged thereon. If there has been no determination by the Reviewing Party or if the Reviewing Party determines that Indemnitee substantively would not be permitted to be indemnified in whole or in part under applicable law or the terms of this Agreement, Indemnitee shall have the right to commence litigation in the Delaware Court seeking an initial determination by the court or challenging any such determination by the Reviewing Party or any aspect thereof and the Company hereby consents to service of process and to appear in any such proceeding. Any determination by the Reviewing Party otherwise shall be conclusive and binding on the Company and Indemnitee.

Section 2. Special Independent Counsel. The Company agrees that if there is a Change in Control of the Company (other than a Change in Control which has been approved by two- thirds or more of the Company's Board of Directors who were directors immediately prior to such Change in Control) then with respect to all matters thereafter arising concerning the rights of Indemnitee to indemnity payments and Expense Advances under this Agreement or any other agreement, the Bylaws or Certificate of Incorporation now or hereafter in effect relating to Claims for Indemnifiable Events, the Company shall seek legal advice only from special independent counsel selected by Indemnitee and approved by the Company (which approval shall not be unreasonably withheld or delayed) and who has not otherwise performed services for the Company or for Indemnitee within the last five years (other than in connection with such matters). In the event that Indemnitee and the Company are unable to agree on the selection of the special independent counsel, such special independent counsel shall be selected by lot from among at least five law firms with offices in the State of Delaware having more than fifty attorneys, having a rating of "av" or better in the then current Martindale Hubbell Law Directory and having attorneys which specialize in corporate law. Such selection shall be made in the presence of Indemnitee (and his legal counsel or either of them, as Indemnitee may elect). Such counsel, among other things, shall, within 90 days of its retention, render its written opinion to

the Company and Indemnitee as to whether and to what extent Indemnitee would be permitted to be indemnified under applicable law. The Company agrees to pay the reasonable fees of the special independent counsel referred to above and to fully indemnify such counsel against any and all expenses (including attorneys' fees), claims, liabilities, and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

Section 3. Indemnification for Additional Expenses. The Company shall indemnify Indemnitee against any and all Expenses and, if requested by Indemnitee in writing, shall (within ten business days of such written request) advance such Expenses to Indemnitee, which are incurred by Indemnitee in connection with any Claim asserted against or action brought by Indemnitee for (i) indemnification or advance payment of Expenses by the Company under this Agreement or any other agreement, the Bylaws or Certificate of Incorporation now or hereafter in effect relating to Claims for Indemnifiable Events and/or (ii) recovery under any directors' and officers' liability insurance policies maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, advance expense payment or insurance recovery, as the case may be. The Indemnitee shall qualify for advances solely upon the execution and delivery to the Company of an undertaking providing that the Indemnitee undertakes to repay the advance to the extent that it is ultimately determined by final judgment or adjudication of a court of appropriate jurisdiction that the Indemnitee is not entitled to be indemnified by the Company.

Section 4. Partial Indemnity, Etc. If Indemnitee is entitled under any provisions of this Agreement to indemnification by the Company of some or a portion of the Expenses, liabilities, judgments, fines, penalties and amounts paid in settlement of a Claim but not, however, for all of the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled. Moreover, notwithstanding any other provision of this Agreement, to the extent that Indemnitee has been successful on the merits or otherwise in defense of any or all Claims relating in whole or in part to an Indemnifiable Event or in defense of any issue or matter therein, including dismissal without prejudice, Indemnitee shall be indemnified against all Expenses incurred in connection therewith. In connection with any determination by the Reviewing Party or otherwise as to whether Indemnitee is entitled to be indemnified hereunder the burden of proof shall be on the Company to establish that Indemnitee is not so entitled.

Section 5. No Presumption. For purposes of this Agreement, the termination of any action, suit or proceeding by judgment, order, settlement (whether with or without court approval) or conviction, or upon a plea of nolo contendere, or its equivalent, shall not create a presumption that Indemnitee did not meet any particular standard of conduct or have any particular belief. Any determination by the Reviewing Party that indemnitee is not entitled to indemnification hereunder shall not be a defense by the Company to any Claim by Indemnitee to enforce any right to indemnification or advancement of Expenses pursuant to this Agreement or any other agreement, the Bylaws or Certificate of Incorporation now or hereafter in effect.

Section 6. Notification and Defense of Claim. Within 30 days after receipt by Indemnitee of notice of the commencement of a Claim which may involve an Indemnifiable Event, Indemnitee will, if a claim in respect thereof is to be made against the Company under

this Agreement, submit to the Company a written notice identifying the proceeding, but the omission so to notify the Company will not relieve it from any liability which it may have to Indemnitee under this Agreement unless the Company is materially prejudiced by such lack of notice. With respect to any such Claim as to which Indemnitee notifies the Company of the commencement thereof:

(a) the Company will be entitled to participate therein at its own expense;

(b) except as otherwise provided below, to the extent that it may wish, the Company jointly with any other indemnifying party similarly notified will be entitled to assume the defense thereof, with counsel satisfactory to Indemnitee. After notice from the Company to Indemnitee of its election to assume the defense thereof, the Company will not be liable to Indemnitee under this Agreement for any legal or other expenses subsequently incurred by Indemnitee in connection with the defense thereof other than reasonable costs of investigation or as otherwise provided below. Indemnitee shall have the right to employ its own counsel in such action, suit or proceeding, but the fees and expenses of such counsel incurred after notice from the Company of its assumption of the defense thereof shall be at the expense of Indemnitee unless (i) the employment of counsel by Indemnitee has been authorized by the Company, (ii) Indemnitee shall have reasonably concluded that there may be a conflict of interest between the Company and the Indemnitee in the conduct of the defense of such action, or (iii) the Company shall not in fact have employed counsel to assume the defense of such action, in each of which cases the fees and expenses of counsel shall be at the expense of the Company. The Company shall not be entitled to assume the defense of any claim brought by or on behalf of the Company or as to which Indemnitee shall have made the conclusion provided for in clause (ii) above; and

(c) the Company shall not be liable to indemnify Indemnitee under this Agreement for any amounts paid in settlement of any action or claim effected without its written consent. The Company shall not settle any action or claim in any manner which would impose any penalty or limitation on Indemnitee without Indemnitee's written consent. Neither the Company nor Indemnitee will unreasonably withhold or delay their consent to any proposed settlement.

Section 7. Non-exclusivity, Etc. The rights of Indemnitee hereunder shall be in addition to any other rights Indemnitee may have under the Certificate of Incorporation, the Bylaws, the DGCL, any agreement, a vote of the stockholders, a resolution of directors or otherwise. No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee acting on behalf of the Company and at the request of the Company prior to such amendment, alteration or repeal. To the extent that a change in the DGCL (whether by statute or judicial decision), the Certificate of Incorporation or the Bylaws permits greater indemnification by agreement than would be afforded currently under the Certificate of Incorporation, the Bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy

given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy. Notwithstanding anything to the contrary herein, the indemnification provided under this agreement shall continue as to the Indemnitee for any action the Indemnitee took or did not take while serving in an indemnified capacity even though the Indemnitee may have ceased to serve in such capacity.

Section 8. Liability Insurance. To the extent the Company maintains an insurance policy or policies providing directors' and officers' liability insurance, Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any Company director or officer. If, at the time the Company receives notice from any source of a Claim as to which Indemnitee is a party or a participant (as a witness or otherwise), the Company has director and officer liability insurance in effect, the Company shall give prompt notice of such Proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such Claim in accordance with the terms of such policies.

Section 9. Certain Definitions.

(a) Change in Control: shall be deemed to have occurred if:

(i) any person, as that term is used in Section 13(d) and Section 14(d)(2) of the Exchange Act, becomes, is discovered to be, or files a report on Schedule 13D or 14D-1 (or any successor schedule, form or report) disclosing that such person is a beneficial owner (as defined in Rule 13d-3 under the Exchange Act or any successor rule or regulation), directly or indirectly, of securities of the Company representing 20% or more of the total voting power of the Company's then outstanding Voting Securities (unless such person becomes such a beneficial owner in connection with the initial public offering of the Company);

(ii) individuals who, as of the consummation date of the Company's initial public offering, constitute the Board of Directors of the Company cease for any reason to constitute at least a majority of the Board of Directors of the Company, unless any such change is approved by a unanimous vote of the members of the Board of Directors of the Company in office immediately prior to such cessation;

(iii) the Company, or any material subsidiary of the Company, is merged, consolidated or reorganized into or with an Acquiring Person or securities of the Company are exchanged for securities of an Acquiring Person, and immediately after such merger, consolidation, reorganization or exchange less than a majority of

the combined voting power of the then outstanding securities of the Acquiring Person immediately after such transaction are held, directly or indirectly, in the aggregate by the holders of Voting Securities immediately prior to such transaction;

(iv) the Company, or any material subsidiary of the Company, in any transaction or series of related transactions, sells or otherwise transfers all or substantially all of its assets to an Acquiring Person, and less than a majority of the combined voting power of the then outstanding securities of the Acquiring Person immediately after such sale or transfer is held, directly or indirectly, in the aggregate by the holders of Voting Securities immediately prior to such sale or transfer;

(v) the Company and its subsidiaries, in any transaction or series of related transactions, sells or otherwise transfers business operations that generated two thirds or more of the consolidated revenues (determined on the basis of the Company's four most recently completed fiscal quarters) of the Company and its subsidiaries immediately prior thereto;

(vi) the Company files a report or proxy statement with the Securities and Exchange Commission pursuant to the Exchange Act disclosing that a change in control of the Company has or may have occurred or will or may occur in the future pursuant to any then existing contract or transaction; or

(vii) any other transaction or series of related transactions occur that have substantially the effect of the transactions specified in any of the preceding clauses in this Section 9(a).

Notwithstanding the provisions of Section 9(a)(i) or 9(a)(iv), unless otherwise determined in a specific case by majority vote of the Board of Directors of the Company, a Change of Control shall not be deemed to have occurred for purposes of this Agreement solely because (i) the Company, (ii) an entity in which the Company directly or indirectly beneficially owns 50% or more of the voting securities or (iii) any Company sponsored employee stock ownership plan, or any other employee benefit plan of the Company, either files or becomes obligated to file a report or a proxy statement under or in response to Schedule 13D, Schedule 14D-1, Form 8-K or Schedule 14A (or any successor schedule, form or report or item therein) under the Exchange Act, disclosing beneficial ownership by it of shares of stock of the Company, or because the Company reports that a Change in Control of the Company has or may have occurred or will or may occur in the future by reason of such beneficial ownership.

(b) Claim: any threatened, pending or completed action, suit, proceeding or alternative dispute resolution mechanism, or any inquiry, hearing or investigation whether conducted by the Company or any other party, whether civil, criminal, administrative, investigative or other.

(c) Expenses: include attorneys' fees and all other costs, fees, expenses and obligations of any nature whatsoever paid or incurred in connection with investigating, defending, being a witness in or participating in (including appeal), or preparing to defend, be a witness in or participate in any Claim relating to any Indemnifiable Event or to enforce Indemnitee's rights to indemnification or advancement of Expenses pursuant to this Agreement or any other agreement, the Bylaws or Certificate of Incorporation now or hereafter in effect.

(d) Indemnifiable Event: any event or occurrence (whether before or after the date hereof) related to the fact that Indemnitee is or was a director, officer, employee, consultant, agent or fiduciary of or to the Company, or is or was serving at the request of the Board of Directors as a director, officer, employee, trustee, agent or fiduciary of another corporation, partnership, joint venture, employee benefit plan, trust or other enterprise, or by reason of anything done or not done by Indemnitee in any such capacity including, without limitation, any claim or investigation under the Securities Act, the Exchange Act or other federal or state statutory law or regulation, at common law or otherwise on which relate directly to indirectly to the registration, purchase, sale or ownership of any securities of the Company or to any fiduciary obligation owed with respect thereto or as a direct or indirect result of any claim made by any stockholder of the Company against Indemnitee and arising out of or related to any round of financing of the Company (including but not limited to claims regarding non-participation, or non-pro rata participation, in such round by such stockholder), or made by a third party against Indemnitee based on any misstatement or omission of a material fact by the Company in violation of any duty of disclosure imposed on the Company by federal or state securities or common laws.

(e) Reviewing Party: (i) the Company's Board of Directors (provided that a majority of directors are not parties to the particular Claim for which Indemnitee is seeking indemnification) or (ii) any other person or body appointed by the Company's Board of Directors, who is not a party to the particular Claim for which Indemnitee is seeking indemnification, or (iii) if there has been a Change in Control (other than a Change of Control which has been approved by two-thirds or more of the Company's Board of Directors who were directors immediately prior to such Change of Control), the special independent counsel referred to in Section 2 hereof.

(f) Voting Securities: any securities of the Company which vote generally in the election of directors.

Section 10. Amendments, Termination and Waiver. No supplement, modification, amendment or termination of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

Section 11. Subrogation. In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

Section 12. No Duplication of Payments. The Company shall not be liable under this Agreement to make any payment in connection with any Claim made against Indemnitee to the extent Indemnitee has otherwise actually received payment (under insurance policy, Certificate of Incorporation or otherwise) of the amounts otherwise indemnifiable hereunder.

Section 13. Securities Act Liabilities. Indemnitee acknowledges that paragraph (h) of Item 512 of Regulation S-K currently generally requires the Company to undertake in connection with any registration statement filed under the Act to submit the issue of the enforceability of Indemnitee's rights under this Agreement in connection with any liability under the Act on public policy grounds to a court of appropriate jurisdiction and to be governed by any final adjudication of such issue. Indemnitee specifically agrees that any such undertaking shall supersede the provisions of this Agreement and to be bound by any such undertaking.

Section 14. Binding Effect, Etc. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors, assigns, including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company, spouse, heirs, and personal and legal representatives. This Agreement shall continue in effect regardless of whether Indemnitee continues to serve as a director or officer (or in one of the capacities enumerated in Section 9(d) hereof) of the Company or of any other enterprise at the Board of Director's request. The Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

Section 15. Limitations on Actions. No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company against an Indemnitee or an Indemnitee's estate, spouse, heirs, executors or personal or legal representatives after the expiration of three (3) years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such three-year period; provided, however, that if any shorter period of limitations is otherwise applicable to such cause of action, such shorter period shall govern.

Section 16. Severability. The provisions of this Agreement shall be severable in the event that any of the provisions hereof (including any provision within a single section, paragraph or sentence) are held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.

Section 17. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. The Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) appoint, irrevocably, to the extent such party is not a resident of the State of Delaware, National Corporate Research, Ltd., 615 South Dupont Highway, City of Dover, County of Kent, Delaware 19901 as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

Section 18. Identical Counterparts. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

Section 19. Entire Agreement. This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes and replaces any and all prior negotiations, correspondence, understandings and agreements, including without limitation the Prior Indemnification Agreement, between the parties regarding the subject matter hereof.

Executed this __ day of _____, 2007.

Jazz Pharmaceuticals, Inc.

By: _____
Its:

[Indemnitee]

_____

2003 EQUITY INCENTIVE PLAN
OF
JAZZ PHARMACEUTICALS, INC.

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2003 Equity Incentive Plan
of
Jazz Pharmaceuticals, Inc.

1. Purpose of this Plan

The purpose of this 2003 Equity Incentive Plan of Jazz Pharmaceuticals, Inc. is to enhance the long-term shareholder value of Jazz Pharmaceuticals, Inc. by offering opportunities to eligible individuals to participate in the growth in value of the equity of Jazz Pharmaceuticals, Inc. Although this Plan is intended to comply with Rule 701 under the Securities Act and Section 25102(o) of the California Securities Act, the Company reserves the right, formally or informally, to establish a sub-plan from which grants can be made which are intended to rely on federal and state exemptions other than Rule 701 and Section 25102(o) of the California Securities Act.

2. Definitions and Rules of Interpretation

2.1 **Definitions**. This Plan uses the following defined terms:

(a) ***"Administrator"*** means the Board, or the Committee.

(b) ***"Affiliate"*** means a "parent" or "subsidiary" (as each is defined in Section 424 of the Code) of the Company and any other entity that the Board or Committee designates as an "Affiliate" for purposes of this Plan.

(c) ***"Applicable Law"*** means any and all laws of whatever jurisdiction, within or without the United States, and the rules of any stock exchange or quotation system on which Shares are listed or quoted, applicable to the taking or refraining from taking of any action under this Plan, including the administration of this Plan and the issuance or transfer of Awards or Award Shares.

(d) ***"Award"*** means a Stock Award, SAR, Cash Award, or Option granted in accordance with the terms of the Plan.

(e) ***"Award Agreement"*** means the document evidencing the grant of an Award.

(f) ***"Award Shares"*** means Shares covered by an outstanding Award or purchased under an Award.

(g) ***"Awardee"*** means: (i) a person to whom an Award has been granted, including a holder of a Substitute Award, (ii) a person to whom an Award has been

transferred in accordance with all applicable requirements of Sections 6.5, 7(h), and 16 and (iii) a person who holds Option Shares subject to any right of repurchase under Section 15.2.

(h) ***"Board"*** means the board of directors of the Company.

(i) ***"Cash Award"*** means the right to receive cash as described in Section 8.3.

(j) "***California Securities Act***" means the California Corporate Securities Law of 1968.

(k) ***"Change of Control"*** means any transaction or event that the Board specifies as a Change of Control under Section 10.4.

(l) ***"Code"*** means the Internal Revenue Code of 1986.

(m) ***"Committee***" means a committee composed of Company Directors appointed in accordance with the Company's charter documents and Section 4.

(n) ***"Company"*** means Jazz Pharmaceuticals, Inc., a California corporation.

(o) ***"Company Director"*** means a member of the Board.

(p) ***"Consultant"*** means an individual who, or an employee of any entity that, provides bona fide services to the Company or an Affiliate not in connection with the offer or sale of securities in a capital-raising transaction, but who is not an Employee. Notwithstanding the foregoing, no grant may be made to any entity unless the grant and exercise are made in reliance of federal and state securities exemptions other than Rule 701 under the Securities Act and Section 25102(o) of the California Securities Act.

(q) ***"Director"*** means a member of the board of directors of the Company or an Affiliate.

(r) ***"Divestiture"*** means any transaction or event that the Board specifies as a Divestiture under Section 10.5.

(s) ***"Domestic Relations Order"*** means a "domestic relations order" as defined in, and otherwise meeting the requirements of, Section 414(p) of the Code, except that reference to a "plan" in that definition shall be to this Plan.

(t) ***"Employee"*** means a regular employee of the Company or an Affiliate, including an officer or Director, who is treated as an employee in the personnel

records of the Company or an Affiliate, but not individuals who are classified by the Company or an Affiliate as: (i) leased from or otherwise employed by a third party, (ii) independent contractors, or (iii) intermittent or temporary workers. The Company's or an Affiliate's classification of an individual as an "Employee" (or as not an "Employee") for purposes of this Plan shall not be altered retroactively even if that classification is changed retroactively for another purpose as a result of an audit, litigation or otherwise. An Awardee shall not cease to be an Employee due to transfers between locations of the Company, or between the Company and an Affiliate, or to any successor to the Company or an Affiliate that assumes the Awardee's Options under Section 10. Neither service as a Director nor receipt of a director's fee shall be sufficient to make a Director an "Employee."

(u) ***"Exchange Act"*** means the Securities Exchange Act of 1934.

(v) ***"Expiration Date"*** means, with respect to an Award, the date stated in the Award Agreement as the expiration date of the Award or, if no such date is stated in the Award Agreement, then the last day of the maximum exercise period for the Award, disregarding the effect of an Awardee's Termination or any other event that would shorten that period.

(w) ***"Fair Market Value"*** means the value of Shares as determined under Section 17.2.

(x) ***"Fundamental Transaction"*** means any transaction or event described in Section 10.3.

(y) ***"Grant Date"*** means the date the Administrator approves the grant of an Award. However, if the Administrator specifies that an Award's Grant Date is a future date or the date on which a condition is satisfied, the Grant Date for such Award is that future date or the date that the condition is satisfied.

(z) ***"Incentive Stock Option"*** means an Option intended to qualify as an incentive stock option under Section 422 of the Code and designated as an Incentive Stock Option in the Award Agreement for that Option.

(aa) ***"Listed Security"*** means any Share listed or approved for listing upon notice of issuance on a national securities exchange or other market system that meets the requirements of Section 25100(o) of the California Securities Law of 1968, as amended.

(bb) ***"Nonstatutory Option"*** means any Option other than an Incentive Stock Option.

(cc) ***"Objectively Determinable Performance Condition"*** shall mean a performance condition (i) that is established (A) at the time an Award is granted or (B)

no later than the earlier of (1) 90 days after the beginning of the period of service to which it relates, or (2) before the elapse of 25% of the period of service to which it relates, (ii) that is uncertain of achievement at the time it is established, and (iii) the achievement of which is determinable by a third party with knowledge of the relevant facts. Examples of measures that may be used in Objectively Determinable Performance Conditions include net order dollars, net profit dollars, net profit growth, net revenue dollars, revenue growth, individual performance, earnings per share, return on assets, return on equity, and other financial objectives, objective customer satisfaction indicators and efficiency measures, each with respect to the Company and/or an individual business unit.

(dd) ***"Option"*** means a right to purchase Shares of the Company granted under this Plan.

(ee) ***"Option Price"*** means the price payable under an Option for Shares, not including any amount payable in respect of withholding or other taxes.

(ff) ***"Option Shares"*** means Shares covered by an outstanding Option or purchased under an Option.

(gg) ***"Plan"*** means this 2003 Equity Incentive Plan of Jazz Pharmaceuticals, Inc.

(hh) ***"Purchase Price"*** means the price payable under a Stock Award for Shares, not including any amount payable in respect of withholding or other taxes.

(ii) ***"Reverse Vesting"*** means that an Option is or was fully exercisable but that, subject to a "reverse" vesting schedule, the Company has a right to repurchase the Option Shares as specified in Section 15.2(a), with the Company's right of repurchase expiring in accordance with a "forward" vesting schedule that would otherwise have applied to the Option under which the Option Shares were purchased or in accordance with some other vesting schedule described in the Award Agreement. With respect to a Stock Award, Reverse Vesting means that the Company has a right to repurchase the Award Shares purchased pursuant to the Stock Award, as specified in Section 15.2(a), with the Company's right of repurchase expiring in accordance with the vesting schedule in the Award Agreement.

(jj) ***"SAR" or "Stock Appreciation Right"*** means a right to receive cash based on a change in the Fair Market Value of a specific number of Shares pursuant to an Award Agreement, as described in Section 8.1.

(kk) ***"Securities Act"*** means the Securities Act of 1933.

(ll) ***"Share"*** means a share of the common stock of the Company or other securities substituted for the common stock under Section 10.

(mm) ***"Stock Award"*** means an offer by the Company to sell shares subject to certain restrictions pursuant to the Award Agreement as described in Section 8.2.

(nn) ***"Substitute Award"*** means a Substitute Option, Substitute SAR or Substitute Stock Award granted in accordance with the terms of the Plan.

(oo) ***"Substitute Option"*** means an Option granted in substitution for, or upon the conversion of, an option granted by another entity to purchase equity securities in the granting entity.

(pp) ***"Substitute SAR"*** means a SAR granted in substitution for, or upon the conversion of, a stock appreciation right granted by another entity with respect to equity securities in the granting entity.

(qq) ***"Substitute Stock Award"*** means a Stock Award granted in substitution for, or upon the conversion of, a stock award granted by another entity to purchase equity securities in the granting entity.

(rr) ***"Termination"*** means that the Awardee has ceased to be, with or without any cause or reason, an Employee, Director or Consultant. However, unless so determined by the Administrator, "Termination" shall not include a change in status from an Employee, Consultant or Director to another such status. An event that causes an Affiliate to cease being an Affiliate shall be treated as the "Termination" of that Affiliate's Employees, Directors, and Consultants.

2.2 **Rules of Interpretation**. Any reference to a "Section," without more, is to a Section of this Plan. Captions and titles are used for convenience in this Plan and shall not, by themselves, determine the meaning of this Plan. Except when otherwise indicated by the context, the singular includes the plural and vice versa. Any reference to a statute is also a reference to the applicable rules and regulations adopted under that statute. Any reference to a statute, rule or regulation, or to a section of a statute, rule or regulation, is a reference to that statute, rule, regulation, or section as amended from time to time, both before and after the effective date of this Plan and including any successor provisions.

3. Shares Subject to this Plan; Term of this Plan

3.1 **Number of Award Shares**. Subject to adjustment under Section 10, the maximum number of Shares that may be issued under this Plan is 2,125,042. When an Award is granted, the maximum number of Shares that may be issued under this Plan shall be reduced by the number of Shares covered by that Award. However, if an Award later terminates or expires without having been exercised in full, the maximum number of shares that may be issued under this Plan shall be increased by the number of Shares that were covered by, but not purchased under, that Award. By contrast, the repurchase of Shares by the Company shall not increase the maximum number of Shares that may be issued under this Plan.

3.2 **Source of Shares.** Award Shares may be: (a) Shares that have never been issued, (b) Shares that have been issued but are no longer outstanding, or (c) Shares that are outstanding and are acquired to discharge the Company's obligation to deliver Award Shares.

3.3 **Term of this Plan**

(a) This Plan shall be effective on, and Awards may be granted under this Plan after, the date it has been both adopted by the Board and approved by the Company's stockholders.

(b) Subject to Section 13, Awards may be granted under this Plan for a period of ten years from the earlier of the date on which the Board approves this Plan and the date the Company's stockholders approve this Plan. Accordingly, Awards may not be granted under the Plan after the earlier of those dates.

4. Administration

4.1 **General**. The Board shall have ultimate responsibility for administering this Plan. The Board may delegate certain of its responsibilities to a Committee, which shall consist of at least two members of the Board. Where this Plan specifies that an action is to be taken or a determination made by the Board, only the Board may take that action or make that determination. Where this Plan specifies that an action is to be taken or a determination made by the Committee, only the Committee may take that action or make that determination. Where this Plan references the "Administrator," the action may be taken or determination made by the Board or the Committee. All actions and determinations by any Administrator are subject to the provisions of this Plan.

4.2 **Authority of Administrator**. Subject to the other provisions of this Plan, the Administrator shall have the authority to:

(a) grant Awards, including Substitute Awards;

(b) determine the Fair Market Value of Shares;

(c) determine the Option Price and the Purchase Price of Awards;

(d) select the Awardees;

(e) determine the times Awards are granted;

(f) determine the number of Shares subject to each Award;

(g) determine the types of payment that may be used to purchase Award Shares;

(h) determine the types of payment that may be used to satisfy withholding tax obligations;

(i) determine the other terms of each Award, including but not limited to the time or times at which Awards may be exercised, whether and under what conditions an Award is assignable, and whether an Option is a Nonstatutory Option or an Incentive Stock Option;

(j) modify or amend any Award;

(k) authorize any person to sign any Award Agreement or other document related to this Plan on behalf of the Company;

(l) determine the form of any Award Agreement or other document related to this Plan, and whether that document, including signatures, may be in electronic form;

(m) interpret this Plan and any Award Agreement or document related to this Plan;

(n) correct any defect, remedy any omission, or reconcile any inconsistency in this Plan, any Award Agreement or any other document related to this Plan;

(o) adopt, amend, and revoke rules and regulations under this Plan, including rules and regulations relating to sub-plans and Plan addenda;

(p) adopt, amend, and revoke special rules and procedures which may be inconsistent with the terms of this Plan, set forth (if the Administrator so chooses) in sub-plans regarding (for example) the operation and administration of this Plan and the terms of Awards, if and to the extent necessary or useful to accommodate non-U.S. Applicable Laws and practices as they apply to Awards and Option Shares held by, or granted or issued to, persons working or resident outside of the United States or employed by Affiliates incorporated outside the United States;

(q) determine whether a transaction or event should be treated as a Change of Control, a Divestiture or neither;

(r) determine the effect of a Fundamental Transaction and, if the Board determines that a transaction or event should be treated as a Change of Control or a Divestiture, then the effect of that Change of Control or Divestiture; and

(s) make all other determinations the Administrator deems necessary or advisable for the administration of this Plan.

4.3 **Scope of Discretion**. Subject to the last sentence of this Section 4.3, on all matters for which this Plan confers the authority, right or power on the Board or the Committee, that body may make those decisions in its sole and absolute discretion. Those decisions will be final, binding and conclusive. Moreover, but again subject to the last sentence of this Section 4.3, in making those decisions the Board or Committee need not treat all persons eligible to receive Awards, all Awardees, all Awards or all Award Shares the same way. However, except as provided in Section 13.3., the discretion of the Board or Committee is subject to the specific provisions and specific limitations of this Plan, as well as all rights conferred on specific Awardees by Award Agreements and other agreements.

5. Persons Eligible to Receive Awards

5.1 **Eligible Individuals**. Awards (including Substitute Awards) may be granted to, and only to, Employees, Directors and Consultants, including to prospective Employees, Directors and Consultants conditioned on the beginning of their service for the Company or an Affiliate. However, Incentive Stock Options may only be granted to Employees as provided in Section 7(g).

6. Terms and Conditions of Options

The following rules apply to all Options:

6.1 **Price**. No Option may have an Option Price less than 85% of the Fair Market Value of the Shares on the Grant Date. If an Option is granted to a person who, at the Grant Date, owns more than 10% of the voting power of the Company or any corporate Affiliate, that Option shall have an Option Price equal to or greater than 110% of the Fair Market Value of the Shares on the Grant Date. In no event will the Option Price of any Option be less than the par value of the Shares issuable under the Option if that is required by Applicable Law. The Option Price of an Incentive Stock Option shall be subject to Section 7(f).

6.2 **Term**. No Option shall be exercisable after its Expiration Date. No Option may have an Expiration Date that is more than ten years after its Grant Date. Additional provisions regarding the term of Incentive Stock Options are provided in Sections 7(a) and 7(e).

6.3 **Vesting**. Options shall be exercisable: (a) on the Grant Date, or (b) in accordance with a schedule related to the Grant Date, the date the Optionee's directorship, employment or consultancy begins, or a different date specified in the Option Agreement. If so provided in the Option Agreement, an Option may be

exercisable subject to the application of Reverse Vesting to the Option Shares. However, with respect to Options granted in reliance of Section 25102(o) of the California Securities Act, the right to exercise an Option must vest or the Option Shares must be subject to Reverse Vesting**,** at the rate of at least 20% per year over the five years from the Grant Date. No Option granted to an individual who is subject to the overtime pay provisions of the Fair Labor Standards Act may be exercised before the expiration of six months after the Grant Date. Additional provisions regarding the vesting of Incentive Stock Options are provided in Section 7(c).

6.4 **Form of Payment**.

(a) The Administrator shall determine the acceptable form and method of payment for exercising an Option.

(b) Acceptable forms of payment for all Option Shares are cash, check or wire transfer, denominated in U.S. dollars except as specified by the Administrator for non-U.S. Employees or non-U.S. sub-plans.

(c) In addition, the Administrator may permit payment to be made by any of the following methods:

(i) other Shares, or the designation of other Shares, which (A) are "mature" shares for purposes of avoiding variable accounting treatment under generally accepted accounting principles (generally mature shares are those that have been owned by the Optionee for more than six months on the date of surrender), and (B) have a Fair Market Value on the date of surrender equal to the Option Price of the Shares as to which the Option is being exercised;

(ii) provided that a public market exists for the Shares, consideration received by the Company under a procedure under which a broker-dealer that is a member of the National Association of Securities Dealers advances funds on behalf of an Optionee or sells Option Shares on behalf of an Optionee (a "***Cashless Exercise Procedure***"), subject to the limitation that no Officer or Director may participate in that Cashless Exercise Procedure unless the Administrator has determined that the Company has not extended or arranged for the extension of credit to an Optionee;

(iii) one or more promissory notes meeting the requirements of Section 6.4(e), provided that in the case of any Options granted in reliance of the exemptions set forth in Section 25102(o) of the California Securities Act, that Option may not be exercised with a promissory note if the Option is subject to Reverse Vesting; provided further that no Officer or Director may exercise an Option with a promissory note;

(iv) cancellation of any debt owed by the Company or any Affiliate to the Optionee by the Company including without limitation waiver of compensation due or accrued for services previously rendered to the Company; and

(v) any combination of the methods of payment permitted by any paragraph of this Section 6.4.

(d) The Administrator may also permit any other form or method of payment for Option Shares permitted by Applicable Law.

(e) The promissory notes referred to in Section 6.4(c)(iii) must be full recourse. Unless the Committee specifies otherwise after taking into account any relevant accounting issues, the notes shall bear interest at a fair market value rate when the Option is exercised. Interest on the notes shall also be at least sufficient to avoid imputation of interest under Sections 483, 1274, and 7872 of the Code. The notes and their administration shall at all times comply with any applicable margin rules of the Federal Reserve. Consultants may not purchase Option Shares with a note unless the note is adequately secured by collateral other than the Option Shares. The portion of the Option Price equal to the par value of the Option Shares shall in all events be paid in cash. The notes may also include such other terms as the Administrator specifies. Payment may not be made by promissory note by Officers or Directors if Shares are registered under Section 12 of the Exchange Act.

6.5 **Nonassignability of Options**. No Option shall be assignable or otherwise transferable by the Optionee except by will or by the laws of descent and distribution. However, Options may be transferred and exercised in accordance with a Domestic Relations Order and may be exercised by a guardian or conservator appointed to act for the Optionee. Incentive Stock Options may only be assigned in compliance with Section 7(h).

