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

FORM 10-Q

(Mark One)

☒ **Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the quarterly period ended June 30, 2007

or

☐ **Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Commission File Number: 001-33500

JAZZ PHARMACEUTICALS, INC.
(Exact name of registrant as specified in its charter)

Delaware	**05-0563787**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

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)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☐ No ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. (Check one):

Large accelerated filer ☐ Accelerated filer ☐ Non-accelerated filer ☒

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of July 31, 2007, 24,550,554 shares of the registrant's Common Stock, $.0001 par value, were outstanding.

JAZZ PHARMACEUTICALS, INC.

FORM 10-Q FOR THE QUARTER ENDED JUNE 30, 2007

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PART I – FINANCIAL INFORMATION

Item 1. Financial Statements

JAZZ PHARMACEUTICALS, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands)
(Unaudited)

	June 30, 2007	December 31, 2006
ASSETS		
Current assets:		
Cash and cash equivalents	$ 148,000	$ 78,948
Restricted cash	275	275
Accounts receivable, net	6,462	5,380
Inventories	3,216	3,026
Prepaid expenses	2,655	3,447
Other current assets	547	487
Total current assets	161,155	91,563
Property and equipment, net	3,025	2,107
Intangible assets	60,952	69,140
Goodwill	38,213	38,213
Long-term restricted cash and investments	12,085	12,000
Other long-term assets	1,440	1,548
Total assets	$ 276,870	$ 214,571
LIABILITIES, CONVERTIBLE PREFERRED STOCK, AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities:		
Line of credit	$ 3,134	$ 2,191
Accounts payable	4,268	5,443
Accrued liabilities	22,198	12,943
Deferred revenue	2,027	1,422
Preferred stock warrant liability (including $5,965 as of December 31, 2006 held by related parties)	—	8,521
Total current liabilities	31,627	30,520
Deferred rent and other non-current liabilities	452	534
Deferred revenue, non-current	13,037	13,495
Liability under government settlement, non-current	14,881	—
Senior secured notes	74,622	74,283
Commitments and contingencies (Note 7)		
Convertible preferred stock	—	263,852
Common stock subject to repurchase	13,174	8,183
Stockholders' equity (deficit):		
Common stock	2	—
Additional paid-in capital	366,165	1,335
Accumulated other comprehensive income	—	12
Accumulated deficit	(237,090)	(177,643)
Total stockholders' equity (deficit)	129,077	(176,296)
Total liabilities, convertible preferred stock and stockholders' equity (deficit)	$ 276,870	$ 214,571

The accompanying notes are an integral part of these financial statements.

JAZZ PHARMACEUTICALS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except per share amounts)
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Revenues:				
Product sales, net	$ 13,615	$ 10,454	$ 25,240	$ 20,225
Royalties, net	360	120	571	186
Contract revenue	289	500	2,541	500
Total revenues	14,264	11,074	28,352	20,911
Operating expenses:				
Cost of product sales (excluding amortization of acquired developed technology)	1,679	1,754	3,682	3,323
Research and development	17,407	14,280	32,274	27,174
Selling, general and administrative	18,175	13,716	32,514	25,935
Amortization of intangible assets	2,287	2,400	4,649	4,800
Provision for government settlement	17,469	—	17,469	—
Total operating expenses	57,017	32,150	90,588	61,232
Loss from operations	(42,753)	(21,076)	(62,236)	(40,321)
Interest income	1,300	591	2,391	1,172
Interest expense (including $2,287 and $2,255 for the three months ended June 30, 2007 and 2006, respectively, and $4,541 and $4,440 for the six months ended June 30, 2007 and 2006, respectively, pertaining to related parties)	(3,314)	(3,769)	(6,582)	(7,546)
Other income, net	4,904	120	1,835	182
Gain on sale of product rights	—	—	5,145	—
Net loss	(39,863)	(24,134)	(59,447)	(46,513)
Beneficial conversion feature	—	—	—	(3,501)
Loss attributable to common stockholders	$ (39,863)	$ (24,134)	$ (59,447)	$ (50,014)
Loss per share attributable to common stockholders, basic and diluted	$ (5.27)	$ (2,194.00)	$ (15.59)	$ (5,001.40)
Weighted-average common shares used in computing loss per share attributable to common stockholders, basic and diluted	7,561	11	3,813	10

The accompanying notes are an integral part of these financial statements.

JAZZ PHARMACEUTICALS, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	Six Months Ended June 30,	
	2007	2006
Operating activities		
Net loss	$ (59,447)	$ (46,513)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	589	329
Amortization of intangible assets	4,649	4,800
Loss on disposal of property and equipment	6	481
Fair value adjustment to acquired finished goods	54	560
Stock-based compensation expense	1,980	1,664
Excess of cash paid over accrued for interest	487	400
Revaluation of preferred stock warrant liability	(1,846)	(182)
Interest on development financing	—	1,147
Gain on sale of product rights	(5,145)	—
Changes in assets and liabilities:		
Accounts receivable	(1,073)	(7,209)
Inventories	(565)	(361)
Prepaid expenses and other current assets	732	543
Other assets	(52)	320
Accounts payable	(1,535)	(950)
Accrued liabilities	8,522	2,180
Deferred revenue	147	5,000
Deferred rent	(43)	(102)
Liability under government settlement	14,881	—
Net cash used in operating activities	(37,659)	(37,893)
Investing activities		
Purchases of property and equipment	(1,513)	(660)
Increase in restricted cash and investments	(85)	—
Proceeds from sale of product rights	9,000	—
Net cash provided by (used in) investing activities	7,402	(660)
Financing activities		
Proceeds from issuances of convertible preferred stock, net of issuance costs	—	34,994
Proceeds from issuances of common stock, net of issuance costs	76	—
Proceeds from sale of common stock in initial public offering, net of issuance costs	98,290	—
Proceeds from line of credit	12,758	—
Repayments under line of credit	(11,815)	—
Proceeds from development financing	—	15,000
Net cash provided by financing activities	99,309	49,994
Net increase in cash and cash equivalents	69,052	11,441
Cash and cash equivalents, at beginning of period	78,948	20,614
Cash and cash equivalents, at end of period	$ 148,000	$ 32,055
Supplemental disclosure of cash flow information:		
Cash paid for interest (including $4,200 and $4,163 for the six months ended June 30, 2007 and 2006, respectively, paid to related parties)	$ 6,081	$ 6,000
Supplemental disclosure of non-cash financing activities:		
Beneficial conversion feature - deemed dividend attributable to preferred stockholders	$ —	$ 3,501
Conversion of preferred stock warrant liability to stockholders' equity	$ 6,675	$ —

The accompanying notes are an integral part of these financial statements.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

1. Summary of Significant Accounting Policies

Basis of Presentation

These unaudited Condensed Consolidated Financial Statements have been prepared following the requirements of the Securities and Exchange Commission ("SEC") for interim reporting. As permitted under those rules, certain footnotes and other financial information that are normally required by U.S. generally accepted accounting principles ("GAAP") can be condensed or omitted. The information included in this quarterly report on Form 10–Q should be read in conjunction with the Consolidated Financial Statements and accompanying notes included in the Form S-1/A of Jazz Pharmaceuticals, Inc. (the "Company" or "Jazz Pharmaceuticals") filed with the SEC on May 31, 2007. In the opinion of management, these financial statements have been prepared on the same basis as the annual financial statements and include all adjustments, consisting only of normal and recurring adjustments, considered necessary for the fair presentation of the Company's financial position and operating results. The results for the three and six months ended June 30, 2007 are not necessarily indicative of the results to be expected for the year ended December 31, 2007 or for any other interim period or for any future year.

The consolidated financial statements include the accounts of the Company 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 and product candidates. Products developed by the Company will require approval of the United States Food and Drug Administration ("FDA") and/or a foreign regulatory authority prior to commercial sale. 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 on acceptable terms, or at all, which could materially and adversely affect its business, financial condition, results of operations and growth prospects. The Company may seek additional sources of financing through development financings, collaborations or public or private debt or equity financings.

Concentration of Credit Risks

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 United States 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 90% and 93% of gross accounts receivable as of December 31, 2006 and June 30, 2007, respectively.

Use of Estimates

The preparation of financial statements in conformity with GAAP 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.

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.

Initial Public Offering

On May 31, 2007, the Company's Registration Statement on Form S-1/A was declared effective for its initial public offering, pursuant to which the Company sold 6,000,000 shares of its common stock at a public offering price of $18.00 per share. Net cash proceeds from the initial public offering are expected to be approximately $97.2 million, after deducting underwriting discounts and commissions and estimated offering expenses, not all of which had been paid as of June 30, 2007. In connection with the closing of the initial public offering, all of the Company's shares of preferred stock outstanding at the time of the offering were automatically converted into 17,921,551 shares of common stock, and all of the Company's warrants to purchase Series BB preferred stock outstanding at the time of the offering were converted into warrants to purchase common stock.

Of the 17,921,551 shares of preferred stock that converted into common stock, 278,069 shares were held by the Company's executive officers and were subject to the terms of their employment agreements. Under the terms of these employment agreements, the Company may be required to purchase these shares of common stock at fair market value. Effective upon the conversion of the preferred stock into common stock, the Company recorded an additional $4.2 million as common stock subject to repurchase, which represents the fair market value of the shares on the date of the employment agreements.

Changes to Authorized Shares

On June 6, 2007, the Company filed a fourth amended and restated certificate of incorporation with the Delaware Secretary of State under which the Company is authorized to issue 150,000,000 shares of common stock and 20,000,000 shares of preferred stock each having a par value of $0.0001. As of the filing of the fourth amended and restated certificate of incorporation, 24,550,554 shares of common stock and no shares of preferred stock were issued and outstanding.

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.

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 adoption of FIN 48.

As of June 30, 2007, the Company had approximately $1.5 million of unrecognized tax benefits, substantially all of which would, if recognized, affect the Company's tax expense. The Company does 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 federal tax examination. The Company files a United States federal income tax return and various state income tax returns, all of which typically have three tax years open at any point in time.

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 as follows (in thousands, except per share amounts):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Numerator:				
Loss attributable to common stockholders	$ (39,863)	$ (24,134)	$ (59,447)	$ (50,014)
Denominator:				
Weighted-average common shares outstanding	8,252	618	4,461	618
Less: weighted-average common shares outstanding subject to repurchase	(691)	(607)	(648)	(608)
Weighted-average common shares used in computing loss per share attributable to common stockholders, basic and diluted	7,561	11	3,813	10
Loss per share attributable to common stockholders, basic and diluted	$ (5.27)	$ (2,194.00)	$ (15.59)	$ (5,001.40)

The following securities 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):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Series A preferred stock (as if converted)	—	1,355	—	1,355
Series B preferred stock (as if converted)	—	5,884	—	5,884
Series B Prime preferred stock (as if converted)	—	6,375	—	6,375
Warrants to purchase Series BB preferred stock (as if exercised and converted)	—	786	—	786
Warrants to purchase common stock (as if exercised and converted)	786	—	786	—
Options to purchase common stock	1,945	1,538	1,945	1,538
Early exercise of options and unvested restricted common stock	8	139	8	139
Common stock subject to repurchase	594	467	594	467

Recent Accounting Pronouncements

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* ("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 did not have a material effect on its results of operations and financial position.

In September 2006, the Financial Accounting Standards Board ("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 and is required to be adopted by the Company by January 1, 2008. The Company is currently evaluating the effect that the adoption of SFAS 159 will have on its results of operations and financial position.

2. Inventory

The components of inventory were as follows (in thousands):

	June 30, 2007	December 31, 2006
Raw materials	$ 454	$ 541
Finished goods	2,762	2,485
Total inventories	$3,216	$ 3,026

3. Goodwill and Intangible Assets

The gross carrying amount and net book value of goodwill and intangible assets were as follows (in thousands):

	June 30, 2007			December 31, 2006		
	Gross Carrying Amount	Accumulated Amortization	Net Book Value	Gross Carrying Amount	Accumulated Amortization	Net Book Value
Developed technology - Xyrem	$ 39,700	$ 8,413	$31,287	$ 39,700	$ 6,327	$33,373
Developed technology - Antizol	31,100	6,590	24,510	31,100	4,956	26,144
Developed technology - Cystadane	—	—	—	4,300	687	3,613
Agreements not to compete	5,600	2,716	2,884	5,600	2,042	3,558
Trademarks	2,600	551	2,049	2,600	414	2,186
Other	400	178	222	400	134	266
Amortizable intangible assets	79,400	$ 18,448	$60,952	83,700	$ 14,560	$69,140
Goodwill	38,213			38,213		
Total	$117,613			$121,913		

In March 2007, as more fully discussed in Note 10, the Company sold its rights to its Cystadane® (betaine anhydrous) 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.

Future amortization costs per year for the Company's existing intangible assets other than goodwill as of June 30, 2007 were estimated as follows (in thousands):

Year Ending December 31,	Estimated Amortization Expense
2007 (remaining portion)	$ 4,574
2008	8,855
2009	8,581
2010	8,090
2011	7,713

4. Preferred Stock Warrant Liability

In June 2005, in connection with the issuance of the Company's $80.0 million aggregate principal amount senior secured notes, 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 were recorded as a preferred stock warrant liability. Prior to the Company's initial public offering, the preferred stock warrant liability was revalued at the end of each reporting period to fair value using the Black–Scholes option pricing model. On June 6, 2007, upon completion of the Company's initial public offering, the warrants became exercisable for common stock and the liability was reclassified to stockholders' equity at its then fair value.

The Company recorded benefits of $4.9 million and $120,000, in other income, during the three months ended June 30, 2007 and 2006, respectively, to reflect decreases in the fair value of the preferred stock warrant liability. The Company recorded benefits of $1.8 million and $182,000, in other income, during the six months ended June 30, 2007 and 2006, respectively, to reflect decreases in the fair value of the preferred stock warrant liability.

The fair value of the warrants was estimated to be $6.7 million at June 6, 2007, the date the liability was reclassified to stockholders' equity, and $8.5 million at December 31, 2006. The following assumptions were used to estimate the fair value of the warrants:

	June 6, 2007	December 31, 2006
Series BB preferred stock fair value	$17.59	$ 19.37
Volatility	54%	59%
Contractual term (years)	5.1	5.5
Risk-free rate	4.9%	4.7%
Expected dividend yield	0.0%	0.0%

5. Stock-Based Compensation

The Company accounts for employee stock-based compensation under 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. Employee stock-based compensation expense recognized in the three and six months ended June 30, 2007 and 2006 was calculated based on awards ultimately expected to vest, and has been reduced for estimated 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.

Employee stock–based compensation expense recognized under SFAS 123R was as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Cost of product sales	$ 11	$ 1	$ 22	$ 2
Research and development	220	164	414	308
Selling, general and administrative	809	679	1,544	1,354
Total stock-based compensation expense	$ 1,040	$ 844	$ 1,980	$ 1,664

Employee stock-based compensation costs of $22,000 and $18,000 as of June 30, 2007 and December 31, 2006, respectively, were capitalized as a component of inventory and included in the Company's Condensed Consolidated Balance Sheets.

