

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Amendment No. 2
to
FORM S-1
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

INOTEK PHARMACEUTICALS CORPORATION

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

2834
(Primary Standard Industrial
Classification Code Number)

04-3475813
(I.R.S. Employer
Identification Number)

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(Address, Including Zip Code, and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

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

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

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

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer

Accelerated Filer

Non-Accelerated Filer (Do not check if a smaller reporting company)

Smaller Reporting Company

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price(1)	Amount of Registration Fee(5)
Common Stock, par value \$0.01 per share	\$73,933,500(2)	\$8,591.07
Convertible Senior Notes(3)	\$46,000,000(4)	\$5,345.20
Total	\$119,933,500	\$13,936.27

(1) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act.

(2) Includes the offering price of shares that the underwriters have the option to purchase to cover overallocments, if any.

(3) In accordance with Rule 457(i) under the Securities Act, this registration statement also registers the shares of our common stock that are initially issuable upon conversion of the Convertible Senior Notes due 2019, or the notes, registered hereby. The number of shares of our common stock issuable upon such conversion is subject to adjustment upon the occurrence of certain events described herein and will vary based on the public offering price of the common stock registered hereby. Pursuant to Rule 416 under the Securities Act, the number of shares of our common stock to be registered includes an indeterminate number of shares of common stock that may become issuable upon conversion of the notes as a result of such adjustments.

(4) Equals the aggregate principal amount of the notes to be registered hereunder, including \$6,000,000 aggregate principal amount of the notes that may be offered and sold pursuant to the exercise in full of the underwriters' option to purchase additional notes to cover overallocments, if any.

(5) \$15,367.45 has been previously paid.

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

EXPLANATORY NOTE

This Registration Statement contains a prospectus relating to an offering of shares of our common stock (for purposes of this Explanatory Note, the “Common Stock Prospectus”), together with a separate prospectus, or the Convertible Senior Notes Prospectus, relating to an offering of our % Convertible Senior Notes due 2019, or the notes. The complete Common Stock Prospectus follows immediately. Following the Common Stock Prospectus are the following alternative and additional pages for the Convertible Senior Notes Prospectus:

- n front and back cover pages, which will replace the front and back cover pages of the Common Stock Prospectus;
- n pages for the “Prospectus Summary—The Offering” section, which will replace the “Prospectus Summary—The Offering” section of the Common Stock Prospectus;
- n pages for the “Risk Factors—Risks Related to the Notes and Our Common Stock” section, which will replace the “Risk Factors—Risks Related to this Offering and Ownership of Our Common Stock” and “Risk Factors—Risks Related to the Concurrent Offering of Notes” sections of the Common Stock Prospectus;
- n pages for the “Description of Notes” section, which will replace the “Concurrent Offering of Convertible Senior Notes” section of the Common Stock Prospectus;
- n pages for the “Certain Material U.S. Federal Income Tax Considerations for U.S. and Non-U.S. Holders of Notes” section, which will replace the “Certain Material U.S. Federal Income Tax Considerations For Non-U.S. Holders of Common Stock” section of the Common Stock Prospectus; and
- n pages for the “Underwriting” section, which will replace the “Underwriting” section of the Common Stock Prospectus.

In addition, the following references contained within the Common Stock Prospectus will be replaced or removed in the Convertible Senior Notes Prospectus:

- n references to “this offering” or “this offering of common stock” contained in “Use of Proceeds”, “Capitalization”, “Dilution”, “Description of Capital Stock” and “Shares Eligible for Future Sale” will be replaced with references to “the concurrent offering of our common stock” in the Convertible Senior Notes Prospectus;
- n references to “the concurrent offering of \$ million aggregate principal amount of our % Convertible Senior Notes due 2019, or the notes”, “the concurrent offering of notes, if completed”, and “the concurrent offering of notes” contained in “Use of Proceeds”, “Capitalization”, “Dilution”, “Description of Capital Stock” and “Shares Eligible for Future Sale” will be replaced with references to “this offering” in the Convertible Senior Notes Prospectus;
- n the third and sixth paragraphs in “Use of Proceeds” will be removed; and
- n the “Capitalization” section shall include an additional column entitled “Pro Forma As Adjusted for the Offering of Common Stock and Notes”, which in addition to the pro forma information as adjusted for the offering of common stock, will also give further effect to “this offering of the notes”.

All words and phrases similar to those specified above that appear throughout the Common Stock Prospectus will be revised accordingly to make appropriate references in the Convertible Senior Notes Prospectus.

Each of the complete Common Stock Prospectus and Convertible Senior Notes Prospectus will be filed with the Securities and Exchange Commission in accordance with Rule 424 under the Securities Act of 1933, as amended. The closing of this offering of common stock is not contingent upon the closing of the concurrent offering of notes but the closing of the offering of notes is contingent upon the closing of this offering of common stock.

The information in this preliminary prospectus is not complete and may be changed. We may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell nor does it seek an offer to buy these securities in any jurisdiction where the offer or sale is not permitted.

Shares



Common Stock

This is an initial public offering of shares of our common stock. We are offering _____ shares of our common stock. Prior to this offering, there has been no public market for our common stock. We intend to apply to list our common stock on The NASDAQ Global Market under the symbol "ITEK." We expect that the initial public offering price of our common stock will be between \$ _____ and \$ _____ per share.

Concurrently with this offering of common stock, we are also making a public offering of \$ _____ million aggregate principal amount of our _____ % Convertible Senior Notes due 2019, or the notes (plus up to an additional \$ _____ million principal amount of notes if the underwriters for the concurrent offering of notes exercise their over-allotment option), in an underwritten offering pursuant to a separate prospectus. The closing of this offering of common stock is not contingent upon the closing of the concurrent offering of notes, but the closing of the concurrent offering of notes is contingent upon the closing of this offering and the listing of our common stock on The NASDAQ Global Market. We cannot assure you that the concurrent offering of notes will be completed or, if completed, on what terms it will be completed. See the section of this prospectus entitled "Concurrent Offering of Convertible Senior Notes" for a summary of the terms of the notes and a further description of the concurrent offering of notes.

We are an "emerging growth company" under applicable Securities and Exchange Commission rules and will be subject to reduced public company reporting requirements for this prospectus and future filings. See "Prospectus Summary—Implications of Being an Emerging Growth Company."

Our business and an investment in our common stock involve significant risks. These risks are described under the caption "[Risk Factors](#)" beginning on page 13 of this prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

	<i>Per Share</i>	<i>Total</i>
Initial public offering price	\$ _____	\$ _____
Underwriting discounts and commissions(1)	\$ _____	\$ _____
Proceeds, before expenses, to Inotek	\$ _____	\$ _____

(1) We refer you to "Underwriting" beginning on page 169 for additional information regarding total underwriting compensation.

Certain of our existing principal stockholders and their affiliated entities have indicated an interest in purchasing an aggregate of approximately \$ _____ million of shares of our common stock in this offering at the initial public offering price. However, because indications of interest are not binding agreements or commitments to purchase, any of these stockholders may determine to purchase more, less or no shares in this offering, or the underwriters may determine to sell more, less or no shares in this offering to any of these stockholders.

The underwriters may also purchase up to an additional _____ shares from us at the public offering price, less the underwriting discount, within 30 days from the date of this prospectus to cover over-allotments.

The underwriters expect to deliver the shares against payment in New York, New York on _____, 2015.

**Cowen and Company
Canaccord Genuity**

**Piper Jaffray
Nomura**

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You should rely only on the information contained in this prospectus or in any free writing prospectus prepared by us or on our behalf. We have not, and the underwriters have not, authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not, and the underwriters are not, making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus is accurate only as of the date on the front cover of this prospectus. Our business, financial condition, results of operations and prospects may have changed since that date.

Information contained on our website is not part of this prospectus. Neither we nor any of the underwriters have done anything that would permit this offering or possession or distribution of this prospectus in any jurisdiction or distribution of this prospectus in any jurisdiction where action for that purpose is required, other than the United States. You are required to inform yourself about, and to observe any restrictions relating to, this offering and the distribution of this prospectus.

PROSPECTUS SUMMARY

This summary highlights information contained elsewhere in this prospectus and does not contain all of the information that you should consider in making your investment decision. Before investing in our common stock, you should carefully read this entire prospectus, including our financial statements and the related notes included elsewhere in this prospectus. You should also consider, among other things, the matters described under "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations," in each case appearing elsewhere in this prospectus. We are concurrently offering shares of our common stock and \$ million aggregate principal amount of our % Convertible Senior Notes due 2019, or the notes (plus up to an additional \$ million principal amount of notes if the underwriters for the concurrent offering of notes exercise their overallotment option). The closing of our initial public offering of common stock is not contingent upon the closing of the concurrent offering of notes, but the closing of the concurrent offering of notes is contingent upon the closing of this offering and the listing of our common stock on The NASDAQ Global Market. Unless the context requires otherwise, in this prospectus the term "offering" refers to both the offering of common stock and the concurrent offering of notes. Unless otherwise stated, all references to "us," "our," "Inotek," "we," the "Company" and similar designations refer to Inotek Pharmaceuticals Corporation.

Overview

We are a clinical-stage biopharmaceutical company focused on the discovery, development and commercialization of therapies for glaucoma. Glaucoma is a disease of the eye that is typically characterized by structural evidence of optic nerve damage, vision loss and consistently elevated intraocular pressure, or IOP. Our lead product candidate, *trabodenoson*, is a first-in-class selective adenosine mimetic that we rationally designed to lower IOP by restoring the eye's natural pressure control mechanism. We developed this molecule to selectively stimulate a particular adenosine subreceptor in the eye with the effect of augmenting the intrinsic function of the eye's trabecular meshwork, or TM. The TM regulates the pressure inside the eye, and is also the main outflow path for the fluid inside of the eye that often builds up pressure in patients with glaucoma. We believe that by restoring the natural function of the TM and this outflow path, rather than changing the fundamental dynamics of pressure regulation in the eye, *trabodenoson's* mechanism of action should result in a lower risk of unintended side effects and long term safety issues than other mechanisms of action. Additionally, *trabodenoson's* unique mechanism of action in the TM should complement the activity of existing glaucoma therapies that exert their IOP-lowering effects on different parts of the in-flow and out-flow system of the eye.

Our product pipeline includes *trabodenoson* monotherapy delivered in an eye drop formulation, as well as a fixed-dose combination, or FDC, of *trabodenoson* with *latanoprost* given once-daily, or QD. Statistically significant results for the primary endpoint of our completed Phase 2 clinical trial indicate that *trabodenoson* monotherapy has IOP-lowering effects in line with existing therapies, with a favorable safety and tolerability profile at all doses tested. Our completed Phase 2 trial of *trabodenoson* co-administered with *latanoprost*, a prostaglandin analogue, or PGA, demonstrated IOP-lowering in patients who have previously had inadequate responses to treatment with *latanoprost*. These patients represent PGA poor-responders, as evidenced by persistently elevated IOP at levels that typically require the addition of a second drug to further lower IOP.

We are planning an End-of-Phase 2 meeting with the U.S. Food and Drug Administration, or FDA, for *trabodenoson* monotherapy in the first half of 2015. We expect to initiate a Phase 3

program for *trabodenoson* monotherapy in mid-2015, which will consist of two Phase 3 pivotal trials and a long-term safety study. Based on our estimates of the rate of patient enrollment and assuming commencement in mid-2015, we expect to report top-line data from the first of the two pivotal Phase 3 trials by late 2016 or early 2017. If the primary objectives of our Phase 3 program are met, we plan to submit a New Drug Application, or NDA, to the FDA for marketing approval of *trabodenoson* for the treatment of glaucoma in the United States. We plan to submit a marketing authorization application, or MAA, in Europe after filing our NDA for approval of *trabodenoson* in the United States.

We own worldwide rights to all indications for our current product candidates and have patents and pending patent applications related to the composition of matter, pharmaceutical compositions and methods of use for *trabodenoson*, certain of which extend to 2031 with respect to our issued patents and 2034 with respect to our pending patent applications, if issued. If *trabodenoson* receives marketing approval in the United States, we plan to commercialize it by establishing our own specialty sales force in the United States.

Glaucoma Market

According to IMS Health, sales of glaucoma drugs in 2013 were approximately \$2.0 billion in the United States and \$5.6 billion worldwide. According to the British Journal of Ophthalmology, there were an estimated 2.8 million Americans with glaucoma in 2010. Once glaucoma develops, it is a chronic condition that requires life-long treatment. PGAs are the most widely prescribed drug class for glaucoma and include the most widely prescribed glaucoma drug, *latanoprost*. When PGA monotherapy is insufficient to control IOP or is poorly tolerated, non-PGA products, such as beta blockers, alpha agonists and carbonic anhydrase inhibitors, are generally used either as an add-on therapies to the PGA or as an alternative monotherapy. Both PGAs and non-PGAs can cause adverse effects in the eye. In addition, non-PGA drugs can have adverse effects in the rest of the body and have been shown to have poor tolerability profiles.

Additionally, no existing treatments offer the potential to directly treat the underlying cause of glaucoma associated vision loss: the death of retinal ganglion cells, or RGCs, which comprise the nerve tissue in the retina that relays the visual signal to the brain. We believe that a drug with the potential to make these cells more resilient to the stress caused by glaucoma would achieve broad market acceptance as the treatment preferred among patients and physicians.

We believe there are currently two leading classes of new drugs in clinical development for glaucoma: Rho kinase inhibitors and adenosine mimetics. Certain Rho kinase inhibitors recently entered Phase 3 clinical trials and are the furthest along of the potential new glaucoma therapies. As with PGAs, eye redness, or conjunctival hyperemia, has been reported with the Rho kinase inhibitor class. Adenosine mimetics are compounds that mimic or simulate some of the actions or effects of adenosine, a naturally-occurring molecule with many, diverse biologic effects. We believe we are the only company to be developing an adenosine mimetic highly selective for the A1 subreceptor for ophthalmic indications.

Since 1996, there have been no new drug classes approved in the United States for glaucoma. As a result, there are persistent inadequacies in the tools that ophthalmologists use to manage patients with glaucoma. Thus, we believe there is a need for an innovative glaucoma treatment that offers:

- n significant IOP-lowering;
- n a favorable safety and tolerability profile;
- n a novel mechanism of action that complements existing therapies; and
- n convenient dosing.

Our Solution—*Trabodenoson*

Trabodenoson is a first-in-class selective adenosine mimetic that is designed to lower IOP with a mechanism of action that we believe augments the natural function of the TM. In addition, by enhancing a naturally occurring process to make the eye function more like that of a younger, healthier eye, rather than changing the fundamental dynamics of pressure regulation in the eye, we believe there is a lower risk of unintended side effects that could result in safety or tolerability issues in the long term. We believe *trabodenoson* enhances metabolic activity in the TM, which helps clear the pathway for the aqueous humor, the fluid in the eye, to flow out of the eye, thereby lowering IOP. We believe that *trabodenoson*'s mechanism of action improves the function of the eye, and that *trabodenoson* has the potential to be used as a monotherapy in place of current glaucoma treatments. In addition, we expect that *trabodenoson*'s purported mechanism of action in the TM should complement the activity of all currently-approved glaucoma drugs that work in other ways to lower IOP.

We believe the following elements of *trabodenoson*'s product profile will drive its adoption, if approved, in the glaucoma market:

- n **Meaningful IOP-Lowering.** After four weeks of monotherapy treatment in a Phase 2 clinical trial in glaucoma patients receiving no medications, *trabodenoson* (500 mcg) lowered IOP by 4.0 to 7.0 mmHg from study baseline, and 3.5 to 5.0 mmHg from diurnal baseline. Moreover, IOP-lowering at week four was significantly better than IOP-lowering at week two. IOP-lowering for currently-approved glaucoma therapies, according to their FDA-approved labeling, ranges from 2-8 mmHg. A similar trend in improvement of IOP with increasing treatment time was observed in our recently completed Phase 2 trial of *trabodenoson* co-administered with *latanoprost* in a population of PGA poor-responders.
- n **Favorable Safety Profile.** In four completed *trabodenoson* clinical trials over a wide range of doses, no patients have been withdrawn due to a *trabodenoson*-related side effect in the eye. In our multiple-dose monotherapy Phase 2 clinical trial, we did not observe side effects in the eye that would indicate a tolerability problem at any of the doses tested. Specifically, there was no change in the background rate of conjunctival hyperemia in the patient population when treatment with *trabodenoson* was initiated or continued for up to four weeks, even at the highest dose tested. Furthermore, in our most recently completed multiple-dose Phase 2 trial of *trabodenoson* co-administered with *latanoprost* in a population of PGA poor-responders, there also was no change in the rate of hyperemia from study baseline after four, eight or 12 weeks of treatment. No systemic effects of the drug have been identified despite rigorous monitoring, including cardiac and renal function, when administered as an eye drop. We believe this safety profile could be important in the potential for *trabodenoson* to become a preferred treatment alternative for patients that experience undesired side effects with existing therapies.

- n **Unique, Complementary Mechanism of Action.** We believe that *trabodenoson*'s mechanism of action augments a naturally occurring process by clearing the path for aqueous humor outflow in the TM. We expect that this mechanism of action should complement all currently-approved glaucoma drugs which work in other ways to lower IOP, including by reducing the aqueous humor production or increasing outflow through the uveoscleral pathway. This complementary mechanism was confirmed in patients already receiving *latanoprost* therapy in a recently completed multiple-dose Phase 2 trial. In this Phase 2 trial of *trabodenoson* co-administered with *latanoprost* in a population of PGA poor-responders, patients on *latanoprost* experienced an additional 5.5 mmHg IOP lowering from study baseline and 4.3 mmHg from diurnal baseline after 12 weeks of treatment (eight weeks BID plus four weeks QD). These results make *trabodenoson*, with its favorable safety profile, a candidate to add to other glaucoma medications when a further reduction of the IOP is desirable.
- n **Convenient Dosing.** Current Phase 2 clinical data indicate that QD dosing with *trabodenoson* in PGA poor-responders is well tolerated and lowers IOP significantly. We believe a QD dosing regimen minimizes the burden on patients to remember to take their medication, thus potentially improving compliance with the therapy. If confirmed in our Phase 3 program, BID or QD dosing would make *trabodenoson* easier to use than most non-PGA products, and if QD dosing is confirmed and approved, *trabodenoson*'s dosing frequency would match the best-in-class PGAs and would also facilitate an FDC that could be dosed once a day.

We believe that *trabodenoson*'s efficacy, complementary mechanism of action, dosing profile and safety profile also make it well-suited for use in an FDC with a PGA, which could be an effective and convenient option for patients currently using two or more glaucoma drugs to lower IOP.

Product Pipeline

Our product pipeline includes *trabodenoson*, as a monotherapy delivered in an eye drop formulation, as well as an FDC that includes *trabodenoson* plus *latanoprost* in an eye drop formulation. We are also evaluating the potential for *trabodenoson* to directly target optic nerve neuropathies. The following table summarizes key information about our product development programs.

Program	Preclinical	Phase 1	Phase 2	Phase 3	Status	Ownership
Glaucoma and Ocular Hypertension						
Trabodenoson					Entering Phase 3 Mid-2015	Worldwide Rights 100% Ownership
Trabodenoson plus Latanoprost					Phase 2 Trial Completed	Worldwide Rights 100% Ownership
Optic Neuropathies and Degenerative Retinal Diseases						
Trabodenoson					Advancing Toward the Clinic	Worldwide Rights 100% Ownership

Trabodenoson

Our first product candidate, *trabodenoson*, is a monotherapy dosed in an eye drop. Our clinical trials have shown that *trabodenoson* has significant IOP-lowering effects, convenient dosing and also has a favorable safety profile when compared to the currently available glaucoma treatments, such as PGAs and non-PGAs.

Trabodenoson-Latanoprost Fixed-Dose Combination

A large number of patients use more than one drug in an attempt to lower IOP. The available FDC products increase IOP-lowering but also have unpleasant tolerability challenges in the eye, as well as the adverse effects, safety warnings, precautions and contraindications that the two individually-dosed drugs carry in their FDA-approved package inserts. An FDC product containing a PGA plus a non-PGA has not yet been approved in the United States. We believe that none have gained FDA approval because the modest incremental benefit in IOP-lowering seen when a non-PGA is added to a PGA is too small in the context of the added side effects and clinical risks that come with the combined drugs. In contrast, based on our completed Phase 2 study in which *trabodenoson* therapy was added to *latanoprost*, we believe that an FDC containing a PGA and *trabodenoson* will benefit from significant incremental efficacy while adding very few side effects or clinical risks to the profile of the PGA alone. We believe such a product would be well received in the glaucoma market, especially for use in patients with higher IOPs that currently use two or more glaucoma drugs to lower IOP.

Our second product candidate is a combination of *trabodenoson* with a PGA, *latanoprost*, to create an FDC. While our FDC has not yet been formulated or administered to humans, we expect that *trabodenoson* will not adversely affect the safety profile of *latanoprost*, or any other currently-approved PGA, because of its favorable safety and tolerability profile from our completed Phase 2 trial in which *trabodenoson* and *latanoprost* were co-administered. We believe that *trabodenoson*'s mechanism for lowering IOP complements the mechanism of action of *latanoprost* and other PGAs, which work primarily on the secondary uveoscleral outflow, because *trabodenoson* is believed to act through the TM, the largest aqueous humor outflow path in the eye. In fact, our IOP-lowering studies in cynomolgus monkeys have shown that IOP-lowering is significantly better when the eye is treated with both *trabodenoson* and *latanoprost*, as compared to treatment with *latanoprost* alone. Moreover, *trabodenoson* appears to have a sufficiently long duration of action, which we believe may allow it to be effectively dosed QD in conjunction with *latanoprost* as an FDC. Assuming the *trabodenoson* safety profile remains favorable, a *trabodenoson-latanoprost* FDC therapy could present a much improved risk/benefit profile over other combinations of currently-approved PGAs and non-PGAs.

Trabodenoson for Optic Neuropathy

The neuroprotective potential of *trabodenoson* is supported by the basic biology of adenosine, which has shown that the stimulation of the A1 receptor can protect tissues of the central nervous system. While we have not yet conducted a formal program of studies to prove neuroprotection, we plan to study the potential of *trabodenoson* monotherapy and our FDC product candidate to slow the loss of vision significantly more than attributable to IOP lowering alone, either in glaucoma patients or in other rarer forms of optic nerve neuropathies.

Clinical Development Plan

Our planned Phase 3 program for *trabodenoson* as a monotherapy is expected to incorporate both the FDA-acceptable clinical endpoint of IOP, and to include studies with three months of treatment, both of which are well-known and accepted standards for pivotal trials for glaucoma. We

are planning an End-of-Phase 2 meeting with the FDA in the first half of 2015 to discuss our Phase 3 program for *trabodenoson* monotherapy and to confirm the design and endpoints for the Phase 3 pivotal trials. We plan to start our Phase 3 program for *trabodenoson* monotherapy in mid-2015, and we expect to report top-line data from the first pivotal trial in the program by late 2016 or early 2017, with the second pivotal trial being completed in 2017. After completion of the long-term monotherapy safety study, we plan to submit an NDA. We are planning to continue our Phase 2 program for our FDC in 2016 and to commence our Phase 3 program for our FDC in late 2017.

Our Strategy

Our goal is to become a leading biopharmaceutical company focused on the discovery, development and commercialization of novel therapies to treat glaucoma. The key elements of our strategy are as follows:

- n Complete clinical development and seek marketing approval for our lead product candidate, *trabodenoson* monotherapy;
- n Complete clinical development and seek marketing approval of an FDC product that includes both *trabodenoson* and *latanoprost*;
- n Establish a specialty sales force to maximize the commercial potential of *trabodenoson* in the United States; and
- n Evaluate the potential of *trabodenoson* to slow the loss of vision associated with glaucoma or for additional ophthalmic indications.

Risks Associated with Our Business

Our business is subject to a number of risks of which you should be aware before making an investment decision. These risks are discussed more fully in the "Risk Factors" section of this prospectus. These risks include the following:

- n We currently have no source of revenue and may never become profitable.
- n We depend substantially on the success of our product candidates, particularly *trabodenoson* monotherapy and *trabodenoson* FDC, which are still in development. If we are unable to successfully commercialize our product candidates, or experience significant delays in doing so, our business will be materially harmed.
- n We will need to obtain additional financing to fund our operations and, if we are unable to obtain such financing, we may be unable to complete the development and commercialization of our primary product candidates.
- n We have not obtained regulatory approval for any of our product candidates in the United States or in any other country, and we cannot guarantee that we will ever have marketable products.
- n We have not yet successfully formulated, and may be unable to formulate or manufacture our fixed-dose combination product candidate in a way that is suitable for clinical or commercial use. Any such delay or failure could materially harm our commercial prospects, result in higher costs and deprive us of product candidate revenues.
- n Our product candidates may have undesirable adverse effects, which may delay or prevent regulatory approval or, if approval is received, require our products to be taken off the market, require them to include safety warnings or otherwise limit their sales.

- n If we are unable to effectively establish a direct sales force in the United States, our business may be harmed.
- n We face competition from established branded and generic pharmaceutical companies and if our competitors are able to develop and market products that are preferred over our products, our commercial opportunity will be reduced or eliminated.
- n The commercial success of our product candidates will depend on the degree of market acceptance among ophthalmologists and optometrists, patients, patient advocacy groups, third-party payors and the medical community.
- n If we fail to obtain and sustain coverage and an adequate level of reimbursement for our product candidates by third-party payors, potential future sales would be materially adversely affected.
- n We may not be able to protect our proprietary technology in the marketplace.
- n We will need to significantly increase the size of our organization, and we may experience difficulties in managing growth.

Company and Other Information

We were incorporated under the laws of the State of Delaware on July 7, 1999. Our principal executive office is located at 131 Hartwell Avenue, Suite 105, Lexington, Massachusetts, and our telephone number is (781) 676-2100. Our website address is www.inotekpharma.com. We do not incorporate the information on or accessible through our website into this prospectus, and you should not consider any information on, or that can be accessed through, our website as part of this prospectus. The reference to our website is an inactive textual reference only and is not a hyperlink.

All trademarks or trade names referred to in this prospectus are the property of their respective owners. Solely for convenience, the trademarks and trade names in this prospectus may be referred to without the ® and ™ symbols, but such references should not be construed as any indicator that their respective owners will not assert, to the fullest extent under applicable law, their rights thereto. We do not intend our use or display of other companies' trademarks and trade names to imply a relationship with, or endorsement or sponsorship of us by, any other companies.

Implications of Being an Emerging Growth Company

As a company with less than \$1 billion in revenue during our last fiscal year, we qualify as an "emerging growth company" as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act, and we may remain an emerging growth company for up to five years. For so long as we remain an emerging growth company, we are permitted and intend to rely on exemptions from certain disclosure and other requirements that are applicable to other public companies that are not emerging growth companies. In particular, in this prospectus, we have provided only two years of audited financial statements and have not included all of the executive compensation related information that would be required if we were not an emerging growth company. Accordingly, the information contained herein may be different than the information you receive from other public companies in which you hold stock.

The Offering

Common stock offered by us	shares
Common stock to be outstanding immediately after this offering	shares (shares if the underwriters exercise their overallotment option)
Overallotment option	shares
Use of proceeds	<p>We estimate that we will receive net proceeds from this offering of approximately \$ million, or \$ million if the underwriters exercise their overallotment option, based upon an assumed initial public offering price of \$ per share, the midpoint of the price range set forth on the cover page of this prospectus, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable.</p> <p>We estimate that the net proceeds to us from the concurrent offering of notes, if completed, will be approximately \$ million, or \$ million if the underwriters for the concurrent offering of notes exercise their overallotment option after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.</p> <p>We intend to use the net proceeds from this offering and the concurrent offering of notes to fund the continued development of our product candidates and for other general corporate purposes. We intend to repay borrowings under and terminate our existing notes payable agreements with Horizon Technology Finance Corporation and Fortress Credit Co LLC with a portion of this offering. See "Use of Proceeds."</p>
Concurrent offering of notes	<p>Concurrently with this offering, we are also making a public offering of \$ million aggregate principal amount of notes (plus up to an additional \$ million principal amount of notes if the underwriters for the concurrent offering of notes exercise their overallotment option), in an underwritten offering pursuant to a separate prospectus.</p>

This prospectus shall not be deemed an offer to sell or a solicitation of an offer to buy any of the notes offered in the concurrent offering of notes. The closing of this offering is not contingent upon the closing of the concurrent offering of notes, but the closing of the concurrent offering of notes is contingent upon the closing of this offering of common stock and the listing of our common stock on The NASDAQ Global Market. We cannot assure you that the concurrent offering of notes will be completed or, if completed, on what terms it will be completed. See the section of this prospectus entitled "Concurrent Offering of Convertible Senior Notes" for a summary of the terms of the notes and a further description of the concurrent offering of notes.

Risk factors

You should carefully read "Risk Factors" in this prospectus for a discussion of factors that you should consider before deciding to invest in our common stock.

Proposed NASDAQ Global Market symbol

"ITEK"

Certain of our existing principal stockholders and their affiliated entities have indicated an interest in purchasing an aggregate of approximately \$ million in shares of our common stock in this offering at the initial public offering price. Assuming an initial public offering price of \$ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, these stockholders would purchase an aggregate of of the shares offered in this offering based on these indications of interest. However, because indications of interest are not binding agreements or commitments to purchase, these stockholders may determine to purchase fewer shares than they have indicated an interest in purchasing or not to purchase any shares in this offering. It is also possible that these stockholders could indicate an interest in purchasing more shares of our common stock. In addition, the underwriters could determine to sell fewer shares to any of these stockholders than the stockholders have indicated an interest in purchasing or not to sell any shares to these stockholders.

The number of shares of our common stock to be outstanding after this offering is based on 10,626,056 shares of our common stock outstanding as of September 30, 2014, which assumes the conversion of (i) all of our outstanding 25,949,333 shares of preferred stock, including all accrued and unpaid dividends thereon, into 9,404,970 shares of common stock, which will occur immediately prior to the closing of this offering, and (ii) the \$2.0 million of subordinated convertible promissory notes we issued in December 2014 into shares of common stock upon the consummation of this offering at the assumed initial public offering price of \$ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and excludes:

- n 1,091,330 shares of common stock issuable upon the exercise of stock options at a weighted-average exercise price of \$4.01 per share;

- n 228,906 shares of Series AA preferred stock issuable upon the exercise of warrants outstanding, which have an exercise price of \$1.529 per share, and which warrants will become exercisable for 67,522 shares of common stock at \$5.18 per share upon the closing of this offering; and
- n shares of common stock that would be issuable upon conversion of the notes, if issued, in the concurrent offering of notes assuming that we settle all conversion of the notes in shares of our common stock and without the application of any anti-dilution, make-whole or other adjustments.

Unless otherwise indicated, all information in this prospectus reflects or assumes the following:

- n the filing and effectiveness of our amended and restated certificate of incorporation and the adoption of our amended and restated bylaws, which will occur immediately prior to the closing of this offering;
- n a 1-for-3.39 reverse stock split of our common stock and a proportional adjustment to the existing conversion ratio for each series of our redeemable convertible preferred stock, which became effective on November 26, 2014;
- n the conversion of all of our outstanding 25,949,333 shares of preferred stock, including all accrued and unpaid dividends thereon, into 9,404,970 shares of common stock upon the closing of this offering;
- n the automatic conversion of the \$2.0 million of subordinated convertible promissory notes we issued in December 2014 into shares of common stock upon the consummation of this offering at the assumed initial public offering price of \$ per share, which is the midpoint of the price range set forth on the cover page of this prospectus;
- n no issuance or exercise of stock options or warrants on or after September 30, 2014;
- n no exercise by the underwriters of their option to purchase up to an additional shares of common stock in this offering to cover overallotments, if any; and
- n the completion of the concurrent offering of \$ million aggregate principal amount of notes (assuming no exercise by the underwriters for the concurrent offering of notes of their overallotment option).

Summary Financial Data

The summary statements of operations data for the years ended December 31, 2012 and 2013 are derived from our audited financial statements included elsewhere in this prospectus. The summary statements of operations data for the nine months ended September 30, 2013 and 2014, and the summary balance sheet data as of September 30, 2014, have been derived from our unaudited financial statements included elsewhere in this prospectus. Our unaudited financial statements have been prepared on a basis consistent with our audited financial statements included in this prospectus and, in the opinion of management, reflect all adjustments, consisting only of normal and recurring adjustments, necessary for a fair presentation of such financial data. The summary financial data reflects a 1-for-3.39 reverse stock split of our common stock and a proportional adjustment to the existing conversion ratio for each series of our redeemable convertible preferred stock, which became effective on November 26, 2014.

You should read this summary financial data together with our audited financial statements and related notes included elsewhere in this prospectus and the information under the captions “Selected Financial Data” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations.” Our historical results are not necessarily indicative of our future results, and our operating results for the nine-month period ended September 30, 2014 are not necessarily indicative of the results that may be expected for the fiscal year ending December 31, 2014 or any other interim periods or any future year or period.

(in thousands, except share and per share data)	Year Ended December 31,		Nine Months Ended	
	2012	2013	2013	September 30, 2014
	(unaudited)			
Statements of Operations Data:				
Operating expenses:				
Research and development	\$ (3,542)	\$ (5,330)	\$ (3,738)	\$ (4,655)
General and administrative	(2,307)	(1,324)	(1,242)	(1,337)
Loss from operations	(5,849)	(6,654)	(4,980)	(5,992)
Other income	4	3	2	—
Interest expense	(213)	(884)	(638)	(735)
Change in fair value of warrant liabilities	—	(81)	(29)	(656)
Net loss	\$ (6,058)	\$ (7,616)	\$ (5,645)	\$ (7,383)
Net loss per common share—basic and diluted	\$ (6.72)	\$ (8.39)	\$ (5.97)	\$ (8.61)
Weighted-average common shares outstanding—basic and diluted	1,216,746	1,218,803	1,218,034	1,221,086
Pro forma net loss per common share—basic and diluted (unaudited)(1)		\$ (1.18)		\$ (1.04)
Pro forma weighted-average common shares outstanding—basic and diluted (unaudited)		8,676,361		10,071,419

(in thousands)	As of September 30, 2014		
	Actual (Unaudited)	Pro Forma(2) (Unaudited)	Pro Forma As Adjusted For The Offering of Common Stock(3)(4) (Unaudited)
Balance Sheet Data:			
Cash and cash equivalents	\$ 5,357	\$ 7,357	\$
Total assets	6,498	8,498	
Notes payable—current portion	2,980	2,980	
Notes payable, net of current portion	3,294	3,294	
Convertible subordinated promissory notes	—	—	
Warrant liabilities	294	—	
Total liabilities	9,108	8,814	
Series AA redeemable convertible preferred stock	45,114	—	
Accumulated deficit	(125,893)	(125,893)	
Total stockholders’ (deficit) equity	(48,272)		

- (1) See Note 2 to our consolidated financial statements included elsewhere in this prospectus for an explanation of the method used to calculate the historical and pro forma net loss per share, basic and diluted, and the number of shares used in the computation of the per share amounts.
- (2) Pro forma column in the balance sheet data table above reflects (a) the automatic conversion of all outstanding shares of our convertible preferred stock into an aggregate of 9,404,970 shares of common stock immediately prior to the closing of this offering, (b) the automatic conversion of the \$2.0 million of subordinated convertible promissory notes we issued in December 2014 into _____ shares of common stock upon the consummation of this offering at the assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and the cash received upon the sale of such notes and; (c) the filing and effectiveness of our amended and restated certificate of incorporation, which will occur immediately prior to the closing of this offering.
- (3) Pro forma as adjusted for the offering of common stock column in the balance sheet data table above gives effect to (a) the pro forma adjustments set forth above and (b) the sale and issuance by us of _____ shares of our common stock in this offering, based upon the assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. The pro forma as adjusted for the offering of common stock column does not include any amounts we may receive from the concurrent offering of notes. The closing of this offering of common stock is not contingent upon the closing of the concurrent offering of notes, but the closing of the concurrent offering of notes is contingent upon the closing of this offering of common stock and the listing of our common stock on The NASDAQ Global Market. If we do consummate the concurrent offering of notes, our cash and cash equivalents and total assets will increase by \$ _____ million and our notes and total liabilities will increase by \$ _____ million. Any increase or decrease in the principal amount of the notes issued in the concurrent offering of notes will have a proportionate increase or decrease in the amount of our cash and cash equivalents, total assets, notes and total liabilities.
- (4) A \$1.00 increase (decrease) in the assumed initial public offering price of \$ _____ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) the amount of our cash and cash equivalents, total assets and total stockholders' equity by \$ _____ million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. An increase (decrease) of one million shares offered by us would increase (decrease) the amount of our cash and cash equivalents, total assets and total stockholders' equity by \$ _____ million, assuming the assumed initial public offering price remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

RISK FACTORS

An investment in our common stock involves a high degree of risk. We operate in an industry that involves numerous risks and uncertainties. The risks and uncertainties described below may change over time and other risks and uncertainties, including those that we do not currently consider material, may impair our business. If any of the risks discussed below actually occur, our business, financial condition, operating results or cash flows could be materially adversely affected. This could cause the trading price of our common stock to decline, and you may lose all or part of your investment.

Risks Related to Our Financial Position and Need for Additional Capital

We currently have no source of revenue and may never become profitable.

We are a clinical-stage biopharmaceutical company with a limited operating history. Our ability to generate revenue and become profitable depends upon our ability to successfully complete the development of our product candidates for the treatment of glaucoma and obtain the necessary regulatory approvals for our product candidates. We have never been profitable, have no products approved for commercial sale and to date have not generated any revenue from product sales. Even if we receive regulatory approval for the sale of our product candidates, we do not know when such product candidates will generate revenue, if at all. Our ability to generate product revenue depends on a number of factors, including our ability to:

- n successfully complete clinical development, and receive regulatory approval, for our product candidates, including *trabodenoson* monotherapy and *trabodenoson* with *latanoprost* as a fixed-dose combination, or FDC;
- n set an acceptable price for our product candidates and obtain coverage and adequate reimbursement from third-party payors;
- n establish sales, marketing and distribution systems for our product candidates;
- n add operational, financial and management information systems and personnel, including personnel to support our clinical, manufacturing and planned future commercialization efforts;
- n have commercial quantities of our product candidates manufactured at acceptable cost levels;
- n successfully market and sell our product candidates in the United States and enter into partnerships or other arrangements to commercialize our product candidates outside the United States; and
- n maintain, expand and protect our intellectual property portfolio.

In addition, because of the numerous risks and uncertainties associated with product development, we are unable to predict the timing or amount of increased expenses, or when, or if, we will be able to achieve or maintain profitability. In addition, our expenses could increase beyond expectations if we are required by the U.S. Food and Drug Administration, or FDA, and comparable non-U.S. regulatory authorities, or other regulatory authorities to perform studies or clinical trials in addition to those that we currently anticipate. Even if our product candidates are approved for commercial sale, we anticipate incurring significant costs associated with the commercial launch of these products.

Our ability to become and remain profitable depends on our ability to generate revenue. Even if we are able to generate revenues from the sale of our product candidates, we may not become profitable and may need to obtain additional funding to continue operations. If we fail to become profitable or are unable to sustain profitability on a continuing basis, then we may be unable to continue our operations at planned levels and be forced to reduce our operations. Even if we do achieve profitability, we may not be able to sustain or increase profitability on a quarterly or annual basis. Our failure to become and remain profitable would decrease the value of our company and could impair our ability to raise capital, expand our business or continue our operations. A decline in the value of our company could also cause you to lose all or part of your investment.

We have a history of net losses and anticipate that we will continue to incur net losses for the foreseeable future.

We have a history of losses and anticipate that we will continue to incur net losses for the foreseeable future. Our net losses were \$6.1 million and \$7.6 million for the years ended December 31, 2012 and 2013, respectively. Our net losses were \$5.6 million and \$7.4 million for the nine months ended September 30, 2013 and 2014, respectively. As of September 30, 2014, we had an accumulated deficit of \$125.9 million.

Investment in pharmaceutical product development is highly speculative because it entails substantial upfront capital expenditures and significant risk that a product candidate will fail to gain regulatory approval or become commercially viable. We have devoted most of our financial resources to research and development, including our non-clinical development activities and clinical trials. We are not currently generating revenues, and we cannot estimate with precision the extent of our future losses. We do not currently have any products that are available for commercial sale and we may never generate revenue from selling products or achieve profitability. We expect to continue to incur substantial and increasing losses through the projected commercialization of our product candidates. None of our product candidates have been approved for marketing in the United States and may never receive such approval. As a result of these factors, we are uncertain when or if we will achieve profitability and, if so, whether we will be able to sustain it. Our ability to produce revenue and achieve profitability is dependent on our ability to complete the development of our product candidates, obtain necessary regulatory approvals, and have our products manufactured and successfully marketed. We cannot assure you that we will be profitable even if we successfully commercialize our products. Failure to become and remain profitable may adversely affect the market price of our common stock and our ability to raise capital and continue operations.

We have financed our operations with a combination of private and public grants and contracts and equity and preferred stock offerings. From 1997 to 2004, we have received non-dilutive funding totaling over \$50 million through federal and private grants and contracts. Since 2004, we have raised additional equity capital with funding from biotechnology and pharmaceutical investors. In February 2004, we completed the sale of approximately \$20 million of Series A preferred stock. In October 2005, we completed the sale of \$35 million of Series B preferred stock. In October of 2007, we completed the sale of approximately \$24 million of Series C preferred. In June 2011, we completed the sale of an aggregate of approximately \$23.5 million of Series AA preferred stock in four separate closings during the preceding year. In February 2013, we completed the sale of approximately \$3.5 million of convertible promissory notes in three separate closings during the preceding eight months. In July 2013, we completed the sale of an additional approximately \$13.5 million of Series AA preferred stock, including the conversion of the convertible promissory notes, in two separate closings during the previous two months. In December 2014, we completed the issuance and sale of \$2.0 million of subordinated convertible promissory notes. Our product candidates will require the completion of regulatory review, significant marketing efforts and substantial investment before they can provide us with any revenue.

We expect our research and development expenses to continue to be significant in connection with our planned Phase 2 clinical trials and our planned Phase 3 program. In addition, if we obtain regulatory approval for our product candidates, we expect to incur increased sales and marketing expenses. As a result, we expect to continue to incur significant and increasing operating losses and negative cash flows for the foreseeable future. These losses have had and will continue to have a material adverse effect on our stockholders' deficit, financial position, cash flows and working capital.

We will need to obtain additional financing to fund our operations and, if we are unable to obtain such financing, we may be unable to complete the development and commercialization of our primary product candidates.

Our operations have consumed substantial amounts of cash since inception. At September 30, 2014, our cash and cash equivalents were \$5.4 million. We estimate that the net proceeds to us from the sale of _____ shares of common stock in this offering will be approximately \$ _____ million, based upon an assumed initial public offering price of \$ _____ per share, the midpoint of the price range set forth on the cover page of this prospectus, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. We estimate that the net proceeds to us from the concurrent offering of the notes, after deducting underwriting discounts and commissions and estimated offering expenses, will be approximately \$ _____ million, if completed. We believe that the net proceeds from this offering of common stock and the concurrent offering of notes, together with existing cash and cash equivalents, will be sufficient to fund our projected operating requirements for the next 12 months. If we do not complete the concurrent offering of notes, the proceeds of this offering of common stock would be insufficient to complete a Phase 2 trial for our FDC product candidate, initiate the second Phase 3 pivotal trial for *trabodenoson* monotherapy or complete enrollment in a long-term safety study. We will need to obtain additional financing to conduct additional trials for the approval of our drug candidates if requested by regulatory bodies, and complete the development of any additional product candidates we might acquire. Moreover, our fixed expenses such as rent, interest expense and other contractual commitments are substantial and are expected to increase in the future.

Adequate additional funding may not be available to us on acceptable terms, or at all. If we are unable to raise capital when needed or on attractive terms, we would be forced to delay, reduce or eliminate our research and development programs or future commercialization efforts. Our forecast of the period of time through which our financial resources will be adequate to support our operating requirements is a forward-looking statement and involves risks and uncertainties, and actual results could vary as a result of a number of factors, including the factors discussed elsewhere in this "Risk Factors" section. We have based this forecast on a number of assumptions that may prove to be wrong, and changing circumstances beyond our control may cause us to consume capital more rapidly than we currently anticipate.

Our future funding requirements will depend on many factors, including, but not limited to:

- n the progress, timing, scope and costs of our clinical trials, including the ability to enroll patients in our planned and potential future clinical trials in a timely manner;
- n the time and cost necessary to obtain regulatory approvals that may be required by regulatory authorities;
- n our ability to successfully commercialize our product candidates;
- n the amount of sales and other revenues from product candidates that we may commercialize, if any, including the selling prices for such product candidates and the availability of coverage and adequate reimbursement from third parties;
- n selling and marketing costs associated with our product candidates, including the cost and timing of expanding our marketing and sales capabilities;
- n the terms and timing of any potential future collaborations, licensing or other arrangements that we may establish;
- n cash requirements of any future acquisitions and/or the development of other product candidates;
- n the costs of operating as a public company;
- n the time and cost necessary to respond to technological and market developments;
- n the costs of maintaining and expanding our existing intellectual property rights; and
- n the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights.

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Until we can generate a sufficient amount of revenue, we may finance future cash needs through public or private equity offerings, license agreements, debt financings, collaborations, strategic alliances, marketing or distribution arrangements or a combination thereof. Additional funds may not be available when we need them on terms that are acceptable to us, or at all. General market conditions or the market price of our common stock may not support capital raising transactions such as an additional public or private offering of our common stock or other securities. In addition, our ability to raise additional capital may be dependent upon our stock being quoted on The NASDAQ Global Market, or NASDAQ, or upon obtaining shareholder approval. There can be no assurance that we will be able to satisfy the criteria for continued listing on NASDAQ or that we will be able to obtain shareholder approval if it is necessary. If adequate funds are not available, we may be required to delay or reduce the scope of or eliminate one or more of our research or development programs or our commercialization efforts.

We may seek to access the public or private capital markets whenever conditions are favorable, even if we do not have an immediate need for additional capital at that time. In addition, if we raise additional funds through collaborations, strategic alliances or marketing, distribution or licensing arrangements with third parties, we may have to relinquish valuable rights to our technologies, future revenue streams or product candidates or to grant licenses on terms that may not be favorable to us. Our inability to obtain additional funding when we need it could seriously harm our business.

Additional capital that we may need to operate or expand our business may not be available. In addition, our agreements that govern our existing indebtedness contain covenants that restrict our ability to obtain additional capital and pursue business opportunities.

We may require additional capital to operate or expand our business. Additional funds may not be available when we need them, on terms that are acceptable to us, or at all. For example, the agreements governing our existing indebtedness contain various restrictive covenants, including restrictions on our ability to dispose of assets, make acquisitions or investments, incur additional debt or liens, make distributions to our stockholders or enter into certain types of related party transactions. Although we intend to repay borrowings under and terminate our existing indebtedness with a portion of the proceeds from this offering, any debt financing obtained by us in the future could involve further restrictive covenants, which may make it more difficult for us to obtain additional capital and pursue business opportunities. Moreover, our existing debt agreement contains a penalty if the company prepays the debt.

If we raise additional funds through the issuance of equity or convertible securities, the percentage ownership of holders of our common stock could be significantly diluted and these newly issued securities may have rights, preferences or privileges senior to those of holders of our common stock. Furthermore, volatility in the credit or equity markets may have an adverse effect on our ability to obtain debt or equity financing or the cost of such financing. If we do not have funds available to enhance our solution, maintain the competitiveness of our technology and pursue business opportunities, this could have an adverse effect on our business, operating results and financial condition.

Risks Related to Development, Regulatory Approval and Commercialization

We depend substantially on the success of our product candidates, particularly trabodenoson monotherapy and trabodenoson FDC, which are still in development. If we are unable to successfully commercialize our product candidates, or experience significant delays in doing so, our business will be materially harmed.

Our business and the ability to generate revenue related to product sales, if ever, will depend on the successful development, regulatory approval and commercialization of our product candidates *trabodenoson* monotherapy and *trabodenoson* FDC, which are still in development, and other potential products we may develop or license. We have invested a significant portion of our efforts and financial

resources in the development of our existing product candidates. The success of our product candidates will depend on several factors, including:

- n successful completion of clinical trials, and the supporting non-clinical toxicology, formulation development, and manufacturing of supplies for the clinical program in accordance with current Good Manufacturing Practices, or cGMP;
- n receipt of regulatory approvals from the FDA and other applicable regulatory authorities outside the United States;
- n establishment of arrangements with third-party manufacturers;
- n obtaining and maintaining patent and trade secret protection and regulatory exclusivity;
- n protecting our rights in our intellectual property;
- n launching commercial sales of our product candidates, if and when approved;
- n acceptance of any approved product by the medical community and patients;
- n obtaining coverage and adequate reimbursement from third-party payors for product candidates, if and when approved;
- n effectively competing with other products; and
- n achieving a continued acceptable safety profile for our product candidates following regulatory approval, if and when received.

If we do not achieve one or more of these factors in a timely manner or at all, we could experience significant delays or an inability to successfully commercialize our product candidates, which would materially harm our business and we may not be able to earn sufficient revenues and cash flows to continue our operations.

Our product candidates are *trabodenoson* as a monotherapy and as an FDC consisting of *trabodenoson* with a prostaglandin analog, or PGA. We have no other product candidates in our near term product pipeline. As a result, we are substantially dependent on the successful development and commercialization of *trabodenoson*. If the results of our chronic toxicology program were to identify a safety problem, or if our upcoming pivotal trials of *trabodenoson* monotherapy or our upcoming continuing Phase 2 program for the FDC product candidate were to demonstrate lack of efficacy in lowering intraocular pressure, or IOP, or any safety issues related to *trabodenoson*, our development strategy would be materially and adversely affected.

We have not obtained regulatory approval for any of our product candidates in the United States or in any other country.

We currently do not have any product candidates that have gained regulatory approval for sale in the United States or in any other country, and we cannot guarantee that we will ever have marketable products. Our business is substantially dependent on our ability to complete the development of, obtain regulatory approval for and successfully commercialize product candidates in a timely manner. We cannot commercialize product candidates in the United States without first obtaining regulatory approval to market each product from the FDA; similarly, we cannot commercialize product candidates outside of the United States without obtaining regulatory approval from comparable foreign regulatory authorities. We have completed a Phase 2 trial in which we tested *trabodenoson* co-administered with *latanoprost*. We are planning an End-of-Phase 2 meeting with the FDA for *trabodenoson* monotherapy in the first half of 2015 and expect to initiate a pivotal Phase 3 program in mid-2015, which will consist of two Phase 3 pivotal trials and a long-term safety study. We cannot predict whether any of our future trials, including our planned long-term safety trial of *trabodenoson*, will be successful or whether regulators will agree with our conclusions regarding the preclinical studies and clinical trials we have conducted to date.

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Before obtaining regulatory approvals for the commercial sale of any product candidate for a target indication, we must demonstrate in preclinical studies and well-controlled clinical trials, and, with respect to approval in the United States, to the satisfaction of the FDA, that the product candidate is safe and effective for use for that target indication and that the manufacturing facilities, processes and controls are adequate. In the United States, we have not submitted a New Drug Application, or NDA, for any of our product candidates. An NDA must include extensive preclinical and clinical data and supporting information to establish the product candidate's safety and effectiveness for each desired indication. The NDA must also include significant information regarding the chemistry, manufacturing and controls for the product. Obtaining approval of an NDA is a lengthy, expensive and uncertain process, and approval may not be obtained. If we submit an NDA to the FDA, the FDA must decide whether to accept or reject the submission for filing. We cannot be certain that any submissions will be accepted for filing and review by the FDA.

Regulatory authorities outside of the United States, such as in Europe and Japan and in emerging markets, also have requirements for approval of drugs for commercial sale with which we must comply prior to marketing in those areas. Regulatory requirements can vary widely from country to country and could delay or prevent the introduction of our product candidates. Clinical trials conducted in one country may not be accepted by regulatory authorities in other countries, and obtaining regulatory approval in one country does not mean that regulatory approval will be obtained in any other country. Approval processes vary among countries and can involve additional product testing and validation and additional administrative review periods. Seeking non-U.S. regulatory approval could require additional non-clinical studies or clinical trials, which could be costly and time consuming. The non-U.S. regulatory approval process may include all of the risks associated with obtaining FDA approval. For all of these reasons, we may not obtain non-U.S. regulatory approvals on a timely basis, if at all.

The process to develop, obtain regulatory approval for and commercialize product candidates is long, complex and costly both inside and outside of the United States, and approval is never guaranteed. Even if our product candidates were to successfully obtain approval from the regulatory authorities, any approval might significantly limit the approved indications for use, or require that precautions, contraindications, or warnings be included on the product labeling, or require expensive and time-consuming post-approval clinical trials or surveillance as conditions of approval. Following any approval for commercial sale of our product candidates, certain changes to the product, such as changes in manufacturing processes and additional labeling claims, will be subject to additional FDA review and approval. Also, regulatory approval for any of our product candidates may be withdrawn. If we are unable to obtain regulatory approval for our product candidates in one or more jurisdictions, or any approval contains significant limitations, our target market will be reduced and our ability to realize the full market potential of our product candidates will be harmed. Furthermore, we may not be able to obtain sufficient funding or generate sufficient revenue and cash flows to continue the development of any other product candidate in the future.

Regulatory approval may be substantially delayed or may not be obtained for one or all of our product candidates if regulatory authorities require additional time or studies to assess the safety and efficacy of our product candidates.

We may be unable to initiate or complete development of our product candidates on schedule, if at all. The timing for the completion of the studies for our product candidates will require funding beyond the proceeds of this offering. In addition, if regulatory authorities require additional time or studies to assess the safety or efficacy of our product candidates, we may not have or be able to obtain adequate funding to complete the necessary steps for approval for any or all of our product candidates. Preclinical studies and clinical trials required to demonstrate the safety and efficacy of our product candidates are time consuming and expensive and together take several years or more to complete.

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Delays in regulatory approvals or rejections of applications for regulatory approval in the United States, Europe, Japan or other markets may result from many factors, including:

- n our inability to obtain sufficient funds required for a clinical trial;
- n requests from regulatory authorities for additional analyses, reports, data, non-clinical and preclinical studies and clinical trials;
- n questions from regulatory authorities regarding interpretations of data and results and the emergence of new information regarding our product candidates or other products;
- n clinical holds, other regulatory objections to commencing or continuing a clinical trial or the inability to obtain regulatory approval to commence a clinical trial in countries that require such approvals;
- n failure to reach agreement with the FDA or comparable non-US regulatory authorities regarding the scope or design of our clinical trials;
- n our inability to enroll a sufficient number of patients who meet the inclusion and exclusion criteria in our clinical trials. For example, we are seeking patients with elevated levels of IOP for our clinical trials, which are more difficult to find;
- n our inability to conduct the clinical trial in accordance with regulatory requirements or our clinical protocols;
- n our inability to reach agreements on acceptable terms with prospective contract research organizations, or CROs, and trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;
- n our inability to identify and maintain a sufficient number of sites, many of which may already be engaged in other clinical trial programs, including some that may be for the same indications targeted by our product candidates;
- n any determination that a clinical trial presents unacceptable health risks;
- n lack of adequate funding to continue the clinical trial due to unforeseen costs or other business decisions;
- n our inability to obtain approval from Institutional Review Boards, or IRBs, to conduct clinical trials at their respective sites;
- n our inability to manufacture in a timely manner or obtain from third parties sufficient quantities or quality of the product candidates or other materials required for a clinical trial;
- n difficulty in maintaining contact with patients after treatment, resulting in incomplete data; and
- n unfavorable or inconclusive results of clinical trials and supportive non-clinical studies, including unfavorable results regarding the effectiveness of product candidates during clinical trials.

Changes in regulatory requirements and guidance may also occur and we may need to amend clinical trial protocols submitted to applicable regulatory authorities to reflect these changes. Amendments may require us to resubmit clinical trial protocols to IRBs for re-examination, which may impact the costs, timing or successful completion of a clinical trial.

As a result of our planned End-of-Phase 2 meeting with the FDA for *trabodenoson* in the first half of 2015, the FDA may require us to conduct additional clinical trials before we commence our Phase 3 pivotal trials and long-term safety study or they may require us to increase the size of or change the design of our planned pivotal trials. In addition, if the FDA requires us to change the design of our planned pivotal trials, the actual costs of these trials may be greater than what we estimated based on our current expectations regarding the design of these trials. If we are required to conduct additional clinical trials or other studies with respect to any of our product candidates beyond those that we initially contemplated, if we are unable to successfully complete our clinical trials or other studies or if the results of these studies are not positive or are only modestly positive, we may be delayed in obtaining regulatory approval for that product candidate, we may not be able to obtain regulatory

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approval at all or we may obtain approval for indications that are not as broad as intended. Our product development costs will also increase if we experience delays in testing or approvals and we may not have sufficient funding to complete the testing and approval process. Significant clinical trial delays could allow our competitors to bring products to market before we do and impair our ability to commercialize our products if and when approved. If any of this occurs, our business will be materially harmed.

We have not yet successfully formulated, and may be unable to formulate or manufacture our fixed-dose combination product candidate in a way that is suitable for clinical or commercial use. Any such delay or failure could materially harm our commercial prospects, result in higher costs and deprive us of product candidate revenues.

We recently completed a Phase 2 trial to evaluate the efficacy, tolerability and safety of *trabodenoson* when co-administered with commercially-available *latanoprost* eye drops. However, we have not yet formulated our FDC product candidate to include these two drugs in a single combination dose, and we may never be able to formulate or manufacture our FDC product candidate in a way that is suitable for clinical or commercial use. Any delay or failure to develop a suitable product formulation or manufacturing process for our FDC product candidate could materially harm our commercial prospects, result in higher costs or deprive us of potential product revenues.

Failure can occur at any stage of clinical development. If the clinical trials for our product candidates are unsuccessful, we could be required to abandon development.

A failure of one or more clinical trials can occur at any stage of testing for a variety of reasons. The outcome of preclinical testing and early clinical trials may not be predictive of the outcome of later clinical trials, and interim results of a clinical trial do not necessarily predict final results. In addition, adverse events may occur or other risks may be discovered in Phase 2 or Phase 3 clinical trials that will cause us to suspend or terminate our clinical trials. In some instances, there can be significant variability in safety and/or efficacy results between different trials of the same product candidate due to numerous factors, including changes in or adherence to trial protocols, differences in size and type of the patient populations and the rates of dropout among clinical trial participants. To date, we have only exposed 233 clinical trial subjects to *trabodenoson*. The FDA expects that a total of at least 1,500 patients will be exposed to at least a single dose of *trabodenoson* before submission of an NDA, and the complete NDA submission package must also contain safety data from at least 300 patients treated with *trabodenoson* for at least six months, and at least 100 patients treated for at least a year. Our future clinical trial results therefore may not demonstrate safety and efficacy sufficient to obtain regulatory approval for our product candidates. Moreover, we still need to evaluate the long-term safety effects of our product candidates, the results of which could adversely affect our clinical development program.

Flaws in the design of a clinical trial may not become apparent until the clinical trial is well-advanced. We have limited experience in designing clinical trials and may be unable to design and execute a clinical trial to support regulatory approval. In addition, clinical trials often reveal that it is not practical or feasible to continue development efforts. Further, we have never submitted an NDA for any product candidates.

We may voluntarily suspend or terminate our clinical trials if at any time we believe that they present an unacceptable risk to participants. Further, regulatory agencies, IRBs or data safety monitoring boards may at any time order the temporary or permanent discontinuation of our clinical trials or request that we cease using investigators in the clinical trials if they believe that the clinical trials are not being conducted in accordance with applicable regulatory requirements, or that they present an unacceptable safety risk to participants.

If the results of our clinical trials for our current product candidates or clinical trials for any future product candidates do not achieve the primary efficacy endpoints or demonstrate unexpected safety

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issues, the prospects for approval of our product candidates will be materially adversely affected. Moreover, preclinical and clinical data are often susceptible to varying interpretations and analyses, and many companies that believed their product candidates performed satisfactorily in preclinical studies and clinical trials have failed to achieve similar results in later clinical trials, including longer term trials, or have failed to obtain regulatory approval of their product candidates. Many compounds that initially showed promise in clinical trials or earlier stage testing have later been found to cause undesirable or unexpected adverse effects that have prevented further development of the compound. In addition, we have typically only tested our product candidates in a single eye, which may not accurately predict the efficacy or safety of our product candidates when dosed in both eyes. Our planned Phase 3 pivotal trials of *trabodenoson* monotherapy may not produce the results that we expect. Our planned clinical trials are also designed to test the use of *trabodenoson* in combination with *latanoprost* as an add-on therapy. Accordingly, the efficacy of our primary product candidates may not be similar or correspond directly to their efficacy when used as a monotherapy. Our current product candidates remain subject to the risks associated with clinical drug development as indicated above.

In addition to the circumstances noted above, we may experience numerous unforeseen events that could cause our clinical trials to be delayed, suspended or terminated, or which could delay or prevent our ability to receive regulatory approval or commercialize our product candidates, including:

- n clinical trials of our product candidates may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional clinical trials or implement a clinical hold;
- n the number of patients required for clinical trials of our product candidates may be larger than we anticipate, enrollment in these clinical trials may be slower than we anticipate or participants may drop out of these clinical trials at a higher rate than we anticipate;
- n our third-party contractors may fail to comply with regulatory requirements or meet their contractual obligations to us in a timely manner, or at all;
- n regulators or IRBs may not authorize us or our investigators to commence a clinical trial or conduct a clinical trial at a prospective trial site;
- n we may have delays in reaching or fail to reach agreement on acceptable clinical trial contracts or clinical trial protocols with prospective trial sites;
- n we may elect or be required to suspend or terminate clinical trials of our product candidates based on a finding that the participants are being exposed to health risks;
- n the cost of clinical trials of our product candidates may be greater than we anticipate;
- n the supply or quality of our product candidates or other materials necessary to conduct clinical trials of our product candidates may be insufficient or inadequate; and
- n our product candidates may have undesirable adverse effects or other unexpected characteristics.

If we elect or are required to suspend or terminate a clinical trial of any of our product candidates, our commercial prospects will be adversely impacted and our ability to generate product revenues may be delayed or eliminated.

Our product candidates may have undesirable adverse effects, which may delay or prevent regulatory approval or, if approval is received, require our products to be taken off the market, require them to include safety warnings or otherwise limit their sales.

Unforeseen adverse effects from any of our product candidates could arise either during clinical development or, if approved, after the approved product has been marketed. In particular, we are aware of the known potential of adenosine and adenosine-like drugs to affect the heart if present in the systematic circulation at high enough levels.