6.6. **Substitute Options**. The Board may cause the Company to grant Substitute Options in connection with the acquisition by the Company or an Affiliate of equity securities of any entity (including by merger, tender offer, or other similar transaction) or of all or a portion of the assets of any entity. Any such substitution shall be effective when the acquisition closes. Substitute Options may be Nonstatutory Options or Incentive Stock Options. Unless and to the extent specified otherwise by the Board, Substitute Options shall have the same terms and conditions as the options they replace, except that (subject to Section 10) Substitute Options shall be Options to purchase Shares rather than equity securities of the granting entity and shall have an Option Price determined by the Board.

7. Incentive Stock Options

The following rules apply only to Incentive Stock Options and only to the extent these rules are more restrictive than the rules that would otherwise apply under this Plan. With the consent of the Optionee, or where this Plan provides that an action may be taken notwithstanding any other provision of this Plan, the Administrator may deviate from the requirements of this Section, notwithstanding that any Incentive Stock Option modified by the Administrator will thereafter be treated as a Nonstatutory Option.

(a) The Expiration Date of an Incentive Stock Option shall not be later than ten years from its Grant Date, with the result that no Incentive Stock Option may be exercised after the expiration of ten years from its Grant Date.

(b) No Incentive Stock Option may be granted more than ten years from the date this Plan was approved by the Board.

(c) Options intended to be incentive stock options under Section 422 of the Code that are granted to any single Optionee under all incentive stock option plans of the Company and its Affiliates, including incentive stock options granted under this Plan, may not vest at a rate of more than $100,000 in Fair Market Value of stock (measured on the grant dates of the options) during any calendar year. For this purpose, an option vests with respect to a given share of stock the first time its holder may purchase that share, notwithstanding any right of the Company to repurchase that share. Unless the administrator of that option plan specifies otherwise in the related agreement governing the option, this vesting limitation shall be applied by, to the extent necessary to satisfy this $100,000 rule, treating certain stock options that were intended to be incentive stock options under Section 422 of the Code as Nonstatutory Options. The stock options or portions of stock options to be reclassified as Nonstatutory Options are those with the highest option prices, whether granted under this Plan or any other equity compensation plan of the Company or any Affiliate that permits that treatment. This Section 7(c) shall not cause an Incentive Stock Option to vest before its original vesting date or cause an Incentive Stock Option that has already vested to cease to be vested.

(d) In order for an Incentive Stock Option to be exercised for any form of payment other than those described in Section 6.4(b), that right must be stated at the time of grant in the Option Agreement relating to that Incentive Stock Option.

(e) Any Incentive Stock Option granted to a Ten Percent Shareholder, must have an Expiration Date that is not later than five years from its Grant Date, with the result that no such Option may be exercised after the expiration of five years from the Grant Date. A "***Ten Percent Shareholder***" is any person who, directly or by attribution under Section 424(d) of the Code, owns stock possessing more than ten percent of the total combined voting power of all classes of stock of the Company or of any Affiliate on the Grant Date.

(f) The Option Price of an Incentive Stock Option shall never be less than the Fair Market Value of the Shares at the Grant Date. The Option Price for the Shares covered by an Incentive Stock Option granted to a Ten Percent Shareholder shall never be less than 110% of the Fair Market Value of the Shares at the Grant Date.

(g) Incentive Stock Options may be granted only to Employees. If an Optionee changes status from an Employee to a Consultant, that Optionee's Incentive Stock Options shall automatically become Nonstatutory Options if not exercised within the time period described in Section 7(i).

(h) No rights under an Incentive Stock Option may be transferred by the Optionee, other than by will or the laws of descent and distribution. During the life of the Optionee, an Incentive Stock Option may be exercised only by the Optionee. The Company's compliance with a Domestic Relations Order, or the exercise of an Incentive Stock Option by a guardian or conservator appointed to act for the Optionee, shall not violate this Section 7(h).

(i) An Incentive Stock Option shall be treated as a Nonstatutory Option if it remains exercisable after, and is not exercised within, the three-month period beginning with the Optionee's Termination for any reason other than the Optionee's death or disability (as defined in Section 22(c) of the Code). In the case of Termination due to death, an Incentive Stock Option shall continue to be treated as an Incentive Stock Option if it remains exercisable after, and is not exercised within, the three-month period after the Optionee's Termination provided it is exercised before the Expiration Date. In the case of Termination due to disability, an Incentive Stock Option shall be treated as a Nonstatutory Option if it remains exercisable after, and is not exercised within, one year after the Optionee's Termination.

(j) An Incentive Stock Option may only be modified by the Board or Committee.

8. Stock Appreciation Rights, Stock Awards and Cash Awards

8.1 **Stock Appreciation Rights**

The following rules apply to SARs:

(a) **Term**. No SAR shall be exercisable after its Expiration Date. No SAR may have an Expiration Date that is more than ten years after its Grant Date.

(b) **Vesting**. SARs shall be exercisable: (i) on the Grant Date, (ii) in accordance with a schedule related to the Grant Date, the date the Awardee's directorship, employment or consultancy begins, or a different date specified in the Award Agreement, or (iii) or upon the achievement of Objectively Determinable Performance Conditions.

(c) **Exercise of SARs**. Upon the exercise of an SAR, in whole or in part, an Awardee shall be entitled to a payment in an amount equal to the excess of the Fair Market Value of a fixed number of Shares covered by the exercised portion of the SAR on the date of exercise, over the Fair Market Value of the Shares covered by the exercised portion of the SAR on the Grant Date. The amount due to the Awardee the exercise of a SAR will be paid in cash or Shares over the period or periods specified in the Award Agreement. An Award Agreement may place limits on the amount that may be paid over any specified period or periods upon the exercise of a SAR, on an aggregate basis or as to any Awardee. A SAR shall be considered exercised when the Company receives written notice of exercise in accordance with the terms of the Award Agreement from the person entitled to exercise the SAR.

(d) **Nonassignability of SARs**. Except as set forth in any Award Agreement or determined by the Administrator, no SAR shall be assignable or otherwise transferable by the Awardee except by will or by the laws of descent and distribution. However, SARs may be transferred and exercised in accordance with a Domestic Relations Order.

(e) **Substitute SARs**. The Board may cause the Company to grant Substitute SARs in connection with the acquisition by the Company or an Affiliate of equity securities of any entity (including by merger) or all or a portion of the assets of any entity. Any such substitution shall be effective when the acquisition closes. Unless and to the extent specified otherwise by the Board, Substitute SARs shall have the same terms and conditions as the options they replace, except that (subject to Section 10) Substitute SARs shall be exercisable with respect to the Fair Market Value of Shares rather than equity securities of the granting entity and shall be on terms that, as determined by the Board in its sole and absolute discretion, properly reflects the substitution.

8.2 **Stock Awards**. The following rules apply to all Stock Awards:

(a) **Price**. No Stock Award may have a Purchase Price less than 85% of the Fair Market Value of the Shares on the Grant Date or on the date on which the purchase is completed. If a Stock Award of Shares that are not Listed Securities is granted to a person who, at the Grant Date, owns more than 10% of the voting power of the Company or any corporate Affiliate, that Stock Award shall have a Purchase Price of not less than 100% of the Fair Market Value of the Shares on the Grant Date or on the date the purchase is completed. In no event will the Purchase Price of any Stock Award be less than the par value of the Shares issuable under the Stock Award if that is required by Applicable Law.

(b) **Term**. No Stock Award shall be exercisable after its Expiration Date. No Stock Award may have an Expiration Date that is more than ten years after its Grant Date.

(c) **Vesting**. Stock Awards shall be exercisable: (i) on the Grant Date, or (ii) in accordance with a schedule related to the Grant Date, the date the Awardee's directorship, employment or consultancy begins, or a different date specified in the Award Agreement.

(d) **Right of Repurchase**. If so provided in the Award Agreement, Award Shares acquired pursuant to a Stock Award may be subject to Reverse Vesting. With respect to Stock Awards subject to Reverse Vesting granted to Employees who are not officers or directors of the Company or any parent or subsidiary of the Company to purchase Shares that are not Listed Securities, the Company's right of repurchase must lapse at the rate of at least 20% per year over the five years from the Grant Date.

(e) **Form of Payment**. The Administrator shall determine the acceptable form and method of payment for exercising a Stock Award.

(i) Acceptable forms of payment for all Award Shares are cash, check or wire transfer, denominated in U.S. dollars except as specified by the Administrator for non-U.S. Employees or non-U.S. sub-plans.

(ii) In addition, the Administrator may permit payment to be made by any of the methods permitted with respect to the exercise of Options pursuant to Section 6.4.

(f) **Nonassignability of Stock Awards**. Except as set forth in any Award Agreement or determined by the Administrator, no Stock Award shall be assignable or otherwise transferable by the Awardee except by will or by the laws of descent and distribution. However, Stock Awards may be transferred and exercised in accordance with a Domestic Relations Order.

(g) **Substitute Stock Award**. The Board may cause the Company to grant Substitute Stock Awards in connection with the acquisition by the Company or an Affiliate of equity securities of any entity (including by merger) or all or a portion of the assets of any entity. Unless and to the extent specified otherwise by the Board, Substitute Stock Awards shall have the same terms and conditions as the options they replace, except that (subject to Section 10) Substitute Stock Awards shall be Stock Awards to purchase Shares rather than equity securities of the granting entity and shall have a Purchase Price that, as determined by the Board in its sole and absolute discretion, properly reflects the substitution.

8.3 **Cash Awards**. The following rules apply to all Cash Awards:

(a) **Term**. No Cash Award shall be payable after its Expiration Date. No Cash Award may have an Expiration Date that is more than ten years after its Grant Date.

(b) **Vesting**. Cash Awards shall be payable: (i) on the Grant Date, (ii) in accordance with a schedule related to the Grant Date, the date the Awardee's directorship, employment or consultancy begins, or a different date specified in the Award Agreement, or (iii) or upon the achievement of Objectively Determinable Performance Conditions.

9. Exercise of Awards

9.1 **In General**. An Award shall be exercisable in accordance with this Plan and the Award Agreement under which it is granted.

9.2 **Time of Exercise**. Options and Stock Awards shall be considered exercised when the Company receives: (a) written notice of exercise from the person entitled to exercise the Option or Stock Award, (b) full payment, or provision for payment, in a form and method approved by the Administrator, for the Shares for which the Option or Stock Award is being exercised, and (c) with respect to Nonstatutory Options or Stock Awards, payment, or provision for payment, in a form approved by the Administrator, of all applicable withholding taxes due upon exercise. An Award may not be exercised for a fraction of a Share or for less than 50 Shares. SARs and Cash Awards shall be considered exercised when the Company receives written notice of the exercise from the person entitled to exercise the SAR or Cash Award.

9.3 **Issuance of Award Shares**. The Company shall issue Award Shares in the name of the person properly exercising the Award. If the Awardee is that person and so requests, the Award Shares shall be issued in the name of the Awardee and the Awardee's spouse. The Company shall endeavor to issue Award Shares promptly after an Award is exercised. However, until Award Shares are actually issued, as evidenced by the appropriate entry on the stock books of the Company or its transfer agent, the Awardee shall not have the rights of a shareholder with respect to those Option Shares, even though the Awardee has completed all the steps necessary to exercise the Award. No adjustment shall be made for any dividend, distribution, or other right for which the record date precedes the date the Award Shares are issued, except as provided in Section 10.

9.4 **Termination**

(a) ***In General***. Except as provided in an Award Agreement or in writing by the Administrator and as otherwise provided in Sections 9.4(b), (c), (d), (e) and (f), after an Awardee's Termination the Awardee's Awards shall be exercisable to the extent (but only to the extent) they are vested on the date of that Termination and only during the three months after the Termination (provided that, prior to the time the Shares become Listed Securities, such period of time shall be not less than thirty (30) days), but in no event after the Expiration Date. To the extent the Awardee does not exercise an Award within the time specified for exercise, the Award shall automatically terminate.

(b) ***Leaves of Absence***. Unless otherwise provided in the Award Agreement, no Award may be exercised more than three months after the beginning of a leave of absence, other than a personal or medical leave approved by an authorized representative of the Company with employment guaranteed upon return by contract or statute. Awards shall not continue to vest during a leave of absence, unless otherwise determined by the Administrator with respect to an approved personal or medical leave with employment guaranteed upon return by contract or statute.

(c) ***Death or Disability***. Unless otherwise provided by the Administrator or in the Award Agreement, if an Awardee's Termination is due to death or disability (as determined by the Administrator with respect to all Awards other than Incentive Stock Options and as defined by Section 22(e) of the Code with respect to Incentive Stock Options), all Awards of that Awardee to the extent exercisable at the date of that Termination may be exercised for one year after that Termination (provided that, prior to the time the Shares become Listed Securities, such period of time shall be not less than six (6) months), but in no event after the Expiration Date. In the case of Termination due to death, an Award may be exercised as provided in Section 16. In the case of Termination due to disability, if a guardian or conservator has been appointed to act for the Awardee and been granted this authority as part of that appointment, that guardian or conservator may exercise the Award on behalf of the Awardee. In the case of an Awardee who dies or becomes disabled within three months after Termination, if the Termination was not due to Cause, the Awardee's Awards may be exercised for one year after that Termination. To the extent an Award is not so exercised within the time specified for its exercise, the Award shall automatically terminate.

(d) ***Divestiture***. If an Awardee's Termination is due to a Divestiture, the Board may take any one or more of the actions described in Section 10.3 or 10.4 with respect to the Awardee's Awards.

(e) ***Termination for Cause***. If an Awardee's Termination is due to Cause, all of the Awardee's Awards shall automatically terminate and cease to be exercisable at the time of Termination and the Administrator may rescind any and all exercises of Awards by the Awardee that occurred after the first event constituting Cause. "***Cause***" means employment-related dishonesty, fraud, willful or material misconduct, disclosure or misuse of confidential information or other employment-related conduct that is likely to cause significant injury to the Company, an Affiliate or any of their respective employees, officers or directors (including, without limitation, commission of a felony or similar offense), in each case as determined by the Administrator. "Cause" shall not require that a civil judgment or criminal conviction have been entered against or guilty plea shall have been made by the Awardee regarding any of the matters referred to in the previous sentence. Accordingly, the Administrator shall be entitled to determine "Cause" based on the Administrator's good faith belief. If the Awardee is criminally charged with a felony or similar offense, that shall be a sufficient, but not a necessary, basis for such a belief.

(f) ***Reverse Vesting***. Under any circumstances stated in this Section 9.4 in which all unvested Options of an Optionee immediately vest, the Company's repurchase rights shall lapse on all Option Shares held by that Optionee which are subject to Reverse Vesting.

(g) ***Consulting or Employment Relationship***. Nothing in this Plan or in any Award Agreement, and no Award or the fact that Award Shares remain subject to repurchase rights, shall: (A) interfere with or limit the right of the Company or any Affiliate to terminate the employment or consultancy of any Awardee at any time, whether with or without cause or reason, and with or without the payment of severance or any other compensation or payment, or (B) interfere with the application of any provision in any of the Company's or any Affiliate's charter documents or Applicable Law relating to the election, appointment, term of office, or removal of a Director.

10. Certain Transactions and Events

10.1 **In General**. Except as provided in this Section 10, no change in the capital structure of the Company, merger, sale or other disposition of assets or a subsidiary, change of control, issuance by the Company of shares of any class of securities convertible into shares of any class, conversion of securities, or other transaction or event shall require or be the occasion for any adjustments of the type described in this Section 10. Additional provisions with respect to the foregoing transactions are set forth in Section 13.3.

10.2 **Changes in Capital Structure**. In the event of any stock split, reverse stock split, recapitalization, combination or reclassification of stock, stock dividend, spin-off, or similar change to the capital structure of the Company (not including a Fundamental Transaction or Change of Control), the Board shall make whatever adjustments it concludes are appropriate to: (a) the number and type of Awards that may be granted under this Plan, (b) the number and type of Options that may be granted to any individual under this Plan, (c) the Terms of any SAR, (d) the Purchase Price of any Stock Award, and (e) the Option Price and number and class of securities issuable under each outstanding Option, and (f) the repurchase price of any securities substituted for Option Shares that are subject to repurchase rights. The specific adjustments shall be determined by the Board in its sole and absolute discretion. Unless the Board specifies otherwise, any securities issuable as a result of any such adjustment shall be rounded to the next lower whole security. The Board need not adopt the same rules for each Award or each Awardee.

10.3 **Fundamental Transactions**. If the Company merges with another entity in a transaction in which the Company is not the surviving entity or if, as a result of any

other transaction or event, other securities are substituted for the Shares or Shares may no longer be issued (each a "***Fundamental Transaction***"), then, notwithstanding any other provision of this Plan, the Board shall do one or more of the following contingent on the closing or completion of the Fundamental Transaction: (a) arrange for the substitution, in exchange for Awards, of options to purchase equity securities other than Shares (including, if appropriate, equity securities of an entity other than the Company) (an "assumption" of Awards) on such terms and conditions as the Board determines are appropriate, (b) accelerate the vesting and termination of outstanding Awards, in whole or in part, so that Awards can be exercised before or otherwise in connection with the closing or completion of the Fundamental Transaction or event but then terminate, (c) cancel or arrange for the cancellation of Awards in exchange for cash payments to Awardees, and (d) either arrange for any repurchase rights of the Company with respect to Award Shares to apply to the securities issued in substitution for Shares or terminate repurchase rights on Award Shares. The Board need not adopt the same rules for each Award or each Awardee.

10.4 **Changes of Control**. The Board may also, but need not, specify that other transactions or events constitute a "***Change of Control***". The Board may do that either before or after the transaction or event occurs. Examples of transactions or events that the Board may treat as Changes of Control are: (a) the Company or an Affiliate is a party to a merger, consolidation, amalgamation, or other transaction in which the beneficial stockholders of the Company, immediately before the transaction, beneficially own securities representing 50% or less of the total combined voting power or value of the Company immediately after the transaction, (b) any person or entity, including a "group" as contemplated by Section 13(d)(3) of the Exchange Act, acquires securities holding 30% or more of the total combined voting power or value of the Company, or (c) as a result of or in connection with a contested election of Company Directors, the persons who were Company Directors immediately before the election cease to constitute a majority of the Board. In connection with a Change of Control, notwithstanding any other provision of this Plan, the Board may take any one or more of the actions described in Section 10.3. In addition, the Board may extend the date for the exercise of Awards (but not beyond their original Expiration Date). The Board need not adopt the same rules for each Award or each Awardee.

10.5 **Divestiture**. If the Company or an Affiliate sells or otherwise transfers equity securities of an Affiliate to a person or entity other than the Company or an Affiliate, or leases, exchanges or transfers all or any portion of its assets to such a person or entity, then the Board may specify that such transaction or event constitutes a "***Divestiture***". In connection with a Divestiture, notwithstanding any other provision of this Plan, the Board may take one or more of the actions described in Section 10.3 or 10.4 with respect to Awards or Award Shares held by, for example, Employees, Directors or Consultants for whom that transaction or event results in a Termination. The Board need not adopt the same rules for each Award or each Awardee.

10.6 **Dissolution**. If the Company adopts a plan of dissolution, the Board may cause Awards to be fully vested and exercisable (but not after their Expiration Date) before the dissolution is completed but contingent on its completion and may cause the Company's repurchase rights on Award Shares to lapse upon completion of the dissolution. The Board need not adopt the same rules for each Award or each Awardee. However, to the extent not exercised before the earlier of the completion of the dissolution or their Expiration Date, Awards shall terminate just before the dissolution is completed.

10.7 **Cut-Back to Preserve Benefits**. If the Administrator determines that the net after-tax amount to be realized by any Awardee, taking into account any accelerated vesting, termination of repurchase rights, or cash payments to that Awardee in connection with any transaction or event addressed in this Section 10 would be greater if one or more of those steps were not taken or payments were not made with respect to that Awardee's Awards or Award Shares, then and to that extent one or more of those steps shall not be taken and payments shall not be made.

11. Withholding and Tax Reporting

11.1 **Tax Withholding Alternatives**

(a) ***General***. Whenever Award Shares are issued or become free of restrictions, the Company may require the Awardee to remit to the Company an amount sufficient to satisfy any applicable tax withholding requirement, whether the related tax is imposed on the Awardee or the Company. The Company shall have no obligation to deliver Award Shares or release Award Shares from an escrow or permit a transfer of Option Shares until the Awardee has satisfied those tax withholding obligations. Whenever payment in satisfaction of Awards is made in cash, the payment will be reduced by an amount sufficient to satisfy all tax withholding requirements.

(b) ***Method of Payment***. The Awardee shall pay any required withholding using the forms of consideration described in Section 6.4(b), except that, in the discretion of the Administrator, the Company may also permit the Awardee to use any of the forms of payment described in Section 6.4(c). The Administrator may also permit Award Shares to be withheld to pay required withholding. If the Administrator permits Award Shares to be withheld, the Fair Market Value of the Award Shares withheld, as determined as of the date of withholding, shall not exceed the amount determined by the applicable minimum statutory withholding rates.

11.2 **Reporting of Dispositions**. Any holder of Option Shares acquired under an Incentive Stock Option shall promptly notify the Administrator, following such procedures as the Administrator may require, of the sale or other disposition of any of those Option Shares if the disposition occurs during: (a) the longer of two years after the Grant Date of the Incentive Stock Option and one year after the date the Incentive Stock Option was exercised, or (b) such other period as the Administrator has established.

12. Compliance with Law

12.1 **Applicable Law**. The grant of Awards and the issuance and subsequent transfer of Award Shares shall be subject to compliance with all Applicable Law, including all applicable securities laws. Awards may not be exercised, and Award Shares may not be transferred, in violation of Applicable Law. Thus, for example, Awards may not be exercised unless: (a) a registration statement under the Securities Act is then in effect with respect to the related Award Shares, or (b) in the opinion of legal counsel to the Company, those Award Shares may be issued in accordance with an applicable exemption from the registration requirements of the Securities Act and any other applicable securities laws. The failure or inability of the Company to obtain from any regulatory body the authority considered by the Company's legal counsel to be necessary or useful for the lawful issuance of any Award Shares or their subsequent transfer shall relieve the Company of any liability for failing to issue those Award Shares or permitting their transfer. As a condition to the exercise of any Award or the transfer of any Award Shares, the Company may require the Awardee to satisfy any requirements or qualifications that may be necessary or appropriate to comply with or evidence compliance with any Applicable Law.

12.2 **Financial Information**. The Company shall furnish its annual financial statements to each Awardee during the period the Awardee holds any Option, Stock Award or Award Shares. Those statements shall include a balance sheet and income statement, and shall be delivered as soon as is practical after the end of the Company's fiscal year. This section does not apply to Awardees who are key Employees and whose duties afford them access to those financial statements.

13. Amendment or Termination of this Plan or Outstanding Awards

13.1 **Amendment and Termination**. The Board may at any time amend, suspend, or terminate this Plan.

13.2 **Stockholder Approval**. The Company shall obtain the approval of the Company's stockholders for any amendment to this Plan if shareholder approval is necessary or desirable to comply with any Applicable Law or with the requirements applicable to the grant of Awards intended to be Incentive Stock Options. The Board may also, but need not, require that the Company's stockholders approve any other amendments to this Plan.

13.3 **Effect**. No amendment, suspension, or termination of this Plan, and no modification of any Award even in the absence of an amendment, suspension, or termination of this Plan, shall impair any existing contractual rights of any Awardee

unless the affected Awardee consents to the amendment, suspension, termination, or modification. However, no such consent shall be required if the Board determines in its sole and absolute discretion that the amendment, suspension, termination, or modification: (a) is required or advisable in order for the Company, the Plan or the Award to satisfy Applicable Law, to meet the requirements of any accounting standard or to avoid any adverse accounting treatment, or (b) in connection with any transaction or event described in Section 10, is in the best interests of the Company or its stockholders. The Board may, but need not, take the tax consequences to affected Awardees into consideration in acting under the preceding sentence. Those decisions will be final, binding and conclusive. Termination of this Plan shall not affect the Administrator's ability to exercise the powers granted to it under this Plan with respect to Awards granted before the termination, or Award Shares issued under such Awards, even if those Award Shares are issued after the termination.

14. Reserved Rights

14.1 **Nonexclusivity of this Plan**. This Plan shall not limit the power of the Company or any Affiliate to adopt other incentive arrangements including, for example, the grant or issuance of stock options, stock, or other equity-based rights under other plans or independently of any plan.

14.2 **Unfunded Plan**. This Plan shall be unfunded. Although bookkeeping accounts may be established with respect to Awardees, any such accounts will be used merely as a convenience. The Company shall not be required to segregate any assets on account of this Plan, the grant of Awards, or the issuance of Award Shares. The Company and the Administrator shall not be deemed to be a trustee of stock or cash to be awarded under this Plan. Any obligations of the Company to any Awardee shall be based solely upon contracts entered into under this Plan, such as Award Agreements. No such obligations shall be deemed to be secured by any pledge or other encumbrance on any assets of the Company. Neither the Company nor the Administrator shall be required to give any security or bond for the performance of any such obligations.

15. Special Arrangements Regarding Award Shares

15.1 **Escrows and Pledges**. To enforce any restrictions on Award Shares including restrictions related to Reverse Vesting, the Administrator may require their holder to deposit the certificates representing Award Shares, with stock powers or other transfer instruments approved by the Administrator endorsed in blank, with the Company or an agent of the Company to hold in escrow until the restrictions have lapsed or terminated. The Administrator may also cause a legend or legends referencing the restrictions to be placed on the certificates. Any Awardee who delivers a promissory note as partial or full consideration for the purchase of Award Shares will be required to pledge and deposit with the Company some or all of the Award Shares as collateral to secure the payment of the note. However, the Administrator may require or accept other

or additional forms of collateral to secure the note and, in any event, the Company will have full recourse against the maker of the note, notwithstanding any pledge or other collateral.

15.2 **Repurchase Rights**

(a) ***Reverse Vesting***. If an Option or Stock Award is subject to Reverse Vesting, the Company shall have the right, during the 90 days after the Awardee's Termination, to repurchase any or all of the Award Shares that were unvested as of the date of that Termination, at a purchase price determined by the Administrator in accordance with this Section 15.2. The repurchase price shall be either (i) the Option Price or Purchase Price for those shares or (ii) the lower of the Option Price for those Shares, the Purchase Price for those Shares or the Fair Market Value of those Option Shares as of the date of the Termination. However, the repurchase price will be the lower of (i) the Option Price or Purchase Price for the Award Shares (minus the amount of any cash dividends paid or payable with respect to the Award Shares for which the record date precedes the repurchase, and (ii) the Fair Market Value at the date of the Termination, if the Award Shares were purchased with a promissory note. The repurchase price shall be paid in cash or, if the Option Shares were purchased in whole or in part with a promissory note, cancellation of indebtedness under that note, or a combination of those means. The Company's right to repurchase Award Shares granted to any Awardee who is not an officer, Company Director or Consultant pursuant to Section 25102(o) of the California Securities Act during any period in which the Shares are not registered under Section 12 of the Exchange Act at Fair Market Value will terminate if and when Shares become Listed Securities. The Company may assign this right of repurchase.

(b) ***Procedure***. The Company may, in it sole discretion, exercise any of its repurchase rights under Section 15.2. The Company or its assignee may choose to give the Awardee a written notice of exercise of its repurchase rights under this Section 15.2. However, the Company's failure to give such a notice shall not affect its rights to repurchase Award Shares. The Company must, however, tender the repurchase price during the period specified in this Section 15.2 for exercising its repurchase rights in order to exercise such rights.

15.3 **Market Standoff**. If requested by the Company or a representative of its underwriters in connection with a registration of any securities of the Company under the Securities Act, Awardees or certain Awardees shall be prohibited from selling some or all of their Award Shares during a period not to exceed 180 days after the effective date of a registration statement filed with respect to the initial public offering of the Company stock and 90 days after the effective date of any other registration statement of the Company. This restriction shall apply only to the first two registration statements of the Company to become effective under the Securities Act. However, it shall not apply to any registration statement on Form S-8 or an equivalent registration statement. Moreover, registration statements on Form S-4, S-8 or equivalent registration statements shall not count as either of those two registration statements.

15.4 **Dividends**. Dividends on Award Shares that are subject to any restrictions, including Reverse Vesting, shall be (a) deferred until the lapsing of the restrictions on such Award Shares and (b) held by the Company for the benefit of the Awardee until the lapsing of such restrictions, if cash, with such interest as determined by the Administrator in its sole discretion, subject to the same restriction, including those set forth in this Section 15, as the Award Shares on which the dividends were paid.

16. Beneficiaries

An Awardee may file a written designation of one or more beneficiaries who are to receive the Awardee's rights under the Awardee's Awards after the Awardee's death. An Awardee may change such a designation at any time by written notice. If an Awardee designates a beneficiary, the beneficiary may exercise the Awardee's Awards after the Awardee's death. If an Awardee dies when the Awardee has no living beneficiary designated under this Plan, the Company shall allow the executor or administrator of the Awardee's estate to exercise the Award or, if there is none, the person entitled to exercise the Option under the Awardee's will or the laws of descent and distribution. In any case, no Award may be exercised after its Expiration Date.

17. Miscellaneous

17.1 **Governing Law**. This Plan, the Award Agreements, and all other agreements entered into under this Plan, and all actions taken under this Plan or in connection with Awards or Award Shares shall be governed by the substantive laws, but not the choice of law rules, of the State of California.

17.2 **Determination of Value**. Fair Market Value shall be determined as follows:

(a) ***No Established Market***. If Shares are not traded on any established stock exchange or quoted on a national market system and are not quoted by a recognized securities dealer, the Administrator (following guidelines established by the Board or Committee) will determine Fair Market Value in good faith. The Administrator will consider the following factors, and any others it considers significant, in determining Fair Market Value: (i) the price at which other securities of the Company have been issued to purchasers other than Employees, Directors, or Consultants, (ii) the Company's net worth, prospective earning power, dividend paying capacity, and non-operating assets, if any, and (iii) any other relevant factors, including the economic outlook for the Company and the Company's industry, the Company's position in that industry, the Company's goodwill and intellectual property, and the values of securities of other businesses in the same industry.

(b) ***Listed Stock***. If the Shares are traded on any established stock exchange or quoted on a national market system, Fair Market Value shall be the closing sales price for the Shares as quoted on that stock exchange or system for the date the value is to be determined (the "***Value Date***") as reported in *The Wall Street Journal* or a similar publication. If no sales are reported as having occurred on the Value Date, Fair Market Value shall be that closing sales price for the last preceding trading day on which sales of Shares are reported as having occurred. If no sales are reported as having occurred during the five trading days before the Value Date, Fair Market Value shall be the closing bid for Shares on the Value Date. If Shares are listed on multiple exchanges or systems, Fair Market Value shall be based on sales or bids on the primary exchange or system on which Shares are traded or quoted.

(c) ***Stock Quoted by Securities Dealer***. If Shares are regularly quoted by a recognized securities dealer but selling prices are not reported on any established stock exchange or quoted on a national market system, Fair Market Value shall be the mean between the high bid and low asked prices on the Value Date. If no prices are quoted for the Value Date, Fair Market Value shall be the mean between the high bid and low asked prices on the last preceding trading day on which any bid and asked prices were quoted.

(d) ***Initial Public Offering***. The Fair Market Value of Shares on the date, if any, that the Company makes an initial public offering of Shares shall be the price at which Shares are first offered to the public.

17.3 **Reservation of Shares**. During the term of this Plan, the Company will at all times reserve and keep available such number of Shares as are still issuable under this Plan.

17.4 **Electronic Communications**. Any Award Agreement, notice of exercise of an Award, or other document required or permitted by this Plan may be delivered in writing or, to the extent determined by the Administrator, electronically. Signatures may also be electronic if permitted by the Administrator.

17.5 **Notices**. Unless the Administrator specifies otherwise, any notice to the Company under any Option Agreement or with respect to any Awards or Award Shares shall be in writing (or, if so authorized by Section 17.4, communicated electronically), shall be addressed to the Secretary of the Company, and shall only be effective when received by the Secretary of the Company.

Adopted by the Board and effective on March 31, 2003.

Approved by the stockholders on March 31, 2003.

Amended to reduce total shares covered by 660,000 shares to 935,000 on October 22, 2003.

Amended to reduce total shares covered by 232,500 shares to 702,500 on December 18, 2004.

Amended to increase total shares covered by 22,815,358 shares, to a total of 23,517,858 shares effective February 18, 2004.

Adjusted to reduce total shares covered to 2,125,042 shares in connection with a 1-for-11.06701 reverse stock split of the Company's Common Stock and Preferred Stock effected on May 15, 2007.

Exhibit 10.22

JAZZ PHARMACEUTICALS, INC.

2003 EQUITY INCENTIVE PLAN

OPTION EXERCISE
AND
STOCK PURCHASE AGREEMENT

Instructions

1. Read the entire Agreement carefully. This is a legally binding agreement between you and the Company.
2. **Items A–C:** insert your name and identifying information.
3. **Items D-G:** identify the stock option you want to exercise.
4. **Item H:** identify how many shares you want to purchase.
5. **Item I:** Calculate the Option Price by multiplying the share number in Item H by the purchase price per share in Item E.
6. **Item J:** Confirm with the Company whether a tax withholding amount should be entered in this space.
7. **Item K:** Add the Option Price in Item I to the tax withholding amount, if any, in Item J. Insert the resulting Purchase Price in Item K.
8. **Item L:** Identify your approved method of payment for the Shares.
9. **Signatures:** Sign the Agreement in the space provided on page 10. (***Important note:*** If you are married, your spouse also is required to sign.)
10. Submit your fully completed and signed Agreement, together with payment of the Purchase Price, to the Finance Department

JAZZ PHARMACEUTICALS, INC.