As of June 30, 2007, total compensation cost related to unvested stock options not yet recognized was $6.9 million, which is expected to be allocated to expense and production costs over a weighted-average period of 2.75 years.

The employee stock-based compensation expense recognized under SFAS 123R was determined using the Black–Scholes option valuation model. Option valuation models require the input of subjective assumptions, and these assumptions can vary over time. The fair value of stock options was estimated at the grant date using the following weighted-average assumptions:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Weighted-average volatility	56%	61%	60%	61%
Weighted-average expected term	6.0	6.0	6.4	6.0
Range of risk-free rates	4.9%	5.0-5.1%	4.5-4.9%	4.6-5.1%
Expected dividend yield	0.0%	0.0%	0.0%	0.0%

The Company issued 5,017 shares of common stock as a result of stock option exercises during the six months ended June 30, 2007.

Effective upon the Company's initial public offering, employees became eligible to participate in an employee stock purchase plan (the "ESPP"). However, for logistical reasons, the Company did not communicate the details of the ESPP and employees were not able to notify the Company of their payroll withholdings until July 20, 2007. As a result, the Company and the employees did not have a mutual understanding of the terms of the awards until July 20, 2007 and, in accordance with SFAS 123R, the Company will not record any stock-based compensation expense related to the ESPP until the third quarter of 2007.

6. 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 three and six months ended December 31, 2007 and 2006, the difference between comprehensive loss and net loss represented unrealized gains on available-for-sale securities and was not material.

7. Commitments and Contingencies

Settlement of Investigation

In April 2006, the Company and Orphan Medical received subpoenas from the United States Department of Justice requiring both entities to provide the Department of Justice with certain information relating to Xyrem® (sodium oxybate), including information regarding the promotion and marketing of Xyrem.

On July 13, 2007, the Company entered into (i) a civil settlement agreement (the "Civil Settlement Agreement") with the United States of America, acting through the United States Department of Justice, the United States Attorney's Office for the Eastern District of New York, the Office of Inspector General of the Department of Health and Human Services ("HHS-OIG"), the United States Office of Personnel Management and the United States Department of Defense TRICARE Management Activity to resolve the governmental investigation related to the promotion of Xyrem and (ii) a non-prosecution agreement with the United States Attorney's Office for the Eastern District of New York (the "Non-prosecution Agreement")

under which the United States Attorney's Office agreed that the Company would not be prosecuted for the matters that were the subject of the investigation. Orphan Medical, which was acquired by the Company in June 2005, entered into (i) a plea agreement with the United States Attorney's Office for the Eastern District of New York (the "Plea Agreement"), under which Orphan Medical pled guilty, on July 13, 2007, to one felony count of introducing a misbranded drug into interstate commerce and (ii) the Civil Settlement Agreement. The Company expects that it and Orphan Medical will also enter into agreements with Medicaid participating states.

Pursuant to the Civil Settlement Agreement and the Plea Agreement, payments totaling approximately $20.0 million are required to be made over the period from July 20, 2007 through January 15, 2012. The total includes payments to Federal healthcare programs and Medicaid participating states, as well as restitution and fines. In addition, under the Non-prosecution Agreement, the Company agreed to guarantee payment by Orphan Medical of the amounts due under the Plea Agreement. The total payments due under the Civil Settlement Agreement and the Plea Agreement are payable as follows: $1.0 million in 2007; $2.0 million in 2008; $2.5 million in 2009; $3.0 million in 2010; $3.0 million in 2011 and $8.5 million in 2012. All remaining amounts due under the Civil Settlement Agreement could be accelerated if the Company is acquired, or in the event of an uncured default resulting from the failure to make payments when due. In addition, all or a portion of the remaining amounts due under the Civil Settlement Agreement could be accelerated if the Company has net income in any year. Orphan Medical, which no longer directly markets products, may be excluded from participation in Federal healthcare programs as a result of the settlement.

The Company also entered into a five-year corporate integrity agreement with HHS-OIG (the "Corporate Integrity Agreement") pursuant to which Jazz Pharmaceuticals agreed, among other things, to keep in place and continue its current compliance program which includes a compliance committee, a compliance officer, a code of conduct, comprehensive compliance policies, training and monitoring, a compliance hotline, an open door policy and a disciplinary process for compliance violations. The Company has agreed to provide periodic reports to HHS-OIG and an independent review organization will review its compliance program.

The settlement is neither an admission of liability by the Company nor a concession by the United States that its claims are not well founded. Participation in Federal healthcare programs by the Company, which was not prosecuted, will not be affected by the settlement. In the event of an uncured material breach or deliberate violation, as the case may be, of the Civil Settlement Agreement, the Corporate Integrity Agreement or the Non-prosecution Agreement, the Company could be excluded from participation in Federal healthcare programs and/or subject to prosecution.

The Plea Agreement was approved by the United States District Court for the Eastern District of New York on July 13, 2007.

The Company recorded a charge of $17.5 million during the three and six months ended June 30, 2007, which represents the present value of the settlement payments discounted at an interest rate of 4.6%. The non-current portion of this provision as of June 30, 2007 was $14.9 million and the current portion, which is included in accrued liabilities, was $2.6 million.

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 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 under "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, 2006 and June 30, 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.

Legal Proceedings

See "Settlement of Investigation" above.

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 United States 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. The purpose of the special meeting was to consider and vote 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 United States District Court for the District of Minnesota. On February 16, 2007, the United States 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. Oral argument on the motion was heard on June 8, 2007; the judge has not yet ruled on the motion. 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.

8. Segment 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, net (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Xyrem	$ 9,628	$ 7,202	$ 18,252	$ 13,355
Antizol	3,987	3,007	6,623	6,138
Cystadane (1)	—	245	365	732
Total	$ 13,615	$ 10,454	$ 25,240	$ 20,225

(1) We sold our rights to Cystadane to an unrelated third party in March 2007.

The following table presents a summary of total revenues attributed to domestic and foreign sources (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
United States	$ 13,621	$ 10,495	$ 25,134	$ 19,845
Europe	553	579	3,077	810
All other	90	—	141	256
Total	$ 14,264	$ 11,074	$ 28,352	$ 20,911

The following table presents a summary of revenues from significant customers as a percentage of the Company's total revenues:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
Express Scripts	67%	65%	64%	64%
Cardinal Health	*	11%	*	13%
UCB	*	*	10%	*

* Represented less than 10% of revenues.

9. 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 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 on commercial sales at specified rates.

10. Divestiture of Cystadane

In March 2007, the Company signed an agreement with an unrelated third party under which that third party purchased the Company's rights to Cystadane, along with its associated product registrations, commercial inventory and trademarks, for cash consideration of $9.0 million. 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 in the six months ended June 30, 2007, on the sale of the rights to Cystadane.

11. 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.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

The following discussion of our financial condition and the results of operations should be read in conjunction with the consolidated condensed financial statements and notes to consolidated condensed financial statements included elsewhere in this quarterly report on Form 10-Q. This discussion contains forward looking statements that involve risks and uncertainties. When reviewing the discussion below, you should keep in mind the substantial risks and uncertainties that characterize our business. In particular, we encourage you to review the risks and uncertainties described in Part II Item 1A. "RISK FACTORS" elsewhere in this report. These risks and uncertainties could cause actual results to differ materially from those projected in forward-looking statements contained in this report or implied by past results and trends. Forward-looking statements are statements that attempt to forecast or anticipate future developments in our business; we encourage you to review the examples of our forward-looking statements under the heading "Cautionary Note Regarding Forward-Looking Statements" that appears at the end of this discussion. These statements, like all statements in this report, speak only as of their date (unless another date is indicated), and we undertake no obligation to update or revise these statements in light of future developments.

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 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, we have built a commercial operation and assembled a portfolio of products and product candidates that currently includes two marketed products, one product candidate for which an approvable letter has been issued by the United States Food and Drug Administration, or FDA, and three 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, Cystadane®, for cash consideration of $9.0 million.

Our marketed products 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. 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. UCB has commercially launched Xyrem in 12 countries, and Valeant launched Xyrem in Canada at the end of July 2007.
- *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. We also market Antizol-Vet®, an injectable formulation of fomepizole approved as an antidote for suspected or confirmed ethylene glycol poisoning in dogs.

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, that 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 submitted a new drug application, or NDA, to the FDA for Luvox CR in April 2006. In February 2007, the FDA issued an approvable letter for Luvox CR, and in June 2007 Solvay submitted its complete response to the approvable letter. In July 2007, the FDA accepted for review the submission of the complete response by Solvay, and the PDUFA action date is December 22, 2007. 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 the remainder of 2007

and during 2008, 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).* 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.
- *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 continue to have seizures on stable anti-epileptic regimens.
- *JZP-7 (dopamine agonist).* JZP-7, a novel formulation incorporating a dopamine agonist, is being developed for the treatment of restless legs syndrome.

On May 31, 2007, our Registration Statement on Form S-1/A was declared effective for our initial public offering, pursuant to which we sold 6,000,000 shares of our common stock at a public offering price of $18.00 per share. Net cash proceeds from the initial public offering are expected to be approximately $97.2 million, after deducting underwriting discounts and commissions and estimated offering expenses, not all of which had been paid as of June 30, 2007.

In July 2007, we and our wholly-owned subsidiary, Orphan Medical, Inc., settled a matter relating to an investigation by the United States, acting through the Department of Justice, the United States Attorney's Office for the Eastern District of New York and other federal agencies, including the Office of Inspector General of the United States Department of Health and Human Services ("HHS-OIG"). Orphan Medical pled guilty to one felony count of introducing a misbranded drug into interstate commerce. A total of approximately $20.0 million in civil and criminal payments is required to be paid over the next several years in connection with this matter. We agreed to guarantee payment of amounts payable by Orphan Medical.

We were not prosecuted; however, as part of the settlement we entered into a corporate integrity agreement with the HHS-OIG. That agreement requires us to maintain a comprehensive compliance program, which we have in place, and we will have additional ongoing compliance-related operating costs related to our compliance program and the corporate integrity agreement. See Part I Item 1 "Note 7 Commitments and Contingencies" elsewhere in this report for additional details regarding this settlement.

In July 2007, we completed a pharmacokinetic study of JZP-2, a product candidate for the acute treatment of panic attacks associated with panic disorder. Based upon an initial analysis of the pharmacokinetic data generated by the study, we expect that this product formulation will likely be discontinued.

While we believe our current cash, cash equivalents and marketable securities and interest earned thereon, together with anticipated revenue 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 for the next 12 months, we expect to raise additional funds within that period of time through development financing, 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 three and six months ended June 30, 2007 and 2006:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2007	2006	2007	2006
	(In thousands)			
Xyrem	$ 9,628	$ 7,202	$ 18,252	$ 13,355
Antizol (1)	3,987	3,007	6,623	6,138
Cystadane (2)	—	245	365	732
Total	$ 13,615	$ 10,454	$ 25,240	$ 20,225

(1) Includes sales of Antizol-Vet, which were $66,000 and $54,000 in the three months ended June 30, 2007 and 2006, respectively, and $131,000 and $134,000 in the six months ended June 30, 2007 and 2006, respectively.
(2) We sold our rights to Cystadane to an unrelated third party in March 2007.

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 in the United States expires in 2009 for the treatment of cataplexy in patients with narcolepsy, and in 2012 for the treatment of excessive daytime sleepiness in patients with narcolepsy.

Antizol (fomepizole). Revenues from sales of Antizol in the United States represented primarily sales to pharmaceutical wholesalers. Our sales of Antizol to distributors outside 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. Antizol is stocked by hospitals for use in emergency rooms and sales are typically uneven from quarter to quarter. We do not believe that the increased sales during the three months ended June 30, 2007 are necessarily indicative of sales in future periods.

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. Royalty income was $360,000 and $120,000 in the three months ended June 30, 2007, and 2006 respectively, and $571,000 and $186,000 in the six months ended June 30, 2007 and 2006, respectively. Although we do not expect royalty revenues to comprise a substantial portion of our revenues in the near future, we expect royalty revenues to increase as UCB launches Xyrem in additional countries and following Valeant's launch of Xyrem in Canada.

Contract Revenues

Almost all of our contract revenues relate to upfront or milestone payments received from UCB. UCB made 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 $532,000 and $280,000 of contract revenues for the three and six months ended June 30, 2007, respectively. At the beginning of August 2007, we reached a $7.5 million development milestone in the clinical trials of JZP-6 that our agreement with UCB provides will be paid in September 2007.

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. Since our formation in 2003 through June 30, 2007, we incurred approximately $151.0 million in research and development expenses, 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 product 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.

We designate development projects to which we have allocated significant research and development resources with the term "JZP" and a unique number. 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," but include these costs in "R&D support" in the following table. The following table summarizes our research and development expenses for the six months ended June 30, 2007 and, for JZP projects currently under development, direct research and development expenses attributed to each project from its inception through June 30, 2007.

	Six Months Ended June 30, 2007	From 2004 to June 30, 2007
Luvox CR	$ 3,935	$ 3,935
JZP-6	11,302	25,511
JZP-4	4,156	15,073
JZP-8	660	2,376
JZP-7	726	2,208
JZP-2	784	2,807
Other projects	724	
R&D support	9,987	
Total	$ 32,274	

During the six months ended June 30, 2007, our research and development expenses for Luvox CR primarily consisted of a $2.0 million payment upon execution of a product license agreement and $1.9 million of expenses in connection with the scale-up for commercial manufacturing of Luvox CR. During 2007, we expect to incur research and development expenses of approximately $10.0 to $13.0 million related to Luvox CR, some of which will relate to the manufacturing of commercial supplies of the product that might be sold to customers.

Critical Accounting Policies and Significant Estimates

To understand our financial statements, it is important to understand our critical accounting policies and estimates. The preparation of our financial statements in conformity with United States generally accepted accounting principles requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Significant estimates and assumptions are required in the determination of revenue recognition, in particular related to our agreement with UCB, sales deductions for estimated specialty distributor and wholesaler fees, prompt payment discounts, Medicaid rebates, chargebacks, customer rebates, and royalties. Significant estimates and assumptions are also required to determine whether to capitalize intangible assets, the amortization periods for identifiable intangible assets, the potential impairment of goodwill and other intangible assets, stock-based compensation, beneficial conversion features, accrued expenses and in-process research and development. Some of these judgments can be subjective and complex, and, consequently, actual results may differ from these estimates. For any given individual estimate or assumption we make, there may also be other estimates or assumptions that are reasonable. Although we believe our estimates and assumptions are reasonable, they are based upon information available at the time the estimates and assumptions were made.

Our critical accounting policies and significant estimates are detailed in our Registration Statement on Form S-1/A filed with the Securities and Exchange Commission, or SEC, on May 31, 2007. There have been no material changes in our critical accounting policies and estimates and judgments since that date.