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Any undesirable adverse effects that may be caused by our product candidates could interrupt, delay or halt clinical trials and could result in the denial of regulatory approval by the FDA and comparable non-U.S. regulatory authorities for any or all targeted indications, and in turn prevent us from commercializing our product candidates and generating revenues from their sale. In addition, if any of our product candidates receives regulatory approval and we or others later identify undesirable adverse effects caused by the product, we could face one or more of the following consequences:

- n regulatory authorities may require the addition of labeling statements, such as a “black box” warning or a contraindication, or other labeling changes;
- n regulatory authorities may withdraw their approval of the product;
- n regulatory authorities may seize the product;
- n we may be required to change the way that the product is administered, conduct additional clinical trials or recall the product;
- n we may be subject to litigation or product liability claims, fines, injunctions, or criminal penalties; and
- n our reputation may suffer.

Any of these events could prevent us from achieving or maintaining market acceptance of the affected product or could substantially increase the costs and expenses of commercializing such product, which in turn could delay or prevent us from generating significant revenues from its sale.

Trabodenoson is an adenosine mimetic. Adenosine is used therapeutically to manage cardiovascular arrhythmias, such as paroxysmal supraventricular tachycardia, a type of accelerated heart rate. All of our data to date reflects that *trabodenoson* does not have systemic effects, including no impact on the cardiovascular system when dosed in the eye. However, we are still conducting additional trials for *trabodenoson* and systemic effects may arise in future trials. Furthermore, if *trabodenoson* has the perception of having potential adverse effects because it is an adenosine mimetic, it may be negatively viewed by ophthalmologists and optometrists, patients, patient advocacy groups, third-party payors and the medical community which would adversely affect the market acceptance of our product candidates. In addition, the use of our product candidates outside the indications cleared for use, or off-label use, or the use of our product candidate in an inappropriate manner, may increase the risk of injury to patients. Clinicians may use our products for off-label uses, as the FDA does not restrict or regulate a clinician’s choice of treatment within the practice of medicine. Off-label use of our products may increase the risk of product liability claims against us. Product liability claims are expensive to defend and could divert our management’s attention and result in substantial damage awards against us.

If our product candidates receive regulatory approval, we will be subject to ongoing regulatory requirements and we may face future development, manufacturing and regulatory difficulties.

Our product candidates, if approved, will also be subject to ongoing regulatory requirements for labeling, packaging, storage, advertising, promotion, sampling, record-keeping, submission of safety and other post-market approval information, importation and exportation. In addition, approved products, manufacturers and manufacturers’ facilities are required to comply with extensive FDA and European Medicines Agency, or EMA, requirements and the requirements of other similar agencies, including ensuring that quality control and manufacturing procedures conform to cGMP requirements. As such, we and our potential future contract manufacturers will be subject to continual review and periodic inspections to assess compliance with cGMPs. Accordingly, we and others with whom we work will be required to expend time, money and effort in all areas of regulatory compliance, including manufacturing, production and quality control. We will also be required to report certain adverse reactions and production problems, if any, to the FDA, EMA and other similar foreign agencies and to comply with certain requirements concerning advertising and promotion for our product candidates. Promotional communications with respect to prescription drugs also are subject to a variety of legal

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and regulatory restrictions and must be consistent with the information in the product's approved labeling. Accordingly, once approved, we may not promote our products, if any, for indications or uses for which they are not approved.

If a regulatory agency discovers previously unknown problems with a product, such as adverse events of unanticipated severity or frequency, or problems with the facility where the product is manufactured, or disagrees with the promotion, marketing or labeling of a product, it may impose restrictions on that product or us, including requiring withdrawal of the product from the market. If our product candidates fail to comply with applicable regulatory requirements, a regulatory agency may:

- n issue warning letters or untitled letters;
- n require product recalls;
- n mandate modifications to promotional materials or require us to provide corrective information to healthcare practitioners;
- n require us or our potential future collaborators to enter into a consent decree or permanent injunction, which can include shutdown of manufacturing facilities, imposition of various fines, reimbursements for inspection costs, required due dates for specific actions and penalties for noncompliance;
- n impose other administrative or judicial civil or criminal penalties or pursue criminal prosecution;
- n withdraw regulatory approval;
- n refuse to approve pending applications or supplements to approved applications filed by us or by our potential future collaborators;
- n impose restrictions on operations, including costly new manufacturing requirements; or
- n seize or detain products.

If we are unable to effectively establish a direct sales force in the United States, our business may be harmed.

We currently do not have an established sales organization and do not have a marketing or distribution infrastructure. To achieve commercial success for any approved product, we must either develop a sales and marketing organization or outsource these functions to third parties. If *trabodenson* receives marketing approval in the United States, we plan to commercialize it by establishing a glaucoma-focused specialty sales force of approximately 150 people targeting high-prescribing ophthalmologists and optometrists throughout the United States. We will need to incur significant additional expenses and commit significant additional time and management resources to establish and train a sales force to market and sell our products. We may not be able to successfully establish these capabilities despite these additional expenditures.

Factors that may inhibit our efforts to successfully establish a sales force include:

- n our inability to compete with other pharmaceutical companies to recruit, hire, train and retain adequate numbers of effective sales and marketing personnel with requisite knowledge of our target market;
- n the inability of sales personnel to obtain access to adequate numbers of ophthalmologists and optometrists to prescribe any future approved products;
- n unforeseen costs and expenses associated with creating an independent sales and marketing organization; and
- n a delay in bringing products to market after efforts to hire and train our sales force have already commenced.

In the event we are unable to successfully market and promote our products, our business may be harmed.

We currently intend to explore the licensing of commercialization rights or other forms of collaboration outside of the United States, which will expose us to additional risks of conducting business in international markets.

The non-U.S. markets are an important component of our growth strategy. If we fail to obtain licenses or enter into collaboration arrangements with selling parties, or if these parties are not successful, our revenue-generating growth potential will be adversely affected. Moreover, international business relationships subject us to additional risks that may materially adversely affect our ability to attain or sustain profitable operations, including:

- n efforts to enter into collaboration or licensing arrangements with third parties in connection with our international sales, marketing and distribution efforts may increase our expenses or divert our management's attention from the acquisition or development of product candidates;
- n changes in a specific country's or region's political and cultural climate or economic condition;
- n differing regulatory requirements for drug approvals and marketing internationally, which could result in our being required to conduct additional clinical trials or other studies before being able to successfully commercialize our product candidates in any jurisdiction outside the United States;
- n difficulty of effective enforcement of contractual provisions in local jurisdictions;
- n potentially reduced protection for intellectual property rights;
- n potential third-party patent rights in countries outside of the United States;
- n unexpected changes in tariffs, trade barriers and regulatory requirements;
- n economic weakness, including inflation, or political instability, particularly in non-U.S. economies and markets, including several countries in Europe;
- n compliance with tax, employment, immigration and labor laws for employees traveling abroad;
- n the effects of applicable foreign tax structures and potentially adverse tax consequences;
- n foreign currency fluctuations, which could result in increased operating expenses and reduced revenue, and other obligations incidental to doing business in another country;
- n workforce uncertainty in countries where labor unrest is more common than in the United States;
- n the potential for so-called parallel importing, which is what happens when a local seller, faced with high or higher local prices, opts to import goods from a foreign market (with low or lower prices) rather than buying them locally;
- n failure of our employees and contracted third parties to comply with Office of Foreign Asset Control rules and regulations and the Foreign Corrupt Practices Act;
- n production shortages resulting from any events affecting raw material supply or manufacturing capabilities abroad; and
- n business interruptions resulting from geo-political actions, including war and terrorism, or natural disasters, including earthquakes, volcanoes, typhoons, floods, hurricanes and fires.

These and other risks may materially adversely affect our ability to attain or sustain revenue from international markets.

We face competition from established branded and generic pharmaceutical companies and if our competitors are able to develop and market products that are preferred over our products, our commercial opportunity will be reduced or eliminated.

The development and commercialization of new drug products is highly competitive. We face competition from established branded and generic pharmaceutical companies, smaller biotechnology and pharmaceutical companies, as well as from academic institutions, government agencies and private and public research institutions, which may in the future develop products to treat glaucoma. Any product candidates that we successfully develop and commercialize will compete with existing therapies and new therapies that may become available in the future. Many of our competitors have

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significantly greater financial resources and expertise in research and development, manufacturing, preclinical testing, conducting clinical trials, obtaining regulatory approvals and marketing approved products than we do. Glaukos Corporation recently commercialized a trabecular micro-bypass stent that is implanted in the eye during cataract surgery and allows fluid to flow from the anterior of the eye into the collecting channels, bypassing the TM. In addition, early-stage companies that are also developing glaucoma treatments may prove to be significant competitors, such as Aerie Pharmaceuticals, Inc., which is developing a Rho kinase/norepinephrine transport inhibitor. We expect that our competitors will continue to develop new glaucoma treatments, which may include eye drops, oral treatments, surgical procedures, implantable devices or laser treatments. Other early-stage companies may also compete through collaborative arrangements with large and established companies. Mergers and acquisitions in the pharmaceutical and biotechnology industries may result in even more resources being concentrated among a smaller number of our competitors. Our commercial opportunity will be reduced or eliminated if our competitors develop and commercialize products that are safer, more effective, have fewer adverse effects, are more convenient or are less expensive than our product candidates. The market for glaucoma prescriptions is highly competitive and is currently dominated by generic drugs, such as *latanoprost* and *timolol*, and additional products are expected to become available on a generic basis over the coming years. If any of our product candidates are approved, we expect that they will be priced at a premium over competitive generic products and consistent with other branded glaucoma drugs.

If our competitors market products that are more effective, safer, have fewer side effects or are less expensive than our product candidates or that reach the market sooner than our potential future products, if any, we may not achieve commercial success.

The commercial success of our product candidates will depend on the degree of market acceptance among ophthalmologists and optometrists, patients, patient advocacy groups, third-party payors and the medical community.

Our product candidates may not gain market acceptance among ophthalmologists and optometrists, patients, patient advocacy groups, third-party payors and the medical community. There are a number of available therapies marketed for the treatment of glaucoma. Some of these drugs are branded and subject to patent protection, but most others, including *latanoprost* and many beta blockers, are available on a generic basis. Many of these approved drugs are well established therapies and are widely accepted by ophthalmologists and optometrists, patients and third-party payors. Insurers and other third-party payors may also encourage the use of generic products. Additionally, in patients with normal tension glaucoma whose IOP falls into the normal range, IOP is generally much more difficult to reduce. In these patients, *trabodenson* may offer little or no clinical benefit, which may ultimately limit its utility in this subpopulation of glaucoma patients. The degree of market acceptance of our product candidates will depend on a number of factors, including:

- n the market price, affordability and patient out-of-pocket costs of our product candidates relative to other available products, which are predominantly generics;
- n the effectiveness of our product candidates as compared with currently available products and any products that may be approved in the future;
- n patient willingness to adopt our product candidates in place of current therapies;
- n varying patient characteristics including demographic factors such as age, health, race and economic status;
- n changes in the standard of care for the targeted indications for any of our product candidates;
- n the prevalence and severity of any adverse effects or perception of any potential side effects;
- n limitations or warnings contained in a product candidate's FDA-approved labeling;
- n limitations in the approved clinical indications for our product candidates;
- n relative convenience and ease of administration;

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- n the strength of our selling, marketing and distribution capabilities;
- n the quality of our relationship with patient advocacy groups;
- n sufficient third-party coverage and reimbursement; and
- n product liability claims.

In addition, the potential market opportunity for our product candidates is difficult to precisely estimate. Our estimates of the potential market opportunity for our product candidates include several key assumptions based on our industry knowledge, industry publications, third-party research reports and other surveys. If any of these assumptions proves to be inaccurate, then the actual market for our product candidates could be smaller than our estimates of our potential market opportunity. If the actual market for our product candidates is smaller than we expect, our product revenue may be limited, and it may be more difficult for us to achieve or maintain profitability. If we fail to achieve market acceptance of our product candidates in the United States and abroad, our revenue will be more limited and it will be more difficult to achieve profitability.

If we fail to obtain and sustain coverage and an adequate level of reimbursement for our product candidates by third-party payors, potential future sales would be materially adversely affected.

The course of treatment for glaucoma patients includes primarily older drugs, and the leading products for the treatment of glaucoma currently in the market, including *latanoprost* and *timolol*, are available as generic brands. There will be no commercially viable market for our product candidates without coverage and adequate reimbursement from third-party payors, and any coverage and reimbursement policy may be affected by future healthcare reform measures. We cannot be certain that coverage and adequate reimbursement will be available for our product candidates or any other future product candidates we develop. Additionally, even if there is a commercially viable market, if the level of reimbursement is below our expectations, our anticipated revenue and gross margins will be adversely affected.

Third-party payors, such as government or private healthcare insurers, carefully review and increasingly question and challenge the coverage of and the prices charged for drugs. Reimbursement rates from private health insurance companies vary depending on the company, the insurance plan and other factors. Reimbursement rates may be based on reimbursement levels already set for lower cost drugs and may be incorporated into existing payments for other services. A current trend in the U.S. healthcare industry is toward cost containment. Large public and private payors, managed care organizations, group purchasing organizations and other similar organizations are exerting increasing influence on decisions regarding the use of, and reimbursement levels for, particular treatments. Such third-party payors, including Medicare, may question the coverage of, and challenge the prices charged for, medical products and services, and many third-party payors limit coverage of or reimbursement for newly approved healthcare products. In particular, third-party payors may limit the covered indications. Cost-control initiatives could decrease the price we might establish for our product candidates, which could result in product revenues being lower than anticipated. We believe our drugs will be priced significantly higher than existing generic drugs and consistently with current branded drugs. Patients who are prescribed medications for the treatment of their conditions, and their prescribing physicians, generally rely on third-party payors to reimburse all or part of the costs associated with their prescription drugs. Patients are unlikely to use our products unless coverage is provided and reimbursement is adequate to cover a significant portion of the cost of our products. If we are unable to show a significant benefit relative to existing generic drugs, Medicare, Medicaid and private payors may not be willing to cover or provide adequate reimbursement for our drugs, which would significantly reduce the likelihood of them gaining market acceptance. In the United States, no uniform policy requirement for coverage and reimbursement for drug products exists among third-party payors. Therefore, coverage and reimbursement for drug products can differ significantly from payor to payor.

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We expect that private insurers will consider the efficacy, cost effectiveness, safety and tolerability of our product candidates in determining whether to approve coverage and set reimbursement levels for such products. Obtaining these approvals can be a time consuming and expensive process. Our business and prospects would be materially adversely affected if we do not receive approval for coverage and reimbursement of our product candidates from private insurers on a timely or satisfactory basis. Limitations on coverage and reimbursement could also be imposed by government payors, such as the local Medicare carriers, fiscal intermediaries, or Medicare Administrative Contractors. Further, Medicare Part D, which provides a pharmacy benefit to certain Medicare patients, does not require participating prescription drug plans to cover all drugs within a class of products. Our business could be materially adversely affected if private or governmental payors, including Medicare Part D prescription drug plans were to limit access to, or deny or limit reimbursement of, our product candidates or other potential products.

Reimbursement systems in international markets vary significantly by country and by region, and reimbursement approvals must be obtained on a country-by-country basis. In some foreign markets, prescription pharmaceutical pricing remains subject to continuing governmental control even after initial approval is granted. For example, reimbursement in the European Union must be negotiated on a country-by-country basis and in many countries the product cannot be commercially launched until reimbursement is approved. The negotiation process in some countries can exceed 12 months. To obtain reimbursement or pricing approval in some countries, we may be required to conduct a clinical trial that compares the cost-effectiveness of our products to other available therapies.

If the prices for our product candidates decrease or if governmental and other third-party payors do not provide coverage and adequate reimbursement levels, our revenue, potential for future cash flows and prospects for profitability will suffer.

Governments outside the United States tend to impose strict price controls, which may adversely affect our revenues, if any.

The pricing of prescription pharmaceuticals is also subject to governmental control outside of the United States. In these countries, pricing negotiations with governmental authorities can take considerable time after the receipt of marketing approval for a product. To obtain reimbursement or pricing approval in some countries, we may be required to conduct a clinical trial that compares the cost-effectiveness of our product candidates to other available therapies. If reimbursement of our products is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, our business could be harmed, possibly materially.

If we are found in violation of federal or state “fraud and abuse” laws or other healthcare laws, we may face penalties, which may adversely affect our business, financial condition and results of operation.

In the United States, we are subject to various federal and state healthcare “fraud and abuse” laws, including anti-kickback laws, false claims laws and other laws intended, among other things, to reduce fraud and abuse in federal and state healthcare programs. The Federal Anti-Kickback Statute makes it illegal for any person, including a prescription drug manufacturer (or a party acting on its behalf), to knowingly and willfully solicit, receive, offer or pay any remuneration that is intended to induce the referral of business, including the purchase, lease, order or arranging for or recommending the purchase, lease or order of any good, facility, item or service for which payment may be made, in whole or in part, under a federal healthcare program, such as Medicare or Medicaid. Although we seek to structure our business arrangements in compliance with all applicable requirements, these laws are broadly written, and it is often difficult to determine precisely how the law will be applied in specific circumstances. Accordingly, it is possible that our practices may be challenged under the Federal Anti-Kickback Statute. The Federal False Claims Act prohibits anyone from, among other things, knowingly presenting or causing to be presented for payment to the government, including the federal healthcare

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programs, claims for reimbursed drugs or services that are false or fraudulent. This statute has been interpreted to prohibit presenting claims for items or services that were not provided as claimed, or claims for medically unnecessary items or services. Many states have similar false claims laws. Cases have been brought under false claims laws alleging that off-label promotion of pharmaceutical products or the provision of kickbacks have resulted in the submission of false claims to governmental healthcare programs. In addition, private individuals have the ability to bring actions on behalf of the government under the Federal False Claims Act as well as under the false claims laws of several states. Under the Health Insurance Portability and Accountability Act of 1996, or HIPAA, we are prohibited from, among other things, knowingly and willfully executing a scheme to defraud any healthcare benefit program, including private payors, or knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services to obtain money or property of any healthcare benefit program.

Similarly, the civil monetary penalties statute imposes penalties against any person or entity who, among other things, is determined to have presented or caused to be presented a claim to a federal health program that the person knows or should know is for an item or service that was not provided as claimed or is false or fraudulent.

Additionally, the federal Physician Payments Sunshine Act within the Patient Protection and Affordable Care Act, as amended by the Health Care Education and Reconciliation Act, or collectively the ACA, and its implementing regulations, require that certain manufacturers of drugs, devices, biologics and medical supplies to report annually information related to certain payments or other transfers of value provided to physicians and teaching hospitals, and certain ownership and investment interests held by physicians and their immediate family members.

Many states have adopted laws similar to the aforementioned laws, some of which apply to the referral of patients for healthcare services reimbursed by any source, not just governmental payors. In addition, some states have passed laws that require pharmaceutical companies to comply with the April 2003 U.S. Department of Health and Human Services Office of Inspector General Compliance Program Guidance for Pharmaceutical Manufacturers and/or the Pharmaceutical Research and Manufacturers of America's Code on Interactions with Healthcare Professionals. Several states also impose other marketing restrictions or require pharmaceutical companies to make marketing or price disclosures to the state. There are ambiguities as to what is required to comply with these state requirements and if we fail to comply with an applicable state law requirement we could be subject to penalties.

In addition, we may be subject to data privacy and security regulation by both the federal government and the states in which we conduct our business. HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, or HITECH, and their respective implementing regulations, including the final omnibus rule published on January 25, 2013, imposes specified requirements relating to the privacy, security and transmission of individually identifiable health information. Among other things, HITECH makes HIPAA's privacy and security standards directly applicable to business associates, defined as independent contractors or agents of covered entities that create, receive, maintain or transmit protected health information in connection with providing a service for or on behalf of a covered entity. HITECH also created four new tiers of civil monetary penalties and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce the federal HIPAA laws and seek attorneys' fees and costs associated with pursuing federal civil actions. In addition, state laws govern the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts.

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Law enforcement authorities are increasingly focused on enforcing these laws, and it is possible that some of our practices may be challenged under these laws. Efforts to ensure that our business arrangements with third parties will comply with applicable healthcare laws and regulations will involve substantial costs. It is possible that the government could allege violations of, or convict us of violating, these laws. If we are found in violation of one of these laws, we could be subject to significant civil, criminal and administrative penalties, damages, fines, disgorgement, individual imprisonment, exclusion from governmental funded federal or state healthcare programs, contractual damages, reputational harm, diminished profits and future earnings, and the curtailment or restructuring of our operations. Were this to occur, our business, financial condition and results of operations and cash flows may be materially adversely affected.

Recently enacted and future legislation may increase the difficulty and cost of commercializing our product candidates and may affect the prices we may obtain.

In the United States and some foreign jurisdictions, there have been a number of legislative and regulatory changes and proposed changes regarding the healthcare system that could prevent or delay regulatory approval of our product candidates, restrict or regulate post-marketing activities and affect our ability to profitably sell our product candidates for which we obtain regulatory approval.

In March 2010, President Obama signed into law the ACA, a sweeping law intended to broaden access to health insurance, reduce or constrain the growth of healthcare spending, enhance remedies against healthcare fraud and abuse, add new transparency requirements for healthcare and health insurance industries, impose new taxes and fees on the health industry and impose additional health policy reforms. The ACA increased manufacturers' rebate liability under the Medicaid Drug Rebate Program by increasing the minimum rebate amount for both branded and generic drugs and revised the definition of average manufacturer price, or AMP, which may also increase the amount of Medicaid drug rebates manufacturers are required to pay to states. The legislation also expanded Medicaid drug rebates, which previously had been payable only on fee-for-service utilization, to Medicaid managed care utilization, and created an alternative rebate formula for certain new formulations of certain existing products that is intended to increase the rebates due on those drugs. Further, the ACA imposed a significant annual fee on companies that manufacture or import branded prescription drug products and requires manufacturers to provide a 50% discount off the negotiated price of branded drugs dispensed to beneficiaries in the Medicare Part D coverage gap, referred to as the "donut hole." Substantial new provisions affecting compliance have also been enacted, including the Physician Payments Sunshine Act, as described above. Although it is too early to determine the full effect of the ACA, the new law appears likely to continue the downward pressure on pharmaceutical pricing, especially under the Medicare program, and may also increase our regulatory burdens and operating costs.

Other legislative changes have been proposed and adopted in the United States since the ACA was enacted. In August 2011, the Budget Control Act of 2011, among other things, created measures for spending reductions by Congress. A Joint Select Committee on Deficit Reduction, tasked with recommending a targeted deficit reduction of at least \$1.2 trillion for the years 2013 through 2021, was unable to reach the required goals, thereby triggering the legislation's automatic reduction to several government programs. This includes aggregate reductions of Medicare payments to providers up to 2% per fiscal year, which went into effect in April 2013 and will remain in effect through 2024 unless additional Congressional action is taken. In January 2013, President Obama signed into law the American Taxpayer Relief Act of 2012, which, among other things, further reduced Medicare payments to several providers, including hospitals, imaging centers and cancer treatment centers, and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. Any reduction in reimbursement from Medicare or other government programs may result in a similar reduction in payments from private payors, which may adversely affect our future profitability.

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Legislative and regulatory proposals have been introduced at both the state and federal level to expand post-approval requirements and restrict sales and promotional activities for pharmaceutical products. We are not sure whether additional legislative changes will be enacted, or whether the FDA regulations, guidance or interpretations will be changed, or what the impact of such changes on the marketing approvals of our product candidates, if any, may be. In addition, increased scrutiny by the U.S. Congress of the FDA's approval process may significantly delay or prevent marketing approval, as well as subject us to more stringent product labeling and post-marketing approval testing and other requirements.

There have been, and likely will continue to be, legislative and regulatory proposals at the foreign, federal and state levels directed at broadening the availability of healthcare and containing or lowering the cost of healthcare. We cannot predict whether future healthcare initiatives will be implemented at the federal or state level or in countries outside of the United States in which we may do business in the future, or the effect any future legislation or regulation will have on us.

If we face allegations of noncompliance with the law and encounter sanctions, our reputation, revenues and liquidity may suffer, and our products could be subject to restrictions or withdrawal from the market.

Any government investigation of alleged violations of law could require us to expend significant time and resources in response, and could generate negative publicity. Any failure to comply with ongoing regulatory requirements may significantly and adversely affect our ability to commercialize and generate revenues from our products. If regulatory sanctions are applied or if regulatory approval is withdrawn, the value of our company and our operating results will be adversely affected. Additionally, if we are unable to generate revenues from our product sales, our potential for achieving profitability will be diminished and the capital necessary to fund our operations will be increased.

We may not be able to identify additional therapeutic opportunities for our product candidates or to expand our portfolio of products.

We may explore other therapeutic opportunities with *trabodenson* and seek to commercialize a portfolio of new ophthalmic drugs in addition to our product candidates that we are currently developing. We have no potential products in our research and development pipeline other than those potential products that are formulations of *trabodenson* or that apply *trabodenson* for the treatment of other indications beyond glaucoma and other neuropathies.

Research programs to pursue the development of our product candidates for additional indications and to identify new potential products and disease targets require substantial technical, financial and human resources whether or not we ultimately are successful. Our research programs may initially show promise in identifying potential indications and/or potential products, yet fail to yield results for clinical development for a number of reasons, including:

- n the research methodology used may not be successful in identifying potential indications and/or potential products;
- n product candidates may, after further study, be shown to have harmful adverse effects or other characteristics that indicate they are unlikely to be effective drugs; or
- n it may take greater human and financial resources to identify additional therapeutic opportunities for our product candidates or to develop suitable potential products through internal research programs and clinical trials than we will possess, thereby limiting our ability to diversify and expand our product portfolio.

Because we have limited financial and managerial resources, we focus on research programs and product candidates for specific indications. As a result, we may forego or delay pursuit of opportunities with other potential products or for other indications that later prove to have greater commercial

potential or a greater likelihood of success. Our resource allocation decisions may cause us to fail to capitalize on viable commercial products or profitable market opportunities.

Accordingly, there can be no assurance that we will ever be able to identify additional therapeutic opportunities for our product candidates or to develop suitable potential products through internal research programs, which could materially adversely affect our future growth and prospects.

Risks Related to Our Reliance on Third Parties

We currently depend on third parties to conduct some of the operations of our clinical trials and other portions of our operations, and we may not be able to control their work as effectively as if we performed these functions ourselves.

We rely on third parties, such as contract research organizations, or CROs, clinical data management organizations, medical institutions and clinical investigators, to oversee and conduct our clinical trials, and to perform data collection and analysis of our product candidates. We expect to rely on these third parties to conduct clinical trials of any other potential products that we develop. These parties are not our employees and we cannot control the amount or timing of resources that they devote to our program. In addition, any CRO that we retain will be subject to the FDA's regulatory requirements or similar foreign standards and we do not have control over compliance with these regulations by these providers. Our agreements with third-party service providers are on trial-by-trial and project-by-project bases. Typically, we may terminate the agreements with notice and occasionally the third party service provider may terminate the agreement without notice. Typically, we are responsible for the third party's incurred costs and occasionally we have to pay cancellation fees. If any of our relationships with our third-party CROs terminate, we may not be able to enter into arrangements with alternative CROs or to do so on commercially reasonable terms. We also rely on other third parties to store and distribute drug supplies for our clinical trials. Any performance failure on the part of our distributors could delay clinical development or regulatory approval of our product candidates or commercialization of our product candidates, producing additional losses and depriving us of potential product revenue.

Our reliance on these third parties for clinical development activities reduces our control over these activities but does not relieve us of our responsibilities, and we remain responsible for ensuring that each of our clinical trials is conducted in accordance with the general investigational plan, the protocols for the trial and the FDA's regulations and international standards, referred to as Good Clinical Practice, or GCP, requirements, for conducting, recording and reporting the results of clinical trials to assure that data and reported results are credible and accurate and that the rights, integrity and confidentiality of trial participants are protected. Preclinical studies must also be conducted in compliance with other requirements, such as Good Laboratory Practice, or GLP, and the Animal Welfare Act. Managing performance of third-party service providers can be difficult, time consuming and cause delays in our development programs. We currently have a small number of employees, which limits the internal resources we have available to identify and monitor our third-party providers.

Furthermore, these third parties may conduct clinical trials for competing drugs or may have relationships with other entities, some of which may be our competitors. As such, the ability of these third parties to provide services to us may be limited by their work with these other entities. The use of third-party service providers requires us to disclose our proprietary information to these parties, which could increase the risk that this information will be misappropriated.

If these third parties do not successfully carry out their contractual duties or obligations and meet expected deadlines, if they need to be replaced or if the quality or accuracy of the clinical data they obtain is compromised due to the failure to adhere to our clinical protocols according to regulatory

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requirements or for other reasons, our financial results and the commercial prospects for our current product candidates or our other potential products could be harmed, our costs could increase and our ability to obtain regulatory approval and commence product sales could be delayed.

We have no manufacturing capacity or experience and anticipate continued reliance on third-party manufacturers for the development and commercialization of our product candidates in accordance with manufacturing regulations.

We do not currently, nor currently intend to, operate manufacturing facilities for clinical or commercial production of our product candidates. We have no experience in drug formulation, and we lack the resources and the capabilities to manufacture our product candidates and potential products on a clinical or commercial scale. We do not intend to develop facilities for the manufacture of product candidates for clinical trials or commercial purposes in the foreseeable future. We currently rely on third-party manufacturers to produce the active pharmaceutical ingredient and final drug product for our clinical trials. We manage such production with all our vendors on a purchase order basis in accordance with applicable master service and supply agreements. We do not have long-term agreements with any of these or any other third-party suppliers. To the extent we terminate our existing supplier arrangements in the future and seek to enter into arrangements with alternative suppliers, we might experience a delay in our ability to obtain adequate supply for our clinical trials and commercialization. We also do not have any current contractual relationships for the manufacture of commercial supplies of any of our product candidates if and when they are approved. Our third-party manufacturers have made only a limited number of lots of our product candidates to date and have not made any commercial lots. The manufacturing processes for our product candidates have never been tested at commercial scale, and the process validation requirement has not yet been satisfied for any product candidate. These manufacturing processes and the facilities of our third-party manufacturers will be subject to inspection and approval by the FDA before we can commence the manufacture and sale of our product candidates, and thereafter on an ongoing basis. Some of our third-party manufacturers have never been inspected by the FDA and have not been through the FDA approval process for a commercial product. Some of our third-party manufacturers are subject to FDA inspection from time to time. Failure by these third-party manufacturers to pass such inspections and otherwise satisfactorily complete the FDA approval regimen with respect to our product candidates may result in regulatory actions such as the issuance of FDA Form 483 inspectional observations, warning letters or injunctions or the loss of operating licenses. Based on the severity of the regulatory action, our clinical or commercial supply of our product candidates could be interrupted or limited, which could have a material adverse effect on our business.

With respect to commercial production of our product candidates in the future, we plan on outsourcing production of the active pharmaceutical ingredients and final product manufacturing if and when approved for marketing by the applicable regulatory authorities. This process is difficult and time consuming and we can give no assurance that we will enter commercial supply agreements with any contract manufacturers on favorable terms or at all.

Reliance on third-party manufacturers entails risks, including:

- n manufacturing delays if our third-party manufacturers give greater priority to the supply of other products over our product candidates or otherwise do not satisfactorily perform according to the terms of their agreements with us;
- n the possible termination or nonrenewal of the agreement by the third party at a time that is costly or inconvenient for us;
- n the possible breach of the manufacturing agreement by the third party;
- n product loss due to contamination, equipment failure or improper installation or operation of equipment or operator error;

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- n the failure of the third-party manufacturer to comply with applicable regulatory requirements; and
- n the possible misappropriation of our proprietary information, including our trade secrets and know-how.

Our manufacturers may not perform as agreed or may not remain in the contract manufacturing business. In the event of a natural disaster, business failure, strike or other difficulty, we may be unable to replace a third-party manufacturer in a timely manner and the production of our product candidates and potential products could be interrupted, resulting in delays and additional costs. We may also have to incur other charges and expenses for products that fail to meet specifications and undertake remediation efforts.

If third-party manufacturers fail to comply with manufacturing regulations, our financial results and financial condition will be adversely affected.

Before a third party can begin the commercial manufacturing of our product candidates and potential products, their manufacturing facilities, processes and quality systems must be in compliance with applicable regulations. Due to the complexity of the processes used to manufacture pharmaceutical products and product candidates, any potential third-party manufacturer may be unable to initially pass federal, state or international regulatory inspections in a cost effective manner. If contract manufacturers fail to pass such inspection, our commercial supply of drug substance will be significantly delayed and may result in significant additional costs. In addition, pharmaceutical manufacturing facilities are continuously subject to inspection by the FDA and comparable non-U.S. regulatory authorities, before and after product approval, and must comply with cGMP. Our contract manufacturers may encounter difficulties in achieving quality control and quality assurance and may experience shortages in qualified personnel. In addition, contract manufacturers' failure to achieve and maintain high manufacturing standards in accordance with applicable regulatory requirements, or the incidence of manufacturing errors, could result in patient injury, product liability claims, product shortages, product recalls or withdrawals, delays or failures in product testing or delivery, cost overruns or other problems that could seriously harm our business. If a third-party manufacturer with whom we contract is unable to comply with manufacturing regulations, we may also be subject to fines, unanticipated compliance expenses, recall or seizure of our products, product liability claims, total or partial suspension of production and/or enforcement actions, including injunctions, and criminal or civil prosecution. These possible sanctions could materially adversely affect our financial results and financial condition.

Furthermore, changes in the manufacturing process or procedure, including a change in the location where the product is manufactured or a change of a third-party manufacturer, will require prior FDA review and/or approval of the manufacturing process and procedures in accordance with the FDA's regulations, or comparable foreign requirements. This review may be costly and time consuming and could delay or prevent us from conducting our clinical trials or launching a product. The new facility will also be subject to pre-approval inspection. In addition, we have to demonstrate that the product made at the new facility is equivalent to the product made at the former facility by physical and chemical methods, which are costly and time consuming. It is also possible that the FDA may require clinical testing as a way to prove equivalency, which would result in additional costs and delay.

Any collaboration arrangement that we may enter into in the future may not be successful, which could adversely affect our ability to develop and commercialize our current and future product candidates.

We plan to seek collaboration arrangements with pharmaceutical or biotechnology companies for the development or commercialization of our current and future product candidates outside of the United States. We will face, to the extent that we decide to enter into collaboration agreements, significant competition in seeking appropriate collaborators. Moreover, collaboration arrangements are

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complex and time consuming to negotiate, document and implement. We may not be successful in our efforts to establish and implement collaborations or other alternative arrangements should we choose to enter into such arrangements, and the terms of the arrangements may not be favorable to us. If and when we collaborate with a third party for development and commercialization of a product candidate, we can expect to relinquish some or all of the control over the future success of that product candidate to the third party. The success of our collaboration arrangements will depend heavily on the efforts and activities of our collaborators. Collaborators generally have significant discretion in determining the efforts and resources that they will apply to these collaborations. To the extent such collaborators have programs that are competitive with our product candidates, they may decide to focus time and resources on development of those programs rather than our product candidates.

Disagreements between parties to a collaboration arrangement regarding clinical development and commercialization matters can lead to delays in the development process or commercializing the applicable product candidate and, in some cases, termination of the collaboration arrangement. These disagreements can be difficult to resolve if neither of the parties has final decision making authority. Collaborations with pharmaceutical or biotechnology companies and other third parties often are terminated or allowed to expire by the other party. Any such termination or expiration would adversely affect us financially and could harm our business reputation.

If we are not able to establish collaborations, we may have to alter our development and commercialization plans.

The development and potential commercialization of our product candidates will require substantial additional cash to fund expenses. For some of our product candidates, we may decide to collaborate with pharmaceutical and biotechnology companies for the development and potential commercialization of those product candidates.

We face significant competition in seeking appropriate collaborators. Whether we reach a definitive agreement for collaboration will depend, among other things, upon our assessment of the collaborator's resources and expertise, the terms and conditions of the proposed collaboration and the proposed collaborator's evaluation of a number of factors. Those factors may include the design or results of clinical trials, the likelihood of approval by the FDA or similar regulatory authorities outside the United States, the potential market for the subject product candidate, the costs and complexities of manufacturing and delivering such product candidate to patients, the potential of competing products, the existence of uncertainty with respect to our ownership of technology, which can exist if there is a challenge to such ownership without regard to the merits of the challenge, and industry and market conditions generally. The collaborator may also consider alternative product candidates or technologies for similar indications that may be available to collaborate on and whether such collaboration could be more attractive than the one with us for our product candidates. We may also be restricted under future license agreements from entering into agreements on certain terms with potential collaborators. Collaborations are complex and time-consuming to negotiate and document. In addition, there have been a significant number of recent business combinations among large pharmaceutical companies that have resulted in a reduced number of potential future collaborators.

If we are unable to reach agreements with suitable collaborators on a timely basis, on acceptable terms, or at all, we may have to curtail the development of a product candidate, reduce or delay its development program or one or more of our other development programs, delay its potential commercialization or reduce the scope of any sales or marketing activities, or increase our expenditures and undertake development or commercialization activities at our own expense. If we elect to fund and undertake development or commercialization activities on our own, we may need to obtain additional expertise and additional capital, which may not be available to us on acceptable terms or at all. If we fail to enter into collaborations and do not have sufficient funds or expertise to undertake

the necessary development and commercialization activities, we may not be able to further develop our product candidates or bring them to market and generate product revenue.

Risks Related to Intellectual Property

We may not be able to protect our proprietary technology in the marketplace.

We depend on our ability to protect our proprietary technology. We rely largely on trade secret and patent laws, and confidentiality, licensing and other agreements with employees and third parties, all of which offer only limited protection. Our success depends in large part on our ability and any future licensee's ability to obtain and maintain patent protection in the United States and other countries with respect to our proprietary technology and products. We believe we will continue to be able to obtain, through prosecution of our current pending patent applications, adequate patent protection for our proprietary drug technology. If we are compelled to spend significant time and money protecting or enforcing our patents or patent applications, designing around patents held by others or licensing or acquiring, potentially for large fees, patents or other proprietary rights held by others, our business and financial prospects may be harmed. If we are unable to effectively protect the intellectual property that we own, other companies may be able to offer the same or similar products for sale, which could materially adversely affect our competitive business position and harm our business prospects. Our patents may be challenged, narrowed, invalidated, or circumvented, which could limit our ability to stop competitors from marketing the same or similar products or limit the length of term of patent protection that we may have for our products.

The patent positions of pharmaceutical products are often complex and uncertain. The breadth of claims allowed in pharmaceutical patents in the United States and many jurisdictions outside of the United States is not consistent. For example, in many jurisdictions the support standards for pharmaceutical patents are becoming increasingly strict. Some countries prohibit method of treatment claims in patents. Changes in either the patent laws or interpretations of patent laws in the United States and other countries may diminish the value of our intellectual property or create uncertainty. In addition, publication of information related to our current product candidates and potential products may prevent us from obtaining or enforcing patents relating to these product candidates and potential products, including, without limitation, composition-of-matter patents, which are generally believed to offer the strongest patent protection.

Our intellectual property consists of issued patents and pending patent applications related to our product candidates and other proprietary technology which cover compositions of matter, methods of use, combinations with other glaucoma products, formulations, polymorphs and the protection of the optic nerve. For *trabodenson*, the composition patents are scheduled to expire in 2025 and 2026, in Europe and the United States, respectively. See "Business—Intellectual Property" included elsewhere in this prospectus for further information about our issued patents and patent applications.

Patents that we own or may license in the future do not necessarily ensure the protection of our product candidates for a number of reasons, including without limitation the following:

- n we may not have been the first to make the inventions covered by our patents or pending patent applications;
- n we may not have been the first to file patent applications for these inventions;
- n any patents issued to us may not cover our products as ultimately developed;
- n our pending patent applications may not result in issued patents, and even if they issue as patents, they may not provide us with any competitive advantages, or may be challenged and invalidated by third parties;

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- n our patents may not be broad or strong enough to prevent competition from other products that are identical or similar to our product candidates;
- n there can be no assurance that the term of a patent can be extended under the provisions of patent term extension afforded by U.S. law or similar provisions in foreign countries, where available;
- n our patents, and patents that we may obtain in the future, may not prevent generic entry into the U.S. market for our *trabodenson* and other product candidates;
- n we may be required to disclaim part of the term of one or more patents;
- n there may be prior art of which we are not aware that may affect the validity or enforceability of a patent claim;
- n there may be patents issued to third parties that will affect our freedom to operate;
- n if our patents are challenged, a court could determine that they are invalid or unenforceable;
- n there might be significant changes in the laws that govern patentability, validity and infringement of our patents that adversely affects the scope of our patent rights;
- n a court could determine that a competitor's technology or product does not infringe our patents;
- n our patents could irretrievably lapse due to failure to pay fees or otherwise comply with regulations or could be subject to compulsory licensing; and
- n we may fail to obtain patents covering important products and technologies in a timely fashion or at all.

In addition, on September 16, 2011, the Leahy-Smith America Invents Act, or the Leahy-Smith Act, was signed into law. The Leahy-Smith Act includes a number of significant changes to U.S. patent law. These include provisions that affect the way patent applications will be prosecuted and may also affect patent litigation. The United States Patent Office is currently developing regulations and procedures to govern administration of the Leahy-Smith Act, and many of the substantive changes to patent law associated with the Leahy-Smith Act have not yet become effective. Accordingly, it is not clear what, if any, impact the Leahy-Smith Act will have on the operation of our business. However, the Leahy-Smith Act, in particular the first-to-file provision, and its implementation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents, all of which could have a material adverse effect on our business and financial condition.

If we encounter delays in our development or clinical trials, the period of time during which we could market our product candidates under patent protection would be reduced.

Our competitors may seek to invalidate our patents.

Our competitors may be able to circumvent our patents by developing similar or alternative technologies or products in a non-infringing manner. Our competitors may seek to market generic versions of any approved products by submitting Abbreviated New Drug Applications, or ANDAs, to the FDA in which our competitors claim that our patents are invalid, unenforceable and/or not infringed. Alternatively, our competitors may seek approval to market their own products similar to or otherwise competitive with our products. In these circumstances, we may need to defend and/or assert our patents, including by filing lawsuits alleging patent infringement. In any of these types of proceedings, a court or other agency with jurisdiction may find our patents invalid and/or unenforceable. We may also fail to identify patentable aspects of our research and development before it is too late to obtain patent protection. Even if we have valid and enforceable patents, these patents still may not provide protection against competing products or processes sufficient to achieve our business objectives.

The issuance of a patent is not conclusive as to its inventorship, scope, ownership, priority, validity or enforceability. In that regard, third parties may challenge our patents in the courts or patent offices in the United States and abroad. Such challenges may result in loss of exclusivity or freedom to operate

or in patent claims being narrowed, invalidated or held unenforceable, in whole or in part, which could limit our ability to stop others from using or commercializing similar or identical technology and products, or limit the duration of the patent protection of our technology and product candidates. In addition, given the amount of time required for the development, testing and regulatory review of new product candidates, patents protecting such candidates might expire before or shortly after such candidates are commercialized.

A significant portion of our intellectual property portfolio currently includes pending patent applications that have not yet issued as patents. If our pending patent applications fail to issue our business will be adversely affected.

Our commercial success will depend significantly on maintaining and expanding patent protection for our product candidates, as well as successfully defending our current and future patents against third-party challenges. As of September 30, 2014, we own at least 50 issued patents and have at least 40 pending patent applications in the United States and a number of foreign jurisdictions relating to our current product candidates and proprietary technology. See “Business—Intellectual Property” included elsewhere in this prospectus for further information about our issued patents and patent applications. Our intellectual property consists of patents and pending patent applications related to our product candidates and other proprietary technology which cover compositions of matter, methods of use, combinations with other glaucoma products, formulations, polymorphs and the protection of the optic nerve. For *trabodenson*, the composition of matter patents are scheduled to expire in 2025 and 2026, in Europe and the United States, respectively.

There can be no assurance that our patent applications will issue as patents in the United States or foreign jurisdictions in which such applications are pending. Even if patents do issue on any of these applications, there can be no assurance that a third party will not challenge their validity or that we will obtain sufficient claim scope in those patents to prevent a third party from competing successfully with our products.

We may not be able to enforce our intellectual property rights throughout the world.

The laws of some foreign countries do not protect intellectual property rights to the same extent as the laws of the United States. Many companies have encountered significant problems in protecting and defending intellectual property rights in certain foreign jurisdictions. The legal systems of some countries, particularly developing countries, do not favor the enforcement of patents and other intellectual property protection, especially those relating to life sciences. To the extent we are able to obtain patents or other intellectual property rights in any foreign jurisdictions, it may be difficult for us to prevent infringement of our patents or misappropriation of these intellectual property rights. For example, some foreign countries have compulsory licensing laws under which a patent owner must grant licenses to third parties. In addition, many countries limit the enforceability of patents against third parties, including government agencies or government contractors. In these countries, patents may provide limited or no benefit.

Proceedings to enforce our patent rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business. Accordingly, our efforts to protect our intellectual property rights in such countries may be inadequate. In addition, changes in the law and legal decisions by courts in the United States and foreign countries may affect our ability to obtain adequate protection for our technology and the enforcement of intellectual property.

Obtaining and maintaining our patent protection depends on compliance with various procedural, document submission, fee payment and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.

The United States Patent and Trademark Office, or the USPTO, and various foreign governmental patent agencies require compliance with a number of procedural, documentary, fee payment and other

provisions during the patent process. There are situations in which noncompliance can result in abandonment or lapse of a patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. In this event, competitors might be able to enter the market earlier than would otherwise have been the case.

We may infringe the intellectual property rights of others, which may prevent or delay our product development efforts and stop us from commercializing or increase the costs of commercializing our products.

Our commercial success depends significantly on our ability to operate without infringing the patents and other intellectual property rights of third parties. For example, there could be issued patents of which we are not aware that our product candidates or potential products infringe. There also could be patents that we believe we do not infringe, but that we may ultimately be found to infringe.

Moreover, patent applications are in some cases maintained in secrecy until patents are accepted or issued. The publication of discoveries in the scientific or patent literature frequently occurs substantially later than the date on which the underlying discoveries were made and patent applications were filed. Because patents can take many years to issue, there may be currently pending applications of which we are unaware that may later result in issued patents that our product candidates or potential products infringe. For example, pending applications may exist that claim or can be amended to claim subject matter that our product candidates or potential products infringe. Competitors may file continuing patent applications claiming priority to already issued patents in the form of continuation, divisional, or continuation-in-part applications, in order to maintain the pendency of a patent family and attempt to cover our product candidates.

Third parties may assert that we are employing their proprietary technology without authorization and may sue us for patent or other intellectual property infringement. These lawsuits are costly and could adversely affect our results of operations and divert the attention of managerial and scientific personnel. If we are sued for patent infringement, we would need to demonstrate that our product candidates, potential products or methods either do not infringe the claims of the relevant patent or that the patent claims are invalid or unenforceable, and we may not be able to do this. Proving invalidity or unenforceability is difficult. For example, in the United States, proving invalidity requires a showing of clear and convincing evidence to overcome the presumption of validity enjoyed by issued patents. Even if we are successful in these proceedings, we may incur substantial costs and the time and attention of our management and scientific personnel could be diverted in pursuing these proceedings, which could have a material adverse effect on us. In addition, we may not have sufficient resources to bring these actions to a successful conclusion. If a court holds that any third-party patents are valid, enforceable and cover our products or their use, the holders of any of these patents may be able to block our ability to commercialize our products unless we acquire or obtain a license under the applicable patents or until the patents expire. We may not be able to enter into licensing arrangements or make other arrangements at a reasonable cost or on reasonable terms. Any inability to secure licenses or alternative technology could result in delays in the introduction of our products or lead to prohibition of the manufacture or sale of products by us. Even if we are able to obtain a license, it may be non-exclusive, thereby giving our competitors access to the same technologies licensed to us. We could be forced, including by court order, to cease commercializing the infringing technology or product. In addition, in any such proceeding or litigation, we could be found liable for monetary damages, including treble damages and attorneys' fees if we are found to have willfully infringed a patent. A finding of infringement could prevent us from commercializing our product candidates or force us to cease some of our business operations, which could materially harm our business. Any claims by third parties that we have misappropriated their confidential information or trade secrets could have a similar negative impact on our business. 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.

We may face claims of infringement, misappropriation or other violations of the rights of third-party intellectual property holders.

Pharmaceutical companies, biotechnology companies and academic institutions may compete with us in the commercialization of *trabodенoson* for use in ophthalmic indications and filing patent applications potentially relevant to our business. In order to contend with the strong possibility of third-party intellectual property conflicts, we periodically conduct freedom-to-operate studies, but such studies may not uncover all patents relevant to our business.

From time to time, we find it necessary or prudent to obtain licenses from third-party intellectual property holders. Where licenses are readily available at reasonable cost, such licenses are considered a normal cost of doing business. In other instances, however, we may use the results of freedom-to-operate studies to guide our early-stage research away from areas where we are likely to encounter obstacles in the form of third-party intellectual property. For example, where a third party holds relevant intellectual property and is a direct competitor, a license might not be available on commercially reasonable terms or available at all. We strive to identify potential third-party intellectual property issues in the early stages of research of our research programs, in order to minimize the cost and disruption of resolving such issues.

In spite of these efforts to avoid obstacles and disruptions arising from third-party intellectual property, it is impossible to establish with certainty that our products will be free of claims that we infringe, misappropriate or otherwise violate the rights of third-party intellectual property holders. Even with modern databases and online search engines, freedom-to-operate searches are imperfect and may fail to identify relevant patents and published applications. Even when a third-party patent is identified, we may conclude that we do not infringe the patent or that the patent is invalid. If the third-party patent owner disagrees with our conclusion and we continue with the business activity in question, patent litigation may result. We might decide to initiate litigation in an attempt to have a court declare the third-party patent invalid or non-infringed by our activity.

We may be subject to claims that we or our employees have misappropriated the intellectual property, including trade secrets, of a third party, or claiming ownership of what we regard as our own intellectual property.

Many of our employees were previously employed at universities, biotechnology companies or other pharmaceutical companies, including our competitors or potential competitors. Some of these employees, including each member of our senior management, executed proprietary rights, non-disclosure and non-competition agreements in connection with such previous employment. Although we try to ensure that our employees do not use the intellectual property and other proprietary information or know-how of others in their work for us, we may be subject to claims that we or these employees have used or disclosed such intellectual property, including trade secrets or other proprietary information. Litigation may be necessary to defend against these claims. We are not aware of any threatened or pending claims related to these matters or concerning the agreements with our senior management, but litigation may be necessary in the future to defend against such claims. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management.

In addition, while we typically require our employees, consultants and contractors who may be involved in the development of intellectual property to execute agreements assigning such intellectual property to us, we may be unsuccessful in executing such an agreement with each party who in fact develops intellectual property that we regard as our own, which may result in claims by or against us related to the ownership of such intellectual property. If we fail in prosecuting or defending any such

claims, in addition to paying monetary damages, we may lose valuable intellectual property rights. Even if we are successful in prosecuting or defending against such claims, litigation could result in substantial costs and be a distraction to our management and scientific personnel.

We may be unable to adequately prevent disclosure of trade secrets and other proprietary information.

We rely on trade secrets to protect our proprietary know-how and technological advances, especially where we have not filed a patent application or where we do not believe patent protection is appropriate or obtainable. However, trade secrets are difficult to protect. We rely in part on confidentiality agreements with our employees, consultants, outside scientific collaborators, sponsored researchers and other advisors to protect our trade secrets and other proprietary information. However, any party with whom we have executed such an agreement may breach that agreement and disclose our proprietary information, including our trade secrets. Accordingly, these agreements may not effectively prevent disclosure of confidential information and may not provide an adequate remedy in the event of unauthorized disclosure of confidential information. Costly and time-consuming litigation could be necessary to enforce and determine the scope of our proprietary rights. In addition, others may independently discover our trade secrets and proprietary information. Further, the FDA, as part of its Transparency Initiative, a proposal by the FDA to increase disclosure and make data more accessible to the public, is currently considering whether to make additional information publicly available on a routine basis, including information that we may consider to be trade secrets or other proprietary information, and it is not clear at the present time how the FDA's disclosure policies may change in the future, if at all. Failure to obtain or maintain trade secret protection could enable competitors to use our proprietary information to develop products that compete with our products or cause additional, material adverse effects upon our competitive business position and financial results.

Detecting the disclosure or misappropriation of a trade secret and enforcing a claim that a party illegally disclosed or misappropriated a trade secret is difficult, expensive and time-consuming, and the outcome is unpredictable. In addition, some courts inside and outside the United States are less willing or unwilling to protect trade secrets. If any of our trade secrets were to be lawfully obtained or independently developed by a competitor, we would have no right to prevent them, or those to whom they communicate it, from using that technology or information to compete with us. If any of our trade secrets were to be disclosed to or independently developed by a competitor, our competitive position would be harmed.

Any lawsuits relating to infringement of intellectual property rights brought by or against us will be costly and time consuming and may adversely impact the price of our common stock.

We may be required to initiate litigation to enforce or defend our intellectual property. These lawsuits can be very time consuming and costly. There is a substantial amount of litigation involving patent and other intellectual property rights in the pharmaceutical industry generally. Such litigation or proceedings could substantially increase our operating expenses and reduce the resources available for development activities or any future sales, marketing or distribution activities.

In any infringement litigation, any award of monetary damages we receive may not be commercially valuable. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information could be compromised by disclosure during litigation. Moreover, there can be no assurance that we will have sufficient financial or other resources to file and pursue such infringement claims, which typically last for years before they are resolved. Further, any claims we assert against a perceived infringer could provoke these parties to assert counterclaims against us alleging that we have infringed their patents. Some of our competitors may be able to sustain the costs of such litigation or proceedings more effectively than we can because of their greater financial resources. Uncertainties resulting from

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the initiation and continuation of patent litigation or other proceedings could have a material adverse effect on our ability to compete in the marketplace.

In addition, our patents and patent applications could face other challenges, such as interference proceedings, opposition proceedings, re-examination proceedings, and other forms of post-grant review. In the United States, for example, post-grant review has recently been expanded. Any of these challenges, if successful, could result in the invalidation of, or in a narrowing of the scope of, any of our patents and patent applications subject to challenge. Any of these challenges, regardless of their success, would likely be time consuming and expensive to defend and resolve and would divert our management and scientific personnel's time and attention.

In addition, there could be public announcements of the results of hearings, motions or other interim proceedings or developments, and if securities analysts or investors perceive these results to be negative, it could have a material adverse effect on the market price of our common stock.

We will need to obtain FDA approval of any proposed product names, and any failure or delay associated with such approval may adversely affect our business.

Any name we intend to use for our product candidates will require approval from the FDA regardless of whether we have secured a formal trademark registration from the USPTO. The FDA typically conducts a review of proposed product names, including an evaluation of the potential for confusion with other product names. The FDA may also object to a product name if it believes the name inappropriately implies certain medical claims or contributes to an overstatement of efficacy. If the FDA objects to any of our proposed product names, we may be required to adopt an alternative name for our product candidates. If we adopt an alternative name, we would lose the benefit of our existing trademark applications for such product candidate and may be required to expend significant additional resources in an effort to identify a suitable product name that would qualify under applicable trademark laws, not infringe the existing rights of third parties and be acceptable to the FDA. We may be unable to build a successful brand identity for a new trademark in a timely manner or at all, which would limit our ability to commercialize our product candidates.

If we do not obtain additional protection under the Hatch-Waxman Amendments and similar foreign legislation extending the terms of our patents and obtaining data exclusivity for our product candidates, our business may be materially harmed.

Depending upon the timing, duration and specifics of FDA regulatory approval for our product candidates, one or more of our U.S. patents may be eligible for limited patent term restoration under the Drug Price Competition and Patent Term Restoration Act of 1984, referred to as the Hatch-Waxman Amendments. The Hatch-Waxman Amendments permit a patent restoration term of up to five years as compensation for patent term lost during product development and the FDA regulatory review process. Patent term restorations, however, cannot extend the remaining term of a patent beyond a total of 14 years from the date of product approval by the FDA.

The application for patent term extension is subject to approval by the USPTO, in conjunction with the FDA. It takes at least six months to obtain approval of the application for patent term extension. We may not be granted an extension because of, for example, failing to apply within applicable deadlines, failing to apply prior to expiration of relevant patents or otherwise failing to satisfy applicable requirements. Moreover, the applicable time period or the scope of patent protection afforded could be less than we request. If we are unable to obtain patent term extension or restoration or the term of any such extension is less than we request, the period during which we will have the right to exclusively market our product will be shortened and our competitors may obtain earlier approval of competing products, and our ability to generate revenues could be materially adversely affected.

Risks Related to Our Business Operations and Industry

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

We are currently a small company with four employees as of September 30, 2014, and we outsource to consultants or other organizations substantially all of our operations, including accounting, finance, research and development and conduct of clinical trials. In order to commercialize our product candidates, we will need to substantially increase our operations. We plan to continue to build our compliance, financial and operating infrastructure to ensure the maintenance of a well-managed company. We expect to significantly expand our employment base when we reach the full commercial stages of our current product candidates' life cycle.

Future growth will impose significant added responsibilities on members of management, including the need to identify, recruit, maintain and integrate additional employees. In addition, to meet our obligations as a public company, we will need to increase our general and administrative capabilities. Our management, personnel and systems currently in place may not be adequate to support this future growth. Our future financial performance and our ability to commercialize our product candidates and to compete effectively will depend, in part, on our ability to manage any future growth effectively. To that end, we must be able to:

- n manage our clinical trials and the regulatory process effectively;
- n manage the manufacturing of product candidates and potential products for clinical and commercial use;
- n integrate current and additional management, administrative, financial and sales and marketing personnel;
- n develop a marketing and sales infrastructure;
- n hire new personnel necessary to effectively commercialize our product candidates;
- n develop our administrative, accounting and management information systems and controls; and
- n hire and train additional qualified personnel.

Product candidates that we may acquire or develop in the future may be intended for patient populations that are large. In order to continue development and marketing of these product candidates, if approved, we would need to significantly expand our operations. Our staff, financial resources, systems, procedures or controls may be inadequate to support our operations and our management may be unable to manage successfully future market opportunities or our relationships with customers and other third parties. In particular, we will need to build out our finance, accounting and reporting infrastructure to meet our reporting obligations as a public company. Because we have never had this infrastructure, there may be increased risk that we will not be able to adequately meet these reporting obligations in a timely manner.

In addition, we may in the future decide to move our primary office into a new facility to address our business needs. This potential relocation could disrupt our operations, resulting in slower realization of efficiencies and capacity which could be associated with our use of a new office space.

We are a clinical-stage company and it may be difficult for you to evaluate the success of our business to date and to assess our future viability.

We are a clinical-stage biopharmaceutical company focused on the discovery, development and commercialization of therapies for glaucoma. Our operations to date have been limited to organizing and staffing our company, business planning, raising capital, conducting research and developing our product candidates. We have not yet demonstrated our ability to successfully complete a pivotal Phase 3 clinical trial, obtain regulatory approval of a product candidate, manufacture a commercial scale product, or arrange

for a third party to do so on our behalf, or conduct sales and marketing activities necessary for successful product commercialization. Consequently, any predictions about our future success or viability may not be as accurate as they could be if we had a longer operating history and more experience with late stage development and commercialization of product candidates.

In addition, as a new business, we may encounter unforeseen expenses, difficulties, complications, delays and other known and unknown factors. We will need to transition from a company with a product development focus to a company capable of supporting commercial activities. We may not be successful in such a transition.

We depend upon our key personnel and our ability to attract and retain employees.

Our future growth and success depend on our ability to recruit, retain, manage and motivate our employees. We are highly dependent on our senior management team and our scientific founders, as well as the other principal members of our management and scientific teams. Although we have formal employment agreements with our executive officers, these agreements do not prevent them from terminating their employment with us at any time. The loss of the services of any member of our senior management or scientific team or the inability to hire or retain experienced management personnel could adversely affect our ability to execute our business plan and harm our operating results.

Because of the specialized scientific and managerial nature of our business, we rely heavily on our ability to attract and retain qualified scientific, technical and managerial personnel. In particular, the loss of David P. Southwell, our President and Chief Executive Officer, Rudolf A. Baumgartner, M.D., our Executive Vice President and Chief Medical Officer, William K. McVicar, Ph.D., our Executive Vice President and Chief Scientific Officer or Dale Ritter, our Vice President—Finance, could be detrimental to us if we cannot recruit suitable replacements in a timely manner. We do not currently carry “key person” insurance on the lives of members of executive management. The competition for qualified personnel in the pharmaceutical field is intense. Due to this intense competition, we may be unable to continue to attract and retain qualified personnel necessary for the development of our business or to recruit suitable replacement personnel. In addition, we rely on consultants and advisors, including scientific and clinical advisors, to assist us in formulating our research and development and commercialization strategy. Our consultants and advisors may be employed by employers other than us and may have commitments under consulting or advisory contracts with other entities that may limit their availability to us.

Our disclosure controls and procedures may not prevent or detect all errors or acts of fraud.

Upon the closing of this offering, we will become subject to the periodic reporting requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act. Our disclosure controls and procedures are designed to reasonably assure that information required to be disclosed by us in reports we file or submit under the Exchange Act is accumulated and communicated to management, and recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission, or SEC. We believe that any disclosure controls and procedures or internal controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met.

These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people or by an unauthorized override of the controls. Accordingly, because of the inherent limitations in our control system, misstatements due to error or fraud may occur and not be detected.

If we engage in acquisitions in the future, we will incur a variety of costs and we may never realize the anticipated benefits of such acquisitions.

We may attempt to acquire businesses, technologies, services, products or other product candidates in the future that we believe are a strategic fit with our business. We have no present agreement regarding any material acquisitions. However, if we do undertake any acquisitions, the process of integrating an acquired business, technology, service, product candidates or potential products into our business may result in unforeseen operating difficulties and expenditures, including diversion of resources and management's attention from our core business. In addition, we may fail to retain key executives and employees of the companies we acquire, which may reduce the value of the acquisition or give rise to additional integration costs. Future acquisitions could result in additional issuances of equity securities that would dilute the ownership of existing stockholders. Future acquisitions could also result in the incurrence of debt, actual or contingent liabilities or the amortization of expenses related to other intangible assets, any of which could adversely affect our operating results. In addition, we may fail to realize the anticipated benefits of any acquisition.

Our business is affected by macroeconomic conditions.

Various macroeconomic factors could adversely affect our business and the results of our operations and financial condition, including changes in inflation, interest rates and foreign currency exchange rates and overall economic conditions and uncertainties, including those resulting from current and future conditions in the global financial markets. For instance, if inflation or other factors were to significantly increase our business costs, it may not be feasible to pass through price increases to patients. Interest rates, the liquidity of the credit markets and the volatility of the capital markets could also affect the value of our investments and our ability to liquidate our investments in order to fund our operations.

Interest rates and the ability to access credit markets could also adversely affect the ability of patients, payors and distributors to purchase, pay for and effectively distribute our products. Similarly, these macroeconomic factors could affect the ability of our potential future contract manufacturers, sole-source or single-source suppliers or licensees to remain in business or otherwise manufacture or supply product. Failure by any of them to remain in business could affect our ability to manufacture products.