2003 EQUITY INCENTIVE PLAN

OPTION EXERCISE AND
STOCK PURCHASE AGREEMENT

Date:_____

OPTIONHOLDER / PURCHASER

(A) Name:_____

(B) Employee number:_____

(C) Residence address:_____

STOCK OPTION

(D) Option Shares (total) subject to this Option:_____

(E) Purchase Price per Share:_____

(F) Grant Date:_____

(G) Option Number:_____

OPTION SHARES PURCHASED UNDER THIS AGREEMENT

(H) Shares purchased:_____

(I) Option Price [(E) x (H)]:_____

(J) Tax withholding (if applicable):_____

(to be calculated by Company)

(K) Purchase Price [(I) + (J)]:_____

PAYMENT METHOD *(select one or more)*

(L) Cash or check (enclosed):_____

Wire transfer:_____

(Identify sending bank and wire transfer number)

"Cashless exercise" (if permitted):_____

(Identify approved NASD broker-dealer and attach agreement)

Other:_____

(Attach Company approval for other form of payment)

1. ***Exercise of Option.***

1.1. I am exercising my right to purchase the number of shares of common stock of Jazz Pharmaceuticals, Inc. indicated on Line (H) by exercising the option identified on Lines (D) through (G). The per share purchase price of the option is indicated on Line (E) and the aggregate purchase price of the shares I am purchasing is indicated on Line (I). I acknowledge that I may be responsible for tax withholding on the shares, in which case the aggregate purchase price would be as indicated on Line (K) (which the Company will complete). The shares that I am purchasing by exercising my option are referred to in this agreement as the "Shares". The total purchase price of the shares is referred to in this agreement as the "Purchase Price". I acknowledge that the option I am exercising was issued under and is subject to the rules of the 2003 Equity Incentive Plan of Jazz Pharmaceuticals, Inc. (the "Plan").

1.2. With this signed agreement, I have submitted payment in a form acceptable to the Company for the amount of the Purchase Price.

2. ***Company's Rights of Repurchase.***

2.1. ***Right of Repurchase for Reverse Vesting***. If the Shares are not completely vested, I acknowledge that, if my employment with the Company is Terminated (as defined in the Plan), the Company can elect to repurchase any or all of the unvested Shares during the 90 days following my Termination for the lesser of: (i) the Purchase Price of the Shares, minus any cash dividends paid or payable with respect to the Shares for which the record date precedes the repurchase and (ii) the fair market value of the Shares as of the date of my Termination (determined in accordance with the Plan).

2.2 ***Acceleration of Vesting***. If (a) there is of a Change of Control (defined below) of the Company and (b) my employment with the Company is terminated by the Company, other than for Cause (defined below), within twelve months after such Change of Control, then the Company's repurchase right with respect to 25% of the Shares covered by the option pursuant to which the Shares were purchased (or if less than 25% of the shares covered by such option then remain unvested, all such remaining unvested shares) will automatically lapse on the last day of my employment. For purposes of this Section 2.2, "Change of Control" means (a) the sale, lease, assignment, transfer, conveyance or disposal of all or substantially all of the assets of the Company, or (b) the acquisition of the Company by another entity by means of a consolidation, reorganization, merger or other similar transaction or series of related transactions, in each case excluding (i) any such transaction in which the stockholders of the Company immediately prior to the transaction own more than 50% of the voting power of the acquiror (or parent thereof) immediately after such transaction and (ii) any transaction determined by the Board of Directors of the Company in good faith to be primarily for capital raising purposes. "Cause" means (a) my willful misconduct or gross negligence in the performance of my duties; (b) my conviction or plea of guilt or nolo contendere to any felony or crime involving moral turpitude; or (c) my continued failure to perform my duties to the Company.

2.3 ***Escrow.*** To enforce any restrictions on the Shares, including the Company's right to repurchase the Shares, I acknowledge that I may be required to deposit the certificates representing the Shares, with stock powers or other transfer instruments endorsed in blank, with the Company or an agent of the Company to hold in escrow until the restrictions have lapsed or terminated. I further acknowledge that the certificates representing the Shares may contain legends referencing the restrictions on the Shares and any other legends deemed appropriate by counsel to the Company.

2.4 ***Sales Prohibited.*** I acknowledge that I may not sell or transfer the shares while they are subject to the Company's right of repurchase.

3. ***Company's Right of First Refusal Respecting Shares.***

3.1. ***Right of First Refusal***. If I propose to transfer any Shares or any interest in the Shares, the Company will have a right of first refusal (the "***Right of First Refusal***") with respect to those Shares.

3.2. ***Notice of Proposed Transfer***. If I want to transfer any or all of the Shares, I will give a written notice (the "***Transfer Notice***") to the Company describing fully the proposed transfer, including the number of Shares proposed to be transferred, the proposed transfer price, and the name and address of the person I am proposing to transfer shares to. The Transfer Notice must be a binding commitment signed both by me and by the person I am proposing to transfer shares to.

3.3. ***Company's Election to Purchase Shares***. The Company may elect to purchase the Shares identified in the Transfer Notice by delivery of a notice of exercise of the Company's Right of First Refusal within 30 days after the date the Transfer Notice is delivered to the Company. The purchase price paid by the Company will be the price per share equal to the proposed per share transfer price, and will be paid within 60 days after the date the Transfer Notice is received by the Company, unless a longer period for payment was offered by the transferee, in which case the Company will pay the purchase price within such longer period. The Company's rights under this Section 3 are freely assignable, in whole or in part.

3.4. ***Payment for Shares by Company.*** If the Company exercises the Right of First Refusal, I will sell the Shares to the Company on the terms provided in the Transfer Notice. However, if the Transfer Notice provides for payment for the Shares other than in cash, the Company will have the option of paying, in cash, the present value of the consideration described in the Transfer Notice. If I disagree with the value determined by the Company, then I may request an independent appraisal by an appraiser acceptable to the Purchaser and the Company, the costs of which will be borne equally by me and the

Company. If, at the time of exercise of the Right of First Refusal, any Notes of mine are outstanding which represent any portion of the Purchase Price of the Shares, the repurchase price shall be paid first by cancellation of any obligation for accrued but unpaid interest under those Notes, next by cancellation of principal under those Notes, and finally by payment of cash.

3.5. ***Transfer of Shares***. If the Company fails to exercise the Right of First Refusal within 30 days after the date the Transfer Notice is delivered to the Company, I may, not later than 75 days following delivery to the Company of the Transfer Notice, sell the Shares described in the Transfer Notice on the terms and conditions described in the Transfer Notice. Any proposed transfer on terms and conditions different from those described in the Transfer Notice, as well as any subsequent proposed transfer by Purchaser, will again be subject to the Company's Right of First Refusal and will require compliance by Purchaser with the Right of First Refusal procedure described in this Agreement.

3.6. ***Binding Effect of Right of First Refusal***. The Right of First Refusal will be to the benefit of the successors and assigns of the Company and will be binding upon any transferee of Shares other than a bona fide transferee acquiring Shares in a good faith transaction where the Company failed to exercise the Right of First Refusal, or a transferee from such person.

3.7. ***Termination of Company's Right of First Refusal***. Notwithstanding anything to the contrary in this Agreement, the Company will have no Right of First Refusal, and I will have no obligation to comply with the procedures of the Right of First Refusal, after the earlier of (a) the closing of the Company's initial registered public offering to the public generally, or (b) the date 10 years after the Grant Date of the Option.

3.8. ***Family Transfers.*** Notwithstanding any to the contrary in this Agreement, the Right of First Refusal does not apply to a transfer of Shares subject to a Nonstatutory Option by gift or devise to members of my immediate family (i.e., parents, spouse or children or to a trust for my benefit or any of my immediate family members), but does apply to any subsequent transfer of such Shares by such immediate family members. Any subsequent transfer by a family member will again be subject to the Company's Right of First Refusal and will require compliance with the Right of First Refusal procedure described in this Agreement.

4. ***Representations***

4.1. ***Investment in the Shares is Risky***. I acknowledge that none of the Company's securities, including the Shares, are publicly traded, and the Company has made no representation, covenant, or agreement as to whether there will be a public market for any of its securities in the future.

I represent that I can bear the economic risk of paying the Purchase Price for an indefinite period. I acknowledge that the sale of the Shares has not been registered under the Securities Act of 1933, as amended (the **"*Securities Act*")**, and I will not be able to transfer the Shares unless such transfer is registered under the Securities Act or an exemption from such registration is available. I acknowledge that the Company has made no agreements, covenants or undertakings whatsoever to register the transfer of any of the Shares under the Securities Act and that the Company has made no representations, warranties, or covenants whatsoever as to whether any exemption from the Securities Act, including without limitation any exemption for limited sales in routine brokers' transactions pursuant to Rule 144, will be available.

I understand that if the exemption under Rule 144 becomes available at all, it will not be available until at least one year after full payment of cash for the Shares (or delivery of a full-recourse note secured by adequate additional collateral), and not then unless: (a) a public trading market then exists in the Company's common stock; (b) adequate information as to the Company's financial and other affairs and operations is then available to the public; and (c) all other terms and conditions of Rule 144 have been satisfied. I understand that the resale provisions of Rule 701will not apply until 90 days after the Company becomes subject to the reporting obligations of the Securities Exchange Act of 1934 (typically upon the effective date of an initial public offering).

4.2. ***Taxes.*** The Company has made no warranties or representations to me with respect to the income tax consequences of the transactions contemplated by this Agreement and I am not relying on the Company or its representatives for an assessment of such tax consequences. I have had adequate opportunity to consult with my personal tax advisor prior to submitting this Agreement to the Company.

4.3. ***Repurchase.*** If the Shares are subject to a Right of Repurchase in favor of the Company at their original purchase price when I cease to provide services for the Company, or if I could be subject to suit under Section 16(b) of the Securities Exchange Act of 1934 with respect to the purchase of the Shares, I will execute and deliver to the Company a copy of the Acknowledgment and Statement of Decision Regarding Election Pursuant to Section 83(b) of the Internal Revenue Code (the "***Acknowledgment***") attached as Exhibit A. I acknowledge that I am primarily responsible for filing any Section 83(b) elections although the Company will, as an accommodation to me and without assuming any liability, file a duplicate election if I promptly provide an executed form with the Acknowledgement and Statement of Decision Regarding Section 83(b). I will consult with my own tax advisor to determine if there is a comparable election to file in the state of where I reside and whether filing a federal or state Section 83(b) election is desirable under my circumstances.

4.4. ***Disqualifying Dispositions of ISO Stock***. I acknowledge that if the Stock acquired by exercise of an Incentive Stock Option (as defined in Section 2.1 of the Plan)

is disposed of within two years after the Grant Date (as defined in the Option Grant) or within one year after such exercise, immediately prior to the disposition I will promptly notify the Company in writing of the date and terms of the disposition and will provide such other information regarding the disposition as the Company may reasonably require.

5. ***Miscellaneous Provisions.***

5.1. ***Successors and Assigns.*** Subject to the limitations set forth in this Agreement, the benefits and obligations of this Agreement will be binding on the executors, administrators, heirs, legal representatives, successors, and assigns of the parties.

5.2. ***Costs.*** I will repay the Company for all costs and damages, including incidental and consequential damages and attorney's fees, resulting from any transfer of the Shares which is not in compliance with the provisions of this Agreement.

5.3. ***Governing Law.*** This Agreement shall be governed by, and construed in accordance with, the laws of the State of California excluding those laws that direct the application of the laws of another jurisdiction.

5.4. ***Notices***. All notices and other communications under this Agreement shall be in writing. Unless and until I am notified in writing to the contrary, all notices, communications, and documents directed to the Company and related to the Agreement, if not delivered by hand, shall be mailed, addressed to:

Jazz Pharmaceuticals, Inc.
Attention: Chief Financial Officer

at the Company's published principal office location.

5.5. ***Communications.*** Unless and until I notify the Company in writing to the contrary, all notices, communications, and documents intended for me and related to this Agreement, if not delivered by hand, shall be mailed to my last known address as shown on the Company's books. Notices and communications shall be mailed by first class mail, postage prepaid; documents shall be mailed by registered mail, return receipt requested, postage prepaid. All mailings and deliveries related to this Agreement shall be deemed received when actually received, if by hand delivery, and three business days after mailing, if by mail.

5.6. ***Arbitration.*** All disputes arising out of this Agreement will be finally settled by arbitration in accordance with the then existing rules of the American Arbitration Association. The arbitration will be conducted in the county of San Mateo County, California. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction over it; provided that nothing in this Agreement shall

prevent a party from applying to a court of competent jurisdiction to obtain temporary relief pending resolution of the dispute through arbitration. The parties agree that service of any notices in the course of such arbitration at their respective addresses as provided for in this agreement shall be valid and sufficient.

5.7. ***This is not an employment contract.*** This Agreement is not to be interpreted as a guarantee or contract of continuing employment.

JAZZ PHARMACEUTICALS, INC.

By: _____

Title: _____

I hereby agree to be bound by all of the terms and conditions of this Agreement and the Plan.

_____

Purchaser's signature

_____

Printed name

The purchaser's spouse indicates by the execution of this Agreement his or her consent to be bound by the terms herein as to his or her interests, whether as community property or otherwise, if any, in the Shares hereby purchased.

_____

Purchaser's Spouse

Exhibits

Exhibit 9A	Acknowledgment and Statement of Decision Regarding Section 83(b) Election
Exhibit 9B	Section 83(b) Election

ACKNOWLEDGEMENT AND
STATEMENT OF DECISION
REGARDING SECTION 83(b) ELECTION

The undersigned, a purchaser of shares of Common Stock of Jazz Pharmaceuticals, Inc. (the "*Company*") and a party to a Nonqualified Stock Option Purchase Agreement with the Company (the "*Agreement*"), hereby states as follows:

1. I acknowledge receipt of a copy of the Agreement and the memorandum entitled "Tax Consequences of Purchasing Restricted Stock; Filing a Section 83(b) Election." I have carefully reviewed the Agreement and the memorandum.

2. I either [check as applicable]:

__ (a) have consulted, and have been fully advised by, my tax advisor _____, whose business address is _____ _____ _____, regarding the federal, state, and local tax consequences of purchasing shares under the Agreement, and particularly regarding the advisability of making elections pursuant to Section 83(b) of the Internal Revenue Code of 1986, (the "Code"), and pursuant to any corresponding provisions of applicable state laws; **or**

__ (b) have knowingly chosen not to consult such a tax advisor.

3. I have decided [check as applicable]:

__ (a) to make an election pursuant to Section 83(b) of the Code by filing an election form with the appropriate tax authorities within 30 days of the undersigned's purchase under the Agreement, and am submitting to the Company, together with my executed Agreement, three duplicate copies of executed election forms; **or**

__ (b) not to make an election pursuant to Section 83(b) of the Code.

I acknowledge that, even if the Company files, or engages another party to file, a duplicate Section 83(b) election form with the Internal Revenue Service as an accommodation to me, I have the primary responsibility for timely filing any Section 83(b) election with the Internal Revenue Service and any state revenue authorities, and will hold the Company and its agents harmless from any failure to timely file a duplicate copy of the Section 83(b) election.

Date: _____ _____

ELECTION UNDER SECTION 83(b)
OF THE INTERNAL REVENUE CODE

I hereby elect, under Section 83(b) of the Internal Revenue Code, to include in gross income any excess of the fair market value of the property described in paragraph 2, disregarding any lapse restrictions on that property, over the amount I paid for such property, as described below.

1. My name, address and taxpayer identification number are:

   Name: _____

   Address: _____
   _____
   _____

   Social Security Number: _____

2. The property with respect to which this election is made consists of _____ shares of common stock (the "Shares") of _____ (the "Company").

3. The date on which the Shares were acquired was _____, 2_____, and the taxable year to which this election relates is calendar year _____.

4. The Shares are subject to the following restrictions: the right of the Company to repurchase the Shares at ***[the lower of]*** the initial purchase price ***[or the price at the date of repurchase]***. This right lapses based on my continued performance of services over time.

5. The fair market value of the Shares at the time of transfer (determined without regard to any restrictions other than restrictions which by their terms will never lapse) was $_____ per share.

6. The amount paid for the Shares was $_____ per share.

7. A copy of this election has been furnished to the Company. I am the person performing services and the transferee of the Shares.

_____ _____
Signature Date

The spouse of the taxpayer acknowledges the making of this election.

_____
Signature

Regular Election

PROTECTIVE ELECTION UNDER
SECTION 83(b) OF THE INTERNAL REVENUE CODE
(INCENTIVE STOCK OPTION)

I hereby elect, under Section 83(b) of the Internal Revenue Code, to include in gross income, with the effect and under the circumstances described in paragraph 4, any excess of the fair market value of the property described in paragraph 2, disregarding any lapse restrictions on that property, over the amount I paid for such property.

1. My name, address and taxpayer identification number are:

Name: _____

Address: _____

_____

_____

Social Security Number: _____

2. The property with respect to which the election is made consists of _____ shares of common stock (the "Shares") of _____ (the "Company").

3. The date on which the Shares were acquired was _____, _____, and the taxable year to which this election relates is _____.

4. The Shares were acquired pursuant to my exercise of an incentive stock option. This filing is therefore made for the purpose of determining the amount of my adjustment under Section 56(b)(3) of the Internal Revenue Code with respect to my purchase of the Shares. This filing will also be effective for regular income tax purposes in the event that the option is determined not to qualify as an incentive stock option or I dispose (as defined in Section 424(c) of the Internal Revenue Code) of the Shares within either period described in Section 422(a)(1) of the Internal Revenue Code.

5. The Shares are subject to the following restrictions: the right of the Company to repurchase the Shares at the lower of the initial purchase price or the price on the date of repurchase. This right lapses based on my continued performance of services.

6. The fair market value of the Shares at the time of transfer (determined without regard to any restrictions other than those which by their terms will never lapse) was $_____ per share.

7. The amount paid for the Shares was $_____ per share.

8. A copy of this election has been furnished to the Company. I am the person performing services and the transferee of the Shares.

_____ _____

Signature Date of Execution

The spouse of the taxpayer acknowledges the making of this election.

_____

Signature

[FORM OF GRANT NOTICE - NON-EXECUTIVE EMPLOYEES AND DIRECTORS]

DATE

NAME
ADDRESS

Re: Grant of Stock Option

Option Shares:	Grant Date:
Price per share: $	Vesting Start Date:
	Fully-Vested Date:
Option No.:	Expiration Date:

Dear _____:

I am pleased to confirm that Jazz Pharmaceuticals, Inc. (the "Company") has granted you an option to purchase shares of our common stock under the 2003 Equity Incentive Plan. To accept your stock option, please sign the enclosed copy of this letter and return it in the envelope provided.

1. Your option is intended to be [an incentive] [a nonstatutory] stock option. The basic terms of your option grant are identified in the information block at the top of this offer letter, but other important terms and conditions are described in the plan. We encourage you to carefully review the plan, a copy of which is enclosed.

2. Subject to the plan, your option vests (becomes exercisable) as follows:

[insert vesting schedule]

so that all shares will become purchasable on the Fully-Vested Date shown above.

3. If (a) there is of a Change of Control (defined below) of the Company and (b) your employment with the Company is terminated by the Company, other than for Cause (defined below), within twelve months after such Change of Control, then the vesting of this option shall be immediately accelerated such that 25% of the shares covered by this option (or if less than 25% of the shares covered by this option then remain unvested, all such remaining unvested shares) will vest on your last day of employment with the Company. For purposes of this option grant, "Change of Control" means (a) the sale, lease, assignment, transfer, conveyance or disposal of all or substantially all of the assets of the Company, or (b) the acquisition of the Company by another entity by means of a consolidation,

reorganization, merger or other similar transaction or series of related transactions, in each case excluding (i) any such transaction in which the stockholders of the Company immediately prior to the transaction own more than 50% of the voting power of the acquiror (or parent thereof) immediately after such transaction and (ii) any transaction determined by the Board of Directors of the Company in good faith to be primarily for capital raising purposes. "Cause" means (a) your willful misconduct or gross negligence in the performance of your duties; (b) your conviction or plea of guilt or nolo contendere to any felony or crime involving moral turpitude; or (c) your continued failure to perform your duties to the Company.

4. If you decide to purchase shares under this option, you will be required to submit a completed exercise agreement on a form approved by the Company, together with payment for the shares. You may pay for the shares (plus any associated withholding taxes) using cash, a check, a wire transfer or any other form of payment listed in section 6.4(c) of the plan and permitted by the Administrator at the time you wish to exercise. Shares available under this option must be purchased, if at all, no later than the Expiration Date.

5. As you know, the shares of the Company have not been registered with the Securities and Exchange Commission, and are not publicly traded. In accepting this option, you agree that your rights to purchase or resell the option shares are expressly conditioned upon compliance with applicable U.S. federal and state securities laws, and agree to cooperate with the Company to achieve compliance with those laws.

6. Shares you purchase under this option are subject to a right of first refusal in favor of the Company, as set out in Section 3 of the Company's Option Exercise and Stock Purchase Agreement. Shares you purchase under this option may also be subject to other restrictions, including escrow and market standoff requirements. Those rights and restrictions are set forth in Sections 6 and 15 of the Plan and Section 2 of the Company's Option Exercise and Stock Purchase Agreement.

We value your efforts and look forward to your continued contribution.

Sincerely,

[Authorized Signatory]
[Title]

I accept this option and agree to the terms of this offer letter and the plan.

_____ _____, 200__
Optionee signature Date

[FORM OF RESTATED INCENTIVE OR NONSTATUTORY STOCK OPTION
GRANT NOTICE – EXECUTIVE OFFICERS]

Restated [Incentive][Nonstatutory] Stock Option Grant

[Grant Number]
Partially replacing
Grant No. __

February 18, 2004

[Name]
[Address]

Re: Grant of Stock Option

Option Shares:	Grant Date:
	February 18, 2004
Price per share:	The "Vesting Base Date" is February 18, 2004, the date of the Initial Closing as that term is defined in the Preferred Stock Purchase Agreement dated January 27, 2004, among Jazz Pharmaceuticals, Inc. and certain investors.
	The "Fully-Vested Date" is the fourth anniversary of Vesting Base Date.
Option No.:	Expiration Date:

Dear [Name]:

This restated [incentive][nonstatutory] stock option grant is one of six restated grants (the "Restated Grants") replacing your original stock option grant No. __ (the "Original Grant"). The changes from the Original Grant in the Restated Grants are to divide the Original Grant to reflect (i) the fact that a portion of the original Grant was an incentive stock option and a portion was a nonstatutory stock option and (ii) to reflect the different exercise prices for portions of the

original Grant in different restated grant agreements. The Restated Grants do not alter the terms of the Original Grant; the total number of shares covered, the exercise price, the vesting and the term of the Original Grant and the Restated Grants are the same. The restatement is solely for purposes of clarity and ease of administration. Under this Restated Grant, Jazz Pharmaceuticals, Inc. (the "Company") has granted you options to purchase shares of our common stock under the 2003 Equity Incentive Plan (the "Plan"), the terms of which are incorporated into this letter. To accept this Restated Grant, please sign the enclosed copy of this letter and return it in the envelope provided.

1. Your options are intended to be [incentive stock options; provided, however, that to the extent they exceed the annual limits for incentive stock options, your options shall be nonstatutory stock options][nonstatutory]. The basic terms of your grant are identified in the information block at the top of this offer letter, but other important terms and conditions are described in the Plan. We encourage you to carefully review the Plan, a copy of which is enclosed.

2. Subject to the plan, this Restated Grant will vest as follows:

> The Restated Grants, together, are subject to four-year vesting with 25% vesting on the one year anniversary of the Vesting Base Date, an additional 12.5% vesting on the eighteen month anniversary of the Vesting Base Date, and remaining options vesting equally each month thereafter for 30 months such that all the options will be fully vested on the Fully-Vested Date (subject to acceleration of vesting upon the occurrence of the same events and on the same schedule as the accelerated lapse of the right of repurchase applicable to Founders Shares and Unvested Founders Shares set forth in Section 8.2.2 and 8.2.3 of your Employment Agreement).
>
> Therefore, the vesting schedule for this Restated Grant is as follows:
>
> [Vesting Schedule]

For the purposes of this agreement, (i) Employment Agreement means your Employment Agreement with the Company dated February 18, 2004, as the same may be amended from time to time in accordance with its terms; and (ii) Founders Shares and Unvested Founders Shares shall have the meaning given to those terms in your Employment Agreement.

3. If you decide to exercise this option and thus purchase shares, you will be required to submit a completed Option Exercise and Stock Purchase Agreement in the Company's then current form (the "Option Exercise and Stock Purchase Agreement"), together with payment for the shares. You may pay for the shares (plus any associated withholding taxes) using cash, a check, a wire transfer or any

other form of payment listed in section 6.4(c) of the Plan and permitted by the Administrator at the time you wish to exercise. Shares available under your option grant must be purchased, if at all, no later than the Expiration Date.

4. As you know, the shares of the Company have not been registered with the Securities and Exchange Commission, and are not publicly traded. In accepting your option grant, you agree that your rights to purchase or resell the option shares are expressly conditioned upon compliance with applicable U.S. federal and state securities laws, and agree to cooperate with the Company to achieve compliance with those laws.

5. Shares you purchase upon exercise of an option shall be subject to the rights, privileges and restrictions set forth in the Plan, your Employment Agreement, the Amended and Restated Investor Rights Agreement dated as of February 18, 2004 by and among the company, you and other parties identified therein, the Amended and Restated Right of First Refusal and Co-Sale Agreement dated as of February 18, 2004 by and among the Company, you and other parties identified therein, and the Amended and Restated Voting Agreement dated as of February 18, 2004 by and among the Company, you and other parties identified therein, as each may be amended from time to time in accordance with its terms.

We value your efforts and look forward to your continued contribution.

Sincerely,

[Authorized Signatory]
[Title]

I accept this Restated Grant as a partial replacement of the Original Grant [Grant Number] and agree to the terms of this letter and the plan.

_____ _____, 2007
Optionee signature effective as of February 18, 2004

[NEW FORM OF GRANT NOTICE - NON-EXECUTIVE EMPLOYEES AND DIRECTORS]

[Date]

«First» «Last»
«Street»
«City»

Re: Grant of Stock Option

Option Shares:	«Shares»	Grant Date:	(Date)
Price per share:	$____*	Vesting Start Date:	«Vest_Date»
		Fully-Vested Date:	«Fully_Vested_Date»
Option No.:	«Opt_No»	Expiration Date:	(Date)

Dear «First»,

I am pleased to confirm that Jazz Pharmaceuticals, Inc. (the "Company") has granted you an option to purchase shares of our common stock under the 2003 Equity Incentive Plan. To accept your stock option, please sign the enclosed copy of this letter and return it in the envelope provided.

1. Your option is intended to be an incentive stock option. The basic terms of your option grant are identified in the information block at the top of this offer letter, but other important terms and conditions are described in the plan. We encourage you to carefully review the plan, a copy of which is enclosed.

2. Subject to the plan, your option vests (becomes exercisable) as follows:

25% on the Vesting Start Date set forth above, and 1/48th per month thereafter so that all shares will become purchasable on the Fully-Vested Date shown above.

3. If (a) there is of a Change of Control (defined below) of the Company and (b) your employment with the Company is terminated by the Company, other than for Cause (defined below), within twelve months after such Change of Control, then the vesting of this option shall be immediately accelerated such that 25% of the shares covered by this option (or if less than 25% of the shares covered by this option then remain unvested, all such remaining unvested shares) will vest on your last day of employment with the Company. For purposes of this option grant, "Change of Control" means (a) the sale, lease, assignment, transfer, conveyance or disposal of all or substantially all of the assets of the Company, or (b) the acquisition of the Company by another entity by means of a consolidation, reorganization, merger or other similar transaction or series of related transactions, in each case excluding (i) any such transaction in which the stockholders of the Company immediately prior to the transaction own more than 50% of the voting power of the acquiror (or parent thereof) immediately after such transaction and (ii) any transaction determined by the Board of Directors of the Company in good faith to be primarily for capital raising purposes. "Cause" means (a) your willful misconduct or gross negligence in the performance of your duties; (b) your conviction or plea of guilt or nolo contendere to any felony or crime involving moral turpitude; or (c) your continued failure to perform your duties to the Company.

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* The exercise price per share of this option is intended by the Board of Directors to be the fair market value of the Company's common stock at the Grant Date. The Board has attempted in good faith to set the exercise price of this option at the fair market value of the common stock, determined in compliance with applicable tax laws, though there can be no certainty that the IRS will agree. If the IRS does not agree and asserts the fair market value of the common stock at the Grant Date less than the exercise price per share, the IRS could seek to impose taxes, costs or penalties on you under Internal Revenue Code Section 409A. While the Company thinks this is an unlikely event, the Company cannot provide absolute assurance and you may want to consult your tax adviser with any questions. By accepting this stock option, you agree that none of the Company nor its officers or directors will be liable to you if the IRS were to impose any taxes, penalties or interest.

4. If you decide to purchase shares under this option, you will be required to submit a completed exercise agreement on a form approved by the Company, together with payment for the shares. You may pay for the shares (plus any associated withholding taxes) using cash, a check, a wire transfer or any other form of payment listed in section 6.4(c) of the plan and permitted by the Administrator at the time you wish to exercise. Shares available under this option must be purchased, if at all, no later than the Expiration Date.

5. As you know, the shares of the Company have not been registered with the Securities and Exchange Commission, and are not publicly traded. In accepting this option, you agree that your rights to purchase or resell the option shares are expressly conditioned upon compliance with applicable U.S. federal and state securities laws, and agree to cooperate with the Company to achieve compliance with those laws.

6. Shares you purchase under this option are subject to a right of first refusal in favor of the Company, as set out in Section 3 of the Company's Option Exercise and Stock Purchase Agreement. Shares you purchase under this option may also be subject to other restrictions, including escrow and market standoff requirements. Those rights and restrictions are set forth in Sections 6 and 15 of the Plan and Section 2 of the Company's Option Exercise and Stock Purchase Agreement.

We value your efforts and look forward to your continued contribution.

Sincerely,

[Authorized Signatory]
[Title]

I accept this option and agree to the terms of this offer letter and the plan.

_____ _____, 2007
Optionee signature Date

[NEW FORM OF GRANT NOTICE - EXECUTIVE OFFICERS]

[Date]

«First» «Last»
«Street»
«City»

Re: Grant of Stock Option

Option Shares:	«Shares»	Grant Date:	(Date)
Price per share:	$____*	Vesting Start Date:	«Vest_Date»
		Fully-Vested Date:	«Fully_Vested_Date»
Option No.:	«Opt_No»	Expiration Date:	(Date)

Dear «First»,

I am pleased to confirm that Jazz Pharmaceuticals, Inc. (the "Company") has granted you an option to purchase shares of our common stock under the 2003 Equity Incentive Plan. To accept your stock option, please sign the enclosed copy of this letter and return it in the envelope provided.

1. Your option is intended to be [a nonstatutory] [an incentive] stock option[;provided, however, that to the extent this option exceeds the annual limits for incentive stock options, this option will be a nonstatutory stock option]. The basic terms of your option grant are identified in the information block at the top of this offer letter, but other important terms and conditions are described in the plan. We encourage you to carefully review the plan, a copy of which is enclosed.

2. Subject to the plan, your option vests (becomes exercisable) as follows:

[Vesting Schedule]

All shares will become purchasable by the Fully-Vested Date shown above.

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* The exercise price per share of this option is intended by the Board of Directors to be the fair market value of the Company's common stock at the Grant Date. The Board has attempted in good faith to set the exercise price of this option at the fair market value of the common stock, determined in compliance with applicable tax laws, though there can be no certainty that the IRS will agree. If the IRS does not agree and asserts the fair market value of the common stock at the Grant Date less than the exercise price per share, the IRS could seek to impose taxes, costs or penalties on you under Internal Revenue Code Section 409A. While the Company thinks this is an unlikely event, the Company cannot provide absolute assurance and you may want to consult your tax adviser with any questions. By accepting this stock option, you agree that none of the Company nor its officers or directors will be liable to you if the IRS were to impose any taxes, penalties or interest.

3. Shares you purchase upon exercise of this option will be subject to the rights, privileges and restrictions (including the provisions providing for the acceleration of the vesting of stock options under certain circumstances) set forth in the Plan and in your Employment Agreement with the Company dated February 18, 2004, as it may be amended from time to time in accordance with its terms.

4. If you decide to purchase shares under this option, you will be required to submit a completed exercise agreement on a form approved by the Company, together with payment for the shares. You may pay for the shares (plus any associated withholding taxes) using cash, a check, a wire transfer or any other form of payment listed in section 6.4(c) of the plan and permitted by the Administrator at the time you wish to exercise. Shares available under this option must be purchased, if at all, no later than the Expiration Date.

5. As you know, the shares of the Company have not been registered with the Securities and Exchange Commission, and are not publicly traded. In accepting this option, you agree that your rights to purchase or resell the option shares are expressly conditioned upon compliance with applicable U.S. federal and state securities laws, and agree to cooperate with the Company to achieve compliance with those laws.