Results of Operations

Comparison of Three and Six Months Ended June 30, 2007 and 2006

	Three Months Ended June 30,		Increase/ (Decrease)	%Increase/ (Decrease)	Six Months Ended June 30,		Increase/ (Decrease)	%Increase/ (Decrease)
	2007	2006			2007	2006		
	(In thousands)						(In thousands)	
Product sales, net	$13,615	$10,454	$ 3,161	30%	$25,240	$20,225	$ 5,015	25%
Royalties, net	360	120	240	200%	571	186	385	207%
Contract revenue	289	500	(211)	(42)%	2,541	500	2,041	408%
Cost of product sales	1,679	1,754	(75)	(4)%	3,682	3,323	359	11%
Research and development	17,407	14,280	3,127	22%	32,274	27,174	5,100	19%
Selling, general and administrative	18,175	13,716	4,459	33%	32,514	25,935	6,579	25%
Amortization of intangible assets	2,287	2,400	(113)	(5)%	4,649	4,800	(151)	(3)%
Provision for government settlement	17,469	—	17,469	N/A(1)	17,469	—	17,469	N/A(1)
Interest income	1,300	591	709	120%	2,391	1,172	1,219	104%
Interest expense	(3,314)	(3,769)	455	(12)%	(6,582)	(7,546)	964	(13)%
Other income, net	4,904	120	4,784	3987%	1,835	182	1,653	908%
Gain on sale of product	—	—	—	N/A(1)	5,145	—	5,145	N/A(1)

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

Product Sales, Net

The increase in product sales, net in the three and six months ended June 30, 2007 as compared to the same periods in 2006 was primarily due to the growth of Xyrem sales, which increased by $2.4 million and $4.9 million, respectively. We believe the increase in Xyrem sales was attributable to our investments in Xyrem marketing programs and the integration of our expanded sales force and to increases in the price we charge Express Scripts instituted in August 2006 and May 2007. Sales of Antizol and Antizol-Vet increased by $1.0 million and $485,000 in the three months and six months ended June 30, 2007 compared to the same periods in 2006. Antizol is stocked by hospitals for use in emergency rooms and sales are typically uneven from quarter to quarter. We do not believe that the higher sales of Antizol in the three months ended June 30, 2007 are necessarily indicative of sales in future periods. As a result of the sale of our rights to Cystadane in March 2007, we did not record any sales of this product in the three months ended June 30, 2007.

Royalties, Net

The increase in royalties, net in the three and six months ended June 30, 2007 compared to same periods in 2006 was almost entirely due to an increase in royalties on sales of Xyrem by UCB.

Contract Revenues

Contract revenues in the six months ended June 30, 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 $541,000 related primarily to the amortization of deferred revenues on $15.0 million of payments received from UCB in the second half of 2006. We recognized contract revenues of $500,000 in the three months and six months ended June 30, 2006 upon achievement of a commercial milestone paid by UCB in June 2006.

Cost of Product Sales

The decrease in cost of product sales in the three months ended June 30, 2007 as compared to the three months ended June 30, 2006 was due to higher Xyrem unit costs in the three months ended June 30, 2006. The higher unit costs in the three months ended June 30, 2006 were due primarily to the sale of inventory with higher packaging costs and, to a lesser extent, expense related to the fair value adjustment to inventory acquired as part of the acquisition of Orphan Medical.

The increase in cost of product sales in the six months ended June 30, 2007 compared to the six months ended June 30, 2006 was primarily due to an increase in product sales, partially offset by expense in the six months ended June 30, 2006 related to the fair value adjustment to inventory acquired as part of the acquisition of Orphan Medical.

Research and Development Expenses

Higher research and development expenses in the three and six months ended June 30, 2007 as compared to the same periods in 2006 resulted from increased spending on the JZP-6 development program, increased headcount and related expenses, and Luvox CR development and scale-up for commercial manufacturing. Higher research and development expenses in the six months ended June 30, 2007 as compared to the same period in 2006 also reflect a $2.0 million payment to Solvay in January 2007 for the exclusive rights 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 and six months ended June 30, 2007 as compared to the same periods in 2006 primarily due to growth in headcount and related expenses, spending in preparation for the launch of Luvox CR, and higher expenses to support the sales force, partially offset by lower legal fees. Legal fees were lower in the three and six months ended June 30, 2007 as compared to the same periods of 2006, primarily as a result of the costs in 2006 of our initial response to the government investigation described in Part II Item 1 “Legal Proceedings”.

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, and are amortized on a straight-line basis over their estimated useful lives. Amortization costs in the three and six months ended June 30, 2007, were lower as compared to same periods in 2006 as a result of the sale of our rights to Cystadane in March 2007.

Provision for Government Settlement

In April 2006, we and Orphan Medical received subpoenas from the United States Department of Justice in connection with the sale and marketing of Xyrem. In July 2007, we reached a comprehensive settlement with the government in connection with this matter and agreed to make payments totaling approximately $20.0 million, including interest, over the next several years. We recorded a charge of $17.5 million in the three months ended June 30, 2007, which represents the present value of these payments discounted at an interest rate of 4.6%.

Interest Income

Interest income was higher in the three and six months ended June 30, 2007 as compared to the same periods in 2006 primarily due to higher average cash balances.

Interest Expense

Interest expense in the three and six months ended June 30, 2007 and 2006 primarily related to interest on our $80.0 million principal amount of senior secured notes issued in June 2005. Interest on the notes is 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 and was calculated using the effective interest method. In the three and six months ended June 30, 2006, interest expense also included $547,000 and $1.1 million, respectively, related to the financing of a product candidate in development. In June 2006, following the analysis of the results of a Phase III clinical trial, we decided to discontinue development of the product candidate and therefore did not accrue interest subsequent to May 31, 2006. Upon the formal termination of the financing agreement in July 2006 we recorded a gain on extinguishment in the amount of $31.6 million in the three months ended September 30, 2006.

Other Income, Net

In connection with the issuance of senior secured notes in June 2005, we 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 were recorded as preferred stock warrant liability. Prior to our initial public offering the preferred stock warrant liability was revalued at the end of each reporting period to fair value using the Black-Scholes option pricing model. On June 6, 2007, upon completion of our initial public offering, the warrants became exercisable for common stock and the liability was reclassified to stockholders' equity at its then fair value.

We recorded benefits of $4.9 million and $120,000 for the three months ended June 30, 2007 and 2006, respectively, to reflect decreases in the fair value of the preferred stock warrant liability. We recorded benefits of $1.8 million and $182,000 for the six months ended June 30, 2007 and 2006, respectively, to reflect decreases in the fair value of the preferred stock warrant liability.

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 six months ended June 30, 2007.

Liquidity and Capital Resources

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 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.

Our operations have been financed primarily through the sale of preferred stock, the issuance of senior secured notes and warrants, a line of credit, development financing related to one of our previous product candidates, our collaboration with UCB related to one of our products and a product candidate and our initial public offering.

As of June 30, 2007, we had $148.0 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 United States government agencies, corporate debt securities and money market funds.

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

	Six Months Ended June 30,	
	2007	2006
	(In thousands)	
Cash provided by (used in):		
Operating activities	$ (37,659)	$ (37,893)
Investing activities	7,402	(660)
Financing activities	99,309	49,994

Net cash used in operating activities during the six months ended June 30, 2007 primarily reflected the net loss, offset in part by changes in working capital, depreciation and amortization, the liability under government settlement, the change in the preferred stock warrant liability and the gain on sale of product rights. Net cash used in operating activities during the six months ended June 30, 2006 primarily reflected the net loss, offset in part by depreciation and amortization. Net cash used in investing activities during the six months ended June 30, 2007 and 2006 primarily related to purchases of property and equipment. In addition, investing activities during the six months ended June 30, 2007 included proceeds of $9.0 million from the sale of our rights to Cystadane. Net cash provided by financing activities during the six months ended June 30, 2007 and 2006 was primarily attributable to the issuance of common stock in our 2007 initial public offering and issuances of preferred stock in 2006. We will need to raise additional funds in order to continue to finance our business.

We believe our current cash, cash equivalents and marketable securities 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 for the next 12 months. We have based this estimate on assumptions that may prove to be wrong, and we could exhaust our available financial resources sooner than we currently expect. See Part II Item 1A—Risk Factors—"Our operations have generated negative cash flows, and if we are unable to secure additional funding when we need it, we may be required to reduce operations" and other risk factors included in Part II Item 1A for a discussion of the factors that will influence our future capital requirements.

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 or to sell the rights to one or more commercial products to third parties. 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

Other than payments due under the settlement of the government investigation detailed in the table below, there have been no material changes in our contractual obligations, outside the ordinary course of business, since our Registration Statement on Form S-1/A was filed with the SEC on May 31, 2007.

	Principal	Interest	Total
		(In thousands)	
July 2007	$ 962	$ 38	$ 1,000
January 2008	1,626	374	2,000
January 2009	1,818	682	2,500
January 2010	2,405	595	3,000
January 2011	2,516	484	3,000
January 2012	8,142	358	8,500
Total	$17,469	$ 2,531	$20,000

If we are acquired, or, in the event of an uncured default resulting from the failure to make payments when due, $3.5 million plus interest payable under the Civil Settlement Agreement described in Part II Item 1 “Legal Proceedings”, could become due immediately, to the extent then unpaid. In addition, if, in any calendar year, our audited financial statements show net income, we would have to pay 50% of the net income shown in those financial statements within 30 days of their issuance, up to the remainder of the then remaining unpaid amount under the Civil Settlement Agreement. These additional payments would be applied to the payment schedule under the Civil Settlement Agreement in reverse chronological order so that the amounts otherwise payable in 2012 would be paid first, then the amounts otherwise payable in 2011 and continuing in reverse order. Payments due under the Civil Settlement Agreement that could be accelerated under these provisions are as follows: $537,000 otherwise payable in January 2009, $645,000 otherwise payable in January 2010, $645,000 otherwise payable in January 2011, and $1.8 million otherwise payable in January 2012.

Recent Accounting Pronouncements

In July 2006, the Financial Accounting Standards Board, or 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 did not have a 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 our 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.

Cautionary Note Regarding Forward-Looking Statements

This quarterly report on Form 10-Q (including documents incorporated by reference) and other written and oral statements we make from time to time contain certain "forward-looking" statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. You can identify these forward-looking statements by the fact they use words such as "should", "expect", "anticipate", "estimate", "target", "may", "project", "guidance", "intend", "plan", "believe" and other words and terms of similar meaning and expression in connection with any discussion of future operating or financial performance. You can also identify forward-looking statements by the fact that they do not relate strictly to historical or current facts. Such forward-looking statements are based on current expectations and involve inherent risks and uncertainties, including factors that could delay, divert or change any of them, and could cause actual outcomes to differ materially from current expectations. These statements are likely to relate to, among other things, our goals, plans and projections regarding our financial position, results of operations, cash flows, market position, product development, product approvals, sales efforts, expenses, performance or results of current and anticipated products, the outcome of contingencies such as legal proceedings, and financial results, all of which are based on current expectations that involve inherent risks and uncertainties, including internal or external factors that could delay, divert or change any of them from time to time. We have included important factors in the cautionary statements included in this report, particularly under Part II Item 1A "Risk Factors", that we believe could cause actual results to differ materially from any forward-looking statement.

Although we believe we have been prudent in our plans and assumptions, no assurance can be given that any goal or plan set forth in forward-looking statements can be achieved, and you are cautioned not to place undue reliance on such statements, which speak only as of the date made. We undertake no obligation to release publicly any revisions to forward-looking statements as a result of new information, future events or otherwise.

Item 3. 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 United States government agencies, corporate bonds, commercial paper and money market funds. Our cash and investments as of June 30, 2007 consisted primarily of obligations of United States government agencies and money market funds.

Our settlement with the government, which is disclosed more fully in Part II Item 1 "Legal Proceedings", and 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.

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures. We have carried out an evaluation, under the supervision, and with the participation of, management including our principal executive officer and financial officer, of our disclosure controls and procedures (as defined in Exchange Act Rule 13a–15(e)) as of the end of the period covered by this quarterly report on Form 10–Q. Based on their evaluation, our principal executive officer and financial officer concluded that, subject to the limitations described below, our disclosure controls and procedures were effective as of June 30, 2007.

Limitations on the Effectiveness of Controls. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues, if any, within an organization have been detected. We continue to implement, improve and refine our disclosure controls and procedures and our internal control over financial reporting.

Changes in Internal Control over Financial Reporting. There were no changes in our internal control over financial reporting that occurred during our fiscal quarter ended June 30, 2007 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II – OTHER INFORMATION

Item 1. Legal Proceedings.

In April 2006, we and our wholly owned subsidiary, Orphan Medical, Inc., received subpoenas from the U.S. Department of Justice, acting through the United States Attorney for the Eastern District of New York, in connection with the sale and marketing of Xyrem (sodium oxybate). 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 United States 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 United States Food and Drug Administration, or 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.

On July 13, 2007, we entered into (i) a civil settlement agreement (the "Civil Settlement Agreement") with the United States of America, acting through the United States Department of Justice, the United States Attorney's Office for the Eastern District of New York, the Office of Inspector General of the Department of Health and Human Services ("HHS-OIG"), the United States Office of Personnel Management and the United States Department of Defense TRICARE Management Activity to resolve the governmental investigation related to the promotion of Xyrem and (ii) a non-prosecution agreement with the United States Attorney's Office for the Eastern District of New York (the "Non-prosecution Agreement") under which the United States Attorney's Office agreed we would not be prosecuted for the matters that were the subject of the investigation. Orphan Medical, which we acquired in June 2005, entered into (i) a plea agreement with the United States Attorney's Office for the Eastern District of New York (the "Plea Agreement"), under which Orphan Medical pled guilty, on July 13, 2007, to one felony count of introducing a misbranded drug into interstate commerce and (ii) the Civil Settlement Agreement. We expect that both Jazz Pharmaceuticals and Orphan Medical will also enter into agreements with Medicaid participating states.

Pursuant to the Civil Settlement Agreement and the Plea Agreement, payments totaling approximately $20.0 million are required to be made over the period from July 20, 2007 through January 15, 2012. The total includes payments to Federal healthcare programs and Medicaid participating states, as well as restitution and fines. In addition, under the Non-prosecution Agreement, we agreed to guarantee payment by Orphan Medical of the amounts due under the Plea Agreement. The total payments due under the Civil Settlement Agreement and the Plea Agreement are payable as follows: $1.0 million in 2007; $2.0 million in 2008; $2.5 million in 2009; $3.0 million in 2010; $3.0 million in 2011 and $8.5 million in 2012. All remaining amounts due under the Civil Settlement Agreement could be accelerated if we are acquired, or in the event of an uncured default resulting from the failure to make payments when due. In addition, all or a portion of the remaining amounts due under the Civil Settlement Agreement could be accelerated if we have net income in any year. Orphan Medical, which no longer directly markets products, may be excluded from participation in Federal healthcare programs as a result of the settlement.

We also entered into a five-year corporate integrity agreement with HHS-OIG (the "Corporate Integrity Agreement") pursuant to which we agreed, among other things, to keep in place and continue our current compliance program which includes a compliance committee, a compliance officer, a code of conduct, comprehensive compliance policies, training and monitoring, a compliance hotline, an open door policy and a disciplinary process for compliance violations. We have agreed to provide periodic reports to HHS-OIG and our compliance program will be reviewed by an independent review organization.