If product liability lawsuits are successfully brought against us, our insurance may be inadequate and we may incur substantial liability.

We face an inherent risk of product liability claims as a result of the clinical testing of our product candidates. We will face an even greater risk if we commercially sell our product candidates or any other potential products that we develop. We maintain primary product liability insurance and excess product liability insurance with an aggregate limit of \$10 million that cover our clinical trials and we plan to maintain insurance against product liability lawsuits for commercial sale of our product candidates. Historically, the potential liability associated with product liability lawsuits for pharmaceutical products has been unpredictable. Although we believe that our current insurance is a reasonable estimate of our potential liability and represents a commercially reasonable balancing of the level of coverage as compared to the cost of the insurance, we may be subject to claims in connection with our clinical trials and, in the future, commercial use of our product candidates, for which our insurance coverage may not be adequate, and the cost of any product liability litigation or other proceeding, even if resolved in our favor, could be substantial.

For example, we may be sued if any product we develop allegedly causes injury or is found to be otherwise unsuitable during clinical testing, manufacturing, marketing or sale. Any such product liability claims may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product, negligence, strict liability or a breach of warranties. Large judgments have been awarded in class action lawsuits based on drugs that had unanticipated adverse effects. Claims could also be asserted under state consumer protection acts. If we cannot successfully defend

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ourselves against product liability claims, we may incur substantial liabilities or be required to limit commercialization of our product candidates. Regardless of the merits or eventual outcome, liability claims may result in:

- n reduced resources of our management to pursue our business strategy;
- n decreased demand for our product candidates or potential products that we may develop;
- n injury to our reputation and significant negative media attention;
- n withdrawal of clinical trial participants;
- n termination of clinical trial sites or entire trial programs;
- n initiation of investigations by regulators;
- n product recalls, withdrawals or labeling, marketing or promotional restrictions;
- n significant costs to defend resulting litigation;
- n diversion of management and scientific resources from our business operations;
- n substantial monetary awards to trial participants or patients;
- n loss of revenue; and
- n the inability to commercialize any products that we may develop.

We will need to increase our insurance coverage if our product candidates receive marketing approval and we begin selling them. However, the product liability insurance we will need to obtain in connection with the commercial sales of our product candidates, if and when they receive regulatory approval, may be unavailable in meaningful amounts or at a reasonable cost. In addition, insurance coverage is becoming increasingly expensive. If we are unable to obtain or maintain sufficient insurance coverage at an acceptable cost or to otherwise protect against product liability claims, it could prevent or inhibit the development and commercial production and sale of our product candidates, if and when they obtain regulatory approval, which could materially adversely affect our business, financial condition, results of operations, cash flows and prospects.

Additionally, we do not carry insurance for all categories of risk that our business may encounter. Some of the policies we currently maintain include general liability, employment practices liability, auto, property, workers' compensation, products liability and directors' and officers' insurance. We do not know, however, if we will be able to maintain insurance with adequate levels of coverage. Any significant uninsured liability may require us to pay substantial amounts, which would materially adversely affect our financial position, cash flows and results of operations.

Business interruptions could delay us in the process of developing our products and could disrupt our sales.

Our headquarters is located in Lexington, Massachusetts. We are vulnerable to natural disasters, such as severe storms and other events that could disrupt our business operations. We do not carry insurance for natural disasters and we may not carry sufficient business interruption insurance to compensate us for losses that may occur. Any losses or damages we incur could have a material adverse effect on our business operations.

Our business and operations would suffer in the event of system failures.

Despite the implementation of security measures, our internal computer systems, and those of our CROs and other third parties on which we rely, are vulnerable to damage from computer viruses, unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures. If such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our drug development programs. For example, the loss of clinical trial data from completed or ongoing or planned clinical trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data. To the extent that any disruption or security breach were to result in a loss of or damage to our data or applications, or inappropriate disclosure of confidential or proprietary information, we could incur liability and the further development of our product candidates could be delayed.

Our employees, independent contractors, principal investigators, consultants, commercial partners and vendors may engage in misconduct or other improper activities, including noncompliance with regulatory standards and requirements and insider trading, which could significantly harm our business.

We are exposed to the risk of fraud or other misconduct by employees and independent contractors, such as principal investigators, consultants, commercial partners and vendors. Misconduct by these parties could include failures to comply with the regulations of the FDA and comparable non-U.S. regulatory authorities, provide accurate information to the FDA and comparable non-U.S. regulatory authorities, comply with fraud and abuse and other healthcare laws in the United States and abroad, report financial information or data accurately or disclose unauthorized activities to us. In particular, sales, marketing and other business arrangements in the healthcare industry are subject to extensive laws intended to prevent fraud, misconduct, kickbacks, self-dealing and other abusive practices. These laws may restrict or prohibit a wide range of business activities, including, but not limited to, research, manufacturing, distribution, pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements. Misconduct could also involve the improper use of information obtained in the course of clinical trials, which could result in regulatory sanctions and serious harm to our reputation. We adopted a code of ethics, but it is not always possible to identify and deter employee and other third-party misconduct, and the precautions we take to detect and prevent this activity may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to comply with these laws. If any such actions are instituted against us resulting from such misconduct those actions could have a significant impact on our business, including the imposition of significant civil, criminal and administrative penalties, damages, monetary fines, disgorgement, possible exclusion from participation in Medicare, Medicaid and other federal healthcare programs, contractual damages, reputational harm, diminished profits and future earnings and curtailment or restructuring of our operations, any of which could adversely affect our ability to operate.

We and our development partners, third-party manufacturers and suppliers use biological materials and may use hazardous materials, and any claims relating to improper handling, storage or disposal of these materials could be time consuming or costly.

We and our development partners, third-party manufacturer and suppliers may use hazardous materials, including chemicals and biological agents and compounds that could be dangerous to human health and safety or the environment. Our operations and the operations of our third-party manufacturers and suppliers also produce hazardous waste products. Federal, state and local laws and regulations govern the use, generation, manufacture, storage, handling and disposal of these materials and wastes. Compliance with applicable environmental laws and regulations may be expensive and current or future environmental laws and regulations may impair our product development efforts. In addition, we cannot entirely eliminate the risk of accidental injury or contamination from these materials or wastes. We do not carry specific biological or hazardous waste insurance coverage, and our property, casualty and general liability insurance policies specifically exclude coverage for damages and fines arising from biological or hazardous waste exposure or contamination. Accordingly, in the event of contamination or injury, we could be held liable for damages or be penalized with fines in an amount exceeding our resources, and our clinical trials or regulatory approvals could be suspended.

Risks Related to this Offering and Ownership of Our Common Stock

The market price of our common stock may be highly volatile, and you may not be able to resell your shares at or above the initial public offering price.

Prior to this offering, there has not been a public market for our common stock. Although we expect to list our common stock on NASDAQ, if an active trading market for our common stock does not develop following this offering, you may not be able to sell your shares quickly or above the initial

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public offering price. The initial public offering price for the shares was determined by negotiations between us and representatives of the underwriters and may not be indicative of prices that will prevail in the trading market, and the value of our common stock may decrease from the initial public offering price.

The trading price of our common stock is likely to be volatile, and you can lose all or part of your investment. The following factors, in addition to other factors described in this “Risk Factors” section and elsewhere in this prospectus, may have a significant impact on the market price of our common stock:

- n announcements of regulatory approval or a complete response letter, or specific label indications or patient populations for its use, or changes or delays in the regulatory review process;
- n announcements of therapeutic innovations or new products by us or our competitors;
- n adverse actions taken by regulatory agencies with respect to our clinical trials, manufacturing supply chain or sales and marketing activities;
- n any adverse changes to our relationship with manufacturers or suppliers;
- n the results of our testing and clinical trials;
- n the results of our efforts to acquire or license additional product candidates;
- n variations in the level of expenses related to our existing product candidates or preclinical and clinical development programs;
- n any intellectual property infringement actions in which we may become involved;
- n announcements concerning our competitors or the pharmaceutical industry in general;
- n achievement of expected product sales and profitability;
- n manufacture, supply or distribution shortages;
- n actual or anticipated fluctuations in our quarterly or annual operating results;
- n changes in financial estimates or recommendations by securities analysts;
- n trading volume of our common stock;
- n sales of our common stock by us, our executive officers and directors or our stockholders in the future;
- n sales by us of securities linked to our common stock, such as the notes;
- n general economic and market conditions and overall fluctuations in the U.S. equity markets;
- n changes in accounting principles; and
- n the loss of any of our key scientific or management personnel.

In addition, the stock market, in general, and small pharmaceutical and biotechnology companies have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of these companies. Broad market and industry factors may negatively affect the market price of our common stock, regardless of our actual operating performance. Further, a significant decline in the financial markets and other related factors beyond our control may cause our stock price to decline rapidly and unexpectedly.

We may be subject to securities litigation, which is expensive and could divert management attention.

Our share price may be volatile, and in the past companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. We may be the target of this type of litigation in the future. Litigation of this type could result in substantial costs and diversion of management’s attention and resources, which could adversely impact our business. Any adverse determination in litigation could also subject us to significant liabilities.

Our existing principal stockholders, executive officers and directors own a significant percentage of our common stock and will be able to exert a significant control over matters submitted to our stockholders for approval.

After this offering, our officers and directors, and stockholders who own more than 5% of our outstanding common stock before this offering will, in the aggregate, beneficially own approximately % of our common stock (after giving effect to the automatic conversion of all outstanding shares of our convertible preferred stock but assuming no exercise of the underwriters' overallocation option, no exercise of outstanding options or warrants and no purchases by certain of our existing principal stockholders, including their affiliated entities, who have indicated an interest in purchasing an aggregate of approximately \$ million of shares of our common stock in this offering at the initial public offering price set forth on the cover of this prospectus).

This significant concentration of share ownership may adversely affect the trading price for our common stock because investors often perceive disadvantages in owning stock in companies with controlling stockholders. As a result, these stockholders, if they acted together, could significantly influence all matters requiring approval by our stockholders, including the election of directors and the approval of mergers or other business combination transactions. These stockholders may be able to determine all matters requiring stockholder approval. The interests of these stockholders may not always coincide with our interests or the interests of other stockholders. This may also prevent or discourage unsolicited acquisition proposals or offers for our common stock that you may feel are in your best interest as one of our stockholders and they may act in a manner that advances their best interests and not necessarily those of other stockholders, including seeking a premium value for their common stock, and might affect the prevailing market price for our common stock.

If you purchase our common stock in this offering, you will incur immediate and substantial dilution in the book value of your shares.

The initial public offering price is substantially higher than the net tangible book value per share of our common stock. Investors purchasing common stock in this offering will pay a price per share that substantially exceeds the net tangible book value of our common stock. As a result, investors purchasing common stock in this offering will incur immediate dilution of \$ per share, based on the assumed initial public offering price of \$ per share which is the midpoint of the price range set forth on the cover of this prospectus and our pro forma net tangible book value as of September 30, 2014. In addition, investors purchasing common stock in this offering will contribute % of the total amount invested by stockholders since inception but will only own % of the shares of common stock outstanding.

In the past, we have issued options and warrants to acquire shares of our capital stock at prices significantly below the assumed initial public offering price. To the extent any outstanding options or warrants are ultimately exercised or we issue additional shares of common stock to the holders of exchangeable shares of our subsidiary, you will sustain further dilution. Further, because we will need to raise additional capital to fund our clinical development programs, we may in the future sell substantial amounts of common stock or securities convertible into or exchangeable for common stock. These future issuances of equity or equity-linked securities, together with the exercise of outstanding options and warrants and any additional shares issued in connection with acquisitions, if any, may result in further dilution to investors. For more information, see "Dilution" for a more detailed description of the dilution to new investors in the offering.

Sales of a substantial number of shares of our common stock in the public market by our existing stockholders could cause our stock price to fall.

Sales of a substantial number of shares of our common stock or any of our securities linked to our common stock, such as the notes, 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 or equity-linked securities. Substantially all of our existing stockholders are

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subject to lock-up agreements with the underwriters of this offering that restrict the stockholders' ability to transfer shares of our common stock for a period of 180 days after the date of this prospectus. After this offering, we will have outstanding shares of common stock based on the number of shares outstanding as of September 30, 2014 and we will have reserved shares of our common stock to be issued upon the conversion of the notes (assuming an initial public offering price per share of our common stock equal to the midpoint of the price range set forth on the cover page of this prospectus, the conversion of the subordinated convertible promissory notes we issued in December 2014 into shares of common stock at such price and no exercise by the underwriters for the concurrent offering of notes of their overallotment option). Subject to limitations, approximately 10.3 million shares will become eligible for sale upon expiration of the lock-up period, as calculated and described in more detail in the section entitled "Shares Eligible for Future Sale." In addition, shares issued or issuable upon exercise of options and warrants vested as of the expiration of the lock-up period will be eligible for sale at that time. Sales of stock by these stockholders could have a material adverse effect on the trading price of our common stock.

Moreover, after this offering and based on the number of shares outstanding at September 30, 2014, holders of an aggregate of 10.3 million shares of our common stock will have rights, subject to certain conditions, to require us to file registration statements covering their shares or to include their shares in registration statements that we may file for ourselves or other stockholders. Registration of these shares under the Securities Act of 1933, as amended, or the Securities Act, would result in the shares becoming freely tradable without restriction under the Securities Act, except for shares held by our affiliates as defined in Rule 144 under the Securities Act. Any sales of securities by these stockholders could have a material adverse effect on the trading price of our common stock.

Our management will have broad discretion in the use of the net proceeds from this offering and may allocate the net proceeds from this offering in ways that you and other stockholders may not approve.

Our management will have broad discretion in the use of the net proceeds, including for any of the purposes described in the section entitled "Use of Proceeds," and you will not have the opportunity as part of your investment decision to assess whether the net proceeds are being used appropriately. Because of the number and variability of factors that will determine our use of the net proceeds from this offering, their ultimate use may vary substantially from their currently intended use. The failure of our management to use these funds effectively could have a material adverse effect on our business, cause the market price of our common stock to decline and delay the development of our product candidates. Pending their use, we may invest the net proceeds from this offering in short-term, investment-grade, interest-bearing instruments and U.S. government securities. These investments may not yield a favorable return to our stockholders.

If securities or industry analysts do not publish or cease publishing research or reports about us, our business or our market, or if they adversely change their recommendations or publish negative reports regarding our business or our stock, our stock price and trading volume could decline.

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts may publish about us, our business, our market or our competitors. We do not have any control over these analysts and we cannot provide any assurance that analysts will cover us or provide favorable coverage. If any of the analysts who may cover us adversely change their recommendation regarding our stock, or provide more favorable relative recommendations about our competitors, our stock price could decline. If any analyst who may cover us were to cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline.

Because we do not intend to declare cash dividends on our shares of common stock in the foreseeable future, stockholders must rely on appreciation of the value of our common stock for any return on their investment.

We currently anticipate that we will retain future earnings for the development, operation and expansion of our business and do not anticipate declaring or paying any cash dividends in the foreseeable future. In addition, the terms of any future debt agreements may preclude us from paying dividends. As a result, we expect that only appreciation of the price of our common stock, if any, will provide a return to investors in this offering for the foreseeable future.

If we are unable to substantially utilize our net operating loss carryforward, our financial results will be adversely affected.

As of December 31, 2013, we had net operating losses of approximately \$69.3 million, which may be utilized against future federal and state income taxes. In general, a corporation that undergoes an “ownership change” is subject to limitations on its ability to utilize its pre-change net operating losses, or NOLs, to offset future taxable income. In general, an ownership change occurs if the aggregate stock ownership of certain stockholders (generally 5% stockholders, applying certain look-through and aggregation rules) increases by more than 50% over such stockholders’ lowest percentage ownership during the testing period (generally three years). Purchases of our common stock in amounts greater than specified levels, which will be beyond our control, could create a limitation on our ability to utilize our NOLs for tax purposes in the future. Limitations imposed on our ability to utilize NOLs could cause U.S. federal and state income taxes to be paid earlier than would be paid if such limitations were not in effect and could cause such NOLs to expire unused, in each case reducing or eliminating the benefit of such NOLs. Furthermore, we may not be able to generate sufficient taxable income to utilize our NOLs before they expire. If any of these events occur, we may not derive some or all of the expected benefits from our NOLs. In addition, at the state level there may be periods during which the use of NOLs is suspended or otherwise limited, which would accelerate or may permanently increase state taxes owed.

The requirements associated with being a public company will require significant company resources and management attention.

Following this offering, we will become subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act of 2002, as amended, or the Sarbanes-Oxley Act, the listing requirements of the securities exchange on which our common stock is traded and other applicable securities rules and regulations. The Exchange Act requires that we file annual, quarterly and current reports with respect to our business and financial condition and maintain effective disclosure controls and procedures and internal control over financial reporting. In addition, subsequent rules implemented by the SEC and NASDAQ may also impose various additional requirements on public companies. As a result, we will incur additional legal, accounting and other expenses that we did not incur as a nonpublic company, particularly after we are no longer an “emerging growth company” as defined in the Jumpstart Our Business Startups Act, or JOBS Act. Further, the need to establish the corporate infrastructure demanded of a public company may divert management’s attention from implementing our growth strategy. We have made, and will continue to make, changes to our corporate governance standards, disclosure controls and financial reporting and accounting systems to meet our reporting obligations. However, the measures we take may not be sufficient to satisfy our obligations as a public company, which could subject us to delisting of our common stock, fines, sanctions and other regulatory action and potentially civil litigation.

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 compliance initiatives. Failure to build our finance infrastructure and improve our accounting systems and controls could impair our ability to comply with the financial reporting and internal controls requirements for publicly traded companies.

As a public company, we will operate in an increasingly challenging regulatory environment. Once we no longer qualify as an “emerging growth company” under the JOBS Act, we will be required to

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comply with the Sarbanes-Oxley Act and the related rules and regulations of the SEC, expanded disclosures, accelerated reporting requirements and more complex accounting rules. Our management and other personnel will need to devote a substantial amount of time to these compliance initiatives. Moreover, these rules and regulations will increase our legal and financial compliance costs and will make some activities more time-consuming and costly. For example, we expect these rules and regulations to make it more difficult and more expensive for us to obtain director and officer liability insurance and we may be required to incur substantial costs to maintain the same or similar coverage. We estimate that we will annually incur approximately \$1.5 million to \$2.5 million in expenses to ensure compliance with these requirements.

Section 404(a) of the Sarbanes-Oxley Act requires annual management assessments of the effectiveness of our internal control over financial reporting, starting with the second annual report that we would expect to file with the SEC and we will be required to disclose material changes made in our internal controls and procedures on a quarterly basis. Company responsibilities required by the Sarbanes-Oxley Act include establishing corporate oversight and adequate internal control over financial reporting and disclosure controls and procedures. Effective internal controls are necessary for us to produce reliable financial reports and are important to help prevent financial fraud. However, our independent registered public accounting firm will not be required to attest to the effectiveness of our internal control over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act until the later of the year following our first annual report required to be filed with the SEC or the date we are no longer an "emerging growth company" as defined in the JOBS Act, because we are taking advantage of the exemptions contained in the JOBS Act.

To build the infrastructure to allow us to assess the effectiveness of our internal control over financial reporting, we will need to hire additional accounting personnel and improve our accounting systems, disclosure policies, procedures and controls. We are currently in the process of:

- n hiring additional accounting and financial staff with appropriate public company experience;
- n initiating plans to establish an outsourced internal audit function;
- n initiating plans to upgrade our computer systems, including hardware and software;
- n establishing more robust policies and procedures; and
- n enhancing internal controls and our financial statement review process.

If we are unsuccessful in building an appropriate accounting infrastructure, we may not be able to prepare and disclose, in a timely manner, our financial statements and other required disclosures, or comply with existing or new reporting requirements.

During the evaluation and testing process, if we identify one or more material weaknesses in our internal control over financial reporting, we will be unable to assert that our internal control over financial reporting is effective. We cannot assure you that there will not be material weaknesses in our internal control over financial reporting in the future. Any failure to maintain internal control over financial reporting could severely inhibit our ability to accurately report our financial condition, results of operations or cash flows. If we are unable to conclude that our internal control over financial reporting is effective, or if our independent registered public accounting firm determines we have a material weakness in our internal control over financial reporting, we could lose investor confidence in the accuracy and completeness of our financial reports, the market price of our common stock could decline, and we could be subject to sanctions or investigations by NASDAQ, the SEC and comparable non-U.S. regulatory authorities. Failure to remedy any material weakness in our internal control over financial reporting, or to implement or maintain other effective control systems required of public companies, could also restrict our future access to the capital markets.

The recently enacted JOBS Act will allow us to postpone the date by which we must comply with some of the laws and regulations intended to protect investors and to reduce the amount of information we provide in our reports filed with the SEC, which could undermine investor confidence in our company and adversely affect the market price of our common stock.

For so long as we remain an “emerging growth company” as defined in the JOBS Act, we may take advantage of certain exemptions from various requirements that are applicable to public companies that are not “emerging growth companies” including:

- n the provisions of Section 404(b) of the Sarbanes-Oxley Act requiring that our independent registered public accounting firm provide an attestation report on the effectiveness of our internal control over financial reporting;
- n the “say on pay” provisions (requiring a non-binding stockholder vote to approve compensation of certain executive officers) and the “say on golden parachute” provisions (requiring a non-binding stockholder vote to approve golden parachute arrangements for certain executive officers in connection with mergers and certain other business combinations) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, or Dodd-Frank Act, and some of the disclosure requirements of the Dodd-Frank Act relating to compensation of its chief executive officer;
- n the requirement to provide detailed compensation discussion and analysis in proxy statements and reports filed under the Exchange Act, and instead provide a reduced level of disclosure concerning executive compensation; and
- n any rules that may be adopted by the Public Company Accounting Oversight Board requiring mandatory audit firm rotation or a supplement to the auditor’s report on the financial statements.

We may take advantage of these exemptions until we are no longer an “emerging growth company.” We would cease to be an “emerging growth company” upon the earliest of: (i) the last day of the first fiscal year following the fifth anniversary of the closing of this offering; (ii) the last day of the first fiscal year in which our annual gross revenues are \$1 billion or more; (iii) the date on which we have, during the previous three-year period, issued more than \$1 billion in non-convertible debt securities; or (iv) as of the end of any fiscal year in which the market value of our common stock held by non-affiliates exceeded \$700 million as of the end of the second quarter of that fiscal year.

Although we are still evaluating the JOBS Act, we currently intend to take advantage of some, but not all, of the reduced regulatory and reporting requirements that will be available to us so long as we qualify as an “emerging growth company.” For example, we have irrevocably elected under Section 107 of the JOBS Act not to take advantage of the extension of time to comply with new or revised financial accounting standards available under Section 102(b) of the JOBS Act. Our independent registered public accounting firm will not be required to provide an attestation report on the effectiveness of our internal control over financial reporting so long as we qualify as an “emerging growth company,” which may increase the risk that weaknesses or deficiencies in our internal control over financial reporting go undetected. Likewise, so long as we qualify as an “emerging growth company,” we may elect not to provide you with certain information, including certain financial information and certain information regarding compensation of our executive officers, that we would otherwise have been required to provide in filings we make with the SEC, which may make it more difficult for investors and securities analysts to evaluate our company. We cannot predict if investors will find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock, and our stock price may be more volatile and may decline.

Some provisions of our charter documents, Delaware law and the indenture that will govern the notes, if issued, 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 amended and restated certificate of incorporation and our bylaws that will become effective prior to the closing of this offering, as well as provisions of the Delaware General Corporation Law, or DGCL, could make it more difficult for a third party to acquire us or increase the cost of acquiring us, even if doing so would benefit our stockholders, including transactions in which stockholders might otherwise receive a premium for their shares. These provisions include:

- n establishing a classified board of directors such that not all members of the board are elected at one time;
- n allowing the authorized number of our directors to be changed only by resolution of our board of directors;
- n limiting the removal of directors by the stockholders;
- n 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;
- n prohibiting stockholder action by written consent, thereby requiring all stockholder actions to be taken at a meeting of our stockholders;
- n eliminating the ability of stockholders to call a special meeting of stockholders;
- n 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; and
- n requiring the approval of the holders of at least 75% of the votes that all our stockholders would be entitled to cast to amend or repeal our bylaws.

These provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management. In addition, we are subject to Section 203 of the DGCL, 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.

In addition, the indenture that will govern the notes, if issued, will contain provisions that require us to make an offer to purchase the notes at a price equal to 100% of the aggregate principal amount thereof plus accrued and unpaid interest upon the occurrence of, among other things, certain change of control transactions. The indenture that will govern the notes, if issued, will also contain provisions that increase the conversion rate for holders that elect to convert their notes in connection with, among other things, certain change of control transactions. These provisions could have the effect of delaying or preventing a change of control, whether or not it is desired by or beneficial to our stockholders.

Risks Related to the Concurrent Offering of Notes

The availability of our common stock and securities linked to our common stock for sale in the future could reduce the market price of our common stock.

In the future, we may issue equity and equity-linked securities to raise cash for acquisitions or otherwise. We may also acquire interests in other companies by using a combination of cash and our common stock or just our common stock. We also will have the option to issue common stock in respect of conversions of the notes. We may also issue preferred stock or additional securities

convertible into our common stock or preferred stock. Any of these events may dilute your ownership interest in our Company and have an adverse effect on the price of our common stock.

Servicing our debt requires a significant amount of cash. We may not have sufficient cash flow from our business to make payments on our debt, and we may not have the ability to raise the funds necessary to settle conversions of the notes or to repurchase the notes upon a fundamental change, which could adversely affect our business, financial condition and results of operations.

We currently have no source of revenue. Our ability to make scheduled payments of the principal of, to pay interest on or to refinance our indebtedness, including the notes, depends on our future performance, which is subject to economic, financial, competitive and other factors that may be beyond our control. Our business has not historically generated cash flow from operating activities and may not in the future generate cash flow from operating activities sufficient to service our debt and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations, including the notes.

In addition, holders of the notes have the right to require us to repurchase their notes upon the occurrence of a "fundamental change" (as defined in the Convertible Senior Notes Prospectus) at a repurchase price equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest. Upon conversion of the notes, unless we elect to deliver solely shares of our common stock to settle such conversion (other than paying cash in lieu of delivering any fractional share), we will be required to make cash payments in respect of the notes being converted. We may not have enough available cash or be able to obtain financing at the time we are required to make repurchases of the notes surrendered therefor or at the time the notes are being converted. Our failure to repurchase the notes at a time when the repurchase is required by the indenture or to pay any cash payable on future conversions of the notes would constitute an event of default. If the repayment of any indebtedness were to be accelerated because of such event of default (whether under the notes or otherwise), we may not have sufficient funds to repay the indebtedness and repurchase the notes or make cash payments upon conversions thereof. An event of default under the indenture may lead to an acceleration of the notes. Any such acceleration could result in our bankruptcy. In a bankruptcy, the holders of the notes would have a claim to our assets that is senior to the claims of our equity holders.

In addition, our significant indebtedness, combined with our other financial obligations and contractual commitments, could have other important consequences. For example, it could:

- n make us more vulnerable to adverse changes in general U.S. and worldwide economic, industry and competitive conditions and adverse changes in government regulation;
- n limit our flexibility in planning for, or reacting to, changes in our business and our industry;
- n place us at a disadvantage compared to our competitors who have less debt; and
- n limit our ability to borrow additional amounts for working capital and other general corporate purposes, including to fund possible acquisitions of, or investments in, complementary businesses, products, services and technologies.

Any of these factors could materially and adversely affect our business, financial condition and results of operations. In addition, if we incur additional indebtedness, the risks related to our business and our ability to service or repay our indebtedness would increase.

We may incur substantially more debt or take other actions which would intensify the risks discussed above.

We and our future subsidiaries, if any, may be able to incur substantial additional debt in the future, subject to the restrictions contained in our debt instruments, some or all of which may be secured debt. Our existing notes payable agreements with Horizon Technology Finance Corporation and Fortress Credit Co LLC do substantially limit our ability to incur additional debt without lender consent, however, we intend to repay borrowings under and terminate these notes payable agreements with a portion of the net proceeds from this offering. If the note offering is consummated, we will not be restricted under the terms of the indenture governing the notes from incurring additional debt, securing existing or future debt, recapitalizing our debt or taking a number of other actions that are not limited by the terms of the indenture governing the notes that could have the effect of diminishing our ability to make payments on the notes when due.

Noteholders may employ a convertible arbitrage strategy with respect to the notes that could adversely affect the price of our common stock

If the note offering closes, we expect that many investors in, and potential future purchasers of, the notes will employ, or seek to employ, a convertible arbitrage strategy with respect to the notes. Investors would typically implement such a strategy by selling short the common stock underlying the notes and dynamically adjusting their short position while continuing to hold the notes. Investors may also implement this type of strategy by entering into swaps on the common stock in lieu of or in addition to short selling the common stock. Any such strategy may have the effect of decreasing the trading price of our common stock.

The fundamental change repurchase feature of the indenture governing the notes may delay or prevent an otherwise beneficial takeover attempt of us.

The indenture governing the notes will require us to repurchase the notes for cash upon the occurrence of a fundamental change of us and, in certain circumstances, to increase the conversion rate for a holder that converts its notes in connection with a make-whole fundamental change. A takeover of us may trigger the requirement that we repurchase the notes and/or increase the conversion rate, which could make it more costly for a potential acquirer to engage in a combinatory transaction with us. Such additional costs may have the effect of delaying or preventing a takeover of us that would otherwise be beneficial to investors.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, including the sections entitled “Prospectus Summary,” “Risk Factors,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and “Business,” contain forward-looking statements that are based on our management’s belief and assumptions and on information currently available to our management. Although we believe that the expectations reflected in these forward-looking statements are reasonable, these statements relate to future events or our future financial performance, and involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to be materially different from any future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements. Forward-looking statements in this prospectus include, but are not limited to, statements about:

- n our anticipated cash needs and our estimates regarding our capital requirements and our needs for additional financing;
- n the concurrent offering of notes and the use of proceeds therefrom;
- n federal, state, and non-U.S. regulatory requirements, including regulation of our current or any other future product candidates by the FDA;
- n the success, timing and cost of our planned Phase 2 clinical trials and anticipated Phase 3 program for *trabodenson* as a monotherapy and Phase 2 program for our FDC product candidate, including statements regarding the timing of initiation and completion of the trials;
- n the timing of and our ability to submit regulatory filings with the FDA and to obtain and maintain FDA or other regulatory authority approval of, or other action with respect to, our product candidates;
- n our commercialization, marketing and manufacturing capabilities and strategy, including with respect to our planned sales force in the United States and our partnering and collaboration efforts outside the United States;
- n third-party payor reimbursement for our current product candidates or any other potential products;
- n our expectations regarding the clinical efficacy of our product candidates and results of our clinical trials;
- n the glaucoma patient market size and the rate and degree of market adoption of our product candidates by ophthalmologists, optometrists and patients;
- n the timing, cost or other aspects of the commercial launch of our product candidates and potential future sales of our current product candidates or any other potential products;
- n our expectations regarding licensing, acquisitions and strategic operations;
- n the potential advantages of our product candidates;
- n our expectations related to the use of proceeds from this offering;
- n our competitors and their product candidates, including our expectations regarding those competing product candidates;
- n our ability to protect and enforce our intellectual property rights, including our patented and trade secret protected proprietary rights in our product candidates; and
- n anticipated trends and challenges in our business and the markets in which we operate.

We caution you that the foregoing list may not contain all of the forward-looking statements made in this prospectus.

In some cases, you can identify forward-looking statements by terminology such as “may,” “might,” “could,” “would,” “will,” “should,” “expect,” “intend,” “plan,” “anticipate,” “believe,” “estimate,” “predict,” “project,” “target,” “potential,” “continue” or the negative of these terms or other comparable terminology. These statements are only predictions. You should not place undue reliance on forward-

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looking statements because they involve known and unknown risks, uncertainties and other factors, which are, in some cases, beyond our control and which could materially affect results. Factors that may cause actual results to differ materially from current expectations include, among other things, those listed under “Risk Factors” and elsewhere in this prospectus. If one or more of these risks or uncertainties occur, or if our underlying assumptions prove to be incorrect, actual events or results may vary significantly from those implied or projected by the forward-looking statements. No forward-looking statement is a guarantee of future performance. You should read this prospectus and the documents that we reference in this prospectus and have filed with the SEC as exhibits to the registration statement, of which this prospectus is a part, completely and with the understanding that our actual future results may be materially different from any future results expressed or implied by these forward-looking statements.

The forward-looking statements in this prospectus represent our views as of the date of this prospectus. We anticipate that subsequent events and developments will cause our views to change. However, while we may elect to update these forward-looking statements at some point in the future, we have no current intention of doing so except to the extent required by applicable law. You should therefore not rely on these forward-looking statements as representing our views as of any date subsequent to the date of this prospectus.

INDUSTRY AND MARKET DATA

We obtained the industry and market data in this prospectus from our own internal estimates and research as well as from industry and general publications and research, surveys, studies and trials conducted by third parties. We believe and act as if the third party data contained herein, and the underlying economic assumptions relied upon therein, are generally reliable. Some data is also based on our good faith estimates, which are derived from management's knowledge of the industry and independent sources. This data involves a number of assumptions and limitations, and you are cautioned not to give undue weight to such estimates. In addition, while we believe the market opportunity information included in this prospectus is generally reliable and is based on reasonable assumptions, such data involves risks and uncertainties and are subject to change based on various factors, including those discussed under the heading "Risk Factors." These and other factors could cause our results to differ materially from those expressed in the estimates made by third parties and by us.

USE OF PROCEEDS

We estimate that the net proceeds to us from the sale of _____ shares of common stock in this offering will be approximately \$ _____ million based upon an assumed initial public offering price of \$ _____ per share, the midpoint of the price range set forth on the cover page of this prospectus, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. If the underwriters' exercise their overallotment option, we estimate that our net proceeds will be approximately \$ _____ million, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

A \$1.00 increase (decrease) in the assumed initial public offering price of \$ _____ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) the net proceeds to us from this offering by approximately \$ _____ million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, an increase (decrease) of one million shares offered by us would increase (decrease) the net proceeds to us from this offering by approximately \$ _____ million, assuming the assumed initial public offering price remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. A 1,000,000 share increase in the number of shares offered by us together with a concomitant \$1.00 increase in the assumed initial public offering price of \$ _____ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase the net proceeds to us from this offering by approximately \$ _____ million, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Conversely, a 1,000,000 share decrease in the number of shares offered by us together with a concomitant \$1.00 decrease in the assumed initial public offering price of \$ _____ per share, the midpoint of the price range set forth on the cover page of this prospectus, would decrease the net proceeds to us from this offering by approximately \$ _____ million, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

We estimate that the net proceeds to us from the concurrent offering of notes, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, will be approximately \$ _____ million, if completed. If the underwriters for the concurrent offering of notes exercise their overallotment option, we estimate that our net proceeds will be approximately \$ _____ million, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

The principal purposes of both offerings are to fund the continued testing of *trabodenoson* as a monotherapy and as a fixed-dose combination with *latanoprost* for the reduction of intraocular pressure, or IOP, fund the further increase of our financial flexibility, create a public market for our common stock, facilitate our access to the public equity markets and for general corporate purposes. We currently expect to use the net proceeds from both offerings as follows:

- n approximately \$ _____ million to complete the first Phase 3 pivotal trial for *trabodenoson* monotherapy, including associated payments for direct clinical and non-clinical costs;
- n approximately \$ _____ million to fund the initiation of the second Phase 3 pivotal trial for *trabodenoson* monotherapy, including associated payments for direct clinical and non-clinical costs;
- n approximately \$ _____ million to complete a Phase 2 trial for our FDC product candidate, including associated payments for direct clinical and non-clinical costs, and the development of a commercial formulation;
- n approximately \$ _____ million to fund the initiation and enrollment of a long-term safety study;

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- n approximately \$ million to repay borrowings under and terminate our existing notes payable agreements with Horizon Technology Finance Corporation and Fortress Credit Co LLC; and
- n the remainder for working capital and general corporate purposes.

We intend to repay borrowings under and terminate our existing notes payable agreements with Horizon Technology Finance Corporation and Fortress Credit Co LLC with a portion of the net proceeds from this offering. The notes payable bear interest at a rate of 11.0% per annum and mature on October 1, 2016. As of September 30, 2014, the total principal balance owed under the notes payable agreements was \$6.3 million.

If we do not complete the concurrent offering of notes, the proceeds from this offering of common stock would be insufficient to complete a Phase 2 trial for our FDC product candidate, initiate the second Phase 3 pivotal trial for *trabodenson* monotherapy or complete enrollment in a long-term safety study. The closing of this offering of common stock is not contingent upon the closing of the concurrent offering of notes, but the closing of the concurrent offering of notes is contingent upon the closing of this offering of common stock.

Our expected use of net proceeds from both offerings represents our current intentions based upon our present plans and business condition. As of the date of this prospectus, we cannot predict with certainty all of the particular uses for the net proceeds to be received upon the closing of both offerings or the amounts that we will actually spend on the uses set forth above. We may use a portion of the net proceeds of this offering for the acquisition or licensing, as the case may be, of additional technologies, other assets or businesses, or for other strategic investments or opportunities, although we have no current understandings, agreements or commitments to do so at this time.

The amount and timing of our actual expenditures will depend upon numerous factors, including the results of our continued testing of our product candidates and the other factors described under "Risk Factors" in this prospectus. Accordingly, our management will have flexibility in applying the net proceeds from both offerings. An investor will not have the opportunity to evaluate the economic, financial or other information on which we base our decisions on how to use the proceeds.

Pending these uses, we intend to invest the net proceeds in high quality, investment grade instruments, certificates of deposit or direct or guaranteed obligations of the U.S. government, or hold as cash.

DIVIDEND POLICY

We have never declared or paid any cash dividends on our capital stock. We currently intend to retain all available funds and any future earnings, if any, to fund the development and expansion of our business and we do not anticipate paying any cash dividends in the foreseeable future. Any future determination to pay cash dividends will be made at the discretion of our board of directors. In addition, the terms of our outstanding indebtedness restrict our ability to pay cash dividends, and any future indebtedness that we may incur could preclude us from paying cash dividends. Investors should not purchase our common stock with the expectation of receiving cash dividends.

CAPITALIZATION

The following table sets forth our cash, cash equivalents and capitalization as of September 30, 2014:

- n on an actual basis;
- n on a pro forma basis to give effect to (i) the conversion of all of our outstanding 25,949,333 shares of preferred stock, including all accrued and unpaid dividends thereon, into an aggregate of 9,404,970 shares of common stock upon the closing of this offering, (ii) the automatic conversion of the \$2.0 million subordinated convertible promissory notes we issued in December 2014 into _____ shares of common stock upon the consummation of this offering at the assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and the cash received upon the sale of such notes and (iii) the filing and effectiveness of our amended and restated certificate of incorporation, which will occur immediately prior to the closing of this offering; and
- n on a pro forma as adjusted basis to give further effect to our sale in this offering of shares of common stock at an assumed initial public offering price of \$ _____ per share (the midpoint of the price range set forth on the cover page of this prospectus), after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. The pro forma as adjusted for the offering of common stock column does not include any amounts we may receive from the concurrent offering of notes. The closing of this offering of common stock is not contingent upon the closing of the concurrent offering of notes, but the closing of the concurrent offering of notes is contingent upon the closing of this offering of common stock and the listing of our common stock on The NASDAQ Global Market. If we do consummate the concurrent offering of notes, our cash and cash equivalents and total assets will increase by \$ _____ million and our notes and total liabilities will increase by \$ _____ million. Any increase or decrease in the principal amount of the notes issued in the concurrent offering of notes will have a proportionate increase or decrease in the amount of our cash and cash equivalents, total assets, notes and total liabilities.

You should read the following table together with the sections titled “Use of Proceeds,” “Selected Financial Data,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations,” “Description of Capital Stock” and the financial statements and related notes appearing elsewhere in this prospectus. The following table also reflects a 1-for-3.39 reverse stock split of our common stock and a proportional adjustment to the existing conversion ratio for each series of our redeemable convertible preferred stock, which became effective on November 26, 2014.

	<u>As of September 30, 2014</u>		
	<u>Actual</u> <u>(unaudited)</u>	<u>Pro Forma</u> <u>(unaudited)</u>	<u>Pro Forma As</u> <u>Adjusted For</u> <u>The Offering</u> <u>Of Common</u> <u>Stock</u> <u>(unaudited)</u>
(in thousands, except share and per share amounts)			
Cash and cash equivalents	\$ 5,357	\$ 7,357	\$ _____
Notes payable	\$ 6,274	\$ 6,274	\$ _____
Convertible subordinated promissory notes	—	—	—
Series AA redeemable convertible preferred stock, \$0.001 par value; 25,757,874 shares authorized and 24,057,013 shares issued and outstanding, actual; no shares authorized, issued and outstanding, pro forma and pro forma as adjusted	45,114	—	—
Series X redeemable convertible preferred stock, \$0.001 par value; 2,902,050 shares authorized and 1,892,320 shares issued and outstanding, actual; no shares authorized, issued and outstanding, pro forma and pro forma as adjusted	548	—	—

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	As of September 30, 2014		
	Actual (unaudited)	Pro Forma (unaudited)	Pro Forma As Adjusted For The Offering Of Common Stock (unaudited)
(in thousands, except share and per share amounts)			
Stockholders' equity (deficit):			
Common stock, \$0.01 par value; 32,857,171 shares authorized, 1,221,086 issued and outstanding, actual; 125,000,000 shares authorized, pro forma and pro forma as adjusted; shares issued and outstanding, pro forma; and shares issued and outstanding, pro forma as adjusted	12		
Additional paid-in capital	77,609		
Accumulated deficit	(125,893)	(125,893)	
Total stockholders' equity (deficit)	(48,272)		
Total capitalization	\$ 3,664	\$	\$

The information above is illustrative only, and our capitalization following the completion of both offerings will be adjusted based on the actual initial public offering price and other terms of this offering and the concurrent offering of notes determined at pricing.

A \$1.00 increase (decrease) in the assumed initial public offering price of \$ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) the amount of cash and cash equivalents, total stockholders' equity (deficit) and total capitalization on a pro forma as adjusted basis by approximately \$ million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Similarly, an increase (decrease) of one million shares offered by us would increase (decrease) the amount of cash and cash equivalents, total stockholders' equity (deficit) and total capitalization on a pro forma as adjusted basis by approximately \$ million, assuming the assumed initial public offering price remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. A 1,000,000 share increase in the number of shares offered by us together with a concomitant \$1.00 increase in the assumed initial public offering price of \$ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase each of cash and cash equivalents, total stockholders' equity (deficit) and total capitalization by approximately \$ million, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Conversely, a share decrease in the number of shares offered by us together with a concomitant \$1.00 decrease in the assumed initial public offering price of \$ per share, the midpoint of the price range set forth on the cover page of this prospectus, would decrease each of cash and cash equivalents, total stockholders' equity (deficit) and total capitalization by approximately \$ million, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. The pro forma as adjusted information discussed above is illustrative only and will be adjusted based on the actual initial public offering price and other terms of this offering determined at pricing.

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The actual, pro forma and pro forma as adjusted information set forth in the table above excludes (i) 1,091,330 shares of common stock issuable upon the exercise of stock options outstanding as of September 30, 2014 with a weighted-average exercise price of \$4.01 per share, (ii) 228,906 shares of Series AA preferred stock issuable upon the exercise of warrants outstanding, which have an exercise price of \$1.529 per share, are exercisable for common stock upon the closing of this offering and (iii) any shares of our common stock delivered to settle conversions of the notes if we elect to satisfy our conversion obligation with respect to the notes in shares of our common stock or a combination of cash and shares of our common stock.

DILUTION

If you invest in our common stock in this offering, your interest will be diluted to the extent of the difference between the initial public offering price per share of our common stock and the pro forma as adjusted net tangible book value per share of our common stock immediately after this offering. We calculate net tangible book value per share by dividing the net tangible book value (tangible assets less total liabilities) by the number of outstanding shares of our common stock.

The historical net tangible book value of our common stock as of September 30, 2014 was \$(48.3) million, or \$(39.53) per share, based on 1,221,086 shares of common stock outstanding as of September 30, 2014, which excludes the conversion of all of our outstanding 25,949,333 shares of preferred stock, including all accrued and unpaid dividends thereon, into 9,404,970 shares of common stock immediately prior to the closing of this offering.

The pro forma net tangible book value of our common stock as of September 30, 2014 was \$(2.3) million, or approximately \$(0.22) per share of common stock, based on 10,626,056 shares of our common stock outstanding, after giving effect to the automatic conversion of (i) all 25,949,333 outstanding shares of convertible preferred stock, including all accrued and unpaid dividends thereon, into 9,404,970 shares of common stock immediately prior to the closing of this offering and (ii) the subordinated convertible promissory notes we issued in December 2014 into _____ shares of common stock upon the consummation of this offering at the assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus.

After giving further effect to our sale of _____ shares in this offering at an assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and after deducting estimated underwriting discounts and commissions and estimated offering expenses, our pro forma as adjusted net tangible book value as of September 30, 2014 would be \$ _____ million, or \$ _____ per share. This represents an immediate increase in net tangible book value of \$ _____ per share to existing stockholders and an immediate dilution in net tangible book value of \$ _____ per share to purchasers of common stock in this offering, as illustrated in the following table:

Assumed initial public offering price per share	\$
Historical net tangible book value per share	(39.53)
Increase attributable to the pro forma transactions described above, before giving effect to this offering	_____
Pro forma net tangible book value per share as of September 30, 2014	_____
Increase in net tangible book value per share attributable to new investors	_____
Pro forma as adjusted net tangible book value per share at September 30, 2014 after giving effect to this offering	_____
Dilution per share to new investors	\$ _____

The information above reflects a 1-for-3.39 reverse stock split of our common stock and a proportional adjustment to the existing conversion ratio for each series of our redeemable convertible preferred stock, effective on November 26, 2014.

A \$1.00 increase (decrease) in the assumed initial public offering price of \$ _____ per share would increase (decrease) the dilution to new investors by \$ _____ per share, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated expenses payable by us. Similarly,

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an increase (decrease) of one million shares offered by us would increase (decrease) the dilution to new investors by \$ per share, assuming the assumed initial public offering price remains the same and after deducting estimated underwriting discounts and commissions and estimated expenses payable by us. A 1,000,000 share increase in the number of shares offered by us together with a concomitant \$1.00 increase in the assumed initial public offering price of \$ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase the dilution to new investors by approximately \$ per share, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Conversely, a 1,000,000 share decrease in the number of shares offered by us together with a concomitant \$1.00 decrease in the assumed initial public offering price of \$ per share, the midpoint of the price range set forth on the cover page of this prospectus, would decrease the dilution to new investors by approximately \$ per share, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

If the underwriters exercise their overallotment option, the pro forma as adjusted net tangible book value would be \$ per share, and the dilution in pro forma as adjusted net tangible book value to investors in this offering would be \$ per share. The following table summarizes, on a pro forma as adjusted basis as of September 30, 2014, the differences between the number of shares of common stock purchased from us, the total consideration and the average price per share paid by existing stockholders (giving effect to the conversion of (i) all of our outstanding 25,949,333 shares of preferred stock, including all accrued and unpaid dividends thereon, into 9,404,970 shares of common stock prior to the closing of this offering and (ii) the subordinated convertible promissory notes we issued in December 2014 into shares of common stock upon the consummation of this offering at the assumed initial public offering price of \$ per share, which is the midpoint of the price range set forth on the cover page of this prospectus) and by investors participating in this offering, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, at an assumed initial public offering price of \$ per share, the midpoint of the price range set forth on the cover page of this prospectus.

	Shares Purchased		Total Consideration		Average price / share
	Number	Percent	Amount	Percent	
Existing stockholders	10,626,056	%	\$116,677,000	%	\$ 10.98
New investors		%		%	\$
Total		100%	\$	100%	\$

The above discussion and tables are based on 1,221,086 shares of common stock issued and outstanding as of September 30, 2014 and also reflects the conversion of (i) all outstanding shares of preferred stock, including all accrued and unpaid dividends thereon, into an aggregate of 9,404,970 shares of common stock immediately prior to the closing of this offering (after giving effect to a 1-for-3.39 reverse stock split of our common stock and a proportional adjustment to the existing conversion ratio for each series of our redeemable convertible preferred stock, which became effective on November 26, 2014) and (ii) the subordinated convertible promissory notes we issued in December 2014 into shares of common stock upon the consummation of this offering at the assumed initial public offering price of \$ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and excludes:

- n 1,091,330 shares of common stock issuable upon the exercise of stock options outstanding as of September 30, 2014 at a weighted-average exercise price of \$4.01 per share;
- n 228,906 shares of Series AA preferred stock issuable upon the exercise of warrants outstanding, which have an exercise price of \$1.529 per share, and which warrants will become exercisable for 67,522 shares of common stock at \$5.18 per share upon the closing of this offering; and

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n shares of common stock that would be issuable upon conversion of the notes, if issued, in the concurrent offering of notes and shares of common stock that would be issuable upon conversion of the notes issued to the underwriters for their overallotment option, if exercised, in the concurrent offering of notes assuming that we settle all conversions in shares of our common stock and without the application of any anti-dilution, make-whole or other adjustments.

A \$1.00 increase (decrease) in the assumed initial public offering price of \$ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) the total consideration paid by new investors by approximately \$ million, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

If the underwriters exercise their overallotment option, the number of shares of common stock held by existing stockholders will be reduced to % of the total number of shares of common stock to be outstanding after this offering, and the number of shares of common stock held by investors participating in this offering will be further increased to or % of the total number of shares of common stock to be outstanding after this offering.

To the extent that outstanding options are exercised, you will experience further dilution. In addition, we may choose to raise additional capital due to market conditions or strategic considerations even if we believe we have sufficient funds for our current or future operating plans. To the extent that additional capital is raised through the sale of equity or convertible debt securities, the issuance of these securities may result in further dilution to our stockholders.

Certain of our existing principal stockholders and their affiliated entities have indicated an interest in purchasing an aggregate of approximately \$ million in shares of our common stock in this offering at the initial public offering price. However, because indications of interest are not binding agreements or commitments to purchase, these stockholders may determine to purchase fewer shares than they have indicated an interest in purchasing or not to purchase any shares in this offering. It is also possible that these stockholders could indicate an interest in purchasing more shares of our common stock. In addition, the underwriters could determine to sell fewer shares to any of these stockholders than the stockholders have indicated an interest in purchasing or not to sell any shares to these stockholders.

SELECTED FINANCIAL DATA

We derived the selected statements of operations data for the years ended December 31, 2012 and 2013 and the balance sheet data as of December 31, 2012 and 2013 from our audited financial statements appearing elsewhere in this prospectus. The selected statements of operations data for the nine months ended September 30, 2013 and 2014 and the balance sheet data as of September 30, 2014 have been derived from our unaudited financial statements included elsewhere in this prospectus. These unaudited financial statements have been prepared on a basis consistent with our audited financial statements and, in the opinion of management, reflect all adjustments, consisting only of normal and recurring adjustments, necessary for a fair presentation of such financial data. The selected financial data reflects a 1-for-3.39 reverse stock split of our common stock and a proportional adjustment to the existing conversion ratio for each series of our redeemable convertible preferred stock, which became effective on November 26, 2014.

You should read this data together with our financial statements and related notes appearing elsewhere in this prospectus and the information under the captions "Management's Discussion and Analysis of Financial Condition and Results of Operations." Our historical results are not necessarily indicative of our future results, and results for the nine-month period ended September 30, 2014 are not necessarily indicative of the results to be expected for the year ending December 31, 2014 or any other interim periods or any future year or period.

	<u>Year Ended December 31,</u>		<u>Nine Months Ended</u>	
	<u>2012</u>	<u>2013</u>	<u>September 30,</u>	<u>2014</u>
			(unaudited)	
(in thousands, except share and per share data)				
Statements of Operations Data:				
Operating expenses:				
Research and development	\$ (3,542)	\$ (5,330)	\$ (3,738)	\$ (4,655)
General and administrative	(2,307)	(1,324)	(1,242)	(1,337)
Loss from operations	(5,849)	(6,654)	(4,980)	(5,992)
Other income	4	3	2	-
Interest expense	(213)	(884)	(638)	(735)
Change in fair value of warrant liabilities	-	(81)	(29)	(656)
Net loss	<u>\$ (6,058)</u>	<u>\$ (7,616)</u>	<u>\$ (5,645)</u>	<u>\$ (7,383)</u>
Net loss per common share—basic and diluted	<u>\$ (6.72)</u>	<u>\$ (8.39)</u>	<u>\$ (5.97)</u>	<u>\$ (8.61)</u>
Weighted-average common shares outstanding—basic and diluted	<u>1,216,746</u>	<u>1,218,803</u>	<u>1,218,034</u>	<u>1,221,086</u>
Pro forma net loss per common share—basic and diluted (unaudited)		<u>\$ (1.18)</u>		<u>\$ (1.04)</u>
Pro forma weighted-average common shares outstanding—basic and diluted (unaudited)		<u>8,676,361</u>		<u>10,071,419</u>

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(in thousands)	Year Ended December 31,		September 30,
	2012	2013	2014 (unaudited)
Balance Sheet Data:			
Cash and cash equivalents	\$ 1,372	\$ 12,793	\$ 5,357
Total assets	1,421	12,863	6,498
Convertible notes payable	2,713	—	—
Notes payable—current portion	—	1,410	2,980
Notes payable, net of current portion	—	5,395	3,294
Warrant liabilities	—	1,888	294
Total liabilities	3,789	10,525	9,108
Series AA redeemable convertible preferred stock	27,856	40,685	45,114
Accumulated deficit	(110,894)	(118,510)	(125,893)
Total stockholders' deficit	(30,930)	(38,895)	(48,272)

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

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our "Selected Financial Data" and our financial statements, related notes and other financial information included elsewhere in this prospectus. This discussion contains forward-looking statements that involve risks and uncertainties such as our plans, objectives, expectations and intentions. Our actual results could differ materially from those discussed in these forward looking statements. Factors that could cause or contribute to such differences include, but are not limited to, those identified below and those discussed in "Risk Factors" included elsewhere in this prospectus.

Overview

We are a clinical-stage biopharmaceutical company focused on the discovery, development and commercialization of therapies for glaucoma. Glaucoma is a disease of the eye that is typically characterized by structural evidence of optic nerve damage, vision loss and consistently elevated intraocular pressure, or IOP. Our lead product candidate, *trabodenoson*, is a first-in-class selective adenosine mimetic that we rationally designed to lower IOP by restoring the eye's natural pressure control mechanism. Our product pipeline includes *trabodenoson* monotherapy delivered in an eye drop formulation, as well as a fixed-dose combination, or FDC, of *trabodenoson* with *latanoprost* given once-daily, or QD. Our completed Phase 2 trial of *trabodenoson* co-administered with *latanoprost*, a prostaglandin analogue, or PGA, demonstrated IOP-lowering in patients who have previously had inadequate response to *latanoprost*. These patients represent PGA poor-responders, as evidenced by persistently elevated IOP at levels that typically require the addition of a second drug to further lower IOP.

We are planning an End-of-Phase 2 meeting with the U.S. Food and Drug Administration, or FDA, for *trabodenoson* in the first half of 2015. We expect to initiate a Phase 3 program for *trabodenoson* monotherapy in mid-2015, which will consist of two Phase 3 pivotal trials and a long-term safety study. Based on our estimates of the rate of patient enrollment and assuming commencement in mid-2015, we expect to report top-line data from the first of the two pivotal Phase 3 trials by late 2016 or early 2017, with a second pivotal trial being completed in 2017.

Since our inception on July 7, 1999, we have devoted substantially all of our resources to business planning, raising capital, product research and development, applying for and obtaining government and private grants, recruiting management, research and technical staff and other personnel, acquiring operating assets, and undertaking preclinical studies and clinical trials of our lead product candidates.

We have not completed development of any product candidate and we have therefore not generated any revenues from product sales. Prior to 2012, we generated revenues primarily from research grants received from governmental agencies and private companies as well as revenue earned under licensing and research collaboration contracts. All previously recognized revenue was unrelated to our current development efforts focused on our lead product candidate, *trabodenoson*, for the treatment of glaucoma and other diseases of the eye.

Historically, we have financed our operations principally through grants from government and private entities, private placements of preferred stock and issuances of convertible promissory notes and notes payable. Although it is difficult to predict our liquidity requirements, based upon our current operating plan, and assuming the successful closing of this offering of common stock and concurrent offering of notes, we believe we will have sufficient cash to meet our projected operating requirements for the next 12 months. If we do not complete the concurrent offering of notes, the proceeds from this

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offering of common stock would be insufficient to complete a Phase 2 trial for our FDC product candidate, initiate the second Phase 3 pivotal trial for *trabodenoson* monotherapy or complete enrollment in a long-term safety study. The closing of this offering of common stock is not contingent upon the closing of the concurrent offering of notes, but the closing of the concurrent offering of notes is contingent upon the closing of this offering of common stock. See "Liquidity and Capital Resources."

Our net losses were \$6.1 million and \$7.6 million for the years ended December 31, 2012 and 2013, respectively. Our net losses were \$5.6 million and \$7.4 million for the nine months ended September 30, 2013 and 2014, respectively. As of September 30, 2014, we had an accumulated deficit of \$125.9 million.

Factors Affecting our Results of Operations

We expect our expenses to increase substantially in connection with our ongoing activities, particularly as we continue to invest in research and development and commence our Phase 3 program of *trabodenoson* in 2015. We also expect our expenses to increase as we complete formulation and manufacturing activities of our FDC product candidate and commence clinical trials in 2016. In addition, if we successfully launch *trabodenoson* as a monotherapy or any other product candidates, we expect to incur significant commercialization expenses related to sales, marketing, manufacturing and distribution of our products.

Furthermore, upon the closing of this offering, we expect to incur additional costs associated with operating as a public company. We expect operating expenses to increase substantially to support an increased infrastructure and expanded operations. Accordingly, we may need to obtain additional funding in connection with our continuing operations. Adequate additional financing may not be available to us on acceptable terms, or at all. If we are unable to raise capital when needed or on attractive terms, we would be forced to delay, reduce or eliminate our research and development programs or any future commercialization efforts. We will need to generate significant revenues to achieve profitability, and we may never do so. As a result, we expect to incur significant expenses and increasing operating losses for the foreseeable future.

Financial Overview

Revenue

We have not generated any revenue from product sales since our inception and do not expect to generate any revenue from the sale of products in the near future. Our ability to generate revenues will depend heavily on the successful development, regulatory approval and commercialization of *trabodenoson* and any other future product candidates. Historically, we generated revenues primarily from research grants received from governmental agencies and private companies as well as revenue earned under licensing and research collaboration contracts that were unrelated to our current research and development programs. We have not generated any revenues after January 1, 2012.

Research and Development Expenses

Research and development expenses consist primarily of the costs associated with our research and development activities, conducting preclinical studies and clinical trials and activities related to regulatory filings. Our research and development expenses consist of:

- n direct clinical and non-clinical expenses which include expenses incurred under agreements with contract research organizations, or CROs, contract manufacturing organizations and costs associated with preclinical activities and development activities and costs associated with regulatory activities;
- n employee and consultant-related expenses, including salaries, benefits, travel and stock-based compensation expense for research and development personnel as well as consultants that conduct and support clinical trials and preclinical studies; and

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- n facilities and other expenses, which include direct and allocated expenses for rent and maintenance of facilities, insurance and other supplies used in research and development activities.

We expense research and development costs as incurred. We record costs for some development activities, such as clinical trials, based on an evaluation of the progress to completion of specific tasks using data such as subject enrollment, clinical site activations or other information our vendors provide to us.

The following table summarizes our research and development expenses by type of activity for the years ended December 31, 2012 and 2013, and for the nine months ended September 30, 2013 and 2014:

(in thousands)	Year Ended December 31,		Nine Months Ended September 30,	
	2012	2013	2013 (unaudited)	2014 (unaudited)
<i>Trabodenoson</i> —direct clinical and non-clinical	\$1,988	\$3,799	\$2,457	\$3,828
Personnel and other expenses:				
Employee and consultant-related expenses	1,341	1,339	1,130	711
Facility expenses	163	123	95	104
Other expenses	50	69	56	12
Total personnel and other expenses	1,554	1,531	1,281	827
Total research and development expenses	<u>\$3,542</u>	<u>\$5,330</u>	<u>\$3,738</u>	<u>\$4,655</u>

All research and development efforts and expenses for the years ended December 31, 2012 and 2013, and for the nine months ended September 30, 2013 and 2014, relate to the development of *trabodenoson*. We do not track *trabodenoson*-related expenses by product candidate. All expenses related to *trabodenoson* as a monotherapy also benefit the FDC product candidate *trabodenoson* with *latanoprost*. We have expended approximately \$40 million for external development costs related to *trabodenoson* from inception through September 30, 2014.

The process of conducting the necessary clinical research to obtain regulatory approval is costly and time consuming and the successful development of our product candidates is highly uncertain. Our future research and development expenses will depend on the clinical success of our product candidates, as well as ongoing assessments of the commercial potential of such product candidates. In addition, we cannot forecast with any degree of certainty which product candidates may be subject to future collaborations, when such arrangements will be secured, if at all, and to what degree such arrangements would affect our development plans and capital requirements. We expect our research and development expenses to increase in future periods for the foreseeable future as we seek to complete development of our lead product candidate, *trabodenoson*, further develop our other product candidates and expand our research and development personnel to focus on these product candidate development activities.

The successful development and commercialization of our product candidates is highly uncertain. This is due to the numerous risks and uncertainties associated with product development and commercialization, including the uncertainty of:

- n the scope, progress, outcome and costs of our clinical trials and other research and development activities;

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- n the efficacy and potential advantages of our product candidates compared to alternative treatments, including any standard of care;
- n the market acceptance of our product candidates;
- n obtaining, maintaining, defending and enforcing patent claims and other intellectual property rights;
- n significant and changing government regulation; and
- n the timing, receipt and terms of any marketing approvals.

A change in the outcome of any of these variables with respect to the development of *trabodenoson* or any other product candidate that we may develop could mean a significant change in the costs and timing associated with the development of that product candidate. For example, if the FDA or another regulatory authority were to require us to conduct clinical trials or other testing beyond those that we currently contemplate for the completion of clinical development of *trabodenoson* or any other product candidate that we may develop or if we experience significant delays in enrollment in any of our clinical trials, we could be required to expend significant additional financial resources and time on the completion of clinical development of that product candidate.

General and Administrative Expenses

General and administrative expenses consist of salaries and related benefit costs, including stock-based compensation for administrative personnel. Other significant general and administrative expenses include professional fees for legal, patents, consulting, auditing and tax services as well as other direct and allocated expenses for rent and maintenance of facilities, insurance and other supplies used in general and administrative activities. We anticipate that our general and administrative expenses will increase in future periods to support increases in our research and development activities and as a result of increased headcount (especially in our accounting and finance departments), increased stock-based compensation charges, expanded infrastructure, increased costs for insurance, and increased legal, compliance, accounting and investor and public relations expenses associated with being a public company.