6. Shares you purchase under this option are subject to a right of first refusal in favor of the Company, as set out in Section 3 of the Company's Option Exercise and Stock Purchase Agreement, to the extent those provisions are not superseded by your Employment Agreement. Shares you purchase under this option may also be subject to other restrictions, including escrow and market standoff requirements. Those rights and restrictions are set forth in Sections 6 and 15 of the Plan and Section 2 of the Company's Option Exercise and Stock Purchase Agreement.

We value your efforts and look forward to your continued contribution.

Sincerely,

[Authorized Signatory]
[Title]

I accept this option and agree to the terms of this offer letter and the plan.

_____ _____, 2007
Optionee signature Date

JAZZ PHARMACEUTICALS, INC.
2007 EQUITY INCENTIVE PLAN

APPROVED BY THE BOARD: MAY 1, 2007
APPROVED BY THE STOCKHOLDERS: MAY 9, 2007
TERMINATION DATE: APRIL 30, 2017

1. GENERAL.

(a) Successor and Continuation of Prior Plan. The Plan is intended as the successor to and continuation of the Company's 2003 Equity Incentive Plan (the "***Prior Plan***"). Following the Effective Date, no additional stock awards shall be granted under the Prior Plan. Any shares remaining available for issuance pursuant to the exercise of options or settlement of stock awards under the Prior Plan shall become available for issuance pursuant to Stock Awards granted hereunder. Any shares subject to outstanding stock awards granted under the Prior Plan that expire or terminate for any reason prior to exercise or settlement shall become available for issuance pursuant to Stock Awards granted hereunder. On the Effective Date, all outstanding stock awards granted under the Prior Plan shall be deemed to be stock awards granted pursuant to the Plan, but shall remain subject to the terms of the Prior Plan with respect to which they were originally granted. All Stock Awards granted subsequent to the effective date of this Plan shall be subject to the terms of this Plan.

(b) Eligible Stock Award Recipients. The persons eligible to receive Stock Awards are Employees, Directors and Consultants.

(c) Available Stock Awards. The Plan provides for the grant of the following Stock Awards: (i) Incentive Stock Options, (ii) Nonstatutory Stock Options, (iii) Restricted Stock Awards, (iv) Restricted Stock Unit Awards, (v) Stock Appreciation Rights, (vi) Performance Stock Awards, and (vii) Other Stock Awards.

(d) Purpose. The Company, by means of the Plan, seeks to secure and retain the services of the group of persons eligible to receive Stock Awards as set forth in Section 1(b), to provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate, and to provide a means by which such eligible recipients may be given an opportunity to benefit from increases in value of the Common Stock through the granting of Stock Awards.

2. ADMINISTRATION.

(a) Administration by Board. The Board shall administer the Plan unless and until the Board delegates administration of the Plan to a Committee or Committees, as provided in Section 2(c).

(b) Powers of Board. The Board shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine from time to time (A) which of the persons eligible under the Plan shall be granted Stock Awards; (B) when and how each Stock Award shall be granted; (C) what type or combination of types of Stock Award shall be granted; (D) the provisions of each Stock Award granted (which need not be identical), including the time or times when a person shall be permitted to receive cash or Common Stock pursuant to a Stock Award; and (E) the number of shares of Common Stock with respect to which a Stock Award shall be granted to each such person.

(ii) To construe and interpret the Plan and Stock Awards granted under it, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Stock Award Agreement, in a manner and to the extent it shall deem necessary or expedient to make the Plan or Stock Award fully effective.

(iii) To settle all controversies regarding the Plan and Stock Awards granted under it.

(iv) To accelerate the time at which a Stock Award may first be exercised or the time during which a Stock Award or any part thereof will vest in accordance with the Plan, notwithstanding the provisions in the Stock Award stating the time at which it may first be exercised or the time during which it will vest.

(v) To effect, at any time and from time to time, with the consent of any adversely affected Participant, (1) the reduction of the exercise price of any outstanding Option or the strike price of any outstanding Stock Appreciation Right; (2) the cancellation of any outstanding Option or Stock Appreciation Right and the grant in substitution therefor of (a) a new Option or Stock Appreciation Right under the Plan or another equity plan of the Company covering the same or different number of shares of Common Stock, (b) a Restricted Stock Award, (c) a Restricted Stock Unit Award, (d) an Other Stock Award, (e) cash, and/or (f) other valuable consideration as determined by the Board in its sole discretion; or (3) any other action that is treated as a repricing under generally accepted accounting principles.

(vi) To suspend or terminate the Plan at any time. Suspension or termination of the Plan shall not impair rights and obligations under any Stock Award granted while the Plan is in effect except with the written consent of the affected Participant.

(vii) To amend the Plan in any respect the Board deems necessary or advisable, including, without limitation, relating to Incentive Stock Options and certain nonqualified deferred compensation under Section 409A of the Code and/or to bring the Plan or Stock Awards granted under the Plan into compliance therewith, subject to the limitations, if any, of applicable law. However, except as provided in Section 9(a) relating to Capitalization Adjustments, stockholder approval shall be required for any amendment of the Plan that either (i) materially increases the number of shares of Common Stock available for issuance under the Plan, (ii) materially expands the class of individuals eligible to receive Stock Awards under the Plan, (iii) materially increases the benefits accruing to Participants under the Plan or materially reduces the price at which shares of Common Stock may be issued or purchased under the Plan, (iv) materially extends the term of the Plan, or (v) expands the types of Stock Awards available for

issuance under the Plan, but in each of (i) through (v) only to the extent required by applicable law or listing requirements. Except as provided above, rights under any Stock Award granted before amendment of the Plan shall not be impaired by any amendment of the Plan unless (i) the Company requests the consent of the affected Participant, and (ii) such Participant consents in writing.

(viii) To submit any amendment to the Plan for stockholder approval, including, but not limited to, amendments to the Plan intended to satisfy the requirements of (i) Section 162(m) of the Code and the regulations thereunder regarding the exclusion of performance-based compensation from the limit on corporate deductibility of compensation paid to Covered Employees, (ii) Section 422 of the Code regarding Incentive Stock Options, or (iii) Rule 16b-3.

(ix) To approve forms of Stock Award Agreements for use under the Plan and to amend the terms of any one or more Stock Awards, including, but not limited to, amendments to provide terms more favorable than previously provided in the Stock Award Agreement, subject to any specified limits in the Plan that are not subject to Board discretion; *provided however,* that, the rights under any Stock Award shall not be impaired by any such amendment unless (i) the Company requests the consent of the affected Participant, and (ii) such Participant consents in writing. Notwithstanding the foregoing, subject to the limitations of applicable law, if any, the Board may amend the terms of any one or more Stock Awards without the affected Participant's consent if necessary to maintain the qualified status of the Stock Award as an Incentive Stock Option or to bring the Stock Award into compliance with Section 409A of the Code and the related guidance thereunder.

(x) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan or Stock Awards.

(xi) To adopt such procedures and sub-plans as are necessary or appropriate to permit participation in the Plan by Employees, Directors or Consultants who are foreign nationals or employed outside the United States.

(c) Delegation to Committee.

(i) General. The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration is delegated to a Committee, the Committee shall have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to a subcommittee of the Committee any of the administrative powers the Committee is authorized to exercise (and references in the Plan to the Board shall thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. The Board may retain the authority to concurrently administer the Plan with the Committee and may, at any time, revest in the Board some or all of the powers previously delegated.

(ii) Section 162(m) and Rule 16b-3 Compliance. In the sole discretion of the Board, the Committee may consist solely of two or more Outside Directors, in accordance

with Section 162(m) of the Code, or solely of two or more Non-Employee Directors, in accordance with Rule 16b-3. In addition, the Board or the Committee, in its sole discretion, may (A) delegate to a Committee who need not be Outside Directors the authority to grant Stock Awards to eligible persons who are either (I) not then Covered Employees and are not expected to be Covered Employees at the time of recognition of income resulting from such Stock Award, or (II) not persons with respect to whom the Company wishes to comply with Section 162(m) of the Code, or (B) delegate to a Committee who need not be Non-Employee Directors the authority to grant Stock Awards to eligible persons who are not then subject to Section 16 of the Exchange Act.

(d) Delegation to Officers. The Board may delegate to one or more Officers the authority to do one or both of the following (i) designate Officers and Employees of the Company or any of its Subsidiaries to be recipients of Options (and, to the extent permitted by Delaware law, other Stock Awards) and the terms thereof, and (ii) determine the number of shares of Common Stock to be subject to such Stock Awards granted to such Officers and Employees; *provided, however,* that the Board resolutions regarding such delegation shall specify the total number of shares of Common Stock that may be subject to the Stock Awards granted by such Officers and that such Officer may not grant a Stock Award to himself or herself. Notwithstanding anything to the contrary in this Section 2(d), the Board may not delegate to an Officer authority to determine the Fair Market Value of the Common Stock pursuant to Section 13(u)(iii) below.

(e) Effect of Board's Decision. All determinations, interpretations and constructions made by the Board in good faith shall not be subject to review by any person and shall be final, binding and conclusive on all persons.

3. SHARES SUBJECT TO THE PLAN.

(a) Share Reserve. Subject to the provisions of Section 9(a) relating to Capitalization Adjustments, the aggregate number of shares of Common Stock that may be issued pursuant to Stock Awards under the Plan shall not exceed four million six hundred twenty-five thousand forty-two (4,625,042) shares, subject to reduction as set forth below. Such share reserve consists of (i) the two million one hundred twenty-five thousand forty-two (2,125,042) shares reserved for issuance under the Prior Plan, plus (ii) an additional two million five hundred thousand (2,500,000) shares reserved for issuance under the Plan, but such aggregate number shall be reduced by any unused shares of Common Stock remaining available on the Effective Date for the future grant of stock awards under the Prior Plan. In addition, the number of shares of Common Stock available for issuance under the Plan shall automatically increase on January 1st of each year commencing in 2008 and ending on (and including) January 1, 2017, in an amount equal to the lesser of (i) four and one-half percent (4.5%) of the total number of shares of Common Stock outstanding on December 31st of the preceding calendar year, or (ii) the number of shares of stock (not to exceed three million (3,000,000) shares) determined by the Board of Directors. Notwithstanding the foregoing, the Board may act prior to the first day of any calendar year, to provide that there shall be no increase in the share reserve for such calendar year or that the increase in the share reserve for such calendar year shall be a lesser number of shares of Common Stock than would otherwise occur pursuant to the preceding sentence. Shares may be issued in connection with a merger or acquisition as permitted by Nasdaq Rule

4350(i)(1)(A)(iii) or, if applicable, NYSE Listed Company Manual Section 303A.08, or AMEX Company Guide Section 711 and such issuance shall not reduce the number of shares available for issuance under the Plan.

(b) Reversion of Shares to the Share Reserve. If any (i) Stock Award shall for any reason expire or otherwise terminate, in whole or in part, without having been exercised in full, (ii) shares of Common Stock issued to a Participant pursuant to a Stock Award are forfeited back to or repurchased by the Company because of the failure to meet a contingency or condition required for the vesting of such shares, (iii) a Stock Award is settled in cash, (iv) if any shares of Common Stock are cancelled in accordance with the cancellation and regrant provisions of Section 3(b)(v), then the shares of Common Stock not issued under such Stock Award, or forfeited to or repurchased by the Company, shall revert to and again become available for issuance under the Plan. If any shares subject to a Stock Award are not delivered to a Participant because such shares are withheld for the payment of taxes or the Stock Award is exercised through a reduction of shares subject to the Stock Award (i.e., "net exercised") or an appreciation distribution in respect of a Stock Appreciation right is paid in shares of Common Stock, the number of shares subject to the Stock Award that are not delivered to the Participant shall remain available for subsequent issuance under the Plan. If the exercise price of any Stock Award is satisfied by tendering shares of Common Stock held by the Participant (either by actual delivery or attestation), then the number of shares so tendered shall remain available for issuance under the Plan.

(c) Incentive Stock Option Limit. Notwithstanding anything to the contrary in this Section 3(c), subject to the provisions of Section 9(a) relating to Capitalization Adjustments the aggregate maximum number of shares of Common Stock that may be issued pursuant to the exercise of Incentive Stock Options shall be four million six hundred twenty-five thousand forty-two (4,625,042) shares of Common Stock plus the amount of any increase in the number of shares that may be available for issuance pursuant to Stock Awards pursuant to Section 3(a).

(d) Source of Shares. The stock issuable under the Plan shall be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market.

4. ELIGIBILITY.

(a) Eligibility for Specific Stock Awards. Incentive Stock Options may be granted only to employees of the Company or a "parent corporation" or "subsidiary corporation" thereof (as such terms are defined in Sections 424(e) and 424(f) of the Code). Stock Awards other than Incentive Stock Options may be granted to Employees, Directors and Consultants.

(b) Ten Percent Stockholders. A Ten Percent Stockholder shall not be granted an Incentive Stock Option unless the exercise price of such Option is at least one hundred ten percent (110%) of the Fair Market Value of the Common Stock on the date of grant and the Option is not exercisable after the expiration of five (5) years from the date of grant.

(c) Section 162(m) Limitation. Subject to the provisions of Section 9(a) relating to Capitalization Adjustments, at such time as the Company may be subject to the applicable

provisions of Section 162(m) of the Code, no Employee shall be eligible to be granted during any calendar year Stock Awards whose value is determined by reference to an increase over an exercise or strike price of at least one hundred percent (100%) of the Fair Market Value of the Common Stock on the date the Stock Award is granted covering more than two million (2,000,000) shares of Common Stock.

(d) Consultants. A Consultant shall be eligible for the grant of a Stock Award only if, at the time of grant, a Form S-8 Registration Statement under the Securities Act ("***Form S-8***") is available to register either the offer or the sale of the Company's securities to such Consultant.

5. OPTION PROVISIONS.

Each Option shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. All Options shall be separately designated Incentive Stock Options or Nonstatutory Stock Options at the time of grant, and, if certificates are issued, a separate certificate or certificates shall be issued for shares of Common Stock purchased on exercise of each type of Option. If an Option is not specifically designated as an Incentive Stock Option, then the Option shall be a Nonstatutory Stock Option. The provisions of separate Options need not be identical; *provided, however*, that each Option Agreement shall conform to (through incorporation of provisions hereof by reference in the Option Agreement or otherwise) the substance of each of the following provisions:

(a) Term. Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, no Option shall be exercisable after the expiration of ten (10) years from the date of its grant or such shorter period specified in the Option Agreement.

(b) Exercise Price. Subject to the provisions of Section 4(b) regarding Ten Percent Stockholders, the exercise price of each Option shall be not less than one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Option on the date the Option is granted. Notwithstanding the foregoing, an Option may be granted with an exercise price lower than one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Option if such Option is granted pursuant to an assumption or substitution for another option in a manner consistent with the provisions of Section 424(a) of the Code (whether or not such options are Incentive Stock Options).

(c) Consideration. The purchase price of Common Stock acquired pursuant to the exercise of an Option shall be paid, to the extent permitted by applicable law and as determined by the Board in its sole discretion, by any combination of the methods of payment set forth below. The Board shall have the authority to grant Options that do not permit all of the following methods of payment (or otherwise restrict the ability to use certain methods) and to grant Options that require the consent of the Company to utilize a particular method of payment. The methods of payment permitted by this Section 5(c) are:

(i) by cash, check, bank draft or money order payable to the Company;

(ii) pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of the stock subject to the Option, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds;

(iii) by delivery to the Company (either by actual delivery or attestation) of shares of Common Stock;

(iv) by a "net exercise" arrangement pursuant to which the Company will reduce the number of shares of Common Stock issuable upon exercise by the largest whole number of shares with a Fair Market Value that does not exceed the aggregate exercise price; *provided, however,* the Company shall accept a cash or other payment from the Participant to the extent of any remaining balance of the aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued; *provided, further,* that shares of Common Stock will no longer be subject to an Option and will not be exercisable thereafter to the extent that (A) shares issuable upon exercise are reduced to pay the exercise price pursuant to the "net exercise," (B) shares are delivered to the Participant as a result of such exercise, and (C) shares are withheld to satisfy tax withholding obligations; or

(v) in any other form of legal consideration that may be acceptable to the Board in its sole discretion and permissible under applicable law.

(d) Transferability of Options. The Board may, in its sole discretion, impose such limitations on the transferability of Options as the Board shall determine. In the absence of such a determination by the Board to the contrary, the following restrictions on the transferability of Options shall apply:

(i) Restrictions on Transfer. An Option shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable during the lifetime of the Optionholder only by the Optionholder; *provided, however*, that the Board may, in its sole discretion, permit transfer of the Option in a manner that is not prohibited by applicable tax and securities laws upon the Optionholder's request.

(ii) Domestic Relations Orders. Notwithstanding the foregoing, an Option may be transferred pursuant to a domestic relations order, *provided, however,* that if an Option is an Incentive Stock Option, such Option may be deemed to be a Nonstatutory Stock Option as a result of such transfer.

(iii) Beneficiary Designation. Notwithstanding the foregoing, the Optionholder may, by delivering written notice to the Company, in a form provided by or otherwise satisfactory to the Company and any broker designated by the Company to effect Option exercises, designate a third party who, in the event of the death of the Optionholder, shall thereafter be entitled to exercise the Option. In the absence of such a designation, the executor or administrator of the Optionholder's estate shall be entitled to exercise the Option.

(e) Vesting of Options Generally. The total number of shares of Common Stock subject to an Option may vest and therefore become exercisable in periodic installments that may or may not be equal. The Option may be subject to such other terms and conditions on the time or times when it may or may not be exercised (which may be based on the satisfaction of Performance Goals or other criteria) as the Board may deem appropriate. The vesting provisions

of individual Options may vary. The provisions of this Section 5(e) are subject to any Option provisions governing the minimum number of shares of Common Stock as to which an Option may be exercised.

(f) Termination of Continuous Service. In the event that an Optionholder's Continuous Service terminates (other than upon the Optionholder's death or Disability), the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise such Option as of the date of termination of Continuous Service) but only within such period of time ending on the earlier of (i) the date three (3) months following the termination of the Optionholder's Continuous Service (or such longer or shorter period specified in the Option Agreement), or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination of Continuous Service, the Optionholder does not exercise his or her Option within the time specified herein or in the Option Agreement (as applicable), the Option shall terminate.

(g) Extension of Termination Date. An Optionholder's Option Agreement may provide that if the exercise of the Option following the termination of the Optionholder's Continuous Service (other than upon the Optionholder's death or Disability) would be prohibited at any time solely because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act, then the Option shall terminate on the earlier of (i) the expiration of a period of three (3) months after the termination of the Optionholder's Continuous Service during which the exercise of the Option would not be in violation of such registration requirements, or (ii) the expiration of the term of the Option as set forth in the Option Agreement.

(h) Disability of Optionholder. In the event that an Optionholder's Continuous Service terminates as a result of the Optionholder's Disability, the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise such Option as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (i) the date twelve (12) months following such termination of Continuous Service (or such longer or shorter period specified in the Option Agreement), or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination of Continuous Service, the Optionholder does not exercise his or her Option within the time specified herein or in the Option Agreement (as applicable), the Option shall terminate.

(i) Death of Optionholder. In the event that (i) an Optionholder's Continuous Service terminates as a result of the Optionholder's death, or (ii) the Optionholder dies within the period (if any) specified in the Option Agreement after the termination of the Optionholder's Continuous Service for a reason other than death, then the Option may be exercised (to the extent the Optionholder was entitled to exercise such Option as of the date of death) by the Optionholder's estate, by a person who acquired the right to exercise the Option by bequest or inheritance or by a person designated to exercise the option upon the Optionholder's death, but only within the period ending on the earlier of (i) the date eighteen (18) months following the date of death (or such longer or shorter period specified in the Option Agreement), or (ii) the expiration of the term of such Option as set forth in the Option Agreement. If, after the Optionholder's death, the Option is not exercised within the time specified herein or in the Option Agreement (as applicable), the Option shall terminate.

(j) Non-Exempt Employees. No Option granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act shall be first exercisable for any shares of Common Stock until at least six months following the date of grant of the Option. The foregoing provision is intended to operate so that any income derived by a non-exempt employee in connection with the exercise or vesting of an Option will be exempt from his or her regular rate of pay.

6. PROVISIONS OF STOCK AWARDS OTHER THAN OPTIONS.

(a) Restricted Stock Awards. Each Restricted Stock Award Agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. To the extent consistent with the Company's Bylaws, at the Board's election, shares of Common Stock may be (x) held in book entry form subject to the Company's instructions until any restrictions relating to the Restricted Stock Award lapse; or (y) evidenced by a certificate, which certificate shall be held in such form and manner as determined by the Board. The terms and conditions of Restricted Stock Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Award Agreements need not be identical, *provided, however*, that each Restricted Stock Award Agreement shall conform to (through incorporation of the provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

(i) Consideration. A Restricted Stock Award may be awarded in consideration for (A) cash, check, bank draft or money order payable to the Company; (B) past or future services actually or to be rendered to the Company or an Affiliate; or (C) any other form of legal consideration that may be acceptable to the Board in its sole discretion and permissible under applicable law.

(ii) Vesting. Shares of Common Stock awarded under a Restricted Stock Award Agreement may be subject to forfeiture to the Company in accordance with a vesting schedule to be determined by the Board.

(iii) Termination of Participant's Continuous Service. In the event a Participant's Continuous Service terminates, the Company may receive via a forfeiture condition or a repurchase right, any or all of the shares of Common Stock held by the Participant which have not vested as of the date of termination of Continuous Service under the terms of the Restricted Stock Award Agreement.

(iv) Transferability. Rights to acquire shares of Common Stock under the Restricted Stock Award Agreement shall be transferable by the Participant only upon such terms and conditions as are set forth in the Restricted Stock Award Agreement, as the Board shall determine in its sole discretion, so long as Common Stock awarded under the Restricted Stock Award Agreement remains subject to the terms of the Restricted Stock Award Agreement.

(b) Restricted Stock Unit Awards. Each Restricted Stock Unit Award Agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate. The terms and conditions of Restricted Stock Unit Award Agreements may change from time to time, and the terms and conditions of separate Restricted Stock Unit Award

Agreements need not be identical, *provided, however,* that each Restricted Stock Unit Award Agreement shall conform to (through incorporation of the provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

(i) Consideration. At the time of grant of a Restricted Stock Unit Award, the Board will determine the consideration, if any, to be paid by the Participant upon delivery of each share of Common Stock subject to the Restricted Stock Unit Award. The consideration to be paid (if any) by the Participant for each share of Common Stock subject to a Restricted Stock Unit Award may be paid in any form of legal consideration that may be acceptable to the Board in its sole discretion and permissible under applicable law.

(ii) Vesting. At the time of the grant of a Restricted Stock Unit Award, the Board may impose such restrictions or conditions to the vesting of the Restricted Stock Unit Award as it, in its sole discretion, deems appropriate.

(iii) Payment. A Restricted Stock Unit Award may be settled by the delivery of shares of Common Stock, their cash equivalent, any combination thereof or in any other form of consideration, as determined by the Board and contained in the Restricted Stock Unit Award Agreement.

(iv) Additional Restrictions. At the time of the grant of a Restricted Stock Unit Award, the Board, as it deems appropriate, may impose such restrictions or conditions that delay the delivery of the shares of Common Stock (or their cash equivalent) subject to a Restricted Stock Unit Award to a time after the vesting of such Restricted Stock Unit Award.

(v) Dividend Equivalents. Dividend equivalents may be credited in respect of shares of Common Stock covered by a Restricted Stock Unit Award, as determined by the Board and contained in the Restricted Stock Unit Award Agreement. At the sole discretion of the Board, such dividend equivalents may be converted into additional shares of Common Stock covered by the Restricted Stock Unit Award in such manner as determined by the Board. Any additional shares covered by the Restricted Stock Unit Award credited by reason of such dividend equivalents will be subject to all the terms and conditions of the underlying Restricted Stock Unit Award Agreement to which they relate.

(vi) Termination of Participant's Continuous Service. Except as otherwise provided in the applicable Restricted Stock Unit Award Agreement, such portion of the Restricted Stock Unit Award that has not vested will be forfeited upon the Participant's termination of Continuous Service.

(vii) Compliance with Section 409A of the Code. Notwithstanding anything to the contrary set forth herein, any Restricted Stock Unit Award granted under the Plan that is not exempt from the requirements of Section 409A of the Code shall incorporate terms and conditions necessary to avoid the consequences of Section 409A(a)(1) of the Code. Such restrictions, if any, shall be determined by the Board and contained in the Restricted Stock Unit Award Agreement evidencing such Restricted Stock Unit Award.

(c) Stock Appreciation Rights. Each Stock Appreciation Right Agreement shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate.

Stock Appreciation Rights may be granted as stand-alone Stock Awards or in tandem with other Stock Awards. The terms and conditions of Stock Appreciation Right Agreements may change from time to time, and the terms and conditions of separate Stock Appreciation Right Agreements need not be identical; *provided, however*, that each Stock Appreciation Right Agreement shall conform to (through incorporation of the provisions hereof by reference in the agreement or otherwise) the substance of each of the following provisions:

(i) Term. No Stock Appreciation Right shall be exercisable after the expiration of ten (10) years from the date of its grant or such shorter period specified in the Stock Appreciation Right Agreement.

(ii) Strike Price. Each Stock Appreciation Right will be denominated in shares of Common Stock equivalents. The strike price of each Stock Appreciation Right shall not be less than one hundred percent (100%) of the Fair Market Value of the Common Stock equivalents subject to the Stock Appreciation Right on the date of grant.

(iii) Calculation of Appreciation. The appreciation distribution payable on the exercise of a Stock Appreciation Right will be not greater than an amount equal to the excess of (A) the aggregate Fair Market Value (on the date of the exercise of the Stock Appreciation Right) of a number of shares of Common Stock equal to the number of share of Common Stock equivalents in which the Participant is vested under such Stock Appreciation Right, and with respect to which the Participant is exercising the Stock Appreciation Right on such date, over (B) the strike price.

(iv) Vesting. At the time of the grant of a Stock Appreciation Right, the Board may impose such restrictions or conditions to the vesting of such Stock Appreciation Right as it, in its sole discretion, deems appropriate.

(v) Exercise. To exercise any outstanding Stock Appreciation Right, the Participant must provide written notice of exercise to the Company in compliance with the provisions of the Stock Appreciation Right Agreement evidencing such Stock Appreciation Right.

(vi) Payment. The appreciation distribution in respect of a Stock Appreciation Right may be paid in Common Stock, in cash, in any combination of the two or in any other form of consideration, as determined by the Board and set forth in the Stock Appreciation Right Agreement evidencing such Stock Appreciation Right.

(vii) Termination of Continuous Service. In the event that a Participant's Continuous Service terminates, the Participant may exercise his or her Stock Appreciation Right (to the extent that the Participant was entitled to exercise such Stock Appreciation Right as of the date of termination of Continuous Service) but only within such period of time ending on the earlier of (A) the date three (3) months following the termination of the Participant's Continuous Service (or such longer or shorter period specified in the Stock Appreciation Right Agreement), or (B) the expiration of the term of the Stock Appreciation Right as set forth in the Stock Appreciation Right Agreement. If, after termination of Continuous Service, the Participant does not exercise his or her Stock Appreciation Right within the time specified herein or in the Stock Appreciation Right Agreement (as applicable), the Stock Appreciation Right shall terminate.

(viii) Compliance with Section 409A of the Code. Notwithstanding anything to the contrary set forth herein, any Stock Appreciation Rights granted under the Plan that are not exempt from the requirements of Section 409A of the Code shall incorporate terms and conditions necessary to avoid the consequences described in Section 409A(a)(1) of the Code. Such restrictions, if any, shall be determined by the Board and contained in the Stock Appreciation Right Agreement evidencing such Stock Appreciation Right.

(d) Performance Stock Awards. A Performance Stock Award is either a Restricted Stock Award or Restricted Stock Unit Award that may be granted or may vest based upon the attainment during a Performance Period of certain Performance Goals. A Performance Stock Award may, but need not, require the completion of a specified period of Continuous Service. The length of any Performance Period, the Performance Goals to be achieved during the Performance Period, and the measure of whether and to what degree such Performance Goals have been attained shall be conclusively determined by the Committee in its sole discretion. The maximum benefit to be received by any Participant in a calendar year attributable to Performance Stock Awards described in this Section 6(d) shall not exceed the value of two million (2,000,000) shares of Common Stock. In addition, to the extent permitted by applicable law and the applicable Award Agreement, the Board may determine that cash may be used in payment of Performance Stock Awards.

(e) Other Stock Awards. Other forms of Stock Awards valued in whole or in part by reference to, or otherwise based on, Common Stock may be granted either alone or in addition to Stock Awards provided for under Section 5 and the preceding provisions of this Section 6. Subject to the provisions of the Plan, the Board shall have sole and complete authority to determine the persons to whom and the time or times at which such Other Stock Awards will be granted, the number of shares of Common Stock (or the cash equivalent thereof) to be granted pursuant to such Other Stock Awards and all other terms and conditions of such Other Stock Awards.

7. COVENANTS OF THE COMPANY.

(a) Availability of Shares. During the terms of the Stock Awards, the Company shall keep available at all times the number of shares of Common Stock required to satisfy such Stock Awards.

(b) Securities Law Compliance. The Company shall seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Stock Awards and to issue and sell shares of Common Stock upon exercise of the Stock Awards; *provided, however,* that this undertaking shall not require the Company to register under the Securities Act the Plan, any Stock Award or any Common Stock issued or issuable pursuant to any such Stock Award. If, after reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary for the lawful issuance and sale of Common Stock under the Plan, the Company shall be relieved from any liability for failure to issue and sell Common Stock upon exercise of such Stock Awards unless and until such authority is obtained.

(c) No Obligation to Notify. The Company shall have no duty or obligation to any holder of a Stock Award to advise such holder as to the time or manner of exercising such Stock Award. Furthermore, the Company shall have no duty or obligation to warn or otherwise advise such holder of a pending termination or expiration of a Stock Award or a possible period in which the Stock Award may not be exercised. The Company has no duty or obligation to minimize the tax consequences of a Stock Award to the holder of such Stock Award.

8. MISCELLANEOUS.

(a) Use of Proceeds. Proceeds from the sale of shares of Common Stock pursuant to Stock Awards shall constitute general funds of the Company.

(b) Corporate Action Constituting Grant of Stock Awards. Corporate action constituting a grant by the Company of a Stock Award to any Participant shall be deemed completed as of the date of such corporate action, unless otherwise determined by the Board, regardless of when the instrument, certificate, or letter evidencing the Stock Award is communicated to, or actually received or accepted by, the Participant.

(c) Stockholder Rights. No Participant shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to such Stock Award unless and until (i) such Participant has satisfied all requirements for exercise of the Stock Award pursuant to its terms, and (ii) the issuance of the Common Stock pursuant to such exercise has been entered into the books and records of the Company.

(d) No Employment or Other Service Rights. Nothing in the Plan, any Stock Award Agreement or other instrument executed thereunder or in connection with any Stock Award granted pursuant to the Plan shall confer upon any Participant any right to continue to serve the Company or an Affiliate in the capacity in effect at the time the Stock Award was granted or shall affect the right of the Company or an Affiliate to terminate (i) the employment of an Employee with or without notice and with or without cause, (ii) the service of a Consultant pursuant to the terms of such Consultant's agreement with the Company or an Affiliate, or (iii) the service of a Director pursuant to the Bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be.

(e) Incentive Stock Option $100,000 Limitation. To the extent that the aggregate Fair Market Value (determined at the time of grant) of Common Stock with respect to which Incentive Stock Options are exercisable for the first time by any Optionholder during any calendar year (under all plans of the Company and any Affiliates) exceeds one hundred thousand dollars ($100,000), the Options or portions thereof that exceed such limit (according to the order in which they were granted) shall be treated as Nonstatutory Stock Options, notwithstanding any contrary provision of the applicable Option Agreement(s).

(f) Investment Assurances. The Company may require a Participant, as a condition of exercising or acquiring Common Stock under any Stock Award, (i) to give written assurances

satisfactory to the Company as to the Participant's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Stock Award; and (ii) to give written assurances satisfactory to the Company stating that the Participant is acquiring Common Stock subject to the Stock Award for the Participant's own account and not with any present intention of selling or otherwise distributing the Common Stock. The foregoing requirements, and any assurances given pursuant to such requirements, shall be inoperative if (x) the issuance of the shares upon the exercise or acquisition of Common Stock under the Stock Award has been registered under a then currently effective registration statement under the Securities Act, or (y) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the Common Stock.

(g) Withholding Obligations. Unless prohibited by the terms of a Stock Award Agreement, the Company may, in its sole discretion, satisfy any federal, state or local tax withholding obligation relating to a Stock Award by any of the following means (in addition to the Company's right to withhold from any compensation paid to the Participant by the Company) or by a combination of such means: (i) causing the Participant to tender a cash payment; (ii) withholding shares of Common Stock from the shares of Common Stock issued or otherwise issuable to the Participant in connection with the Stock Award; *provided, however*, that no shares of Common Stock are withheld with a value exceeding the minimum amount of tax required to be withheld by law (or such lower amount as may be necessary to avoid classification of the Stock Award as a liability for financial accounting purposes); (iii) withholding cash from a Stock Award settled in cash; (iv) withholding payment from any amounts otherwise payable to the Participant; or (v) by such other method as may be set forth in the Stock Award Agreement.