The settlement is neither an admission of liability by us nor a concession by the United States that its claims are not well founded. Participation in Federal healthcare programs by Jazz Pharmaceuticals, which was not prosecuted, will not be affected by the settlement. In the event of an uncured material breach or deliberate violation, as the case may be, of the Civil Settlement Agreement, the Corporate Integrity Agreement or the Non-prosecution Agreement, we could be excluded from participation in Federal healthcare programs and/or subject to prosecution.

The Plea Agreement was approved by the United States District Court for the Eastern District of New York on July 13, 2007.

While we have reached a settlement agreement with the United States Attorney's Office, and the other government agencies described above, 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. We cannot predict whether these actions are likely to occur, nor can we reasonably estimate the amount of any fines or penalties that might result from an adverse outcome.

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 Untied States 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. The purpose of the special meeting was to consider and vote 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 United States District Court for the District of Minnesota. On February 16, 2007, the United States 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. Oral argument on the motion was heard on June 8, 2007; the judge has not yet ruled on the motion. We 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, we have not recorded an associated liability. We will recognize a liability, if any, when we have an adequate basis to estimate any probable exposure, if any.

From time to time we are involved in legal proceedings arising in the ordinary course of business. We believe there is no other litigation pending that could have, individually or in the aggregate, a material adverse effect on our results of operations or financial condition.

Item 1A. Risk Factors.

We have identified the following risks and uncertainties that may have a material adverse effect on our business, financial condition or results of operations. The risks described below are not the only ones we face. Additional risks not presently known to us or that we currently believe are immaterial may also significantly impair our business operations. Our business could be harmed by any of these risks. We have marked with an asterisk (*) those risks described below that reflect substantive changes from the risks described in our Registration Statement on Form S-1/A, filed with the SEC on May 31, 2007. In addition, the risks described under, and the captions entitled, "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" and "An active trading market for our common stock may not develop" included in our Registration Statement on Form S-1/A, filed with the SEC on May 31, 2007 have been removed. In assessing these risks, you should also refer to the other information contained in this quarterly report on Form 10-Q, 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 a new drug application, or 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, or API, 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. Solvay submitted its complete response to the FDA in June 2007. In July 2007, the FDA accepted for review the submission of the complete response by Solvay, and the PDUFA action date is December 22, 2007.

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.

For quantities of Luvox CR that may be used for commercial launch, and for product that was used in clinical studies, Solvay manufactured the API, fluvoxamine maleate. Solvay no longer manufactures the API, and manufacturing has been transferred to Lonza Group, Ltd., which we expect will, in the future, be our sole source of fluvoxamine maleate. We cannot assure you that Lonza can or will supply, in the time we need, sufficient quantities of API to enable Elan to manufacture the quantities of Luvox CR that we need. Lonza will need to be approved by the FDA as a supplier of the API, and we cannot assure you that this will happen, that it will happen in time for our planned launch of Luvox CR, or that there will not be an interruption in supply as a result of this change in API suppliers.

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.

Enrolling patients in fibromyalgia trials is difficult and time consuming. Lyrica® (pregabalin), a product marketed by Pfizer, Inc., was recently approved by the FDA for the management of fibromyalgia. We cannot predict what effect, if any, this approval will have on the rate of patient enrollment in our Phase III clinical trials.

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 depends 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 depends 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 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 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 offset 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. 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 the API of Xyrem and JZP-6, sodium oxybate, is a Schedule I

controlled substance, our supplier of the active pharmaceutical ingredient and our product manufacturers 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 could 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; and if we are not successful in obtaining sufficiently increased quotas in 2007, this could aversely affect our commercial and/or clinical supplies of Xyrem and JZP-6 in 2008. 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 provided fluvoxamine, the active pharmaceutical ingredient in Luvox CR, for quantities of Luvox CR that may be used for commercial launch, and for product that was used in clinical studies. Solvay no longer manufactures the API, and manufacturing has been transferred to Lonza Group, Ltd. who must be approved by the FDA as a supplier of the API. If Lonza is unable to timely 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.

The investigation by the U.S. Attorney's Office for the Eastern District of New York concerning the sales and marketing of Xyrem could result in additional fines, penalties or other adverse consequences. Our settlement of the matter could result in additional adverse publicity that 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 have settled this matter 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. Orphan Medical pled guilty to one felony count of introducing a misbranded drug into interstate commerce. A total of approximately $20.0 million in civil and criminal payments will be paid over the next several years in connection with this matter. We agreed to guarantee payment of amounts payable by Orphan Medical.

While we were not prosecuted, as part of the settlement we entered into a corporate integrity agreement with the Office of Inspector General, U.S. Department of Health and Human Services. That agreement requires us to maintain a comprehensive compliance program, and we will have additional ongoing compliance-related operating costs related to this compliance program and the corporate integrity agreement.

The settlement has resulted in negative publicity for us and for Xyrem. Even though we have executed definitive settlement 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 predict whether this additional action will occur, nor can we reasonably estimate the amount of any fines or penalties that might result from an adverse outcome.

In addition, 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. *

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. The FDA recently approved a product for the management of fibromyalgia syndrome. This product is not, and 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.

If Luvox CR is approved by the FDA, we intend to market it 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. In June 2007, the FDA approved Lyrica (pregabalin), an anticonvulsant marketed by Pfizer for the treatment of partial seizures, post herpetic neuralgia and diabetic peripheral neuropathy, for the management of fibromyalgia syndrome. There are currently no other 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. In addition to JZP-6, there are currently three 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.

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, three major pharmaceutical companies are conducting, or have completed, Phase III clinical trials of product candidates for the treatment of fibromyalgia syndrome. 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 field sales positions. 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 revenue 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 229 regular full-time employees as of June 30, 2007, approximately 41% 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 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 anti-kickback statutes and false claims statutes.

The federal health care program anti-kickback 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 anti-kickback 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 anti-kickback 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 $6.6 million in net product sales in 2006 and the first six months 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 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 six month period ended June 30, 2007 were $59.4 million and $59.4 million, respectively, and we had an accumulated deficit of $237.1 million at June 30, 2007. We expect our operating expenses to increase over 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.

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 when we need it, we may be required to reduce operations. **

As of June 30, 2007, we had approximately $148.0 million in cash, cash equivalents and marketable securities. Our cash flows used in operations were approximately $57.4 million and $37.7 million during 2006 and the first six months of 2007, respectively. Substantially all of our $43.3 million and $25.2 million in net product sales during 2006 and the first six months 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 net proceeds from our initial public 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 for the next 12 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;
- 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 preferred stock, the issuance of senior secured notes and warrants, a line of credit, development financing related to one of our previous product candidates, our collaboration with UCB related to Xyrem and JZP-6 and our initial public offering. In addition, the 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.

Even though we recently completed our initial public offering, 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 or to sell the rights to one or more commercial products to third parties. 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 June 30, 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 who 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 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 may not be able to sell their shares at or above the purchase price. Security prices for companies similar to us experience significant price and volume fluctuations. The following factors, in addition to other risks described herein, 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;
- the failure or delay by the DEA in providing sufficient quotas for Xyrem;
- 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;
- 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, 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. As of June 30, 2007, we had 24,550,554 shares of common stock outstanding.

The six million shares of common stock sold in our initial public offering are freely tradable without restrictions or further registration under the Securities Act of 1933, as amended. The remaining 18,550,554 shares of common stock outstanding as of June 30, 2007 are restricted as a result of securities laws or lock-up agreements. These shares will generally become available for sale in the public market as follows:

- 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 close of our initial public offering, or December 3, 2007; 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.

As of June 30, 2007, the holders of approximately 19,306,128 shares of common stock, based on shares outstanding as of that date, 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, we filed a registration statement on Form S-8 under the Securities Act of 1933, as amended, to register up to 4,957,794 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.

As of June 30, 2007, our executive officers, directors and principal stockholders, together with their respective affiliates, beneficially owned approximately 64.0% of our capital stock, of which 7.1% is beneficially owned by our executive officers. Accordingly, our executive officers, directors and principal stockholders are 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 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 must 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, these rules and regulations may make it more difficult and more expensive for us to obtain director and officer liability insurance, and we may 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.

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.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

Unregistered Sales of Equity Securities

From April 1, 2007 through June 30, 2007, we sold and issued the following unregistered securities:

1. We granted options to our employees and directors for the purchase of an aggregate of 66,596 shares of our common stock at an exercise price of $18.00 per share, pursuant to our 2003 Equity Incentive Plan. During this period, stock options to purchase an aggregate of 1,908 shares of our common stock were cancelled without being exercised and no shares of our common stock were issued upon exercise of stock options. The options granted during this period pursuant to our 2003 Equity Incentive Plan are subject to vesting over four years from the date of grant, subject to the optionee's continuous service with us.
2. We granted an option to one non-employee director for the purchase of 17,500 shares of our common stock, at an exercise price of $18.00 per share, pursuant to our 2007 Equity Incentive Plan. The option vests with respect to (i) thirty-three and one-third percent (33 1/3%) of the shares subject to the option upon completion of one (1) year of 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 completion of each additional month of service over the two (2)-year period measured from the first anniversary of date of grant.

These issuances were deemed exempt from registration under the Securities Act in reliance on Rule 701 promulgated under the Securities Act of 1933, as amended, as offers and sale of securities pursuant to certain compensatory benefit plans and contracts relating to compensation in compliance with Rule 701.

Use of Proceeds

On May 31, 2007, our registration statement on Form S-1/A (Registration No. 333-141164) was declared effective by the SEC for our initial public offering, pursuant to which we registered 6,000,000 shares of common stock to be sold by us. The stock was offered at $18.00 per share. Our common stock commenced trading on June 1, 2007. The offering closed on June 6, 2007 after the sale of all securities registered, and as a result, we received net proceeds of approximately $97.2 million, after underwriters' discounts of approximately $7.6 million and other expenses of $3.2 million. The underwriters of the offering were Morgan Stanley & Co. Incorporated, Lehman Brothers Inc., Credit Suisse Securities (USA) LLC, and Natexis Bleichroeder Inc. No offering expenses were paid directly or indirectly to our directors, officers or their associates, or to persons owning 10% or more of any of our equity securities.

As of June 30, 2007, we have used approximately $5.2 million of the net proceeds from the offering to fund the planned U.S. launch and commercialization of Luvox CR, to fund our Phase III pivotal clinical trials of JZP-6, to fund continued development of and feasibility activities for our portfolio of clinical and early-stage product candidates, as well as for working capital, capital expenditures and other general corporate purposes. We intend to use the remaining net proceeds to fund the planned U.S. launch and commercialization of Luvox CR, including for development and commercial milestone payments to Solvay in connection with the acquisition of our U.S. rights to Luvox CR, to fund activities related to our preparation for marketing and promotion of Luvox CR and the expansion of our specialty sales force, to fund production of initial commercial quantities of Luvox CR, to fund our Phase III pivotal clinical trials of JZP-6, to fund continued development of and feasibility activities for our portfolio of clinical and early-stage product candidates during the next 12 months, and for working capital, capital expenditures and other general corporate purposes. We continually assess the specific uses and allocations for these funds. Pending use of the remaining net proceeds of this offering, we have invested the funds in short-term, interest bearing, investment grade securities.

Item 4. Submission of Matters to a Vote of Security Holders.

In April 2007, we submitted the following matter to holders of our preferred stock for their approval. On April 18, 2007, the holders of our preferred stock approved the matter, as set forth below, by written consent. As of the record date for taking such action, we had 17,921,551 shares of our preferred stock outstanding. The following actions were unanimously approved:

1. The consent to the conversion of all shares of our preferred stock into shares of our common stock immediately prior to and subject to the closing of our initial public offering.

In May 2007, we submitted the following matters to holders of warrants to purchase our preferred stock for their approval. On May 4, 2007, such warrantholders approved each of these matters, as set forth below, by written consent. As of the record date for taking such action, we had warrants to purchase 785,728 shares of Series BB preferred stock outstanding. The following actions were approved by the required percentage of the preferred shares:

1. Immediately following the conversion of all of our preferred stock into shares of common stock pursuant to the terms and conditions of the preferred stockholder consent dated as of April 18, 2007, each warrant shall automatically become exercisable for that number of shares of our common stock as would have been issuable upon conversion of the shares of our preferred stock underlying such warrant immediately prior to such conversion.
2. The waiver of rights to receive at least 20 days' written notice prior to our effecting a 1-for-11.06701 reverse stock split and the amendment and restatement of our certificate of incorporation to effect such reverse stock split.

In April 2007, we submitted the following matters to our stockholders for their approval. On May 9, 2007, our stockholders approved each of these matters, as set forth below, by written consent. As of the record date for taking such action, we had 18,550,554 shares of our common stock outstanding (on an as-if-converted to common stock basis). The following actions were approved:

1. The approval of the amendment and restatement of our certificate of incorporation to effect a 1-for-11.06701 reverse stock split of our capital stock (including all outstanding warrants and options exercisable for shares of our capital stock).
2. The approval of the amendment and restatement of our certificate of incorporation that became effective upon the completion of our initial public offering to, among other things, (i) delete the provisions in the certificate designating the rights and preferences of the preferred stock which are no longer outstanding following the conversion of such preferred stock into shares of our common stock upon the closing of the initial public offering, (ii) authorize the issuance of up to 150,000,000 shares of common stock, (iii) authorize the issuance of up to 20,000,000 shares of preferred stock and (iv) provide for certain stockholder protection measures.
3. The approval of the amendment and restatement of our bylaws.
4. The approval and adoption of our 2007 Equity Incentive Plan, 2007 Employee Stock Purchase Plan and 2007 Non-Employee Directors Stock Option Plan.
5. The approval of a form of Indemnity Agreement to be entered into by us with each of our directors and officers.
6. The termination of the Second Amended and Restated Voting Agreement and the Second Amended and Restated Right of First Refusal and Co-Sale Agreement, each entered into between us and certain of our stockholders.
7. The increase in our authorized number of directors from 10 to 11 and the election of Jaimin R. Patel to our Board of Directors, which consisted of the following other individuals immediately following Mr. Patel's election: Bruce C. Cozadd, Samuel R. Saks, M.D., Adam H. Clammer, Samuel D. Colella, Bryan C. Cressey, Michael W. Michelson, James C. Momtazee, Kenneth W. O'Keefe, Alan M. Sebulsky and James B. Tananbaum, M.D.
8. The waiver of rights of first refusal to purchase shares of our common stock to be issued in connection with our initial public offering.
9. The waiver of certain notice rights and rights to include shares of capital stock in the registration statement filed by us with the SEC in connection with our initial public offering and to include such shares in any related underwriting.

The results of the voting from stockholders that returned written consents for the actions listed above were 18,520,400 shares for and none against.

Item 5. Other Information.

In July 2007, we amended the Employment Agreements with our six executive officers to add provisions to comply with Regulation 409A of the Internal Revenue Code of 1986, as amended, and we amended and restated our Executive Change In Control and Severance Plan to comply with Regulation 409A.

Item 6. Exhibits.