Interest Expense

Interest expense consists primarily of interest on our existing notes payable, interest on convertible promissory notes, amortization of loan discounts as well as interest calculated based on the amortization of the beneficial conversion feature of the convertible promissory notes. We intend to repay our borrowings under our existing notes payable agreements with Horizon Technology Finance Corporation and Fortress Credit Co LLC with the proceeds from this offering.

Other Income (Expense), Net

Other income (expense), net, consists primarily of non-cash expense related to changes in the fair value of our warrant liabilities arising from the warrants to purchase shares of Series AA Preferred Stock described in Note 7 of our consolidated financial statements and appearing elsewhere in this prospectus, offset by other income which is primarily comprised of interest income.

Results of Operations**Comparison of the Nine Months Ended September 30, 2013 and 2014**

The following table summarizes the results of our operations for the nine months ended September 30, 2014 and 2013:

(in thousands)	Nine Months Ended September 30,		Increase (Decrease)
	2013	2014	
	(Unaudited)		
Operating expenses:			
Research and development	\$(3,738)	\$(4,655)	\$ 917
General and administrative	(1,242)	(1,337)	95
Total operating expenses	(4,980)	(5,992)	1,012
Interest expense	(638)	(735)	97
Other income (expense), net	(27)	(656)	629
Net loss	<u>\$(5,645)</u>	<u>\$(7,383)</u>	<u>\$ 1,738</u>

Research and Development Expenses

Research and development expenses increased by \$0.9 million to \$4.7 million for the nine months ended September 30, 2014, as compared to \$3.7 million for the nine months ended September 30, 2013. The increase resulted primarily from higher CRO and other direct clinical trial expenses related to the Phase 2 trial of *trabodenson* FDC, which we recently completed. This increase was partially offset by decreases in expenses related to manufacturing of the active pharmaceutical ingredient needed to conduct the Phase 2 trial, as well as decreases in expenses related to consultants and stock-based compensation for research development personnel.

General and Administrative Expenses

General and administrative expenses increased \$0.1 million, to \$1.3 million, for the nine months ended September 30, 2014, as compared to \$1.2 million for the nine months ended September 30, 2013. Included in the nine months ended September 30, 2013 is approximately \$0.8 million of executive severance and payroll-related costs that are related to the termination of our former CEO and CFO who were terminated in May 2013 as well as a reversal of approximately \$0.3 million of stock based compensation also related to these terminations. This decrease of \$0.5 million was offset by higher outside consultant expenses of \$0.4 million related primarily to financial and accounting support and stock-based compensation of \$0.2 million related to the 2014 option grants.

Interest Expense

Interest expense increased \$0.1 million, to \$0.7 million, for the nine months ended September 30, 2014, as compared to \$0.6 million for the nine months ended September 30, 2013. The entire amount of interest expense, both coupon and discount amortization, for the nine months ended September 30, 2014, was related to the notes payable that we issued to two financial entities in June 2013. Interest expense for the nine months ended September 30, 2013 includes approximately \$0.4 million related to our convertible promissory notes which converted to equity in June 2013 plus approximately \$0.2 million of both coupon and discount amortization related to the notes payable that we issued to two financial entities in June 2013.

Other Income (Expense), Net

Other expense, net, increased \$0.6 million, to \$0.7 million, for the nine months ended September 30, 2014, as compared to a nominal amount of other expense, net, for the nine months ended September 30, 2013. The increase resulted from the non-cash expense related to changes in the fair value of our warrant liabilities arising from the warrants to purchase shares of Series AA Preferred Stock described in Note 7 of our consolidated financial statements appearing elsewhere in this prospectus.

Comparison of the Years Ended December 31, 2012 and 2013

The following table summarizes the results of our operations for the years ended December 31, 2013 and 2012:

	Year Ended December 31,		Increase (Decrease)
	2012	2013	
Operating expenses:			
Research and development	\$(3,542)	\$(5,330)	\$ 1,788
General and administrative	(2,307)	(1,324)	(983)
Total operating expenses	(5,849)	(6,654)	805
Interest expense	(213)	(884)	671
Other income (expense), net	4	(78)	82
Net loss	<u>\$(6,058)</u>	<u>\$(7,616)</u>	<u>\$ 1,558</u>

Research and Development Expenses

Research and development expenses increased by \$1.8 million, to \$5.3 million, for the year ended December 31, 2013, as compared to \$3.5 million for the year ended December 31, 2012. The increase resulted entirely from higher CRO and other direct clinical expenses related to the Phase 2 trial of *trabodenson* FDC, which we recently completed.

General and Administrative Expenses

General and administrative expenses decreased \$1.0 million, to \$1.3 million, for the year ended December 31, 2013, as compared to \$2.3 million for the year ended December 31, 2012. Approximately \$0.6 million of this decrease is due to lower stock-based compensation and included a reversal of \$0.3 million in expenses related to the termination of our former CEO and CFO who were terminated in May 2013. The remaining decrease resulted primarily from lower patent, legal and consultant-related expenses offset by higher payroll-related expenses.

Interest Expense

Interest expense increased by \$0.7 million, to \$0.9 million, for the year ended December 31, 2013, as compared to \$0.2 million for the year ended December 31, 2012. Approximately \$0.5 million of the increase resulted from the interest expense related to our notes payable which we issued in June 2013. The remaining increase resulted from higher interest expense related to our convertible promissory notes which converted into equity in June 2013.

Other Income (Expense), Net

Net other income increased by \$0.1 million and is the result of the non-cash income related to changes in the fair value of our warrant liabilities arising from the warrants to purchase shares of Series AA Preferred Stock described in Note 7 of our consolidated financial statements appearing elsewhere in this prospectus.

Liquidity and Capital Resources

Since inception, we have incurred accumulated net losses and negative cash flows from our operations. We incurred net losses of \$7.4 million and \$5.6 million for the nine months ended September 30, 2014 and 2013, respectively. We incurred net losses of \$7.6 million and \$6.1 million for the years ended December 31, 2013 and 2012, respectively. Our operating activities used \$6.5 million and \$6.9 million of cash flows during the years ended December 2013 and 2012, respectively, and \$6.8 million and \$4.7 million for the nine months ended September 30, 2014 and 2013, respectively. Historically, we have financed our operations principally through grants from government and private entities, private placements of preferred stock and issuances of convertible promissory notes and notes payable.

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At September 30, 2014, we had cash and cash equivalents of \$5.4 million. Additionally, we estimate that the net proceeds to us from the concurrent offering of the notes, after deducting underwriting discounts and commissions and estimated offering expenses, will be approximately \$ million, if completed. We invest our cash equivalents in operating or money market accounts in order to preserve principal.

On June 28, 2013, we entered into notes payable agreements with two financial entities pursuant to which we issued a \$3.5 million note to each lender and received net proceeds of \$6.9 million. The notes bear interest at a rate of 11.0% per annum and mature on October 1, 2016. Payments for the initial 12 months of the term are interest only and thereafter require repayment of the principal balance, with interest, in 27 monthly installments. Under the terms of the notes payable agreements, we granted first priority liens and the loans are collateralized by our personal property, including cash and cash equivalents. The notes payable agreements also contain representations and warranties by us and the lenders, indemnification provisions in favor of the lenders, customary covenants (including limitations on other indebtedness, liens, acquisitions, investments and dividends, but no financial covenants), and events of default (including payment defaults, breaches of covenants following any applicable cure period, a material impairment in the perfection or priority of lenders' security interest or in the collateral, and events relating to bankruptcy or insolvency). The terms of our current indebtedness may limit our ability to incur additional debt and undertake strategic transactions that may be beneficial to holders of our common stock. As of September 30, 2014, the total principal balance owed under the notes payable agreements was \$6.3 million. In addition, we believe we were in compliance with all covenants under the notes payable agreements as of September 30, 2014. We intend to repay the borrowings under and terminate our notes payable agreements with the proceeds from this offering. See "Use of Proceeds" and "Concurrent Offering of Convertible Senior Notes."

In December 2014, we issued \$2.0 million of subordinated convertible promissory notes to existing stockholders. These notes mature on June 30, 2015 and accrue interest at the rate of 8% per annum and are subordinate to all other senior indebtedness of the Company. In addition to other provisions relating to settlement, upon the closing of an initial public offering of common stock of at least \$40 million all outstanding principal and accrued interest thereon will automatically convert into common stock at the initial public offering price and in the event of a change-in-control transaction the noteholders will receive either (a) cash in the amount of twice the principal and interest due as of the effective date of the change in control transaction or (b) shares of Series AA preferred stock based upon the conversion of the principal and interest due as of the effective date of the change-in-control transaction, whichever yields the greatest return.

The following table summarizes our sources and uses of cash for each of the periods presented:

	Year Ended December 31,		Nine Months Ended September 30,	
	2012	2013	2013	2014
(in thousands)				(unaudited)
Cash used in operating activities	\$ (6,936)	\$ (6,455)	\$ (4,677)	\$ (6,749)
Cash provided by investing activities	3	-	-	-
Cash provided by financing activities	2,500	17,876	17,876	(687)
Net increase (decrease) in cash and equivalents	<u>\$ (4,433)</u>	<u>\$ 11,421</u>	<u>\$ 13,199</u>	<u>\$ (7,436)</u>

Net cash used in operating activities

Net cash used in operating activities was \$6.7 million for the nine months ended September 30, 2014 and \$4.7 million for the nine months ended September 30, 2013. Net cash used in operating activities for the nine months ended September 30, 2014 principally resulted from our net loss of \$7.4 million and increased prepaid expenses primarily related to \$1.1 million in deferred public offering expenses. These amounts were partially offset by increases in non-cash expenses related to changes

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in the fair value of our warrant liabilities of \$0.7 million, increases in accounts payables and accrued expenses of \$0.7 million, non-cash interest expenses of \$0.2 million as well as non-cash stock-based compensation expense of \$0.2 million. Net cash used in operating activities for the nine months ended September 30, 2013 principally resulted from our net loss of \$5.6 million partially offset by increases in accounts payable and accrued expenses of \$0.7 million and net non-cash stock compensation and interest expenses of \$0.3 million.

Net cash used in operating activities was \$6.5 million for the year ended December 31, 2013 and \$6.9 million for the year ended December 31, 2012. Net cash used in operating activities for the year ended December 31, 2013 principally resulted from our net loss of \$7.6 million and decreases in accounts payable of \$0.2 million partially offset by increases in accrued expenses of \$0.9 million and net non-cash stock compensation and interest expenses of \$0.3 million. Net cash used in operating activities for the year ended December 31, 2012 principally resulted from our net loss of \$6.1 million and decreases in accrued expenses of \$1.8 million partially offset by increases in non-cash stock compensation expenses of \$0.5 million, non-cash interest expenses of \$0.2 million and accounts payable of \$0.2 million. Our net losses in all periods were the result of our significant operating expenses for research and development activities and general and administrative expenses.

Net cash used in investing activities

Net cash used in investing activities was not significant for all periods presented.

Net cash used in or provided by financing activities

Net cash used in financing activities was \$0.7 million for the nine months ended September 30, 2014 and reflects the principal payments on our notes payable. Net cash provided by financing activities was \$17.9 million for the nine months ended September 30, 2013 and resulted primarily from \$10.0 million in net proceeds from the sale of our Series AA Preferred Stock, \$6.9 million in net proceeds from our notes payable and \$1.0 million in net proceeds from the sale of our convertible notes, which converted into Series AA Preferred Stock in June 2013.

Net cash provided by financing activities was \$17.9 million for the year ended December 31, 2013 and \$2.5 million for the year ended December 31, 2012. Net cash provided by financing activities for the year ended December 31, 2013 resulted primarily from \$10.0 million in net cash proceeds from the sale of our Series AA Preferred Stock, \$6.9 million in proceeds from our notes payable and \$1.0 million in net proceeds from the sale of our convertible notes which converted into Series AA Preferred Stock in June 2013. Net cash provided by financing activities for the year ended December 31, 2012 principally resulted from the receipt of \$2.5 million in proceeds from the sale of our convertible notes which converted into Series AA Preferred Stock in June 2013.

Operating Capital Requirements

To date, we have not generated any revenue from product sales. We do not know when, or if, we will generate any revenue from product sales. We do not expect to generate significant revenue from product sales unless and until we obtain regulatory approval of and commercialize one of our current or future product candidates. We anticipate that we will continue to generate losses for the foreseeable future and we expect the losses to increase as we continue the development of, and seek regulatory approvals for, our product candidates and begin to commercialize any approved products. Upon the closing of this offering, we expect to incur additional costs associated with operating as a public company. In addition, subject to obtaining regulatory approval of any of our product candidates, we expect to incur significant commercialization expenses for product sales, marketing and manufacturing. Accordingly, we anticipate that we will need substantial additional funding in connection with our continuing operations.

Based on our current operating plan, we expect that our existing cash and cash equivalents as of September 30, 2014, together with anticipated net proceeds from this offering of common stock and

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the concurrent offering of notes, will enable us to fund our operating expenses for the next 12 months. In that time, we expect that our expenses will increase substantially as we fund clinical development of *trabodenoson*, fund clinical development of our FDC product candidate, fund new and ongoing research and development activities, fund the additional expenses related to being a public company, working capital and other general corporate purposes. If we do not complete the concurrent offering of notes, the proceeds from this offering of common stock would be insufficient to complete a Phase 2 trial for our FDC product candidate, initiate the second Phase 3 pivotal trial for *trabodenoson* monotherapy or complete enrollment in a long-term safety study. The closing of this offering of common stock is not contingent upon the closing of the concurrent offering of notes, but the closing of the concurrent offering of notes is contingent upon the closing of this offering of common stock. We have based our estimates on assumptions that may prove to be wrong, and we may use our available capital resources sooner than we currently expect. Because of the numerous risks and uncertainties associated with the development and commercialization of our product candidates, we are unable to estimate the amounts of increased capital outlays and operating expenditures necessary to complete the development and commercialization of our product candidates.

Our future capital requirements will depend on many factors, including:

- n the costs, timing and outcome of regulatory reviews and approvals;
- n the ability of our product candidates to progress through clinical development successfully;
- n the initiation, progress, timing, costs and results of non-clinical studies and clinical trials for our other programs and potential products;
- n the number and characteristics of the product candidates we pursue;
- n the costs of preparing, filing and prosecuting patent applications, maintaining and enforcing our intellectual property rights and defending intellectual property-related claims;
- n the extent to which we acquire or in-license other products and technologies; and
- n our ability to establish any future collaboration arrangements on favorable terms, if at all.

Until such time, if ever, as we can generate substantial product revenue, we expect to finance our cash needs through a combination of equity offerings, debt financings, collaborations, strategic alliances and licensing arrangements. To the extent that we raise additional capital through the sale of equity or convertible debt securities, the ownership interest of our stockholders will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect your rights as a common stockholder. Debt financing, if available, may involve agreements that include covenants limiting or restricting our ability to take specific actions, such as incurring additional debt, making capital expenditures or declaring dividends and may require the issuance of warrants, which could potentially dilute your ownership interest. If we raise additional funds through collaborations, strategic alliances or licensing arrangements with third parties, we may have to relinquish valuable rights to our technologies, future revenue streams or research programs or to grant licenses on terms that may not be favorable to us. If we are unable to raise additional funds through equity or debt financings when needed, we may be required to delay, limit, reduce or terminate our product development or future commercialization efforts or grant rights to develop and market products or product candidates that we would otherwise prefer to develop and market ourselves.

Contractual Obligations and Commitments

The following summarizes our significant contractual obligations as of December 31, 2013:

(in thousands)	Total	Less than 1 year	1 to 3 years	3 to 5 years	More than 5 years
Operating lease obligations(1)	\$ 67	\$ 54	\$ 13	\$ –	\$ –
Notes payable(2)	8,529	2,148	6,381	–	–
Severance payments(3)	145	145	–	–	–
Total	<u>\$8,741</u>	<u>\$ 2,347</u>	<u>\$6,394</u>	<u>\$ –</u>	<u>\$ –</u>

- (1) Amounts represent our minimum lease obligations related to our corporate headquarters in Lexington, Massachusetts. The minimum lease payments in the table do not include related common area maintenance charges or real estate taxes, which costs are variable.
- (2) Amounts represent principal, interest and termination payments on our notes payable. We intend to repay the borrowings under and terminate our notes payable agreements with the proceeds from this offering. See "Use of Proceeds."
- (3) Amount represents severance payments owed to our former CEO.

The table above does not reflect the concurrent offering of notes.

We enter into contracts in the normal course of business with CROs and contract manufacturers to assist in the performance of our research and development activities and other services and products for operating purposes. To the extent that these contracts provide for termination on notice, and therefore are cancelable contracts, they are not included in the table of contractual obligations and commitments.

Off-Balance Sheet Arrangements

We did not have during the periods presented, and we do not currently have, any off-balance sheet arrangements, as defined under SEC rules.

Quantitative and Qualitative Disclosures about Market Risk

We are exposed to market risks in the ordinary course of our business. These market risks are principally limited to interest rate fluctuations. We had cash and cash equivalents of \$5.4 million at September 30, 2014, consisting primarily of funds in operating cash accounts. The primary objective of our investment activities is to preserve principal and liquidity while maximizing income without significantly increasing risk. We do not enter into investments for trading or speculative purposes. Due to the short-term nature of our investment portfolio, we do not believe an immediate 1.0% increase in interest rates would have a material effect on the fair market value of our portfolio, and accordingly we do not expect a sudden change in market interest rates to affect materially our operating results or cash flows.

Because our notes payable bear interest at a fixed rate, a change in interest rates would not impact the amount of interest we would pay on our indebtedness.

JOBS Act

Under Section 107(b) of the Jumpstart Our Business Startups Act of 2012, or the JOBS Act, an "emerging growth company" can delay the adoption of new or revised accounting standards until such time as those standards would apply to private companies. We have irrevocably elected not to avail ourselves of this exemption and, as a result, we will adopt new or revised accounting standards at the

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same time as other public companies that are not emerging growth companies. There are other exemptions and reduced reporting requirements provided by the JOBS Act that we are currently evaluating. For example, as an emerging growth company, we are exempt from Sections 14A(a) and (b) of the Exchange Act which would otherwise require us to (i) submit certain executive compensation matters to stockholder advisory votes, such as “say-on-pay,” “say-on-frequency” and “golden parachutes” and (ii) disclose certain executive compensation related items such as the correlation between executive compensation and performance and comparisons of our Chief Executive Officer’s compensation to our median employee compensation. We also intend to rely on an exemption from the rule requiring us to provide an auditor’s attestation report on our internal controls over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act and the rule requiring us to comply with any requirement that may be adopted by the Public Company Accounting Oversight Board, or PCAOB, regarding mandatory audit firm rotation or a supplement to the auditor’s report providing additional information about the audit and the financial statements, known as the auditor discussion and analysis. We will continue to remain an “emerging growth company” until the earliest of the following: the last day of the fiscal year following the fifth anniversary of the date of the closing of this offering; the last day of the fiscal year in which our total annual gross revenue is equal to or more than \$1 billion; the date on which we have issued more than \$1 billion in nonconvertible debt during the previous three years; or the date on which we are deemed to be a large accelerated filer under the rules of the SEC.

Critical Accounting Policies and Estimates

Accrued Research and Development Expenses

As part of the process of preparing our financial statements, we are required to estimate our accrued research and development expenses. This process involves reviewing open contracts and purchase orders, communicating with our personnel to identify services that have been performed on our behalf and estimating the level of service performed and the associated costs incurred for the services when we have not yet been invoiced or otherwise notified of the actual costs. The majority of our service providers invoice us in arrears for services performed, on a pre-determined schedule or when contractual milestones are met; however, some require advanced payments. We make estimates of our accrued expenses as of each balance sheet date in our financial statements based on facts and circumstances known to us at that time. Examples of estimated accrued research and development expenses include fees paid to:

- n CROs in connection with performing research and development services on our behalf;
- n investigative sites or other providers in connection with clinical trials;
- n vendors in connection with non-clinical development activities; and
- n vendors related to product manufacturing, development and distribution of clinical supplies.

We base our expenses related to clinical trials on our estimates of the services received and efforts expended pursuant to contracts with multiple CROs that conduct and manage non-clinical studies and clinical trials on our behalf. The financial terms of these agreements are subject to negotiation, vary from contract to contract and may result in uneven payment flows. There may be instances in which payments made to our vendors will exceed the level of services provided and result in a prepayment of the clinical expense. Payments under some of these contracts depend on factors such as the successful enrollment of patients and the completion of clinical trial milestones. In accruing service fees, we estimate the time period over which services will be performed, enrollment of patients, number of sites activated and level of effort to be expended in each period. If the actual timing of the performance of services or the level of effort varies from our estimate, we adjust the accrual or prepaid accordingly. Although we do not expect our estimates to be materially different from amounts actually incurred, our understanding of the status and timing of services performed relative to the actual status and timing of services performed may vary and may result in us reporting expenses that are too high or too low in any particular period.

Fair Value Measurements

We are required to disclose information on all assets and liabilities reported at fair value that enables an assessment of the inputs used in determining the reported fair values. Accounting Standard Codification, or ASC, Topic 820, Fair Value Measurements and Disclosures, establishes a hierarchy of inputs used when available. Observable inputs are inputs that market participants would use in pricing the asset or liability based on market data obtained from sources independent of our company. Unobservable inputs are inputs that reflect our assumptions about the inputs that market participants would use in pricing the asset or liability, and are developed based on the best information available in the circumstances. The fair value hierarchy applies only to the valuation inputs used in determining the reported fair value of the investments and is not a measure of the investment credit quality. The three levels of the fair value hierarchy are described below:

- n Level 1—Valuations based on unadjusted quoted prices in active markets for identical assets or liabilities that we have the ability to access at the measurement date;
- n Level 2—Valuations based on quoted prices for similar assets or liabilities in markets that are not active or for which all significant inputs are observable, either directly or indirectly;
- n Level 3—Valuations that require inputs that reflect our own assumptions that are both significant to the fair value measurement and unobservable.

To the extent that valuation is based on models or inputs that are less observable or unobservable in the market, the determination of fair value requires more judgment. Accordingly, the degree of judgment exercised by us in determining fair value is greatest for instruments categorized in Level 3. A financial instrument's level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement.

Our material financial instruments at September 30, 2014 and 2013 and December 31, 2013 and 2012 consist primarily of cash and cash equivalents and preferred stock warrant liabilities. We have determined that our preferred stock warrant liabilities would be classified as a Level 3 fair value measurements. We account for our preferred stock warrant liabilities as liabilities based upon the characteristics and provisions of the underlying instruments. These liabilities were recorded at their fair value on the date of issuance and are re-measured on each subsequent balance sheet date, with fair value changes recognized as income (decreases in fair value) or expense (increases in fair value) in other income (expense), net in the consolidated statements of operations.

Stock-Based Compensation

We measure the cost of employee services received in exchange for an award of equity instruments based on the grant date fair value of the award. That cost is recognized on a straight-line basis over the period during which the employee is required to provide service in exchange for the award. The fair value of options on the date of grant is calculated using the Black-Scholes option pricing model based on key assumptions such as stock price, expected volatility and expected term. Our estimates of these assumptions are primarily based on third-party valuations, historical data, peer company data and judgment regarding future trends and factors.

We account for stock options issued to non-employees in accordance with the provisions of The Financial Accounting Standards Board, or FASB, ASC Subtopic 505-50, *Equity-Based Payments to Non-employees*, which requires valuing the stock options using the Black-Scholes option pricing model and re-measuring such stock options at their current fair value as they vest.

Significant Factors, Assumptions and Methodologies Used in Determining Fair Value

Determining the fair value of our convertible preferred stock warrants and stock-based awards requires the use of subjective assumptions. In the absence of a publicly traded market for our securities, we conducted periodic valuations of our securities.

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Valuation of Series AA Preferred Stock Warrants as of June 30, 2013, September 30, 2013, December 31, 2013 and September 30, 2014

We performed a retrospective valuation for June 9, 2010 (which coincides with our grants of restricted Series X preferred stock), June 30, 2013 (which closely coincides with the issuance of warrants to purchase our Series AA preferred stock), September 30, 2013 and December 31, 2013. Additionally, we performed a valuation as of September 30, 2014. The valuation methods employed and significant assumptions are described below.

We engaged consultants to perform market research at our direction in the second half of 2012. This research concluded that our current product candidates could be well-positioned to compete effectively with existing drug therapies. We also obtained script data for current ophthalmology-related products and research data for other public companies developing products similar to our product candidates.

A third-party valuation consultant was engaged to advise and assist us in connection with the valuations of our Series AA preferred stock warrants as of June 30, 2013, September 30, 2013, December 31, 2013 and September 30, 2014. Because our Series X preferred stock is entitled to a contingent liquidation preference which varies based on the total value of our equity, we were precluded from using a closed-form model, such as the Black-Scholes option pricing method, to value the Series AA preferred stock warrants. Therefore, we employed a Monte Carlo simulation methodology for all models used to determine the fair value of securities in our capital structure.

Our initial equity value, or EV, was determined by utilizing a risk-adjusted discounted cash flow model based upon the market research described above, which is an income approach and was corroborated with market data, coupled with a series of Monte Carlo simulations which projected various equity values under different possible liquidity events including (i) initial public offering, or IPO, (ii) merger and acquisition, or M&A, and (iii) stay-private, or SP, scenarios. The first two scenarios assume the successful completion of our recent Phase 2 clinical trial, while the third scenario considered unfavorable results.

Key assumptions underlying the discounted cash flow model are described below:

- n Based on the research described above and the industry knowledge of our officers and consultants, we developed projections of market penetration, product selling prices and required infrastructure to estimate our future revenues and operating expenses to determine projected free cash flows from our two current product candidates containing *trabodenson*, through patent expiration.
- n *Probability of Success*. To determine the probability of success for the various phases of development required for submission in an NDA, we utilized the clinical trial success rates as published in certain reports.
- n *Time to Liquidity*. For valuations occurring prior to September 30, 2014, we assumed liquidity events occurring between December 31, 2014 and April 1, 2015. For the September 30, 2014 valuation we assumed liquidity events occurring between November 30, 2014 and April 1, 2015.
- n *Risk Free rates*. Risk free rates are based on published or imputed government treasury rates as of each valuation date.
- n *Volatilities*. Volatilities were derived from historical data from guideline publicly traded comparable companies. We used volatilities of 75% to 80% for the June 30, 2013 and September 30, 2013 valuations, 60% for the December 31, 2013 valuation and 65% to 70% for the September 30, 2014 valuation.

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The Monte Carlo-simulated total equity values were then allocated to each type of security using a current value (waterfall) method under each scenario and were then probability-adjusted using probability weights by scenario.

<u>As of date:</u>	<u>IPO</u>	<u>M&A</u>	<u>SP</u>
June 30, 2013	–%	20%	80%
September 30, 2013	–%	20%	80%
December 31, 2013	5%	20%	75%
September 30, 2014	30%	20%	50%

Retrospective 2010 Valuation

We performed a retrospective valuation of our Series X preferred stock as of its issuance in June 2010 for the purpose of determining an appropriate amount to record as stock-based compensation related to this stock grant. A third-party valuation consultant was engaged to advise and assist us in connection with the valuation of our Series X preferred stock as of the June 9, 2010 grant date. We implied the value of the Series X preferred stock from the value of the Series AA preferred stock investment made on the same date. We examined the parameters surrounding the Series AA preferred stock and determined that it adequately represented an arm's length transaction which constituted a Level 2 input for purposes of valuing the Series X preferred stock under a market approach.

The equity value as of this retrospective valuation date was estimated using a Monte Carlo simulation that would result in a per share value for the Series AA preferred stock equal to the price paid in the transaction. The simulated total equity values were allocated to each share class using a current value (waterfall) allocation method. The determined value of the Series X preferred stock represented the mean of all outputs from each Monte Carlo simulation model.

The per share value of Series X preferred stock on a fully marketable basis was estimated at \$0.63 as of June 2010. We applied a discount for lack of marketability of 35% to the value of Series X preferred stock which resulted in a fair value per share of Series X preferred stock on a non-marketable interest basis of \$0.41. A protective put option pricing model was used to estimate the discount for lack of marketability in the aforementioned Series X preferred stock valuation.

Results of Valuation Models May Vary

Valuation models require the input of highly subjective assumptions. Because our shares have characteristics significantly different from that of publicly traded common stock and because changes in the subjective input assumptions can materially affect the fair value estimate, in management's opinion, the existing models do not necessarily provide a reliable, single measure of the fair value of our Series AA preferred stock or Series X preferred stock. The foregoing valuation methodologies are not the only valuation methodologies available and are not expected to be used to value our securities after this offering is complete. We cannot make complete assurances as to any particular valuation for our securities. Accordingly, investors are cautioned not to place undue reliance on the foregoing valuation methodologies as an indicator of future stock prices.

BUSINESS

Overview

We are a clinical-stage biopharmaceutical company focused on the discovery, development and commercialization of therapies for glaucoma. Glaucoma is a disease of the eye that is typically characterized by structural evidence of optic nerve damage, vision loss and consistently elevated intraocular pressure, or IOP. Our lead product candidate, *trabodendoson*, is a first-in-class selective adenosine mimetic that we rationally designed to lower IOP by restoring the eye's natural pressure control mechanism. We developed this molecule to selectively stimulate a particular adenosine subreceptor in the eye with the effect of augmenting the intrinsic function of the eye's trabecular meshwork, or TM. The TM regulates the pressure inside the eye and is also the main outflow path for the fluid inside of the eye that often builds up pressure in patients with glaucoma. We believe that by restoring the natural function of the TM and this outflow path, rather than changing the fundamental dynamics of pressure regulation in the eye, *trabodendoson's* mechanism of action should result in a lower risk of unintended side effects and long term safety issues than other mechanisms of action. Additionally, *trabodendoson's* unique mechanism of action in the TM should complement the activity of existing glaucoma therapies that exert their IOP-lowering effects on different parts of the in-flow and out-flow system of the eye.

Our product pipeline includes *trabodendoson* monotherapy delivered in an eye drop formulation, as well as a fixed-dose combination, or FDC, of *trabodendoson* with *latanoprost* given once-daily, or QD. Statistically significant results for the primary endpoint of our completed Phase 2 clinical trial indicate that *trabodendoson* monotherapy has IOP-lowering effects in line with existing therapies, with a favorable safety and tolerability profile at all doses tested. Our completed Phase 2 trial of *trabodendoson* co-administered with *latanoprost*, a prostaglandin analogue, or PGA, demonstrated IOP-lowering in patients who have previously had inadequate responses to treatment with *latanoprost*. These patients represent PGA poor-responders, as evidenced by persistently elevated IOP at levels that typically require the addition of a second drug to further lower IOP.

We are planning an End-of-Phase 2 meeting with the U.S. Food and Drug Administration, or FDA, for *trabodendoson* monotherapy in the first half of 2015. We expect to initiate a Phase 3 program for *trabodendoson* monotherapy in mid-2015, which will consist of two Phase 3 pivotal trials and a long-term safety study. Based on our estimates of the rate of patient enrollment and assuming commencement in mid-2015, we expect to report top-line data from the first pivotal Phase 3 trial by late 2016 or early 2017. If the primary objectives of our Phase 3 program are met, we plan to submit a New Drug Application, or NDA, to the FDA for marketing approval of *trabodendoson* for the treatment of glaucoma in the United States. We plan to submit a marketing authorization application, or MAA, in Europe after filing our NDA for approval of *trabodendoson* in the United States.

According to IMS Health sales of glaucoma drugs in 2013 were approximately \$2.0 billion in the United States and \$5.6 billion worldwide. According to the British Journal of Ophthalmology, there were an estimated 2.8 million Americans with glaucoma in 2010. Once glaucoma develops, it is a chronic condition that requires life-long treatment. PGAs are the most widely prescribed drug class for glaucoma and include the most widely prescribed glaucoma drug, *latanoprost*. When PGA monotherapy is insufficient to control IOP or is poorly tolerated, non-PGA products, such as beta blockers, alpha agonists and carbonic anhydrase inhibitors, are generally used either as an add-on therapy to the PGA or as an alternative monotherapy. Both PGAs and non-PGAs can cause adverse effects in the eye. In addition, non-PGA drugs can have adverse effects in the rest of the body and have been shown to have poor tolerability profiles. As a result, we believe there is a significant unmet need for a treatment that effectively lowers IOP by restoring outflow and the natural pressure control by the TM, that has a favorable safety and tolerability profile, and that works effectively in combination with other treatments.

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Additionally, no existing treatments offer the potential to directly treat the underlying cause of glaucoma associated vision loss: the death of retinal ganglion cells, or RGCs, the nerve tissue in the retina that relays the visual signal to the brain. We believe that a drug with the potential to make these cells more resilient to the stress caused by glaucoma would achieve broad market acceptance as the treatment preferred among patients and physicians.

We own worldwide rights to all indications for our current product candidates and have patents and pending patent applications related to the composition of matter, pharmaceutical compositions and methods of use for *trabodenoson*, certain of which extend to 2031 with respect to our issued patents and 2034 with respect to our pending patent applications, if issued. If *trabodenoson* receives marketing approval in the United States, we plan to commercialize it by establishing our own specialty sales force in the United States.

Our Strategy

Our goal is to become a leading biopharmaceutical company focused on the discovery, development and commercialization of novel therapies to treat glaucoma. The key elements of our strategy are as follows:

- n **Complete clinical development and seek marketing approval for our lead product candidate, *trabodenoson* monotherapy.** In 2012, we completed a Phase 2 trial of *trabodenoson* monotherapy, which demonstrated statistically significant IOP-lowering and a favorable safety profile. We are planning an End-of-Phase 2 meeting with the FDA in the first half of 2015 to discuss our Phase 3 program for *trabodenoson* monotherapy and to confirm the design and endpoints for the Phase 3 pivotal trials. Based on our estimates of the rate of patient enrollment and assuming commencement in mid-2015, we expect to have top-line data from the first of two pivotal trials in the program by late 2016 or early 2017. If the primary objectives of our Phase 3 program are met, we plan to submit an NDA to the FDA for marketing approval of *trabodenoson* monotherapy for the treatment of glaucoma in the United States. We plan to submit an MAA in Europe after filing our NDA for approval of *trabodenoson* monotherapy in the United States.
- n **Complete clinical development and seek marketing approval of a fixed-dose combination product that includes both *trabodenoson* and *latanoprost*.** As many as half of glaucoma patients, typically those with more severe disease, need to use two or more glaucoma drugs to sufficiently reduce their IOP. The initial treatment for glaucoma patients is usually the use of a prescription eye drop from the PGA drug class. However, as PGAs are often unable to lower IOP sufficiently to reach the patient's medically targeted level, non-PGA products are used either as an add-on therapy to the PGA or as an alternative monotherapy in place of PGAs. There are currently no FDC products approved for use in the United States that include a PGA. We intend to formulate and conduct clinical development in order to seek marketing approval for an FDC product that includes both *trabodenoson* and *latanoprost*, the best-selling PGA. We believe that the favorable safety and tolerability profile and complementary mechanism of action of *trabodenoson* could, if approved, make an FDC with *latanoprost* a highly effective, well-tolerated and more convenient QD regimen for treating glaucoma in patients who have a less functional TM and therefore need additional help lowering their IOP. Our completed Phase 2 trial of *trabodenoson* co-administered with the PGA, *latanoprost*, demonstrated IOP-lowering in patients who have previously had inadequate responses to the PGA, *latanoprost*. These patients represent PGA poor-responders, as evidenced by persistently elevated IOP at levels that typically require the addition of a second drug to further lower IOP.
- n **Establish a specialty sales force to maximize the commercial potential of *trabodenoson* in the United States.** We have retained worldwide commercial rights to *trabodenoson*. If *trabodenoson* receives marketing approval in the United States, we plan to commercialize it by establishing a glaucoma-focused specialty sales force of approximately 150 people targeting

ophthalmologists and optometrists throughout the United States. For markets outside the United States, we intend to explore partnership opportunities through collaboration and licensing arrangements.

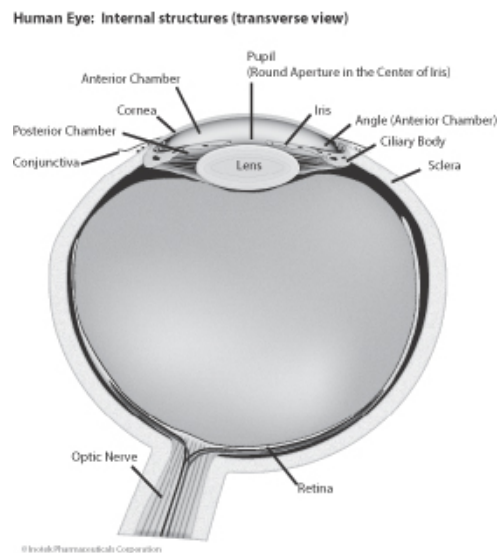
- n **Evaluate the potential of trabodenoson to slow the loss of vision associated with glaucoma or for additional ophthalmic indications.** Based on an animal model that indicated *trabodenoson*'s potential to directly protect RGCs, the nerve tissue in the retina that relays the visual signal to the brain, we plan to conduct clinical trials to measure the rate of vision loss over time, rather than IOP control, in patients treated with *trabodenoson*. Should the results of these trials be positive, we plan to seek labeling indicative of *trabodenoson*'s potential to change the course of glaucoma-related vision loss, beyond that of IOP-lowering effect alone. In addition, this effect, if proven, could address the subset of glaucoma patients that do not have high IOPs, but still suffer from vision loss over time. We are also evaluating other potential indications where therapy with *trabodenoson* may be beneficial.

Glaucoma Overview

Glaucoma is a disease of the eye in which damage to the optic nerve leads to progressive, irreversible vision loss. Its characteristics can include structural evidence of optic nerve damage, vision loss and consistently elevated IOP.

Physiology of the Eye

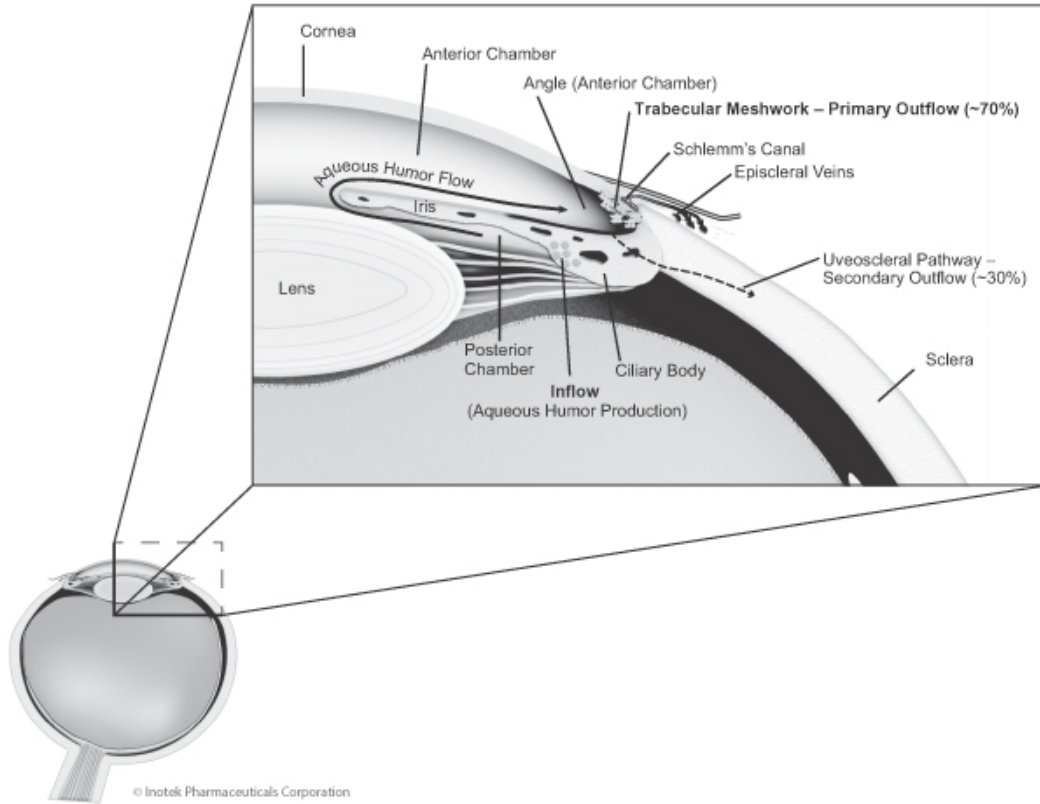
The eye is a fibrous sack which must stay “inflated” with a fluid that maintains the eye’s form, known as aqueous humor, at the proper pressure in order to maintain its shape and effectively convey light to the retina where the light stimulus is then relayed to the brain and converted into a visual image. To maintain the eye’s pressure—and therefore its shape—and as a means to provide nutrients to eye tissue, aqueous humor is constantly produced inside the eye by a tissue known as the ciliary body. The ciliary body sits just behind the iris, which is the colored part of the eye. Aqueous humor flows forward through a hole in the center of the iris, called the pupil, and down into the angle defined by the front of the iris and the back of the cornea, which is the clear covering on the front of the eye. This angle is the same angle referred to in Primary Open Angle Glaucoma, or POAG, the most common form of glaucoma. Below is a diagram depicting certain parts of the eye, including the ciliary body, iris and the angle defined by the front of the iris and the back of the cornea:



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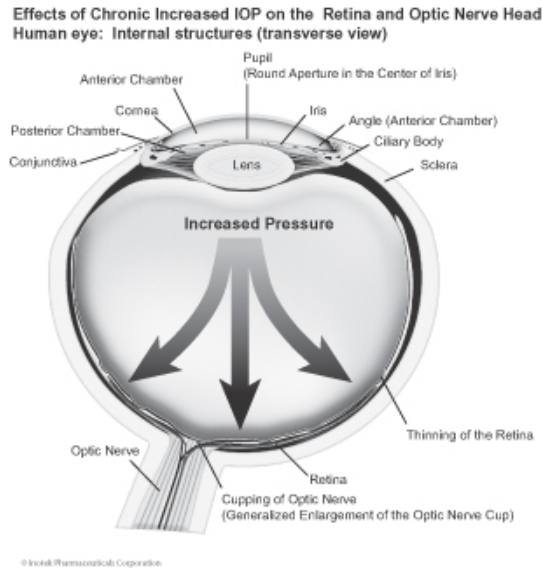
In this angle, around the outer rim of the iris, is the TM, a natural, pressure-regulating drain. It is here that in a healthy, well-functioning eye, approximately 70% of the aqueous humor exits and flows into a drainage canal known as Schlemm's canal, which empties back into the venous drainage system. The remaining approximately 30% of the aqueous humor leaves the eye through a secondary pathway called the uveoscleral pathway. The diagram below reflects the TM and the uveoscleral pathway, the two pathways for the aqueous humor to leave the eye.

Trabecular Meshwork and Aqueous Humor Dynamics



Development of High IOP and its Effects on Glaucoma

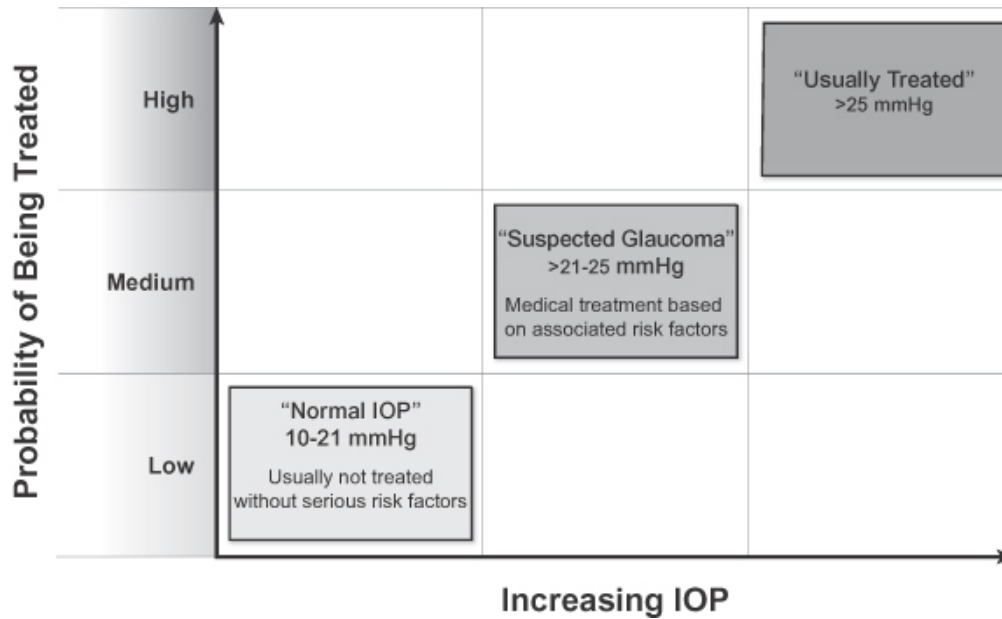
In a typical glaucoma patient, not enough aqueous humor exits the eye, creating excess pressure and compressing the retina, the layer of tissue covering the inside of the back half of the eye that actually converts light into nerve impulses. For people to “see,” these impulses—the visual signal—must be relayed through the optic nerve back to the brain for processing. The cells in the retina require nutrients and oxygen that are delivered via blood vessels entering and exiting the eye through the same opening as the nerve fibers carrying the visual signal. However, when IOP is too high, it is more difficult to pump blood enriched in oxygen and nutrients into the retina. The diagram below reflects the anatomy of the eye and how elevated IOP can impair the nerve tissue in the retina and the optic nerve head.



The deprivation of blood supply to the retina may damage RGCs, the nerve tissue in the retina that relays the visual signal to the brain. These RGCs have long tails called axons that extend back to the brain to carry the visual image. In fact, the optic nerve is nothing more than a bundle of these axons extending to the vision processing center of the brain. When an RGC dies, one of the connections between the retina and the brain is lost, and like most cases when a nerve is damaged or cut—like in a spinal cord injury—there is no known way to repair the damage and, as a result, some portion of vision is permanently lost. Therefore, the root cause of vision loss in glaucoma is not high IOP per se, but the impact of high IOP on the retina, and specifically the RGCs.

Clinical Definition of Glaucoma

There are two key elements to the clinical definition of glaucoma: structural evidence of optic nerve damage and vision loss. Common risk factors include age, family history, corneal thickness and high IOP, commonly measured in millimeters of mercury, or mmHg. Currently, the only known way to treat glaucoma and slow the progression of vision loss is to reduce IOP. While treatment approaches are based on an assessment of the patient's risk factors for vision loss, elevated IOP is by far the best understood contributor to development of glaucoma. We believe that the general treatment patterns in the figure below, relative to a patient's IOP, are typical.



The Ocular Hypertension Treatment Study, or the OHTS Study, was a large, randomized academic trial published in 2002 that followed a total of 1,636 participants who initially had no evidence of glaucoma-related damage. The OHTS Study found that higher IOPs generally indicate a higher risk for progression to glaucoma. An IOP of 10 to 21 mmHg is generally considered in the normal range. Individuals with IOPs greater than 21 and up to 25 mmHg will often not be prescribed drug therapy unless they have evidence of both structural changes and some vision loss, or some combination of these and other risk factors for future vision loss. In fact, the United Kingdom's National Institute of Health and Care Excellence Guidelines, or NICE Guidelines, for the treatment of suspected glaucoma (structural changes but without vision loss) plus elevated IOP, does not recommend treatment of eyes with corneal thickness of 555-590 nm and IOP of 25 mmHg or below. Drug treatment is much more common when patients have IOPs greater than 25 mmHg.

Glaucoma Market

According to the British Journal of Ophthalmology, there were an estimated 2.8 million Americans with glaucoma in 2010. According to the Archives of Ophthalmology, that number will reach approximately 3.4 million by 2020. Approximately 120,000 of these patients are suffering from blindness as a result of destruction to their optic nerve. Glaucoma can affect patients of all ages and ethnicities. However, according to the Archives of Ophthalmology, the prevalence rate (the proportion of people in the population that have glaucoma) increases with age. The most significant increases in

prevalence rates occur above 55 years of age. The prevalence in the population aged 65 years and younger is approximately twice that of the population 55 years or younger. Glaucoma is a chronic condition with no known cure and as a result patients are typically treated for the rest of their lives. Patients with glaucoma report decreased quality-of-life, difficulties with daily functioning, including driving, and are more likely to report falls and motor vehicle collisions.

According to IMS Health, in 2013, 31.2 million prescriptions were written for glaucoma medications in the United States. According to IMS Health, approximately two-thirds of these prescriptions were for generic drugs, including *latanoprost* and *timolol*, which are the top two selling drugs for the treatment of glaucoma. Due to the lack of innovation in medications for glaucoma, most of the drugs used to treat glaucoma are generic drugs. Sales of glaucoma drugs in 2012 were approximately \$1.9 billion in the United States and \$5.5 billion worldwide. In 2013, sales of glaucoma drugs were approximately \$2.0 billion in the United States and \$5.6 billion worldwide, and IMS Health projects U.S. sales to be \$3.1 billion in 2018, an increase of approximately 54% over 2013 sales.

Existing Glaucoma Treatments

The initial treatment for glaucoma patients is typically the use of a prescription eye drop from a class of drugs called PGAs. According to IMS Health, prescriptions for PGAs make up more than half of all prescriptions for glaucoma medications. The PGAs' primary mechanism of action for treating glaucoma is thought to be increasing fluid outflow through the uveoscleral pathway. A number of adverse effects are known to occur in all drugs in the PGA class and, as a result, these side effects are assumed to be associated with the mechanism of action. Most notable of these side effects is eye redness, or conjunctival hyperemia.

When PGAs are insufficient to control IOP or are poorly tolerated, non-PGA products are used either as an add-on therapy to the PGA or as an alternative monotherapy in place of a PGA. Non-PGAs can include a beta-blocker, an alpha (adrenergic) agonist or a carbonic anhydrase inhibitor alone. FDC products containing these non-PGAs are dominated by beta-blocker combinations, which can take the form of a beta-blocker combined with an alpha agonist (Combigan®), or a beta-blocker combined with a carbonic anhydrase inhibitor (Cosopt® or generic equivalent). Finally, there is a non-PGA combination (Simbrinza®) which consist solely of an alpha agonist and a carbonic anhydrase inhibitor. Non-PGA drugs generally have poorer tolerability in the eye than PGA drugs, and some have systemic adverse effects that limit the patient population in which they can be used safely. Moreover, their IOP-lowering effect is generally less than that of PGAs and the vast majority of non-PGAs are required to be dosed multiple times daily.

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The existing classes of treatment available for glaucoma each have varying mechanisms of action, levels of IOP-lowering, side effects and other adverse effects, as described in the following table.

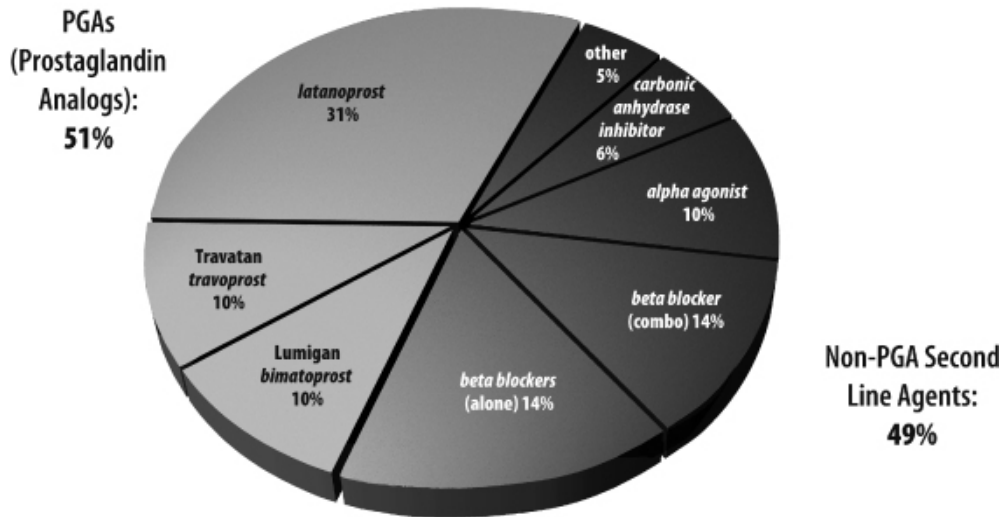
Summary of Existing Glaucoma Treatments:

Drug Classification (Generic Names)	Mechanism of Action*	IOP Reduction**	Known Side Effects*	Other Precautions, Warnings, Contraindications and Adverse Effects*
Prostaglandin analog <i>latanoprost</i> <i>Travatan (travoprost)</i> <i>Lumigan (bimatoprost)</i>	Increase uveoscleral and/or trabecular outflow	6-8 mmHg (25%-33%)	- Eye redness (conjunctival hyperemia) - Visual disturbances (blurred vision, loss of visual acuity) - Itching (pruritis) - Burning - Stinging - Eye pain - Darkening of the eyelids (periocular hyperpigmentation) - Permanent eye (iris) color change	- Macular edema - History of herpetic keratitis - Ocular edema
Beta-adrenergic antagonist, or beta-blocker <i>timolol</i>	Decrease aqueous production	N/A mmHg (20%-25%)	- Burning - Stinging - Eye lid swelling (Blepharitis) - Corneal inflammation (keratitis) - Itching (pruritis) - Eye pain - Dry eyes, foreign body sensation - Visual disturbances - Drooping eye lids (ptosis) - Swelling of retina (cystoid macular edema)	- Muscle weakness - Anaphylaxis - Severe respiratory and cardiac reactions - Contraindicated in bronchial asthma (or history of), severe chronic obstructive pulmonary disease, sinus bradycardia (slower heart rate), second or third degree atrioventricular block, overt cardiac failure, cardiogenic shock
Alpha-adrenergic agonist, or alpha agonist <i>brimonidine</i>	Decrease aqueous production; increase uveoscleral outflow	2-6 mmHg (20%-25%)	- Allergic conjunctivitis - Eye redness (conjunctival hyperemia) - Itchy eyes (eye pruritis)	- Severe cardiovascular disease - Depression - Cerebral or coronary insufficiency - High blood pressure (orthostatic hypertension) - Contraindicated in patients on monoamine oxidase inhibitor therapy
Carbonic anhydrase inhibitor <i>dorzolamide</i> <i>brinzolamide</i>	Decrease aqueous production	3-5 mmHg (15%-20%)	- Bitter taste - Burning - Stinging - Allergic conjunctivitis - Corneal inflammation (superficial punctate keratitis)	- Conjunctivitis - Eye lid reactions - Sulfonamide allergy

* According to FDA-approved labeling.

** mmHg, according to FDA-approved labeling; % from baseline, according to American Academy of Ophthalmology Glaucoma Panel.

The chart below illustrates the respective proportions of glaucoma prescriptions issued in 2013 by class, according to IMS Health.



Glaucoma Treatments Currently in Development.

We believe there are currently two leading classes of new drugs in clinical development for glaucoma: Rho kinase inhibitors and adenosine mimetics.

A Rho kinase inhibitor recently entered Phase 3 clinical trials and is the furthest along of the potential new glaucoma therapies: Aerie Pharmaceuticals, Inc.'s AR-13324. Like with PGAs, conjunctival hyperemia has been reported with the Rho kinase inhibitor class.

Adenosine mimetics are compounds that mimic or simulate some of the actions or effects of adenosine, a naturally-occurring molecule with many, diverse biologic effects. There are four known subreceptors that are specific to adenosine: A1, A2a, A2b and A3. These subreceptors can cause many effects if stimulated. In the adenosine mimetic group, there are compounds targeting three different adenosine subreceptors: A1, A2a and A3. We believe that A1 selectivity is necessary for optimal IOP-lowering effect. To our knowledge, the two compounds being developed by other companies that were selective for the A2a subreceptor have been discontinued from clinical development for glaucoma. A third compound being developed that we believe targets both the A1 (IOP-lowering) and the A3 (IOP-increasing) subreceptors is still being studied. We believe that because this third compound is dosed orally, it is challenging to isolate its pharmacologic effects solely to the eye. We believe we are the only company to be developing an adenosine mimetic highly selective for the A1 subreceptor for ophthalmic indications.

Market Opportunity

Since 1996, there have been no new drug classes approved in the United States for glaucoma. As a result, there are persistent inadequacies in the tools that ophthalmologists use to manage patients with glaucoma. Thus, we believe there is a need for an innovative glaucoma treatment that offers:

- n significant IOP-lowering;
- n a favorable safety and tolerability profile;
- n a novel mechanism of action that complements existing therapies; and
- n convenient dosing.

Our Solution—Trabodенoson

Trabodенoson is a first-in-class selective adenosine mimetic that is designed to lower IOP with a mechanism of action that we believe augments the natural function of the TM. In addition, by enhancing a naturally occurring process to make the eye function more like that of a younger, healthier eye, rather than changing the fundamental dynamics of pressure regulation in the eye, we believe there is a lower risk of unintended side effects that could result in safety or tolerability issues in the long term. We believe *trabodенoson* enhances metabolic activity in the TM, which helps clear the pathway for the aqueous humor, the fluid in the eye, to flow out of the eye, thereby lowering IOP. We believe that *trabodенoson*'s mechanism of action improves the function of the eye, and that *trabodенoson* has the potential to be used as a monotherapy in place of current glaucoma treatments. In addition, we expect that *trabodенoson*'s purported mechanism of action in the TM should complement the activity of all currently-approved glaucoma drugs that work in other ways to lower IOP.

We believe the following elements of *trabodенoson*'s product profile will drive its adoption, if approved, in the glaucoma market:

- n **Meaningful IOP-Lowering.** After four weeks of monotherapy treatment in a Phase 2 clinical trial in glaucoma patients who had discontinued any other medications, *trabodенoson* (500 mcg) lowered IOP by an average of 4.0 to 7.0 mmHg from study baseline and 3.5 to 5.0 mmHg from diurnal baseline, over the dosing interval. Moreover, IOP-lowering at week four was significantly better than IOP-lowering at week two. IOP-lowering for currently-approved glaucoma therapies, according to their FDA-approved labels, ranges from 2-8 mmHg. A similar trend in improvement of IOP with increasing treatment time was observed in our recently completed Phase 2 trial of *trabodенoson* co-administered with *latanoprost* in a population of PGA poor-responders.
- n **Favorable Safety Profile.** In four completed *trabodенoson* clinical trials over a wide range of doses, no patients have been withdrawn due to a *trabodенoson*-related side effect in the eye. In our multiple-dose Phase 2 monotherapy clinical trial, we did not observe side effects in the eye that would indicate a tolerability problem at any of the doses tested. Specifically, there was no change in the background rate of conjunctival hyperemia in the patient population when treatment with *trabodенoson* was initiated or continued for up to four weeks, even at the highest dose tested. Furthermore, in our most recently completed multiple-dose Phase 2 trial of *trabodенoson* co-administered with *latanoprost* in a population of PGA poor-responders, there also was no change in the rate of hyperemia from study baseline after four, eight or 12 weeks of treatment. No systemic effects of the drug have been identified, despite rigorous monitoring including cardiac and renal function, when administered as an eye drop. We believe this safety profile could be important in the potential for *trabodенoson* to become a preferred treatment alternative for patients that experience undesired side effects with existing therapies.

- n **Unique, Complementary Mechanism of Action.** We believe that *trabodenoson*'s mechanism of action augments a naturally occurring process by clearing the path for aqueous humor outflow in the TM. We expect that this mechanism of action should complement all currently-approved glaucoma drugs which work in other ways to lower IOP, including by reducing aqueous humor production and increasing outflow through the uveoscleral pathway. This complementary mechanism was confirmed in patients already receiving *latanoprost* therapy in a recently completed multiple-dose Phase 2 trial. In this Phase 2 trial of *trabodenoson* co-administered with *latanoprost* in a population of PGA poor-responders, patients on *latanoprost* experienced an additional 5.5 mmHg IOP lowering from their study baseline and 4.3 mmHg from their diurnal baseline after 12 weeks treatment (eight weeks BID plus four weeks QD). These results make *trabodenoson*, with its favorable safety profile, a candidate to add to other glaucoma medications when a further reduction of the IOP is desirable.
- n **Convenient Dosing.** Current Phase 2 clinical data indicate that QD dosing with *trabodenoson* in PGA poor-responders is well tolerated and lowers IOP significantly. We believe a QD dosing regimen minimizes the burden on patients to remember to take their medication, thus, we believe, potentially improving compliance with the therapy. If confirmed and approved in our Phase 3 program, QD dosing would make *trabodenoson* easier to use than most non-PGA products, and *trabodenoson*'s dosing frequency would match the best-in-class PGAs, which would facilitate an FDC with a PGA that could be dosed QD.

We believe that *trabodenoson*'s efficacy, complementary mechanism of action, dosing and safety profile make it well suited for use in an FDC with a PGA, which could be an effective and convenient option for patients currently using two or more glaucoma drugs to lower IOP.

***Trabodenoson* Discovery—Background**

Adenosine is a naturally occurring molecule that has a broad array of biological effects. Its effects are mediated through activity at four known adenosine-specific subreceptors: A1, A2a, A2b and A3. These subreceptors are present throughout the body on the cells of different tissues, and at different concentrations. When adenosine binds and activates these different subreceptors, it can cause many diverse effects.

In 1995, a study was published in the *Journal of Pharmacology and Experimental Therapeutics* describing how adenosine mimetics can lower IOP by activating adenosine A1 subreceptors in rabbits. In 2001, an animal study published by the University of Pennsylvania School of Medicine confirmed that stimulation of A1 lowered IOP, but that stimulating A2a or A3 subreceptors increased IOP.

Our scientists began a rational deconstruction of this complex biology in order to isolate the protective activity of adenosine and to incorporate it into novel therapeutics. Beginning with the structure of adenosine, we created a series of molecules to bind with, and therefore induce the biological effects associated with stimulation of a single adenosine subreceptor. In this way, the undesired biological actions of native adenosine were systematically removed, one by one by eliminating the activity at non-target subreceptors. This rational drug design process relied heavily on our understanding of structure activity relationships, which relate the variation in the structure of the adenosine mimetics and their ability to bind and activate ideally just one adenosine subreceptor. Ultimately, a number of molecules emerged from these efforts with isolated and specialized activity, including some adenosine mimetics that only targeted the A1 subreceptor, leading to the discovery of *trabodenoson*.

The high affinity binding of *trabodenoson* to the A1 subreceptor is shown by the small K_i in the table below, and its selectivity for this IOP-lowering activity is indicated by much higher K_i 's for A2a and A3 receptors where its binding is relatively weak.