(h) Electronic Delivery. Any reference herein to a "written" agreement or document shall include any agreement or document delivered electronically or posted on the Company's intranet.

(i) Deferrals. To the extent permitted by applicable law, the Board, in its sole discretion, may determine that the delivery of Common Stock or the payment of cash, upon the exercise, vesting or settlement of all or a portion of any Stock Award may be deferred and may establish programs and procedures for deferral elections to be made by Participants. Deferrals by Participants will be made in accordance with Section 409A of the Code. Consistent with Section 409A of the Code, the Board may provide for distributions while a Participant is still an employee. The Board is authorized to make deferrals of Stock Awards and determine when, and in what annual percentages, Participants may receive payments, including lump sum payments, following the Participant's termination of employment or retirement, and implement such other terms and conditions consistent with the provisions of the Plan and in accordance with applicable law.

(j) Compliance with Section 409A. To the extent that the Board determines that any Stock Award granted under the Plan is subject to Section 409A of the Code, the Stock Award Agreement evidencing such Stock Award shall incorporate the terms and conditions necessary to avoid the consequences described in Section 409A(a)(1) of the Code. To the extent applicable, the Plan and Stock Award Agreements shall be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued or amended after the Effective Date. Notwithstanding any provision of the Plan to the contrary, in the event that following the Effective Date the Board determines that any Stock Award may be subject to Section 409A of the Code and related Department of Treasury guidance (including such Department of Treasury guidance as may be issued after the Effective Date), the Board may adopt such amendments to the Plan and the applicable Stock Award Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Board determines are necessary or appropriate to (1) exempt the Stock Award from Section 409A of the Code and/or preserve the intended tax treatment of the benefits provided with respect to the Stock Award, or (2) comply with the requirements of Section 409A of the Code and related Department of Treasury guidance.

9. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; OTHER CORPORATE EVENTS.

(a) Capitalization Adjustments. In the event of a Capitalization Adjustment, the Board shall appropriately and proportionately adjust: (i) the class(es) and maximum number of securities subject to the Plan pursuant to Section 3(a); (ii) the class(es) and maximum number of securities that may be issued pursuant to the exercise of Incentive Stock Options pursuant to Section 3(c); (iii) the class(es) and maximum number of securities that may be awarded to any person pursuant to Section 4(c) and 6(d); and (iv) the class(es) and number of securities and price per share of stock subject to outstanding Stock Awards. The Board shall make such adjustments, and its determination shall be final, binding and conclusive.

(b) Dissolution or Liquidation. Except as otherwise provided in a Stock Award Agreement, in the event of a dissolution or liquidation of the Company, all outstanding Stock Awards (other than Stock Awards consisting of vested and outstanding shares of Common Stock not subject to a forfeiture condition or the Company's right of repurchase) shall terminate immediately prior to the completion of such dissolution or liquidation, and the shares of Common Stock subject to the Company's repurchase rights may be repurchased by the Company notwithstanding the fact that the holder of such Stock Award is providing Continuous Service, *provided, however,* that the Board may, in its sole discretion, cause some or all Stock Awards to become fully vested, exercisable and/or no longer subject to repurchase or forfeiture (to the extent such Stock Awards have not previously expired or terminated) before the dissolution or liquidation is completed but contingent on its completion.

(c) Corporate Transaction. The following provisions shall apply to Stock Awards in the event of a Corporate Transaction unless otherwise provided in the instrument evidencing the Stock Award or any other written agreement between the Company or any Affiliate and the holder of the Stock Award or unless otherwise expressly provided by the Board at the time of grant of a Stock Award. Except as otherwise stated in the Stock Award Agreement, in the event

of a Corporate Transaction, then, notwithstanding any other provision of the Plan, the Board shall take one or more of the following actions with respect to Stock Awards, contingent upon the closing or completion of the Corporate Transaction:

(i) arrange for the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) to assume or continue the Stock Award or to substitute a similar stock award for the Stock Award (including, but not limited to, an award to acquire the same consideration paid to the stockholders of the Company pursuant to the Corporate Transaction);

(ii) arrange for the assignment of any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to the Stock Award to the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company);

(iii) accelerate the vesting of the Stock Award (and, if applicable, the time at which the Stock Award may be exercised) to a date prior to the effective time of such Corporate Transaction as the Board shall determine (or, if the Board shall not determine such a date, to the date that is five (5) days prior to the effective date of the Corporate Transaction), with such Stock Award terminating if not exercised (if applicable) at or prior to the effective time of the Corporate Transaction;

(iv) arrange for the lapse of any reacquisition or repurchase rights held by the Company with respect to the Stock Award;

(v) cancel or arrange for the cancellation of the Stock Award, to the extent not vested or not exercised prior to the effective time of the Corporate Transaction, in exchange for such cash consideration as the Board, in its sole discretion, may consider appropriate; and

(vi) make a payment, in such form as may be determined by the Board equal to the excess, if any, of (A) the value of the property the holder of the Stock Award would have received upon the exercise of the Stock Award, over (B) any exercise price payable by such holder in connection with such exercise.

The Board need not take the same action with respect to all Stock Awards or with respect to all Participants.

(d) Change in Control. A Stock Award may be subject to additional acceleration of vesting and exercisability upon or after a Change in Control as may be provided in the Stock Award Agreement for such Stock Award or as may be provided in any other written agreement between the Company or any Affiliate and the Participant. A Stock Award may vest as to all or any portion of the shares subject to the Stock Award (i) immediately upon the occurrence of a Change in Control, whether or not such Stock Award is assumed, continued, or substituted by a surviving or acquiring entity in the Change in Control, or (ii) in the event a Participant's Continuous Service is terminated, actually or constructively, within a designated period following the occurrence of a Change in Control. In the absence of such provisions, no such acceleration shall occur.

10. TERMINATION OR SUSPENSION OF THE PLAN.

(a) Plan Term. The Board may suspend or terminate the Plan at any time. Unless terminated sooner, the Plan shall terminate on the day before the tenth (10th) anniversary of the earlier of (i) the date the Plan is adopted by the Board, or (ii) the date the Plan is approved by the stockholders of the Company. No Stock Awards may be granted under the Plan while the Plan is suspended or after it is terminated.

(b) No Impairment of Rights. Suspension or termination of the Plan shall not impair rights and obligations under any Stock Award granted while the Plan is in effect except with the written consent of the affected Participant.

11. EFFECTIVE DATE OF PLAN.

The Plan shall become effective on the IPO Date, but no Stock Award shall be exercised (or, in the case of a Restricted Stock Award, Restricted Stock Unit Award, or Other Stock Award shall be granted) unless and until the Plan has been approved by the Stockholders of the Company, which approval shall be within twelve (12) months before or after the date the Plan is adopted by the Board.

12. CHOICE OF LAW.

The law of the State of Delaware shall govern all questions concerning the construction, validity and interpretation of this Plan, without regard to that state's conflict of laws rules.

13. DEFINITIONS.

As used in the Plan, the following definitions shall apply to the capitalized terms indicated below:

(a) "***Affiliate***" means, at the time of determination, any "parent" or "subsidiary" of the Company as such terms are defined in Rule 405 of the Securities Act. The Board shall have the authority to determine the time or times at which "parent" or "subsidiary" status is determined within the foregoing definition.

(b) "***Board***" means the Board of Directors of the Company.

(c) "***Capitalization Adjustment***" means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Stock Award after the Effective Date without the receipt of consideration by the Company (through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or other transaction not involving the receipt of consideration by the Company). Notwithstanding the foregoing, the conversion of any convertible securities of the Company shall not be treated as a transaction "without the receipt of consideration" by the Company.

(d) "***Cause***" means with respect to a Participant, the occurrence of any of the following events: (i) such Participant's commission of any felony or any crime involving fraud, dishonesty or moral turpitude under the laws of the United States or any state thereof; (ii) such Participant's attempted commission of, or participation in, a fraud or act of dishonesty against the Company; (iii) such Participant's intentional, material violation of any contract or agreement between the Participant and the Company or of any statutory duty owed to the Company; (iv) such Participant's unauthorized use or disclosure of the Company's confidential information or trade secrets; or (v) such Participant's gross misconduct. The determination that a termination of the Participant's Continuous Service is either for Cause or without Cause shall be made by the Company in its sole discretion. Any determination by the Company that the Continuous Service of a Participant was terminated with or without Cause for the purposes of outstanding Stock Awards held by such Participant shall have no effect upon any determination of the rights or obligations of the Company or such Participant for any other purpose.

(e) "***Change in Control***" means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) any Exchange Act Person becomes the Owner, directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control shall not be deemed to occur (A) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other Exchange Act Person from the Company in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities or (B) solely because the level of Ownership held by any Exchange Act Person (the "***Subject Person***") exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control shall be deemed to occur;

(ii) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior thereto do not Own, directly or indirectly, either (A) outstanding voting securities representing more than fifty percent (50%) of the combined outstanding voting power of the surviving Entity in such merger, consolidation or similar transaction or (B) more than fifty percent (50%) of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such transaction;

(iii) the stockholders of the Company approve or the Board approves a plan of complete dissolution or liquidation of the Company, or a complete dissolution or liquidation of the Company shall otherwise occur, except for a liquidation into a parent corporation;

(iv) there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity, more than fifty percent (50%) of the combined voting power of the voting securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition; or

(v) individuals who, on the date the Plan is adopted by the Board, are members of the Board (the "***Incumbent Board***") cease for any reason to constitute at least a majority of the members of the Board; *provided, however,* that if the appointment or election (or nomination for election) of any new Board member was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member shall, for purposes of the Plan, be considered as a member of the Incumbent Board.

For avoidance of doubt, the term Change in Control shall not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company.

Notwithstanding the foregoing or any other provision of the Plan, the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Affiliate and the Participant shall supersede the foregoing definition with respect to Stock Awards subject to such agreement; *provided, however,* that if no definition of Change in Control or any analogous term is set forth in such an individual written agreement, the foregoing definition shall apply.

The Board may, in its sole discretion and without a Participant's consent, amend the definition of "Change in Control" to conform to the definition of "Change in Control" under Section 409A of the Code, and the regulations thereunder.

(f) "***Code***" means the Internal Revenue Code of 1986, as amended.

(g) "***Committee***" means a committee of one (1) or more Directors to whom authority has been delegated by the Board in accordance with Section 2(c).

(h) "***Common Stock***" means the common stock of the Company.

(i) "***Company***" means Jazz Pharmaceuticals, Inc., a Delaware corporation.

(j) "***Consultant***" means any person, including an advisor, who is (i) engaged by the Company or an Affiliate to render consulting or advisory services and is compensated for such services, or (ii) serving as a member of the board of directors of an Affiliate and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, shall not cause a Director to be considered a "Consultant" for purposes of the Plan.

(k) "***Continuous Service***" means that the Participant's service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in the capacity in which the Participant renders service to the Company or an Affiliate as an Employee, Consultant or Director or a change in the entity for which the Participant renders such service, provided that there is no interruption or termination of the Participant's service with the Company or an Affiliate, shall not terminate a Participant's Continuous Service; *provided, however*, if the Entity for which a Participant is rendering services ceases to qualify as an "Affiliate," as determined by the Board in its sole discretion, such Participant's Continuous Service shall be considered to have terminated on the date such Entity ceases to qualify as an Affiliate. To the extent permitted by law, the Board or the chief executive officer of the Company, in that party's sole discretion, may determine whether Continuous Service shall be considered interrupted in the case of: (i) any leave of absence approved by the Board or the chief executive officer of the Company, including sick leave, military leave or any other personal leave; or (ii) transfers between the Company, an Affiliate, or their successors. Notwithstanding the foregoing, a leave of absence shall be treated as Continuous Service for purposes of vesting in a Stock Award only to such extent as may be provided in the Company's leave of absence policy, in the written terms of any leave of absence agreement or policy applicable to the Participant, or as otherwise required by law.

(l) "***Corporate Transaction***" means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) a sale or other disposition of all or substantially all, as determined by the Board in its sole discretion, of the consolidated assets of the Company and its Subsidiaries;

(ii) a sale or other disposition of at least ninety percent (90%) of the outstanding securities of the Company;

(iii) the consummation of a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(iv) the consummation of a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

(m) "***Covered Employee***" means the chief executive officer and the four (4) other highest compensated officers of the Company for whom total compensation is required to be reported to stockholders under the Exchange Act, as determined for purposes of Section 162(m) of the Code.

(n) "***Director***" means a member of the Board.

(o) "***Disability***" means, with respect to a Participant, the inability of such Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, as provided in Section 22(e)(3) and 409A(a)(2)(c)(i) of the Code.

(p) "***Effective Date***" means the effective date of the Plan as set forth in Section 11.

(q) "***Employee***" means any person employed by the Company or an Affiliate. However, service solely as a Director, or payment of a fee for such services, shall not cause a Director to be considered an "Employee" for purposes of the Plan.

(r) "***Entity***" means a corporation, partnership, limited liability company or other entity.

(s) "***Exchange Act***" means the Securities Exchange Act of 1934, as amended.

(t) "***Exchange Act Person***" means any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that "Exchange Act Person" shall not include (i) the Company or any Subsidiary of the Company, (ii) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company, (iii) an underwriter temporarily holding securities pursuant to an offering of such securities, (iv) an Entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company; or (v) any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the Effective Date, is the Owner, directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities.

(u) "***Fair Market Value***" means, as of any date, the value of the Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or traded on the Nasdaq Global Select Market or the Nasdaq Global Market, the Fair Market Value of a share of Common Stock shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange (or the exchange or market with the greatest volume of trading in the Common Stock) on the date of determination, as reported in *The Wall Street Journal* or such other source as the Board deems reliable.

(ii) If the Common Stock is listed or traded on the Nasdaq Capital Market, the Fair Market Value of a share of Common Stock shall be the mean between the bid and asked prices for the Common Stock on the date of determination, as reported in *The Wall Street Journal* or such other source as the Board deems reliable. Unless otherwise provided by the Board, if there is no closing sales price (or closing bid if no sales were reported) for the Common Stock on the date of determination, then the Fair Market Value shall be the mean between the bid and asked prices for the Common Stock on the last preceding date for which such quotation exists.

(iii) In the absence of such markets for the Common Stock, the Fair Market Value shall be determined by the Board in good faith and in a manner that complies with Section 409A of the Code.

(v) "***Incentive Stock Option***" means an Option which qualifies as an "incentive stock option" within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(w) "***IPO Date***" means the date of the underwriting agreement between the Company and the underwriter(s) managing the initial public offering of the Common Stock, pursuant to which the Common Stock is priced for the initial public offering.

(x) "***Non-Employee Director***" means a Director who either (i) is not a current employee or officer of the Company or an Affiliate, does not receive compensation, either directly or indirectly, from the Company or an Affiliate for services rendered as a consultant or in any capacity other than as a Director (except for an amount as to which disclosure would not be required under Item 404(a) of Regulation S-K promulgated pursuant to the Securities Act ("***Regulation S-K***")), does not possess an interest in any other transaction for which disclosure would be required under Item 404(a) of Regulation S-K, and is not engaged in a business relationship for which disclosure would be required pursuant to Item 404(b) of Regulation S-K; or (ii) is otherwise considered a "non-employee director" for purposes of Rule 16b-3.

(y) "***Nonstatutory Stock Option***" means an Option that does not qualify as an Incentive Stock Option.

(z) "***Officer***" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(aa) "***Option***" means an Incentive Stock Option or a Nonstatutory Stock Option to purchase shares of Common Stock granted pursuant to the Plan.

(bb) "***Option Agreement***" means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an Option grant. Each Option Agreement shall be subject to the terms and conditions of the Plan.

(cc) "***Optionholder***" means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(dd) "***Other Stock Award***" means an award based in whole or in part by reference to the Common Stock which is granted pursuant to the terms and conditions of Section 6(d).

(ee) "***Other Stock Award Agreement***" means a written agreement between the Company and a holder of an Other Stock Award evidencing the terms and conditions of an Other Stock Award grant. Each Other Stock Award Agreement shall be subject to the terms and conditions of the Plan.

(ff) "***Outside Director***" means a Director who either (i) is not a current employee of the Company or an "affiliated corporation" (within the meaning of Treasury Regulations

promulgated under Section 162(m) of the Code), is not a former employee of the Company or an "affiliated corporation" who receives compensation for prior services (other than benefits under a tax-qualified retirement plan) during the taxable year, has not been an officer of the Company or an "affiliated corporation," and does not receive remuneration from the Company or an "affiliated corporation," either directly or indirectly, in any capacity other than as a Director, or (ii) is otherwise considered an "outside director" for purposes of Section 162(m) of the Code.

(gg) "***Own***," "***Owned***," "***Owner***," "***Ownership***" A person or Entity shall be deemed to "Own," to have "Owned," to be the "Owner" of, or to have acquired "Ownership" of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

(hh) "***Participant***" means a person to whom a Stock Award is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Stock Award.

(ii) "***Performance Criteria***" means the one or more criteria that the Board shall select for purposes of establishing the Performance Goals for a Performance Period. The Performance Criteria that shall be used to establish such Performance Goals may be based on any one of, or combination of, the following: (i) earnings per share; (ii) earnings before interest, taxes and depreciation; (iii) earnings before interest, taxes, depreciation and amortization (EBITDA); (iv) total stockholder return; (v) return on equity; (vi) return on assets, investment, or capital employed; (vii) operating margin; (viii) gross margin; (ix) operating income; (x) net income (before or after taxes); (xi) net operating income; (xii) net operating income after tax; (xiii) pre- and after-tax income; (xiv) pre-tax profit; (xv) operating cash flow; (xvi) sales or revenue targets; (xvii) orders and revenue; (xviii) increases in revenue or product revenue; (xix) expenses and cost reduction goals; (xx) improvement in or attainment of expense levels; (xxi) improvement in or attainment of working capital levels; (xxii) economic value added (or an equivalent metric); (xxiii) market share; (xxiv) cash flow; (xxv) cash flow per share; (xxvi) share price performance; (xxvii) debt reduction; (xxviii) implementation or completion of projects or processes; (xxix) customer satisfaction; (xxx) stockholders' equity; (xxxi) quality measures; and (xxxii) to the extent that a Stock Award is not intended to comply with Section 162(m) of the Code, other measures of performance selected by the Board. Partial achievement of the specified criteria may result in the payment or vesting corresponding to the degree of achievement as specified in the Stock Award Agreement. The Board shall, in its sole discretion, define the manner of calculating the Performance Criteria it selects to use for such Performance Period.

(jj) "***Performance Goals***" means, for a Performance Period, the one or more goals established by the Board for the Performance Period based upon the satisfaction of the Performance Criteria. Performance Goals may be based on a Company-wide basis, with respect to one or more business units, divisions, Affiliates, or business segments, and in either absolute terms or relative to the performance of one or more comparable companies or the performance of one or more relevant indices. At the time of the grant of any Stock Award, the Board is authorized to determine whether, when calculating the attainment of Performance Goals for a Performance Period: (i) to exclude restructuring and/or other nonrecurring charges; (ii) to exclude exchange rate effects, as applicable, for non-U.S. dollar denominated net sales and operating earnings; (iii) to exclude the effects of changes to generally accepted accounting

standards required by the Financial Accounting Standards Board; (iv) to exclude the effects of any statutory adjustments to corporate tax rates; and (v) to exclude the effects of any "extraordinary items" as determined under generally accepted accounting principles. In addition, the Board retains the discretion to reduce or eliminate the compensation or economic benefit due upon attainment of Performance Goals.

(kk) "***Performance Period***" means one or more periods of time, which may be of varying and overlapping duration, as the Committee may select, over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant's right to and the payment of a Performance Stock Award.

(ll) "***Performance Stock Award***" means an award of shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(d).

(mm) "***Plan***" means this Jazz Pharmaceuticals, Inc. 2007 Equity Incentive Plan.

(nn) "***Prior Plan***" means the Company's 2003 Equity Incentive Plan as in effect immediately prior to the Effective Date.

(oo) "***Restricted Stock Award***" means an award of shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(a).

(pp) "***Restricted Stock Award Agreement***" means a written agreement between the Company and a holder of a Restricted Stock Award evidencing the terms and conditions of a Restricted Stock Award grant. Each Restricted Stock Award Agreement shall be subject to the terms and conditions of the Plan.

(qq) "***Restricted Stock Unit Award***" means a right to receive shares of Common Stock which is granted pursuant to the terms and conditions of Section 6(b).

(rr) "***Restricted Stock Unit Award Agreement***" means a written agreement between the Company and a holder of a Restricted Stock Unit Award evidencing the terms and conditions of a Restricted Stock Unit Award grant. Each Restricted Stock Unit Award Agreement shall be subject to the terms and conditions of the Plan.

(ss) "***Rule 16b-3***" means Rule 16b-3 promulgated under the Exchange Act or any successor to Rule 16b-3, as in effect from time to time.

(tt) "***Securities Act***" means the Securities Act of 1933, as amended.

(uu) "***Stock Appreciation Right***" means a right to receive the appreciation on Common Stock that is granted pursuant to the terms and conditions of Section 6(c).

(vv) "***Stock Appreciation Right Agreement***" means a written agreement between the Company and a holder of a Stock Appreciation Right evidencing the terms and conditions of a Stock Appreciation Right grant. Each Stock Appreciation Right Agreement shall be subject to the terms and conditions of the Plan.

(ww) "***Stock Award***" means any right to receive Common Stock granted under the Plan, including an Option, a Restricted Stock Award, a Restricted Stock Unit Award, a Stock Appreciation Right, a Performance Stock Award, or any Other Stock Award.

(xx) "***Stock Award Agreement***" means a written agreement between the Company and a Participant evidencing the terms and conditions of a Stock Award grant. Each Stock Award Agreement shall be subject to the terms and conditions of the Plan.

(yy) "***Subsidiary***" means, with respect to the Company, (i) any corporation of which more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership, limited liability company or other entity in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%) .

(zz) "***Ten Percent Stockholder***" means a person who Owns (or is deemed to Own pursuant to Section 424(d) of the Code) stock possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or any Affiliate.

JAZZ PHARMACEUTICALS, INC.
2007 NON-EMPLOYEE DIRECTORS STOCK OPTION PLAN

ADOPTED BY THE BOARD OF DIRECTORS: MAY 1, 2007
APPROVED BY THE STOCKHOLDERS: MAY 9, 2007

1. GENERAL.

(a) Eligible Option Recipients. The persons eligible to receive Options are the Non-Employee Directors of the Company.

(b) Purpose. The Company, by means of the Plan, seeks to retain the services of its Non-Employee Directors, to secure and retain the services of new Non-Employee Directors and to provide incentives for such persons to exert maximum efforts for the success of the Company and any Affiliate by giving them an opportunity to benefit from increases in value of the Common Stock through the automatic grant of Nonstatutory Stock Options. The Plan is also intended to provide a source of shares of Common Stock to be used to pay distributions under the Company's Directors Deferred Compensation Plan.

2. ADMINISTRATION.

(a) Administration by Board. The Board shall administer the Plan. The Board may not delegate administration of the Plan.

(b) Powers of Board. The Board shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine the provisions of each Option to the extent not specified in the Plan.

(ii) To construe and interpret the Plan and Options granted under it, and to establish, amend and revoke rules and regulations for its administration. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan or in any Option Agreement, in a manner and to the extent it shall deem necessary or expedient to make the Plan fully effective.

(iii) To amend the Plan or an Option as provided in Section 10.

(iv) To terminate or suspend the Plan as provided in Section 11.

(v) Generally, to exercise such powers and to perform such acts as the Board deems necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the Plan.

(c) Effect of Board's Decision. All determinations, interpretations and constructions made by the Board in good faith shall not be subject to review by any person and shall be final, binding and conclusive on all persons.

3. SHARES SUBJECT TO THE PLAN.

(a) Share Reserve. Subject to the provisions of Section 9(a) relating to Capitalization Adjustments, the aggregate number of shares of Common Stock that may be issued under the Plan shall not exceed two hundred thousand (200,000), plus an automatic annual increase beginning on January 1, 2008 and ending on (and including) January 1, 2017, in an amount equal to the sum of (i) the excess of (A) the number of shares subject to Options granted during the preceding calendar year, over (B) the number of shares added back to the share reserve during the preceding calendar year pursuant to the provisions of Section 3(b), and (ii) the aggregate number of shares credited to the Non-Employee Directors' stock accounts pursuant to the Company's Directors Deferred Compensation Plan; *provided, however,* that such automatic annual increase shall not exceed two hundred thousand (200,000) shares. Notwithstanding the foregoing, the Board may act prior to the first day of any calendar year, to provide that there shall be no increase in the share reserve for such calendar year or that the increase in the share reserve for such calendar year shall be a lesser number of shares of Common Stock than would otherwise occur pursuant to the preceding sentence.

(b) Reversion of Shares to the Share Reserve. If an Option shall for any reason expire or otherwise terminate, in whole or in part, without having been exercised in full, the shares of Common Stock not acquired under such Option shall revert to and again become available for issuance under the Plan. If any shares subject to an Option are not delivered to an Optionholder because such shares are withheld for the payment of taxes or the Option is exercised through a reduction of shares subject to the Option (*i.e.*, "net exercised"), the number of shares that are not delivered to the Optionholder shall remain available for issuance under the Plan. If the exercise price of an Option is satisfied by tendering shares of Common Stock held by the Optionholder (either by actual delivery or attestation), then the number of shares so tendered shall remain available for issuance under the Plan.

(c) Payment Shares. Subject to the overall limitation in Section 3(a) on the number of shares of Common Stock that may be issued pursuant to Options, shares of Common Stock may be used as the form of payment for distributions under the Company's Directors Deferred Compensation Plan.

(d) Source of Shares. The stock issuable under the Plan shall be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market.

4. ELIGIBILITY.

The Options shall automatically be granted under the Plan as set forth in Section 5 to all Non-Employee Directors who meet the specified criteria.

5. NON-DISCRETIONARY GRANTS.

(a) Initial Grants. Without any further action of the Board, each person who after the IPO Date is elected or appointed for the first time to be a Non-Employee Director automatically shall, upon the date of his or her initial election or appointment to be a Non-Employee Director, be granted an Option (the "***Initial Grant***") to purchase thirty thousand (30,000) shares of Common Stock on the terms and conditions set forth herein.

(b) Annual Grants. Without any further action of the Board, on the first Trading Day occurring on or after August 15 of each year, beginning on August 15, 2007, each person who is then a Non-Employee Director automatically shall be granted an Option (the "***Annual Grant***") to purchase ten thousand (10,000) shares of Common Stock on the terms and conditions set forth herein.

6. OPTION PROVISIONS.

Each Option shall be in such form and shall contain such terms and conditions as required by the Plan. Each Option shall contain such additional terms and conditions, not inconsistent with the Plan, as the Board shall deem appropriate. Each Option shall include (through incorporation of provisions hereof by reference in the Option or otherwise) the substance of each of the following provisions:

(a) Term. No Option shall be exercisable after the expiration of ten (10) years from the date it was granted.

(b) Exercise Price. The exercise price of each Option shall be one hundred percent (100%) of the Fair Market Value of the Common Stock subject to the Option on the date the Option is granted.

(c) Consideration. The purchase price of Common Stock acquired pursuant to an Option may be paid, to the extent permitted by applicable law, in any combination of (i) cash or check, (ii) delivery to the Company (either by actual delivery or attestation) of shares of Common Stock, or (iii) to the extent permitted by law, pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of Common Stock, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds.

(d) Transferability. Except as otherwise provided for in this Section 6(d), an Option shall not be transferable except by will or by the laws of descent and distribution and shall be exercisable only by the Optionholder during the life of the Optionholder. However, an Option may be transferred for no consideration upon written consent of the Board if (i) at the time of transfer, a Form S-8 registration statement under the Securities Act is available for the issuance of shares by the Company upon the exercise of such transferred Option, or (ii) the transfer is to the Optionholder's employer at the time of transfer or an affiliate of the Optionholder's employer at the time of transfer. Any such transfer is subject to such limits as the Board may establish, and subject to the transferee agreeing to remain subject to all the terms and conditions applicable to the Option prior to such transfer. The forgoing right to transfer the Option shall apply to the

right to consent to amendments to the Option Agreement for such Option. In addition, until the Optionholder transfers the Option, an Optionholder may, by delivering written notice to the Company, in a form provided by or otherwise satisfactory to the Company, designate a third party who, in the event of the death of the Optionholder, shall thereafter be entitled to exercise the Option.

(e) Vesting. Options shall vest as follows:

(i) Initial Grant. The Initial Grant shall vest with respect to (i) thirty-three and one-third percent (33 1/3%) of the shares subject to the Initial Grant upon the Optionholder's completion of one (1) year of Continuous Service measured from the date of grant, and (ii) the balance of the shares in a series of twenty-four (24) successive equal monthly installments upon the Optionholder's completion of each additional month of Continuous Service over the two (2)-year period measured from the first anniversary of the date of grant.

(ii) Annual Grant. The Annual Grant shall vest in a series of twelve (12) successive equal monthly installments during the Optionholder's Continuous Service over the one (1)-year period measured from the date of grant.

(f) Early Exercise. The Option may, but need not, include a provision whereby the Optionholder may elect at any time before the Optionholder's Continuous Service terminates to exercise the Option as to any part or all of the shares of Common Stock subject to the Option prior to the full vesting of the Option. Any unvested shares of Common Stock so purchased may be subject to a repurchase option in favor of the Company or to any other restriction the Board determines to be appropriate. The Company will not exercise its repurchase option until at least six (6) months (or such longer or shorter period of time required to avoid classification of the Option as a liability for financial accounting purposes) have elapsed following exercise of the Option unless the Board otherwise specifically provides in the Option.

(g) Termination of Continuous Service. In the event that an Optionholder's Continuous Service terminates (other than upon the Optionholder's death or Disability or upon a Change in Control), the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise such Option as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (i) the date three (3) months following the termination of the Optionholder's Continuous Service, or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination of Continuous Service, the Optionholder does not exercise his or her Option within the time specified herein or in the Option Agreement (as applicable), the Option shall terminate.

(h) Extension of Termination Date. If the exercise of the Option following the termination of the Optionholder's Continuous Service (other than upon the Optionholder's death or Disability or upon a Change in Control) would be prohibited at any time solely because the issuance of shares of Common Stock would violate the registration requirements under the Securities Act, then the Option shall terminate on the earlier of (i) the expiration of a period of three (3) months after the termination of the Optionholder's Continuous Service during which the exercise of the Option would not be in violation of such registration requirements, or (ii) the expiration of the term of the Option as set forth in the Option Agreement.

(i) Disability of Optionholder. In the event that an Optionholder's Continuous Service terminates as a result of the Optionholder's Disability, the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise it as of the date of termination of Continuous Service), but only within such period of time ending on the earlier of (i) the date twelve (12) months following such termination of Continuous Service, or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination, the Optionholder does not exercise his or her Option within the time specified herein or in the Option Agreement, the Option shall terminate.

(j) Death of Optionholder. In the event that (i) an Optionholder's Continuous Service terminates as a result of the Optionholder's death, or (ii) the Optionholder dies within the three (3)-month period after the termination of the Optionholder's Continuous Service for a reason other than death, then the Option may be exercised (to the extent the Optionholder was entitled to exercise such Option as of the date of death) by the Optionholder's estate, by a person who acquired the right to exercise the Option by bequest or inheritance, or by a person designated to exercise the Option upon the Optionholder's death, but only within the period ending on the earlier of (i) the date eighteen (18) months following the date of death, or (ii) the expiration of the term of such Option as set forth in the Option Agreement. If, after the Optionholder's death, the Option is not exercised within the time specified herein, the Option shall terminate.

(k) Termination Upon Change in Control. In the event that an Optionholder's Continuous Service terminates as of, or within twelve (12) months following a Change in Control, the Optionholder may exercise his or her Option (to the extent that the Optionholder was entitled to exercise such Option as of the date of termination of Continuous Service) within such period of time ending on the earlier of (i) the date twelve (12) months following the effective date of the Change in Control, or (ii) the expiration of the term of the Option as set forth in the Option Agreement. If, after termination of Continuous Service, the Optionholder does not exercise his or her Option within the time specified herein or in the Option Agreement (as applicable), the Option shall terminate.

7. COVENANTS OF THE COMPANY

(a) Availability of Shares. During the terms of the Options, the Company shall keep available at all times the number of shares of Common Stock required to satisfy such Stock Awards.

(b) Securities Law Compliance. The Company shall seek to obtain from each regulatory commission or agency having jurisdiction over the Plan such authority as may be required to grant Options and to issue and sell shares of Common Stock upon exercise of the Options; provided, however, that this undertaking shall not require the Company to register under the Securities Act the Plan, any Option or any Common Stock issued or issuable pursuant to any such Option. If, after reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary for the lawful issuance and sale of Common Stock under the Plan, the Company shall be relieved from any liability for failure to issue and sell Common Stock upon exercise of such Options unless and until such authority is obtained.

8. MISCELLANEOUS.

(a) Use of Proceeds. Proceeds from the sale of shares of Common Stock pursuant to Options shall constitute general funds of the Company.

(b) Stockholder Rights. No Optionholder shall be deemed to be the holder of, or to have any of the rights of a holder with respect to, any shares of Common Stock subject to such Option unless and until such Optionholder has satisfied all requirements for exercise of the Option pursuant to its terms.