Exhibit Number	Description of Document
3.1	Fourth Amended and Restated Certificate of Incorporation of Jazz Pharmaceuticals, Inc.
3.2(1)	Amended and Restated Bylaws of Jazz Pharmaceuticals, Inc.
4.1	Reference is made to Exhibits 3.1 and 3.2.
4.2(2)	Specimen Common Stock Certificate.
4.3	Third Amended and Restated Investor Rights Agreement dated June 6, 2007, by and between Jazz Pharmaceuticals, Inc. and the other parties named therein.
4.4(3)	Senior Secured Note and Warrant Purchase Agreement, dated as of June 24, 2005, by and among Jazz Pharmaceuticals, Inc., Twist Merger Sub, Inc. and the Purchasers.
4.5(3)	Form of Senior Secured Note of Jazz Pharmaceuticals, Inc.
4.6(3)	Form of Series BB Preferred Stock Warrant of Jazz Pharmaceuticals, Inc.
10.57A(4)	Civil Settlement Agreement, dated July 13, 2007, among the United States of America acting through the entities named therein, Jazz Pharmaceuticals, Inc., and Orphan Medical, Inc.
10.57B(4)	Non-prosecution Agreement, dated July 13, 2007, between the United States Attorney's Office for the Eastern District of New York and Jazz Pharmaceuticals, Inc.
10.57C(4)	Plea Agreement, dated July 13, 2007, between the United States Attorney for the Eastern District of New York and Orphan Medical, Inc.
10.57D(4)	Corporate Integrity Agreement, dated July 13, 2007, between the Office of Inspector General of the Department of Health and Human Services and Jazz Pharmaceuticals, Inc.
10.58	Amended Executive Change in Control and Severance Benefit Plan of Jazz Pharmaceuticals, Inc.
10.59	Form of Amendment to Employment Agreement, by and between Jazz Pharmaceuticals, Inc. and each of Bruce Cozadd, Samuel Saks, M.D., Robert Myers, Matthew Fust, Carol Gamble and Janne Wissel.
10.60	Form of Letter, amending all outstanding options granted under Jazz Pharmaceuticals, Inc.'s 2003 Equity Incentive Plan.
10.61	Non-Employee Director Compensation Arrangements, as modified, of Jazz Pharmaceuticals, Inc.
31.1	Certification of Chief Executive Officer pursuant to Rules 13a-14(a) and 15d-14(a) promulgated under the Securities Exchange Act of 1934, as amended.
31.2	Certification of Chief Financial Officer pursuant to Rules 13a-14(a) and 15d-14(a) promulgated under the Securities Exchange Act of 1934, as amended.
32.1	Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.*

(1) Previously filed as Exhibit 3.4 to Jazz Pharmaceuticals, Inc.'s Registration Statement on Form S-1/A (No. 333-141164), as filed with the Securities and Exchange Commission on May 17, 2007, as amended, and incorporated by reference herein.

(2) Previously filed as Exhibit 4.2 to Jazz Pharmaceuticals, Inc.'s Registration Statement on Form S-1/A (No. 333-141164), as filed with the Securities and Exchange Commission on May 17, 2007, as amended, and incorporated by reference herein.

(3) Previously filed as the like numbered exhibit to Jazz Pharmaceuticals, Inc.'s Registration Statement on Form S-1 (No. 333-141164), as filed with the Securities and Exchange Commission on March 9, 2007, as amended, and incorporated by reference herein.

(4) Previously filed as the like numbered exhibit to Jazz Pharmaceuticals, Inc.'s Current Report on Form 8-K (No. 001-33500), as filed with the Securities and Exchange Commission on July 18, 2007 and incorporated by reference herein.

* The certifications attached as Exhibits 32.1 accompany this quarterly report on Form 10-Q pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, and shall not be deemed "filed" by Jazz Pharmaceuticals, Inc. for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Dated: August 10, 2007

Jazz Pharmaceuticals, Inc.

/s/ Matthew K. Fust

Matthew K. Fust
Senior Vice President and Chief Financial Officer
(*Duly Authorized and Principal Accounting and Financial Officer*)

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Exhibit 3.1

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 6th day of June, 2007.

JAZZ PHARMACEUTICALS, INC.

By: /s/ Carol A. Gamble
Carol A. Gamble
Secretary

Exhibit 4.3

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: /s/ Carol A. Gamble
Print Name: Carol A. Gamble
Title: Sr. Vice President & General Counsel

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: /s/ Michael Michelson
Print Name: Michael Michelson
Title:

KKR JP III LLC

Signature: /s/ Michael Michelson
Print Name: Michael Michelson
Title:

KKR TRS HOLDINGS, INC.

Signature: /s/ Michael Michelson
Print Name: Michael Michelson
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: /s/ Bryan C. Cressey
Print Name: Bryan C. Cressey
Title: Managing Partner

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: /s/ Bryan C. Cressey
Print Name: Bryan C. Cressey
Title: Managing Partner

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, L.L.C.,
its Manager

Signature: /s/ Kenneth W. O'Keefe
Print Name: Kenneth W. O'Keefe
Title: Partner

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.
Its: 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: /s/ Alyson Goldfarb
Print Name: Alyson Goldfarb
Title: Vice President

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: /s/ Alyson Goldfarb
Print Name: Alyson Goldfarb
Title: Vice President

LEHMAN BROTHERS P.A. LLC

Signature: /s/ Deborah Nordell
Print Name: Deborah Nordell
Title: Vice President

LEHMAN BROTHERS PARTNERSHIP ACCOUNT 2000/2001, L.P.

By: LB I Group Inc., its General Partner

Signature: /s/ Alyson Goldfarb
Print Name: Alyson Goldfarb
Title: Vice President

LEHMAN BROTHERS OFFSHORE PARTNERSHIP ACCOUNT 2000/2001, L.P.

By: Lehman Brothers Offshore Partners Ltd., its General Partner

Signature: /s/ Alyson Goldfarb
Print Name: Alyson Goldfarb
Title: Vice President

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: /s/ Terry Gould
Print Name: Terry Gould
Title: Partner

ADAMS STREET V, L.P.

By: Adams Street Partners, LLC, its General Partner

Signature: /s/ Terry Gould
Print Name: Terry Gould
Title: Partner

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: /s/ Reeve B. Waud
Print Name: Reeve B. Waud
Title: Managing Member

WAUD CAPITAL AFFILIATES, L.L.C.

Signature: /s/ Reeve B. Waud
Print Name: Reeve B. Waud
Title: Managing Member

DEEP COVE MEZZANINE, LLC

Signature: /s/ Reeve B. Waud
Print Name: Reeve B.Waud
Title: Managing Member

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:

/s/ Samuel R. Saks
SAMUEL R. SAKS

/s/ Bruce C. Cozadd
BRUCE C. COZADD

/s/ Robert M. Myers
ROBERT M. MYERS

/s/ Janne L. T. Wissel
JANNE L.T. WISSEL

/s/ Matthew K. Fust
MATTHEW K. FUST

/s/ Carol A. Gamble
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	94,932,531 shares of Series B/P Preferred Stock
KKR JP III LLC 9 W. 57th Street, 42nd Floor New York, NY 10019	403,344 shares of Series B/P Preferred Stock
Thoma Cressey Fund VII, L.P. Sears Tower, 92nd Floor 233 South Wacker Drive Chicago, IL 60606	21,662,348 shares of Series B Preferred Stock
Thoma Cressey Friends Fund VII, L.P. Sears Tower, 92nd Floor 233 South Wacker Drive Chicago, IL 60606	338,237 shares of Series B Preferred Stock
CCG Investment Fund, LP c/o Golden Gate Capital One Embarcadero Center, 33rd Floor San Francisco, CA 94111	9,521,349 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	480,987 shares of Series B Preferred Stock
CCG Associates-QP, LLC c/o Golden Gate Capital One Embarcadero Center, 33rd Floor San Francisco, CA 94111	523,132 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	127,553 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	127,260 shares of Series B Preferred Stock
CCG CI, LLC c/o Golden Gate Capital One Embarcadero Center, 33rd Floor San Francisco, CA 94111	220,006 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	14,667,057 shares of Series B Preferred Stock
Lehman Brothers HealthCare Venture Capital L.P. 399 Park Avenue New York, NY 10022 Attention: Fred Steinberg	1,833,382 shares of Series B Preferred Stock
Lehman Brothers P. A. L.L.C. 399 Park Avenue New York, NY 10022 Attention: Fred Steinberg	3,509,093 shares of Series B Preferred Stock
Lehman Brothers Partnership Account 2000/2001, L.P. 399 Park Avenue New York, NY 10022 Attention: Fred Steinberg	1,581,017 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	410,036 shares of Series B Preferred Stock
Prospect Venture Partners II, L.P. 435 Tasso Street, Suite 200 Palo Alto, CA 94301	7,313,625 shares of Series A Preferred Stock 6,139,997 shares of Series B Preferred Stock

Name and Address	Securities
Prospect Associates II, L.P. 435 Tasso Street, Suite 200 Palo Alto, CA 94301	111,375 shares of Series A Preferred Stock 93,502 shares of Series B Preferred Stock
Versant Venture Capital II, L.P. 3000 Sand Hill Road Building 4, Suite 210 Menlo Park, CA 94025	7,223,361 shares of Series A Preferred Stock 6,064,216 shares of Series B Preferred Stock
Versant Side Fund II, L.P. 3000 Sand Hill Road Building 4, Suite 210 Menlo Park, CA 94025	64,559 shares of Series A Preferred Stock 54,200 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	137,080 shares of Series A Preferred Stock 115,083 shares of Series B Preferred Stock
BVCF IV, L.P. One North Wacker Drive, Suite 2200 Chicago, IL 60606	2,200,058 shares of Series B Preferred Stock
Adams Street V, L.P. One North Wacker Drive, Suite 2200 Chicago, IL 60606	2,200,058 shares of Series B Preferred Stock
Cardinal Fund I, L.P. 201 Main Street, Suite 2415 Fort Worth, TX 76102 Attention: Ray Pinson	2,933,411 shares of Series B Preferred Stock Warrant to Purchase 86,957 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	1,466,706 shares of Series B Preferred Stock Warrant to Purchase 43,478 shares of Series BB Preferred Stock
EGS Private Healthcare Partnership II, L.P. 105 Rowayton Ave. Rowayton, CT 06853	2,222,679 shares of Series B Preferred Stock

Name and Address	Securities
EGS Private Healthcare Investors II, L.P. 105 Rowayton Ave. Rowayton, CT 06853	350,540 shares of Series B Preferred Stock
EGS Private Healthcare Canadian Partners, L.P. 105 Rowayton Ave. Rowayton, CT 06853	334,462 shares of Series B Preferred Stock
EGS Private Healthcare Presidents Fund, L.P. 105 Rowayton Ave. Rowayton, CT 06853	25,730 shares of Series B Preferred Stock
Samuel R. Saks 2404 Hillside Drive Burlingame, CA 94010	2,640,000 shares of Common Stock 150,000 shares of Series A Preferred Stock 733,352 shares of Series B Preferred Stock
Bruce C. Cozadd 2316 Branner Dr. Menlo Park, CA 94025	1,980,000 shares of Common Stock 733,352 shares of Series B Preferred Stock
Robert M. Myers 1847 Hamilton Ave. Palo Alto, CA 94303	1,047,500 shares of Common Stock 513,347 shares of Series B Preferred Stock
Janne L.T. Wissel 1514 Oriole Avenue Sunnyvale, CA 94087	330,000 shares of Common Stock 733,352 shares of Series B Preferred Stock
Matthew K. Fust 1034 Noe St. San Francisco, CA 94114	330,000 shares of Common Stock 220,005 shares of Series B Preferred Stock
Carol A. Gamble 625 Hurlingham Ave. San Mateo, CA 94402	300,000 shares of Common Stock
Waud Capital Partners, L.P. 560 Oakwood Avenue, Suite 203 Lake Forest, IL 60045	5,280,141 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	586,682 shares of Series B Preferred Stock
Deep Cove Mezzanine, LLC 560 Oakwood Ave, Suite 203 Lake Forest, IL 60045	Warrants to purchase 543,478 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 71,630 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 3,369,566 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 2,717,391 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 869,565 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 443,804 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 294,348 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 193,152 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 62,283 shares of Series BB Preferred Stock

Exhibit 10.58

JAZZ PHARMACEUTICALS, INC.

EXECUTIVE CHANGE IN CONTROL AND SEVERANCE BENEFIT PLAN

SECTION 1. INTRODUCTION.

The Jazz Pharmaceuticals, Inc. Executive Change in Control and Severance Benefit Plan (the ***"Plan"***) is hereby established effective May 1, 2007 (the ***"Effective Date"***). The Plan was amended by the Board on July 18, 2007. The purpose of the Plan is to provide for the payment of severance benefits to certain eligible executive employees of Jazz Pharmaceuticals, Inc. (the ***"Company"***) or its Affiliates in the event that such employees are subject to qualifying employment terminations in connection with a Change in Control. This Plan shall supersede any generally applicable severance or change in control plan, policy, or practice, whether written or unwritten, with respect to each employee who becomes a Participant in the Plan. For the purposes of the foregoing sentence, a generally applicable severance or change in control plan, policy, or practice is a plan, policy, or practice in which benefits are not conditioned upon (i) being designated as a participant, (ii) receiving an award such as a stock option, or (iii) the employee electing to participate. This Plan shall not supersede any individually negotiated employment contract or agreement, or any written plans that are not of general application, and such Participant's severance benefit, if any, shall be governed by the terms of such individually negotiated employment contract, agreement, or written plan, and shall be governed by this Plan only to the extent that the reduction pursuant to Section 5(b) below does not entirely eliminate benefits under this Plan. This Plan document also constitutes the Summary Plan Description for the Plan.

SECTION 2. DEFINITIONS.

For purposes of the Plan, the following terms are defined as follows:

(a) *"Affiliate"* means any "parent" or "subsidiary" of the Company as such terms are defined in Rule 405 of the Securities Act of 1933, as amended.

(b) *"Base Salary"* means the Participant's annual base pay (excluding incentive pay, premium pay, commissions, overtime, bonuses and other forms of variable compensation), at the rate in effect during the last regularly scheduled payroll period immediately preceding the date of the Participant's Covered Termination (without giving effect to any reduction in annual base pay after a Change in Control that would constitute grounds for Constructive Termination).

(c) *"Board"* means the Board of Directors of Jazz Pharmaceuticals, Inc.

(d) *"Bonus Percentage"* means the greater of any annual bonus, as a percentage of annual base salary paid in the year of determination, paid to the Participant in respect of either of the last two calendar years prior to the date of a Covered Termination; *provided, however*, that if the Participant was not employed for the entire calendar year prior to the date of a Covered Termination, the "Bonus Percentage" shall be the average bonus, as a percentage of annual base salary, for all similarly situated employees at the Company (*e.g.*, all Vice Presidents) who were employed for the entire calendar year prior to the date of a Covered Termination.

(e) ***"Bonus Multiplier"*** means the quotient obtained by dividing: (i) the sum of the number of full months that a Participant is employed in the year of a Covered Termination and twelve (12), by (ii) twelve (12).