Trabodенoson is a Potent and Selective A1 Adenosine Mimetic

Compound	A1 (Ki, nM)	A2a (Ki, nM)	A3 (Ki, nM)	Selectivity Ratios	
				A1/A2a	A1/A3
Trabodенoson	0.97	4,690	704	4,835x	725x

Trabodенoson's key characteristics include:

1. Potency—Ki in single-digit nM range (0.97nM);
2. High Selectivity—over A2a> 1000-fold and A3>500-fold;
3. Ease of Fat Solubility—allowing corneal penetration so it can reach the TM; and
4. A high compatibility with the often sensitive tissues in the front of the eye.

We believe that *trabodенoson* is the only adenosine mimetic with high selectivity for the single desired target of action, the A1 subreceptor, and that stimulation of this subreceptor in the TM effects a meaningful improvement in the metabolic activity in the TM that helps to clear the pathway for the aqueous humor to flow out of the eye, lowering IOP. This metabolic activity takes the form of an increase or up-regulation of proteases—such as Protease A or MMP-2—that digests and removes accumulated proteins that can block the healthy flow of the aqueous humor out of an eye with glaucoma. This metabolic activity is a naturally occurring or endogenous process that is enhanced by treatment with *trabodенoson*. We believe this process does not radically change the way the TM controls eye pressure, but rather restores the natural process of pressure control in the TM, which is different from other therapies that decrease aqueous humor production or increase the permeability of the eye to increase outflow.

Product Pipeline

Our product pipeline includes *trabodенoson*, as a monotherapy delivered in an eye drop formulation, as well as an FDC that includes *trabodенoson* plus *latanoprost* in an eye drop formulation, which we refer to as our FDC product candidate. We are also evaluating the potential for *trabodенoson* to directly target optic nerve neuropathies. The following table summarizes key information about our product development programs.

Program	Preclinical	Phase 1	Phase 2	Phase 3	Status	Ownership
Glaucoma and Ocular Hypertension						
Trabodенoson	[Progress bar spanning Preclinical, Phase 1, and Phase 2]				Entering Phase 3 Mid-2015	Worldwide Rights 100% Ownership
Trabodенoson plus Latanoprost	[Progress bar spanning Preclinical and Phase 1]				Phase 2 Trial Completed	Worldwide Rights 100% Ownership
Optic Neuropathies and Degenerative Retinal Diseases						
Trabodенoson	[Progress bar spanning Preclinical]				Advancing Toward the Clinic	Worldwide Rights 100% Ownership

Trabodенoson

Our first product candidate, *trabodенoson*, is a monotherapy dosed in an eye drop. Our clinical trials have shown that *trabodенoson* has significant IOP-lowering effects, convenient dosing and also has a favorable safety profile when compared to the currently available glaucoma treatments, such as PGAs and non-PGAs.

Trabodenoson-Latanoprost Fixed-Dose Combination

As many as half of glaucoma patients, typically those with more severe disease, need to use two or more glaucoma drugs to sufficiently reduce their IOP. The available FDC products increase IOP-lowering but also have unpleasant tolerability challenges in the eye, as well as the adverse effects, safety warnings, precautions and contraindications that the two individually-dosed drugs carry in their FDA-approved package inserts. An FDC product containing a PGA plus a non-PGA has not yet been approved in the United States. We believe that none have gained FDA approval because the modest incremental benefit in IOP-lowering seen when a non-PGA is added to a PGA is too small in the context of the added side effects and clinical risks that come with the combined drugs. In contrast, based on our completed Phase 2 study in which *trabodenoson* therapy was co-administered with *latanoprost*, we believe that an FDC containing a PGA and *trabodenoson* will provide significant incremental efficacy while adding very few side effects or clinical risks to the profile of the PGA alone. We believe such a product would be well received in the glaucoma market, especially for use in patients with higher IOPs that currently use two or more glaucoma drugs to lower IOP.

Our second product candidate is a combination of *trabodenoson* with a PGA, *latanoprost*, to create an FDC. While our FDC product candidate has not yet been formulated as an FDC or administered to humans, we expect that *trabodenoson* will not adversely affect the safety profile of *latanoprost*, or any other currently-approved PGA, because of its favorable safety and tolerability profile from our completed Phase 2 trial in which *trabodenoson* and *latanoprost* were co-administered. We believe that *trabodenoson*'s mechanism for lowering IOP complements the mechanism of action of *latanoprost* and other PGAs, which work primarily on the secondary uveoscleral outflow, because *trabodenoson* is believed to act through the TM, the largest aqueous humor outflow path in the eye. In fact, our IOP-lowering studies in cynomolgus monkeys have shown that IOP-lowering is significantly better when the eye is treated with both *trabodenoson* and *latanoprost*, as compared to treatment with *latanoprost* alone. Our completed Phase 2 trial of *trabodenoson* co-administered with *latanoprost* also demonstrated IOP-lowering in patients who have previously had inadequate responses to *latanoprost*.

These patients represent PGA poor-responders, as evidenced by persistently elevated IOP at levels that typically require the addition of a second drug to further lower IOP. The safety profile of *trabodenoson* co-administered with *latanoprost* is similar to that of *trabodenoson* monotherapy. Moreover, *trabodenoson* had a sufficiently long duration of action, allowing it to be effectively dosed QD in conjunction with *latanoprost*. Assuming the *trabodenoson* safety profile remains favorable, a *trabodenoson-latanoprost* FDC therapy could present a much improved risk/benefit profile over other combinations of currently-approved PGAs and non-PGAs.

Trabodenoson for Optic Neuropathy and Degenerative Retinal Diseases

The neuroprotective potential of *trabodenoson* is supported by the basic biology of adenosine, which has shown that the stimulation of the A1 receptor can protect tissues of the central nervous system. A pre-clinical study of the impact of high IOP on RGCs showed that *trabodenoson* could protect this key population of cells in the retina that, when lost, result in the irreversible vision loss associated with glaucoma. While we have not yet conducted a formal program of studies to prove neuroprotection, we plan to study the potential of *trabodenoson* monotherapy and our FDC product candidate to slow the loss of vision significantly more than attributable to IOP lowering alone, either in glaucoma patients or in other rarer forms of optic nerve neuropathies.

In a pre-clinical model, designed to screen molecules for their potential to treat dry age-related macular degeneration (d-AMD), *trabodenoson* eye drops prevented the loss of cells in the outer retina that result from the exposure to intense blue light. The cells preserved include rods and cones, known as photoreceptors, and retinal pigmented epithelial cells which support the rods and cones. Of note, the retinal pigmented epithelial cells are known to express the A1 receptor. The rods and cones are two

of several types on neurons in the retina, which along with the retinal ganglion cells, relay the visual signal to the brain. Additional pre-clinical work is required to confirm the potential of *trabodenoson* to treat dry-AMD. However, once proof of concept has been established, the accrued clinical experience with *trabodenoson* in glaucoma will accelerate initiation of a clinical evaluation of the drug in dry-AMD.

Clinical Data and Development Strategy

Our planned Phase 3 program for *trabodenoson* as a monotherapy is expected to incorporate both the FDA-acceptable clinical endpoint of IOP, and to include studies with three months of treatment, both of which are well-known and accepted standards for pivotal trials for glaucoma. We are planning an End-of-Phase 2 meeting with the FDA in the first half of 2015 to discuss our Phase 3 program for *trabodenoson* monotherapy and to confirm the design and endpoints for the Phase 3 pivotal trials. We plan to start our Phase 3 program for *trabodenoson* monotherapy in mid-2015, and we expect to report top-line data from the first pivotal trial in the program by late 2016 or early 2017. If the primary objectives of our Phase 3 program are met, we plan to submit an NDA. We are planning to commence our Phase 3 program for the FDC of *trabodenoson* and *latanoprost* in 2017.

Clinical Results

Trabodenoson Phase 2 Tolerability, Safety and Efficacy of Monotherapy in Glaucoma Patients

In 2012, we completed a successful Phase 2 dose-ranging clinical trial in 144 patients with OHT (ocular hypertension with no visual field loss) or POAG, which demonstrated a clear dose response to *trabodenoson*. Statistically significant results for the primary endpoint of our Phase 2 clinical trials indicate that *trabodenoson* has IOP-lowering effects in line with the best existing therapies, with a favorable safety and tolerability profile at all doses tested. The trial was randomized, double-masked, placebo-controlled, and evaluated the efficacy, tolerability, safety, and pharmacokinetics of *trabodenoson* over two or four weeks of BID dosing with eye drops. Separate groups of patients received *trabodenoson* doses of 50, 100 or 200 mcg for two weeks, or 500 mcg for four weeks, and their IOP-lowering efficacy and safety data were compared to groups of patients dosed concurrently with placebo eye drops, also BID. To enter the trial, otherwise healthy patients had to have elevated IOPs (greater than or equal to 24 mmHg and less than or equal to 34 mmHg) when off of all glaucoma drugs, and a diagnosis of either OHT or POAG.

The primary efficacy endpoint was IOP (measured throughout the day). The primary efficacy analysis calculated the reduction in IOP from the patients' IOP at the beginning of the study (recorded before active drug was administered at the study 8 AM baseline). A second analysis calculated the reduction in IOP from a time-matched diurnal baseline. The IOP drop from baseline for each dose group (50, 100, 200 and 500 mcg) was then compared statistically to the IOP drop of a matched placebo group treated concurrently.

Safety evaluations included recording of withdrawals or terminations and adverse events. In each patient, the treated eye was evaluated at regular intervals with internal eye exams (including pupil dilation with slit lamp examination of the inside of the eye) and external eye examinations (of the outside surface of the eye, eye lids and surrounding tissue). Visual function was also assessed. Overall health was assessed by physical exam, vital signs (including heart rate and blood pressure), electrocardiograms, or ECGs, for heart function and analysis of urine and blood samples (clinical chemistry), and plasma samples were collected to analyze the pharmacokinetic parameters, such as the half-life of any drug detected in the systemic circulation.

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Results

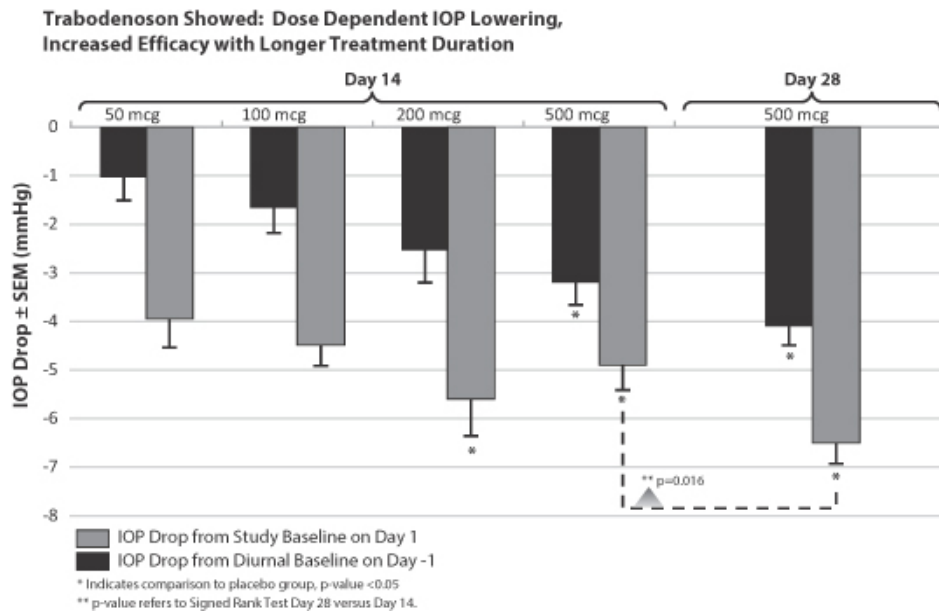
Patient Population: The characteristics of the patients in the dose groups were similar, including their ages, baseline IOPs, and diagnoses (OHT or POAG). The table below reflects information regarding the demographics of the patient populations that participated in the study, and shows that both diagnoses groups had similar baseline IOPs, and that groups treated with *trabodenoson* had characteristics that were similar to the placebo groups to which they were compared.

Baseline Demographics and IOP

	Placebo	Trabodenoson Dose				Total Active
		50 mcg	100 mcg	200 mcg	500 mcg	
Mean Age	59	56.6	55.6	53.8	57.6	56.3
n	59	17	17	17	34	85
Baseline IOP (mmHg)	26.6	26.1	25.6	26.1	26.2	26
OHT n(%)	22(37.3)	6(35.3)	8(47.1)	6(35.3)	14(41.2)	34(40.0)
Baseline IOP (mmHg)	26.7	27.2	25	27.1	26.3	26.3
POAG n(%)	37(62.7)	11(64.7)	9(52.9)	11(64.7)	20(58.8)	51(60.0)
Baseline IOP (mmHg)	26.5	25.5	26.1	25.5	26.1	25.9

Efficacy

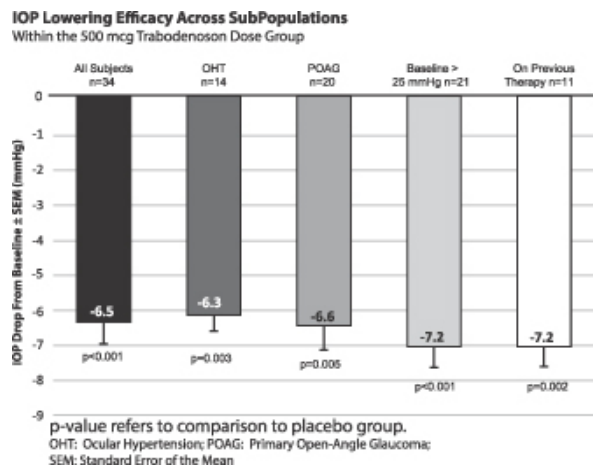
Both the 200 mcg dose and the 500 mcg doses at day 14, and the 500 mcg dose at day 28, met the primary endpoint demonstrating statistically significant improvements in IOP relative to the matched placebo ($p < 0.05$ indicating a greater than 95% probability that the result was not a random event). Moreover, a clear increase in IOP-lowering efficacy was seen with increasing doses of *trabodenoson* (i.e. a dose response), and the most efficacious *trabodenoson* dose tested was the highest dose of 500 mcg. *Trabodenoson*'s primary efficacy endpoint (IOP drop from baseline) measured after four weeks of treatment (at day 28) had improved significantly from the same endpoint when measured after two weeks of treatment (at day 14). This improvement with treatment time was statistically significant ($p = 0.016$). In the figure below, a clear trend for increasing IOP-lowering efficacy with increasing dose is evident. For the 500 mcg dose, the statistically significant increase in efficacy between day 14 and day 28 is illustrated on the right side of the figure.



On average, doubling doses between 50 and 500 mcg increases IOP lowering from diurnal baseline by approximately 0.7 mmHg.

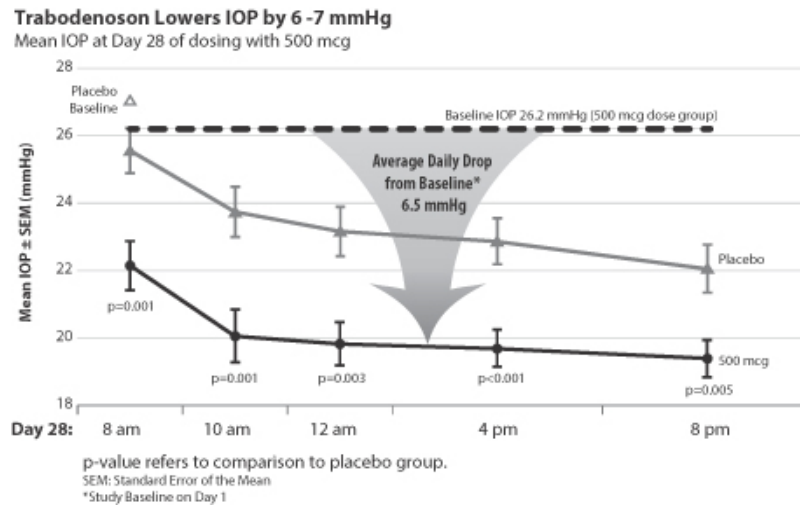
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The IOP-lowering at the highest and most efficacious dose (500 mcg) was evaluated in various patient sub-populations to gain a sense of the ability to generalize the results over a diverse patient population. The figure below compares the IOP drop from study baseline (the primary endpoint analysis) for all patients (far left) to various sub-populations to the right of that. All of these patient subgroups responded to *trabodenoson*'s IOP-lowering effect.



When we rationally designed *trabodenoson*, our primary objective was to restore pressure regulation in eyes with high IOP, a risk factor for glaucoma. A healthy eye has a natural circadian rhythm that dictates a pattern of IOP over the day. We found that this pattern, or the shape of the IOP circadian rhythm curve throughout the day, is relatively unchanged by *trabodenoson* treatment, except that the overall IOP during the day is reduced by *trabodenoson* treatment as intended. We believe this indicates that the TM has been restored to an improved function resulting in a more normal average pressure, and that this normal daily IOP pattern indicates that the fundamental biology of pressure management in the eye has been preserved. The natural daily changes in IOP still exist, but at a significantly lower average pressure that we believe is less damaging to RGCs and the optic nerve.

The figure below shows diurnal IOP for the highest dose tested and the placebo group at day 28, and the primary endpoint for the trial (average daily drop from study baseline).



Furthermore, after 28 days of BID dosing, the IOP-lowering effect persisted for an additional 24 hours after the last dose of medication, which we believe indicates the potential for *trabodenoson* monotherapy to be dosed QD.

Safety and Tolerability

There were no serious adverse events or patients that withdrew due to safety findings that occurred once the drug was given. There were no signs of systemic safety issues in any of the non-ocular examinations, ECG evaluations or laboratory tests performed. Systemically, administration of *trabodenoson* eye drops was found to be well-tolerated. There were no changes noted from internal eye examinations or visual testing during drug treatment. The rate of conjunctival hyperemia in patients treated with *trabodenoson* was unchanged from the placebo run-in period (study baseline). There was no maximum tolerated dose determined because all doses tested were well-tolerated.

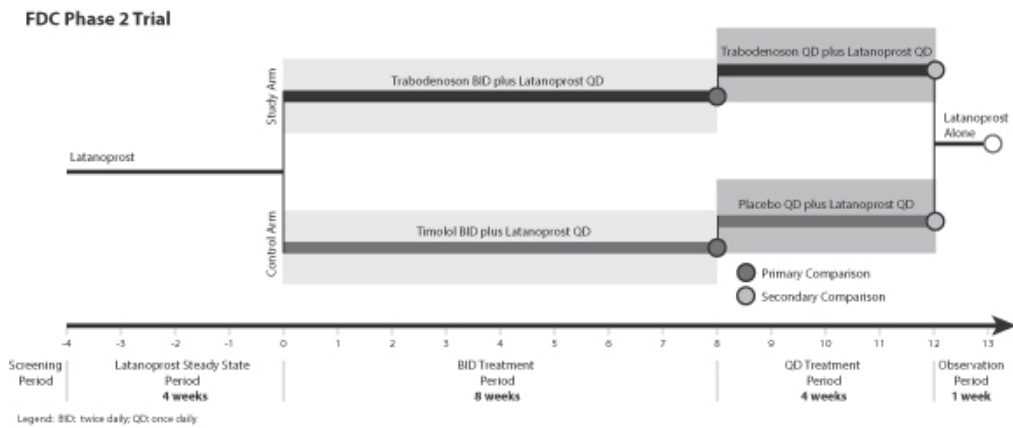
Trabodenoson Phase 2 Co-Administered with Latanoprost in Glaucoma Patients

In October 2014, we received top line results from a Phase 2 trial in patients with POAG or OHT, in which *trabodenoson* eye drops were co-administered with *latanoprost* eye drops. The objective of the study was to evaluate the safety and additional IOP-lowering effect of *trabodenoson* when added either BID or QD to *latanoprost*. This trial enrolled 101 patients who had IOPs of greater than or equal to 24 mmHg despite one month of previous treatment with *latanoprost*. These patients are considered PGA poor-responders, as evidenced by persistently elevated IOP at levels that typically require the addition of a second drug to further lower IOP. The trial was randomized, double-masked, placebo- and active- controlled.

Following four weeks of *latanoprost* eye drops, otherwise healthy patients with an IOP greater than 24 mmHg and a diagnosis of either OHT or POAG were randomized for Part 1 of the study. In Part 1, the study arm consisted of BID-dosed *trabodenoson* (1.5%; 500 mcg nominal dose) plus *latanoprost* 0.005%, at the approved dose, QD. The control arm consisted of *timolol* 0.5%, an approved BID dose plus *latanoprost* 0.005% QD. Patients in both arms were treated for a total of eight weeks in Part 1 of the study to evaluate the additive effects of *trabodenoson* BID to *latanoprost* QD, with an active control consisting of *timolol* BID.

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At the end of Part 1, after eight weeks of treatment, patients began Part 2 of the study. In Part 2, the study arm was switched to a QD dose of *trabodenoson* (3.0%, 1,000 mcg nominal dose) plus *latanoprost* 0.005% QD, and patients in the control arm were switched to placebo QD plus *latanoprost* 0.005% QD. Part 2 was designed to measure the additive effects of *trabodenoson* QD to *latanoprost* QD over an additional four weeks. The number of patients planned for enrollment was ~100 (50 patients per arm) for Part 1 and ~80 (40 patients per arm) for Part 2. This trial is outlined below.



The primary efficacy endpoint was IOP, measured throughout the day. The efficacy analyses calculated the reduction in IOP from the patients' IOP at study baseline and diurnal baseline (recorded after taking *latanoprost* for four weeks but before *trabodenoson* or *timolol* were added). In Part 1, these IOP drops from baseline, on *latanoprost*, were compared to the IOP drops of the control arm treated concurrently with *timolol*. In Part 2, the IOP drop from baseline in patients receiving *trabodenoson* QD plus *latanoprost* QD was compared to patients receiving placebo QD plus *latanoprost* QD.

Safety evaluations included recording of withdrawals or terminations and adverse events, or AEs. In each patient, both eyes were evaluated at regular intervals with internal eye exams (including pupil dilation with slit lamp examination of the inside of the eye) and external eye examinations (of the outside surface of the eye, eye lids and surrounding tissue). Visual function was also assessed. Overall health was assessed by physical exam, vital signs (including heart rate and blood pressure), electrocardiograms, or ECGs, for heart function and analysis of urine and blood samples (clinical chemistry). Plasma samples were collected to analyze the pharmacokinetic parameters, such as the half-life of any drug detected in the systemic circulation.

Results

Patient Population: The characteristics of the patients in the dose groups were similar, including their age, and baseline IOPs, which were not adequately controlled following a four-week run-in using *latanoprost* therapy. The table below includes information on the demographics of the patients that participated in the study.

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Baseline Demographics and IOP

ITT population	Part 1		Part 2	
	Trabodenoson BID	Timolol BID	Trabodenoson QD	Placebo QD
n	50	51	37	43
Mean Age	62	61	63	61
Baseline IOP using <i>latanoprost</i> (mmHg)	25.71	25.86	25.68	25.86
OHT n (%)	23 (46%)	13 (25.5%)	15 (40.5%)	12 (28%)
Baseline IOP using <i>latanoprost</i> (mmHg)	25.78	25.65	25.93	25.29
POAG n (%)	27 (54%)	38 (74.5%)	22 (59.5%)	31 (72%)
Baseline IOP using <i>latanoprost</i> (mmHg)	25.65	25.93	25.50	26.08

Discontinuations:

In Part 1, there were four discontinuations due to either protocol violations or exclusionary criteria (three patients were in the *trabodenoson* group and one was in the *timolol* group). In Part 2, there were two discontinuations; one was discontinued due to an AE and the other did not to return during follow-up, but provided no explanation (both were in the placebo group).

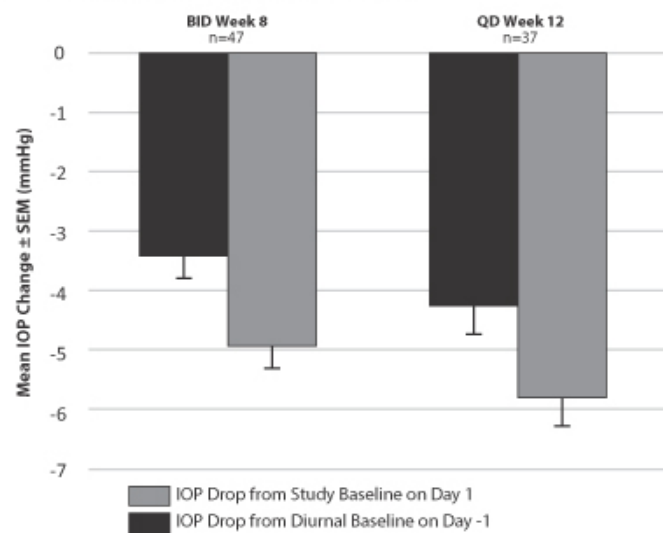
Efficacy

After eight weeks of BID dosing in Part 1, patients treated with *trabodenoson* co-administered with *latanoprost* experienced further mean reductions of IOP of 3.4 and 4.9 mmHg from diurnal and study baselines, respectively, beyond the IOP-lowering of *latanoprost*. After switching to QD *trabodenoson* in Part 2, and treating for an additional four weeks, QD dosing with *trabodenoson* resulted in a mean reduction in IOP of 4.3 and 5.8 mmHg from diurnal and study baseline, respectively, from the IOP on *latanoprost* alone. At the end of Part 2 (after 12 weeks), the IOP-lowering seen in the Study Eye (the eye treated with *trabodenoson*) was statistically significantly greater than the IOP drop of the patient's Control Eye (the patient's other eye that only received QD *latanoprost*).

In Part 1 the IOP drop at the end of 8 weeks of treatment, in this population of *latanoprost* poor-responders, was less than *timolol* BID (0.5%) which dropped pressure 6.1 and 7.6 mmHg, on average from diurnal and study baselines, respectively.

Trabodенoson: Effective with Once- or Twice-Daily Dosing

IOP change from baseline on latanoprost, ITT



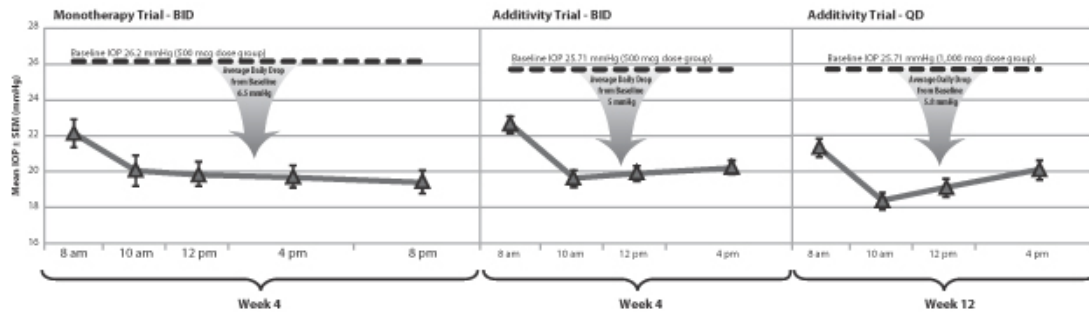
In Part 2 of the trial, QD *trabodенoson* lowered IOP an additional 4.3 and 5.8 mmHg from diurnal and study baseline, respectively, beyond the effect of *latanoprost* alone in this population of *latanoprost* poor-responders.

Consistency of Results across Phase II Studies

Mean reductions in IOP from study baseline ranging from 5.0 mmHg after four weeks of BID treatment to 5.8 mmHg after four weeks of QD treatment in the trial were similar to the 6.5 mmHg IOP reduction seen at the end of the four week *Trabodенoson Phase 2 Tolerability, Safety and Efficacy of Monotherapy in Glaucoma Patients* trial (the monotherapy trial). In the monotherapy trial, patients received only *trabodенoson*. The patients in the 2014 additivity trial represented a different patient population than those studied in the monotherapy trial. These patients had inadequate responses to *latanoprost*, as evidenced by persistently high IOP, despite *latanoprost* treatment for four weeks prior to randomization. This patient population typically requires the addition of a second drug to their PGA therapy to further lower IOP. Patients in the monotherapy trial, by contrast, were removed from all glaucoma medications, and thus represented a typical patient population studied in a Phase 3 glaucoma trial. Despite these differences in the patient populations, the efficacy of *trabodенoson* was consistent across trials, suggesting that *trabodенoson*'s mechanism of action is effective across a wide-range of glaucoma disease severity.

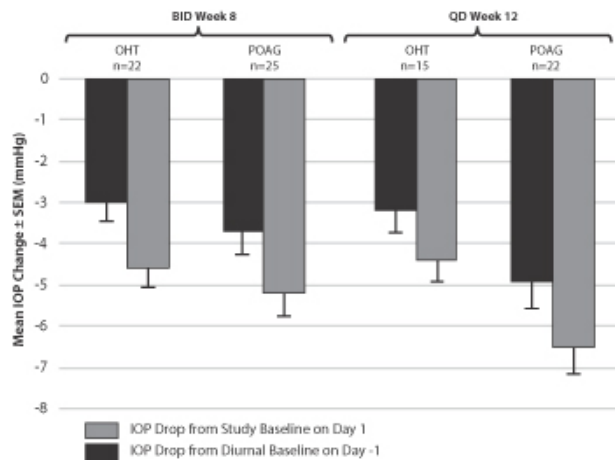
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Demonstrates Consistent Efficacy in a Tougher Patient Population:
 Comparison of Previous Monotherapy Results and Additivity Results



Both OHT and POAG patients responded to *trabodendoson* with POAG subjects showing the largest IOP drops.

Trabodendoson: OHT vs POAG
 IOP change from baseline on latanoprost, ITT

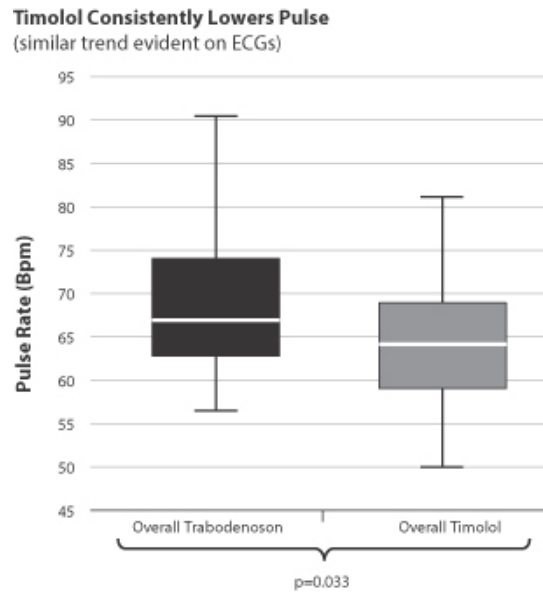


Safety and Tolerability

With the exception of a single patient who received placebo plus *latanoprost*, no patients dropped out of the trial as a result of a drug-related adverse effect or due to drug intolerability. *Trabodenoson* was well tolerated in the eye, with no drug related hyperemia detectable by ocular exam at four, eight or 12 weeks. Mild hyperemia seen on the first day of dosing in a minority of patients was back to baseline by the 1 week post dose ocular exams. *Trabodenoson* had no detectable systemic effects in any of the non-ocular examinations, ECG evaluations or laboratory tests performed. Overall adverse events were similar in the BID phase (*Trabodenoson* 36%; *Timolol* 29%), with the *trabodenoson* rate dropping to 26% without the first-day hyperemias, and were also similar in the QD phase (*Trabodenoson* 16%; Placebo 14%) between treatment groups. However, *timolol* (dosed in one eye only) had systemic adverse events associated with systemic beta blockade, including: dizziness, headache, fatigue and symptomatic sinus bradycardia.

Patients randomized to *timolol* also had lower pulse rates than in the *trabodenoson* group (the pulse rate was measured 30 minutes and one hour after dosing). This difference was statistically significant in the overall data ($p=0.033$) as well as at the individual time points ($p=0.041$ and $p=0.030$ at the 30 minute and one hour post-dose time points, respectively).

The pulse rates for both groups are shown in the boxplot below, which includes the minimum and maximum values, median (white line), and the boundaries of the upper and lower quartiles (top and bottom of the box).



Trabodenoson Repeat-Dose Safety and Tolerability in Adult Healthy Volunteers

We conducted a randomized, double-masked, placebo-controlled, dose-escalation trial in healthy volunteers, aged 35-65, with the primary objective of characterizing the safety and tolerability profile of *trabodenoson* and identifying a maximum tolerated dose (a dose that was associated with limiting or intolerable side effects).

Ten subjects were assigned to each of seven consecutive cohorts (six to active *trabodenoson* and four to matched placebo). Cohorts 1 through 6 consisted of sequential, escalating doses (200, 400, 800, 1600, 2400 and 3200 mcg of *trabodenoson*) which were given topically to a single eye, BID, for 14 days. The 3200 mcg dose was the highest dose that could be administered to a single eye at one time due to, among others, the limitations of the formulation. Cohort 7 included eight step-wise escalating doses of *trabodenoson*, given in both eyes. Doses given to this cohort ranged from 200-3200 mcg in a single eye and totaled 1800-6400 mcg for both eyes combined. Dose escalation to the next dose level proceeded only after masked review of the safety data from the preceding dose level.

Systemic safety assessments included: adverse events, other medications used, physical examinations, vital signs, clinical laboratory tests of blood and urine samples, extensive monitoring of cardiac function and health (12-lead ECG tracings, continuous cardiac monitoring and cardiac troponin concentrations), lung function testing (FEV₁), sleep (Karolinska Sleepiness Scale), kidney function and withdrawals or terminations. No systemic safety signals were found at any of the doses tested.

Ocular safety assessments included vision tests (visual acuity), IOP measurements, as well as internal and external eye examinations. No significant changes were seen in IOP measurements and examination of the periorbital area, eyelids, eyelashes, pupils, cornea, iris and sclera. The only ocular finding was short-lived, self-limited conjunctival hyperemia that was dose-related, usually mild in severity, decreased with continuing exposure, and was not accompanied by evidence that it was related to inflammation, such as persistent anterior chamber cells or flare. The incidence of clinically significant eye redness reported as an adverse event was extremely low (1 of 42) in subjects randomized to *trabodenoson*.

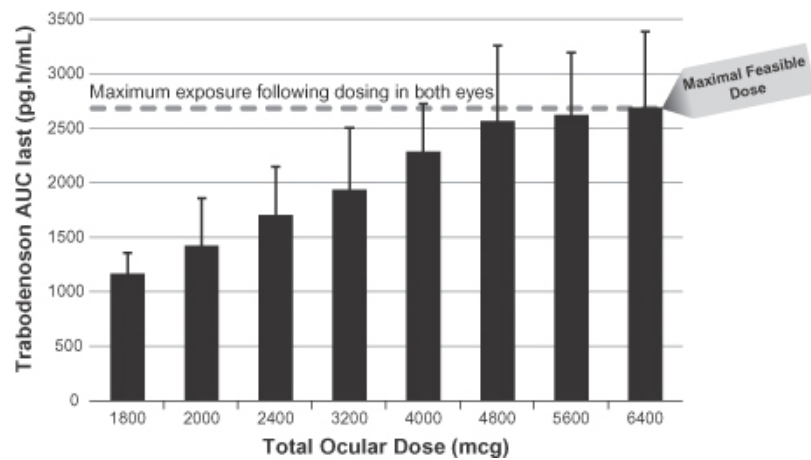
Early Terminations and Withdrawals

Three subjects randomized to placebo were terminated early from the study for reasons unrelated to the study drug. Only one subject assigned to active study drug was withdrawn. The study subject's laboratory tests revealed findings consistent with gallbladder disease (chronic cholecystitis), so the subject was withdrawn from the clinical trial (without unmasking the subject's treatment assignment) and referred for a surgical consult resulting in the subject having chronic gallbladder stones removed.

Pharmacokinetic Data

The pharmacokinetics data indicated that the exposure to *trabodenoson* generally increased in a dose-dependent manner. At the highest three doses, there were no apparent increases in systemic exposure with increasing dose. This plateau effect suggests that little additional drug is absorbed into systemic circulation following doses above 4800 mcg (2400 mcg per eye), as reflected in the figure below.

The Amount of Trabodenoson Entering the Body Reaches a Plateau, Limiting Systemic Effects



Conclusions

In conclusion, no safety or tolerability issues were identified in either the eye or the body as a whole. Due to the lack of clinically significant findings following in depth safety testing for systemic and ocular effects of *trabodenoson*, no maximum tolerated dose could be identified. Systemic exposure to *trabodenoson* appeared to be limited above ocular doses totaling 4800 mcg, indicating an apparent limitation to the amount of drug that can be delivered to the body by dosing in the eye.

Trabodenoson Monotherapy Tolerability, Safety and Efficacy

We conducted a Phase 1/2 multi-center, randomized, double-masked, placebo-controlled, dose-escalation trial in 70 adults with POAG and OHT with the primary objective of characterizing the safety and tolerability of increasing doses of a pilot formulation of *trabodenoson* monotherapy.

Subjects were sequentially assigned to one of seven consecutive cohorts (eight to active *trabodenoson* and four to matched placebo); consisting of sequential, escalating single-doses of 2.5, 7.5, 20, 60, 180, 350 or 700 mcg of *trabodenoson* given topically to a single study eye.

Efficacy (IOP-lowering), tolerability, safety and pharmacokinetics assessments were performed following study drug administration, and dose escalation from one cohort to the next cohort proceeded only after masked review of the safety data from the preceding cohort.

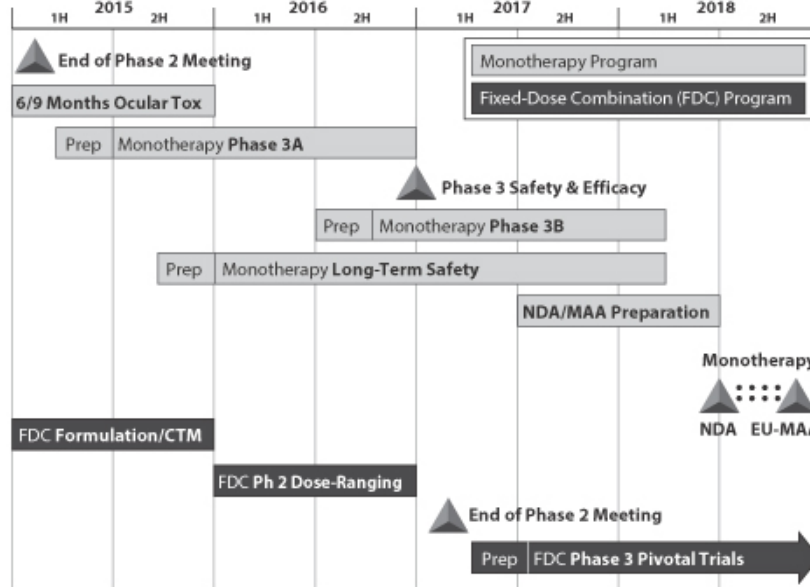
Conclusions

In conclusion, *trabodenoson* monotherapy ophthalmic solution up to and including 700 mcg were well-tolerated. This preliminary formulation of *trabodenoson* demonstrated activity at lowering IOP following single doses of 350 mcg and 700 mcg in patients with POAG or OHT.

Development Plans

Upon completion of our Phase 2 trials and meeting with the FDA, we plan to continue developing *trabodenoson* as a monotherapy and an FDC with *latanoprost*, along with the neuroprotective potential of both to slow the loss of vision significantly more than attributable to IOP-lowering alone either in glaucoma patients or other rarer forms of optic nerve neuropathy. The figure below shows our plans for upcoming clinical trials.

Trabodenoson Monotherapy and Fixed-Dose Combination Program Timelines



CTM: Clinical Trial Material

Trabodenoson

We are planning an End-of-Phase 2 meeting with the FDA in the first half of 2015 to discuss our Phase 3 program for *trabodenoson* monotherapy and to confirm the design and endpoints for the Phase 3 pivotal trials. This program is scheduled to begin in mid-2015, when the manufacturing (in accordance with the current Good Manufacturing Practices, or cGMP), packaging and labeling of the study drug are complete. The preliminary design for the program, which is to be confirmed by the FDA, is expected to include doses and dose frequencies based on the Phase 2 clinical data. The two Phase 3 pivotal efficacy trials are expected to include between 800 and 1,500 patients, depending on the design and number of dosing arms in the study, and are expected to include patients with glaucoma and baseline IOPs in the mid-20s mmHg. Following a run-in period, the trials are expected to run for at least 12 weeks of active treatment with the primary endpoint of IOP-lowering over the day.

The FDA expects that a total of at least 1,500 patients will be exposed to at least a single dose of *trabodenoson*, and the complete submission package must also contain safety data from at least 300 patients treated with *trabodenoson* for at least six months, and at least 100 patients treated for at least a year. These longer-term treatments will be accomplished in a long-term safety trial conducted at the

highest anticipated *trabodenoson* dose, and are expected to begin in early 2016 when the long-term ocular toxicity studies of six and nine month durations are available to support the longer dosing time. This long-term safety trial represents the first opportunity for us to study the rate of vision loss over a longer time. If the enrollment projections are met, the first data from our Phase 3 program is anticipated in late 2016 or early 2017. We are planning to complete the long-term safety study in early 2018. If the primary objectives of our Phase 3 program are met, we plan to submit an NDA to the FDA for marketing approval of *trabodenoson* for the treatment of glaucoma in the United States.

Fixed-Dose Combination of Trabodenoson and Latanoprost

We are also developing an FDC of *trabodenoson* and *latanoprost*. Upon successful completion of our formulation efforts and stability studies, we will commence manufacturing of clinical supplies to support further clinical trials. We have not filed a separate investigational new drug application, or IND, for the FDC, as we expect to be able to rely on the existing *trabodenoson* IND. Similarly, we have not conducted a Phase 1 trial for the FDC as we were able to rely on the safety and tolerability data generated in our completed trials for *trabodeonson* as a monotherapy.

The results of the Phase 2 trial that evaluated the efficacy and safety of the combination of *latanoprost* and *trabodenoson*, at two dose levels, and when given QD and BID, will inform the design and format of the next study which will be structured to evaluate the safety and efficacy of various dose combinations and dosing patterns of an FDC of *latanoprost* and *trabodenoson*, which we still need to formulate. Once FDC clinical supplies are available, we believe that the FDA will allow us to continue the Phase 2 development using several FDC formulations with various dose combinations. However, the commencement of our Phase 2 program for the FDC product candidate will depend on successful development and cGMP manufacturing of stable FDC dosage forms. We expect to initiate our Phase 2 program in 2016 and plan to start our Phase 3 FDC program in late 2017. We expect our FDC product candidate to benefit many patients with higher IOPs and more severe disease that typically require more aggressive medical treatment. For this reason, the patient population for the FDC program is expected to carry a higher disease burden. As with the monotherapy product development, the FDA requirements for long-term dosing data (at least 300 patients treated with the FDC for at least six months, and at least 100 patients treated for at least a year) will require the program to include a long-term safety study.

Neuroprotection

We plan to study the neuroprotective potential of *trabodenoson* monotherapy and our FDC product candidate to slow the loss of vision significantly more than attributable to IOP-lowering alone either in glaucoma patients or other rarer forms of optic nerve neuropathy. While supported by the basic biology of adenosine, we have not yet conducted a formal program of studies to prove neuroprotection and have not filed an IND related to this program. This evaluation may include longer longitudinal studies in glaucoma patients, as potentially smaller patient groups with rapidly-progressing optic nerve damage. Although treatment times will be measured in years rather than months, this effort can run in parallel to the normal development trials, or may be included in the objectives of the planned long-term safety trials. The regulatory path for such an indication is thus far uncharted, so significant regulatory as well as clinical risk is anticipated for such a program and close interaction with regulatory agencies will be required. Due to the speculative nature of the development, it is difficult at this time to predict if or when an NDA submission in support of neuroprotection indication may be submitted.

Competition

The pharmaceutical industry is characterized by rapidly advancing technologies, intense competition and a strong emphasis on proprietary products. While we believe that our experience and scientific knowledge provide us with competitive advantages, we face competition from established

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branded and generic pharmaceutical companies, such as Novartis International AG and its subsidiary Alcon Labs, Allergan Inc., Bausch + Lomb, Inc. (now a unit of Valeant Pharmaceuticals International, Inc.), Merck & Co., Inc., Santen Inc., Aerie Pharmaceuticals, Inc. and smaller biotechnology and pharmaceutical companies, as well as from academic institutions, government agencies and private and public research institutions, which may in the future develop products to treat glaucoma. Any product candidates that we successfully develop and commercialize will compete with existing therapies and new therapies that may become available in the future. We believe that the key competitive factors affecting the success of our product candidates, if approved, are likely to be efficacy, safety, convenience, price, tolerability and the availability of coverage and adequate reimbursement from governmental authorities and other third-party payors.

Many of our competitors have significantly greater financial resources and expertise in research and development, manufacturing, preclinical testing, conducting clinical trials, obtaining regulatory approvals and marketing approved products than we do. Glaukos Corporation recently commercialized a trabecular micro-bypass stent that is implanted in the eye during cataract surgery and allows fluid to flow from the anterior of the eye into the collecting channels, bypassing the TM. In addition, early-stage companies that are also developing glaucoma treatments, such as Aerie Pharmaceuticals, Inc., which is developing a Rho kinase/norepinephrine transport inhibitor, may prove to be significant competitors. We expect that our competitors will continue to develop new glaucoma treatments, which may include eye drops, oral treatments, surgical procedures, implantable devices or laser treatments.

Other early-stage companies may also compete through collaborative arrangements with large and established companies. Mergers and acquisitions in the pharmaceutical and biotechnology industries may result in even more resources being concentrated among a smaller number of our competitors. These competitors also compete with us in recruiting and retaining qualified scientific and management personnel and establishing clinical trial sites and patient registration for clinical trials, as well as in acquiring technologies complementary to, or necessary for, our programs.

Our commercial opportunity could be reduced or eliminated if our competitors develop and commercialize products that are safer, more effective, have fewer adverse effects, are more convenient or are less expensive than any products that we may develop. Our competitors also may obtain FDA or other regulatory approval for their products more rapidly than we may obtain approval for ours. In addition, our ability to compete may be affected because in many cases physicians, insurers or other third-party payors may encourage the use of generic products. The market for glaucoma prescriptions is highly competitive and is currently dominated by generic drugs, such as *latanoprost* and *timolol*, and additional products are expected to become available on a generic basis over the coming years. If any of our product candidates are approved, we expect that they will be priced at a premium over competitive generic products and consistent with other branded glaucoma drugs.

Manufacturing

Trabodenoson is a small molecule that is capable of being manufactured in reliable and reproducible synthetic processes from readily available starting materials. We believe the chemistry used to manufacture *trabodenoson* is amenable to a scale up and does not require unusual equipment in the manufacturing process. We do not currently operate manufacturing facilities for clinical or commercial production of our product candidates. We currently rely on third-party manufacturers to produce the active pharmaceutical ingredient and final drug product for our clinical trials. We manage such production with all our vendors on a purchase order basis in accordance with applicable master service and supply agreements. We do not have long-term agreements with these manufacturers or any other third-party suppliers. *Latanoprost* and *timolol*, used in our clinical trials, are available in

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commercial quantities from multiple reputable third-party manufacturers. We intend to procure quantities on a purchase order basis for our clinical and commercial production. If any of our existing third-party suppliers should become unavailable to us for any reason, we believe that there are a number of potential replacements, although we might experience a delay in our ability to obtain alternative suppliers. We also do not have any current contractual relationships for the manufacture of commercial supplies of our product candidates if they are approved. With respect to commercial production of our product candidates in the future, we plan to outsource production of the active pharmaceutical ingredients and final drug product manufacturing if they are approved for marketing by the applicable regulatory authorities.

We expect to continue to develop drug candidates that can be produced in a cost effective manner at contract manufacturing facilities. However, should a supplier or manufacturer on which we have relied to produce a product candidate provide us with a faulty product or such product is later recalled, we would likely experience delays and additional costs, each of which could be significant.

Intellectual Property

Our success depends in part on our ability to obtain and maintain proprietary protection for our products and product candidates, technology and know-how, to operate without infringing the proprietary rights of others and to prevent others from infringing our proprietary rights.

We own a patent portfolio covering the *trabodenoson* compound that includes issued patents in the United States, Europe, Japan, and several other countries. These composition of matter patents are scheduled to expire by early 2026 in the United States and by mid-2025 abroad. We also own an issued U.S. patent and have pending patent applications in Europe and Japan relating to the use of *trabodenoson* for reducing IOP. The issued U.S. patent and the pending foreign patent applications, if issued, are scheduled to expire by 2030. A detailed freedom-to-operate analysis has been conducted and we are not aware of any third party rights or impediments to commercializing *trabodenoson* for use in ophthalmic indications in the United States or Europe.

Our patent portfolio includes issued U.S. patents relating to combinations of *trabodenoson* with carbonic anhydrase inhibitors and beta blockers.

We are also pursuing patent applications in the United States and abroad relating to:

- n combinations of *trabodenoson* with PGAs, carbonic anhydrase inhibitors or beta blockers, in patent applications which, if issued, are scheduled to expire by 2031;
- n polymorphs of *trabodenoson*, in patent applications which, if issued, are scheduled to expire by 2033;
- n formulations of *trabodenoson*, in patent applications which, if issued, are scheduled to expire by 2034; and
- n ocular neuroprotective uses of *trabodenoson*, in patent applications which, if issued, are scheduled to expire by 2034.

As we advance the development of our *trabodenoson* products and clinical development we continue to look at opportunities to file additional patent applications covering new and innovative developments to ensure we have a patent portfolio that is multifaceted. For such additional applications, we will continue to seek patent protection in the United States and other jurisdictions that are important in the ophthalmic markets.

In addition to our patents and patent applications, we keep certain of our proprietary information as trade secrets, which we seek to protect by confidentiality agreements with our employees and third parties, and by seeking to maintain the physical security of our premises and physical and electronic security of our information technology systems.

Government Regulation

FDA Regulation and Marketing Approval

In the United States, the FDA regulates drugs under the Federal Food, Drug and Cosmetic Act, or FDCA, and related regulations. Drugs are also subject to other federal, state and local statutes and regulations. Failure to comply with the applicable United States regulatory requirements at any time during the product development process, approval process or after approval may subject an applicant to administrative or judicial sanctions and non-approval of product candidates. These sanctions could include the imposition by the FDA or an Institutional Review Board, or IRB, of a clinical hold on trials, the FDA's refusal to approve pending applications or related supplements, withdrawal of an approval, untitled or warning letters, product recalls, product seizures, total or partial suspension of production or distribution, injunctions, fines, restitution, disgorgement, civil penalties or criminal prosecution. Such actions by government agencies could also require us to expend a large amount of resources to respond to the actions. Any agency or judicial enforcement action could have a material adverse effect on us.

The FDA and comparable regulatory agencies in state and local jurisdictions and in foreign countries impose substantial requirements upon the clinical development, manufacture and marketing of pharmaceutical products. These agencies and other federal, state and local entities regulate research and development activities and the testing, manufacture, quality control, safety, effectiveness, labeling, packaging, storage, distribution, record keeping, approval, post-approval monitoring, advertising, promotion, sampling and import and export of our products. Our drugs must be approved by the FDA through the NDA process before they may be legally marketed in the United States. See "The NDA Approval Process" below.

The process required by the FDA before drugs may be marketed in the United States generally involves the following:

- n completion of non-clinical laboratory tests, animal studies and formulation studies conducted according to Good Laboratory Practices, or GLP, or other applicable regulations;
- n submission of an IND, which allows clinical trials to begin unless FDA objects within 30 days;
- n adequate and well-controlled human clinical trials to establish the safety and efficacy of the proposed drug for its intended use or uses conducted in accordance with FDA regulations and Good Clinical Practices, or GCP, which are international ethical and scientific quality standards meant to ensure that the rights, safety and well-being of trial participants are protected and that the roles of clinical trial sponsors, administrators, and monitors are well defined;
- n preparation and submission to the FDA of an NDA;
- n review of the product by an FDA advisory committee, where appropriate or if applicable;
- n satisfactory completion pre-approval inspection of manufacturing facilities and clinical trial sites at which the product, or components thereof, are produced to assess compliance with cGMP requirements and of selected clinical trial sites to assess compliance with GCP requirements; and
- n FDA approval of an NDA which must occur before a drug can be marketed or sold.

Preclinical Studies

Preclinical studies include laboratory evaluation of the purity and stability of the manufactured drug substance or active pharmaceutical ingredient and the formulated drug or drug product, as well as in vitro and animal studies to assess the safety and activity of the drug for initial testing in humans and to establish a rationale for therapeutic use. The conduct of preclinical studies is subject to federal regulations and requirements, including GLP regulations. The results of the preclinical tests, together with manufacturing information, analytical data, any available clinical data or literature and plans for clinical studies, among other things, are submitted to the FDA as part of an IND.

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Companies usually must complete some long-term preclinical testing, such as animal tests of reproductive adverse events and carcinogenicity, and must also develop additional information about the chemistry and physical characteristics of the drug and finalize a process for manufacturing the drug in commercial quantities in accordance with cGMP requirements. The manufacturing process must be capable of consistently producing quality batches of the drug candidate and, among other things, the manufacturer must develop methods for testing the identity, strength, quality and purity of the final drug product. Additionally, appropriate packaging must be selected and tested and stability studies must be conducted to demonstrate that the drug candidate does not undergo unacceptable deterioration over its shelf life.

IND and Clinical Trials

Clinical trials involve the administration of the investigational product to human subjects under the supervision of qualified investigators in accordance with GCP requirements. Clinical trials are conducted under written study protocols detailing, among other things, the objectives of the study, the parameters to be used in monitoring safety and the effectiveness criteria to be evaluated. Prior to commencing the first clinical trial, an initial IND, which contains the results of preclinical testing along with other information, such as information about product chemistry, manufacturing and controls and a proposed protocol, must be submitted to the FDA. The IND automatically becomes effective 30 days after receipt by the FDA unless the FDA within the 30-day time period raises concerns or questions about the conduct of the clinical trial and imposes a clinical hold. A clinical hold may also be imposed at any time while the IND is in effect. In such a case, the IND sponsor must resolve any outstanding concerns with the FDA before the clinical trial may begin. Accordingly, submission of an IND may or may not result in the FDA allowing clinical trials to commence.

A sponsor who wishes to conduct a clinical trial outside the United States may, but need not, obtain FDA authorization to conduct the clinical trial under an IND. If a foreign clinical trial is not conducted under an IND, the sponsor may submit data from the clinical trial to the FDA in support of an NDA or IND so long as the clinical trial is conducted in compliance with GCP, and the FDA is able to validate the data from the study through an onsite inspection if the agency deems it necessary.

A separate submission to the existing IND must be made for each successive clinical trial to be conducted during product development. Further, an independent IRB for each site proposing to conduct the clinical trial must review and approve the study for any clinical trial before it commences at that site. Informed written consent must also be obtained from each trial subject. Regulatory authorities, including the FDA, an IRB, a data safety monitoring board or the sponsor, may suspend or terminate a clinical trial at any time on various grounds, including a finding that the participants are being exposed to an unacceptable health risk or that the clinical trial is not being conducted in accordance with FDA requirements.

For purposes of NDA approval, human clinical trials are typically conducted in sequential phases that may overlap:

- n Phase 1— the drug is initially given to healthy human subjects or patients and tested for safety, dosage tolerance, absorption, metabolism, distribution and excretion. These trials may also provide early evidence on effectiveness. During Phase 1 clinical trials, sufficient information about the investigational drug's pharmacokinetics and pharmacologic effects may be obtained to permit the design of well-controlled and scientifically valid Phase 2 clinical trials.
- n Phase 2— trials are conducted in a limited number of patients in the target population to identify possible adverse effects and safety risks, to determine the efficacy of the product for specific targeted diseases and to determine dosage tolerance and optimal dosage. Multiple Phase 2 clinical trials may be conducted by the sponsor to obtain information prior to beginning larger and more expensive Phase 3 clinical trials.

- n Phase 3— when Phase 2 evaluations demonstrate that a dosage range of the product appears effective and has an acceptable safety profile, and provide sufficient information for the design of Phase 3 trials, Phase 3 trials are undertaken to provide statistically significant evidence of clinical efficacy and to further test for safety in an expanded patient population at multiple clinical trial sites. They are performed after preliminary evidence suggesting effectiveness of the drug has been obtained, and are intended to further evaluate dosage, effectiveness and safety, to establish the overall benefit-risk relationship of the investigational drug and to provide an adequate basis for product labeling and approval by the FDA. In most cases, the FDA requires two adequate and well-controlled Phase 3 clinical trials to demonstrate the efficacy of the drug.

All clinical trials must be conducted in accordance with FDA regulations, GCP requirements and their protocols in order for the data to be considered reliable for regulatory purposes. Progress reports detailing the results of the clinical trials must be submitted at least annually to the FDA and more frequently if serious adverse events occur. Phase 1, Phase 2 and Phase 3 clinical trials may not be completed successfully within any specified period, or at all.

An investigational drug product that is a combination of two different drugs in a single dosage form must comply with an additional rule that requires that each component make a contribution to the claimed effects of the drug product and the dosage of each component (amount, frequency, duration) is such that the combination is safe and effective for a significant patient population requiring such concurrent therapy as defined in the labeling of the drug product. This typically requires larger studies that test the drug against each of its components. In addition, typically, if a drug product is intended to treat a chronic disease, as is the case with our products, safety and efficacy data must be gathered over an extended period of time, which can range from six months to three years or more.

Government regulation may delay or prevent marketing of product candidates or new drugs for a considerable period of time and impose costly procedures upon our activities.

Disclosure of Clinical Trial Information

Sponsors of clinical trials of FDA-regulated products, including drugs, are required to register and disclose certain clinical trial information. Information related to the product, patient population, phase of investigation, study sites and investigators, and other aspects of the clinical trial is then made public as part of the registration. Sponsors are also obligated to discuss the results of their clinical trials after completion. Disclosure of the results of these trials can be delayed until the new product or new indication being studied has been approved. Competitors may use this publicly available information to gain knowledge regarding the progress of development programs.

The NDA Approval Process

In order to obtain approval to market a drug in the United States, a marketing application must be submitted to the FDA that provides data establishing to the FDA's satisfaction the safety and effectiveness of the investigational drug for the proposed indication. Each NDA submission requires a substantial user fee payment unless a waiver or exemption applies. The application includes all relevant data available from pertinent non-clinical or preclinical studies and clinical trials, including negative or ambiguous results as well as positive findings, together with detailed information relating to the product's chemistry, manufacturing, controls and proposed labeling, among other things. Data can come from company-sponsored clinical trials intended to test the safety and effectiveness of a use of a product, or from a number of alternative sources, including studies initiated by investigators that meet GCP requirements.

During the development of a new drug, sponsors are given opportunities to meet with the FDA at certain points. These points may be prior to submission of an IND, at the end of Phase 1 or 2, and before an NDA is submitted. Meetings at other times may be requested. These meetings can provide

an opportunity for the sponsor to share information about the data gathered to date, for the FDA to provide advice and for the sponsor and the FDA to reach agreement on the next phase of development. Sponsors typically use the end of Phase 2 meetings to discuss their Phase 2 clinical results and present their plans for the pivotal Phase 3 trials that they believe will support approval of the new drug.

The results of product development, non-clinical studies and clinical trials, along with descriptions of the manufacturing process, analytical tests conducted on the chemistry of the drug, proposed labeling and other relevant information are submitted to the FDA as part of an NDA requesting approval to market the product. The FDA reviews all NDAs submitted to ensure that they are sufficiently complete for substantive review before it accepts them for filing. It may request additional information rather than accept a NDA for filing. In this event, the NDA must be resubmitted with the additional information. The resubmitted application also is subject to review before the FDA accepts it for filing. The FDA has 60 days from its receipt of an NDA to conduct an initial review to determine whether the application will be accepted for filing based on the agency's threshold determination that the application is sufficiently complete to permit substantive review. If the NDA submission is accepted for filing, the FDA reviews the NDA to determine, among other things, whether the proposed product is safe and effective for its intended use, and whether the product is being manufactured in accordance with cGMP to assure and preserve the product's identity, strength, quality and purity. The FDA has agreed to specific performance goals on the review of NDAs and seeks to review standard NDAs in 12 months from submission of the NDA. The review process may be extended by the FDA for three additional months to consider certain late-submitted information or information intended to clarify information already provided in the submission. After the FDA completes its initial review of an NDA, it will communicate to the sponsor that the drug will either be approved, or it will issue a complete response letter to communicate that the NDA will not be approved in its current form and inform the sponsor of changes that must be made or additional clinical, non-clinical or manufacturing data that must be received before the application can be approved, with no implication regarding the ultimate approvability of the application or the timing of any such approval, if ever. If or when those deficiencies have been addressed to the FDA's satisfaction in a resubmission of the NDA, the FDA will issue an approval letter. FDA has committed to reviewing such resubmissions in two to six months depending on the type of information included. The FDA may refer applications for novel drug products or drug products that present difficult questions of safety or efficacy to an advisory committee, typically a panel that includes clinicians and other experts, for review, evaluation and a recommendation as to whether the application should be approved and, if so, under what conditions. The FDA is not bound by the recommendations of an advisory committee, but it considers such recommendations carefully when making decisions.

Before approving an NDA, the FDA typically will inspect the facilities at which the product is manufactured. The FDA will not approve the product unless it determines that the manufacturing processes and facilities are in compliance with cGMP requirements and adequate to assure consistent production of the product within required specifications. Additionally, before approving an NDA, the FDA may inspect one or more clinical sites to assure compliance with GCP. If the FDA determines that the application, manufacturing process or manufacturing facilities are not acceptable, it typically will outline the deficiencies and often will request additional testing or information. This may significantly delay further review of the application. If the FDA finds that a clinical site did not conduct the clinical trial in accordance with GCP, the FDA may determine the data generated by the clinical site should be excluded from the primary efficacy analyses provided in the NDA. Additionally, notwithstanding the submission of any requested additional information, the FDA ultimately may decide that the application does not satisfy the regulatory criteria for approval.

The FDA may require, or companies may pursue, additional clinical trials after a product is approved. These so-called Phase 4 trials may be made a condition to be satisfied for continuing drug

approval. The results of Phase 4 trials can confirm the effectiveness of a product candidate and can provide important safety information. In addition, the FDA has authority to require sponsors to conduct post-marketing trials to specifically address safety issues identified by the agency. See “Post-Marketing Requirements” below.

The FDA also has authority to require a Risk Evaluation and Mitigation Strategy, or a REMS, from manufacturers to ensure that the benefits of a drug outweigh its risks. A sponsor may also voluntarily propose a REMS as part of the NDA submission. The need for a REMS is determined as part of the review of the NDA. Based on statutory standards, elements of a REMS may include “Dear Doctor letters,” a medication guide, more elaborate targeted educational programs, and in some cases elements to assure safe use, or ETASU. ETASU can include, but are not limited to, special training or certification for prescribing or dispensing, dispensing only under certain circumstances, special monitoring and the use of patient registries. These elements are negotiated as part of the NDA approval, and in some cases the approval date may be delayed. Once adopted, REMS are subject to periodic assessment and modification.