(c) No Service Rights. Nothing in the Plan, any instrument executed, or Option granted pursuant thereto shall confer upon any Optionholder any right to continue to serve the Company as a Non-Employee Director or shall affect the right of the Company or an Affiliate to terminate the service of a Director pursuant to the Bylaws of the Company or an Affiliate, and any applicable provisions of the corporate law of the state in which the Company or the Affiliate is incorporated, as the case may be.

(d) Investment Assurances. The Company may require an Optionholder, as a condition of exercising or acquiring Common Stock under any Option, (i) to give written assurances satisfactory to the Company as to the Optionholder's knowledge and experience in financial and business matters and/or to employ a purchaser representative reasonably satisfactory to the Company who is knowledgeable and experienced in financial and business matters and that he or she is capable of evaluating, alone or together with the purchaser representative, the merits and risks of exercising the Option; and (ii) to give written assurances satisfactory to the Company stating that the Optionholder is acquiring the Common Stock subject to the Option for the Optionholder's own account and not with any present intention of selling or otherwise distributing the Common Stock. The foregoing requirements, and any assurances given pursuant to such requirements, shall be inoperative if (i) the issuance of the shares upon the exercise or acquisition of Common Stock under the Option has been registered under a then currently effective registration statement under the Securities Act, or (ii) as to any particular requirement, a determination is made by counsel for the Company that such requirement need not be met in the circumstances under the then applicable securities laws. The Company may, upon advice of counsel to the Company, place legends on stock certificates issued under the Plan as such counsel deems necessary or appropriate in order to comply with applicable securities laws, including, but not limited to, legends restricting the transfer of the Common Stock.

(e) Withholding Obligations. The Optionholder may satisfy any federal, state or local tax withholding obligation relating to the exercise or acquisition of Common Stock under an Option by any of the following means (in addition to the Company's right to withhold from any compensation paid to the Optionholder by the Company) or by a combination of such means: (i) tendering a cash payment; (ii) authorizing the Company to withhold shares from the shares of the Common Stock otherwise issuable to the Optionholder as a result of the exercise or acquisition of Common Stock under the Option; *provided, however,* that no shares of Common Stock are withheld with a value exceeding the minimum amount of tax required to be withheld by law; or (iii) delivering to the Company owned and unencumbered shares of the Common Stock.

(f) Electronic Delivery. Any reference herein to a "written" agreement or document shall include any agreement or document delivered electronically or posted on the Company's intranet.

9. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; CORPORATE TRANSACTIONS.

(a) Capitalization Adjustments. In the event of a Capitalization Adjustment, the Board shall proportionately and appropriately adjust: (i) the class(es) and maximum number of securities subject to the Plan pursuant to Section 3(a), (ii) the class(es) and maximum number of securities by which the share reserve is to increase automatically each year pursuant to Section 3(a), (iii) the class(es) and number of securities for which the nondiscretionary grants of Options are made pursuant to Section 5, and (iv) the class(es) and number of securities and price per share of stock subject to outstanding Options. The Board shall make such adjustments, and its determination shall be final, binding and conclusive.

(b) Dissolution or Liquidation. In the event of a dissolution or liquidation of the Company, all outstanding Options shall terminate immediately prior to the completion of such dissolution or liquidation.

(c) Corporate Transaction.

(i) Options May Be Assumed. In the event of a Corporate Transaction, any surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) may assume or continue any or all Options outstanding under the Plan or may substitute similar stock options for Options outstanding under the Plan (including but not limited to, options to acquire the same consideration paid to the stockholders of the Company pursuant to the Corporate Transaction), and any reacquisition or repurchase rights held by the Company in respect of Common Stock issued pursuant to Options may be assigned by the Company to the successor of the Company (or the successor's parent company, if any), in connection with such Corporate Transaction. A surviving corporation or acquiring corporation may choose to assume or continue only a portion of an Option or substitute a similar option for only a portion of an Option.

(ii) Options Held by Active Optionholders. In the event of a Corporate Transaction in which the surviving corporation or acquiring corporation (or its parent company) does not assume or continue such outstanding Options or substitute similar stock options for such outstanding Options, then with respect to Options that have not been assumed, continued or substituted and that are held by Optionholders whose Continuous Service has not terminated prior to the effective time of the Corporate Transaction (referred to as the "***Active Optionholders***"), the vesting of such Options (and, if applicable, the time at which such Options may be exercised) shall (contingent upon the effectiveness of the Corporate Transaction) be accelerated in full to a date prior to the effective time of such Corporate Transaction as the Board shall determine (or, if the Board shall not determine such a date, to the date that is five (5) days prior to the effective time of the Corporate Transaction), and the Options shall terminate if not exercised (if applicable) at or prior to the effective time of the Corporate Transaction, and any reacquisition or repurchase rights held by the Company with respect to such Options shall lapse (contingent upon the effectiveness of the Corporate Transaction).

(iii) Options Held by Former Optionholders. In the event of a Corporate Transaction in which the surviving corporation or acquiring corporation (or its parent company) does not assume or continue such outstanding Options or substitute similar stock options for such outstanding Options, then with respect to any other Options that have not been assumed, continued or substituted and that are held by persons other than Active Optionholders, the vesting of such Options (and, if applicable, the time at which such Options may be exercised) shall not be accelerated unless otherwise provided in Section 9(d) or in a written agreement between the Company or any Affiliate and the holder of such Options, and such Options shall terminate if not exercised (if applicable) prior to the effective time of the Corporate Transaction; *provided, however,* that any reacquisition or repurchase rights held by the Company with respect to such Options shall not terminate and may continue to be exercised notwithstanding the Corporate Transaction.

(iv) Payment for Options in Lieu of Exercise. Notwithstanding the foregoing, in the event an Option will terminate if not exercised prior to the effective time of a Corporate Transaction, the Board may provide, in its sole discretion, that the holder of such Option may not exercise such Option but will receive a payment, in such form as may be determined by the Board, equal in value to the excess, if any, of (i) the value of the property the holder of the Option would have received upon the exercise of the Option, over (ii) the exercise price payable by the Optionholder in connection with such exercise.

(d) Change in Control. In the event that an Optionholder (i) is required to resign his or her position as a Non-Employee Director as a condition of a Change in Control, or (ii) is removed from his or her position as a Non-Employee Director in connection with a Change in Control, the outstanding Options held by such Optionholder shall become fully vested and exercisable immediately prior to the effectiveness of such resignation or removal (and contingent upon the effectiveness of such Change in Control).

(e) Parachute Payments.

(i) If the acceleration of the vesting and exercisability of Options provided for in Sections 9(c) and 9(d), together with payments and other benefits of an Optionholder, (collectively, the "***Payment***") (i) constitute a "parachute payment" within the meaning of Section 280G of the Code, or any comparable successor provisions, and (ii) but for this Section 9(e) would be subject to the excise tax imposed by Section 4999 of the Code, or any comparable successor provisions (the "***Excise Tax***"), then such Payment shall be either (1) provided to such Optionholder in full, or (2) provided to such Optionholder as to such lesser extent that would result in no portion of such Payment being subject to the Excise Tax, whichever of the foregoing amounts, when taking into account applicable federal, state, local and foreign income and employment taxes, the Excise Tax, and any other applicable taxes, results in the receipt by such Optionholder, on an after-tax basis, of the greatest amount of the Payment, notwithstanding that all or some portion of the Payment may be subject to the Excise Tax.

(ii) Unless the Company and such Optionholder otherwise agree in writing, any determination required under this Section 9(e) shall be made in writing in good faith by the Accountant. If a reduction in the Payment is to be made as provided above, reductions shall occur in the following order unless the Optionholder elects in writing a different order (*provided*,

however, that such election shall be subject to Company approval if made on or after the date that triggers the Payment or a portion thereof): (i) reduction of cash payments; (ii) cancellation of accelerated vesting of Options; and (iii) reduction of other benefits paid to the Optionholder. If acceleration of vesting of Options is to be reduced, such acceleration of vesting shall be cancelled in the reverse order of date of grant of Options (*i.e.*, the earliest granted Option cancelled last) unless the Optionholder elects in writing a different order for cancellation.

(iii) For purposes of making the calculations required by this Section 9(e), the Accountant may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of the Code and other applicable legal authority. The Company and the Optionholder shall furnish to the Accountant such information and documents as the Accountant may reasonably request in order to make such a determination. The Company shall bear all costs the Accountant may reasonably incur in connection with any calculations contemplated by this Section 9(e).

(iv) If, notwithstanding any reduction described above, the Internal Revenue Service (the "***IRS***") determines that the Optionholder is liable for the Excise Tax as a result of the Payment, then the Optionholder shall be obligated to pay back to the Company, within thirty (30) days after a final IRS determination or, in the event that the Optionholder challenges the final IRS determination, a final judicial determination, a portion of the Payment (the "***Repayment Amount***"). The Repayment Amount with respect to the Payment shall be the smallest such amount, if any, as shall be required to be paid to the Company so that the Optionholder's net after-tax proceeds with respect to the Payment (after taking into account the payment of the Excise Tax and all other applicable taxes imposed on the Payment) shall be maximized. The Repayment Amount with respect to the Payment shall be zero if a Repayment Amount of more than zero would not result in the Optionholder's net after-tax proceeds with respect to the Payment being maximized. If the Excise Tax is not eliminated pursuant to this paragraph, the Optionholder shall pay the Excise Tax.

(v) Notwithstanding any other provision of this Section 9(e), if (i) there is a reduction in the Payment as described above, (ii) the IRS later determines that the Optionholder is liable for the Excise Tax, the payment of which would result in the maximization of the Optionholder's net after-tax proceeds of the Payment (calculated as if the Payment had not previously been reduced), and (iii) the Optionholder pays the Excise Tax, then the Company shall pay or otherwise provide to the Optionholder that portion of the Payment that was reduced pursuant to this Section 9(e) contemporaneously or as soon as administratively possible after the Optionholder pays the Excise Tax so that the Optionholder's net after-tax proceeds with respect to the Payment are maximized.

(vi) If the Optionholder either (i) brings any action to enforce rights pursuant to this Section 9(e), or (ii) defends any legal challenge to his or her rights under this Section 9(e), the Optionholder shall be entitled to recover attorneys' fees and costs incurred in connection with such action, regardless of the outcome of such action; *provided, however,* that if such action is commenced by the Optionholder, the court finds that the action was brought in good faith.

10. AMENDMENT OF THE PLAN AND OPTIONS.

(a) Amendment of Plan. Subject to the limitations, if any, of applicable law, the Board, at any time and from time to time, may amend the Plan. However, except as provided in Section 9(a) relating to Capitalization Adjustments, no amendment shall be effective unless approved by the stockholders of the Company to the extent stockholder approval is necessary to satisfy applicable law.

(b) Stockholder Approval. The Board, in its sole discretion, may submit any other amendment to the Plan for stockholder approval.

(c) No Impairment of Rights. Rights under any Option granted before amendment of the Plan shall not be impaired by any amendment of the Plan unless (i) the Company requests the consent of the affected Optionholder, and (ii) such Optionholder consents in writing.

(d) Amendment of Options. The Board, at any time and from time to time, may amend the terms of any one or more Options; *provided, however,* that the rights under any Option shall not be impaired by any such amendment unless (i) the Company requests the consent of the Optionholder, and (ii) the Optionholder consents in writing.

11. TERMINATION OR SUSPENSION OF THE PLAN.

(a) Plan Term. The Board may suspend or terminate the Plan at any time. No Options may be granted under the Plan while the Plan is suspended or after it is terminated.

(b) No Impairment of Rights. Suspension or termination of the Plan shall not impair rights and obligations under any Option granted while the Plan is in effect except with the written consent of the Optionholder.

12. EFFECTIVE DATE OF PLAN.

The Plan shall become effective on the IPO Date, but no Option shall be exercised unless and until the Plan has been approved by the stockholders of the Company, which approval shall be within twelve (12) months before or after the date the Plan is adopted by the Board.

13. CHOICE OF LAW.

The law of the state of Delaware shall govern all questions concerning the construction, validity and interpretation of this Plan, without regard to that state's conflict of laws rules.

14. DEFINITIONS.

As used in the Plan, the following definitions shall apply to the capitalized terms indicated below:

(a) "***Accountant***" means the independent public accountants of the Company.

(b) "***Affiliate***" means, at the time of determination, any "parent" or "subsidiary" of the Company as such terms are defined in Rule 405 of the Securities Act. The Board shall have the authority to determine the time or times at which "parent" or "subsidiary" status is determined within the foregoing definition.

(c) "***Annual Grant***" means an Option granted annually to all Non-Employee Directors who meet the specified criteria pursuant to Section 5(b).

(d) "***Annual Meeting***" means the first annual meeting of the stockholders of the Company held each calendar year at which the Directors are selected.

(e) "***Board***" means the Board of Directors of the Company.

(f) "***Capitalization Adjustment***" means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Stock Award after the Effective Date without the receipt of consideration by the Company (through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or other transaction not involving the receipt of consideration by the Company). Notwithstanding the foregoing, the conversion of any convertible securities of the Company shall not be treated as a transaction "without the receipt of consideration" by the Company.

(g) "***Change in Control***" means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) any Exchange Act Person becomes the Owner, directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities other than by virtue of a merger, consolidation or similar transaction. Notwithstanding the foregoing, a Change in Control shall not be deemed to occur (A) on account of the acquisition of securities of the Company by an investor, any affiliate thereof or any other Exchange Act Person from the Company in a transaction or series of related transactions the primary purpose of which is to obtain financing for the Company through the issuance of equity securities or (B) solely because the level of Ownership held by any Exchange Act Person (the "***Subject Person***") exceeds the designated percentage threshold of the outstanding voting securities as a result of a repurchase or other acquisition of voting securities by the Company reducing the number of shares outstanding, provided that if a Change in Control would occur (but for the operation of this sentence) as a result of the acquisition of voting securities by the Company, and after such share acquisition, the Subject Person becomes the Owner of any additional voting securities that, assuming the repurchase or other acquisition had not occurred, increases the percentage of the then outstanding voting securities Owned by the Subject Person over the designated percentage threshold, then a Change in Control shall be deemed to occur;

(ii) there is consummated a merger, consolidation or similar transaction involving (directly or indirectly) the Company and, immediately after the consummation of such merger, consolidation or similar transaction, the stockholders of the Company immediately prior

thereto do not Own, directly or indirectly, either (A) outstanding voting securities representing more than fifty percent (50%) of the combined outstanding voting power of the surviving Entity in such merger, consolidation or similar transaction or (B) more than fifty percent (50%) of the combined outstanding voting power of the parent of the surviving Entity in such merger, consolidation or similar transaction, in each case in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such transaction;

(iii) the stockholders of the Company approve or the Board approves a plan of complete dissolution or liquidation of the Company, or a complete dissolution or liquidation of the Company shall otherwise occur, except for a liquidation into a parent corporation;

(iv) there is consummated a sale, lease, exclusive license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries, other than a sale, lease, license or other disposition of all or substantially all of the consolidated assets of the Company and its Subsidiaries to an Entity, more than fifty percent (50%) of the combined voting power of the voting securities of which are Owned by stockholders of the Company in substantially the same proportions as their Ownership of the outstanding voting securities of the Company immediately prior to such sale, lease, license or other disposition; or

(v) individuals who, on the date the Plan is adopted by the Board, are members of the Board (the "***Incumbent Board***") cease for any reason to constitute at least a majority of the members of the Board; *provided, however,* that if the appointment or election (or nomination for election) of any new Board member was approved or recommended by a majority vote of the members of the Incumbent Board then still in office, such new member shall, for purposes of the Plan, be considered as a member of the Incumbent Board.

For avoidance of doubt, the term Change in Control shall not include a sale of assets, merger or other transaction effected exclusively for the purpose of changing the domicile of the Company.

Notwithstanding the foregoing or any other provision of the Plan, the definition of Change in Control (or any analogous term) in an individual written agreement between the Company or any Affiliate and the Optionholder shall supersede the foregoing definition with respect to Stock Awards subject to such agreement; *provided, however,* that if no definition of Change in Control or any analogous term is set forth in such an individual written agreement, the foregoing definition shall apply.

The Board may, in its sole discretion and without a Optionholder's consent, amend the definition of "Change in Control" to conform to the definition of "Change in Control" under Section 409A of the Code, and the regulations thereunder.

(h) "***Code***" means the Internal Revenue Code of 1986, as amended.

(i) "***Common Stock***" means the common stock of the Company.

(j) "***Company***" means Jazz Pharmaceuticals, Inc., a Delaware corporation.

(k) "***Consultant***" means any person, including an advisor, who is (i) engaged by the Company or an Affiliate to render consulting or advisory services and is compensated for such services, or (ii) serving as a member of the Board of Directors of an Affiliate and is compensated for such services. However, service solely as a Director, or payment of a fee for such service, shall not cause a Director to be considered a "Consultant" for purposes of the Plan.

(l) "***Continuous Service***" means that the Optionholder's service with the Company or an Affiliate, whether as an Employee, Director or Consultant, is not interrupted or terminated. A change in the capacity in which the Optionholder renders service to the Company or an Affiliate as an Employee, Consultant or Director or a change in the entity for which the Optionholder renders such service, provided that there is no interruption or termination of the Optionholder's service with the Company or an Affiliate, shall not terminate an Optionholder's Continuous Service; *provided, however*, if the corporation for which an Optionholder is rendering service ceases to qualify as an Affiliate, as determined by the Board in its sole discretion, such Optionholder's Continuous Service shall be considered to have terminated on the date such corporation ceases to qualify as an Affiliate. For example, a change in status from a Non-Employee Director of the Company to a Consultant of an Affiliate or an Employee of the Company will not constitute an interruption of Continuous Service. To the extent permitted by law, the Board or the chief executive officer of the Company, in that party's sole discretion, may determine whether Continuous Service shall be considered interrupted in the case of any leave of absence approved by that party, including sick leave, military leave or any other personal leave. Notwithstanding the foregoing, a leave of absence shall be treated as Continuous Service for purposes of vesting in an Option only to such extent as may be provided in the Company's leave of absence policy or in the written terms of the Optionholder's leave of absence.

(m) "***Corporate Transaction***" means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) a sale or other disposition of all or substantially all, as determined by the Board in its sole discretion, of the consolidated assets of the Company and its Subsidiaries;

(ii) a sale or other disposition of at least ninety percent (90%**)** of the outstanding securities of the Company;

(iii) the consummation of a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(iv) the consummation of a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

(n) "***Director***" means a member of the Board.

(o) "***Disability***" means, with respect to a Optionholder, the inability of such Optionholder to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, as provided in Section 22(e)(3) and 409A(a)(2)(c)(i) of the Code.

(p) "***Employee***" means any person employed by the Company or an Affiliate. However, service solely as a Director, or payment of a fee for such services, shall not cause a Director to be considered an "Employee" for purposes of the Plan.

(q) "***Entity***" means a corporation, partnership, limited liability company or other entity.

(r) "***Exchange Act***" means the Securities Exchange Act of 1934, as amended.

(s) "***Exchange Act Person***" means any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act), except that "Exchange Act Person" shall not include (i) the Company or any Subsidiary of the Company, (ii) any employee benefit plan of the Company or any Subsidiary of the Company or any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any Subsidiary of the Company, (iii) an underwriter temporarily holding securities pursuant to an offering of such securities, (iv) an Entity Owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their Ownership of stock of the Company; or (v) any natural person, Entity or "group" (within the meaning of Section 13(d) or 14(d) of the Exchange Act) that, as of the Effective Date, is the Owner, directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the combined voting power of the Company's then outstanding securities.

(t) "***Fair Market Value***" means, as of any date, the value of the Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or traded on the Nasdaq Global Select Market or the Nasdaq Global Market, the Fair Market Value of a share of Common Stock shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange (or the exchange or market with the greatest volume of trading in the Common Stock) on the date of determination, as reported in *The Wall Street Journal* or such other source as the Board deems reliable.

(ii) If the Common Stock is listed or traded on the Nasdaq Capital Market, the Fair Market Value of a share of Common Stock shall be the mean between the bid and asked prices for the Common Stock on the date of determination, as reported in *The Wall Street Journal* or such other source as the Board deems reliable. Unless otherwise provided by the Board, if there is no closing sales price (or closing bid if no sales were reported) for the Common Stock on the date of determination, then the Fair Market Value shall be the mean between the bid and asked prices for the Common Stock on the last preceding date for which such quotation exists.

(iii) In the absence of such markets for the Common Stock, the Fair Market Value shall be determined by the Board in good faith and in a manner that complies with Section 409A of the Code.

(u) "***Initial Grant***" means an Option granted to a Non-Employee Director who meets the specified criteria pursuant to Section 5(a).

(v) "***IPO Date***" means the date of the underwriting agreement between the Company and the underwriter(s) managing the initial public offering of the Common Stock, pursuant to which the Common Stock is priced for the initial public offering.

(w) "***Non-Employee Director***" means a Director who is not an Employee.

(x) "***Nonstatutory Stock Option***" means an Option not intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(y) "***Officer***" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(z) "***Option***" means a Nonstatutory Stock Option granted pursuant to the Plan.

(aa) "***Option Agreement***" means a written agreement between the Company and an Optionholder evidencing the terms and conditions of an individual Option grant. Each Option Agreement shall be subject to the terms and conditions of the Plan.

(bb) "***Optionholder***" means a person to whom an Option is granted pursuant to the Plan or, if applicable, such other person who holds an outstanding Option.

(cc) "***Own***," "***Owned***," "***Owner***," "***Ownership***" A person or Entity shall be deemed to "Own," to have "Owned," to be the "Owner" of, or to have acquired "Ownership" of securities if such person or Entity, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power, which includes the power to vote or to direct the voting, with respect to such securities.

(dd) "***Plan***" means this Jazz Pharmaceuticals, Inc. 2007 Non-Employee Directors Stock Option Plan.

(ee) "***Rule 16b-3***" means Rule 16b-3 promulgated under the Exchange Act or any successor to Rule 16b-3, as in effect from time to time.

(ff) "***Securities Act***" means the Securities Act of 1933, as amended.

(gg) "***Subsidiary***" means, with respect to the Company, (i) any corporation of which more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, Owned by the Company, and (ii) any partnership in which the Company has a direct or indirect interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%).

(hh) "***Trading Day***" means any day on which the exchange(s) or market(s) on which shares of Common Stock are listed, including an established stock exchange, the Nasdaq Global Select Market or the Nasdaq Global Market, the Nasdaq Capital Market, is open for trading.

JAZZ PHARMACEUTICALS, INC.
2007 NON-EMPLOYEE DIRECTORS STOCK OPTION PLAN

OPTION GRANT NOTICE
([INITIAL] [ANNUAL] GRANT)

Jazz Pharmaceuticals, Inc. (the "***Company***"), pursuant to its 2007 Non-Employee Directors Stock Option Plan (the "***Plan***"), hereby grants to Optionholder an option to purchase the number of shares of the Company's Common Stock set forth below. This option is subject to all of the terms and conditions as set forth herein and in the Option Agreement, the Plan, and the Notice of Exercise, all of which are attached hereto and incorporated herein in their entirety.

Optionholder:	_____
Date of Grant:	_____
Number of Shares Subject to Option:	_____
Exercise Price (Per Share):	_____
Total Exercise Price:	_____
Expiration Date:	_____

Type of Grant: Nonstatutory Stock Option

Exercise Schedule: [Initial Grant: The shares vest and become exercisable with respect to (i) thirty-three and one-third percent (33 1/3%) of the shares on the first anniversary of the Date of Grant, and (ii) the balance of the shares in a series of twenty-four (24) successive equal monthly installments over the two (2)-year period measured from the first anniversary of the Date of Grant.]

[Annual Grant: The shares vest and become exercisable in a series of twelve (12) successive equal monthly installments over the one (1)-year period measured from the Date of Grant.]

Payment: By one or a combination of the following items (described in the Option Agreement):

☐ By cash or check

☐ Pursuant to a Regulation T Program if the Shares are publicly traded

☐ By delivery of already-owned shares if the Shares are publicly traded

Additional Terms/Acknowledgements: The undersigned Optionholder acknowledges receipt of, and understands and agrees to, this Option Grant Notice, the Option Agreement, and the Plan. Optionholder further acknowledges that as of the Date of Grant, this Option Grant Notice, the Option Agreement, and the Plan set forth the entire understanding between Optionholder and the Company regarding the acquisition of stock in the Company and supersede all prior oral and written agreements on that subject with the exception of (i) options previously granted and delivered to Optionholder under the Plan, and (ii) the following agreements only:

OTHER AGREEMENTS: _____

_____

JAZZ PHARMACEUTICALS, INC.

By: _____
Signature

Title: _____

Date: _____

OPTIONHOLDER:

_____
Signature

Date: _____

ATTACHMENTS: Option Agreement, 2007 Non-Employee Directors Stock Option Plan, and Notice of Exercise

JAZZ PHARMACEUTICALS, INC.
2007 NON-EMPLOYEE DIRECTORS STOCK OPTION PLAN

OPTION AGREEMENT
(NONSTATUTORY STOCK OPTION)

Pursuant to your Option Grant Notice ("***Grant Notice***") and this Option Agreement, Jazz Pharmaceuticals, Inc. (the "***Company***") has granted you an option under its 2007 Non-Employee Directors Stock Option Plan (the "***Plan***") to purchase the number of shares of the Company's Common Stock indicated in your Grant Notice at the exercise price indicated in your Grant Notice. Defined terms not explicitly defined in this Option Agreement but defined in the Plan shall have the same definitions as in the Plan.

The details of your option are as follows:

1. VESTING. Subject to the limitations contained herein, your option will vest as provided in your Grant Notice, provided that vesting will cease upon the termination of your Continuous Service.

2. NUMBER OF SHARES AND EXERCISE PRICE. The number of shares of Common Stock subject to your option and your exercise price per share referenced in your Grant Notice may be adjusted from time to time for Capitalization Adjustments.

3. METHOD OF PAYMENT. Payment of the exercise price is due in full upon exercise of all or any part of your option. You may elect to make payment of the exercise price in cash or by check or in one or more of the following manners:

(a) Provided that at the time of exercise the Common Stock is publicly traded and quoted regularly in *The Wall Street Journal*, pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board that, prior to the issuance of Common Stock, results in either the receipt of cash (or check) by the Company or the receipt of irrevocable instructions to pay the aggregate exercise price to the Company from the sales proceeds.

(b) Provided that at the time of exercise the Common Stock is publicly traded and quoted regularly in *The Wall Street Journal*, by delivery to the Company (either by actual delivery or attestation) of already-owned shares of Common Stock that are owned free and clear of any liens, claims, encumbrances or security interests, and that are valued at Fair Market Value on the date of exercise. Notwithstanding the foregoing, you may not exercise your option by tender to the Company of Common Stock to the extent such tender would violate the provisions of any law, regulation or agreement restricting the redemption of the Company's stock.

4. WHOLE SHARES. You may exercise your option only for whole shares of Common Stock.

5. SECURITIES LAW COMPLIANCE. Notwithstanding anything to the contrary contained herein, you may not exercise your option unless the shares of Common Stock issuable

upon such exercise are then registered under the Securities Act or, if such shares of Common Stock are not then so registered, the Company has determined that such exercise and issuance would be exempt from the registration requirements of the Securities Act. The exercise of your option also must comply with other applicable laws and regulations governing your option, and you may not exercise your option if the Company determines that such exercise would not be in material compliance with such laws and regulations.

6. TERM. You may not exercise your option before the commencement or after the expiration of its term. The term of your option commences on the Date of Grant and expires upon the earliest of the following:

(a) three (3) months after the termination of your Continuous Service for any reason other than your Disability or death or upon a Change in Control, provided that if during any part of such three (3) month period your option is not exercisable solely because of the condition set forth in Section 5, your option shall not expire until the earlier of the Expiration Date or until it shall have been exercisable for an aggregate period of three (3) months after the termination of your Continuous Service;

(b) twelve (12) months after the termination of your Continuous Service due to your Disability;

(c) eighteen (18) months after your death if you die either during your Continuous Service or within three (3) months after your Continuous Service terminates;

(d) twelve (12) months after the effective date of a Change in Control if termination occurs as of, or within twelve (12) months following the effective date of such a Change in Control;

(e) the Expiration Date indicated in your Grant Notice; or

(f) the day before the tenth (10th) anniversary of the Date of Grant.

7. EXERCISE.

(a) You may exercise the vested portion of your option (and the unvested portion of your option if your Grant Notice so permits) during its term by delivering a Notice of Exercise (in a form designated by the Company) together with the exercise price to the Secretary of the Company, or to such other person as the Company may designate, during regular business hours, together with such additional documents as the Company may then require.

(b) By exercising your option you agree that, as a condition to any exercise of your option, the Company may require you to enter into an arrangement providing for the payment by you to the Company of any tax withholding obligation of the Company arising by reason of (i) the exercise of your option, (ii) the lapse of any substantial risk of forfeiture to which the shares of Common Stock are subject at the time of exercise, or (iii) the disposition of shares of Common Stock acquired upon such exercise.

8. TRANSFERABILITY. Your option is transferable only by will or by the laws of descent and distribution and is exercisable only by you during your lifetime. However, you may transfer your option for no consideration upon written consent of the Board (i) if, at the time of transfer, a Form S-8 registration statement under the Securities Act is available for the issuance of shares by the Company upon the exercise of such transferred option, or (ii) the transfer is to your employer at the time of transfer or an affiliate of your employer at the time of transfer. Any such transfer is subject to such limits as the Board may establish, and subject to the transferee agreeing to remain subject to all the terms and conditions applicable to your option prior to such transfer. The forgoing right to transfer your option shall apply to the right to consent to amendments to the Option Agreement for such option. In addition, until you transfers the option, you may, by delivering written notice to the Company, in a form provided by or otherwise satisfactory to the Company, designate a third party who, in the event of your death, shall thereafter be entitled to exercise your option.

9. CHANGE IN CONTROL.

(a) In the event that you are required to resign your position as a Non-Employee Director as a condition of a Change in Control or you are removed from your position as a Non-Employee Director in connection with a Change in Control, your option shall become fully vested and exercisable immediately prior to the effectiveness of such resignation or removal (and contingent upon the effectiveness of such Change in Control).

(b) If any payment or benefit you would receive in connection with a Change in Control from the Company or otherwise ("***Payment***") would (i) constitute a "parachute payment" within the meaning of Section 280G of the Code, and (ii) but for this sentence, be subject to the excise tax imposed by Section 4999 of the Code (the "***Excise Tax***"), then the Company shall cause to be determined, before any amounts of the Payment are paid to you, which of the following two alternative forms of payment would maximize your after-tax proceeds: (i) payment in full of the entire amount of the Payment (a "***Full Payment***"), or (ii) payment of only a part of the Payment so that you receive the largest payment possible without the imposition of the Excise Tax (a "***Reduced Payment***"), whichever amount results in your receipt, on an after-tax basis, of the greater amount of the Payment notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. For purposes of determining whether to make a Full Payment or a Reduced Payment, the Company shall cause to be taken into account all applicable federal, state and local income and employment taxes and the Excise Tax (all computed at the highest applicable marginal rate, net of the maximum reduction in federal income taxes which could be obtained from a deduction of such state and local taxes).

(c) If a Reduced Payment is made, (i) the Payment shall be paid only to the extent permitted under the Reduced Payment alternative, and you shall have no rights to any additional payments and/or benefits constituting the Payment, and (ii) reduction in payments and/or benefits shall occur in the following order unless you elect in writing a different order (provided, however, that such election shall be subject to Company approval if made on or after the date on which the event that triggers the Payment occurs): (1) reduction of cash payments; (2) cancellation of accelerated vesting of equity awards other than stock options; (3) cancellation of accelerated vesting of stock options; and (4) reduction of other benefits paid to you. In the event that acceleration of compensation from your equity awards is to be reduced, such acceleration of vesting shall be canceled in the reverse order of the date of grant (*i.e.*, earliest granted Stock Award cancelled last) unless you elect in writing a different order for cancellation.

(d) The accounting firm engaged by the Company for general tax purposes as of the day prior to the effective date of the Change in Control shall perform the foregoing calculations. If the accounting firm so engaged by the Company is serving as accountant or auditor for the individual, entity or group effecting the Change in Control, the Company shall appoint a nationally recognized accounting firm to make the determinations required hereunder. The Company shall bear all expenses with respect to the determinations by such accounting firm required to be made hereunder.

(e) The accounting firm engaged to make the determinations hereunder shall provide its calculations, together with detailed supporting documentation, to you and the Company within fifteen (15) calendar days after the date on which your right to a Payment is triggered (if requested at that time by you or the Company) or such other time as requested by you or the Company. If the accounting firm determines that no Excise Tax is payable with respect to a Payment, either before or after the application of the Reduced Amount, it shall furnish you and the Company with an opinion reasonably acceptable to you that no Excise Tax will be imposed with respect to such Payment. Any good faith determinations of the accounting firm made hereunder shall be final, binding and conclusive upon you and the Company.

10. OPTION NOT A SERVICE CONTRACT. Your option is not an employment or service contract, and nothing in your option shall be deemed to create in any way whatsoever any obligation on your part to continue in the employ of the Company or an Affiliate, or of the Company or an Affiliate to continue your employment. In addition, nothing in your option shall obligate the Company or an Affiliate, their respective stockholders, Boards of Directors, Officers or Employees to continue any relationship that you might have as a Director or Consultant for the Company or an Affiliate.