(f) ***"Cause"*** means the occurrence of any one or more of the following: (i) the Participant's unauthorized use or disclosure of the confidential information or trade secrets of Company or its Affiliates which use or disclosure causes material harm to the Company or an Affiliate; (ii) the Participant's material breach of any agreement between the Participant and the Company or an Affiliate which remains uncured for ten (10) days after receiving written notification of the breach from the Board; (iii) the Participant's material failure to comply with the written policies or rules of the Company or an Affiliate which remains uncured for ten (10) days after receiving written notification of the breach from the Board; (iv) the Participant's conviction of, or plea of "guilty" or "no contest" to, any crime involving fraud, dishonesty, or moral turpitude under the laws of any United States Federal, state, local, or foreign governmental authority; (v) the Participant's gross misconduct; (vi) the Participant's continuing failure to perform assigned duties after receiving written notification of the failure from the Board; or (vii) the Participant's failure to cooperate in good faith with a governmental or internal investigation of the Company, its Affiliates, directors, officers, or employees, if the Board has requested the Participant's cooperation.

(g) ***"Change in Control"*** shall mean 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 any institutional investor, any affiliate thereof or any other Exchange Act Person that acquires the Company's securities in a transaction or series of related transactions that are primarily a private financing transaction for the Company 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 if, 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 either case, in substantially the same proportions as their ownership of the voting power of the Company's securities immediately prior to such merger, consolidation or similar 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; or

(iv) there is consummated a sale, lease, 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 proportion as their Ownership of the Company immediately prior to such sale, lease, license or other disposition.

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.

(h) ***"COBRA"*** means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

(i) ***"Code"*** means the Internal Revenue Code of 1986, as amended.

(j) ***"Company"*** means Jazz Pharmaceuticals, Inc. or, following a Change in Control which is a sale of assets or a merger in which Jazz Pharmaceuticals, Inc. is not the surviving entity, the entity to which the assets are sold or the surviving entity resulting from such transaction, respectively.

(k) ***"Constructive Termination"*** means a resignation of employment by a Participant after an action or event which constitutes Good Reason is undertaken by the Company or an Affiliate, or occurs.

(l) ***"Covered Termination"*** means either (i) an Involuntary Termination Without Cause, or (ii) a Constructive Termination, in each case within twelve (12) months following a Change in Control. Termination of employment of a Participant due to death or disability shall not constitute a Covered Termination unless a resignation of employment by the Participant immediately prior to the Participant's death or disability would have qualified as a Constructive Termination.

(m) ***"Entity"*** means a corporation, partnership, limited liability company, or other entity.

(n) ***"ERISA***" means the Employee Retirement Income Security Act of 1974, as amended.

(o) ***"Exchange Act"*** means the Securities Exchange Act of 1934, as amended.

(p) ***"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 (A) the Company or any Subsidiary of the Company; (B) 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; (C) an underwriter temporarily holding securities pursuant to an offering of such securities; or (D) 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.

(q) ***"Involuntary Termination Without Cause"*** means a termination by the Company of a Participant's employment relationship with the Company or an Affiliate for any reason other than for Cause.

(r) ***"Good Reason"*** means the occurrence of any one or more of the following actions or events: (i) a reduction in the Participant's Base Salary by more than ten percent (10%) (other than a reduction in conjunction with (x) a Company-wide salary reduction, or (y) a salary reduction involving senior management of the Company which results in salary reductions for employees similarly-situated to the Participant); (ii) a relocation of Participant's place of employment by more than thirty-five (35) miles; provided and only if such reduction or relocation is effected without the Participant's consent; (iii) a substantial reduction in the Participant's duties or responsibilities (and not simply a change in reporting relationships) in effect prior to the effective date of the Change in Control; *provided, however*, that it shall not constitute "Good Reason" if, following the effective date of the Change in Control, either (x) the Company is retained as a separate legal entity or business unit and the Participant holds the same position in such legal entity or business unit as the Participant held before such effective date, or (y) the Participant holds a position with duties and responsibilities comparable (though not necessarily identical, in view of the relative sizes of the Company and the entity involved in the Change in Control) to the duties and responsibilities of the Participant prior to the effective date of the Change in Control; (iv) a reduction in the Participant's title (*e.g.*, the Participant no longer has a "Vice President" title); or (v) required travel by the Participant on the Company's business is substantially increased compared with the Participant's business travel obligations prior to the Change in Control, provided and only if such increased business travel is effected without the Participant's consent.

(s) ***"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.

(t) ***"Participant"*** means an individual who has been designated a Participant by the Plan Administrator in its sole discretion (either by a specific designation or by virtue of being a member of a class of employees who have been so designated).

(u) ***"Plan Administrator"*** means the Board or any committee duly authorized by the Board to administer the Plan. The Plan Administrator may, but is not required to be, the Compensation Committee of the Board. The Board may at any time administer the Plan, in whole or in part, notwithstanding that the Board has previously appointed a committee to act as the Plan Administrator.

(v) ***"Subsidiary"*** shall mean any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company, if each of the corporations other than the last corporation in the unbroken chain owns stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain. A corporation that attains the status of a Subsidiary on a date after the adoption of the Plan shall be considered a Subsidiary commencing as of such date.

SECTION 3. ELIGIBILITY FOR BENEFITS.

(a) General Rules. Subject to the limitations set forth in this Section 3 and Section 5, in the event of a Covered Termination, the Company shall provide the severance benefits described in Section 4 to each affected Participant.

(b) Exceptions to Benefit Entitlement. A Participant will not receive benefits under the Plan (or will receive reduced benefits under the Plan) in the following circumstances, as determined by the Plan Administrator in its sole discretion:

(i) The Participant has executed an individually negotiated employment contract or agreement with the Company relating to severance or change in control benefits that is in effect on his or her termination date and which provides benefits that the Plan Administrator, in its sole discretion, determines to be of greater value than the benefits provided for in this Plan, in which case such Participant's severance benefit, if any, shall be governed by the terms of such individually negotiated employment contract or agreement and shall be governed by this Plan only to the extent that the reduction pursuant to Section 5(b) below does not entirely eliminate benefits under this Plan.

(ii) The Participant is entitled to receive benefits under another severance benefit plan maintained by the Company on his or her termination date and which provides benefits that the Plan Administrator, in its sole discretion, determines to be of greater value than the benefits provided for in this Plan, in which case such Participant's severance benefit, if any, shall be governed by the terms of such other severance benefit plan and shall be governed by this Plan only to the extent that the reduction pursuant to Section 5(b) below does not entirely eliminate benefits under this Plan.

(iii) The Participant's employment terminates or is terminated for any reason other than a Covered Termination.

(iv) The Participant voluntarily terminates employment with the Company in order to accept employment with another entity that is controlled (directly or indirectly) by the Company or is otherwise an Affiliate.

(v) The Participant does not confirm in writing that he or she shall be subject to the Company's *Employee Confidential Information and Inventions Agreement*.

(vi) The Participant is rehired prior to the date benefits under the Plan are scheduled to commence by the Company or an Affiliate for an identical or substantially equivalent or comparable position as the Participant's last position with the Company or an Affiliate.

(vii) The Participant is offered an identical or substantially equivalent or comparable position with the Company, an Affiliate, or a successor pursuant to a Change in Control. For purposes of the foregoing, a "substantially equivalent or comparable position" is one that offers the Participant substantially the same level of responsibility and Base Salary; *provided, however*, that a Participant shall not be considered to be offered a "substantially equivalent or comparable position" if a resignation by the Participant would constitute Constructive Termination.

(viii) The Participant has failed to execute or has revoked the release described in Section 5(a).

(c) Termination of Benefits. A Participant's right to receive benefits under this Plan shall terminate immediately if, at any time prior to or during the period for which the Participant is receiving benefits hereunder, the Participant, without the prior written approval of the Plan Administrator:

(i) willfully breaches a material provision of the Company's *Employee Confidential Information and Inventions Agreement*;

(ii) encourages or solicits any of the Company's then current employees to leave the Company's employ for any reason or interferes in any other manner with employment relationships at the time existing between the Company and its then current employees; or

(iii) induces any of the Company's then current clients, customers, suppliers, vendors, distributors, licensors, licensees or other third party to terminate their existing business relationship with the Company or interferes in any other manner with any existing business relationship between the Company and any then current client, customer, supplier, vendor, distributor, licensor, licensee or other third party.

SECTION 4. AMOUNT OF BENEFITS.

In the event of a Participant's Covered Termination, the Participant shall be entitled to receive the benefits provided by this Section 4.

(a) Cash Severance Benefits. The Company shall make a cash severance payment to the Participant in an amount equal to the sum of (i) the Participant's Base Salary, and (ii) the product of (A) the Participant's Base Salary, and (B) the Participant's Bonus Percentage, and (C) the Participant's Bonus Multiplier. Such severance payment shall be paid in accordance with Section 6.

(b) Health Continuation Coverage.

(i) Provided that the Participant is eligible for, and has made an election at the time of the Covered Termination pursuant to COBRA under a health, dental, or vision plan sponsored by the Company, each such Participant shall be entitled to payment by the Company of all of the applicable premiums (inclusive of premiums for the Participant's dependents for such health, dental, or vision plan coverage as in effect immediately prior to the date of the Covered Termination) for such health, dental, or vision plan coverage for a period of twelve (12) months following the date of the Covered Termination, with such coverage counted as coverage pursuant to COBRA.

(ii) No such premium payments (or any other payments for health, dental, or vision coverage by the Company) shall be made following the Participant's death or the effective date of the Participant's coverage by a health, dental, or vision insurance plan of a subsequent employer. Each Participant shall be required to notify the Plan Administrator immediately if the Participant becomes covered by a health, dental, or vision insurance plan of a subsequent employer. Upon the conclusion of such period of insurance premium payments made by the Company, the Participant will be responsible for the entire payment of premiums required under COBRA for the duration of the COBRA period.

(iii) For purposes of this Section 4(b), (i) references to COBRA shall be deemed to refer also to analogous provisions of state law, and (ii) any applicable insurance premiums that are paid by the Company shall not include any amounts payable by the Participant under an Internal Revenue Code Section 125 health care reimbursement plan, which amounts, if any, are the sole responsibility of the Participant.

(c) Stock Award Vesting Acceleration. Upon a Covered Termination, (i) the vesting and exercisability of all outstanding options to purchase the Company's common stock (or stock appreciation rights or similar rights or other rights with respect to stock of the Company issued pursuant to any equity incentive plan of the Company) that are held by the Participant on such date shall be accelerated in full, and (ii) any reacquisition or repurchase rights held by the Company with respect to common stock issued or issuable (or with respect to similar rights or other rights with respect to stock of the Company issued or issuable pursuant to any equity incentive plan of the Company) pursuant to any other stock award granted to the Participant by the Company shall lapse.

(d) Other Employee Benefits. All other benefits (such as life insurance, disability coverage, and 401(k) plan coverage) shall terminate as of the Participant's termination date (except to the extent that a conversion privilege may be available thereunder).

(e) Additional Benefits. Notwithstanding the foregoing, the Plan Administrator may, in its sole discretion, provide benefits in addition to those pursuant to Sections 4(a), 4(b), and 4(c) to one or more Participants chosen by the Plan Administrator, in its sole discretion, and the provision of any such benefits to a Participant shall in no way obligate the Company to provide such benefits to any other Participant, even if similarly situated.

SECTION 5. LIMITATIONS ON BENEFITS.

(a) Release. In order to be eligible to receive benefits under the Plan, a Participant must execute a general waiver and release in substantially the form attached hereto as **EXHIBIT A**, **EXHIBIT B**, or **EXHIBIT C**, as appropriate, and such release must become effective in accordance with its terms; *provided, however,* no such release shall require the Participant to forego any unpaid salary, any accrued but unpaid vacation pay or any benefits payable pursuant to this Plan. With respect to any outstanding option held by the Participant, no provision set forth in this Plan granting the Participant additional rights to exercise the option can be exercised unless and until the release becomes effective. Unless a Change in Control has occurred, the Plan Administrator, in its sole discretion, may modify the form of the required release to comply with applicable law and shall determine the form of the required release, which may be incorporated into a termination agreement or other agreement with the Participant.

(b) Certain Reductions. The Plan Administrator, in its sole discretion, shall have the authority to reduce a Participant's severance benefits, in whole or in part, by any other severance benefits, pay in lieu of notice, or other similar benefits payable to the Participant by the Company that become payable in connection with the Participant's termination of employment pursuant to (i) any applicable legal requirement, including, without limitation, the Worker Adjustment and Retraining Notification Act (the ***"WARN Act"***), (ii) a written employment or severance agreement with the Company, or (iii) any Company policy or practice providing for the Participant to remain on the payroll for a limited period of time after being given notice of the termination of the Participant's employment. The benefits provided under this Plan are intended to satisfy, in whole or in part, any and all statutory obligations and other contractual obligations of the Company, including benefits provided by offer letter or employment agreements, that may arise out of a Participant's termination of employment, and the Plan Administrator shall so construe and implement the terms of the Plan. The Plan Administrator's decision to apply such reductions to the severance benefits of one Participant and the amount of such reductions shall in no way obligate the Plan Administrator to apply the same reductions in the same amounts to the severance benefits of any other Participant, even if similarly situated. In the Plan Administrator's sole discretion, such reductions may be applied on a retroactive basis, with severance benefits previously paid being re-characterized as payments pursuant to the Company's statutory or other contractual obligations.

(c) Parachute Payments. Except as otherwise provided in an agreement between a Participant and the Company, if any payment or benefit the Participant 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 such Payment shall be equal to the Reduced Amount. The "Reduced Amount" shall be either (x) the largest portion of the Payment that would result in no portion of the Payment being subject to the Excise Tax, or (y) the largest portion, up to and including the total, of the Payment, whichever amount, after taking into account all applicable federal, state and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in the Participant's 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. If a reduction in payments or benefits constituting "parachute payments" is

necessary so that the Payment equals the Reduced Amount, reduction shall occur in the following order unless the Participant elects 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 a Participant. If acceleration of vesting of compensation from a Participant's equity awards is to be reduced, such acceleration of vesting shall be cancelled by first canceling such acceleration for the vesting installment that will vest last and continuing by canceling as a first priority such acceleration for vesting installments with the latest vesting unless the Participant elects in writing a different order for cancellation prior to any Change in Control.

(d) Mitigation. Except as otherwise specifically provided herein, a Participant shall not be required to mitigate damages or the amount of any payment provided under this Plan by seeking other employment or otherwise, nor shall the amount of any payment provided for under this Plan be reduced by any compensation earned by a Participant as a result of employment by another employer or any retirement benefits received by such Participant after the date of the Participant's termination of employment with the Company, except for health continuation coverage provided pursuant to Section 4(b).

(e) Non-Duplication of Benefits. Except as otherwise specifically provided for herein, no Participant is eligible to receive benefits under this Plan or pursuant to other contractual obligations more than one time. This Plan is designed to provide certain severance pay and change in control benefits to Participants pursuant to the terms and conditions set forth in this Plan. The payments pursuant to this Plan are in addition to, and not in lieu of, any unpaid salary, bonuses or benefits to which a Participant may be entitled for the period ending with the Participant's Covered Termination.

SECTION 6. TIME OF PAYMENT AND FORM OF BENEFITS.