Changes to some of the conditions established in an approved application, including changes in indications, labeling, manufacturing processes or facilities, require submission and FDA approval of a new NDA or NDA supplement before the change can be implemented. An NDA supplement for a new indication typically requires clinical data similar to that in the original application, and the FDA uses the same procedures and actions in reviewing NDA supplements as it does in reviewing NDAs.

Even if a product candidate receives regulatory approval, the approval may be limited to specific disease states, patient populations and dosages, or might contain significant limitations on use in the form of warnings, precautions or contraindications, or in the form of onerous risk management plans, restrictions on distribution, or post-marketing trial requirements. Further, even after regulatory approval is obtained, later discovery of previously unknown problems with a product may result in restrictions on the product or even complete withdrawal of the product from the market. Delay in obtaining, or failure to obtain, regulatory approval for our products, or obtaining approval but for significantly limited use, would harm our business. In addition, we cannot predict what adverse governmental regulations may arise from future United States or foreign governmental action.

The Hatch-Waxman Amendments

Under the Drug Price Competition and Patent Term Restoration Act of 1984, referred to as the Hatch-Waxman Amendments, a portion of a product’s U.S. patent term that was lost during clinical development and regulatory review by the FDA may be restored by returning up to five years of patent life for a patent that covers a new product or its use. This period is generally one-half the time between the effective date of an IND (falling after issuance of the patent) and the submission date of an NDA, plus the time between the submission date of an NDA and the approval of that application, provided the sponsor acted with diligence. Patent term restorations, however, cannot extend the remaining term of a patent beyond a total of 14 years from the date of product approval and only one patent applicable to an approved drug may be extended and the extension must be applied for prior to expiration of the patent. The USPTO, in consultation with the FDA, reviews and approves the application for any patent term extension or restoration.

Market Exclusivity

Market exclusivity provisions under the FDCA also can delay the submission or the approval of certain competing applications. The FDCA provides a five-year period of non-patent marketing exclusivity within the United States to the first applicant to gain approval of an NDA for a new chemical entity. A drug is a new chemical entity if the FDA has not previously approved any other new drug containing the same active moiety, which is the molecule or ion responsible for the action of the drug substance. During the exclusivity period, the FDA may not accept for review an Abbreviated New Drug Application, or ANDA, or a 505(b)(2) NDA submitted by another company for another version of such

drug where the applicant does not own or have a legal right of reference to all the data required for approval. However, an application may be submitted after four years if it contains a certification of patent invalidity or non-infringement to one of the patents listed with the FDA by the innovator NDA holder. The FDCA also provides three years of marketing exclusivity for an NDA, 505(b)(2) NDA or supplement to an existing NDA if new clinical investigations, other than bioavailability studies, that were conducted or sponsored by the applicant are deemed by the FDA to be essential to the approval of the application, for example, for new indications, dosages or strengths of an existing drug. This three-year exclusivity covers only the conditions associated with the new clinical investigations and does not prohibit the FDA from approving ANDAs for drugs containing the original active agent. Five-year and three-year exclusivity will not delay the submission or approval of a full NDA; however, an applicant submitting a full NDA would be required to conduct or obtain a right of reference to all of the non-clinical studies and adequate and well-controlled clinical trials necessary to demonstrate safety and effectiveness.

Pediatric exclusivity is another type of non-patent marketing exclusivity in the United States and, if granted, provides for the attachment of an additional six months of marketing protection to the term of any existing regulatory exclusivity, including the non-patent exclusivity. This six-month exclusivity may be granted if an NDA sponsor submits pediatric data that fairly respond to a written request from the FDA for such data.

Post-Marketing Requirements

Following approval of a new product, a pharmaceutical company and the approved product are subject to continuing regulation by the FDA, including, among other things, monitoring and recordkeeping activities, reporting to the applicable regulatory authorities of adverse experiences with the product, providing the regulatory authorities with updated safety and efficacy information, product sampling and distribution requirements, and complying with promotion and advertising requirements, which include, among others, standards for direct-to-consumer advertising, restrictions on promoting drugs for uses or in patient populations that are not described in the drug's approved labeling, or off-label use, limitations on industry-sponsored scientific and educational activities and requirements for promotional activities involving the internet. Although physicians may, in their independent professional medical judgment, prescribe legally available drugs for off-label uses, manufacturers may not market or promote such off-label uses. Modifications or enhancements to the product or its labeling or changes of the site of manufacture are often subject to the approval of the FDA and other regulators, who may or may not grant approval or may include a lengthy review process.

Prescription drug advertising is subject to federal, state and foreign regulations. In the United States, the FDA regulates prescription drug promotion, including direct-to-consumer advertising. Prescription drug promotional materials must be submitted to the FDA in conjunction with their first use. Any distribution of prescription drug products and pharmaceutical samples must comply with the U.S. Prescription Drug Marketing Act, or the PDMA, a part of the FDCA.

In the United States, once a product is approved, its manufacturing is subject to comprehensive and continuing regulation by the FDA. The FDA regulations require that products be manufactured in specific approved facilities and in accordance with cGMP. We rely, and expect to continue to rely, on third parties for the production of clinical and commercial quantities of our products in accordance with cGMP regulations. cGMP regulations require among other things, quality control and quality assurance as well as the corresponding maintenance of records and documentation and the obligation to investigate and correct any deviations from cGMP. Drug manufacturers and other entities involved in the manufacture and distribution of approved drugs are required to register their establishments with the FDA and certain state agencies, and are subject to periodic unannounced inspections by the FDA and certain state agencies for compliance with cGMP and other laws. Accordingly, manufacturers must continue to expend time, money and effort in the area of production and quality control to maintain

cGMP compliance. These regulations also impose certain organizational, procedural and documentation requirements with respect to manufacturing and quality assurance activities. NDA holders using contract manufacturers, laboratories or packagers are responsible for the selection and monitoring of qualified firms, and, in certain circumstances, qualified suppliers to these firms. These firms and, where applicable, their suppliers are subject to inspections by the FDA at any time, and the discovery of violative conditions, including failure to conform to cGMP, could result in enforcement actions that interrupt the operation of any such product or may result in restrictions on a product, manufacturer, or holder of an approved NDA, including, among other things, recall or withdrawal of the product from the market.

In addition, the manufacturer and/or sponsor under an approved NDA are subject to annual product and establishment fees. These fees are typically increased annually.

The FDA also may require post-marketing testing, also known as Phase 4 testing, REMS to monitor the effects of an approved product or place conditions on an approval that could restrict the distribution or use of the product. Discovery of previously unknown problems with a product or the failure to comply with applicable FDA requirements can have negative consequences, including adverse publicity, judicial or administrative enforcement, untitled or warning letters from the FDA, mandated corrective advertising or communications with doctors, withdrawal of approval, and civil or criminal penalties, among others. Newly discovered or developed safety or effectiveness data may require changes to a product's approved labeling, including the addition of new warnings and contraindications, and also may require the implementation of other risk management measures. Also, new government requirements, including those resulting from new legislation, may be established, or the FDA's policies may change, which could delay or prevent regulatory approval of our products under development.

Coverage and Reimbursement

Sales of any products for which we receive regulatory approval for commercial sale will depend in part on the availability of reimbursement from third-party payors, including government healthcare program administrative authorities, managed care organizations, private health insurers, and other entities. Patients who are prescribed medications for the treatment of their conditions, and their prescribing physicians, generally rely on third-party payors to reimburse all or part of the costs associated with their prescription drugs. Patients are unlikely to use our products unless coverage is provided and reimbursement is adequate to cover a significant portion of the cost of our products. Therefore, our products, once approved, may not obtain market acceptance unless coverage is provided and reimbursement is adequate to cover a significant portion of the cost of our products.

The process for determining whether a third-party payor will provide coverage for a drug product typically is separate from the process for setting the price of a drug product or for establishing the reimbursement rate that the payor will pay for the drug product once coverage is approved. Third-party payors may limit coverage to specific drug products on an approved list, also known as a formulary, which might not include all of the FDA-approved drugs for a particular indication. A decision by a third-party payor not to cover our product candidates could reduce physician utilization of our products once approved. Moreover, a third-party payor's decision to provide coverage for a drug product does not imply that an adequate reimbursement rate will be approved. Adequate third-party reimbursement may not be available to enable us to maintain price levels sufficient to realize an appropriate return on our investment in product development. Additionally, coverage and reimbursement for drug products can differ significantly from payor to payor. One third-party payor's decision to cover a particular drug product or service does not ensure that other payors will also provide coverage for the medical product or service, or will provide coverage at an adequate reimbursement rate. As a result, the coverage determination process will require us to provide scientific and clinical support for the use of our products to each payor separately and will be a time-consuming process.

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The containment of healthcare costs has become a priority of federal, state and foreign governments, and the prices of drugs have been a focus in this effort. Third-party payors are increasingly challenging the prices charged for drug products and medical services, examining the medical necessity and reviewing the cost effectiveness of drug products and medical services, in addition to questioning safety and efficacy. If these third-party payors do not consider our products to be cost-effective compared to other available therapies, they may not cover our products after FDA approval or, if they do, the level of payment may not be sufficient to allow us to sell our products at a profit.

In particular, our success may depend on our ability to obtain coverage and adequate reimbursement through Medicare Part D plans for our products that obtain regulatory approval. The Medicare Part D program provides a voluntary prescription drug benefit to Medicare beneficiaries. Under Part D, Medicare beneficiaries may enroll in prescription drug plans offered by private entities which will provide coverage of outpatient prescription drugs. Part D plans include both stand-alone prescription drug benefit plans and prescription drug coverage as a supplement to Medicare Advantage plans. Unlike Medicare Part A and B, Part D coverage is not standardized. In general, Part D prescription drug plan sponsors have flexibility regarding coverage of Part D drugs, and each drug plan can develop its own drug formulary that identifies which drugs it will cover and at what tier or level. However, Part D prescription drug formularies must include drugs within each therapeutic category and class of covered Part D drugs, though not necessarily all the drugs in each category or class, with certain exceptions. Any formulary used by a Part D prescription drug plan must be developed and reviewed by a pharmacy and therapeutic committee. Government payment for some of the costs of prescription drugs may increase demand for products for which we receive regulatory approval. However, any negotiated prices for our future products covered by a Part D prescription drug plan will likely be discounted, thereby lowering the net price realized on our sales to pharmacies. Moreover, while the Part D program applies only to drug benefits for Medicare beneficiaries, private payors often follow Medicare coverage policy and payment limitations in setting their own payment rates. Any reduction in payment that results from Medicare Part D may result in a similar reduction in payments from non-government payors.

The American Recovery and Reinvestment Act of 2009 provides funding for the federal government to compare the effectiveness of different treatments for the same illness. A plan for the research will be developed by the Department of Health and Human Services, the Agency for Healthcare Research and Quality and the National Institutes for Health, and periodic reports on the status of the research and related expenditures will be made to Congress. Although the results of the comparative effectiveness studies are not intended to mandate coverage policies for public or private payors, it is not clear what effect, if any, the research will have on the sales of our product candidates, if any such product or the condition that it is intended to treat is the subject of a study. It is also possible that comparative effectiveness research demonstrating benefits in a competitor's product could adversely affect the sales of our product candidates, once approved. If third-party payors do not consider our products to be cost-effective compared to other available therapies, they may not cover our products after approval as a benefit under their plans or, if they do, the level of payment may not be sufficient to allow us to sell our products on a profitable basis.

In addition, in some foreign countries, the proposed pricing for a drug must be approved before it may be lawfully marketed. The requirements governing drug pricing vary widely from country to country. For example, the European Union provides options for its member states to restrict the range of medicinal products for which their national health insurance systems provide reimbursement and to control the prices of medicinal products for human use. A member state may approve a specific price for the medicinal product or it may instead adopt a system of direct or indirect controls on the profitability of the company placing the medicinal product on the market. There can be no assurance

that any country that has price controls or reimbursement limitations for pharmaceutical products will allow favorable reimbursement and pricing arrangements for any of our products. Historically, products launched in the European Union do not follow price structures of the United States and generally tend to be significantly lower.

Anti-Kickback and False Claims Laws and Other Regulatory Matters

In the United States, among other things, the research, manufacturing, distribution, sale and promotion of drug products and medical devices are potentially subject to regulation and enforcement by various federal, state and local authorities in addition to the FDA, including the Centers for Medicare & Medicaid Services, other divisions of the United States Department of Health and Human Services (e.g., the Office of Inspector General), the Drug Enforcement Administration, the Consumer Product Safety Commission, the Federal Trade Commission, the Occupational Safety & Health Administration, the Environmental Protection Agency, state Attorneys General and other state and local government agencies. Our current and future business activities, including for example, sales, marketing and scientific/educational grant programs must comply with healthcare regulatory laws, including the Federal Anti-Kickback Statute, the Federal False Claims Act, as amended, the privacy regulations promulgated under the Health Insurance Portability and Accountability Act, or HIPAA, as amended, physician payment transparency laws, and similar state laws. Pricing and rebate programs must comply with the Medicaid Drug Rebate Program requirements of the Omnibus Budget Reconciliation Act of 1990, as amended, and the Veterans Health Care Act of 1992, as amended. If products are made available to authorized users of the Federal Supply Schedule of the General Services Administration, additional laws and requirements apply. The handling of any controlled substances must comply with the U.S. Controlled Substances Act and Controlled Substances Import and Export Act. Products must meet applicable child-resistant packaging requirements under the U.S. Poison Prevention Packaging Act. All of these activities are also potentially subject to federal and state consumer protection and unfair competition laws.

The distribution of pharmaceutical products is subject to additional requirements and regulations, including extensive record-keeping, licensing, storage and security requirements intended to prevent the unauthorized sale of pharmaceutical products.

The Federal Anti-Kickback Statute makes it illegal for any person, including a prescription drug manufacturer (or a party acting on its behalf) to knowingly and willfully solicit, receive, offer, or pay any remuneration that is intended to induce the referral of business, including the purchasing, leasing, ordering or arranging for or recommending the purchase, lease or order of, any good, facility, item or service for which payment may be made, in whole or in part, under a federal healthcare program, such as Medicare or Medicaid. The term "remuneration" has been broadly interpreted to include anything of value. The Federal Anti-Kickback Statute has been interpreted to apply to arrangements between pharmaceutical manufacturers on one hand and prescribers, purchasers and formulary managers on the other. Although there are a number of statutory exceptions and regulatory safe harbors protecting some common activities from prosecution, the exceptions and safe harbors are drawn narrowly. Practices that involve remuneration that may be alleged to be intended to induce prescribing, purchases or recommendations may be subject to scrutiny if they do not qualify for an exception or safe harbor. Failure to meet all of the requirements of a particular applicable statutory exception or regulatory safe harbor does not make the conduct per se illegal under the Federal Anti-Kickback Statute. Instead, the legality of the arrangement will be evaluated on a case-by-case basis based on a cumulative review of all of its facts and circumstances. Additionally, the intent standard under the Federal Anti-Kickback Statute was amended by the Patient Protection and Affordable Care Act, as amended by the Health Care Education and Reconciliation Act, or collectively the ACA, to a stricter standard such that a person or entity no longer needs to have actual knowledge of the statute or specific intent to violate it in order to have committed a violation. In addition, the ACA codified case law that a claim including items or services resulting from a violation of the Federal Anti-Kickback Statute

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constitutes a false or fraudulent claim for purposes of the Federal False Claims Act. Violations of this law are punishable by up to five years in prison, criminal fines, administrative civil money penalties, and exclusion from participation in federal healthcare programs. In addition, many states have adopted laws similar to the Federal Anti-Kickback Statute. Some of these state prohibitions apply to the referral of patients for healthcare services reimbursed by any insurer, not just federal healthcare programs such as Medicare and Medicaid. Due to the breadth of these federal and state anti-kickback laws, and the potential for additional legal or regulatory change in this area, it is possible that our future business activities, including our sales and marketing practices and/or our future relationships with ophthalmologists and optometrists might be challenged under anti-kickback laws, which could harm us.

The Federal False Claims Act prohibits anyone from, among other things, knowingly presenting, or causing to be presented, for payment to federal programs (including Medicare and Medicaid) claims for items or services, including drugs, that are false or fraudulent. This statute has been interpreted to prohibit presenting claims for items or services not provided as claimed, or claims for medically unnecessary items or services. Although we would not submit claims directly to payors, manufacturers can be held liable under these laws if they are deemed to “cause” the submission of false or fraudulent claims by, for example, providing inaccurate billing or coding information to customers or promoting a product off-label. In addition, our future activities relating to the reporting of wholesaler or estimated retail prices for our products, the reporting of prices used to calculate Medicaid rebate information and other information affecting federal, state and third-party reimbursement for our products, and the sale and marketing of our products, are subject to scrutiny under this law. For example, pharmaceutical companies have been found liable under the Federal False Claims Act in connection with their off-label promotion of drugs. Penalties for a False Claims Act violation include three times the actual damages sustained by the government, plus mandatory civil penalties of between \$5,500 and \$11,000 for each separate false claim, the potential for exclusion from participation in federal healthcare programs, and, although the Federal False Claims Act is a civil statute, conduct that results in a False Claims Act violation may also implicate various federal criminal statutes. If the government were to allege that we were, or convict us of, violating these false claims laws, we could be subject to a substantial fine and may suffer a decline in our stock price. In addition, private individuals have the ability to bring actions under the Federal False Claims Act and certain states have enacted laws modeled after the Federal False Claims Act.

Similarly, the civil monetary penalties statute imposes penalties against any person or entity who, among other things, is determined to have presented or caused to be presented a claim to a federal health program that the person knows or should know is for an item or service that was not provided as claimed or is false or fraudulent.

Additionally, HIPAA created new federal criminal statutes that prohibit knowingly and willfully executing, or attempting to execute, a scheme to defraud any healthcare benefit program, including private third-party payors and knowingly and willfully falsifying, concealing or covering up a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services.

There are also an increasing number of state laws that require manufacturers to make reports to states on pricing and marketing information. Many of these laws contain ambiguities as to what is required to comply with the laws. In addition, as discussed below, a similar federal requirement requires certain manufacturers to track and report to the federal government certain payments provided to physicians and teaching hospitals made in the previous calendar year. These laws may affect our sales, marketing and other promotional activities by imposing administrative and compliance burdens on us. In addition, given the lack of clarity with respect to these laws and their implementation, our reporting actions could be subject to the penalty provisions of the pertinent state and federal authorities.

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In addition, we may be subject to data privacy and security regulation by both the federal government and the states in which we conduct our business. HIPAA, as amended by the Health Information Technology for Economic and Clinical Health Act, or HITECH, and their respective implementing regulations, including the final omnibus rule published on January 25, 2013, imposes specified requirements relating to the privacy, security and transmission of individually identifiable health information. Among other things, HITECH makes HIPAA's privacy and security standards directly applicable to business associates, defined as independent contractors or agents of covered entities that create, receive, maintain or transmit protected health information in connection with providing a service for or on behalf of a covered entity. HITECH also created four new tiers of civil monetary penalties and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce the federal HIPAA laws and seek attorneys' fees and costs associated with pursuing federal civil actions. In addition, state laws govern the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts.

The failure to comply with regulatory requirements subjects us to possible legal or regulatory action. Depending on the circumstances, failure to meet applicable regulatory requirements can result in significant criminal, civil and/or administrative penalties, damages, fines, disgorgement, exclusion from participation in federal healthcare programs, such as Medicare and Medicaid, injunctions, recall or seizure of products, total or partial suspension of production, denial or withdrawal of product approvals, refusal to allow us to enter into supply contracts, including government contracts, contractual damages, reputational harm, administrative burdens, diminished profits and future earnings, and the curtailment or restructuring of our operations, any of which could adversely affect our ability to operate our business and our results of operations.

We plan to develop a comprehensive compliance program that establishes internal controls to facilitate adherence to the law and program requirements to which we will or may become subject because we intend to commercialize products that could be reimbursed under a federal healthcare program and other governmental healthcare programs.

Changes in law or the interpretation of existing law could impact our business in the future by requiring, for example: (i) changes to our manufacturing arrangements; (ii) additions or modifications to product labeling; (iii) the recall or discontinuation of our products; or (iv) additional record-keeping requirements. If any such changes were to be imposed, they could adversely affect the operation of our business.

Affordable Health Care Act and Other Reform Initiatives

In the United States and some foreign jurisdictions, there have been, and likely will continue to be, a number of legislative and regulatory changes and proposed changes regarding the healthcare system directed at broadening the availability of healthcare and containing or lowering the cost of healthcare.

In March 2010, the ACA, was enacted. The ACA includes measures that have or will significantly change the way healthcare is financed by both governmental and private insurers. Among the provisions of the ACA of greatest importance to the pharmaceutical industry are the following:

- n The Medicaid Drug Rebate Program requires pharmaceutical manufacturers to enter into and have in effect a national rebate agreement with the Secretary of the Department of Health and Human Services in exchange for state Medicaid coverage of most of the manufacturer's drugs. ACA made several changes to the Medicaid Drug Rebate Program, including increasing pharmaceutical manufacturers' rebate liability by raising the minimum basic Medicaid rebate on most branded prescription drugs and biologic agents to 23.1% of average manufacturer

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price, or AMP, and adding a new rebate calculation for “line extensions” (i.e., new formulations, such as extended release formulations) of solid oral dosage forms of branded products, as well as potentially impacting their rebate liability by modifying the statutory definition of AMP.

- n The ACA expanded the types of entities eligible to receive discounted 340B pricing, although, with the exception of children’s hospitals, these newly eligible entities will not be eligible to receive discounted 340B pricing on orphan drugs used in orphan indications. In addition, because 340B pricing is determined based on AMP and Medicaid drug rebate data, the revisions to the Medicaid rebate formula and AMP definition described above could cause the required 340B discounts to increase. The ACA imposed a requirement on manufacturers of branded drugs and biologic agents to provide a 50% discount off the negotiated price of branded drugs dispensed to Medicare Part D beneficiaries in the coverage gap (i.e., “donut hole”).
- n The ACA imposed an annual, nondeductible fee on any entity that manufactures or imports certain branded prescription drugs and biologic agents, apportioned among these entities according to their market share in certain government healthcare programs, although this fee would not apply to sales of certain products approved exclusively for orphan indications.
- n The ACA included the Federal Physician Payments Sunshine Act, which required pharmaceutical manufacturers to track certain financial arrangements with physicians and teaching hospitals, including any “transfer of value” provided, as well as any ownership or investment interests held by physicians and their immediate family members. Covered manufacturers were required to begin collecting data on August 1, 2013 and submit reports on aggregate payment data to the government for the first reporting period (August 1, 2013—December 31, 2013) by March 31, 2014, and were required to report detailed payment data for the first reporting period and submit legal attestation to the completeness and accuracy of such data by June 30, 2014. Thereafter, covered manufacturers must submit reports by the 90th day of each subsequent calendar year. The information reported is expected to be publicly available on a searchable website in September 2014.
- n The ACA established a new Patient-Centered Outcomes Research Institute to oversee, identify priorities in, and conduct comparative clinical effectiveness research, along with funding for such research. The research conducted by the Patient-Centered Outcomes Research Institute may affect the market for certain pharmaceutical products.
- n The ACA created the Independent Payment Advisory Board which has the authority to recommend certain changes to the Medicare program to reduce expenditures by the program that could result in reduced payments for prescription drugs. Under certain circumstances, these recommendations will become law unless Congress enacts legislation that will achieve the same or greater Medicare cost savings.
- n The ACA established the Center for Medicare and Medicaid Innovation within CMS to test innovative payment and service delivery models to lower Medicare and Medicaid spending, potentially including prescription drug spending. Funding has been allocated to support the mission of the Center for Medicare and Medicaid Innovation through 2019.

Many of the details regarding the implementation of the ACA are yet to be determined, and at this time, it remains unclear the full effect that the ACA would have on our business.

Other legislative changes have been proposed and adopted in the United States since the ACA was enacted. In August 2011, the Budget Control Act of 2011, among other things, created measures for spending reductions by Congress. A Joint Select Committee on Deficit Reduction, tasked with recommending a targeted deficit reduction of at least \$1.2 trillion for the years 2013 through 2021, was unable to reach required goals, thereby triggering the legislation’s automatic reduction to several government programs. This includes aggregate reductions of Medicare payments to providers up to 2% per fiscal year, which went into effect in April 2013 and will remain in effect through 2024 unless

additional Congressional action is taken. In January 2013, President Obama signed into law the American Taxpayer Relief Act of 2012, which, among other things, further reduced Medicare payments to several providers, including hospitals, imaging centers and cancer treatment centers, and increased the statute of limitations period for the government to recover overpayments to providers from three to five years. Any reduction in reimbursement from Medicare or other government programs may result in a similar reduction in payments from private payors, which may adversely affect our future profitability.

European Union Drug Development

In the European Union, our products will also be subject to extensive regulatory requirements. As in the United States, medicinal products can only be marketed if an MAA from the competent regulatory agencies has been obtained, and the various phases of preclinical and clinical research in the European Union are subject to significant regulatory controls. Although the EU Clinical Trials Directive 2001/20/EC has sought to harmonize the EU clinical trial regulatory framework, setting out common rules for the control and authorization of clinical trials in the EU, the EU Member States have transposed and applied the provisions of the Directive differently. This has led to significant variations in the member state regimes. Under the current regime, before a clinical trial can be initiated it must be approved by two distinct bodies in each of the EU countries where the trial is to be conducted: the National Competent Authority, or NCA, and one or more Ethics Committees, or ECs. In addition, all serious adverse reactions to the investigated drug that occur during the clinical trial must be reported to the NCA and ECs of the Member State where they occurred.

The EU clinical trials legislation is currently undergoing a revision process mainly aimed at making more uniform and streamlining the clinical trials authorization process, simplifying adverse event reporting procedures, improving the supervision of clinical trials and increasing the transparency of clinical trials.

European Union Drug Review Approval

In the European Economic Area, or EEA, which is comprised of the 28 Member States of the European Union plus Norway, Iceland and Liechtenstein, medicinal products can only be commercialized after obtaining an MAA. There are two types of MAAs: the Community MAA, which is issued by the European Commission through the Centralized Procedure based on the opinion of the Committee for Medicinal Products for Human Use, or CHMP, a body of the EMA, and which is valid throughout the entire territory of the EEA; and the National MAA, which is issued by the competent authorities of the Member States of the EEA and only authorized marketing in that Member State's national territory and not the EEA as a whole.

The Centralized Procedure is mandatory for certain types of products, such as biotechnology medicinal products, orphan medicinal products and medicinal products containing a new active substance indicated for the treatment of AIDS, cancer, neurodegenerative disorders, diabetes, auto-immune and viral diseases. The Centralized Procedure is optional for products containing a new active substance not yet authorized in the EEA, or for products that constitute a significant therapeutic, scientific or technical innovation or which are in the interest of public health in the EU. The National MAA is for products not falling within the mandatory scope of the Centralized Procedure. Where a product has already been authorized for marketing in a Member State of the EEA, this National MAA can be recognized in another Member States through the Mutual Recognition Procedure. If the product has not received a National MAA in any Member State at the time of application, it can be approved simultaneously in various Member States through the Decentralized Procedure. Under the Decentralized Procedure an identical dossier is submitted to the competent authorities of each of the Member States in which the MAA is sought, one of which is selected by the applicant as the Reference Member State, or RMS. If the RMS proposes to authorize the product, and the other Member States do not raise objections, the product is granted a national MAA in all the Member States where the authorization was sought. Before granting the MAA, the EMA or the competent authorities of the

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Member States of the EEA make an assessment of the risk-benefit balance of the product on the basis of scientific criteria concerning its quality, safety and efficacy.

Other Regulations

We are also subject to numerous federal, state and local laws relating to such matters as safe working conditions, manufacturing practices, environmental protection, fire hazard control and disposal of hazardous or potentially hazardous substances. We may incur significant costs to comply with such laws and regulations now or in the future.

Employees

We had four full-time employees as of December 31, 2014. None of our employees are represented by any collective bargaining unit. We believe that we maintain good relations with our employees.

Property and Facilities

Our headquarters is currently located in Lexington, Massachusetts, and consists of approximately 2,300 square feet of leased office space under a lease that expires on March 31, 2015. We will require additional space and facilities as our business expands. We believe that suitable additional or alternative space would be available if required in the future on commercially reasonable terms.

Legal Proceedings

From time to time, we may become involved in litigation relating to claims arising from the ordinary course of business. Our management believes that there are currently no claims or actions pending against us, the ultimate disposition of which could have a material adverse effect on our results of operations, financial condition or cash flows.

MANAGEMENT

Directors and Executive Officers

The following table sets forth information regarding our executive officers and directors, including their respective ages and positions as of the date hereof:

<u>Name</u>	<u>Age</u>	<u>Position</u>
<i>Executive Officers:</i>		
David P. Southwell	53	President, Chief Executive Officer and Director
Rudolf Baumgartner, M.D.	55	Executive Vice President and Chief Medical Officer
William K. McVicar, Ph.D.	56	Executive Vice President and Chief Scientific Officer
Dale Ritter	63	Vice President—Finance
<i>Non-Management Directors:</i>		
Ittai Harel(1)(3)	47	Director
Paul G Howes	60	Director
Devang V. Kantesaria, M.D.(2)(3)	41	Director
A.N. "Jerry" Karabelas, Ph.D.	62	Director
Isai Peimer(1)(2)(3)	37	Director
Martin Vogelbaum(1)(2)	51	Director

(1) Member of the Compensation Committee.

(2) Member of the Audit Committee.

(3) Member of the Nominating and Corporate Governance Committee.

The following is a biographical summary of the experience of our executive officers and directors:

Executive Officers

David P. Southwell has served as our President and Chief Executive Officer since July 2014, and as one of our directors since August 2014. Mr. Southwell received a B.A. from Rice University and an M.B.A. from Dartmouth College. From March 2010 to October 2012, Mr. Southwell served as Executive Vice President, Chief Financial Officer of Human Genome Sciences, Inc., or Human Genome Sciences, which is owned by GlaxoSmithKline plc. Prior to his time at Human Genome Sciences, Mr. Southwell served as Executive Vice President and Chief Financial Officer of Sepracor Inc. from July 1994 to July 2008. Mr. Southwell has also served on the board of directors of PTC Therapeutics Inc. since December 2005 and THL Credit, Inc. since June 2007. We believe that Mr. Southwell's qualifications to sit on our board of directors include his broad experience serving on the boards of directors of public companies, his specific experience with public therapeutics companies and his executive leadership, managerial and business experience.

Rudolf Baumgartner, M.D. has served as our Executive Vice President and Chief Medical Officer since June 2007. Dr. Baumgartner received a B.S. and an M.D. from Pennsylvania State University and completed post-doctoral training at the University of Michigan, Johns Hopkins University and the National Institutes of Health (NIH).

William K. McVicar, Ph.D. joined us in September 2007 as Executive Vice President, Pharmaceutical Development and has served as our Executive Vice President and Chief Scientific Officer since January 2009. Dr. McVicar also served as our interim President from May 2013 until August 2014. Dr. McVicar received a B.S. from the State University of New York College at Oneonta and a Ph.D. in Chemistry from the University of Vermont.

Dale Ritter joined us as a financial consultant in June 2014 and has served as our Vice President—Finance since August 2014. From May 2011 to November 2013, Mr. Ritter served in

various roles at Coronado Biosciences, Inc., most recently as Senior Vice President, Finance and Chief Accounting Officer. Prior to his work at Coronado Biosciences Inc., from January 2011 to May 2011, Mr. Ritter served as an Independent Financial Consultant. Mr. Ritter received a B.A. from Syracuse University and an M.B.A. from Babson College.

Non-Management Directors

Ittai Harel has served as one of our directors since March 2010. Since July 2006, Mr. Harel has served in various roles, most recently as general partner, at Pitango Venture Capital, a provider of seed, growth and late-stage capital for core life sciences and technology companies. In connection with these positions, Mr. Harel currently serves on numerous boards of directors, including Vertos Medical, Inc., Valeritas, Inc., Lifebond Ltd. and EarlySense Ltd., also serving as Chairman of the boards of directors of Lifebond Ltd. and EarlySense Ltd. From February 2002 to June 2006, Mr. Harel held pharmaceutical product development strategy and business development roles at Nektar Therapeutics, including serving as Director of Corporate Development. Mr. Harel received a B.S. from Ben Gurion University and an M.B.A. from the Massachusetts Institute of Technology. We believe that Mr. Harel's qualifications to sit on our board of directors include his extensive board and management experience, including with development stage life sciences companies.

Paul G. Howes has served as one of our directors since September 2008. Mr. Howes also served as our President and Chief Executive Officer from September 2008 to May 2013. Prior to his time with us, Mr. Howes served as President of the Americas Region of Bausch + Lomb Incorporated, or Bausch + Lomb, which is owned by Valeant Pharmaceuticals International, Inc., from July 2003 to February 2007. Since May 2013, Mr. Howes has served as a member of the board of directors of various companies including: since May 2013, Kish Bancorp and Kish Bank, a financial conglomerate parent company and its community bank subsidiary; since November 2008, Prevent Blindness America, a vision-related charity for which Mr. Howes has served as Chairman since November 2013; since August 2014, ThromboGenics NV and ThromboGenics Inc., a global integrated biopharmaceutical company and its U.S.-based operating subsidiary. Mr. Howes received an A.B. from Harvard University and an M.B.A. from York University. We believe that Mr. Howes' qualifications to sit on our board of directors include the intimate knowledge of our operations he developed as our President and Chief Executive Officer, his experience working with a public biopharmaceutical company and his executive leadership, managerial and business experience.

Devang V. Kantesaria, M.D. has served as one of our directors since September 2011. Since June 2006, Dr. Kantesaria has been a managing member at Devon Park Associates, LLC, a provider of capital for therapeutics companies which Dr. Kantesaria co-founded. From February 2000 to February 2006, Dr. Kantesaria held venture capital investment and portfolio company development roles at TL Ventures, including as Principal. Dr. Kantesaria received a B.S. from the Massachusetts Institute of Technology and an M.D. from Harvard Medical School. We believe that Dr. Kantesaria's qualifications to sit on our board of directors include his extensive experience in investing in and advising pharmaceutical companies.

A.N. "Jerry" Karabelas, Ph.D. has served as one of our directors since July 2012 and previously served as one of our directors from February 2004 to January 2012, during which time he was the Chairperson of our board. Since December 2001, Mr. Karabelas has been a managing member at Care Capital II, LLC and Care Capital III, LLC, or Care Capital, a provider of capital for entrepreneurial private and public companies developing pharmaceuticals. Prior to his work at Care Capital, from July 2000 to September 2001, Mr. Karabelas was Chairman at Novartis BioVentures, which is owned by Novartis AG, or Novartis, a provider of capital for life sciences companies across the biotech, medical devices and diagnostics industries, prior to which Mr. Karabelas was the Chief Executive Officer of Novartis Pharma AG, which is owned by Novartis. In connection with his work at Care Capital,

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Mr. Karabelas has served on numerous boards of directors of pharmaceutical and therapeutics companies, including Renovo, plc, Vanda Pharmaceuticals, Inc. and NitroMed, Inc. Since June 2013, Mr. Karabelas served as Chairman of Polyphor AG. Mr. Karabelas also served as a member of the boards of directors of SkyePharma, plc from May 2001 to May 2009 and Human Genome Sciences. Mr. Karabelas received a B.S. from the University of New Hampshire and a Ph.D. from the Massachusetts College of Pharmacy. We believe that Mr. Karabelas' qualifications to sit on our board of directors include his extensive experience in working with publicly held pharmaceuticals companies, advising developing life sciences, therapeutics and pharmaceuticals companies and his executive leadership, managerial and business experience.

Isai Peimer has served as one of our directors since May 2013. He is a Managing Director at MedImmune Ventures Inc., an investment company, a position he has held since August 2010. From September 2009 to August 2010, Mr. Peimer was an associate analyst at AllianceBernstein LP, a global asset management firm. From April 2008 to January 2009, he was a senior associate at Visium Asset Management, LP, a healthcare-focused investment fund. From June 2005 to April 2008, Mr. Peimer worked as an investment banker at J.P. Morgan & Co. and was a management consultant for the pharmaceutical and biotech sectors. In connection with his work at MedImmune Ventures, Inc., Mr. Peimer has served on numerous boards of directors of pharmaceutical and therapeutics companies, including Ambit Biosciences Corp., where he is a member of the Audit and Nominating and Corporate Governance Committees, Adheron Therapeutics Inc., where he is a member of the Compensation and Nominating and Corporate Governance Committees, and Corridor Pharmaceuticals, Inc., where he is a member of the Audit Committee. Mr. Peimer received a B.A. from Emory University and an M.B.A. from Dartmouth College. We believe that Mr. Peimer's qualifications to sit on our board of directors include his experience on numerous committees of boards of directors of pharmaceutical companies and his work in advising developing life sciences companies.

Martin Vogelbaum has served as one of our directors since April 2010. Since May 2005, Mr. Vogelbaum has been a Partner at Rho Ventures, or Rho, a venture capital investment firm focused on companies in the healthcare, information technology, new media and multiple other sectors. Mr. Vogelbaum has served on numerous boards of directors private and public of biopharmaceutical companies, including Cara Therapeutics, Inc., where he has been a director since July 2010, and NephroGenex, Inc. Mr. Vogelbaum has more than twenty years of experience investing in life sciences companies at various stages of development and has co-founded more than a half dozen companies. Mr. Vogelbaum received an A.B. from Columbia University. We believe that Mr. Vogelbaum's qualifications to sit on our board of directors include his experience in investing in and service on boards of directors of public and private biopharmaceuticals and therapeutics companies.

Composition of Our Board of Directors

Our board of directors currently consists of seven members, all of whom were elected pursuant to the board composition provisions of our Stockholders Agreement, which is described under "Certain Relationships and Related Party Transactions—Agreements with our Stockholders" in this prospectus. These board composition provisions will terminate immediately prior to the closing of this offering. Upon the termination of these provisions, there will be no further contractual obligations regarding the election of our directors. Our nominating and governance committee and board of directors may therefore consider a broad range of factors relating to the qualifications and background of nominees, which may include diversity and is not limited to race, gender or national origin. We have no formal policy regarding board diversity. Our nominating and governance committee's and board of directors' priority in selecting board members is identification of persons who will further the interests of our stockholders through his or her established record of professional accomplishment, the ability to contribute positively to the collaborative culture among board members, knowledge of our business,

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understanding of the competitive landscape and professional and personal experiences and expertise relevant to our growth strategy. Our directors hold office until their successors have been elected and qualified or until the earlier of their resignation or removal.

Our amended and restated certificate of incorporation and amended and restated bylaws that will become effective upon the closing of this offering also provide that our directors may be removed only for cause by the affirmative vote of the holders of at least 75% of the votes that all our stockholders would be entitled to cast in an annual election of directors, and that any vacancy on our board of directors, including a vacancy resulting from an enlargement of our board of directors, may be filled only by vote of a majority of our directors then in office.

Director independence. Our board of directors has determined that all members of the board of directors, except Messrs. Howes and Southwell, are independent, as determined in accordance with the rules of The NASDAQ Global Market, or NASDAQ. In making such independence determination, the board of directors considered the relationships that each such non-employee director has with us and all other facts and circumstances that the board of directors deemed relevant in determining their independence, including the beneficial ownership of our capital stock by each non-employee director. In considering the independence of the directors listed above, our board of directors considered the association of our directors with the holders of more than 5% of our common stock. Upon the closing of this offering, we expect that the composition and functioning of our board of directors and each of our committees will comply with all applicable requirements of NASDAQ and the rules and regulations of the SEC. There are no family relationships among any of our directors or executive officers.

Staggered board. In accordance with the terms of our amended and restated certificate of incorporation and amended and restated bylaws that will become effective upon the closing of this offering, our board of directors will be divided into three classes, class I, class II and class III, with each class serving staggered three-year terms. Upon the expiration of the term of a class of directors, directors in that class will be eligible to be elected for a new three-year term at the annual meeting of stockholders in the year in which their term expires. The following persons have been designated to serve as directors in the following classes until the term specified below or until his earlier death, resignation or removal:

- n Our Class I directors will be David P. Southwell and Devang V. Kantesaria, M.D. (term expires on date of annual meeting of stockholders following the year ending December 31, 2014);
- n Our Class II directors will be Isai Peimer, Martin Vogelbaum and Ittai Harel (term expires on date of annual meeting of stockholders following the year ending December 31, 2015); and
- n Our Class III directors will be Paul G. Howes and A.N. "Jerry" Karabelas, Ph.D. (term expires on date of annual meeting of stockholders following the year ending December 31, 2016).

Our amended and restated certificate of incorporation and amended and restated bylaws that will become effective upon the closing of this offering provide that the authorized number of directors may be changed only by resolution of the board of directors. Any additional directorships resulting from an increase in the number of directors will be distributed among the three classes so that, as nearly as possible, each class shall consist of one third of the board of directors.

The division of our board of directors into three classes with staggered three-year terms may delay or prevent stockholder efforts to effect a change of our management or a change in control.

Board Leadership Structure and Board's Role in Risk Oversight

The positions of our Chairperson of the board and Chief Executive Officer are presently separated. Separating these positions allows our Chief Executive Officer to focus on our day-to-day business,

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while allowing the Chairperson of the board to lead the board of directors in its fundamental role of providing advice to and independent oversight of management. Our board of directors recognizes the time, effort and energy that the Chief Executive Officer must devote to his position in the current business environment, as well as the commitment required to serve as our Chairperson, particularly as the board of directors' oversight responsibilities continue to grow. Our board of directors also believes that this structure ensures a greater role for the independent directors in the oversight of our company and active participation of the independent directors in setting agendas and establishing priorities and procedures for the work of our board of directors. Our board of directors believes its administration of its risk oversight function has not affected its leadership structure. Although our amended and restated bylaws that will be in effect upon the closing of this offering will not require our Chairperson and Chief Executive Officer positions to be separate, our board of directors believes that having separate positions is the appropriate leadership structure for us at this time and demonstrates our commitment to good corporate governance.

Our board of directors oversees the management of risks inherent in the operation of our business and the implementation of our business strategies. Our board of directors performs this oversight role by using several different levels of review. In connection with its reviews of our operations and corporate functions, our board of directors addresses the primary risks associated with those operations and corporate functions. In addition, our board of directors reviews the risks associated with our business strategies periodically throughout the year as part of its consideration of undertaking any such business strategies.

Each of our board committees also oversees the management of our risk that falls within the committee's areas of responsibility. In performing this function, each committee has full access to management, as well as the ability to engage advisors. Our principal financial officer reports to the audit committee and is responsible for identifying, evaluating and implementing risk management controls and methodologies to address any identified risks. In connection with its risk management role, our audit committee meets privately with representatives from our independent registered public accounting firm and our principal financial officer. The audit committee oversees the operation of our risk management program, including the identification of the primary risks associated with our business and periodic updates to such risks, and reports to our board of directors regarding these activities.

Board Committees

Our board of directors has established an audit committee, a compensation committee and a nominating and corporate governance committee, each of which operates pursuant to a separate charter adopted by our board of directors. The composition and functioning of all of our committees will comply with all applicable requirements of the Sarbanes-Oxley Act, the Dodd-Frank Act, NASDAQ and SEC rules and regulations.

Audit Committee

Isai Peimer, Devang V. Kantesaria, M.D. and Martin Vogelbaum currently serve on the audit committee, which is chaired by Isai Peimer. Our board of directors has determined that each member of the audit committee is "independent" for audit committee purposes as that term is defined in the rules of the SEC and the applicable rules of NASDAQ. Our board of directors has designated Isai Peimer as an "audit committee financial expert," as defined under the applicable rules of the SEC. The audit committee's responsibilities include:

- n appointing, approving the compensation of, and assessing the independence of our independent registered public accounting firm;
- n approving auditing and permissible non-audit services, and the terms of such services, to be provided by our independent registered public accounting firm;

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- n reviewing the internal audit plan with the independent registered public accounting firm and members of management responsible for preparing our financial statements;
- n reviewing and discussing with management and the independent registered public accounting firm our annual and quarterly financial statements and related disclosures as well as critical accounting policies and practices used by us;
- n reviewing the adequacy of our internal control over financial reporting;
- n establishing policies and procedures for the receipt and retention of accounting-related complaints and concerns;
- n recommending, based upon the audit committee's review and discussions with management and the independent registered public accounting firm, whether our audited financial statements shall be included in our Annual Report on Form 10-K;
- n monitoring the integrity of our financial statements and our compliance with legal and regulatory requirements as they relate to our financial statements and accounting matters;
- n preparing the audit committee report required by SEC rules to be included in our annual proxy statement;
- n reviewing all related party transactions for potential conflict of interest situations and approving all such transactions; and
- n reviewing quarterly earnings releases.

Compensation Committee

Martin Vogelbaum, Isai Peimer and Ittai Harel currently serve on the compensation committee, which is chaired by Martin Vogelbaum. Our board of directors has determined that each member of the compensation committee is "independent" as that term is defined in the applicable rules of NASDAQ. The compensation committee's responsibilities include:

- n annually reviewing and approving corporate goals and objectives relevant to the compensation of our Chief Executive Officer;
- n evaluating the performance of our Chief Executive Officer in light of such corporate goals and objectives and determining the compensation of our Chief Executive Officer;
- n reviewing and approving the compensation of our other executive officers;
- n reviewing and establishing our overall management compensation, philosophy and policy;
- n overseeing and administering our compensation and similar plans;
- n evaluating and assessing potential current compensation advisors in accordance with the independence standards identified in the applicable rules of NASDAQ;
- n retaining and approving the compensation of any compensation advisors;
- n reviewing and approving our policies and procedures for the grant of equity-based awards;
- n reviewing and making recommendations to the board of directors with respect to director compensation;
- n preparing the compensation committee report required by SEC rules to be included in our annual proxy statement;
- n reviewing and discussing with management the compensation discussion and analysis to be included in our annual proxy statement or Annual Report on Form 10-K; and
- n reviewing and discussing with the board of directors corporate succession plans for the Chief Executive Officer and other key officers.

Nominating and Corporate Governance Committee

Devang V. Kantesaria, M.D., Isai Peimer and Ittai Harel currently serve on the nominating and corporate governance committee, which is chaired by Devang V. Kantesaria, M.D. Our board of directors has determined that each member of the nominating and corporate governance committee is “independent” as that term is defined in the applicable rules of NASDAQ. The nominating and corporate governance committee’s responsibilities include:

- n developing and recommending to the board of directors criteria for board and committee membership;
- n establishing procedures for identifying and evaluating board of director candidates, including nominees recommended by stockholders;
- n identifying individuals qualified to become members of the board of directors;
- n recommending to the board of directors the persons to be nominated for election as directors and to each of the board’s committees;
- n developing and recommending to the board of directors a set of corporate governance guidelines; and
- n overseeing the evaluation of the board of directors and management.

Our board of directors may establish other committees from time to time.

Compensation Committee Interlocks and Insider Participation

None of the members of our compensation committee has at any time during the prior three years been one of our officers or employees. None of our executive officers currently serves, or in the past fiscal year has served, as a member of the board of directors or compensation committee of any entity that has one or more executive officers serving on our board of directors or compensation committee.

Corporate Governance

Our board of directors has adopted a written code of business conduct and ethics that applies to our directors, officers and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller or persons performing similar functions. Following the completion of this offering, a current copy of the code will be posted on the Corporate Governance section of our website, which is located at www.inotekcorp.com. If we make any substantive amendments to, or grant any waivers from, the code of business conduct and ethics for any officer, we will disclose the nature of such amendment or waiver on our website or in a current report on Form 8-K.

EXECUTIVE COMPENSATION

Executive Compensation Overview

Historically, our executive compensation program has reflected our growth and development-oriented corporate culture. To date, the compensation of David P. Southwell, our President and Chief Executive Officer, and the other executive officers identified in the Summary Compensation Table below, has consisted of a combination of base salary, bonuses and long-term incentive compensation in the form of stock options. Our executive officers and all salaried employees are also eligible to receive health and welfare benefits.

As we transition from a private company to a publicly-traded company, we will evaluate our compensation values and philosophy and compensation plans and arrangements as circumstances require. At a minimum, we expect to review executive compensation annually with input from a compensation consultant if and when determined appropriate by the compensation committee. As part of this review process, we expect the board of directors and the compensation committee to apply our values and philosophy, while considering the compensation levels needed to ensure our executive compensation program remains competitive. We will also review whether we are meeting our retention objectives and the potential cost of replacing a key employee.

Compensation Tables

Summary Compensation Table—2013-2014

The following table presents information regarding the total compensation awarded to, earned by, and paid to each of our named executive officers for services rendered in all capacities to us for the years ended December 31, 2014 and December 31, 2013.

Name and principal position	Fiscal Year	Salary (\$)	Bonus \$(1)	Option awards (\$)	Non-equity incentive plan compensation (\$)	Total (\$)
David P. Southwell(2) <i>President and Chief Executive Officer</i>	2014	115,385	–	–	–	115,385
	2013	–	–	–	–	–
Rudolf Baumgartner, M.D. <i>Executive Vice President and Chief Medical Officer</i>	2014	337,816	25,000(3)	–	–	362,816
	2013	322,438	25,000(3)	–	–	347,438
William K. McVicar, Ph.D. <i>Executive Vice President and Chief Scientific Officer</i>	2014	304,562	25,000(3)	–	–	329,562
	2013	290,698	25,000(3)	–	–	315,698
Dale Ritter(4) <i>Vice President—Finance</i>	2014	75,519	–	–	–	75,519
	2013	–	–	–	–	–

- (1) Does not reflect the payment of fiscal year 2014 year-end bonuses pursuant to employment arrangements with our named executive officers, the amounts of which have not yet been determined and the payment of which has not yet occurred.
- (2) Mr. Southwell was hired by us on August 11, 2014. In connection with the commencement of his employment, Mr. Southwell entered into an employment agreement with us as described below, was granted options to purchase 477,002 shares of our common stock and will receive an annual base salary of \$300,000. Subject to certain conditions, 25% of the options we granted to Mr. Southwell vest on the first anniversary of the date of this offering and the remaining 75% of the options we granted to Mr. Southwell vest in equal monthly installments beginning on the first anniversary of this offering with all options becoming vested on August 29, 2018.

- (3) Reflects the amount paid under retention bonus agreements we entered into with Dr. Baumgartner and Dr. McVicar. The material terms of these retention agreements are described below in the “Executive Compensation—Employment Agreements with Our Named Executive Officers” section.
- (4) Mr. Ritter was hired by us on August 28, 2014 after serving as a consultant from June 3, 2014 to August 27, 2014. In connection with the commencement of his employment, Mr. Ritter entered into an employment agreement with us as described below, was granted options to purchase 52,647 shares of our common stock and will receive an annual base salary of \$255,000. Subject to certain conditions, 25% of the options we granted to Mr. Ritter vest on the first anniversary of the commencement of his employment and the remaining 75% of the options we granted to Mr. Ritter vest in equal monthly installments beginning on the first anniversary of the commencement of his employment with all options becoming vested on August 28, 2018.

Employment Agreements with Our Named Executive Officers

We have entered into employment agreements with certain of our named executive officers. These employment agreements will provide for “at will” employment and contain the additional terms summarized below:

David P. Southwell. On August 11, 2014, we entered into an employment agreement with Mr. Southwell, our President and Chief Executive Officer. Mr. Southwell currently receives a base salary of \$300,000, which is subject to review and adjustment in accordance with our corporate policy. Mr. Southwell is eligible for an annual performance bonus with a target amount of 30% of his base salary, pro-rated for 2014 based on Mr. Southwell’s start date with us, payable at the discretion of our board of directors or compensation committee. Mr. Southwell is eligible to participate in our employee benefit plans in effect from time to time, subject to the terms of those plans.

Rudolf Baumgartner, M.D. On May 2, 2007, we entered into an employment agreement with Dr. Baumgartner, our Executive Vice President and Chief Medical Officer, which we amended on December 23, 2008 and October 9, 2009. Dr. Baumgartner currently receives a base salary of \$338,560, which is subject to review and adjustment in accordance with our corporate policy. Dr. Baumgartner is eligible for an annual performance bonus with a target amount of 25% of his base salary. Dr. Baumgartner is eligible to participate in our employee benefit plans in effect from time to time, subject to the terms of those plans. We also entered into a retention bonus agreement with Dr. Baumgartner on June 24, 2013 pursuant to which Dr. Baumgartner has received a one-time retention bonus payment of \$12,500 and a one-time milestone bonus payment of \$12,500 in 2013 and a one-time milestone payment of \$25,000 in 2014.

William K. McVicar, Ph.D. On August 23, 2007, we entered into an employment agreement with Dr. McVicar, our Executive Vice President and Chief Scientific Officer, which we amended on December 23, 2008 and October 9, 2009. Dr. McVicar currently receives a base salary of \$305,233, which is subject to review and adjustment in accordance with our corporate policy. Dr. McVicar is eligible for an annual performance bonus with a target amount of 20% of his base salary, payable at the discretion of our board of directors. Dr. McVicar is eligible to participate in our employee benefit plans in effect from time to time, subject to the terms of those plans. We also entered into a retention bonus agreement with Dr. McVicar on June 24, 2013 pursuant to which Dr. McVicar has received a one-time retention bonus payment of \$12,500 and one-time milestone bonus payments of \$12,500 in 2013 and a one-time milestone payment of \$25,000 in 2014.

Dale Ritter. On August 28, 2014, we entered into an employment agreement with Mr. Ritter, our Vice President—Finance. Mr. Ritter currently receives an annual base salary of \$255,000. Mr. Ritter is eligible for an annual performance bonus with a target amount of 30% of his annualized base salary, pro-rated for 2014 based on Mr. Ritter’s start date with us, payable at the discretion of our president and chief executive officer and our board of directors. Mr. Ritter is eligible to participate in our employee benefit plans in effect from time to time, subject to the terms of those plans.

Involuntary Termination of Employment and Change of Control

Subject to the execution and effectiveness of a separation agreement, including, among other things, a general release of claims, Mr. Southwell will be eligible to receive the following payments and benefits in the event that his employment is terminated by us without cause or he terminates his employment with us for good reason:

- n base salary continuation for twelve months;
- n if Mr. Southwell is participating in our group health plan immediately prior to the date of termination and elects COBRA health continuation, we will pay him a monthly cash payment equal to the monthly employer contribution we would have made to provide him health insurance if he had remained employed by us until twelve months following the date of termination; and
- n the portion of the stock options and other time-based equity awards held by Mr. Southwell as of the date of termination that would have vested in the twelve months following termination of his employment had he remained employed by us through such date shall immediately accelerate and become fully vested as of the date of termination.

Subject to the execution and effectiveness of a separation agreement, including, among other things, a general release of claims, each of Dr. Baumgartner and Dr. McVicar will be eligible to receive the following payments and benefits in the event that his employment is terminated by us without cause:

- n base salary continuation for twelve months; and
- n with respect to Dr. Baumgartner, a monthly cash payment equal to the monthly employer contribution we would have made to provide him health and dental insurance coverage if he had remained employed by us until twelve months following the date of termination.

Subject to the execution and effectiveness of a separation agreement, including, among other things, a general release of claims, Mr. Ritter will be eligible to receive base salary continuation for six months in the event that his employment is terminated by us without cause.

The receipt of the severance payments and benefits set forth above shall be conditioned upon the named executive officer not violating the terms of a restrictive covenant agreement.

Subject to the execution and effectiveness of a separation agreement, including, among other things, a general release of claims, each named executive officer will be eligible to receive the payments and benefits set forth below in the event that his employment is terminated by us without cause or the named executive officer terminates his employment with us for good reason, in either case within twelve months after a "change in control." With the exception of the payments and benefits for which Mr. Southwell is eligible, the payments and benefits described below are in addition to, not in lieu of, the payments set forth above. With respect to Mr. Southwell, the payments and benefits described below are in lieu of the payments set forth above.

- n A one-time lump payment equal to eighteen months base salary within forty-five days of termination for Mr. Southwell.
- n All unvested stock options and other stock-based awards held by the named executive officer as of the date of the termination of such named executive officer's employment shall immediately accelerate and become fully vested as of the date of termination.

The receipt of the severance payments and benefits set forth above shall be conditioned upon the named executive officer not violating the terms of a restrictive covenant agreement.

Definitions

For purposes of the employment agreement with Mr. Southwell, “cause” means:

- n material misconduct, deliberate and material violation of our rules or policies or breach of a fiduciary duty owed to us;
- n commission of an act of fraud, theft, misappropriation or embezzlement;
- n violation of a federal or state securities law;
- n conviction of, or pleading *nolo contendere* to, a felony or any other crime involving moral turpitude;
- n failure to use reasonable best efforts to consummate a potential change of control of Inotek with one or more potential acquirers following the initiation of a change of control process supported by our board of directors; or
- n material breach of any written agreement with us which breach is not cured within ten days of written notice given by us specifying in reasonable detail such breach.

For purposes of the employment agreements with Dr. Baumgartner, Dr. McVicar and Mr. Ritter, “cause” means:

- n misconduct, deliberate disregard of our rules or policies or breach of a fiduciary duty to us;
- n commission of an act of fraud, theft, misappropriation or embezzlement;
- n violation of federal or state securities laws;
- n conviction of, or pleading *nolo contendere* to, a felony or any other crime involving moral turpitude; or
- n material breach of the employment agreement, any stock option agreement between such named executive officer and us, the confidentiality agreement between such named executive officer and us, or any other written agreement between such named executive officer and us.

For purposes of the employment agreement with Mr. Southwell, “good reason” means the compliance with certain processes and procedures following the occurrence of any of the following events:

- n reduction of base salary without the prior consent of such named executive officer other than in connection with and substantially proportionate to our reductions of the compensation of our management employees;
- n material diminution in his duties, responsibilities and authorities with us without his prior consent; or
- n relocation of our offices more than fifty miles away from the current location without his prior consent.

Notwithstanding the foregoing, in no event shall a named executive officer be deemed to have resigned for good reason unless such named executive officer provides written notice of the reason for such resignation within ninety days of the initial occurrence of such reason and we fail, with such named executive officer’s good faith cooperation, to cure the situation within thirty days following such notice, provided that the resignation must occur no more than thirty days following the end of our cure period.

For the purposes of the employment agreements with Dr. Baumgartner, Dr. McVicar and Mr. Ritter, “good reason” means:

- n reduction of compensation due to such named executive officer on the date of his employment agreement that is not part of a reduction applicable to our other senior executives or our failure to pay such named executive officer’s compensation in the time and manner contemplated therein;
- n our requirement that such named executive officer relocate to an office more than 50 miles from our current office; or

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- n material reduction in such named executive officer's title, responsibilities, duties, reporting relationships or authorities as they exist on the date of each employment agreement.

Notwithstanding the foregoing, in no event shall Dr. Baumgartner, Dr. McVicar or Mr. Ritter be deemed to have resigned for good reason unless such named executive officer provides written notice of the reason for such resignation within ninety days of the initial occurrence of such reason and we fail to cure the situation within thirty days following such notice.

For purposes of the employment agreements with Mr. Southwell, "change in control" means:

- n our consolidation or merger into or with any other entity of entities (except such transaction into one of our subsidiaries or in which we are the surviving corporation and the holders of our voting stock outstanding immediately prior to such transaction constitute not less than the holders of a majority of the voting stock outstanding immediately following such transaction);
- n our sale, lease, transfer or exclusive license of all or substantially all of our intellectual property relating to *trabodenson* (other than a sale, lease, transfer or exclusive license of a subsidiary of ours or to an entity in which the holders of our voting stock outstanding immediately prior to such transaction constitute not less than the holders of a majority of the voting stock outstanding immediately following such transaction);
- n our sale, lease transfer or exclusive license of substantially all of our assets (other than a sale, lease, transfer or exclusive license of a subsidiary of ours or to an entity in which the holders of our voting stock outstanding immediately prior to such transaction constitute not less than the holders of a majority of the voting stock outstanding immediately following such transaction); or
- n the sale, exchange or transfer by our stockholders, in a single transaction or a series of related transactions, of capital stock representing a majority of the voting power at elections of our directors (other than a transaction or series of transactions in which we are the surviving entity and the holders of our voting stock outstanding immediately prior to such transaction or series of transactions constitute not less than the holders of a majority of the voting stock outstanding immediately following such transaction or series of transactions).

Notwithstanding the foregoing, a change in control shall not be deemed to have occurred solely as the result of an acquisition of securities by us which, by reducing the number of shares of voting securities outstanding, increases the proportionate number of voting securities beneficially owned by any person to 50% or more of the combined voting power of all of the then outstanding voting securities; provided, however, that if any person referred to in this sentence shall thereafter become the beneficial owner of any additional shares of voting securities (other than pursuant to a stock split, stock dividend or similar transaction or as a result of an acquisition of securities directly from us) and immediately thereafter beneficially owns 50% or more of the combined voting power of all of the then outstanding voting securities, then a change in control shall be deemed to have occurred.

For the purposes of the employment agreements with Dr. Baumgartner, Dr. McVicar and Mr. Ritter, "change in control" means:

- n a sale of the company by merger in which our stockholders in their capacity as such no longer own a majority of our or our successor's outstanding equity securities;
- n any sale of all or substantially all of our assets or capital stock (other than in a spin-off or similar transaction); or
- n any other acquisition of our business, as determined by our board of directors.

Outstanding Equity Awards at Fiscal Year-End Table—2014

The following table summarizes, for each of our named executive officers, the number of shares of common stock underlying outstanding stock options and restricted common stock held as of December 31, 2014.

Name	Option Awards		
	Number of securities underlying unexercised options (#) exercisable	Per share option exercise price (\$)	Option expiration date
David P. Southwell	477,002(1)	\$ 3.627	8/28/2024
Rudolf Baumgartner, M.D.	2,598	\$ 33.90	6/3/2017
	237	\$ 33.90	3/20/2018
	238,501(1)	\$ 3.627	8/28/2024
William K. McVicar, Ph.D.	1,519	\$ 33.90	9/18/2017
	554	\$ 33.90	12/31/2018
	138	\$ 33.90	3/20/2018
	238,501(1)	\$ 3.627	8/28/2024
Dale Ritter	52,647(1)	\$ 3.627	8/28/2024

(1) No portion of this stock option shall become vested and exercisable until the consummation of the Company's initial public offering.

Director Compensation

The following table presents the total compensation for each person who served as a member of our board of directors during 2014. Other than as set forth in the table and described more fully below, we did not pay any compensation, make any equity awards or non-equity awards to, or pay any other compensation to any of the non-employee members of our board of directors in 2014. David P. Southwell, who is also our President and Chief Executive Officer, receives no compensation for his service as a director, and, consequently, is not included in this table.

Our board of directors adopted a formal director compensation policy for all of our non-employee directors that will be effective as of the effective time of this offering.