11. WITHHOLDING OBLIGATIONS.

(a) At the time you exercise your option, in whole or in part, or at any time thereafter as requested by the Company, you hereby authorize withholding from payroll and any other amounts payable to you, and otherwise agree to make adequate provision for (including by means of a "cashless exercise" pursuant to a program developed under Regulation T as promulgated by the Federal Reserve Board to the extent permitted by the Company), any sums required to satisfy the federal, state, local and foreign tax withholding obligations of the Company or an Affiliate, if any, which arise in connection with the exercise of your option.

(b) Upon your request and subject to approval by the Company, in its sole discretion, and compliance with any applicable legal conditions or restrictions, the Company may withhold from fully vested shares of Common Stock otherwise issuable to you upon the exercise of your option a number of whole shares of Common Stock having a Fair Market Value, determined by the Company as of the date of exercise, not in excess of the minimum amount of tax required to be withheld by law (or such lower amount as may be necessary to avoid classification of your option as a liability for financial accounting purposes). Any adverse consequences to you arising in connection with such share withholding procedure shall be your

sole responsibility. If the date of determination of any tax withholding obligation is deferred to a date later than the date of exercise of your option, share withholding pursuant to the preceding sentence shall not be permitted unless you make a proper and timely election under Section 83(b) of the Code, covering the aggregate number of shares of Common Stock acquired upon such exercise with respect to which such determination is otherwise deferred, to accelerate the determination of such tax withholding obligation to the date of exercise of your option. Notwithstanding the filing of such election, shares of Common Stock shall be withheld solely from fully vested shares of Common Stock determined as of the date of exercise of your option that are otherwise issuable to you upon such exercise. Any adverse consequences to you arising in connection with such share withholding procedure shall be your sole responsibility.

(c) You may not exercise your option unless the tax withholding obligations of the Company and/or any Affiliate are satisfied. Accordingly, you may not be able to exercise your option when desired even though your option is vested, and the Company shall have no obligation to issue a certificate for such shares of Common Stock or release such shares of Common Stock from any escrow provided for herein unless such obligations are satisfied.

12. NOTICES. Any notices provided for in your option or the Plan shall be given in writing and shall be deemed effectively given upon receipt or, in the case of notices delivered by mail by the Company to you, five (5) days after deposit in the United States mail, postage prepaid, addressed to you at the last address you provided to the Company.

13. GOVERNING PLAN DOCUMENT. Your option is subject to all the provisions of the Plan, the provisions of which are hereby made a part of your option, and is further subject to all interpretations, amendments, rules and regulations, which may from time to time be promulgated and adopted pursuant to the Plan. In the event of any conflict between the provisions of your option and those of the Plan, the provisions of the Plan shall control.

JAZZ PHARMACEUTICALS INC.
2007 EMPLOYEE STOCK PURCHASE PLAN

ADOPTED BY THE BOARD OF DIRECTORS: MAY 1, 2007
APPROVED BY THE STOCKHOLDERS: MAY 9, 2007

1. GENERAL.

(a) The purpose of the Plan is to provide a means by which Eligible Employees of the Company and certain designated Related Corporations may be given an opportunity to purchase shares of Common Stock. The Plan is intended to permit the Company to grant a series of Purchase Rights to Eligible Employees under an Employee Stock Purchase Plan.

(b) The Company, by means of the Plan, seeks to retain the services of such Employees, to secure and retain the services of new Employees and to provide incentives for such persons to exert maximum efforts for the success of the Company and its Related Corporations.

2. ADMINISTRATION.

(a) The Board shall administer the Plan unless and until the Board delegates administration of the Plan to a Committee or Committees, as provided in Section 2(c).

(b) The Board shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

(i) To determine how and when Purchase Rights to purchase shares of Common Stock shall be granted and the provisions of each Offering comprised of such Purchase Rights (which need not be identical).

(ii) To designate from time to time which Related Corporations of the Company shall be eligible to participate in the Plan.

(iii) To construe and interpret the Plan and Purchase Rights, and to establish, amend and revoke rules and regulations for administration of the Plan. The Board, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan, in a manner and to the extent it shall deem necessary or expedient to make the Plan or Purchase Rights fully effective.

(iv) To settle all controversies regarding the Plan and Purchase Rights granted under it.

(v) To suspend or terminate the Plan at any time. Suspension or termination of the Plan shall not impair rights and obligations under any Purchase Right granted while the Plan is in effect except with the written consent of the affected Participant.

(vi) To amend the Plan in any respect the Board deems necessary or advisable. However, except as provided in Section 12(a) relating to Capitalization Adjustments, stockholder approval shall be required for any amendment of the Plan that either (i) materially increases the number of shares of Common Stock available for issuance under the Plan, (ii) materially expands the class of individuals eligible to become Participants and receive Purchase Rights under the Plan, (iii) materially increases the benefits accruing to Participants under the Plan or materially reduces the price at which shares of Common Stock may be purchased under the Plan, (iv) materially extends the term of the Plan, or (v) expands the types of awards available for issuance under the Plan, but in each of (i) through (v) only to the extent required by applicable law or listing requirements. Except as provided above, the rights and obligations under any Purchase Rights granted before amendment of the Plan shall not be impaired by any amendment of the Plan except: (i) with the consent of the person to whom such Purchase Rights were granted, or (ii) as necessary to comply with any laws or governmental regulations (including, without limitation, the provisions of the Code and the regulations promulgated thereunder relating to Employee Stock Purchase Plans).

(vii) Generally, to exercise such powers and to perform such acts as it deems necessary or expedient to promote the best interests of the Company and its Related Corporations and to carry out the intent that the Plan be treated as an Employee Stock Purchase Plan.

(viii) To adopt such procedures and sub-plans as are necessary or appropriate to permit participation in the Plan by Employees who are foreign nationals or employed outside the United States.

(c) The Board may delegate some or all of the administration of the Plan to a Committee or Committees. If administration is delegated to a Committee, the Committee shall have, in connection with the administration of the Plan, the powers theretofore possessed by the Board that have been delegated to the Committee, including the power to delegate to a subcommittee any of the administrative powers the Committee is authorized to exercise (and references in this Plan to the Board shall thereafter be to the Committee or subcommittee), subject, however, to such resolutions, not inconsistent with the provisions of the Plan, as may be adopted from time to time by the Board. The Board may retain the authority to concurrently administer the Plan with the Committee and may, at any time, revest in the Board some or all of the powers previously delegated.

(d) All determinations, interpretations and constructions made by the Board in good faith shall not be subject to review by any person and shall be final, binding and conclusive on all persons.

3. SHARES OF COMMON STOCK SUBJECT TO THE PLAN.

(a) Subject to the provisions of Section 12(a) relating to Capitalization Adjustments, the aggregate number of shares of Common Stock that may be sold pursuant to Purchase Rights shall not exceed three hundred fifty thousand (350,000) shares. In addition, the number of shares of Common Stock available for issuance under the Plan shall automatically increase on January 1st of each year commencing in 2008 and ending on (and including) January 1, 2017, in an amount equal to the lesser of (i) one and one-half percent (1.5%) of the total number of shares of

Common Stock outstanding on December 31st of the preceding calendar year, or (ii) three hundred fifty thousand (350,000) shares of Common Stock. Notwithstanding the foregoing, the Board may act prior to the first day of any calendar year, to provide that there shall be no increase in the share reserve for such calendar year or that the increase in the share reserve for such calendar year shall be a lesser number of shares of Common Stock than would otherwise occur pursuant to the preceding sentence.

(b) If any Purchase Right granted under the Plan shall for any reason terminate without having been exercised, the shares of Common Stock not purchased under such Purchase Right shall again become available for issuance under the Plan.

(c) The stock purchasable under the Plan shall be shares of authorized but unissued or reacquired Common Stock, including shares repurchased by the Company on the open market.

4. GRANT OF PURCHASE RIGHTS; OFFERING.

(a) The Board may from time to time grant or provide for the grant of Purchase Rights to purchase shares of Common Stock under the Plan to Eligible Employees in an Offering (consisting of one or more Purchase Periods) on an Offering Date or Offering Dates selected by the Board. Each Offering shall be in such form and shall contain such terms and conditions as the Board shall deem appropriate, which shall comply with the requirement of Section 423(b)(5) of the Code that all Employees granted Purchase Rights shall have the same rights and privileges. The terms and conditions of an Offering shall be incorporated by reference into the Plan and treated as part of the Plan. The provisions of separate Offerings need not be identical, but each Offering shall include (through incorporation of the provisions of this Plan by reference in the document comprising the Offering or otherwise) the period during which the Offering shall be effective, which period shall not exceed twenty-seven (27) months beginning with the Offering Date, and the substance of the provisions contained in Sections 5 through 8.

(b) If a Participant has more than one Purchase Right outstanding under the Plan, unless he or she otherwise indicates in agreements or notices delivered hereunder: (i) each agreement or notice delivered by that Participant shall be deemed to apply to all of his or her Purchase Rights under the Plan, and (ii) a Purchase Right with a lower exercise price (or an earlier-granted Purchase Right, if different Purchase Rights have identical exercise prices) shall be exercised to the fullest possible extent before a Purchase Right with a higher exercise price (or a later-granted Purchase Right if different Purchase Rights have identical exercise prices) shall be exercised.

(c) The Board shall have the discretion to structure an Offering so that if the Fair Market Value of a share of Common Stock on any Purchase Date within that Offering is less than or equal to the Fair Market Value of a share of Common Stock on the Offering Date for that Offering, then (i) that Offering shall terminate immediately following the purchase of shares of Common Stock on such Purchase Date, and (ii) Participants in the terminated Offering automatically shall be enrolled in the Offering that commences immediately after such Purchase Date.

5. ELIGIBILITY.

(a) Purchase Rights may be granted only to Employees of the Company or, as the Board may designate as provided in Section 2(b), to Employees of a Related Corporation. Except as provided in Section 5(b), an Employee shall not be eligible to be granted Purchase Rights under the Plan unless, on the Offering Date, such Employee has been in the employ of the Company or the Related Corporation, as the case may be, for such continuous period preceding such Offering Date as the Board may require, but in no event shall the required period of continuous employment be greater than two (2) years. In addition, the Board may provide that no Employee shall be eligible to be granted Purchase Rights under the Plan unless, on the Offering Date, such Employee's customary employment with the Company or the Related Corporation is more than twenty (20) hours per week and more than five (5) months per calendar year or such other criteria as the Board may determine consistent with Section 423 of the Code.

(b) The Board may provide that each person who, during the course of an Offering, first becomes an Eligible Employee shall, on a date or dates specified in the Offering which coincides with the day on which such person becomes an Eligible Employee or which occurs thereafter, receive a Purchase Right under that Offering, which Purchase Right shall thereafter be deemed to be a part of that Offering. Such Purchase Right shall have the same characteristics as any Purchase Rights originally granted under that Offering, as described herein, except that:

(i) the date on which such Purchase Right is granted shall be the "Offering Date" of such Purchase Right for all purposes, including determination of the exercise price of such Purchase Right;

(ii) the period of the Offering with respect to such Purchase Right shall begin on its Offering Date and end coincident with the end of such Offering; and

(iii) the Board may provide that if such person first becomes an Eligible Employee within a specified period of time before the end of the Offering, he or she shall not receive any Purchase Right under that Offering.

(c) No Employee shall be eligible for the grant of any Purchase Rights under the Plan if, immediately after any such Purchase Rights are granted, such Employee owns stock possessing five percent (5%) or more of the total combined voting power or value of all classes of stock of the Company or of any Related Corporation. For purposes of this Section 5(c), the rules of Section 424(d) of the Code shall apply in determining the stock ownership of any Employee, and stock which such Employee may purchase under all outstanding Purchase Rights and options shall be treated as stock owned by such Employee.

(d) As specified by Section 423(b)(8) of the Code, an Eligible Employee may be granted Purchase Rights under the Plan only if such Purchase Rights, together with any other rights granted under all Employee Stock Purchase Plans of the Company and any Related Corporations, do not permit such Eligible Employee's rights to purchase stock of the Company or any Related Corporation to accrue at a rate which exceeds twenty five thousand dollars ($25,000) of Fair Market Value of such stock (determined at the time such rights are granted, and which, with respect to the Plan, shall be determined as of their respective Offering Dates) for each calendar year in which such rights are outstanding at any time.

(e) Officers of the Company and any designated Related Corporation, if they are otherwise Eligible Employees, shall be eligible to participate in Offerings under the Plan. Notwithstanding the foregoing, the Board may provide in an Offering that Employees who are highly compensated Employees within the meaning of Section 423(b)(4)(D) of the Code shall not be eligible to participate.

6. PURCHASE RIGHTS; PURCHASE PRICE.

(a) On each Offering Date, each Eligible Employee, pursuant to an Offering made under the Plan, shall be granted a Purchase Right to purchase up to that number of shares of Common Stock purchasable either with a percentage or with a maximum dollar amount, as designated by the Board, but in either case not exceeding fifteen percent (15%) of such Employee's earnings (as defined by the Board in each Offering) during the period that begins on the Offering Date (or such later date as the Board determines for a particular Offering) and ends on the date stated in the Offering, which date shall be no later than the end of the Offering.

(b) The Board shall establish one (1) or more Purchase Dates during an Offering as of which Purchase Rights granted pursuant to that Offering shall be exercised and purchases of shares of Common Stock shall be carried out in accordance with such Offering.

(c) In connection with each Offering made under the Plan, the Board may specify a maximum number of shares of Common Stock that may be purchased by any Participant on any Purchase Date during such Offering. In connection with each Offering made under the Plan, the Board may specify a maximum aggregate number of shares of Common Stock that may be purchased by all Participants pursuant to such Offering. In addition, in connection with each Offering that contains more than one Purchase Date, the Board may specify a maximum aggregate number of shares of Common Stock that may be purchased by all Participants on any Purchase Date under the Offering. If the aggregate purchase of shares of Common Stock issuable upon exercise of Purchase Rights granted under the Offering would exceed any such maximum aggregate number, then, in the absence of any Board action otherwise, a pro rata allocation of the shares of Common Stock available shall be made in as nearly a uniform manner as shall be practicable and equitable.

(d) The purchase price of shares of Common Stock acquired pursuant to Purchase Rights shall be not less than the lesser of:

(i) an amount equal to eighty-five percent (85%) of the Fair Market Value of the shares of Common Stock on the Offering Date; or

(ii) an amount equal to eighty-five percent (85%) of the Fair Market Value of the shares of Common Stock on the applicable Purchase Date.

7. PARTICIPATION; WITHDRAWAL; TERMINATION.

(a) A Participant may elect to authorize payroll deductions pursuant to an Offering under the Plan by completing and delivering to the Company, within the time specified in the Offering, an enrollment form (in such form as the Company may provide). Each such enrollment form shall authorize an amount of Contributions expressed as a percentage of the submitting Participant's earnings (as defined in each Offering) during the Offering (not to exceed the maximum percentage specified by the Board). Each Participant's Contributions shall be credited to a bookkeeping account for such Participant under the Plan and shall be deposited with the general funds of the Company except where applicable law requires that Contributions be deposited with a third party. To the extent provided in the Offering, a Participant may begin such Contributions after the beginning of the Offering. To the extent provided in the Offering, a Participant may thereafter reduce (including to zero) or increase his or her Contributions. To the extent specifically provided in the Offering, in addition to making Contributions by payroll deductions, a Participant may make Contributions through the payment by cash or check prior to each Purchase Date of the Offering.

(b) During an Offering, a Participant may cease making Contributions and withdraw from the Offering by delivering to the Company a notice of withdrawal in such form as the Company may provide. Such withdrawal may be elected at any time prior to the end of the Offering, except as provided otherwise in the Offering. Upon such withdrawal from the Offering by a Participant, the Company shall distribute to such Participant all of his or her accumulated Contributions (reduced to the extent, if any, such Contributions have been used to acquire shares of Common Stock for the Participant) under the Offering, and such Participant's Purchase Right in that Offering shall thereupon terminate. A Participant's withdrawal from an Offering shall have no effect upon such Participant's eligibility to participate in any other Offerings under the Plan, but such Participant shall be required to deliver a new enrollment form in order to participate in subsequent Offerings.

(c) Purchase Rights granted pursuant to any Offering under the Plan shall terminate immediately upon a Participant ceasing to be an Employee for any reason or for no reason (subject to any post-employment participation period required by law) or other lack of eligibility. The Company shall distribute to such terminated or otherwise ineligible Employee all of his or her accumulated Contributions (reduced to the extent, if any, such Contributions have been used to acquire shares of Common Stock for the terminated or otherwise ineligible Employee) under the Offering.

(d) Purchase Rights shall not be transferable by a Participant except by will, the laws of descent and distribution, or by a beneficiary designation as provided in Section 10. During a Participant's lifetime, Purchase Rights shall be exercisable only by such Participant.

(e) Unless otherwise specified in an Offering, the Company shall have no obligation to pay interest on Contributions.

8. EXERCISE OF PURCHASE RIGHTS.

(a) On each Purchase Date during an Offering, each Participant's accumulated Contributions shall be applied to the purchase of shares of Common Stock up to the maximum number of shares of Common Stock permitted pursuant to the terms of the Plan and the applicable Offering, at the purchase price specified in the Offering. No fractional shares shall be issued upon the exercise of Purchase Rights unless specifically provided for in the Offering.

(b) If any amount of accumulated Contributions remains in a Participant's account after the purchase of shares of Common Stock and such remaining amount is less than the amount required to purchase one share of Common Stock on the final Purchase Date of an Offering, then such remaining amount shall be held in such Participant's account for the purchase of shares of Common Stock under the next Offering under the Plan, unless such Participant withdraws from such next Offering, as provided in Section 7(b), or is not eligible to participate in such Offering, as provided in Section 5, in which case such amount shall be distributed to such Participant after the final Purchase Date, without interest. If the amount of Contributions remaining in a Participant's account after the purchase of shares of Common Stock is at least equal to the amount required to purchase one (1) whole share of Common Stock on the final Purchase Date of the Offering, then such remaining amount shall be distributed in full to such Participant at the end of the Offering without interest.

(c) No Purchase Rights may be exercised to any extent unless the shares of Common Stock to be issued upon such exercise under the Plan are covered by an effective registration statement pursuant to the Securities Act and the Plan is in material compliance with all applicable federal, state, foreign and other securities and other laws applicable to the Plan. If on a Purchase Date during any Offering hereunder the shares of Common Stock are not so registered or the Plan is not in such compliance, no Purchase Rights or any Offering shall be exercised on such Purchase Date, and the Purchase Date shall be delayed until the shares of Common Stock are subject to such an effective registration statement and the Plan is in such compliance, except that the Purchase Date shall not be delayed more than twelve (12) months and the Purchase Date shall in no event be more than twenty-seven (27) months from the Offering Date. If, on the Purchase Date under any Offering hereunder, as delayed to the maximum extent permissible, the shares of Common Stock are not registered and the Plan is not in such compliance, no Purchase Rights or any Offering shall be exercised and all Contributions accumulated during the Offering (reduced to the extent, if any, such Contributions have been used to acquire shares of Common Stock) shall be distributed to the Participants without interest.

9. COVENANTS OF THE COMPANY.

The Company shall seek to obtain from each federal, state, foreign or other regulatory commission or agency having jurisdiction over the Plan such authority as may be required to issue and sell shares of Common Stock upon exercise of the Purchase Rights. If, after commercially reasonable efforts, the Company is unable to obtain from any such regulatory commission or agency the authority that counsel for the Company deems necessary for the lawful issuance and sale of Common Stock under the Plan, the Company shall be relieved from any liability for failure to issue and sell Common Stock upon exercise of such Purchase Rights unless and until such authority is obtained.

10. DESIGNATION OF BENEFICIARY.

(a) A Participant may file a written designation of a beneficiary who is to receive any shares of Common Stock and/or cash, if any, from the Participant's account under the Plan in the event of such Participant's death subsequent to the end of an Offering but prior to delivery to the Participant of such shares of Common Stock or cash. In addition, a Participant may file a written designation of a beneficiary who is to receive any cash from the Participant's account under the Plan in the event of such Participant's death during an Offering. Any such designation shall be on a form provided by or otherwise acceptable to the Company.

(b) The Participant may change such designation of beneficiary at any time by written notice to the Company. In the event of the death of a Participant and in the absence of a beneficiary validly designated under the Plan who is living at the time of such Participant's death, the Company shall deliver such shares of Common Stock and/or cash to the executor or administrator of the estate of the Participant, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its sole discretion, may deliver such shares of Common Stock and/or cash to the spouse or to any one or more dependents or relatives of the Participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

11. MISCELLANEOUS PROVISIONS.

(a) The Plan and Offering do not constitute an employment contract. Nothing in the Plan or in the Offering shall in any way alter the at will nature of a Participant's employment or be deemed to create in any way whatsoever any obligation on the part of any Participant to continue in the employ of the Company or a Related Corporation, or on the part of the Company or a Related Corporation to continue the employment of a Participant.

(b) The provisions of the Plan shall be governed by the laws of the State of Delaware without resort to that state's conflicts of laws rules.

(c) Proceeds from the sale of shares of Common Stock pursuant to Purchase Rights shall constitute general funds of the Company.

(d) A Participant shall not be deemed to be the holder of, or to have any of the rights of a holder with respect to, shares of Common Stock subject to Purchase Rights unless and until the Participant's shares of Common Stock acquired upon exercise of Purchase Rights are recorded in the books of the Company (or its transfer agent).

12. ADJUSTMENTS UPON CHANGES IN COMMON STOCK; CORPORATE TRANSACTIONS.

(a) In the event of a Capitalization Adjustment, the Board shall appropriately and proportionately adjust: (i) the class(es) and maximum number of securities subject to the Plan pursuant to Section 3(a), (ii) the class(es) and maximum number of securities by which the share reserve is to increase automatically each year pursuant to Section 3(a), (iii) the class(es) and number of securities subject to outstanding Purchase Rights, and (iv) the class(es) and number of securities imposed by purchase limits under each ongoing Offering. The Board shall make such adjustments, and its determination shall be final, binding and conclusive.

(b) In the event of a Corporate Transaction, then: (i) any surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) may assume or continue Purchase Rights outstanding under the Plan or may substitute similar rights (including a right to acquire the same consideration paid to the stockholders in the Corporate Transaction) for those outstanding under the Plan, or (ii) if any surviving or acquiring corporation (or its parent company) does not assume or continue such Purchase Rights or does not substitute similar rights for Purchase Rights outstanding under the Plan, then the Participants' accumulated Contributions shall be used to purchase shares of Common Stock within ten (10) business days prior to the Corporate Transaction under any ongoing Offerings, and the Participants' Purchase Rights under the ongoing Offerings shall terminate immediately after such purchase.

13. TERMINATION OR SUSPENSION OF THE PLAN.

(a) The Board may suspend or terminate the Plan at any time. Unless sooner terminated, the Plan shall terminate at the time that all of the shares of Common Stock reserved for issuance under the Plan, as increased and/or adjusted from time to time, have been issued under the terms of the Plan. No Purchase Rights may be granted under the Plan while the Plan is suspended or after it is terminated.

(b) Any benefits, privileges, entitlements and obligations under any Purchase Rights while the Plan is in effect shall not be impaired by suspension or termination of the Plan except (i) as expressly provided in the Plan or with the consent of the person to whom such Purchase Rights were granted, (ii) as necessary to comply with any laws, regulations or listing requirements, or (iii) as necessary to ensure that the Plan and/or Purchase Rights comply with the requirements of Section 423 of the Code.

14. EFFECTIVE DATE OF PLAN.

The Plan shall become effective on the IPO Date, but no Purchase Rights shall be exercised unless and until the Plan has been approved by the stockholders of the Company, which approval shall be within twelve (12) months before or after the date the Plan is adopted by the Board.

15. DEFINITIONS.

As used in the Plan, the following definitions shall apply to the capitalized terms indicated below:

(a) "***Board***" means the Board of Directors of the Company.

(b) "***Capitalization Adjustment***" means any change that is made in, or other events that occur with respect to, the Common Stock subject to the Plan or subject to any Purchase Right after the Effective Date without the receipt of consideration by the Company (through merger, consolidation, reorganization, recapitalization, reincorporation, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, exchange of shares, change in corporate structure or other transaction not involving the receipt of consideration by the Company). Notwithstanding the foregoing, the conversion of any convertible securities of the Company shall not be treated as a transaction "without the receipt of consideration" by the Company.

(c) "***Code***" means the Internal Revenue Code of 1986, as amended.

(d) "***Committee***" means a committee of one (1) or more members of the Board to whom authority has been delegated by the Board in accordance with Section 2(b)(viii).

(e) "***Common Stock***" means the common stock of the Company.

(f) "***Company***" means Jazz Pharmaceuticals Inc., a Delaware corporation.

(g) "***Contributions***" means the payroll deductions and other additional payments specifically provided for in the Offering, that a Participant contributes to fund the exercise of a Purchase Right. A Participant may make additional payments into his or her account, if specifically provided for in the Offering, and then only if the Participant has not already had the maximum permitted amount withheld during the Offering through payroll deductions.

(h) "***Corporate Transaction***" means the occurrence, in a single transaction or in a series of related transactions, of any one or more of the following events:

(i) the consummation of a sale or other disposition of all or substantially all, as determined by the Board in its sole discretion, of the consolidated assets of the Company and its Subsidiaries;

(ii) the consummation of a sale or other disposition of at least ninety percent (90%**)** of the outstanding securities of the Company;

(iii) the consummation of a merger, consolidation or similar transaction following which the Company is not the surviving corporation; or

(iv) the consummation of a merger, consolidation or similar transaction following which the Company is the surviving corporation but the shares of Common Stock outstanding immediately preceding the merger, consolidation or similar transaction are converted or exchanged by virtue of the merger, consolidation or similar transaction into other property, whether in the form of securities, cash or otherwise.

(i) "***Director***" means a member of the Board.

(j) "***Eligible Employee***" means an Employee who meets the requirements set forth in the Offering for eligibility to participate in the Offering, provided that such Employee also meets the requirements for eligibility to participate set forth in the Plan.

(k) "***Employee***" means any person, including Officers and Directors, who is employed for purposes of Section 423(b)(4) of the Code by the Company or a Related Corporation. However, service solely as a Director, or payment of a fee for such services, shall not cause a Director to be considered an "Employee" for purposes of the Plan.

(l) "***Employee Stock Purchase Plan***" means a plan that grants Purchase Rights intended to be options issued under an "employee stock purchase plan," as that term is defined in Section 423(b) of the Code.

(m) "***Exchange Act***" means the Securities Exchange Act of 1934, as amended.

(n) "***Fair Market Value***" means, as of any date, the value of the Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or traded on the Nasdaq Global Select Market or the Nasdaq Global Market, the Fair Market Value of a share of Common Stock shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange (or the exchange or market with the greatest volume of trading in the Common Stock) on the date of determination, as reported in *The Wall Street Journal* or such other source as the Board deems reliable.

(ii) If the Common Stock is listed or traded on the Nasdaq Capital Market, the Fair Market Value of a share of Common Stock shall be the mean between the bid and asked prices for the Common Stock on the date of determination, as reported in *The Wall Street Journal* or such other source as the Board deems reliable. Unless otherwise provided by the Board, if there is no closing sales price (or closing bid if no sales were reported) for the Common Stock on the date of determination, then the Fair Market Value shall be the mean between the bid and asked prices for the Common Stock on the last preceding date for which such quotation exists.

(iii) In the absence of such markets for the Common Stock, the Fair Market Value shall be determined by the Board in good faith.

(o) "***IPO Date***" means the date of the underwriting agreement between the Company and the underwriter(s) managing the initial public offering of the Common Stock, pursuant to which the Common Stock is priced for the initial public offering.

(p) "***Offering***" means the grant of Purchase Rights to purchase shares of Common Stock under the Plan to Eligible Employees.

(q) "***Offering Date***" means a date selected by the Board for an Offering to commence.

(r) "***Officer***" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(s) "***Participant***" means an Eligible Employee who holds an outstanding Purchase Right granted pursuant to the Plan.

(t) "***Plan***" means this Jazz Pharmaceuticals Inc. 2007 Employee Stock Purchase Plan.

(u) "***Purchase Date***" means one or more dates during an Offering established by the Board on which Purchase Rights shall be exercised and as of which purchases of shares of Common Stock shall be carried out in accordance with such Offering.

(v) "***Purchase Period***" means a period of time specified within an Offering beginning on the Offering Date or on the next day following a Purchase Date within an Offering and ending on a Purchase Date. An Offering may consist of one or more Purchase Periods.

(w) "***Purchase Right***" means an option to purchase shares of Common Stock granted pursuant to the Plan.

(x) "***Related Corporation***" means any "parent corporation" or "subsidiary corporation" of the Company whether now or subsequently established, as those terms are defined in Sections 424(e) and 424(f), respectively, of the Code.

(y) "***Securities Act***" means the Securities Act of 1933, as amended.

(z) "***Trading Day***" means any day on which the exchange(s) or market(s) on which shares of Common Stock are listed, including an established stock exchange, the Nasdaq Global Select Market or the Nasdaq Global Market, the Nasdaq Capital Market, is open for trading.

JAZZ PHARMACEUTICALS, INC.

2007 EMPLOYEE STOCK PURCHASE PLAN
OFFERING DOCUMENT

ADOPTED BY THE BOARD OF DIRECTORS: MAY 1, 2007

In this document, capitalized terms not otherwise defined shall have the same definitions of such terms as in the Jazz Pharmaceuticals, Inc. 2007 Employee Stock Purchase Plan.

1. GRANT; OFFERING DATE.

(a) The Board hereby authorizes a series of Offerings pursuant to the terms of this Offering document.

(b) The first Offering hereunder (the "***Initial Offering***") shall begin on the date the Common Stock is first offered to the public under a registration statement declared effective under the Securities Act and shall end on May 31, 2009, unless terminated earlier as provided below. The Initial Offering shall consist of four (4) Purchase Periods, with the first Purchase Period ending on November 30, 2007, the second Purchase Period ending on May 31, 2008, the third Purchase Period ending on November 30, 2008, and the fourth Purchase Period ending on May 31, 2009.

(c) After the Initial Offering commences, a concurrent Offering shall begin on December 1, 2007 and each June 1 and December 1 beginning in 2008 over the term of the Plan and shall be approximately twenty-four (24) months in duration. Each Offering shall consist of four (4) Purchase Periods, each of which shall be approximately six (6) months in length ending on or about May 31 and November 30 each year. Except as provided below, a Purchase Date is the last day of a Purchase Period or of an Offering, as the case may be.

(d) Notwithstanding the foregoing: (i) if any Offering Date falls on a day that is not a Trading Day, then such Offering Date shall instead fall on the next subsequent Trading Day, and (ii) if any Purchase Date falls on a day that is not a Trading Day, then such Purchase Date shall instead fall on the immediately preceding Trading Day.

(e) Prior to the commencement of any Offering, the Board may change any or all terms of such Offering and any subsequent Offerings. The granting of Purchase Rights pursuant to each Offering hereunder shall occur on each respective Offering Date unless prior to such date (i) the Board determines that such Offering shall not occur, or (ii) no shares of Common Stock remain available for issuance under the Plan in connection with the Offering.

(f) Notwithstanding anything in this Section 1 to the contrary, if the Fair Market Value of a share of Common Stock on any Purchase Date during an Offering is less than or equal to the Fair Market Value of a share of Common Stock on the Offering Date for that Offering, then that Offering shall terminate immediately following the purchase of shares of Common Stock on such Purchase Date. Participants in the terminated Offering automatically shall be enrolled in the Offering that commences immediately after such Purchase Date.

2. ELIGIBLE EMPLOYEES.

(a) Each Eligible Employee who has been an Employee for a continuous period of at least ten (10) days ending on the Offering Date of an Offering hereunder and is either (i) an employee of the Company; (ii) an employee of a Related Corporation incorporated in the United States; or (iii) an employee of a Related Corporation that is not incorporated in the United States, provided that the Board has designated the employees of such Related Corporation as eligible to participate in the Offering, shall be granted a Purchase Right on the Offering Date of such Offering.

(b) Each person who first becomes an Eligible Employee during an Offering shall not be granted a Purchase Right under such Offering.

(c) Notwithstanding the foregoing, the following Employees shall not be Eligible Employees or be granted Purchase Rights under an Offering:

(i) Employees whose customary employment is twenty (20) hours per week or less or five (5) months per calendar year or less;

(ii) five percent (5%) stockholders (including ownership through unexercised and/or unvested stock options) as described in Section 5(c) of the Plan; or

(iii) Employees in jurisdictions outside of the United States if, as of the Offering Date of the Offering, the grant of such Purchase Rights would not be in compliance with the applicable laws of any jurisdiction in which the Employee resides or is employed.

3. PURCHASE RIGHTS.

(a) Subject to the limitations herein and in the Plan, a Participant's Purchase Right shall permit the purchase of the number of shares of Common Stock purchasable with up to fifteen percent (15%) of such Participant's Earnings paid during the period of such Offering beginning immediately after such Participant first commences participation; *provided, however*, that no Participant may have more than fifteen percent (15%) of such Participant's Earnings applied to purchase shares of Common Stock under all ongoing Offerings under the Plan and all other plans of the Company and Related Corporations that are intended to qualify as Employee Stock Purchase Plans.