(a) General Rules. Except as otherwise set forth in the Plan, the cash severance benefits under Section 4(a) of the Plan, if any, shall be paid in a single lump sum payment on the first payroll date following the Participant's Covered Termination. In no event shall payment of any Plan benefit set forth in Section 4 be made prior to the effective date of the release described in Section 5(a). For the avoidance of doubt, in the event of an acceleration of the exercisability of an option (or other award) pursuant to Section 4(c), such option (or other award) shall not be exercisable with respect to such acceleration of exercisability unless and until the effective date of the release described in Section 5(a).

(b) Application of Section 409A.

(i) To the extent that the sum of (i) any cash severance benefit provided under Section 4(a), and (ii) any additional benefits provided under Section 4(e) (collectively, the ***"Payments"***) does not exceed the lesser of: (x) two (2) times the sum of the Participant's annualized compensation based upon the annual rate of pay for services provided to the Company (or an Affiliate or a successor entity, if applicable) for the taxable year of the Participant preceding the taxable year of the Participant in which the Participant incurs a

Covered Termination (adjusted for any increase during such latter year that was expected to continue indefinitely if the Participant had not incurred a Covered Termination), or (y) two (2) times the maximum amount that may be taken into account under a qualified plan pursuant to Section 401(a)(17) of the Code for the year in which the Participant incurs a Covered Termination (the ***"Permitted Window Program Payments"***), such Permitted Window Program Payments shall be paid pursuant to Section 6(a); *provided, however*, such portion of the Payments, to the extent of the Permitted Window Program Payments, shall in no event be paid later than the last day of the second taxable year of the Participant following the taxable year of the Participant in which occurs the Covered Termination. The Permitted Window Program Payments are intended to constitute separate payments for purposes of Treas. Reg. Section 1.409A-2(b)(2) that are payable pursuant to a "window program" to the maximum extent permitted by Treas. Reg. Section 1.409A-1(b)(9)(iii).

(ii) If a Participant is a "specified employee" of the Company or its Affiliates (or any successor entity thereto) within the meaning of Section 409A(a)(2)(B)(i) of the Code on the date of a Covered Termination, then the Payments, to the extent in excess of the Permitted Window Program Payments, shall be delayed until the earlier of: (i) the date that is six (6) months after the date of the Covered Termination, or (ii) the date of Participant's death (such date, the ***"Delayed Initial Payment Date"***), and the Company (or the successor entity thereto, as applicable) shall pay to the Participant a lump sum amount equal to the sum of the Payments that the Participant would otherwise have received on or before the Delayed Initial Payment Date, without any adjustment on account of such delay, if the Payments had not been delayed pursuant to this Section 6(b)(ii), and (B) pay the balance of the Payments in accordance with any applicable payment schedules set forth herein. Payments pursuant to this Section 6(b)(ii) are intended to constitute separate payments for purposes of Treas. Reg. Section 1.409A-2(b)(2).

(iii) If a Participant is not a "specified employee" of the Company or its Affiliates (or any successor entity thereto) within the meaning of Section 409A(a)(2)(B)(i) of the Code on the date of a Covered Termination, then the Payments, to the extent in excess of the Permitted Window Program Payments, shall be paid pursuant to Section 6(a).

(c) Tax Withholding. All payments under the Plan will be subject to all applicable withholding of the Company, including, without limitation, obligations to withhold for federal, state and local income and employment taxes.

(d) Indebtedness of Participants. If a Participant is indebted to the Company on the effective date of his or her Covered Termination, the Plan Administrator reserves the right to offset any severance payments under the Plan by the amount of such indebtedness.

SECTION 7. RIGHT TO INTERPRET PLAN; AMENDMENT AND TERMINATION.

(a) Exclusive Discretion. The Plan Administrator shall have the exclusive discretion and authority to establish rules, forms, and procedures for the administration of the Plan, and to construe and interpret the Plan and to decide any and all questions of fact, interpretation, definition, computation or administration arising in connection with the operation of the Plan, including, but not limited to, the eligibility to participate in the Plan and amount of benefits paid under the Plan. The rules, interpretations, computations and other actions of the Plan Administrator shall be binding and conclusive on all persons.

(b) Amendment or Termination. The Company reserves the right to amend or terminate this Plan, or the benefits provided hereunder at any time; *provided, however,* that no such amendment or termination shall occur following a Change in Control or a Covered Termination as to any Participant who would be adversely affected by such amendment or termination unless such Participant consents in writing to such amendment or termination. Any action amending or terminating the Plan shall be in writing and executed by a duly authorized officer of the Company.

SECTION 8. NO IMPLIED EMPLOYMENT CONTRACT.

The Plan shall not be deemed (i) to give any employee or other person any right to be retained in the employ of the Company or an Affiliate, or (ii) to interfere with the right of the Company or an Affiliate to discharge any employee or other person at any time, with or without cause, which right is hereby reserved.

SECTION 9. LEGAL CONSTRUCTION.

This Plan is intended to be governed by and shall be construed in accordance with ERISA and, to the extent not preempted by ERISA, the laws of the State of California.

SECTION 10. CLAIMS, INQUIRIES AND APPEALS.

(a) Applications for Benefits and Inquiries. Any application for benefits, inquiries about the Plan or inquiries about present or future rights under the Plan must be submitted to the Plan Administrator in writing by an applicant (or his or her authorized representative). The Plan Administrator is set forth in Section 12(d).

(b) Denial of Claims. In the event that any application for benefits is denied in whole or in part, the Plan Administrator must provide the applicant with written or electronic notice of the denial of the application, and of the applicant's right to review the denial. Any electronic notice will comply with the regulations of the U.S. Department of Labor. The notice of denial will be set forth in a manner designed to be understood by the applicant and will include the following:

(i) the specific reason or reasons for the denial;

(ii) references to the specific Plan provisions upon which the denial is based;

(iii) a description of any additional information or material that the Plan Administrator needs to complete the review and an explanation of why such information or material is necessary; and

(iv) an explanation of the Plan's review procedures and the time limits applicable to such procedures, including a statement of the applicant's right to bring a civil action under Section 502(a) of ERISA following a denial on review of the claim, as described in Section 10(d) below.

This notice of denial will be given to the applicant within ninety (90) days after the Plan Administrator receives the application, unless special circumstances require an extension of time, in which case, the Plan Administrator has up to an additional ninety (90) days for processing the application. If an extension of time for processing is required, written notice of the extension will be furnished to the applicant before the end of the initial ninety (90) day period.

This notice of extension will describe the special circumstances necessitating the additional time and the date by which the Plan Administrator is to render its decision on the application.

(c) Request for a Review. Any person (or that person's authorized representative) for whom an application for benefits is denied, in whole or in part, may appeal the denial by submitting a request for a review to the Plan Administrator within sixty (60) days after the application is denied. A request for a review shall be in writing and shall be addressed to:

Jazz Pharmaceuticals, Inc.
Attn: General Counsel
3180 Porter Drive
Palo Alto, CA 94304

A request for review must set forth all of the grounds on which it is based, all facts in support of the request and any other matters that the applicant feels are pertinent. The applicant (or his or her representative) shall have the opportunity to submit (or the Plan Administrator may require the applicant to submit) written comments, documents, records, and other information relating to his or her claim. The applicant (or his or her representative) shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to his or her claim. The review shall take into account all comments, documents, records and other information submitted by the applicant (or his or her representative) relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

(d) Decision on Review. The Plan Administrator will act on each request for review within sixty (60) days after receipt of the request, unless special circumstances require an extension of time (not to exceed an additional sixty (60) days), for processing the request for a review. If an extension for review is required, written notice of the extension will be furnished to the applicant within the initial sixty (60) day period. This notice of extension will describe the special circumstances necessitating the additional time and the date by which the Plan Administrator is to render its decision on the review. The Plan Administrator will give prompt, written or electronic notice of its decision to the applicant. Any electronic notice will comply with the regulations of the U.S. Department of Labor. In the event that the Plan Administrator confirms the denial of the application for benefits in whole or in part, the notice will set forth, in a manner calculated to be understood by the applicant, the following:

(i) the specific reason or reasons for the denial;

(ii) references to the specific Plan provisions upon which the denial is based;

(iii) a statement that the applicant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information relevant to his or her claim; and

(iv) a statement of the applicant's right to bring a civil action under Section 502(a) of ERISA.

(e) Rules and Procedures. The Plan Administrator will establish rules and procedures, consistent with the Plan and with ERISA, as necessary and appropriate in carrying out its responsibilities in reviewing benefit claims. The Plan Administrator may require an applicant who wishes to submit additional information in connection with an appeal from the denial of benefits to do so at the applicant's own expense.

(f) Exhaustion of Remedies. No legal action for benefits under the Plan may be brought until the applicant (i) has submitted a written application for benefits in accordance with the procedures described by Section 10(a) above, (ii) has been notified by the Plan Administrator that the application is denied, (iii) has filed a written request for a review of the application in accordance with the appeal procedure described in Section 10(c) above, and (iv) has been notified that the Plan Administrator has denied the appeal. Notwithstanding the foregoing, if the Plan Administrator does not respond to an applicant's claim or appeal within the relevant time limits specified in this Section 10, the applicant may bring legal action for benefits under the Plan pursuant to Section 502(a) of ERISA.

SECTION 11. BASIS OF PAYMENTS TO AND FROM PLAN.

The Plan shall be unfunded, and all benefits hereunder shall be paid only from the general assets of the Company.

SECTION 12. OTHER PLAN INFORMATION.

(a) Employer and Plan Identification Numbers. The Employer Identification Number assigned to the Company (which is the "Plan Sponsor" as that term is used in ERISA) by the Internal Revenue Service is 05-0563787. The Plan Number assigned to the Plan by the Plan Sponsor pursuant to the instructions of the Internal Revenue Service is 510.

(b) Ending Date for Plan's Fiscal Year. The date of the end of the fiscal year for the purpose of maintaining the Plan's records is December 31.

(c) Agent for the Service of Legal Process. The agent for the service of legal process with respect to the Plan is:

Jazz Pharmaceuticals, Inc.
Attn: General Counsel
3180 Porter Drive
Palo Alto, CA 94304

(d) Plan Sponsor and Administrator. The "Plan Sponsor" of the Plan is:

Jazz Pharmaceuticals, Inc.
Attn: General Counsel
3180 Porter Drive
Palo Alto, CA 94304

The "Plan Administrator" of the Plan is as set forth in Section 2(u). The Plan Sponsor's and Plan Administrator's telephone number is (650) 496-3777 The Plan Administrator is the named fiduciary charged with the responsibility for administering the Plan.

SECTION 13. STATEMENT OF ERISA RIGHTS.

Participants in this Plan (which is a welfare benefit plan sponsored by Jazz Pharmaceuticals, Inc.) are entitled to certain rights and protections under ERISA. If you are a Participant, you are considered a participant in the Plan for the purposes of this Section 13 and, under ERISA, you are entitled to:

(a) Receive Information About Your Plan and Benefits

(i) Examine, without charge, at the Plan Administrator's office and at other specified locations, such as worksites, all documents governing the Plan and a copy of the latest annual report (Form 5500 Series), if applicable, filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration;

(ii) Obtain, upon written request to the Plan Administrator, copies of documents governing the operation of the Plan and copies of the latest annual report (Form 5500 Series), if applicable, and an updated (as necessary) Summary Plan Description. The Plan Administrator may make a reasonable charge for the copies; and

(iii) Receive a summary of the Plan's annual financial report, if applicable. The Plan Administrator is required by law to furnish each participant with a copy of this summary annual report.

(b) Prudent Actions By Plan Fiduciaries. In addition to creating rights for Plan participants, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate the Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in the interest of you and other Plan participants and beneficiaries. No one, including your employer, your union or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a Plan benefit or exercising your rights under ERISA.

(c) Enforce Your Rights.

(i) If your claim for a Plan benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

(ii) Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of Plan documents or the latest annual report from the Plan, if applicable, and do not receive them within 30 days, you may file suit in a Federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay you up to $110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Plan Administrator.

(iii) If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or Federal court.

(iv) If you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a Federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

(d) Assistance With Your Questions. If you have any questions about the Plan, you should contact the Plan Administrator. If you have any questions about this statement or about your rights under ERISA, or if you need assistance in obtaining documents from the Plan Administrator, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

SECTION 14. GENERAL PROVISIONS.

(a) Notices. Any notice, demand or request required or permitted to be given by either the Company or a Participant pursuant to the terms of this Plan shall be in writing and shall be deemed given when delivered personally or deposited in the U.S. mail, First Class with postage prepaid, and addressed to the parties, in the case of the Company, at the address set forth in Section 12(d) and, in the case of a Participant, at the address as set forth in the Company's employment file maintained for the Participant as previously furnished by the Participant or such other address as a party may request by notifying the other in writing.

(b) Transfer and Assignment. The rights and obligations of a Participant under this Plan may not be transferred or assigned without the prior written consent of the Company. This Plan shall be binding upon any surviving entity resulting from a Change in Control and upon any other person who is a successor by merger, acquisition, consolidation or otherwise to the business formerly carried on by the Company without regard to whether or not such person or entity actively assumes the obligations hereunder.

(c) Waiver. Any Party's failure to enforce any provision or provisions of this Plan shall not in any way be construed as a waiver of any such provision or provisions, nor prevent any Party from thereafter enforcing each and every other provision of this Plan. The rights granted the Parties herein are cumulative and shall not constitute a waiver of any Party's right to assert all other legal remedies available to it under the circumstances.

(d) Severability. Should any provision of this Plan be declared or determined to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

(e) Section Headings. Section headings in this Plan are included for convenience of reference only and shall not be considered part of this Plan for any other purpose.

SECTION 15. EXECUTION.

To record the adoption of the Plan as set forth herein, Jazz Pharmaceuticals, Inc. has caused its duly authorized officer to execute the same as of the Effective Date.

JAZZ PHARMACEUTICALS, INC.

By: /s/ Carol A. Gamble
Title: Sr. Vice President & General Counsel

EXHIBIT A

RELEASE AGREEMENT ("*RELEASE*")

I understand and agree completely to the terms set forth in the Jazz Pharmaceuticals, Inc. Executive Change in Control Severance Benefit Plan (the "*Plan*").

I understand that this Release, together with the Plan, constitutes the complete, final and exclusive embodiment of the entire agreement between the Company and me with regard to the subject matter hereof. I am not relying on any promise or representation by the Company that is not expressly stated therein. Certain capitalized terms used in this Release are defined in the Plan.

I hereby confirm my obligations under my *Employee Confidential Information and Inventions Agreement* with the Company.

I hereby represent that I have been paid all compensation owed and for all hours worked, have received all the leave and leave benefits and protections for which I am eligible, pursuant to the Family and Medical Leave Act or otherwise, and have not suffered any on-the-job injury for which I have not already filed a claim.