Director Compensation Table—2014

Director name(1)	Fees earned or paid in cash (\$)	Option awards (\$)	All other compensation (\$)	Total (\$)
Ittai Harel	—	28,356(3)	—	28,356
Paul G. Howes	—	28,356(3)	—	28,356
Devang V. Kantesaria, M.D.	—	28,356(3)	—	28,356
A.N. "Jerry" Karabelas, Ph.D.	—	28,356(3)	—	28,356
Michael Loberg, Ph.D.(2)	—	—	—	—
Isai Peimer	—	28,356(3)	—	28,356
Martin Vogelbaum	—	28,356(3)	—	28,356

(1) As of December 31, 2014, our directors held the following aggregate numbers of stock options and stock awards, respectively: Mr. Harel, 11,799 and 0, respectively; Mr. Howes, 19,173 and 0, respectively; Dr. Kantesaria, 11,799 and 0, respectively; Mr. Karabelas, 11,799 and 0, respectively; Dr. Loberg, 0 and 0, respectively; Mr. Peimer, 11,799 and 0, respectively; and Mr. Vogelbaum, 11,799 and 0, respectively.

(2) Dr. Loberg resigned from our board of directors in July 2014.

(3) Represents options to purchase 11,799 shares of our common stock granted on August 28, 2014 with an exercise price of \$3.627 per share.

Compensation Risk Assessment

We believe that although a portion of the compensation provided to our executive officers and other employees is performance-based, our executive compensation program does not encourage excessive or unnecessary risk taking. This is primarily due to the fact that our compensation programs are designed to encourage our executive officers and other employees to remain focused on both short-term and long-term strategic goals, in particular in connection with our pay-for-performance compensation philosophy. As a result, we do not believe that our compensation programs are reasonably likely to have a material adverse effect on us.

Equity Compensation Plans and Other Benefit Plans

The equity incentive plans described in this section are our 2004 Stock Option and Incentive Plan, or the 2004 Plan, and our 2014 Stock Option and Incentive Plan, or 2014 Plan. Prior to this offering, we granted awards to eligible participants under the 2004 Plan until its expiration date in February 2014 and under the 2014 Plan. We expect to continue to grant awards to eligible participants under the 2014 Plan following the closing of this offering. The following descriptions of certain transactions, payments and other matters contemplated by the 2004 Plan and the 2014 Plan are summaries only. They do not purport to be complete and are qualified, in all respects, by the actual provisions of the 2004 Plan and the 2014 Plan.

2004 Plan

The 2004 Plan was approved by our board of directors and our stockholders on February 10, 2004 and was amended in August 2005 and in September 2008. The 2004 Plan provides for the grant of incentive stock options, as defined under Section 422 of the Code, and for the grant of non-statutory stock options, restricted stock and other equity interests to our employees, officer, directors, consultants and advisors.

As of September 30, 2014, options to purchase a total of 13,885 shares of common stock, with a weighted average exercise price of \$33.90 per share, remained outstanding under the 2004 Plan. The 2004 Plan has expired and we therefore no longer issue any additional awards under the 2004 Plan.

Although no future awards may be granted under the 2004 Plan, all grants previously granted under the 2004 Plan will continue to be outstanding and will be governed under the terms and conditions of the 2004 Plan. Our 2004 Plan is administered by our board of directors. Our board of directors has the authority to accelerate the exercisability or vesting of any award and to determine the specific terms and conditions of each award, subject to the provisions of the 2004 Plan. All stock option awards that were granted pursuant to the 2004 Plan are covered by an option agreement, and all restricted stock awards that were granted pursuant to the 2004 Plan are covered by a restricted stock purchase agreement.

The 2004 Plan provides that upon the occurrence of an "Acquisition," as defined in the 2004 Plan, the board of directors of the surviving or acquiring entity shall, as to outstanding awards, make appropriate provision for the continuation of such awards or the assumption of such awards by the surviving or acquiring entity, or by substituting on an equitable basis for the shares subject to the awards either the consideration payable in the Acquisition, stock of the surviving corporation or securities or other consideration as our board of directors deems appropriate with a fair market value not materially different from the stock subject to such awards immediately prior to the acquisition. Our board of directors may also provide that outstanding options must be exercised within a specified number of days, after which the options shall terminate or provide that one or more awards shall be terminated in exchange for a cash payment equal to the excess of the fair market value of the shares over the exercise price thereof.

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Our board of directors may amend, alter, suspend or terminate the 2004 Plan at any time. Our board of directors may also amend, modify or terminate any outstanding award, provided that no amendment to an award may materially impair any of the rights of a participant under any awards previously granted without his or her written consent. The 2004 Plan expired in accordance with its terms in 2014 and so no further grants will be made under the 2004 Plan.

2014 Plan

On August 28, 2014, our board of directors adopted and on September 26, 2014, our stockholders approved our 2014 Plan to replace the 2004 Plan. On November 18, 2014, our board of directors adopted and our stockholders approved an amendment and restatement of the 2014 Plan. Our 2014 Plan provides us flexibility to use various equity-based incentive and other awards as compensation tools to motivate our workforce. These tools include stock options, stock appreciation rights, restricted stock, restricted stock units, unrestricted stock, performance share awards, cash-based awards and dividend equivalent rights.

We have reserved _____ shares of common stock for the issuance of awards under the 2014 Plan. The shares we issue pursuant to awards granted under the 2014 Plan will be authorized but unissued shares or shares that we reacquire. The number of shares reserved and available for issuance under the 2014 Plan will automatically increase each January 1, beginning on January 1, 2015, by 4% of the number of shares issued and outstanding on the immediately preceding December 31. The shares of common stock underlying any awards that are forfeited, cancelled, held back upon exercise or settlement of an award to satisfy the exercise price or tax withholding, reacquired by us prior to vesting, satisfied without any issuance of common stock, expire or are otherwise terminated (other than by exercise) under the 2014 Plan will be added back to the shares available for issuance under the 2014 Plan.

As of September 30, 2014, options to purchase a total of 1,077,445 shares of common stock, with a weighted average exercise price of \$3.627 per share, remained outstanding under the 2014 Plan.

Under the 2014 Plan, stock options or stock appreciation rights with respect to no more than 1,000,000 shares of common stock may be granted to any one individual in any one calendar year and the maximum number of shares that may be issued in the form of incentive stock options may not exceed _____ shares cumulatively increased January 1, 2015 and on each January 1 thereafter by the lesser of 4% of the number of shares as of the immediately preceding December 31, or 8,000,000 shares.

The 2014 Plan will be administered by the compensation committee. The compensation committee has full power to select, from among the individuals eligible for awards, the individuals to whom awards will be granted, to make any combination of awards to participants, and to determine the specific terms and conditions of each award, subject to the provisions of the 2014 Plan. Full and part-time officers, employees, non-employee directors and consultants, as selected from time to time by our compensation committee, will be eligible to participate in the 2014 Plan.

The 2014 Plan permits the granting of both options to purchase common stock intended to qualify as incentive stock options under Section 422 of the Code and options that do not so qualify. The exercise price of each stock option will be determined by the compensation committee but may not be less than 100% of the fair market value of our common stock on the date of grant or, in the case of an incentive stock option granted to a 10% owner, less than 110% of the fair market value of our common stock on the date of grant. The term of each stock option will be fixed by the compensation committee and may not exceed 10 years from the date of grant (or five years in the case of an incentive stock option granted to a 10% owner). The compensation committee will determine at what time or times each option may be exercised.

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The compensation committee may award stock appreciation rights subject to such conditions and restrictions as it may determine. Stock appreciation rights entitle the recipient to shares of common stock, or cash, equal to the value of the appreciation in our stock price over the exercise price. The exercise price of each stock appreciation right may not be less than 100% of fair market value of the common stock on the date of grant.

The compensation committee may award restricted shares of common stock or restricted stock units to participants subject to such conditions and restrictions as it may determine. These conditions and restrictions may include the achievement of certain performance goals and/or continued employment or service with us through a specified vesting period. The compensation committee may also grant cash-based awards to participants subject to such conditions and restrictions as it may determine. The compensation committee may also grant shares of common stock that are free from any restrictions under the 2014 Plan. Unrestricted stock may be granted to participants in recognition of past services or for other valid consideration and may be issued in lieu of cash compensation due to such participant.

The compensation committee may grant performance share awards to participants that entitle the recipient to receive awards of common stock upon the achievement of certain performance goals and such other conditions as our compensation committee shall determine. Our compensation committee may grant dividend equivalent rights right to participants that entitle the recipient to receive credits for dividends that would be paid if the recipient held a specified number of shares of common stock.

The compensation committee may grant cash bonuses under the 2014 Plan to participants, subject to the achievement of certain performance goals.

The compensation committee may grant awards of restricted stock, restricted stock units, performance shares or cash-based awards to participants that are intended to qualify as "performance-based compensation" under Section 162(m) of the Code. Such awards will only vest or become payable upon the attainment of performance goals that are established by our compensation committee and related to one or more performance criteria. The performance criteria that could be used with respect to any such awards include: total shareholder return, earnings before interest, taxes, depreciation and amortization, net income (loss) (either before or after interest, taxes, depreciation and/or amortization), changes in the market price of our common stock, economic value-added, funds from operations or similar measure, sales or revenue, developmental, clinical or regulatory milestones, acquisitions or strategic transactions (including licenses, collaborations, joint ventures, or promotion arrangements), operating income (loss), cash flow (including, but not limited to, operating cash flow and free cash flow), return on capital, assets, equity, or investment, return on sales, gross or net profit levels, productivity, expense, margins, operating efficiency, customer satisfaction, working capital, earnings (loss) per share of common stock, sales or market shares and number of customers, any of which may be measured either in absolute terms or as compared to any incremental increase or as compared to results of a peer group. From and after the time that we become subject to Section 162(m) of the Code, the maximum award that is intended to qualify as "performance-based compensation" under Section 162(m) of the Code that may be made to any one employee during any one calendar year period is 1,000,000 shares with respect to a stock-based award and \$1,000,000 with respect to a cash-based award.

The 2014 Plan provides that, upon the effectiveness, of a "sale event," as defined in the 2014 Plan, the successor entity may assume, continue or substitute for outstanding awards, as appropriately adjusted. To the extent that awards are not assumed or continued or substituted by the successor entity, all awards granted under the 2014 Plan shall terminate. In the event of such termination, individuals holding options and stock appreciation rights will be permitted to exercise such options and stock appreciation rights (to the extent exercisable) prior to the sale event. Alternatively, in connection with the termination of the 2014 Plan upon a sale event, we may make or provide for a cash payment

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to participants holding options and stock appreciation rights (to the extent exercisable), equal to the difference between the per share cash consideration payable to stockholders in the sale event and the exercise price of the options or stock appreciation rights.

Our board of directors may amend or discontinue the 2014 Plan and our compensation committee may amend or cancel outstanding awards for purposes of satisfying changes in law or any other lawful purpose, including option repricing, but no such action may adversely affect rights under an award without the holder's consent. Certain amendments to the 2014 Plan may require the approval of our stockholders.

No awards may be granted under the 2014 Plan after the date that is ten years from the date of stockholder approval of the 2014 Plan.

Employee Stock Purchase Plan

In November 2014 our board of directors adopted and our stockholders approved the 2014 Employee Stock Purchase Plan, or ESPP. The ESPP authorizes the issuance of up to a total of _____ shares of common stock to participating employees. The ESPP provides that the number of shares reserved and available for issuance under the ESPP shall be cumulatively increased each January 1, beginning on January 1, 2016, by the lesser of (i) _____ shares of common stock or (ii) the number of shares necessary to set the number of shares of Common Stock under the Plan at 1% percent of the outstanding number of shares as of January 1 of the applicable year. However, the board reserves the right to determine that there will be no increase for any year or that any increase will be for a lesser number of shares. The number of shares reserved and available for issuance under the ESPP is subject to adjustment in the event of a stock split, stock dividend or other change in our capitalization.

All employees who we have employed for at least six months and whose customary employment is for more than 20 hours a week are eligible to participate in the ESPP. Any employee who owns 5% or more of the voting power or value of our shares of common stock is not eligible to purchase shares under the ESPP.

We may make one or more offerings to our employees to purchase stock under the ESPP. Unless otherwise determined by the administrator of our ESPP, the first offering will begin on January 1st of the year designated by the administrator and end on the following June 30th. Unless otherwise determined by the administrator, subsequent offerings will begin on the first business day occurring on or after each January 1st and July 1st and will end on the last business day occurring on or before the following June 30th and December 31st, respectively, each referred to as offering periods. The administrator may designate different offering periods in its discretion but no offering shall exceed one year in duration or overlap with another offering. Each eligible employee may elect to participate in any offering by submitting an enrollment form at least 15 days before the relevant offering date.

Each employee who is a participant in the ESPP may purchase shares by authorizing payroll deductions of up to 10% of his or her base compensation during an offering period. Unless the participating employee has previously withdrawn from the offering, his or her accumulated payroll deductions will be used to purchase shares of common stock on the last business day of the offering period at a price equal to 85% of the fair market value of the ordinary shares on the first business day or the last business day of the offering period, whichever is lower, provided that no more than 5,000 shares of common stock may be purchased by any one employee during each offering period. Under applicable tax rules, an employee may purchase no more than \$25,000 worth of stock, valued at the start of the purchase period, under the ESPP in any calendar year.

The accumulated payroll deductions of any employee who is not a participant on the last day of an offering period will be refunded. An employee's rights under the ESPP terminate upon voluntary withdrawal from the plan or when the employee ceases employment with us for any reason.

The ESPP may be terminated or amended by our board of directors at any time, but will automatically terminate upon the tenth anniversary of the date the ESPP is approved by the stockholders. An amendment that increases the number of shares of common stock that are authorized under the ESPP and certain other amendments require the approval of our stockholders.

Amended and Restated 2014 Management Incentive Plan

The Company adopted the Amended and Restated 2014 Management Incentive Plan, or the MIP, in August 2014, in which certain of our named executive officers participate. Pursuant to the MIP, upon a “change in control” (as defined in the MIP), a bonus pool will be created from the proceeds received in connection with such change in control (ranging from 7 percent to 9.75 percent of transaction proceeds, depending upon the level of transaction proceeds received in the transaction), and each participant is entitled to receive a bonus equal to a certain percentage of such bonus pool. The MIP terminates automatically upon the earliest of (i) March 31, 2015 (unless a change in control has occurred prior to such date), (ii) the closing of our initial public offering, (iii) the closing of a qualified financing, as defined in the MIP, and (iv) the date all amounts to be paid under the MIP following a change in control have been paid. Accordingly, the MIP will automatically terminate upon the closing of this offering in accordance with its terms.

Limitations on Liability and Indemnification Matters

Section 145 of the Delaware General Corporation Law, or the DGCL, authorizes a corporation to indemnify its directors and officers against liabilities arising out of actions, suits and proceedings to which they are made or threatened to be made a party by reason of the fact that they have served or are currently serving as a director or officer to a corporation. The indemnity may cover expenses (including attorneys’ fees) judgments, fines and amounts paid in settlement actually and reasonably incurred by the director or officer in connection with any such action, suit or proceeding. Section 145 permits corporations to pay expenses (including attorneys’ fees) incurred by directors and officers in advance of the final disposition of such action, suit or proceeding. In addition, Section 145 provides that a corporation has the power to purchase and maintain insurance on behalf of its directors and officers against any liability asserted against them and incurred by them in their capacity as a director or officer, or arising out of their status as such, whether or not the corporation would have the power to indemnify the director or officer against such liability under Section 145.

We have adopted provisions in our certificate of incorporation and bylaws to be in effect upon the closing of this offering that limit or eliminate the personal liability of our directors to the fullest extent permitted by the DGCL, as it now exists or may in the future be amended. Consequently, a director will not be personally liable to us or our stockholders for monetary damages or breach of fiduciary duty as a director, except for liability for:

- n any breach of the director’s duty of loyalty to us or our stockholders;
- n any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- n any unlawful payments related to dividends or unlawful stock purchases, redemptions or other distributions; or
- n any transaction from which the director derived an improper personal benefit.

These limitations of liability do not alter director liability under the federal securities laws and do not affect the availability of equitable remedies such as an injunction or rescission.

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In addition, our bylaws provide that:

- n we will indemnify our directors, officers and, in the discretion of our board of directors, certain employees to the fullest extent permitted by the DGCL, as it now exists or may in the future be amended; and
- n we will advance reasonable expenses, including attorneys' fees, to our directors and, in the discretion of our board of directors, to our officers and certain employees, in connection with legal proceedings relating to their service for or on behalf of us, subject to limited exceptions.

Additionally, each of our directors may have certain rights to indemnification, advancement of expenses and/or insurance provided by their affiliates, which indemnification relates to and might apply to the same proceedings arising out of such director's services as a director referenced herein. Nonetheless, we have agreed in the indemnification agreements that our obligations to those same directors are primary and any obligation of the affiliates of those directors to advance expenses or to provide indemnification for the expenses or liabilities incurred by those directors are secondary.

We also maintain general liability insurance which covers certain liabilities of our directors and officers arising out of claims based on acts or omissions in their capacities as directors or officers, including liabilities under the Securities Act.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

Other than compensation arrangements, we describe below transactions and series of similar transactions, since January 1, 2011, which includes our last three full fiscal years, to which we were a party or will be a party, in which:

- n the amounts involved exceeded or will exceed \$120,000; and
- n any of our directors, executive officers or holders of more than 5% of our capital stock, or any member of the immediate family of the foregoing persons, had or will have a direct or indirect material interest.

Compensation arrangements for our directors and named executive officers are described elsewhere in this prospectus.

All share and pre-share figures in this section have been adjusted to reflect the 1-for-3.39 reverse stock split of our common stock and a proportional adjustment to the existing conversion ratio for each series of our redeemable convertible preferred stock, which became effective on November 26, 2014.

Participation in This Offering

Certain of our existing principal stockholders and their affiliated entities have indicated an interest in purchasing an aggregate of approximately \$ million in shares of our common stock in this offering at the initial public offering price. However, because indications of interest are not binding agreements or commitments to purchase, these stockholders may determine to purchase fewer shares than they have indicated an interest in purchasing or not to purchase any shares in this offering. It is also possible that these stockholders could indicate an interest in purchasing more shares of our common stock. In addition, the underwriters could determine to sell fewer shares to any of these stockholders than the stockholders have indicated an interest in purchasing or not to sell any shares to these stockholders. Any shares purchased by these potential investors will be subject to lock-up restrictions described under "Shares Eligible for Future Sale."

Sales and Purchases of Securities

Equity Financings

In June 2010, we entered into a securities purchase agreement pursuant to which we issued to certain investors shares an aggregate of 9,477,907 of our Series AA Preferred Stock in two separate closings at a price of approximately \$1.529 per share, as amended, or the 2010 Series AA Purchase Agreement. In May 2011, we issued to certain investors an additional aggregate of 2,329,464 shares of our Series AA Preferred Stock as a result of our attainment of certain milestones under the 2010 Series AA Purchase Agreement. In June 2011, we issued to certain investors an additional aggregate of 3,651,425 shares of our Series AA Preferred Stock pursuant to an elective extension of the 2010 Series AA Purchase Agreement.

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The following table summarizes the participation in the 2010 Series AA Preferred Stock financing by any of our directors, executive officers, holders of more than 5% of our voting securities, or any member of the immediate family of the foregoing persons, since January 1, 2011.

Name	Shares of Series AA Preferred Stock	Aggregate Purchase Price Paid
Devon Park Bioventures, L.P.(1)	1,677,097	\$ 2,565,746
Pitango Venture Capital Fund IV L.P.(2)	984,987	\$ 1,506,907
Pitango Venture Capital Fund Principals L.P.(2)	21,271	\$ 32,541
Care Capital Investments III, LP(3)	989,729	\$ 1,514,160
Care Capital Offshore Investments III, LP(3)	16,529	\$ 25,297
Rho Management Trust I(4)	294,404	\$ 450,400
Rho Ventures IV, L.P.(4)	135,120	\$ 206,716
Rho Ventures IV (QP), L.P.(4)	318,105	\$ 486,661
Rho Ventures IV GmbH & Co. BETEILIGUNGS KG(4)	331,513	\$ 507,172
MedImmune Ventures, Inc.(5)	905,633	\$ 1,385,503

- (1) Devang V. Kantesaria, a member of our board of directors, is a managing member of Devon Park Associates, LLC, of which Devon Park Bioventures, L.P. is an affiliated fund.
- (2) Ittai Harel, a member of our board of directors, is a general partner with Pitango Venture Capital, of which Pitango Venture Capital Fund IV L.P. and Pitango Venture Capital Fund Principals L.P. are affiliated funds.
- (3) A.N. "Jerry" Karabelas, a member of our board of directors, is a managing member at Care Capital II, LLC and Care Capital III, LLC, of which Care Capital Investments III, LP and Care Capital Offshore Investments III, LP are affiliated funds.
- (4) Martin Vogelbaum, a member of our board of directors, is a Partner at Rho, of which Rho Management Trust I, Rho Ventures IV, L.P., Rho Ventures IV (QP), L.P., and Rho Ventures IV GmbH & Co. BETEILIGUNGS KG are affiliated funds.
- (5) Isai Peimer, a member of our board of directors, is a Managing Director at MedImmune Ventures, Inc.

In July 2012, we issued unsecured convertible promissory notes in a private placement for aggregate proceeds of \$1.5 million. In November 2012, we issued unsecured convertible promissory notes in a private placement for aggregate proceeds of \$1.0 million. In February 2013, we issued unsecured convertible promissory notes in a private placement for aggregate proceeds of \$1.0 million. In June 2013, we entered into a securities purchase agreement pursuant to which the promissory notes were converted into 2,677,731 shares of Series AA Preferred Stock in accordance with their terms at a price of \$1.3761 per share and we issued to certain investors an additional aggregate of 5,687,991 shares of our Series AA Preferred Stock at a price of \$1.529 per share, or the 2013 Series AA Purchase Agreement. In July 2013, we issued an additional aggregate of 852,230 shares of our Series AA Preferred Stock to certain investors and warrants to purchase 852,230 shares of our Series AA Preferred Stock at an exercise price of \$0.01 per share, which will terminate upon the closing of this offering, pursuant to the 2013 Series AA Purchase Agreement.

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The following table summarizes the participation in the 2013 Series AA Preferred Stock financing by any of our directors, executive officers, holders of more than 5% of our voting securities, or any member of the immediate family of the foregoing persons.

Name	Principal Amount of Convertible Promissory Notes	Shares of Series AA Preferred Stock	Warrants to Purchase Series AA Preferred Stock	Aggregate Purchase Price Paid
Devon Park Bioventures, L.P.(1)	968,789	2,852,631	301,141	\$4,248,346.76
Pitango Venture Capital Fund IV L.P.(2)	568,986	988,183	–	\$1,444,372.91
Pitango Venture Capital Fund Principals L.P.(2)	12,287	21,319	–	\$ 31,161.02
Care Capital Investments III, LP(3)	571,726	1,683,490	177,717	\$2,507,174.01
Care Capital Offshore Investments III, LP(3)	9,548	28,115	2,968	\$ 41,870.35
Rho Ventures IV Holdings LLC(4)	182,366	536,983	56,687	\$ 799,713.93
Rho Ventures IV, L.P.(4)	83,699	246,453	26,017	\$ 367,036.97
Rho Ventures IV (QP), L.P.(4)	197,047	580,211	61,251	\$ 864,093.40
Rho Ventures IV GmbH & Co. BETEILIGUNGS KG(4)	205,353	604,668	63,833	\$ 900,515.95
MedImmune Ventures, Inc.(5)	523,146	1,540,444	162,616	\$2,294,139.87

- (1) Devang V. Kantesaria, a member of our board of directors, is a managing member of Devon Park Associates, LLC, of which Devon Park Bioventures, L.P. is an affiliated fund.
- (2) Ittai Harel, a member of our board of directors, is a general partner with Pitango Venture Capital, of which Pitango Venture Capital Fund IV L.P. and Pitango Venture Capital Fund Principals L.P. are affiliated funds.
- (3) A.N. "Jerry" Karabelas, a member of our board of directors, is a managing member at Care Capital II, LLC and Care Capital III, LLC, of which Care Capital Investments III, LP and Care Capital Offshore Investments III, LP are affiliated funds.
- (4) Martin Vogelbaum, a member of our board of directors, is a Partner at Rho, of which Rho Ventures IV, L.P., Rho Ventures IV (QP), L.P., Rho Ventures IV GmbH & Co. BETEILIGUNGS KG and Rho Ventures IV Holdings LLC are affiliated funds.
- (5) Isai Peimer, a member of our board of directors, is a Managing Director at MedImmune Ventures, Inc.

Debt Financings

In December 2014, we sold subordinated convertible promissory notes, or the 2014 bridge notes, in the aggregate original principal amount of \$2.0 million to existing stockholders. As consideration for our issuance of the 2014 bridge notes, each investor paid us an amount equal to the original principal amount of the note issued to the investor. The 2014 bridge notes mature on June 30, 2015 and accrue interest at the annual rate of 8%. As of the date of this prospectus, the aggregate outstanding principal and accrued interest under the 2014 bridge notes is approximately \$2.0 million. Pursuant to their terms, the 2014 bridge notes will automatically convert upon the closing of this offering into that number of the same securities sold in this offering equal to all principal plus all accrued and unpaid interest of such bridge notes divided by the price per share of common stock sold in this offering. The following table summarizes the participation in the 2014 bridge notes financing by any of our directors, executive officers, holders of more than 5% of our voting securities, or any member of the immediate family of the foregoing persons.

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Name	Principal Amount of Subordinated Convertible Promissory Note
Devon Park Bioventures, L.P.(1)	\$ 626,942.90
Rho Ventures IV, L.P.(2)	\$ 27,797.11
Rho Ventures IV (QP), L.P.(2)	\$ 146,910.56
Rho Ventures IV GmbH & Co. Beteiligungs KG(2)	\$ 153,102.29
Rho Ventures IV Holdings LLC(2)	\$ 104,780.66
Care Capital Investments III, LP(3)	\$ 369,989.00
Care Capital Offshore Investments III, LP(3)	\$ 6,178.93
MedImmune Ventures, Inc.(4)	\$ 338,551.12
Pitango Venture Capital Fund IV, L.P.(5)	\$ 220,975.53
Pitango Venture Capital Principals Fund IV, L.P.(5)	\$ 4,771.90

- (1) Devang V. Kantesaria, a member of our board of directors, is a managing member of Devon Park Associates, LLC, of which Devon Park Bioventures, L.P. is an affiliated fund.
- (2) Martin Vogelbaum, a member of our board of directors, is a Partner at Rho, of which the Rho Venture Entities are affiliated funds.
- (3) A.N. "Jerry" Karabelas, a member of our board of directors, is a managing member at Care Capital II, LLC and Care Capital III, LLC, of which the Care Capital Entities are affiliated funds.
- (4) Isai Peimer, a member of our board of directors, is a Managing Director at MedImmune Ventures, Inc.
- (5) Ittai Harel, a member of our board of directors, is a general partner with Pitango Venture Capital, of which the Pitango Venture Capital Fund Entities are affiliated funds.

Agreements With Our Stockholders

In connection with our preferred stock financings, we entered into an investor rights agreement and a stockholders agreement, in each case, with the purchasers of our preferred stock and, in the case of the stockholders agreement, certain holders of our common stock. Our third amended and restated investor rights agreement, or Investor Rights Agreement, provides those certain holders of our preferred stock with the right to demand that we file a registration statement, subject to certain limitations, and to request that their shares be covered by a registration statement that we are otherwise filing. See "Description of Capital Stock—Registration Rights" for additional information.

Our third amended and restated stockholders agreement, as amended, or Stockholders Agreement, provides for rights of first refusal, co-sale and drag along rights in respect of sales by certain holders of our capital stock. The Stockholders Agreement further provides certain holders of our capital stock with a participation right to purchase their *pro rata* share of new securities that we may propose to sell and issue, subject to certain exceptions. Further, the Stockholders Agreement contains provisions with respect to the election of our board of directors and its composition.

The rights under each of the Investor Rights Agreement and the Stockholders Agreement will terminate upon the closing of this offering, other than certain registration rights for certain holders of our preferred stock described below.

Indemnification Agreements

Our Fifth Amended and Restated Certificate of Incorporation and our bylaws, as amended, provide that we shall indemnify our directors and officers to the fullest extent permitted by law. In addition, we have previously entered into and intend to enter into new agreements to indemnify our directors and executive officers. These agreements will, among other things, indemnify these individuals for certain

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expenses (including attorneys' fees), judgments, fines and settlement amounts reasonably incurred by such person in any action or proceeding, including any action by or in our right, on account of any services undertaken by such person on behalf of us or that person's status as a member of our board of directors.

Policies for Approval of Related Party Transactions

Following the closing of this offering, the audit committee of our board of directors will have the primary responsibility for reviewing and approving or disapproving "related party transactions," which are transactions between us and related persons in which the aggregate amount involved exceeds or may be expected to exceed \$120,000 and in which a related person has or will have a direct or indirect material interest. For purposes of this policy, a related person will be defined as a director, executive officer, nominee for director or greater than 5% beneficial owner of our common stock, in each case since the beginning of the most recently completed year, and their immediate family members. Our audit committee charter will provide that the audit committee shall review and approve or disapprove any related party transactions. As of the date of this prospectus, we have not adopted any formal standards, policies or procedures governing the review and approval of related party transactions, but we expect that our audit committee will do so in the future.

All of the transactions described above were entered into prior to the adoption of this policy. Accordingly, each was approved by disinterested members of our board of directors after making a determination that the transaction was executed on terms no less favorable than those that could have been obtained from an unrelated third party.

CONCURRENT OFFERING OF CONVERTIBLE SENIOR NOTES

Concurrently with this offering of our common stock, we are offering \$ _____ million principal amount of _____ % Convertible Senior Notes due 2019, or the notes (plus up to an additional \$ _____ million principal amount of notes if the underwriters for the concurrent offering of notes exercise their overallotment option), in an underwritten offering pursuant to a separate prospectus. The notes will bear interest at a rate of _____ % per year, payable semiannually in arrears on _____ and _____ of each year, beginning on _____, 2015. The notes will mature on _____, 2019 unless earlier converted or repurchased.

The notes will be convertible by holders beginning on _____, 2019, or earlier upon the occurrence of certain events. Upon conversion of a note, we will satisfy our conversion obligation by paying and/or delivering, as the case may be, cash, shares of our common stock or a combination of cash and shares of our common stock, at our election, as described in the Convertible Senior Notes Prospectus. The conversion rate will initially be _____ shares of our common stock per \$1,000 principal amount of notes (equivalent to an initial conversion price of approximately \$ _____ per share of our common stock). The conversion rate will be subject to adjustment in some events but will not be adjusted for any accrued and unpaid interest. In addition, following certain corporate events that occur prior to the maturity date, we will increase the conversion rate for a holder who elects to convert its notes in connection with such corporate event in certain circumstances.

We may not redeem the notes prior to maturity. No sinking fund is provided for the notes.

If we undergo a "fundamental change" (as defined in the Convertible Senior Notes Prospectus), holders may require us to repurchase for cash all or any portion of their notes at a repurchase price equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date.

The notes will be our general unsecured obligations and will rank senior in right of payment to all of our indebtedness that is expressly subordinated in right of payment to the notes; rank equal in right of payment with all of our existing and future liabilities that are not so subordinated; effectively rank junior to any of our secured indebtedness to the extent of the value of the assets securing such indebtedness; and structurally rank junior to all preferred stock and indebtedness and other liabilities of our future subsidiaries, if any.

We estimate that the net proceeds to us from the concurrent offering of notes, after deducting underwriting discounts and commissions and estimated offering expenses will be approximately \$ _____ million (assuming no exercise by the underwriters for the concurrent offering of notes of their overallotment option), if completed.

The closing of this offering of common stock is not contingent upon the closing of the concurrent offering of notes, but the closing of the concurrent offering of notes is contingent upon the closing of this offering of common stock and the listing of our common stock on The NASDAQ Global Market. We cannot assure you that the concurrent offering of notes will be completed, or if completed, on what terms it will be completed.

This description and the other information in this prospectus regarding the concurrent notes offering is included in this prospectus for informational purposes only. This prospectus shall not be deemed an offer to sell or a solicitation of an offer to buy any of the notes offered in the concurrent notes offering.

PRINCIPAL STOCKHOLDERS

The following table sets forth certain information known to us regarding beneficial ownership of our capital stock as of September 30, 2014, as adjusted to reflect the sale of common stock offered by us in this offering, for:

- n each person, or group of affiliated persons, known by us to be the beneficial owner of more than 5% of our capital stock;
- n our named executive officers;
- n each of our other directors; and
- n all executive officers and directors as a group.

Beneficial ownership is determined in accordance with the rules of the SEC. A person is deemed to be a beneficial holder of our common stock if that person has or shares voting power, which includes the power to vote or direct the voting of our common stock, or investment power, which includes the power to dispose of or to direct the disposition of such capital stock. Except as noted by footnote, and subject to community property laws where applicable, we believe based on the information provided to us that the persons and entities named in the table below have sole voting and investment power with respect to all common stock shown as beneficially owned by them.

The table lists applicable percentage ownership based on 10,626,056 shares of common stock outstanding as of September 30, 2014, and assumes the conversion of all of our outstanding 25,949,333 shares of preferred stock, including all accrued and unpaid dividends thereon, into 9,404,970 shares of common stock, which will occur immediately prior to the closing of this offering. Shares of common stock that may be acquired by an individual or group within 60 days of September 30, 2014, pursuant to the exercise of options, warrants or other rights, are deemed to be beneficially owned by the persons holding these options for the purpose of computing percentage ownership of that person, but are not treated as outstanding for the purpose of computing any other person's ownership percentage. The table below also reflects a 1-for-3.39 reverse stock split of our common stock and a proportional adjustment to the existing conversion ratio for each series of our redeemable convertible preferred stock, which became effective on November 26, 2014. The column entitled "Percentage of Shares Beneficially Owned— After this Offering (No Exercise of the Underwriters' Overallotment Option)" is based on _____ shares of our common stock outstanding after this offering, including the _____ shares of our common stock that we are selling in this offering and assumes no exercise of the underwriters' option. The column entitled "Percentage of Shares Beneficially Owned—After this Offering (Full Exercise of the Underwriters' Option)" is based on _____ shares of our common stock outstanding after this offering, including the _____ shares of our common stock that we are selling in this offering and assumes the exercise in full of the underwriters' option to purchase _____ additional shares to cover overallotments.

Certain of our existing principal stockholders and their affiliated entities have indicated an interest in purchasing an aggregate of approximately \$ _____ million in shares of our common stock in this offering at the initial public offering price. However, because indications of interest are not binding agreements or commitments to purchase, these stockholders may determine to purchase fewer shares than they have indicated an interest in purchasing or not to purchase any shares in this offering. It is also possible that these stockholders could indicate an interest in purchasing more shares of our common stock. In addition, the underwriters could determine to sell fewer shares to any of these stockholders than the stockholders have indicated an interest in purchasing or not to sell any shares to these stockholders. The information set forth in the table below does not reflect any potential purchases of any shares in this offering by these stockholders or their affiliated entities.

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Unless otherwise noted below, the address of each person listed on the table is c/o Inotek Pharmaceuticals Corporation, 131 Hartwell Avenue, Suite 105, Lexington, MA 02421.

Name and address of beneficial owner	Number of Shares Beneficially Owned Prior to this Offering	Number of Shares Beneficially Owned After this Offering	Percentage of Shares Beneficially Owned		
			Prior to this Offering	After this Offering (No Exercise of the Underwriters' Overallotment Option)	After this Offering (Full Exercise of the Underwriters' Overallotment Option)
5% Stockholders					
Devon Park Bioventures, L.P.(1)	2,727,626		25.7%		
Rho Ventures Entities(2)	2,164,490		20.4%		
Care Capital Entities(3)	1,894,633		17.8%		
MedImmune Ventures, Inc.(4)	1,699,493		16.0%		
Pitango Venture Capital Fund Entities(5)	1,227,783		11.6%		
Named executive officers and directors					
David P. Southwell	—		*		
Rudolf Baumgartner, M.D.(6)	153,229		1.4%		
William K. McVicar, Ph.D.(7)	129,477		1.2%		
Dale Ritter	—		*		
Ittai Harel(8)	11,799		*		
Paul G Howes(9)	140,656		1.3%		
Devang V. Kantesaria, M.D.(10)	2,739,425		25.8%		
A.N. "Jerry" Karabelas, Ph.D.(11)	1,906,432		17.9%		
Isai Peimer(12)	1,711,292		16.1%		
Martin Vogelbaum(13)	11,799		*		
All directors and executive officers as a group (10 persons)	6,804,109		64.0%		

* Represents beneficial ownership of less than one percent.

- (1) Consists of 2,727,626 shares of common stock issuable upon conversion of our outstanding Series AA convertible preferred stock and shares of common stock issuable upon conversion upon the consummation of this offering of a subordinated convertible promissory note we issued in December 2014 at the assumed initial public offering price of \$ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, held by Devon Park Bioventures, L.P. The general partner of Devon Park Bioventures, L.P. is Devon Park Associates, L.P. and Devon Park Associates, LLC is the general partner of Devon Park Associates, L.P. Messrs. Devang V. Kantesaria, a member of our board, Christopher Moller and Marc Ostro are the managing members of Devon Park Associates, LLC. Each such managing director may be deemed to have shared voting and investment power over the shares held by Devon Park Bioventures, L.P. as described above. The address for Devon Park Bioventures, L.P. is 1400 Liberty Ridge Drive, Suite 103, Wayne, Pennsylvania, 19087.
- (2) Consists of (a) 638,040 shares prior to this offering and shares after this offering beneficially owned by Rho Ventures IV (QP), L.P. ("Rho QP"), (b) 664,934 shares prior to this

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offering and _____ shares after this offering beneficially owned by Rho Ventures IV GmbH & Co. BETEILIGUNGS KG ("Rho GmbH"), (c) 590,501 shares prior to this offering and _____ shares after this offering beneficially owned by Rho Ventures IV Holdings LLC ("Rho Holdings"), (d) 115,905 shares prior to this offering and _____ shares after this offering beneficially owned by Rho Ventures IV, L.P. ("Rho IV") and (e) 155,110 shares prior to this offering and _____ shares after this offering beneficially owned by Rho Ventures IV-A, L.P. ("Rho IV-A"). Rho QP's shares consist of (a) 555,812 shares of common stock issuable upon conversion of our outstanding Series AA convertible preferred stock and _____ shares of common stock issuable upon conversion upon the consummation of this offering of a subordinated convertible promissory note we issued in December 2014 at the assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and (b) 82,228 shares of common stock. Rho GmbH's shares consist of (a) 579,239 shares of common stock issuable upon conversion of our outstanding Series AA convertible preferred stock and _____ shares of common stock issuable upon conversion upon the consummation of this offering of a subordinated convertible promissory note we issued in December 2014 at the assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and (b) 85,695 shares of common stock. Rho Holdings' shares consist of (a) 514,400 shares of common stock issuable upon conversion of our outstanding Series AA convertible preferred stock and _____ shares of common stock issuable upon conversion upon the consummation of this offering of a subordinated convertible promissory note we issued in December 2014 at the assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and (b) 76,101 shares of common stock. Rho IV's shares consist of (a) 100,347 shares of common stock issuable upon conversion of our outstanding Series AA convertible preferred stock and _____ shares of common stock issuable upon conversion upon the consummation of this offering of a subordinated convertible promissory note we issued in December 2014 at the assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and (b) 15,558 shares of common stock. Rho IV-A's shares consist of (a) 135,741 shares of common stock issuable upon conversion of our outstanding Series AA convertible preferred stock and _____ shares of common stock issuable upon conversion upon the consummation of this offering of a subordinated convertible promissory note we issued in December 2014 at the assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and (b) 19,369 shares of common stock. The voting and dispositive decisions with respect to the shares held by Rho IV, Rho Holdings, Rho IV-A, and Rho QP are made by the following managing members of their general partner or managing member, Rho Management Ventures IV, L.L.C.: Mark Leschly, Habib Kairouz and Joshua Ruch. The voting and dispositive decisions with respect to the shares held by Rho GmbH are made by the following managing directors of its general partner, Rho Capital Partners Verwaltungs GmbH: Mark Leschly, Habib Kairouz and Joshua Ruch. The address for the Rho Venture Entities is 152 West 57th Street, 23rd Floor, New York, New York 10019.

- (3) Consists of (a) 841,736 shares prior to this offering and _____ shares after this offering beneficially owned by Care Capital Investments II, LP ("Investments II"), (b) 978,785 shares prior to this offering and _____ shares after this offering beneficially owned by Care Capital Investments III, L.P. ("Investments III"), (c) 57,769 shares prior to this offering and _____ shares after this offering beneficially owned by Care Capital Offshore Investments II, LP ("Offshore II") and (d) 16,343 shares prior to this offering and _____ shares after this offering beneficially owned by Care Capital Offshore Investments III, LP ("Offshore III"). Investments II's shares consist of (a) 600,781 shares of common stock issuable upon conversion of our outstanding Series AA convertible preferred stock and _____ shares of common stock issuable upon conversion upon the consummation of this offering of a subordinated convertible promissory note we issued in

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December 2014 at the assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and (b) 240,955 shares of common stock. Investments III's shares consist of 978,785 shares of common stock issuable upon conversion of our outstanding Series AA convertible preferred stock and _____ shares of common stock issuable upon conversion upon the consummation of this offering of a subordinated convertible promissory note we issued in December 2014 at the assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus. Offshore II's shares consist of (a) 41,241 shares of common stock issuable upon conversion of our outstanding Series AA convertible preferred stock and _____ shares of common stock issuable upon conversion upon the consummation of this offering of a subordinated convertible promissory note we issued in December 2014 at the assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and (b) 16,528 shares of common stock. Offshore III's shares consist of 16,343 shares of common stock issuable upon conversion of our outstanding Series AA convertible preferred stock and _____ shares of common stock issuable upon conversion upon the consummation of this offering of a subordinated convertible promissory note we issued in December 2014 at the assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus. The voting and disposition of the shares held by Investments II and Offshore II is determined by the following managing members of their general partner, Care Capital II, LLC: A.N. "Jerry" Karabelas, Ph.D., a member of our Board of Directors, Jan Leschly and David R. Ramsay. The voting and disposition of the shares held by Investments III and Offshore III is determined by the following managing members of their general partner, Care Capital III, LLC: A.N. "Jerry" Karabelas, Ph.D., a member of our Board of Directors, Jan Leschly, Richard Markham and David R. Ramsay. The address of the Care Capital Entities is 47 Hull Street, Suite 310, Princeton, New Jersey 08540.

- (4) Consists of (a) 1,473,364 shares of common stock issuable upon conversion of our outstanding Series AA convertible preferred stock and _____ shares of common stock issuable upon conversion upon the consummation of this offering of a subordinated convertible promissory note we issued in December 2014 at the assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and (b) 226,129 shares of common stock. Isai Peimer, a member of our Board of Directors, is a Managing Director at MedImmune Ventures, Inc. The address of MedImmune Ventures, Inc. is 1 MedImmune Way, Gaithersburg, Maryland 20878.
- (5) Consists of (a) 1,201,841 shares prior to this offering and _____ shares after this offering beneficially owned by Pitango Venture Capital Fund IV L.P. ("Pitango Fund IV") and 25,942 shares prior to this offering and _____ shares after this offering beneficially owned by Pitango Venture Capital Fund Principals IV L.P. ("Pitango Principals"). Pitango Fund IV's shares consist of (a) 973,769 shares of common stock issuable upon conversion of our outstanding Series AA convertible preferred stock and _____ shares of common stock issuable upon conversion upon the consummation of this offering of a subordinated convertible promissory note we issued in December 2014 at the assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and (b) 228,072 shares of common stock. Pitango Principals' shares consist of (a) 21,019 shares of common stock issuable upon conversion of our outstanding Series AA convertible preferred stock and _____ shares of common stock issuable upon conversion upon the consummation of this offering of a subordinated convertible promissory note we issued in December 2014 at the assumed initial public offering price of \$ _____ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and (b) 4,923 shares of common stock. The general partner and manager of Pitango Fund IV and Pitango Principals is Pitango V.C. Fund IV, L.P., whose general partner is Pitango G.P. Capital Holdings Ltd., an Israeli company owned indirectly (through personal holding entities) by each of the following individuals: Rami Kalish, Chermi J.

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Peres, Aaron Mankovski, Isaac Hillel, Rami Beracha and Zeev Binman. These individuals share voting and dispositive power, but none of them has sole voting or dispositive power, over the shares held by Pitango Fund IV and Pitango Principals. Ittai Harel, a member of our Board of Directors, is a general partner with Pitango Venture Capital. The address of the Pitango Fund IV and Pitango Principals is 11 Hamenofim Street, Building B, Herzliya Pituach 46725, Israel.

- (6) Consists of (a) 150,394 shares of common stock issuable upon conversion of our outstanding Series X convertible preferred stock and (b) 2,835 shares of common stock issuable upon the exercise of options exercisable within 60 days after September 30, 2014.
- (7) Consists of (a) 127,266 shares of common stock issuable upon conversion of our outstanding Series X convertible preferred stock and (b) 2,211 shares of common stock issuable upon the exercise of options exercisable within 60 days after September 30, 2014.
- (8) Consists of 11,799 shares of common stock issuable upon the exercise of options exercisable within 60 days after September 30, 2014.
- (9) Consists of (a) 121,483 shares of common stock issuable upon conversion of our outstanding Series X convertible preferred stock and (b) 19,173 shares of common stock issuable upon the exercise of options exercisable within 60 days after September 30, 2014.
- (10) Consists of (a) 2,727,626 shares of common stock issuable upon conversion of our outstanding Series AA convertible preferred stock and shares of common stock issuable upon conversion upon the consummation of this offering of a subordinated convertible promissory note we issued in December 2014 at the assumed initial public offering price of \$ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, held by Devon Park Bioventures, L.P. and (b) 11,799 shares of common stock issuable upon the exercise of options exercisable within 60 days of September 30, 2014. The general partner of Devon Park Bioventures, L.P. is Devon Park Associates, L.P. and Devon Park Associates, LLC is the general partner of Devon Park Associates, L.P. Messrs. Devang V. Kantesaria, a member of our board, Christopher Moller and Marc Ostro are the managing members of Devon Park Associates, LLC. Each such managing member may be deemed to have shared voting and investment power over the shares held by Devon Park Bioventures, L.P. as described above. The address for Devon Park Bioventures, L.P. is 1400 Liberty Ridge Drive, Suite 103, Wayne, Pennsylvania, 19087.
- (11) Consists of (a) 841,736 shares prior to this offering and shares after this offering beneficially owned by Care Capital Investments II, LP ("Investments II"), (b) 978,785 shares prior to this offering and shares after this offering beneficially owned by Care Capital Investments III, L.P. ("Investments III"), (c) 57,769 shares prior to this offering and shares after this offering beneficially owned by Care Capital Offshore Investments II, LP ("Offshore II"), (d) 16,343 shares prior to this offering and shares after this offering beneficially owned by Care Capital Offshore Investments III, LP ("Offshore III") and (e) 11,799 shares of common stock issuable upon the exercise of options exercisable within 60 days of September 30, 2014. Investments II's shares consist of (a) 600,781 shares of common stock issuable upon conversion of our outstanding Series AA convertible preferred stock and shares of common stock issuable upon conversion upon the consummation of this offering of a subordinated convertible promissory note we issued in December 2014 at the assumed initial public offering price of \$ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and (b) 240,955 shares of common stock. Investments III's shares consist of 978,785 shares of common stock issuable upon conversion of our outstanding Series AA convertible preferred stock and shares of common stock issuable upon conversion upon the consummation of this offering of a subordinated convertible promissory note we issued in December 2014 at the assumed initial public offering price of \$ per share, which is the midpoint of the price range set forth on the cover page of this prospectus. Offshore II's shares consist of (a) 41,241 shares of common stock issuable upon conversion of our outstanding Series AA convertible preferred stock and shares of common stock issuable upon conversion upon the consummation of this offering of a subordinated convertible promissory note we issued in

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December 2014 at the assumed initial public offering price of \$ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, and (b) 16,528 shares of common stock. Offshore III's shares consist of 16,343 shares of common stock issuable upon conversion of our outstanding Series AA convertible preferred stock and shares of common stock issuable upon conversion upon the consummation of this offering of a subordinated convertible promissory note we issued in December 2014 at the assumed initial public offering price of \$ per share, which is the midpoint of the price range set forth on the cover page of this prospectus. The voting and disposition of the shares held by Investments II and Offshore II is determined by the following managing members of their general partner, Care Capital II, LLC: A.N. "Jerry" Karabelas, Ph.D., a member of our Board of Directors, Jan Leschly and David R. Ramsay. The voting and disposition of the shares held by Investments III and Offshore III is determined by the following managing members of their general partner, Care Capital III, LLC: A.N. "Jerry" Karabelas, Ph.D., a member of our Board of Directors, Jan Leschly, Richard Markham and David R. Ramsay. The address of the Care Capital Entities is 47 Hull Street, Suite 310, Princeton, New Jersey 08540.

- (12) Consists of (a) 1,473,364 shares of common stock issuable upon conversion of our outstanding Series AA convertible preferred stock and shares of common stock issuable upon conversion upon the consummation of this offering of a subordinated convertible promissory note we issued in December 2014 at the assumed initial public offering price of \$ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, (b) 226,129 shares of common stock and (c) 11,799 shares of common stock issuable upon the exercise of options exercisable within 60 days of September 30, 2014. Isai Peimer, a member of our Board of Directors, is a Managing Director at MedImmune Ventures, Inc. The address of MedImmune Ventures, Inc. is 1 MedImmune Way, Gaithersburg, Maryland 20878.
- (13) Consists of 11,799 shares of common stock issuable upon the exercise of options exercisable within 60 days of September 30, 2014.

DESCRIPTION OF CAPITAL STOCK

The following descriptions are summaries of the material terms of our amended and restated certificate of incorporation and amended and restated bylaws, which will be effective upon closing of this offering. The descriptions of the common stock and preferred stock give effect to changes to our capital structure that will occur immediately prior to the closing of this offering including a 1-for-3.39 reverse stock split of our common stock and a proportional adjustment to the existing conversion ratio for each series of our redeemable convertible preferred stock, which became effective on November 26, 2014. We refer in this section to our amended and restated certificate of incorporation as our certificate of incorporation, and we refer to our amended and restated bylaws as our bylaws.

General

Upon the closing of this offering, our authorized capital stock will consist of 125,000,000 shares of common stock, par value \$0.01 per share, and 5,000,000 shares of preferred stock, par value \$0.001 per share, all of which shares of preferred stock will be undesignated.

As of September 30, 2014, 1,221,086 shares of our common stock were outstanding and held by 34 stockholders of record. In addition, as of September 30, 2014, 25,949,333 shares of preferred stock were outstanding and, with all accrued and unpaid dividends thereon, will convert into 9,404,970 shares of common stock upon the closing of this offering. Further, as of September 30, 2014, we had outstanding options to purchase 1,091,330 shares of our common stock, at a weighted average exercise price of \$4.01 per share, 84,679 of which are vested and exercisable.

Common Stock

The holders of our common stock are entitled to one vote for each share held on all matters submitted to a vote of the stockholders. The holders of our common stock do not have any cumulative voting rights. Holders of our common stock are entitled to receive ratably any dividends declared by the board of directors out of funds legally available for that purpose, subject to any preferential dividend rights of any outstanding preferred stock. Our common stock has no preemptive rights, conversion rights or other subscription rights or redemption or sinking fund provisions.

In the event of our liquidation, dissolution or winding up, holders of our common stock will be entitled to share ratably in all assets remaining after payment of all debts and other liabilities and any liquidation preference of any outstanding preferred stock. The shares to be issued by us in this offering will be, when issued and paid for, validly issued, fully paid and non-assessable.

Preferred Stock

Prior to the closing of this offering, our Fifth Amended and Restated Certificate of Incorporation will be amended to provide that upon the closing of a firm commitment underwritten public offering of our common stock with aggregate proceeds in excess of \$40.0 million, all outstanding shares of our Series AA Convertible Redeemable Preferred Stock and our Series X Convertible Redeemable Preferred Stock shall automatically convert to shares of our common stock. As a result, upon the closing of this offering of our common stock, all outstanding shares of our preferred stock which consist of 24,057,013 shares of our Series AA Redeemable Convertible Preferred Stock and 1,892,320 shares of our Series X Redeemable Convertible Preferred Stock, plus all accrued and unpaid dividends thereon, will be automatically converted into 9,404,970 shares of our common stock. Immediately prior to the closing of this offering, our Fifth Amended and Restated Certificate of Incorporation will be amended and restated to, among other things, delete all references to such shares of preferred stock. Upon the closing of this offering, our board of directors will have the authority, without further action by our stockholders, to issue

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up to 5,000,000 shares of preferred stock in one or more series and to fix the rights, preferences, privileges and restrictions thereof. These rights, preferences and privileges could include dividend rights, conversion rights, voting rights, terms of redemption, liquidation preferences, sinking fund terms and the number of shares constituting, or the designation of, such series, any or all of which may be greater than the rights of common stock. The issuance of our preferred stock could adversely affect the voting power of holders of common stock and the likelihood that such holders will receive dividend payments and payments upon our liquidation. In addition, the issuance of preferred stock could have the effect of delaying, deferring or preventing a change in control of our company or other corporate action. Immediately after closing of this offering, no shares of preferred stock will be outstanding, and we have no present plans to issue any shares of preferred stock.

Warrants

As of September 30, 2014, we had the following outstanding warrants to purchase shares of our Series AA Preferred Stock:

<u>Number of Underlying Shares</u>	<u>Exercise Price Per Share</u>	<u>Warrant Expiration Date</u>
228,906	\$1.529	June 28, 2023(1)

- (1) Warrants automatically terminate upon the closing of a sale or lease of all or substantially all of our business or property, our merger into or consolidation with any other corporation other than a wholly owned subsidiary of ours or any transaction or series of transactions pursuant to which more than 50% of the voting power of our capital stock is transferred.

Upon the closing of this offering, our warrants will become exercisable for 67,522 shares of our common stock rather than Series AA Preferred Stock after the effect of our 1 for 3.39 reverse stock split. The number of shares of our common stock into which the warrant will become exercisable will equal the number of shares of our common stock that the holder would have received if the warrant had been exercised in full and the resulting shares of convertible preferred stock received had been converted into shares of our common stock.

Subordinated Convertible Promissory Notes

Prior to the closing of this offering, the aggregate outstanding principal and accrued interest under the subordinated convertible promissory notes we sold in December 2014, or the 2014 bridge notes, is approximately \$2.0 million. Pursuant to their terms, the 2014 bridge notes will automatically convert upon the closing of this offering into that number of the same securities sold in this offering equal to all principal plus all accrued and unpaid interest of such bridge notes divided by the price per share of common stock sold in this offering.

Registration Rights

Upon the closing of this offering, the holders of our registrable shares, as described in the Investor Rights Agreement, are entitled to rights with respect to the registration of these shares under the Securities Act as hereinafter described. These rights are provided under the terms of the Investor Rights Agreement, and include demand registration rights, short-form registration rights and piggyback registration rights. All fees, costs and expenses of underwritten registrations will be borne by us and all selling expenses, including underwriting discounts and selling commissions, will be borne by the holders of the shares being registered.

Demand Registration Rights

Upon the closing of this offering, certain holders of shares of our common stock, including shares issuable upon the conversion of preferred stock or their permitted transferees, are entitled to demand registration rights. Under the terms of the Investor Rights Agreement, we will be required, upon the

written request of holders of at least 50% of our common shares issued upon conversion of our preferred stock upon consummation of this offering, to register shares with an anticipated aggregate offering price of at least \$5,000,000, to use our commercially reasonable efforts to effect the registration of at least 25% of our common shares issued upon conversion of our preferred stock upon consummation of this offering, subject to certain exceptions. We are required to effect only two registrations pursuant to this provision of the Investor Rights Agreement. A demand for registration may not be made until 180 days after the closing of this offering.

Form S-3 Registration Rights

Upon the closing of this offering, certain holders of shares of our common stock issued upon the conversion of preferred stock or their permitted transferees are also entitled to short form registration rights. If we are eligible to file a registration statement on Form S-3, upon the written request of certain holders of our common stock issued upon conversion of our preferred stock upon consummation of this offering to register shares with an anticipated aggregate offering price of at least \$1,000,000, we will be required to use our best efforts to effect a registration of such shares, subject to certain exceptions.

Piggyback Registration Rights

Upon the closing of this offering, certain holders of shares of our common stock issued upon the conversion of preferred stock or their permitted transferees are entitled to piggyback registration rights. If we propose to register any of our securities either for our own account or for the account of other security holders, the holders of these shares are entitled to include their shares in the registration. Subject to certain exceptions, we and the underwriters may limit the number of shares included in the underwritten offering if the underwriters believe that including these shares would adversely affect the offering.

Indemnification

Our Investor Rights Agreement contains customary cross-indemnification provisions, under which we are obligated to indemnify holders of registrable securities in the event of material misstatements or omissions in the registration statement attributable to us, and they are obligated to indemnify us for material misstatements or omissions attributable to them.

Expiration of Registration Rights

The registration rights granted under the Investor Rights Agreement will terminate on the fifth anniversary of the closing of this offering.

Anti-takeover Effects of Our Certificate of Incorporation, Bylaws and Delaware Law

Our certificate of incorporation and bylaws that will be effective upon consummation of this offering include a number of provisions that may have the effect of delaying, deferring or preventing another party from acquiring control of us and encouraging persons considering unsolicited tender offers or other unilateral takeover proposals to negotiate with our board of directors rather than pursue non-negotiated takeover attempts. These provisions include the items described below.

Board Composition and Filling Vacancies

Our certificate of incorporation provides for the division of our board of directors into three classes serving staggered three-year terms, with one class being elected each year. Our certificate of incorporation also provides that directors may be removed only for cause and then only by the affirmative vote of the holders of 75% of the shares then entitled to vote at an election of directors. Furthermore, any vacancy on our board of directors, however occurring, including a vacancy resulting from an increase in the size of our board, may only be filled by the affirmative vote of a majority of our directors then in office even if less than a quorum. The classification of directors, together with the limitations on removal of directors and treatment of vacancies, has the effect of making it more difficult for stockholders to change the composition of our board of directors.

No Written Consent of Stockholders

Our certificate of incorporation provides that all stockholder actions are required to be taken by a vote of the stockholders at an annual or special meeting, and that stockholders may not take any action by written consent in lieu of a meeting. This limit may lengthen the amount of time required to take stockholder actions and would prevent the amendment of our bylaws or removal of directors by our stockholders without holding a meeting of stockholders.

Meetings of Stockholders

Our certificate of incorporation and bylaws provide that only a majority of the members of our board of directors then in office may call special meetings of stockholders and only those matters set forth in the notice of the special meeting may be considered or acted upon at a special meeting of stockholders. Our bylaws limit the business that may be conducted at an annual meeting of stockholders to those matters properly brought before the meeting.

Advance Notice Requirements

Our bylaws establish advance notice procedures with regard to stockholder proposals relating to the nomination of candidates for election as directors or new business to be brought before meetings of our stockholders. These procedures provide that notice of stockholder proposals must be timely given in writing to our corporate secretary prior to the meeting at which the action is to be taken. Generally, to be timely, notice must be received at our principal executive offices not less than 90 days nor more than 120 days prior to the first anniversary date of the annual meeting for the preceding year. Our bylaws specify the requirements as to form and content of all stockholders' notices. These requirements may preclude stockholders from bringing matters before the stockholders at an annual or special meeting.

Amendment to Certificate of Incorporation and Bylaws

Any amendment of our certificate of incorporation must first be approved by a majority of our board of directors, and if required by law or our certificate of incorporation, must thereafter be approved by a majority of the outstanding shares entitled to vote on the amendment and a majority of the outstanding shares of each class entitled to vote thereon as a class, except that the amendment of the provisions relating to stockholder action, board composition, limitation of liability and the amendment of our certificate of incorporation must be approved by not less than 75% of the outstanding shares entitled to vote on the amendment, and not less than 75% of the outstanding shares of each class entitled to vote thereon as a class. Our bylaws may be amended by the affirmative vote of a majority of the directors then in office, subject to any limitations set forth in the bylaws; and may also be amended by the affirmative vote of at least 75% of the outstanding shares entitled to vote on the amendment, or, if our board of directors recommends that the stockholders approve the amendment, by the affirmative vote of the majority of the outstanding shares entitled to vote on the amendment, in each case voting together as a single class.

Undesignated Preferred Stock

Our certificate of incorporation provides for 5,000,000 authorized shares of preferred stock. The existence of authorized but unissued shares of preferred stock may enable our board of directors to discourage an attempt to obtain control of us by means of a merger, tender offer, proxy contest or otherwise. For example, if in the due exercise of its fiduciary obligations, our board of directors were to determine that a takeover proposal is not in the best interests of our stockholders, our board of directors could cause shares of preferred stock to be issued without stockholder approval in one or more private offerings or other transactions that might dilute the voting or other rights of the proposed acquirer or insurgent stockholder or stockholder group. In this regard, our certificate of incorporation grants our board of directors broad power to establish the rights and preferences of authorized and unissued shares of preferred stock. The issuance of shares of preferred stock could decrease the amount of earnings and assets available for distribution to holders of shares of common stock. The issuance may also adversely affect the rights and powers, including voting rights, of these holders and may have the effect of delaying, deterring or preventing a change in control of us.

Section 203 of the Delaware General Corporation Law

Upon the closing of this offering, we will be subject to the provisions of Section 203 of the DGCL. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a “business combination” with an “interested stockholder” for a three-year period following the time that this stockholder becomes an interested stockholder, unless the business combination is approved in a prescribed manner. Under Section 203, a business combination between a corporation and an interested stockholder is prohibited unless it satisfies one of the following conditions:

- n before the stockholder became interested, our board of directors approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- n upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding, shares owned by persons who are directors and also officers, and employee stock plans, in some instances, but not the outstanding voting stock owned by the interested stockholder; or
- n at or after the time the stockholder became interested, the business combination was approved by our board of directors and authorized at an annual or special meeting of the stockholders by the affirmative vote of at least two-thirds of the outstanding voting stock which is not owned by the interested stockholder.

Section 203 defines a business combination to include:

- n any merger or consolidation involving the corporation and the interested stockholder;
- n any sale, transfer, lease, pledge or other disposition involving the interested stockholder of 10% or more of the assets of the corporation;
- n subject to exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- n subject to exceptions, any transaction involving the corporation that has the effect of increasing the proportionate share of the stock of any class or series of the corporation beneficially owned by the interested stockholder; and
- n the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 203 defines an interested stockholder as any entity or person beneficially owning 15% or more of the outstanding voting stock of the corporation and any entity or person affiliated with or controlling or controlled by the entity or person.

Exchange Listing

We intend to apply to list our common stock on The NASDAQ Global Market under the trading symbol “ITEK.”