(b) For Offerings hereunder, "***Earnings***" means the base compensation paid to a Participant, including all salary, wages (including amounts elected to be deferred by such Participant, that would otherwise have been paid, under any cash or deferred arrangement or other deferred compensation program established by the Company or a Related Corporation), but excluding all overtime pay, commissions, bonuses, and other remuneration paid directly to such Participant, profit sharing, the cost of employee benefits paid for by the Company or a Related Corporation, education or tuition reimbursements, imputed income arising under any Company or Related Corporation group insurance or benefit program, traveling expenses, business and

moving expense reimbursements, income received in connection with stock options, contributions made by the Company or a Related Corporation under any employee benefit plan, and similar items of compensation.

(c) Notwithstanding the foregoing, the maximum number of shares of Common Stock that a Participant may purchase on any Purchase Date in an Offering shall be such number of shares as has a Fair Market Value (determined as of the Offering Date for such Offering) equal to (x) $25,000 multiplied by the number of calendar years in which the Purchase Right under such Offering has been outstanding at any time, minus (y) the Fair Market Value of any other shares of Common Stock (determined as of the relevant Offering Date with respect to such shares) that, for purposes of the limitation of Section 423(b)(8) of the Code, are attributed to any of such calendar years in which the Purchase Right is outstanding. The amount in clause (y) of the previous sentence shall be determined in accordance with regulations applicable under Section 423(b)(8) of the Code based on (i) the number of shares previously purchased with respect to such calendar years pursuant to such Offering or any other Offering under the Plan, or pursuant to any other Company or Related Corporation plans intended to qualify as Employee Stock Purchase Plans, and (ii) the number of shares subject to other Purchase Rights outstanding on the Offering Date for such Offering pursuant to the Plan or any other such Company or Related Corporation Employee Stock Purchase Plan.

(d) The maximum aggregate number of shares of Common Stock available to be purchased by all Participants under an Offering shall be the number of shares of Common Stock remaining available under the Plan on the Offering Date. If the aggregate purchase of shares of Common Stock upon exercise of Purchase Rights granted under all concurrent Offerings would exceed the maximum aggregate number of shares available, the Board shall make a uniform and equitable allocation of the shares available. Any Contributions not applied to the purchase of available shares of Common Stock shall be refunded to the Participants without interest.

(e) Notwithstanding the foregoing, the maximum number of shares of Common Stock that may be purchased on any single Purchase Date by all Eligible Employees under all ongoing Offerings shall not exceed 150,000 shares. If the aggregate number of shares of Common Stock to be purchased upon the exercise of all outstanding Purchase Rights on a single Purchase Date would exceed such limit, the Board shall make a uniform and equitable allocation of the shares available. Any Contributions not applied to the purchase of available shares of Common Stock shall be refunded to the Participants without interest.

4. PURCHASE PRICE.

The purchase price of shares of Common Stock under the Offering shall be the lesser of: (i) eighty-five percent (85%) of the Fair Market Value of such shares of Common Stock on the Offering Date, or (ii) eighty-five percent (85%) of the Fair Market Value of such shares of Common Stock on the applicable Purchase Date. For the Initial Offering, the Fair Market Value of the shares of Common Stock at the time when the Offering commences shall be the price per share at which shares are first sold to the public in the Company's initial public offering as specified in the final prospectus for that initial public offering.

5. PARTICIPATION.

(a) An Eligible Employee may elect to participate in an Offering on the Offering Date. An Eligible Employee may enroll in only one Offering at a time. An Eligible Employee shall elect his or her payroll deduction percentage on such enrollment form as the Company provides. The completed enrollment form must be delivered to the Company at least five (5) days prior to the date participation is to be effective, unless a later time for filing the enrollment form is set by the Company for all Eligible Employees with respect to a given Offering. Payroll deduction percentages must be expressed in whole percentages of Earnings, with a minimum percentage of one percent (1%) and a maximum percentage of fifteen percent (15%). Except as provided in Section 5(e), a Participant may participate only by way of payroll deductions.

(b) A Participant may increase his or her participation level once during a Purchase Period. In addition, a Participant may decrease (including a decrease to zero percent (0%)) his or her participation level no more than twice during a Purchase Period (and the second decrease in participation level must be to zero percent (0%)). Any such change in participation level shall be made by delivering a notice to the Company or a designated Related Corporation, in such form as the Company may provide at least ten (10) days (or such shorter period of time as determined by the Company and communicated to Participants) prior to the payroll date for which it is to be effective. A Participant may also increase his or her participation level effective in a subsequent Purchase Period.

(c) A Participant may withdraw from an Offering and receive a refund of his or her Contributions (reduced to the extent, if any, such Contributions have been used to acquire shares of Common Stock for the Participant on any prior Purchase Date) without interest, at any time prior to the end of the Offering, excluding the ten (10)-day period immediately preceding a Purchase Date (or such shorter period of time determined by the Company and communicated to Participants), by delivering a withdrawal notice to the Company or a designated Related Corporation in such form as the Company may provide. A Participant who has withdrawn from an Offering shall not again participate in such Offering, but may participate in subsequent Offerings under the Plan in accordance with the terms of the Plan and the terms of such subsequent Offerings.

(d) Notwithstanding the foregoing or any other provision of this Offering document or of the Plan to the contrary, neither the enrollment of any Eligible Employee in the Plan nor any forms relating to participation in the Plan shall be given effect until such time as a registration statement covering the shares reserved under the Plan that are subject to the Offering has been filed by the Company and has become effective.

(e) If the provisions of Section 5(d) are applicable, the Company shall establish such procedures as will enable the purposes of the Plan to be satisfied while complying with applicable securities laws. Such procedures may include, for example, allowing Participants to participate other than by means of payroll deduction and/or allowing Participants to increase their level of participation during a Purchase Period. Except as otherwise provided by the Company pursuant to the preceding sentence, for the initial Purchase Period ending November 30, 2007, no payroll deductions shall be required from the Eligible Employee until such time as the Eligible Employee affirmatively elects to commence such payroll deductions following the

Eligible Employee's receipt of the Securities Act prospectus for the Plan. Each Eligible Employee shall automatically be enrolled in such initial Purchase Period with a contribution rate equal to fifteen percent (15%) of Earnings and will have a limited opportunity to make all or part of the contributions in a lump sum payment, rather than through payroll deductions, prior to the end of the initial Purchase Period. To the extent that the Eligible Employee's payroll deductions for such initial Purchase Period are less than fifteen percent (15%) of Earnings paid to the Eligible Employee during such initial Purchase Period, the Eligible Employee may make an additional cash payment at any time on or prior to November 20, 2007 in order to fund the purchase of shares of Common Stock purchased on behalf of the Eligible Employee on such initial Purchase Date.

6. PURCHASES.

Subject to the limitations contained herein, on each Purchase Date, each Participant's Contributions (without any increase for interest) shall be applied to the purchase of whole shares, up to the maximum number of shares permitted under the Plan and the Offering.

7. NOTICES AND AGREEMENTS.

Any notices or agreements provided for in an Offering or the Plan shall be given in writing, in a form provided by the Company (including documents delivered in electronic form, if authorized by the Committee), and unless specifically provided for in the Plan or this Offering, shall be deemed effectively given upon receipt or, in the case of notices and agreements delivered by the Company, five (5) days after deposit in the United States mail, postage prepaid.

8. EXERCISE CONTINGENT ON STOCKHOLDER APPROVAL.

The Purchase Rights granted under an Offering are subject to the approval of the Plan by the stockholders of the Company as required for the Plan to obtain treatment as an Employee Stock Purchase Plan.

9. OFFERING SUBJECT TO PLAN.

Each Offering is subject to all the provisions of the Plan, and the provisions of the Plan are hereby made a part of the Offering. The Offering is further subject to all interpretations, amendments, rules and regulations which may from time to time be promulgated and adopted pursuant to the Plan. In the event of any conflict between the provisions of an Offering and those of the Plan (including interpretations, amendments, rules and regulations which may from time to time be promulgated and adopted pursuant to the Plan), the provisions of the Plan shall control.

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JAZZ PHARMACEUTICALS, INC.
DIRECTORS DEFERRED COMPENSATION PLAN

APPROVED BY THE BOARD: MAY 1, 2007

ARTICLE I

DEFINITIONS

1.1 "***Board***" shall mean the Board of Directors of the Company.

1.2 "***Change in Control***" means any of the following: (a) the date that any one person or persons acting as a group acquires ownership of Company stock constituting more than fifty percent (50%) of the total fair market value or total voting power of the stock of the Company; (b) the date that any one person or persons acting as a group acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) ownership of the stock of the Company possessing fifty percent (50%) or more of the total voting power of the stock of the Company; (c) the date that a majority of members of the Board is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board before the date of the appointment or election; or (d) the date that any one person or persons acting as a group acquires assets (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) from the Company that have a total gross fair market value equal to or more than eighty percent (80%) of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions. The determination of whether an event constitutes a Change of Control for purposes of this Plan shall be made in accordance with its definition under Section 409A of the Code and the regulations and other guidance thereunder, and shall not involve the exercise of any discretionary authority by the Board.

1.3 "***Code***" shall mean the Internal Revenue Code of 1986, as amended.

1.4 "***Common Stock***" shall mean the common stock of the Company.

1.5 "***Company***" means Jazz Pharmaceuticals, Inc., a Delaware corporation.

1.6 "***Director***" shall mean a member of the Board who is not an employee of the Company or any of its subsidiaries.

1.7 "***Exchange Act***" means the Securities Exchange Act of 1934, as amended.

1.8 "***Fair Market Value Per Share***" shall mean the Market Value Per Share, or, if there has been no Public Offering, the fair market value of the Common Stock as determined in the good faith discretion of the Board.

1.9 "***Fees***" shall mean amounts earned for serving as a member of the Board, including any committees of the Board.

1.10 "***He***", "***Him***", or "***His***" shall apply equally to male and female members of the Board.

1.11 "***Market Value Per Share***" shall mean, for any given day, the price per share equal to (i) the last sale price of the Common Stock on the such day on the principal stock exchange on which the Common Stock may at the time be listed or, (ii) if there shall have been no sales on such exchange on such day, the average of the closing bid and asked prices of the Common Stock on such exchange on such day or, (iii) if there is no such bid and asked price on such day, the average of the closing bid and asked prices of the Common Stock on the next preceding date when such bid and asked price occurred or, (iv) if the Common Stock shall not be so listed, the closing sales price of the Common Stock as reported by NASDAQ on such day in the over-the-counter market.

1.12 "***Plan***" shall mean the Jazz Pharmaceuticals, Inc. Directors Deferred Compensation Plan for Directors, as it may be amended from time to time.

1.13 "***Public Offering***" shall mean the sale of shares of Common Stock to the public subsequent to the date hereof pursuant to a registration statement under the Securities Act of 1933, as amended, and the rules and regulations in effect thereunder, which has been declared effective by the Securities Exchange Commission (other than a registration statement on Form S-4, Form S-8 or any other similar form).

1.14 "***Stock Account***" shall mean the account created by the Company pursuant to Article III of this Plan in accordance with an election by a Director to receive stock compensation under Article II hereof.

1.15 "***Year***" shall mean a calendar year.

ARTICLE II

ELECTION TO DEFER

2.1 This Plan shall become effective on the date of the underwriting agreement between the Company and the underwriter(s) managing the initial public offering of the Common Stock, pursuant to which the Common Stock is priced for the initial public offering.

2.2 A Director may elect, on or before December 15 of any Year, to defer payment of all or a specified part of all Fees to be earned during the Year following the Year in which such election occurs and succeeding Years (until the Director ceases to be a Director or changes his election pursuant to Section 2.4 herein); *provided, however*, that with respect to the first Year in which a Director becomes eligible to participate in the Plan, the Director may make an initial election within thirty (30) days after the date the Director becomes so eligible to defer payment of all or a specified part of such Fees earned following the date on which such initial election is made during the remainder of such Year and for any succeeding Years.

2.3 The election to participate in the Plan and manner of payment shall be designated by submitting a letter in the form attached hereto as Appendix A to the Secretary of the Company.

2.4 The election shall continue from Year to Year and become irrevocable on December 15 of each Year, unless the Director changes or terminates it by written request delivered to the Secretary of the Company prior to December 15 of the Year preceding the commencement of the Year for which the changes or termination is first effective.

ARTICLE III

DEFERRED COMPENSATION ACCOUNTS

3.1 The Company shall maintain separate memorandum accounts for the Fees deferred by each Director.

3.2 The Company shall credit, on the date Fees become payable, the Stock Account of each Director with a number of shares of Common Stock which is equal to the deferred portion of any Fee due the Director as to which an election to defer Fees into the Stock Account has been made, divided by the Fair Market Value Per Share determined as of the date such Fees would otherwise have been paid.

3.3 The Company shall credit the Stock Account of each Director who has elected to receive deferred compensation in the form of Common Stock with the number of shares of Common Stock equal to any cash dividends (or the fair market value of dividends paid in property other than dividends payable in Common Stock) payable on the number of shares of Common Stock represented in each Director's Stock Account, divided by the Fair Market Value Per Share on the applicable dividend payment date. Dividends payable in Common Stock will be credited to each Director's Stock Account in the form of the right to receive Common Stock. If adjustments are made to the outstanding shares Common Stock as a result of split-ups, recapitalizations, mergers, consolidations and the like, an appropriate adjustment also will be made in the number of shares of Common Stock credited to the Director's Stock Account.

3.4 Common Stock shall be computed to three decimal places.

3.5 The right to receive Common Stock at a later date shall not entitle any person to rights of a stockholder with respect to such Common Stock unless and until shares of Common Stock have been issued to such person pursuant to Article IV hereof.

3.6 The Stock Account of a Director shall only be a bookkeeping account, and the Company shall not be required to acquire, reserve, segregate, or otherwise set aside shares of its Common Stock for the payment of its obligations under the Plan. The Company shall make available as and when required a sufficient number of shares of its Common Stock to meet the needs of the Plan.

3.7 Nothing contained herein shall be deemed to create a trust of any kind or any fiduciary relationship. To the extent that any person acquires a right to receive payments from the Company under the Plan, such right shall be no greater than the right of any unsecured general creditor of the Company.

ARTICLE IV

PAYMENT OF DEFERRED COMPENSATION

4.1 Subject to the other provisions of this Article IV, amounts credited to a Director's Stock Account shall be distributed as the Director's election (made pursuant to Paragraph 2.2 of Article II hereof) shall provide. Distributions in respect of the Director's Stock Account shall be paid in cash or Common Stock, as the Director shall be permitted to elect at the time such account is to be distributed, and any such distributions shall begin on the tenth (10th) business day following the day on which a Director separates from service with the Board. Shares of Common Stock available for distribution shall be funded with shares reserved under the Company's 2007 Non-Employee Directors Stock Option Plan. Notwithstanding a Director's election, to the extent that an insufficient number of shares remains available under the Company's 2007 Non-Employee Directors Stock Option Plan to fund distributions under the Plan, the Director's Stock Account shall be paid in cash.

4.2 Each Director shall have the right to designate one or more beneficiaries to succeed to his right to receive payments hereunder in the event of his death. Each designated beneficiary shall receive payments in the same manner as the Director if he had lived. In case of a failure of designation or the death of all designated beneficiaries without any designated successors, the balance of the amounts credited to the Director's Stock Account shall be payable in accordance with Section 4.1 to the Director's or former Director's estate in full on the first day of the Year following the Year in which he dies. No beneficiary designation shall be valid unless it is in writing, signed by the Director and filed with the Secretary of the Company.

4.3 In the event of a Change in Control, (i) all amounts credited to each Director's Stock Account shall be distributed on the tenth (10th) business day after the occurrence of such Change in Control and (ii) any Director who elects to have his or her Stock Account distributed in shares of Common Stock must notify the Company of such election in writing no later than the fifth (5th) business day prior to the Change in Control.

4.4 In the event that a Director elects to have a distribution in cash in respect of his or her Stock Account, the total amount of cash to be paid shall be determined by multiplying the number of shares of Common Stock credited to such account on the last business day prior to the date that the first distribution of such account is to be made, by the then Fair Market Value Per Share.

ARTICLE V

ADMINISTRATION

5.1 The Company shall administer the Plan at its expense. All decisions made by the Company with respect to issues hereunder shall be final and binding on all parties.

5.2 Except to the extent required by law, the right of any Director or any beneficiary to any benefit or to any payment hereunder shall not be subject in any manner to attachment or other legal process for the debts of such Director or beneficiary; and any such benefit or payment shall not be subject to alienation, sale, transfer, assignment or encumbrance.

ARTICLE VI

AMENDMENT OF PLAN; GOVERNING LAW; SECTION 409A.

6.1 The Plan may be amended, suspended or terminated in whole or in part from time to time by the Board except that no amendment, suspension, or termination shall apply to the payment of any amounts previously credited to a Director's Stock Account.

6.2 The Plan shall be governed by and construed and enforced in accordance with the laws of the State of Delaware, without regard to principles of conflict of law.

6.3 Notwithstanding any other provision of the Plan, this Plan is intended to comply with Section 409A and shall at all times be interpreted in accordance with such intent such that amounts credited to Directors' accounts shall not be taxable to Directors until such amounts are paid to Directors in accordance with the terms of the Plan. In furtherance thereof, no payments may be accelerated under the Plan other than to the extent permitted under Section 409A of the Code ("***Section 409A***"). To the extent that any provision of the Plan violates Section 409A such that amounts would be taxable to a Director prior to payment or would otherwise subject a Director to a penalty tax under Section 409A, such provision shall be automatically reformed or stricken to preserve the intent hereof. To the extent that the Company determines that Directors may be given greater flexibility to modify or revoke deferral elections under the Plan in a manner consistent with Section 409A (based on future guidance promulgated by the Internal Revenue Service and the Treasury Department from time to time), the Company may (but shall not be obligated to) amend the Plan to provide for such greater flexibility.

APPENDIX A

[Date]

Jazz Pharmaceuticals, Inc.
3180 Porter Drive
Palo Alto, CA 94304

Dear [NAME]:

Pursuant to the Jazz Pharmaceuticals, Inc. Directors Deferred Compensation Plan, adopted on May 1, 2007 (the "***Plan***"), I hereby elect to defer receipt of all or a portion of my Director's fees to which I may become entitled to receive in respect of 2007 and succeeding Years (unless and until I change my election for fees receivable in succeeding years pursuant to the terms of the Plan) in accordance with the percentages indicated below.

Initial Deferral Election. I hereby elect to have my director's fees (and committee fees, if any) credited as follows (fill in appropriate percentages for options a, b and c below):

(a) ____% of the aggregate fees shall be credited to my Stock Account as provided for in the Plan; or

(b) ____% of the aggregate fees shall not be deferred, but shall be paid to me directly and promptly as they accrue.

Timing of Distributions. I understand that my Stock Account shall each become payable on the earlier to occur of the tenth (10th) business day following (i) the date of my separation from service with the Board and (ii) a Change in Control (as such term is defined in the Plan).

Manner of Distributions. Further, I elect to receive the payments pursuant to the Plan (check one desired method below):

(a) If a distribution results due to my separation from service with the Board: in one lump sum; in (insert number) equal annual installments.

(b) If a distribution results due to a Change in Control: in one lump sum; in (insert number) equal annual installments.

Very truly yours,

[Name]

DESIGNATION OF BENEFICIARY
JAZZ PHARMACEUTICALS, INC.
DIRECTORS DEFERRED COMPENSATION PLAN

In the event of my death prior to receipt of all or any amount of the balance of my Stock Account so accumulated, I designate the following one or more individuals _____ as my beneficiary or beneficiaries to receive the funds so accumulated, but unpaid.

Signed this_____ day of _____, 20__.

_____
[NAME]

Witnessed this _____ day of _____, 20__.

_____
[WITNESS]

Exhibit 10.56

JAZZ PHARMACEUTICALS, INC.
NON-EMPLOYEE DIRECTOR
COMPENSATION ARRANGEMENTS

On May 1, 2007, the Board of Directors (the "***Board***") of Jazz Pharmaceuticals, Inc. (the "***Company***") adopted the following compensation program for non-employee directors of the Board to be effective upon the closing of the initial public offering of the Company's common stock (the "***Offering***"). Pursuant to this program, each member of the Board who is not an employee or an officer of the Company will receive the following cash compensation for Board services, as applicable:

- a $30,000 annual retainer for service as a Board member;
- a $15,000 supplemental annual retainer for service as chair of the audit committee;
- a $10,000 supplemental annual retainer for service as chair of the compensation committee; and
- a $5,000 supplemental annual retainer for service as chair of each other committee of the Board.

The Company will continue to reimburse its non-employee directors for their reasonable expenses incurred in attending meetings of the Board and committees of the Board.

Additionally, members of the Board who are not employees or officers of the Company will receive non-statutory stock options under the Company's 2007 Non-Employee Directors Stock Option Plan which will become effective immediately upon the signing of the underwriting agreement for the Offering. Each non-employee director joining the Board after the closing of the Offering will automatically be granted a non-statutory stock option to purchase 30,000 shares of common stock with an exercise price equal to the then fair market value of the Company's common stock. On the first trading day on or after August 15 of each year, commencing on August 15, 2007, each non-employee director will automatically be granted a non-statutory stock option to purchase 10,000 shares of common stock on that date with an exercise price equal to the then fair market value of the Company's common stock. The initial grants will vest with respect to one-third of the shares on the first anniversary of the date of grant, and the balance in a series of 24 successive equal monthly installments thereafter. The annual grants will vest in a series of 12 successive equal monthly installments measured from the date of grant. All stock options granted under the Company's 2007 Non-Employee Directors Stock Option Plan will have a maximum term of ten years.

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the reference to our firm under the caption "Experts" and to the use of our report dated March 6, 2007 (except for the seventh paragraph of Note 2, as to which the date is May 15, 2007), with respect to the consolidated financial statements and schedule of Jazz Pharmaceuticals, Inc. included in Amendment No. 3 to the Registration Statement (Form S-1 No. 333-141164) and related Prospectus of Jazz Pharmaceuticals, Inc. for the registration of shares of its common stock.

/s/ Ernst & Young LLP

Palo Alto, California
May 15, 2007

Exhibit 23.2

Consent of Independent Auditors

We consent to the reference to our firm under the caption "Experts" and to the use of our report dated March 6, 2007, with respect to the financial statements of Orphan Medical, Inc. included in Amendment No. 3 to the Registration Statement (Form S-1 No. 333-141164) and related Prospectus of Jazz Pharmaceuticals, Inc. for the registration of shares of its common stock.

/s/ Ernst & Young LLP

Palo Alto, California
May 15, 2007

Exhibit 24.2

POWER OF ATTORNEY

KNOW ALL BY THESE PRESENTS, that Jaimin R. Patel hereby constitutes and appoints Samuel R. Saks, M.D., Matthew K. Fust and Carol A. Gamble, and each of them, as his or her true and lawful attorneys-in-fact and agents, each with the full power of substitution, for him or her and in his or her name, place or stead, in any and all capacities, to sign any and all amendments to the Registration Statement on Form S-1 (File No. 333-141164) of Jazz Pharmaceuticals, Inc. (including post-effective amendments), and to sign any registration statement for the same offering covered by such Registration Statement that is to be effective upon filing pursuant to Rule 462(b) promulgated under the Securities Act, and all post-effective amendments thereto, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or their, his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, the undersigned has caused this Power of Attorney to be executed this 11th day of May, 2007.

By: /s/ JAIMIN R. PATEL
Jaimin R. Patel

Cooley
GODWARD KRONISH LLP

Chadwick L. Mills
(650) 843-5654
cmills@cooley.com

VIA EDGAR AND FEDEX

May 16, 2007

Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Attn: Ms. Mary K. Fraser
Mr. Jeffrey P. Riedler
Ms. Tabatha Akins
Ms. Lisa Vanjoske

RE: Jazz Pharmaceuticals, Inc.
Form S-1 Registration Statement
File No. 333-141164

Ladies and Gentleman:

On behalf of Jazz Pharmaceuticals, Inc. (the "***Company***"), we are transmitting for filing Amendment No. 3 (the "***Amendment***") to the Registration Statement on Form S-1, File No. 333-141164 (the "***Registration Statement***"). We are also sending copies of this letter and the Amendment, as well as copies that are marked to show changes to Amendment No. 2 to the Registration Statement filed with the U.S. Securities and Exchange Commission (the "***Commission***") on April 20, 2007, to the staff of the Commission (the "***Staff***") in care of Ms. Fraser, Ms. Akins and Ms. Vanjoske.

The Amendment is being filed in response to comments received from the Staff, by letter dated May 15, 2007, with respect to the Registration Statement (the "***Comments***"). The numbering of the paragraphs below corresponds to the numbering of the Comments, which, for the Staff's convenience, have been incorporated into this response letter. Page references in the text of this response letter correspond to the page numbers of the Amendment.

Prospectus Summary – page 1

1. *In the carryover paragraph at the top of page 3 you refer to "proof of concept clinical trials." Please explain what this term refers to.*

   In response to the Staff's comment, the Company has revised the disclosure on page 3 of the prospectus to add an explanation of the term "proof of concept clinical trials."

Management's Discussion and Analysis of Financial Condition and Results of Operations, page 46

Critical Accounting Policies and Significant Judgments and Estimates, page 42

Stock-Based Compensation, page 55

Change in Accounting Principle – Stock Based Compensation Under SFAS 123R, page 56

Common Stock Fair Value, page 57

2. *With respect to prior comment number twenty-six, please expand your disclosures here to:*

   a. Quantitatively disclose how the enterprise value was estimated and changed at each valuation date.

   In response to the Staff's comment, the Company has revised the disclosure on pages 57-59 of the prospectus to disclose how the enterprise value was estimated in connection with each contemporaneous valuation disclosed in the prospectus and the process for determining the fair market value of common stock on each other valuation date.

   b. Tell us, and elaborate on how the "comparison group utilized for the market approach was modified to reflect business developments at comparable companies" was considered in your reassessment of the estimated valuation.

   In response to the Staff's comment, the Company supplementally advises the Staff that, in determining the comparison group utilized for the market approach, the Company used the following comparison group as of June 28, 2006:

   - Adolor Corporation
   - Alexza Pharmaceuticals, Inc.
   - Auxilium Pharmaceuticals, Inc.
   - Enzon Pharmaceuticals, Inc.
   - Idenix Pharmaceuticals, Inc.
   - Indevus Pharmaceuticals, Inc.
   - InterMune, Inc.
   - Neurocrine Biosciences, Inc.
   - Onyx Pharmaceuticals, Inc.
   - Penwest Pharmaceuticals Co.
   - Pharmion Corporation
   - POZEN Inc.
   - Somaxon Pharmaceuticals, Inc.
   - Telik, Inc.

   The Company believes that the inclusion of each of these companies in the comparison group was appropriate because each is a specialty pharmaceutical or biotechnology company with either commercial products or product candidates at a comparable stage of development to the Company's late stage product candidates. The Company believes that the differences between the Company and the companies included in the

comparison group are mitigated by the substantial sample size used for purposes of the market approach.

In connection with the contemporaneous valuation conducted as of December 31, 2006, the Company removed the following four companies from the comparison group for purposes of the market approach:

- Neurocrine Biosciences, Inc.
- Onyx Pharmaceuticals, Inc.
- Telik, Inc.
- Adolor Corporation

Between the date for which market values of these companies were reviewed for purposes of conducting the June 28, 2006 contemporaneous valuation and the date for which market values of comparable companies were reviewed for purposes of conducting the contemporaneous valuation as of December 31, 2006, each of these companies experienced material adverse events associated with significant development projects that resulted in substantial reductions in market value and diminution in future prospects. As a result, the Company believes that these companies were no longer comparable to the Company as of the December 31, 2006. The Company has revised its disclosure on page 58 of the prospectus to provide greater specificity as to the rationale for not including these companies in the comparison group for the contemporaneous valuation as of December 31, 2006.

In connection with the contemporaneous valuation conducted as of December 31, 2006, the Company added the following three companies to the comparison group for purposes of the market approach:

- Acorda Therapeutics, Inc.
- XenoPort, Inc.
- MGI PHARMA, INC.

Based upon a review of publicly available information related to each of these companies, the Company determined that each was a sufficiently comparable specialty pharmaceutical or biotechnology company with commercial products or product candidates at sufficiently comparable stages of development to warrant inclusion in the comparison group for purposes of the market approach. The Company believes that the inclusion of these additional companies provided a more appropriate sample size for purposes of the market approach.

As stated in the disclosure on page 57 of the prospectus, the Company utilized the applicable comparison group in order to conduct the market approach as a means of validating the Company's enterprise value as determined using the income approach. In each of the contemporaneous valuations conducted by the Company, the range of enterprise values as determined using the market approach was within the range of enterprise values as determined using the income approach.

c. *Once you can reasonably estimate the IPO price, qualitatively and quantitatively discuss each significant factor contributing to the difference between each valuation and the estimated IPO price. See paragraph 182(b) of the AICPA Practice Aid.*

In response to the Staff's comment, the Company has revised the disclosure on pages 57-59 of the prospectus to discuss each significant factor contributing to the difference between the mid-point of the estimated range of the IPO price and each of the determinations of fair market value as of June 28, 2006, February 13, 2007, February 27, 2007 and March 31, 2007.

3. *Please refer to your response to our prior comment number twenty seven. Because you state that you used the assistance of an independent valuation specialist, we still believe that naming the expert and including a consent is required. Please revise your disclosure to name the expert and make reference to them in the "Experts" section of the document and provide the written consent this independent valuation specialist, or revise your disclosure to remove all references to the independent valuation specialist. Refer to Securities Act Rule 436. This comment also applies to our prior comment number 40.*

In response to the Staff's comment, the Company has revised the disclosure on pages 57, 116, F-21 and F-33 of the prospectus to remove all references to the independent valuation specialist.

4. *Disclose the intrinsic value of vested and unvested options outstanding based on the estimated IPO price as required by paragraph 180 of the AICPA Practice Aid.*

In response to the Staff's comment, the Company has revised the disclosure on page 60 of the prospectus to disclose the intrinsic value of vested and unvested options outstanding as of March 31, 2007 based on the mid-point of the estimated range of the IPO price.

14. Stock-Based Compensation, page F-27

5. *Refer to your response to our prior comment 42. Please demonstrate how you determined that the companies considered were comparable given your size and stage of development. Tell us the names of the companies that you considered in your analysis. This comment also applies to our prior comment number 26.*

In response to the Staff's comment, the Company supplementally advises the Staff that in determining the comparison group of companies for purposes of evaluating volatility as of December 31, 2006, the Company utilized the same comparison group of companies as utilized for purposes of the applying the market approach in the Company's contemporaneous valuation as of December 31, 2006 as discussed in our response to comment number 2(b) above. The rationale for using each of the companies in this comparison group was the same as set forth in our response to comment number 2(b).

The application of this comment to the Staff's prior comment number 26 is addressed in the Company's response to comment number 2(b) above.

*****

Comment number 1 in the initial comments received from the Staff with respect to the Registration Statement, by letter dated April 13, 2007 (the "**Initial Comments**"), was as follows:

We note that your filing contains numerous omissions throughout the prospectus which relate to the offering price range or the number of shares you will sell. These omissions include but are not limited to:

- *Summary Financial Data*
- *Use Of Proceeds*
- *Capitalization*
- *Dilution*
- *The Option Grants Table*
- *Shares Eligible For Future Sale*
- *The Principal Stockholders Table*
- *Description of Capital Stock*

Rule 430A requires you to include this information in your filing based upon an estimate of the offering price within a bona fide range you disclose on the cover page and based upon an estimate of the number of shares you will sell. We consider a bona fide range to be $2 if the price is under $20 and 10% if it is above $20. You should include the required information in an amendment prior to circulating a "red herring" prospectus.

The Company has provided the requested information in the Amendment, which was filed prior to circulating a "*red herring*" prospectus. The Amendment reflects a $24-$26 range of the estimated offering price. The Company is circulating as a "*red herring*" prospectus the preliminary prospectus included in the Amendment.

Comment number 3 in the Initial Comments was as follows:

> *Comments on your application for confidential treatment will follow under separate cover. We will not consider a request for acceleration of effectiveness of the registration statement until any comments we may have on the application are resolved.*
>
> The Company respectfully requests any comments to its applications for confidential treatment, which were filed on March 27, 2007 (all material contracts for which confidential treatment is requested, except for one later-executed amendment) and April 20, 2007 (one amendment), as soon as possible. The Company currently intends to request that the Registration Statement be declared effective as of approximately May 30, 2007.

*****

The Company is printing and circulating preliminary prospectuses and commencing the marketing of its initial public offering. As noted above, the Company currently intends to request that the Registration Statement be declared effective as of approximately May 30, 2007. In connection with its request for acceleration of effectiveness, the Company will furnish the acknowledgement letter requested in the Initial Comments.

Please do not hesitate to contact me at (650) 843-5654, Suzanne Sawochka Hooper at (650) 843-5180 or John Geschke at (650) 843-5757 if the Staff requires any additional information prior to acceleration of effectiveness or if there is anything that we or the Company can do to facilitate your review.

Best regards,

/s/ CHADWICK L. MILLS

Chadwick L. Mills

cc: Samuel R. Saks, M.D., Jazz Pharmaceuticals, Inc.
Carol A. Gamble, Esq., Jazz Pharmaceuticals, Inc.
Suzanne Sawochka Hooper, Esq., Cooley Godward Kronish LLP
John M. Geschke, Esq., Cooley Godward Kronish LLP
Bruce Dallas, Esq., Davis Polk & Wardwell