In exchange for the consideration provided to me by this Release that I am not otherwise entitled to receive, I hereby generally and completely release Jazz Pharmaceuticals, Inc. and its current and former directors, officers, employees, shareholders, partners, agents, attorneys, predecessors, successors, parent and subsidiary entities, insurers, affiliates, and assigns from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to my signing this Release. This general release includes, but is not limited to: (a) all claims arising out of or in any way related to my employment with the Company or the termination of that employment; (b) all claims related to my compensation or benefits from the Company, including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Company; (c) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (d) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (e) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967 (as amended) ("***ADEA***"), and the California Fair Employment and Housing Act (as amended). Nothing in this Release shall prevent me from challenging this Release by filing, cooperating with, or participating in any proceeding before the Equal Employment Opportunity Commission, the Department of Labor, or the California Department of Fair Employment and Housing, except that I hereby acknowledge and agree that I shall not recover any monetary benefits in connection with any challenge to my Release.

I acknowledge that I am knowingly and voluntarily waiving and releasing any rights I may have under the ADEA ("***ADEA Waiver***"). I also acknowledge that the consideration given for the

ADEA Waiver is in addition to anything of value to which I was already entitled. I further acknowledge that I have been advised by this writing, as required by the ADEA, that: (a) my ADEA Waiver does not apply to any rights or claims that arise after the date I sign this Release; (b) I should consult with an attorney prior to signing this Release; (c) I have twenty-one (21) days to consider this Release (although I may choose to voluntarily sign it sooner); (d) I have seven (7) days following the date I sign this Release to revoke the ADEA Waiver; and (e) the ADEA Waiver will not be effective until the date upon which the revocation period has expired unexercised, which will be the eighth day after I sign this Release.

I acknowledge that I have read and understand Section 1542 of the California Civil Code which reads as follows: **"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."** I hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to my release of any claims hereunder.

I acknowledge that to become effective, I must sign and return this Release to the Company so that it is received not later than twenty-one (21) days following the date it is provided to me.

EXECUTIVE

Name: _____

Date: _____

EXHIBIT B

RELEASE AGREEMENT ("*RELEASE*")

I understand and agree completely to the terms set forth in the Jazz Pharmaceuticals, Inc. Executive Change in Control Severance Benefit Plan (the "*Plan*").

I understand that this Release, together with the Plan, constitutes the complete, final and exclusive embodiment of the entire agreement between the Company and me with regard to the subject matter hereof. I am not relying on any promise or representation by the Company that is not expressly stated therein. Certain capitalized terms used in this Release are defined in the Plan.

I hereby confirm my obligations under my *Employee Confidential Information and Inventions Agreement* with the Company.

I hereby represent that I have been paid all compensation owed and for all hours worked, have received all the leave and leave benefits and protections for which I am eligible, pursuant to the Family and Medical Leave Act or otherwise, and have not suffered any on-the-job injury for which I have not already filed a claim.

Except as otherwise set forth in this Release, I hereby generally and completely release Jazz Pharmaceuticals, Inc. and its current and former directors, officers, employees, shareholders, partners, agents, attorneys, predecessors, successors, parent and subsidiary entities, insurers, affiliates, and assigns from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to my signing this Release. This general release includes, but is not limited to: (a) all claims arising out of or in any way related to my employment with the Company or the termination of that employment; (b) all claims related to my compensation or benefits from the Company, including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Company; (c) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (d) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (e) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967 (as amended) ("***ADEA***"), and the California Fair Employment and Housing Act (as amended). Nothing in this Release shall prevent me from challenging this Release by filing, cooperating with, or participating in any proceeding before the Equal Employment Opportunity Commission, the Department of Labor, or the California Department of Fair Employment and Housing, except that I hereby acknowledge and agree that I shall not recover any monetary benefits in connection with any challenge to my Release.

I acknowledge that I am knowingly and voluntarily waiving and releasing any rights I may have under the ADEA ("***ADEA Waiver***"). I also acknowledge that the consideration given for the

ADEA Waiver is in addition to anything of value to which I was already entitled. I further acknowledge that I have been advised by this writing, as required by the ADEA, that: (a) my ADEA Waiver does not apply to any rights or claims that arise after the date I sign this Release; (b) I should consult with an attorney prior to signing this Release; (c) I have forty-five (45) days to consider this Release (although I may choose to voluntarily sign it sooner); (d) I have seven (7) days following the date I sign this Release to revoke the ADEA Waiver; and (e) the ADEA Waiver will not be effective until the date upon which the revocation period has expired unexercised, which will be the eighth day after I sign this Release.

I have received with this Release a written disclosure of all of the information required by the ADEA, including without limitation a detailed list of the job titles and ages of all employees who were terminated in this group termination and the ages of all employees of the Company in the same job classification or organizational unit who were not terminated, along with information on the eligibility factors used to select employees for the group termination and any time limits applicable to this group termination program.

I acknowledge that I have read and understand Section 1542 of the California Civil Code which reads as follows: **"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."** I hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to my release of any claims hereunder.

I acknowledge that to become effective, I must sign and return this Release to the Company so that it is received not later than forty-five (45) days following the date this Release and the ADEA disclosure form is provided to me.

EXECUTIVE

Name: _____

Date: _____

EXHIBIT C

RELEASE AGREEMENT ("*RELEASE*")

I understand and agree completely to the terms set forth in the Jazz Pharmaceuticals, Inc. Executive Change in Control Severance Benefit Plan (the "*Plan*").

I understand that this Release, together with the Plan, constitutes the complete, final and exclusive embodiment of the entire agreement between the Company and me with regard to the subject matter hereof. I am not relying on any promise or representation by the Company that is not expressly stated therein. Certain capitalized terms used in this Release are defined in the Plan.

I hereby confirm my obligations under my *Employee Confidential Information and Inventions Agreement* with the Company.

I hereby represent that I have been paid all compensation owed and for all hours worked, have received all the leave and leave benefits and protections for which I am eligible, pursuant to the Family and Medical Leave Act or otherwise, and have not suffered any on-the-job injury for which I have not already filed a claim.

In exchange for the consideration provided to me by this Release that I am not otherwise entitled to receive, I hereby generally and completely release Jazz Pharmaceuticals, Inc. and its current and former directors, officers, employees, shareholders, partners, agents, attorneys, predecessors, successors, parent and subsidiary entities, insurers, affiliates, and assigns from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to my signing this Release. This general release includes, but is not limited to: (a) all claims arising out of or in any way related to my employment with the Company or the termination of that employment; (b) all claims related to my compensation or benefits from the Company, including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Company; (c) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (d) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (e) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, and the California Fair Employment and Housing Act (as amended). Nothing in this Release shall prevent me from challenging this Release by filing, cooperating with, or participating in any proceeding before the Equal Employment Opportunity Commission, the Department of Labor, or the California Department of Fair Employment and Housing, except that I hereby acknowledge and agree that I shall not recover any monetary benefits in connection with any challenge to my Release.

I acknowledge that I have read and understand Section 1542 of the California Civil Code which reads as follows: **"A general release does not extend to claims which the creditor does not**

know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." I hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to my release of any claims hereunder.

I acknowledge that to become effective, I must sign and return this Release to the Company so that it is received not later than fourteen (14) days following the date it is provided to me.

EXECUTIVE

Name: _____

Date: _____

Exhibit 10.59

AMENDMENT TO EMPLOYMENT AGREEMENT

This AMENDMENT TO EMPLOYMENT AGREEMENT (the "***Amendment***") is made and entered into on July __, 2007, by and between JAZZ PHARMACEUTICALS, INC., a Delaware corporation (the "***Company***"), and _____ (the "***Executive***"). The Company and the Executive are hereinafter collectively referred to as the "***Parties***", and individually referred to as a "***Party***".

RECITALS

A. The Company retained the services of the Executive pursuant to an employment agreement, dated February 14, 2004 (the "***Previous Employment Agreement***").

B. The Parties wish to amend the Previous Employment Agreement to comply with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended.

AGREEMENT

1. Sections 7 through 25 of the Previous Agreement are hereby renumbered as Sections 8 through 26, respectively, and all Section references in the Previous Agreement shall be updated accordingly.

2. New Section 7 is hereby inserted to read as follows:

7. Application of Internal Revenue Code Section 409A.

Since each arrangement providing for cash payments (except reimbursement of COBRA premiums) pursuant to Sections 6.3, 6.4, and 6.5 (the "***Payments***") constitutes a "nonqualified deferred compensation plan" within the meaning of Section 409A(d) of the Internal Revenue Code of 1986, as amended (the "***Code***"), if the Executive is a "specified employee" of the Company (or any successor entity thereto) within the meaning of Section 409A(a)(2)(B)(i) of the Code on the applicable date, then solely to the extent necessary to avoid the adverse personal tax consequences under Section 409A(a)(1) of the Code, the timing of the Payments shall be delayed to occur on the earlier of: (i) the date that is six months after the date of Executive's separation from service, or (ii) the date of Executive's death (such date, the "***Delayed Initial Payment Date***"), and the Company (or the successor entity thereto, as applicable) shall (A) pay to the Executive a lump sum amount equal to the sum of the Payments that Executive would otherwise have received through the Delayed Initial Payment Date if the commencement of the payment of the Payments had not been delayed pursuant to this Section 7, and (B) commence paying the balance of the Payments in accordance with the applicable payment schedules set forth herein.

IN WITNESS WHEREOF, the Parties have executed this Amendment on July __, 2007, to be effective immediately.

JAZZ PHARMACEUTICALS, INC.

By: _____

Its: _____

EXECUTIVE:

_____

[TYPE NAME]

Address: _____

_____

Exhibit 10.60

August 10, 2007

Re: Outstanding Options to Purchase Shares of Jazz Pharmaceuticals, Inc.

Dear Option Holder:

You currently hold stock options (collectively, the "***Options***") to purchase shares of common stock of Jazz Pharmaceuticals, Inc. (the "***Company***") under the Company's 2003 Equity Incentive Plan (the "***2003 Plan***").

Presently, each of your Options is structured so that the vesting and exercisability of your Options will accelerate with respect to an additional 25% of the option shares (or such lesser amount of shares as are then unvested and subject to the option) if: (a) a change in control occurs, and (b) your employment is terminated without cause within 12 months thereafter. The terms of such acceleration are documented in an option agreement between you and the Company under the 2003 Plan.

We are pleased to announce that the Company's Compensation Committee has approved an amendment to each of your Options which will provide, in addition to the rights above, that in the event that your "continuous service" terminates due to an "involuntary termination without cause," within either 12 months following, or one month prior to, the effective date of a "change in control," the vesting and exercisability of your Options will accelerate in full.

For purposes of such vesting acceleration, "continuous service" and "change in control" shall have the meaning set forth in the Company's 2007 Equity Incentive Plan (the "***2007 Plan***"). To review the definitions described in this paragraph, please refer to the 2007 Plan, which you can read on livelink under Resources/Employees/Employee Stock Plans/2007 Equity Incentive Plan.

In addition, "involuntary termination without cause" shall mean the involuntary termination of your "continuous service" (as defined in the 2007 Plan) for reasons other than death, "disability" (as defined in the 2007 Plan), or "cause." For this purpose, "cause" means that, in the reasonable determination of the Company, you have (i) committed an intentional act or acted with gross negligence that has materially injured the business of the Company; (ii) intentionally refused or failed to follow lawful and reasonable directions of the Board or the appropriate individual to whom you report; (iii) willfully and habitually neglected your duties for the Company; or (iv) been convicted of a felony involving moral turpitude that is likely to inflict or has inflicted material injury on the business of the Company. Notwithstanding the foregoing, "cause" shall not exist based on conduct described in clause (ii) or (iii) unless the conduct described in such clause has not been cured within fifteen (15) days following your receipt of written notice from the Company specifying the particulars of the conduct constituting "cause." Any determination by the Company that your Continuous Service (as defined in the 2007 Plan) was terminated by reason of dismissal without "cause" for purposes of your Options shall have no effect upon any determination of the rights or obligations of you or the Company for any other purpose.

We hope that you find this amendment to be a valuable addition to each of your outstanding Options. Except for the foregoing, all remaining terms and conditions applicable to your Options will continue in full force and effect. Until your fully executed Acknowledgment (attached to this Notice) is received by the Company, your Options will not have the additional acceleration provisions specified in this Notice. Please maintain a copy of this Notice with the other paperwork for your Options so that you will have a permanent record of this new amendment. If you have any questions concerning your amended option, please contact Linda Weber, our Stock Plan Administrator and if you have questions about this amendment, please contact Scott Meggs, our Sr. Corporate Counsel.

Very truly yours,

Jazz Pharmaceuticals, Inc.

ACKNOWLEDGMENT

The undersigned acknowledges receipt of the foregoing Notice and agrees with the terms and conditions specified therein. Specifically, the undersigned agrees to the application of the definitions regarding the amendment to the Options, and acknowledges that he or she has been provided with the opportunity to review a copy of the Company's 2007 Equity Incentive Plan that contains the additional definitions applicable to the Options.

Dated: _____, 2007

_____
Signature

_____
Print Name

Exhibit 10.61

JAZZ PHARMACEUTICALS, INC.
NON-EMPLOYEE DIRECTOR
COMPENSATION ARRANGEMENTS
(as modified on July 18, 2007)

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 ("***Board Retainers***"), 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.

On July 18, 2007, the Board determined that the Board Retainers for the periods from (i) June 1, 2007 through August 14, 2007 (in an amount equal to 20.83% of the annual Board Retainer) and (ii) August 15, 2007 through August 14, 2008 shall be deemed earned and payable on August 15, 2007 and that commencing August 15, 2008, Board Retainers for each annual period from August 15 to the next subsequent August 14 shall be deemed earned and payable in advance on August 15. Payments of Board Retainers are subject to a non-employee's director's election pursuant to the Company's Directors Deferred Compensation Plan.

EXHIBIT 31.1

CERTIFICATION

I, Samuel R. Saks, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Jazz Pharmaceuticals, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 10, 2007

By: /s/ Samuel R. Saks
Samuel R. Saks, M.D.
Chief Executive Officer

EXHIBIT 31.2

CERTIFICATION

I, Matthew K. Fust, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Jazz Pharmaceuticals, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 10, 2007

By: /s/ Matthew K. Fust
Matthew K. Fust
Senior Vice President and Chief Financial Officer

EXHIBIT 32.1

CERTIFICATIONS OF

CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER

PURSUANT TO 18 U.S.C. SECTION 1350,

AS ADOPTED PURSUANT TO

SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

I, Samuel R. Saks, hereby certify, to the best of my knowledge, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the quarterly report of Jazz Pharmaceuticals, Inc. on Form 10-Q for the quarter ended June 30, 2007 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and that information contained in such Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Jazz Pharmaceuticals, Inc.

By: /s/ Samuel R. Saks
Name: Samuel R. Saks, M.D.
Title: Chief Executive Officer
Date: August 10, 2007

I, Matthew K. Fust, hereby certify, to the best of my knowledge, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the quarterly report of Jazz Pharmaceuticals, Inc. on Form 10-Q for the quarter ended June 30, 2007 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and that information contained in such Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Jazz Pharmaceuticals, Inc.

By: /s/ Matthew K. Fust
Name: Matthew K. Fust
Title: Senior Vice President and Chief Financial Officer
Date: August 10, 2007

These certifications accompany the Form 10-Q to which they relate, are not deemed filed with the Securities and Exchange Commission and are not to be incorporated by reference into any filing of Jazz Pharmaceuticals, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.