Transfer Agent and Registrar

The transfer agent and registrar for our common stock will be Continental Stock Transfer & Trust Company. The transfer agent and registrar’s address is 17 Battery Place, New York, NY 10004.

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our shares. Future sales of our common stock in the public market, or the availability of such shares for sale in the public market, could adversely affect market prices prevailing from time to time. As described below, only a limited number of shares will be available for sale shortly after this offering due to contractual and legal restrictions on resale. Nevertheless, sales of our common stock in the public market after such restrictions lapse, or the perception that those sales may occur, could adversely affect the prevailing market price at such time and our ability to raise equity capital in the future.

Based on the number of shares outstanding as of September 30, 2014 (after giving effect to a 1-for-3.39 reverse stock split of our common stock and a proportional adjustment to the existing conversion ratio for each series of our redeemable convertible preferred stock, which became effective on November 26, 2014), upon the closing of this offering of common stock, _____ shares of our common stock will be outstanding, assuming no exercise of the underwriters' overallotment option, the conversion of the subordinated convertible promissory notes we issued in December 2014 into shares of common stock at a price per share equal to the midpoint of the price range set forth on the cover page of this prospectus and no exercise of outstanding options. Concurrently with this offering, we are also making a public offering of \$ _____ million aggregate principal amount of _____ % Convertible Senior Notes due 2019, or the notes (plus up to an additional \$ _____ million principal amount of notes if the underwriters for the concurrent offering of notes exercise their overallotment option). The notes will be convertible by holders beginning on _____, 2019, or earlier upon the occurrence of certain events. Upon conversion of a note, we will satisfy our conversion obligation by paying and/or delivering, as the case may be, cash, shares of our common stock or a combination of cash and shares of our common stock, at our election, as described in the Convertible Senior Notes Prospectus. The conversion rate will initially be _____ shares of our common stock per \$1,000 principal amount of notes (equivalent to an initial conversion price of approximately \$ _____ per share of our common stock). The conversion rate will be subject to adjustment in some events but will not be adjusted for any accrued and unpaid interest. In addition, following a make-whole fundamental change (as defined in the Convertible Senior Notes Prospectus) that occurs prior to the maturity date, we will increase the conversion rate for a holder who elects to convert its notes in connection with such make-whole fundamental change in certain circumstances. Assuming that we settle all conversion of the notes in shares of our common stock and without the application of any anti-dilution, make-whole or other adjustments, _____ shares would be issuable upon conversion of the notes, if issued. The closing of this offering is not contingent upon the closing of the concurrent offering of notes, but the closing of the concurrent offering of notes is contingent upon the closing of this offering. Of the outstanding shares, all of the shares sold in this offering will be freely tradable, except that any shares held by our affiliates, as that term is defined in Rule 144 under the Securities Act, may only be sold in compliance with the limitations described below.

Rule 144

In general, a person who has beneficially owned restricted stock for at least six months would be entitled to sell their securities provided that (i) such person is not deemed to have been one of our affiliates at the time of, or at any time during the 90 days preceding, a sale and (ii) we are subject to the Exchange Act periodic reporting requirements for at least 90 days before the sale. Persons who have beneficially owned restricted shares for at least six months but who are our affiliates at the time of, or any time during the 90 days preceding, a sale, would be subject to additional restrictions, by which such person would be entitled to sell within any three-month period only a number of securities that does not exceed the greater of either of the following:

- n 1% of the number of shares then outstanding, which will equal approximately 149,000 shares immediately after this offering assuming no exercise of the underwriters' overallotment option, based on the number of shares outstanding as of September 30, 2014; or

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- n the average weekly trading volume of our common stock on the NASDAQ Global Market during the four calendar weeks preceding the filing of a notice on Form 144 with respect to the sale.

Provided, in each case, that we are subject to the Exchange Act periodic reporting requirements for at least 90 days before the sale. Such sales both by affiliates and by non-affiliates must also comply with the manner of sale, current public information and notice provisions of Rule 144.

Rule 701

Rule 701 under the Securities Act, as in effect on the date of this prospectus, permits resales of shares in reliance upon Rule 144 but without compliance with certain restrictions of Rule 144, including the holding period requirement. Most of our employees, executive officers or directors who purchased shares under a written compensatory plan or contract may be entitled to rely on the resale provisions of Rule 701, but all holders of Rule 701 shares are required to wait until 90 days after the date of this prospectus before selling their shares. However, substantially all Rule 701 shares are subject to lock-up agreements as described below and under “Underwriting” included elsewhere in this prospectus and will become eligible for sale upon the expiration of the restrictions set forth in those agreements.

Lock-up Agreements

In connection with this offering, all of our directors and executive officers and certain holders of our shares, who collectively held approximately 10.1 million shares of common stock (assuming conversion of all of our outstanding shares of preferred stock) as of September 30, 2014, and substantially all of our optionholders who are not stockholders, have signed lock-up agreements which prevent them from selling any of our common stock or any securities convertible into or exercisable or exchangeable for common stock for a period of not less than 180 days from the date of the preliminary prospectus prepared for this offering without the prior written consent of each of Cowen and Company, LLC and Piper Jaffray & Co., as representatives of the underwriters. The representatives may in their sole discretion and at any time without notice release some or all of the shares subject to lock-up agreements prior to the expiration of the 180-day period. When determining whether or not to release shares from the lock-up agreements, the representatives will consider, among other factors, the stockholder’s reasons for requesting the release, the number of shares for which the release is being requested and market conditions at the time. In addition, our optionholders who have not executed lock-up agreements are nevertheless subject to similar restrictions set forth in the option agreements executed in connection with our 2004 Plan and 2014 Plan.

Registration Rights

Upon the closing of this offering, the holders of approximately 10.3 million shares of common stock or their transferees will be entitled to various rights with respect to registration of these shares under the Securities Act. Registration of these shares under the Securities Act would result in these shares becoming fully tradable without restriction under the Securities Act immediately upon the effectiveness of the registration. See “Description of Capital Stock—Registration Rights” for additional information.

Stock Option Plans

We intend to file one or more registration statements on Form S-8 under the Securities Act to register our shares issued or reserved for issuance under the 2014 Plan and the ESPP. The first such registration statement is expected to be filed soon after the date of this prospectus and will automatically become effective upon filing with the SEC. Accordingly, shares registered under such registration statement will be available for sale in the open market, unless such shares are subject to vesting restrictions with us or the lock-up restrictions described above. We estimate that such registration statement on Form S-8 will cover approximately 2,205,928 shares.

CERTAIN MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS FOR NON-U.S. HOLDERS OF COMMON STOCK

The following is a general discussion of the material U.S. federal income and estate tax considerations applicable to non-U.S. holders (as defined below) with respect to their ownership and disposition of shares of our common stock issued pursuant to this offering. For purposes of this discussion, a non-U.S. holder means a beneficial owner of our common stock that is for U.S. federal income tax purposes

- n a non-resident alien individual;
- n a foreign corporation or any other organization taxable as a corporation for U.S. federal income tax purposes or;
- n a foreign estate or trust, the income of which is not subject to U.S. federal income tax on a net-income basis.

This discussion does not address the tax treatment of partnerships or other entities that are pass-through entities for U.S. federal income tax purposes or persons that hold their common stock through partnerships or other pass-through entities. A partner in a partnership or other pass-through entity that will hold our common stock should consult his, her or its own tax advisor regarding the tax consequences of acquiring, holding and disposing of our common stock through a partnership or other pass-through entity, as applicable.

This discussion is based on current provisions of the U.S. Internal Revenue Code of 1986, as amended, which we refer to as the Code, existing and proposed U.S. Treasury Regulations promulgated thereunder, current administrative rulings and judicial decisions, all as in effect as of the date of this prospectus, all of which are subject to change or to differing interpretation, possibly with retroactive effect. Any change could alter the tax consequences to non-U.S. holders described in this prospectus. There can be no assurance that the Internal Revenue Service, which we refer to as the IRS, will not challenge one or more of the tax consequences described herein. We assume in this discussion that a non-U.S. holder holds shares of our common stock as a capital asset, generally property held for investment.

This discussion does not address all aspects of U.S. federal income and estate taxation that may be relevant to a particular non-U.S. holder in light of that non-U.S. holder's individual circumstances nor does it address any aspects of U.S. state, local or non-U.S. taxes, the alternative minimum tax, or the Medicare tax on net investment income. This discussion also does not consider any specific facts or circumstances that may apply to a non-U.S. holder and does not address the special tax rules applicable to particular non-U.S. holders, such as:

- n insurance companies;
- n tax-exempt organizations;
- n financial institutions;
- n brokers or dealers in securities;
- n regulated investment companies;
- n pension plans;
- n controlled foreign corporations;
- n passive foreign investment companies;
- n persons that have a functional currency other than the U.S. dollar;
- n owners deemed to sell our common stock under the constructive sale provisions of the Code;
- n owners that hold our common stock as part of a straddle, hedge, conversion transaction, synthetic security or other integrated investment; and
- n certain U.S. expatriates.

This discussion is for general information only and is not tax advice. Accordingly, all prospective non-U.S. holders of our common stock should consult their own tax advisors with respect to the U.S. federal, state, local and non-U.S. tax consequences of the purchase, ownership and disposition of our common stock.

Distributions on Our Common Stock

Distributions, if any, on our common stock generally will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. If a distribution exceeds our current and accumulated earnings and profits, the excess will be treated as a tax-free return of the non-U.S. holder's investment, up to such holder's tax basis in the common stock. Any remaining excess will be treated as capital gain, subject to the tax treatment described below in "Gain on sale, exchange or other disposition of our common stock." Any such distributions will also be subject to the discussion below under the section titled "Withholding and Information Reporting Requirements—FATCA."

Dividends paid to a non-U.S. holder generally will be subject to withholding of U.S. federal income tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty between the United States and such holder's country of residence.

Dividends that are treated as effectively connected with a trade or business conducted by a non-U.S. holder within the United States and, if an applicable income tax treaty so provides, that are attributable to a permanent establishment or a fixed base maintained by the non-U.S. holder within the United States, are generally exempt from the 30% withholding tax if the non-U.S. holder satisfies applicable certification and disclosure requirements. However, such U.S. effectively connected income, net of specified deductions and credits, is taxed at the same graduated U.S. federal income tax rates applicable to United States persons (as defined in the Code). Any U.S. effectively connected income received by a non-U.S. holder that is a corporation may also, under certain circumstances, be subject to an additional "branch profits tax" at a 30% rate or such lower rate as may be specified by an applicable income tax treaty between the United States and such holder's country of residence.

A non-U.S. holder of our common stock who claims the benefit of an applicable income tax treaty between the United States and such holder's country of residence generally will be required to provide a properly executed IRS Form W-8BEN or W-8BEN-E (or successor form) and satisfy applicable certification and other requirements. Non-U.S. holders are urged to consult their tax advisors regarding their entitlement to benefits under a relevant income tax treaty.

A non-U.S. holder that is eligible for a reduced rate of U.S. withholding tax under an income tax treaty may obtain a refund or credit of any excess amounts withheld by timely filing a U.S. tax return with the IRS.

Gain on Sale, Exchange or Other Disposition of Our Common Stock

In general, a non-U.S. holder will not be subject to any U.S. federal income tax on any gain realized upon such holder's sale, exchange or other disposition of shares of our common stock unless:

- n the gain is effectively connected with the non-U.S. holder's conduct of a U.S. trade or business and, if an applicable income tax treaty so provides, is attributable to a permanent establishment or a fixed-base maintained by such non-U.S. holder in the United States, in which case the non-U.S. holder generally will be taxed on a net income basis at the graduated U.S. federal income tax rates applicable to United States persons (as defined in the Code) and, if the non-U.S. holder is a foreign corporation, the branch profits tax described above in "Distributions on Our Common Stock" also may apply;

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- n the non-U.S. holder is a nonresident alien individual who is present in the United States for 183 days or more in the taxable year of the disposition and certain other conditions are met, in which case the non-U.S. holder will be subject to a 30% tax (or such lower rate as may be specified by an applicable income tax treaty between the United States and such holder's country of residence) on the net gain derived from the disposition, which may be offset by certain U.S. source capital losses of the non-U.S. holder, if any (even though the individual is not considered a resident of the United States, provided that the non-U.S. holder has timely filed U.S. federal income tax returns with respect to such losses); or
- n we are, or have been, at any time during the five-year period preceding such disposition (or the non-U.S. holder's holding period, if shorter) a "U.S. real property holding corporation," unless our common stock is regularly traded on an established securities market and the non-U.S. holder holds no more than 5% of our outstanding common stock, directly or indirectly, actually or constructively, during the shorter of the 5-year period ending on the date of the disposition or the period that the non-U.S. holder held our common stock. If we are determined to be a U.S. real property holding corporation and the foregoing exception does not apply, then a purchaser may withhold 10% of the proceeds payable to a non-U.S. holder from a sale of our common stock and the non-U.S. holder generally will be taxed on its net gain derived from the disposition at the graduated U.S. federal income tax rates applicable to United States persons (as defined in the Code). Generally, a corporation is a U.S. real property holding corporation only if the fair market value of its U.S. real property interests equals or exceeds 50% of the sum of the fair market value of its worldwide real property interests plus its other assets used or held for use in a trade or business. Although there can be no assurance, we do not believe that we are, or have been, a U.S. real property holding corporation, or that we are likely to become one in the future. No assurance can be provided that our common stock will be regularly traded on an established securities market for purposes of the rules described above.

U.S. Federal Estate Tax

Shares of our common stock that are owned or treated as owned at the time of death by an individual who is not a citizen or resident of the United States, as specifically defined for U.S. federal estate tax purposes, are considered U.S. situs assets and will be included in the individual's gross estate for U.S. federal estate tax purposes. Such shares, therefore, may be subject to U.S. federal estate tax, unless an applicable estate tax or other treaty provides otherwise.

Backup Withholding and Information Reporting

We must report annually to the IRS and to each non-U.S. holder the gross amount of the distributions on our common stock paid to such holder and the tax withheld, if any, with respect to such distributions. Non-U.S. holders may have to comply with specific certification procedures to establish that the holder is not a United States person (as defined in the Code) in order to avoid backup withholding at the applicable rate with respect to dividends on our common stock. Dividends paid to non-U.S. holders subject to withholding of U.S. federal income tax, as described above in "Distributions on Our Common Stock," generally will be exempt from U.S. backup withholding.

Information reporting and backup withholding will generally apply to the proceeds of a disposition of our common stock by a non-U.S. holder effected by or through the U.S. office of any broker, U.S. or foreign, unless the holder certifies its status as a non-U.S. holder and satisfies certain other requirements, or otherwise establishes an exemption. Generally, information reporting and backup withholding will not apply to a payment of disposition proceeds to a non-U.S. holder where the transaction is effected outside the United States through a non-U.S. office of a broker. However, for information reporting purposes, dispositions effected through a non-U.S. office of a broker with

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substantial U.S. ownership or operations generally will be treated in a manner similar to dispositions effected through a U.S. office of a broker. Non-U.S. holders should consult their own tax advisors regarding the application of the information reporting and backup withholding rules to them.

Copies of information returns may be made available to the tax authorities of the country in which the non-U.S. holder resides or is incorporated under the provisions of a specific treaty or agreement.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules from a payment to a non-U.S. holder can be refunded or credited against the non-U.S. holder's U.S. federal income tax liability, if any, provided that an appropriate claim is filed with the IRS in a timely manner.

Withholding and Information Reporting Requirements—FATCA

The Foreign Account Tax Compliance Act, or FATCA, generally imposes a U.S. federal withholding tax at a rate of 30% on payments of dividends on, or gross proceeds from the sale or other disposition of, our common stock paid to a foreign entity unless (i) if the foreign entity is a "foreign financial institution," such foreign entity undertakes certain due diligence, reporting, withholding, and certification obligations, (ii) if the foreign entity is not a "foreign financial institution," such foreign entity identifies certain of its U.S. investors, if any, or (iii) the foreign entity is otherwise exempt under FATCA. Under applicable U.S. Treasury regulations, withholding under FATCA will apply to payments of dividends on our common stock made after June 30, 2014, but will only apply to payments of gross proceeds from a sale or other disposition of our common stock made after December 31, 2016. Under certain circumstances, a non-U.S. holder may be eligible for refunds or credits of the tax. An intergovernmental agreement between the United States and an applicable foreign country may modify the requirements described in this paragraph. Non-U.S. holders should consult their own tax advisors regarding the possible implications of this legislation on their investment in our common stock and the entities through which they hold our common stock, including, without limitation, the process and deadlines for meeting the applicable requirements to prevent the imposition of the 30% withholding tax under FATCA.

UNDERWRITING

We and the underwriters for the offering named below have entered into an underwriting agreement with respect to the shares of common stock being offered. Subject to the terms and conditions of the underwriting agreement, each underwriter has severally agreed to purchase from us the number of shares of common stock set forth opposite its name below. Cowen and Company, LLC and Piper Jaffray & Co. are the representatives of the underwriters.

Underwriter	Number of Shares
Cowen and Company, LLC	
Piper Jaffray & Co.	
Canaccord Genuity Inc.	
Nomura Securities International, Inc.	
Total	

The underwriting agreement provides that the obligations of the underwriters are subject to certain conditions precedent and that the underwriters have agreed, severally and not jointly, to purchase all of the shares of common stock sold under the underwriting agreement if any of these shares are purchased, other than those shares covered by the overallotment option described below. If an underwriter defaults, the underwriting agreement provides that the purchase commitments of the non-defaulting underwriters may be increased or the underwriting agreement may be terminated.

We have agreed to indemnify the underwriters against specified liabilities, including liabilities under the Securities Act, and to contribute to payments the underwriters may be required to make in respect thereof.

The underwriters are offering the shares of common stock, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel and other conditions specified in the underwriting agreement. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

Certain of our existing principal stockholders and their affiliated entities have indicated an interest in purchasing an aggregate of approximately \$ million in shares of our common stock in this offering at the initial public offering price. However, because indications of interest are not binding agreements or commitments to purchase, these stockholders may determine to purchase fewer shares than they have indicated an interest in purchasing or not to purchase any shares in this offering. It is also possible that these stockholders could indicate an interest in purchasing more shares of our common stock. In addition, the underwriters could determine to sell fewer shares to any of these stockholders than the stockholders have indicated an interest in purchasing or not to sell any shares to these stockholders.

Overallotment Option to Purchase Additional Shares

We have granted to the underwriters an option to purchase up to additional shares of common stock at the public offering price, less the underwriting discount, in this offering of common stock. This option is exercisable for a period of 30 days. The underwriters may exercise this option solely for the purpose of covering overallotments, if any, made in connection with the sale of common stock offered hereby. To the extent that the underwriters exercise this option, the underwriters will purchase additional shares from us in approximately the same proportion as shown in the table above.

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Discounts and Commissions

The following table shows the public offering price, underwriting discount and proceeds, before expenses to us. These amounts are shown assuming both no exercise and full exercise of the underwriters' overallotment option.

We estimate that the total expenses of this offering of common stock, excluding underwriting discounts and commissions, will be approximately \$2.0 million and are payable by us. We have also agreed to reimburse the underwriters for certain of their expenses as set forth in the underwriting agreement, including legal fees incurred in the qualification of this offering and the concurrent offering of notes with the Financial Regulatory Authority, or FINRA, in an amount of up to \$30,000, which amount is deemed to be underwriting compensation by FINRA.

	<u>Total</u>		
	<u>Without</u>	<u>With</u>	
	<u>Per Share</u>	<u>Overallotment</u>	<u>Overallotment</u>
Initial public offering price			
Underwriting discounts and commissions			
Proceeds, before expenses, to Inotek			

The underwriters propose to offer the shares of common stock to the public at the public offering price set forth on the cover of this prospectus. The underwriters may offer the shares of common stock to securities dealers at the public offering price less a concession not in excess of \$ per share. If all of the shares are not sold at the public offering price, the underwriters may change the offering price and other selling terms. Sales of shares of common stock made outside of the United States may be made by affiliates of certain of the underwriters.

Discretionary Accounts

The underwriters do not intend to confirm sales of the shares of common stock to any accounts over which they have discretionary authority.

Market Information

Prior to this offering, there has been no public market for shares of our common stock. The initial public offering price will be determined by negotiations between us and the representatives of the underwriters. In addition to prevailing market conditions, the factors to be considered in these negotiations include:

- n the history of, and prospects for, our company and the industry in which we compete;
- n our past and present financial information;
- n an assessment of our management; its past and present operations, and the prospects for, and timing of, our future revenues;
- n the present state of our development; and
- n the above factors in relation to market values and various valuation measures of other companies engaged in activities similar to ours.

An active trading market for our common stock may not develop, or if such a market develops, may not be sustained. It is also possible that after the offering the shares will not trade in the public market at or above the initial public offering price.

We intend to apply to list our common stock on The NASDAQ Global Market under the symbol "ITEK."

Price Stabilization, Short Positions and Penalty Bids

In connection with this offering of common stock, the underwriters may engage in stabilizing transactions, overallotment transactions, syndicate covering transactions, penalty bids and purchases to cover positions created by short sales.

- n Stabilizing transactions permit bids to purchase shares of common stock so long as the stabilizing bids do not exceed a specified maximum, and are engaged in for the purpose of preventing or retarding a decline in the market price of the common stock while the offering is in progress.
- n Overallotment transactions involve sales by the underwriters of shares of common stock in excess of the number of shares the underwriters are obligated to purchase. This creates a syndicate short position which may be either a covered short position or a naked short position. In a covered short position, the number of shares over-allotted by the underwriters is not greater than the number of shares that they may purchase in the overallotment option. In a naked short position, the number of shares involved is greater than the number of shares in the overallotment option. The underwriters may close out any short position by exercising their overallotment option and/or purchasing shares in the open market.
- n Syndicate covering transactions involve purchases of common stock in the open market after the distribution has been completed in order to cover syndicate short positions. In determining the source of shares to close out the short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared with the price at which they may purchase shares through exercise of the overallotment option. If the underwriters sell more shares than could be covered by exercise of the overallotment option and, therefore, have a naked short position, the position can be closed out only by buying shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that after pricing there could be downward pressure on the price of the shares in the open market that could adversely affect investors who purchase in the offering.
- n Penalty bids permit the representatives to reclaim a selling concession from a syndicate member when the common stock originally sold by that syndicate member is purchased in stabilizing or syndicate covering transactions to cover syndicate short positions.

These stabilizing transactions, syndicate covering transactions and penalty bids may have the effect of raising or maintaining the market price of our common stock or preventing or retarding a decline in the market price of our common stock. As a result, the price of our common stock in the open market may be higher than it would otherwise be in the absence of these transactions. Neither we nor the underwriters make any representation or prediction as to the effect that the transactions described above may have on the price of shares of our common stock. These transactions may be effected on The NASDAQ Global Market, in the over-the-counter market or otherwise and, if commenced, may be discontinued at any time.

Lock-Up Agreements

Pursuant to certain "lock-up" agreements, we and our executive officers, directors and certain of our other stockholders, have agreed, subject to certain exceptions, not to offer, sell, assign, transfer, pledge, contract to sell, or otherwise dispose of or announce the intention to otherwise dispose of, or enter into any swap, hedge or similar agreement or arrangement that transfers, in whole or in part, the economic consequence of ownership of, directly or indirectly, or make any demand or request or exercise any right with respect to the registration of, or file with the SEC a registration statement under the Securities Act relating to, any common stock or securities convertible into or exchangeable or exercisable for any common stock without the prior written consent of Cowen and Company, LLC and Piper Jaffray & Co., for a period of 180 days after the date of the underwriting agreement.

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This lock-up provision applies to common stock and to securities convertible into or exchangeable or exercisable for common stock. It also applies to common stock owned now or acquired later by the person executing the agreement or for which the person executing the agreement later acquires the power of disposition. The exceptions to the lock-up for executive officers, directors and stockholders include: (a) transfers made as a bona fide gift to an immediate family member, to a trust the beneficiaries of which are exclusively the executive officer, director or stockholder or immediate family member, or to a charity or educational institution; (b) transfers made by will or intestate succession; (c) transfers not for value to a stockholder, partner, member or similar equity owner of, or business entity that is an affiliate of, a similar equity interest in, a stockholder that is an entity; (d) transfers made by an employee or director pursuant to a net exercise or cashless exercise of outstanding equity awards pursuant to our equity plans or as forfeitures or sales to us of common stock or securities convertible into common stock to cover tax withholding obligations in connection with the vesting, settlement or exercise of equity awards outstanding on the date of the underwriting agreement; (e) the conversion, exchange or exercise of any securities convertible into or exchangeable for our common stock; (f) transactions relating to our common stock or other securities convertible into or exercisable or exchangeable for our common stock acquired in open market transactions after the date of this prospectus, provided that no such transaction is required to be, or is, publicly announced; (g) transactions relating to our common stock acquired through our initial public offering, provided that no such transaction is required to be, or is, publicly announced, and provided further that this sub-clause will not apply to our officers and directors; (h) the establishment of a trading plan in accordance with Rule 10b5-1(c) under the Exchange Act, provided that no sale or other disposition under such trading plan may occur during the 180-day restricted period; and (i) transfers pursuant to a bona fide third party tender offer, merger, consolidation or other similar transaction made to holders of our common stock involving the transfer in one or more transactions to a person or affiliated persons of our voting securities if, after such transfer, such person or group of affiliated persons would hold 90% of our outstanding voting securities. The exceptions to the lock-up for us are: (i) our sale of shares in this offering; (ii) the issuance of common stock or options to acquire common stock pursuant to our employee benefit plans, equity compensation plans or other compensation plans in existence on the date hereof and as described in this prospectus; and (iii) the issuance of common stock pursuant to the conversion or exercise of existing securities and the notes. In addition, the lock-up provision will not restrict broker-dealers from engaging in market making and similar activities conducted in the ordinary course of their business.

Cowen and Company, LLC and Piper Jaffray & Co., in their sole discretion, may release our common stock and other securities subject to the lock-up agreements described above in whole or in part at any time. When determining whether or not to release our common stock and other securities from lock-up agreements, Cowen and Company, LLC and Piper Jaffray & Co. will consider, among other factors, the holder's reasons for requesting the release, the number of shares for which the release is being requested and market conditions at the time of the request. In the event of such a release or waiver for one of our directors or officers, Cowen and Company, LLC and Piper Jaffray & Co. shall provide us with notice of the impending release or waiver at least three business days before the effective date of such release or waiver and we will announce the impending release or waiver by issuing a press release at least two business days before the effective date of the release or waiver.

Electronic Offer, Sale and Distribution of Shares

A prospectus in electronic format may be made available on the websites maintained by one or more of the underwriters or selling group members, if any, participating in this offering and one or more of the underwriters participating in this offering may distribute prospectuses electronically. The representatives may agree to allocate a number of shares to underwriters and selling group members for sale to their online brokerage account holders. Internet distributions will be allocated by the

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underwriters and selling group members that will make internet distributions on the same basis as other allocations. Other than the prospectus in electronic format, the information on these websites is not part of this prospectus or the registration statement of which this prospectus forms a part, has not been approved or endorsed by us or any underwriter in its capacity as underwriter, and should not be relied upon by investors.

Other Relationships

Certain of the underwriters and their affiliates have provided, and may in the future provide, various investment banking, commercial banking and other financial services for us and our affiliates for which they have received, and may in the future receive, customary fees. In addition, the underwriters of this offering of common stock are also the underwriters for the concurrent offering of notes.

Selling Restrictions

No action has been taken in any jurisdiction except the United States that would permit a public offering of our common stock, or the possession, circulation or distribution of this prospectus or any other material relating to us or our common stock in any jurisdiction where action for that purpose is required. Accordingly, the shares may not be offered or sold, directly or indirectly, and neither this prospectus nor any other offering material or advertisements in connection with the shares may be distributed or published, in or from any country or jurisdiction except in compliance with any applicable rules and regulations of any such country or jurisdiction.

United Kingdom

Each of the underwriters has, separately and not jointly, represented and agreed that:

- n it has not made or will not make an offer of the securities to the public in the United Kingdom within the meaning of section 102B of the Financial Services and Markets Act 2000 (as amended), or the FSMA, except to legal entities which are authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities or otherwise in circumstances which do not require the publication by us of a prospectus pursuant to the Prospectus Rules of the Financial Services Authority, or FSA;
- n it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of section 21 of FSMA) to persons who have professional experience in matters relating to investments falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 or in circumstances in which section 21 of FSMA does not apply to us; and
- n it has complied with and will comply with all applicable provisions of FSMA with respect to anything done by it in relation to the securities in, from or otherwise involving the United Kingdom.

Switzerland

The securities will not be offered, directly or indirectly, to the public in Switzerland and this prospectus does not constitute a public offering prospectus as that term is understood pursuant to article 652a or 1156 of the Swiss Federal Code of Obligations.

European Economic Area

In relation to each Member State of the European Economic Area, or the EEA, which has implemented the European Prospectus Directive (each, a "Relevant Member State"), an offer of our shares may not be made to the public in a Relevant Member State other than:

- n to any legal entity which is a qualified investor, as defined in the European Prospectus Directive;

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- n to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150 natural or legal persons (other than qualified investors as defined in the European Prospectus Directive), subject to obtaining the prior consent of the relevant dealer or dealers nominated by us for any such offer, or
- n in any other circumstances falling within Article 3(2) of the European Prospectus Directive,

provided that no such offer of our shares shall require us or any underwriter to publish a prospectus pursuant to Article 3 of the European Prospectus Directive or supplement prospectus pursuant to Article 16 of the European Prospectus Directive.

For the purposes of this description, the expression an “offer to the public” in relation to the securities in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the securities to be offered so as to enable an investor to decide to purchase or subscribe for the securities, as the expression may be varied in that Relevant Member State by any measure implementing the European Prospectus Directive in that member state, and the expression “European Prospectus Directive” means Directive 2003/71/EC (and amendments hereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State) and includes any relevant implementing measure in each Relevant Member State. The expression 2010 PD Amending Directive means Directive 2010/73/EU.

We have not authorized and do not authorize the making of any offer of securities through any financial intermediary on our behalf, other than offers made by the underwriters and their respective affiliates, with a view to the final placement of the securities as contemplated in this document. Accordingly, no purchaser of the shares, other than the underwriters, is authorized to make any further offer of shares on our behalf or on behalf of the underwriters.

LEGAL MATTERS

The validity of the shares of common stock offered by this prospectus will be passed upon for us by Goodwin Procter LLP, Boston, Massachusetts. Certain legal matters will be passed upon for the underwriters by Cooley LLP, New York, New York.

EXPERTS

The consolidated financial statements of Inotek Pharmaceuticals Corporation appearing in this prospectus and registration statement have been audited by McGladrey LLP, an independent registered public accounting firm, as stated in their report appearing elsewhere herein, and are included in reliance upon such report and upon the authority of such firm as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 (File Number 333-199859) under the Securities Act with respect to the common stock we are offering by this prospectus. This prospectus does not contain all of the information included in the registration statement. For further information pertaining to us and our common stock, you should refer to the registration statement and to its exhibits. Whenever we make reference in this prospectus to any of our contracts, agreements or other documents, the references are not necessarily complete, and you should refer to the exhibits attached to the registration statement for copies of the actual contract, agreement or other document.

Upon the closing of the offering, we will be subject to the informational requirements of the Exchange Act and will file annual, quarterly and current reports, proxy statements and other information with the SEC. You can read our SEC filings, including the registration statement, over the Internet at the SEC's website at www.sec.gov. You may also read and copy any document we file with the SEC at its public reference facility at 100 F Street, N.E., Room 1580, Washington, D.C. 20549.

You may also obtain copies of the documents at prescribed rates by writing to the Public Reference Section of the SEC at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference facilities.

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**Report of Independent
Registered Public Accounting Firm**

To the Board of Directors and Shareholders
Inotek Pharmaceuticals Corporation

We have audited the accompanying consolidated balance sheets of Inotek Pharmaceuticals Corporation as of December 31, 2013 and 2012, and the related consolidated statements of operations, changes in redeemable convertible preferred stock and stockholders' deficit, and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Inotek Pharmaceuticals Corporation as of December 31, 2013 and 2012, and the results of their operations and their cash flows for the years then ended, in conformity with U.S. generally accepted accounting principles.

/s/ McGladrey LLP

Boston, Massachusetts
August 29, 2014, except for the effects of the
reverse stock split described in Note 11,
as to which the date is November 26, 2014

Inotek Pharmaceuticals Corporation
Consolidated Balance Sheets
(in thousands, except share and per share data)

	December 31,		September 30,	Pro Forma
	2012	2013	2014	September 30, 2014
			(unaudited)	
Assets				
Current assets:				
Cash and cash equivalents	\$ 1,372	\$ 12,793	\$ 5,357	\$ 5,357
Prepaid expenses and other current assets	45	66	74	74
Total current assets	1,417	12,859	5,431	5,431
Other assets	4	4	1,067	1,067
Total assets	<u>\$ 1,421</u>	<u>\$ 12,863</u>	<u>\$ 6,498</u>	<u>\$ 6,498</u>
Liabilities, Redeemable Convertible Preferred Stock and Stockholders' Deficit				
Current liabilities				
Notes payable-current portion	\$ -	\$ 1,410	\$ 2,980	\$ 2,980
Accounts payable	387	229	1,048	1,048
Accrued expenses and other current liabilities	665	1,579	1,468	1,468
Convertible notes payable	2,713	-	-	-
Total current liabilities	3,765	3,218	5,496	5,496
Notes payable, net of current portion	-	5,395	3,294	3,294
Warrant liabilities	-	1,888	294	-
Other long-term liabilities	24	24	24	24
Total liabilities	<u>3,789</u>	<u>10,525</u>	<u>9,108</u>	<u>8,814</u>
Series AA redeemable convertible preferred stock, \$0.001 par value; 23,923,602 shares, 25,757,874 shares, 25,757,874 shares, and 25,757,874 shares authorized at December 31, 2012, December 31, 2013, September 30, 2014 (unaudited) and pro forma (unaudited), respectively; 15,458,796 shares, 23,204,783 shares, 24,057,013 shares and no shares issued and outstanding at December 31, 2012, December 31, 2013, September 30, 2014 (unaudited) and pro forma (unaudited), respectively	27,856	40,685	45,114	-
Series X redeemable convertible preferred stock, \$0.001 par value; 2,451,183 shares, 2,902,050 shares, 2,902,050 shares, and 2,902,050 shares authorized at December 31, 2012, December 31, 2013, September 30, 2014 (unaudited) and pro forma (unaudited), respectively; 2,451,184 shares, 1,892,320 shares, 1,892,320 shares and no shares issued and outstanding at December 31, 2012, December 31, 2013, September 30, 2014 (unaudited) and pro forma (unaudited), respectively	706	548	548	-
Total redeemable convertible preferred stock	<u>28,562</u>	<u>41,233</u>	<u>45,662</u>	<u>-</u>
Commitments and Contingencies (Note 8)				
Stockholders' deficit:				
Common stock, \$0.01 par value; 85,000,000 shares, 32,857,171 shares, 32,857,171 shares, and 32,857,171 shares authorized at December 31, 2012, December 31, 2013, September 30, 2014 (unaudited) and pro forma (unaudited), respectively; 1,219,002 shares, 1,223,342 shares, 1,221,086 shares and 10,626,056 shares issued at December 31, 2012, December 31, 2013, September 30, 2014 (unaudited) and pro forma (unaudited), respectively; 1,216,746 shares, 1,221,086 shares, 1,221,086 shares and 10,626,056 shares outstanding at December 31, 2012, December 31, 2013, September 30, 2014 (unaudited) and pro forma (unaudited), respectively	12	12	12	106
Treasury stock, at cost 2,256 shares, at December 31, 2012 and 2013 and no shares at September 30, 2014 (unaudited) and pro forma (unaudited), respectively	(176)	(176)	-	-
Additional paid-in capital	80,128	79,779	77,609	123,471
Accumulated deficit	(110,894)	(118,510)	(125,893)	(125,893)
Total stockholders' deficit	(30,930)	(38,895)	(48,272)	(2,316)
Total Liabilities, Redeemable Convertible Preferred Stock and Stockholders' Deficit	<u>\$ 1,421</u>	<u>\$ 12,863</u>	<u>\$ 6,498</u>	<u>\$ 6,498</u>

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

Inotek Pharmaceuticals Corporation
Consolidated Statements of Operations
(in thousands, except share and per share amounts)

	<u>Year ended December 31,</u>		<u>Nine months ended</u>	
	<u>2012</u>	<u>2013</u>	<u>September 30,</u>	<u>2014</u>
			<u>(unaudited)</u>	
Operating expenses:				
Research and development	\$ (3,542)	\$ (5,330)	\$ (3,738)	\$ (4,655)
General and administrative	(2,307)	(1,324)	(1,242)	(1,337)
Loss from operations	(5,849)	(6,654)	(4,980)	(5,992)
Other income	4	3	2	—
Interest expense	(213)	(884)	(638)	(735)
Change in fair value of warrant liabilities	—	(81)	(29)	(656)
Net loss	<u>\$ (6,058)</u>	<u>\$ (7,616)</u>	<u>\$ (5,645)</u>	<u>\$ (7,383)</u>
Net loss per share attributable to common stockholders—basic and diluted	<u>\$ (6.72)</u>	<u>\$ (8.39)</u>	<u>\$ (5.97)</u>	<u>\$ (8.61)</u>
Weighted-average number of shares outstanding—basic and diluted	<u>1,216,746</u>	<u>1,218,803</u>	<u>1,218,034</u>	<u>1,221,086</u>
Pro forma net loss per share attributable to common stockholders—basic and diluted (unaudited)		<u>\$ (1.18)</u>		<u>\$ (1.04)</u>
Pro forma weighted-average number of shares outstanding—basic and diluted (unaudited)		<u>8,676,361</u>		<u>10,071,419</u>

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

Inotek Pharmaceuticals Corporation

Consolidated Statements of Changes in Redeemable Convertible Preferred Stock and Stockholders' Deficit
(in thousands, except share and per share data)

	Series AA Redeemable Convertible Preferred Stock		Series X Redeemable Convertible Preferred Stock		Common Stock		Treasury Stock		Additional Paid-In Capital	Accumulated Deficit	Total
	Shares	Amount	Shares	Amount	Shares	Par Value	Shares	Amount			
Balances at December 31, 2011	15,458,796	\$ 25,738	2,451,184	\$ 495	1,219,002	\$ 12	(2,256)	\$ (176)	\$ 81,971	\$ (104,836)	\$ (23,029)
Stock-based compensation	-	-	-	211	-	-	-	-	275	-	275
Accretion of Series AA preferred stock issuance costs	-	45	-	-	-	-	-	-	(45)	-	(45)
Accrual of Series AA preferred stock dividends	-	2,073	-	-	-	-	-	-	(2,073)	-	(2,073)
Net loss	-	-	-	-	-	-	-	-	-	(6,058)	(6,058)
Balances at December 31, 2012	15,458,796	27,856	2,451,184	706	1,219,002	12	(2,256)	(176)	80,128	(110,894)	(30,930)
Repurchase of Series X preferred stock	-	-	(558,864)	(343)	-	-	-	-	-	-	-
Stock-based compensation	-	-	-	185	-	-	-	-	10	-	10
Issuance of Series AA preferred stock and Series AA preferred stock warrants, net of issuance costs	6,540,221	8,377	-	-	-	-	-	-	-	-	-
Issuance of Series AA preferred stock upon conversion of convertible notes and accrued interest	2,677,731	4,093	-	-	-	-	-	-	-	-	-
Conversion of Series AA preferred stock into common stock	(1,471,965)	(2,253)	-	-	4,340	-	-	-	2,253	-	2,253
Accretion of Series AA preferred stock to redemption value	-	380	-	-	-	-	-	-	(380)	-	(380)
Accrual of Series AA preferred stock dividends	-	2,232	-	-	-	-	-	-	(2,232)	-	(2,232)
Net loss	-	-	-	-	-	-	-	-	-	(7,616)	(7,616)
Balances at December 31, 2013	23,204,783	40,685	1,892,320	548	1,223,342	12	(2,256)	(176)	79,779	(118,510)	(38,895)
Stock-based compensation (unaudited)	-	-	-	-	-	-	-	-	177	-	177
Accretion of Series AA preferred stock to redemption value (unaudited)	-	628	-	-	-	-	-	-	(628)	-	(628)
Accrual of Series AA preferred stock dividends (unaudited)	-	2,498	-	-	-	-	-	-	(2,498)	-	(2,498)
Exercise of Series AA preferred stock warrants (unaudited)	852,230	1,303	-	-	-	-	-	-	955	-	955
Retirement of treasury stock (unaudited)	-	-	-	-	(2,256)	-	2,256	176	(176)	-	-
Net loss (unaudited)	-	-	-	-	-	-	-	-	-	(7,383)	(7,383)
Balances at September 30, 2014 (unaudited)	24,057,013	45,114	1,892,320	548	1,221,086	12	-	-	77,609	(125,893)	(48,272)
Conversion off redeemable convertible preferred stock into common stock (unaudited)	(24,057,013)	(45,114)	(1,892,320)	(548)	9,404,970	94	-	-	45,568	-	45,662
Reclassification of warrants to purchase preferred stock to stockholders' deficit (unaudited)	-	-	-	-	-	-	-	-	294	-	294
Pro forma balances—September 30, 2014 (unaudited)	-	\$ -	-	\$ -	10,626,056	\$ 106	-	\$ -	\$ 123,471	\$ (125,893)	\$ (2,316)

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

Inotek Pharmaceuticals Corporation
Consolidated Statements of Cash Flows
(in thousands, except share and per share amounts)

	Year Ended December 31,		Nine months Ended September 30,	
	2012	2013	2013	2014
			(unaudited)	
Cash flows from operating activities:				
Net loss	\$ (6,058)	\$ (7,616)	\$ (5,645)	\$ (7,383)
Adjustments to reconcile net loss to cash used by operating activities:				
Depreciation	9	—	—	—
Noncash interest expense	213	492	438	165
Change in fair value of warrant liabilities	—	81	29	656
Stock-based compensation	486	(148)	(151)	177
Loss on sale of property and equipment	2	—	—	—
Changes in operating assets and liabilities:				
Prepaid expenses and other assets	43	(21)	(34)	(1,072)
Accounts payable	159	(158)	(9)	819
Accrued expenses and other current liabilities	(1,790)	915	695	(111)
Net cash used in operating activities	<u>(6,936)</u>	<u>(6,455)</u>	<u>(4,677)</u>	<u>(6,749)</u>
Cash flows from investing activities:				
Proceeds from sale of property and equipment	3	—	—	—
Net cash provided by investing activities:	<u>3</u>	<u>—</u>	<u>—</u>	<u>—</u>
Cash flows from financing activities:				
Net proceeds from issuance of notes payable and Series AA preferred stock warrants	—	6,915	6,915	—
Proceeds from issuance of convertible notes	2,500	1,000	1,000	—
Net proceeds from issuance of Series AA preferred stock and Series AA preferred stock warrant	—	9,961	9,961	—
Proceeds from exercise of warrants for Series AA Preferred Stock	—	—	—	8
Principal payments on notes	—	—	—	(695)
Net cash provided by financing activities:	<u>2,500</u>	<u>17,876</u>	<u>17,876</u>	<u>(687)</u>
Net change in cash and cash equivalents	(4,433)	11,421	13,199	(7,436)
Cash and cash equivalents, beginning of period	5,805	1,372	1,372	12,793
Cash and cash equivalents, end of period	<u>\$ 1,372</u>	<u>\$12,793</u>	<u>\$14,571</u>	<u>\$ 5,357</u>
Supplemental disclosure of cash flow information:				
Cash paid for interest	<u>\$ —</u>	<u>\$ 389</u>	<u>\$ 193</u>	<u>\$ 570</u>
Supplemental disclosure of noncash investing and financing activities:				
Accrual of Series AA preferred stock dividends	<u>\$ 2,073</u>	<u>\$ 2,232</u>	<u>\$ 1,420</u>	<u>\$ 2,498</u>
Issuance of 2,677,731 shares of Series AA preferred stock upon conversion of convertible notes and accrued interest	<u>\$ —</u>	<u>\$ 4,093</u>	<u>\$ 4,093</u>	<u>\$ —</u>
Accretion of Series AA preferred stock to redemption value	<u>\$ 45</u>	<u>\$ 380</u>	<u>\$ 202</u>	<u>\$ 628</u>
Conversion of Series AA preferred stock to common stock	<u>\$ —</u>	<u>\$ 2,253</u>	<u>\$ —</u>	<u>\$ —</u>
Reclassification of fair value of warrant liability related to exercise of preferred stock warrants	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 2,250</u>
Retirement of treasury stock	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 176</u>

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

Inotek Pharmaceuticals Corporation

Notes to Consolidated Financial Statements

**(Information as of September 30, 2014 and for the nine months ended September 30, 2013 and 2014 is unaudited)
(in thousands, except share and per share data)**

1. Organization and Operations

Inotek Pharmaceuticals Corporation (the "Company") is a clinical-stage biopharmaceutical company advancing molecules with novel mechanisms of action to address significant diseases of the eye. The Company's business strategy is to develop and progress its product candidates through human clinical trials. The Company's headquarters are located in Lexington, Massachusetts.

The Company has devoted substantially all of its efforts to research and development, including clinical trials of its product candidates. The Company has not completed the development of any product candidates. The Company has no current source of revenue to sustain present activities and does not expect to generate revenue until and unless the Company receives regulatory approval of and successfully commercializes its product candidates. The Company is subject to a number of risks and uncertainties similar to those of other life science companies developing new products, including, among others, the risks related to the necessity to obtain adequate additional financing, to successfully develop product candidates, to obtain regulatory approval of products candidates, to comply with government regulations, to successfully commercialize its potential products, to the protection of proprietary technology and to the dependence on key individuals.

Liquidity

The accompanying consolidated financial statements have been prepared on a basis that assumes the Company will continue as a going concern, which contemplates the realization of assets and the satisfaction of liabilities and commitments in the normal course of business. The Company has funded its operations to date primarily through the sale of preferred stock and issuance of convertible promissory notes and notes payable. The Company will need to expend substantial resources for research and development, including costs associated with the clinical testing of its product candidates and will need to obtain additional financing to fund its operations and to conduct trials for its product candidates. If such products were to receive regulatory approval, the Company would need to prepare for the potential commercialization of its product candidates and fund the commercial launch and continued marketing of its products. The Company expects operating expenses will substantially increase in the future related to additional clinical testing and to support an increased infrastructure to support expanded operations.

As of September 30, 2014, the Company has an accumulated deficit of \$125,893. The Company has \$5,357 of cash as of September 30, 2014 which is expected to fund operations through the first quarter of 2015. The future need for operating capital and research and development funding significantly exceeds this amount and as a result, the Company will require additional funding in the future and may not be able to raise such additional funds. The Company expects losses will continue as it conducts research and development activities. The Company will seek to finance future cash needs through public or private equity offerings, license agreements, debt financings, collaborations, strategic alliances, or any combination thereof. The incurrence of indebtedness would result in increased fixed payment obligations and could also result in restrictive covenants, such as limitations on our ability to incur additional debt, limitations on the Company's ability to acquire, sell or license intellectual property rights and other operating restrictions that could adversely impact the ability of the Company to conduct its business. If adequate funds are not available, the Company would delay,

Inotek Pharmaceuticals Corporation

Notes to Consolidated Financial Statements

**(Information as of September 30, 2014 and for the nine months ended September 30, 2013 and 2014 is unaudited)
(in thousands, except share and per share data)**

reduce or eliminate research and development programs and reduce administrative expenses. The Company may seek to access the public or private capital markets whenever conditions are favorable, even if it does not have an immediate need for additional capital at that time. In addition, if the Company raises additional funds through collaborations, strategic alliances or licensing arrangements with third parties, it may have to relinquish valuable rights to its technologies, future revenue streams or product candidates or to grant licenses on terms that may not be favorable to it. If the Company is unable to raise sufficient funding, it may be unable to continue to operate. There is no assurance that the Company will be successful in obtaining sufficient financing on acceptable terms and conditions to fund continuing operations, if at all. The failure of the Company to obtain sufficient funds on acceptable terms when needed could have a material adverse effect on the Company's business, results of operations and financial condition.

2. Significant Accounting Policies

Basis of Presentation—The accompanying consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America ("GAAP").

Principles of Consolidation—The consolidated financial statements include the accounts of the Company and results of its wholly owned subsidiaries which ceased operations in 2010. All subsidiaries were dissolved by December 31, 2012, and results from their operations were insignificant during the year ended December 31, 2012. The Company currently has no subsidiaries.

Segment Reporting—Operating segments are defined as components of an enterprise about which separate discrete information is available for evaluation by the chief operating decision maker, or decision-making group, in deciding how to allocate resources and in assessing performance. The Company views its operations and manages its business in one operating segment, that of developing pharmaceutical product candidates with the intention of achieving marketing approval and commercializing the approved products. All operations are located in the United States.

Unaudited Pro Forma Presentation—In August 2014, the Company's board of directors authorized the Company to submit a draft registration statement to the Securities and Exchange Commission (the "SEC") permitting the Company to sell shares of its common stock to the public. The unaudited pro forma balance sheet as of September 30, 2014 reflects the automatic conversion of all of the shares of Preferred Stock (Note 7) and accrued dividends thereon into 9,404,970 shares of common stock.

Unaudited pro forma net loss per share is computed using the weighted average number of shares of common stock outstanding after giving effect to the conversion of all Preferred Stock during the year ended December 31, 2013 and the nine months ended September 30, 2014 into shares of the Company's common stock as if such conversion had occurred at the date the Company issued such shares or the beginning of the applicable period, as appropriate.

Unaudited Interim Financial Information—The accompanying balance sheet as of September 30, 2014, statements of operations and cash flows for the nine months ended September 30, 2013 and 2014,

Inotek Pharmaceuticals Corporation

Notes to Consolidated Financial Statements

**(Information as of September 30, 2014 and for the nine months ended September 30, 2013 and 2014 is unaudited)
(in thousands, except share and per share data)**

and statements of changes in redeemable convertible preferred stock and stockholders' deficit for the nine months ended September 30, 2014, are unaudited. The interim unaudited consolidated financial statements have been prepared on the same basis as the annual audited consolidated financial statements and, in the opinion of management, reflect all adjustments, which include normal recurring adjustments, necessary for the fair presentation of the Company's financial position as of September 30, 2014, and the results of its operations and its cash flows for the nine months ended September 30, 2013 and 2014. The financial data and other information disclosed in these notes related to the nine months ended September 30, 2013 and 2014 and as of September 30, 2014, are unaudited. The results for the nine months ended September 30, 2014, are not indicative of results to be expected for the year ending December 31, 2014, any other interim periods or any future year or period.

Use of Estimates—The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of expenses during the reporting period. Actual results could differ from these estimates. Significant items subject to such estimates and assumptions include the valuation of stock options used for the calculation of stock-based compensation, fair value of warrant liabilities and determination of accruals related to research and clinical development.

Cash and Cash Equivalents—Cash and cash equivalents consists of bank deposits and money market accounts. Cash equivalents are carried at cost which approximates fair value due to their short-term nature and which the Company believes do not have a material exposure to credit risk. The Company considers all highly liquid investments with maturities of three months or less from the date of purchase to be cash equivalents.

The Company maintains its cash and cash equivalent balances in the form of money market accounts with financial institutions that management believes are creditworthy. The Company's cash and cash equivalent accounts, at times, may exceed federally insured limits. The Company has not experienced any losses in such accounts. The Company believes it is not exposed to any significant credit risk on cash and cash equivalents.

Deferred Public Offering Costs—Deferred public offering costs, which consist primarily of direct, incremental legal, accounting, SEC and NASDAQ fees relating to the proposed initial public offering, are capitalized as a component of other assets in the accompanying balance sheet as of September 30, 2014. The deferred public offering costs will be offset against proceeds from the proposed initial public offering. In the event the proposed initial public offering does not occur, the deferred public offering costs will be expensed. At September 30, 2014, the Company had \$1,063 of deferred public offering costs.

Deferred Financing Costs—Financing costs incurred in connection with the Company's notes payable and convertible promissory notes were capitalized at the inception of the notes and are amortized over the term of the respective notes using the effective interest rate method. Amortization of deferred financing costs were \$0 and \$112 in the years ended December 31, 2012 and 2013, respectively, and \$58 and \$165 in the nine months ended September 30, 2013 and 2014, respectively (see Note 5).

Inotek Pharmaceuticals Corporation

Notes to Consolidated Financial Statements
(Information as of September 30, 2014 and for the nine months ended September 30, 2013 and 2014 is unaudited)
(in thousands, except share and per share data)

Research and Development Costs—Research and development costs are charged to expense as incurred and include, but are not limited to:

- n employee-related expenses including salaries, benefits, travel and stock-based compensation expense for research and development personnel;
- n expenses incurred under agreements with contract research organizations that conduct clinical and preclinical studies, contract manufacturing organizations and consultants;
- n costs associated with preclinical and development activities; and
- n costs associated with regulatory operations.

Costs for certain development activities, such as clinical studies, are recognized based on an evaluation of the progress to completion of specific tasks using data such as patient enrollment, clinical site activations, and information provided to the Company by its vendors on their actual costs incurred. Payments for these activities are based on the terms of the individual arrangements, which may differ from the patterns of costs incurred, and are reflected in the consolidated financial statements as accrued expenses.

Stock-Based Compensation—The Company measures the cost of employee services received in exchange for an award of equity instruments based on the fair value of the award on the grant date. That cost is recognized on a straight-line basis over the period during which the employee is required to provide service in exchange for the award. The fair value of options on the date of grant is calculated using the Black-Scholes option pricing model based on key assumptions such as stock price, expected volatility and expected term. The Company's estimates of these assumptions are primarily based on third-party valuations, historical data, peer company data and judgment regarding future trends and factors.

The Company accounts for stock options issued to non-employees in accordance with the provisions of the Financial Accounting Standards Board ("FASB") Accounting Standard Codification ("ASC") 505-50, *Equity-Based Payments to Non-employees*, which requires valuing the stock options on their grant date and remeasuring such stock options at their current fair value as they vest.

During 2010, the Company issued shares of Series X preferred stock to certain employees and consultants. In August 2014, the Company granted 1,077,445 stock options to employees and directors. Prior to these stock option grants, the Company last granted stock options in 2009. (See Note 7).

Fair Value Measurements—The Company is required to disclose information on all assets and liabilities reported at fair value that enables an assessment of the inputs used in determining the reported fair values. ASC 820, *Fair Value Measurements and Disclosures* ("ASC 820"), establishes a hierarchy of inputs used when available. Observable inputs are inputs that market participants would use in pricing the asset or liability based on market data obtained from sources independent of the Company. Unobservable inputs are inputs that reflect the Company's assumptions about the inputs that market participants would use in pricing the asset or liability, and are developed based on the best information available in the circumstances. The fair value hierarchy applies only to the valuation inputs

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used in determining the reported fair value of the investments and is not a measure of the investment credit quality. The three levels of the fair value hierarchy are described below:

Level 1—Valuations based on unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.

Level 2—Valuations based on quoted prices for similar assets or liabilities in markets that are not active or for which all significant inputs are observable, either directly or indirectly.

Level 3—Valuations that require inputs that reflect the Company's own assumptions that are both significant to the fair value measurement and unobservable.

To the extent that valuation is based on models or inputs that are less observable or unobservable in the market, the determination of fair value requires more judgment. Accordingly, the degree of judgment exercised by the Company in determining fair value is greatest for instruments categorized in Level 3. A financial instrument's level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. The Company's assets and liabilities measured at fair value on a recurring basis include cash equivalents and warrant liabilities (Note 9).

Income taxes—The Company uses the asset and liability method for accounting for income taxes. Under this method, deferred tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective income tax bases. Deferred tax assets and liabilities are measured using enacted rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. A valuation allowance is recorded if it is more likely than not that a deferred tax asset will not be realized. The Company has provided a full valuation allowance on its deferred tax assets.

The Company recognizes the financial statement benefit of a tax position only after determining that the relevant tax authority would more likely than not sustain the position following an audit. For tax positions meeting the more-likely-than-not threshold, the amount recognized in the consolidated financial statements is the largest benefit that has a greater than 50 percent likelihood of being realized upon ultimate settlement with the relevant tax authority.

The Company will recognize interest and penalties related to uncertain tax positions in income tax expense. As of and for the periods ended December 31, 2012 and 2013 and September 30, 2013 and 2014, the Company had no accrued interest or penalties related to uncertain tax positions and no amounts have been recognized in the Company's consolidated statements of operations.

Net loss per share—The Company calculates net loss per share in accordance with ASC 260, *Earnings per Share*. Basic earnings (loss) per share ("EPS") is calculated by dividing the net income or loss applicable to common stockholders by the weighted average number of common shares outstanding for the period, without consideration of unissued common stock equivalents. The net loss applicable to common stockholders is determined by the reported net loss for the period and deducting dividends accrued and accretion of preferred stock. Diluted EPS is calculated by adjusting the weighted average common shares outstanding for the dilutive effect of common stock options, warrants, and convertible

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preferred stock and accrued but unpaid convertible preferred stock dividends. In periods where a net loss is recorded, no effect is given to potentially dilutive securities, as their effect would be anti-dilutive.

Unaudited pro forma net loss per share is computed using the weighted average number of shares of common stock outstanding after giving effect to the conversion of all convertible preferred stock and accrued but unpaid convertible preferred stock dividends during the year ended December 31, 2013 and the nine months ended September 30, 2014 into shares of the Company's common stock as if such conversion had occurred at the date the Company issued such shares or the beginning of the applicable period, as appropriate.

The following table sets forth the computation of basic and diluted earnings (loss) per share attributable to the Company's common stockholders:

	December 31,		September 30,	
	2012	2013	2013	2014
Numerator:				
Net loss	\$ (6,058)	\$ (7,616)	\$ (5,645)	\$ (7,383)
Accretion and dividends on convertible preferred stock	(2,118)	(2,612)	(1,622)	(3,126)
Net loss applicable to common stockholders	<u>\$ (8,176)</u>	<u>\$ (10,228)</u>	<u>\$ (7,267)</u>	<u>\$ (10,509)</u>
Denominator:				
Weighted average common shares outstanding—basic and diluted	1,216,746	1,218,803	1,218,034	1,221,086
Net loss per share applicable to common stockholders—basic and diluted	<u>\$ (6.72)</u>	<u>\$ (8.39)</u>	<u>\$ (5.97)</u>	<u>\$ (8.61)</u>

The following common stock equivalents were excluded from the calculation of diluted net loss per share for the periods indicated as including them would have an anti-dilutive effect:

	December 31, 2012	December 31, 2013	September 30, 2013	September 30, 2014
Series AA preferred stock	5,397,972	8,113,497	7,956,863	8,846,773
Series X preferred stock	723,053	558,197	558,197	558,197
Warrants for Series AA preferred stock	—	624,859	624,859	67,522
Stock options	15,794	14,181	14,181	1,091,330
Total	<u>6,136,819</u>	<u>9,310,734</u>	<u>9,154,100</u>	<u>10,563,822</u>

Subsequent Events—The Company considers events or transactions that occur after the balance sheet date but prior to the issuance of the financial statements to provide additional evidence relative to certain estimates or to identify matters that require additional disclosure. The Company has completed an evaluation of all subsequent events through the date the financial statements were issued.

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3. Property and Equipment

At December 31, 2012 and 2013 and September 30, 2014, the Company's property and equipment consisted of the following:

	Estimated Useful Life	December 31,		September 30, 2014
		2012	2013	
Office equipment	5 years	\$ 50	\$ 50	\$ 50
Computer hardware and software	3 – 5 years	167	167	167
Total		217	217	217
Less accumulated depreciation		(217)	(217)	(217)
Property and equipment, net		\$ –	\$ –	\$ –

During the year ended December 31, 2012, the Company recognized \$9 of depreciation expense. During the year ended December 31, 2013, and the nine month periods ended September 30, 2013 and 2014, the Company did not recognize any depreciation expense as its assets were fully depreciated.

4. Accrued Expenses

Accrued expenses at December 31, 2012 and 2013 and September 30, 2014 consisted of the following:

	December 31,		September 30, 2014
	2012	2013	
Research and development	\$144	\$ 858	\$ 821
Government payable	367	394	415
Compensation and benefits	86	213	104
Professional fees	52	110	113
Other	16	4	15
Total	\$665	\$1,579	\$ 1,468

5. Debt

Notes Payable

On June 28, 2013, the Company entered into two Loan and Security Agreements (the "Loan Agreements" or "Loans") with two financial entities (the "Lenders") pursuant to which the Company issued Loans for \$3,500 to each lender and received proceeds of \$6,915 net of costs and fees payable to the lenders. The Loans bear interest at a rate per annum of 11.0%. The Loans mature on October 1, 2016 and require interest-only payments for the initial 12 months and thereafter require repayment of the principal balance with interest in 27 monthly installments. Also, upon full repayment or maturity of the Loans, the Lenders are due a termination payment of 3.0% of the initial principal amount of the Loans, or \$210 (the "Loan Termination Payment"). In connection with the Loan Agreements, the Company granted first priority liens and the Loans are collateralized by the Company's personal property, including cash

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and cash equivalents. The Loan Agreements contain representations and warranties by the Company and certain indemnification provisions, non-financial covenants and default provisions. The Loan Agreements also include certain provisions allowing for prepayment of the debt by the Company, exercisable at the Company's option, which require payment of additional interest to the Lenders based upon a stated rate and the balance outstanding at repayment. The Company has determined that the various embedded features do not require bifurcation from the Loan Agreements.

In connection with the Loan Agreements, the Company issued to the Lenders fully-vested warrants to purchase either, at the election of the warrant holder, (i) 228,906 shares of the Company's Series AA preferred stock at an exercise price of \$1.529 per share, or (ii) \$350 of stock in the next round stock, as defined in the Loan Agreements, at a price that is the lowest effective price per share that is offered in the next round. The warrants expire on the earlier of (i) ten years after the date of grant, or (ii) immediately prior to an acquisition transaction, as defined in the warrants.

The Company recorded the fair value of the warrant of approximately \$222 (Note 9) as a discount to the carrying value of the Loans and as a liability. The Company will recognize any change in the value of the warrant liability each reporting period in the statement of operations. Additionally, the Company incurred fees related to the Loan Agreements and reimbursed Lenders for costs incurred by them aggregating \$85 and reflected these fees as a discount to the carrying value of the Loan. The Company amortizes these loan discounts and the Loan Termination Payment, together totaling \$517, to interest expense over the term of the Loan using the effective interest rate method. For the year ended December 31, 2013, interest expense related to the Loan Agreements was \$501, including \$112 related to accretion of the debt discount and termination payment. For the nine months ended September 30, 2013, interest expense related to the Loan Agreements was \$254, including \$58 related to accretion of the debt discount and termination payment. For the nine months ended September 30, 2014, interest expense related to the Loan Agreements was \$735, including \$165 related to accretion of the debt discount and termination payment. At December 31, 2013, the principal balance on the Loan Agreements was \$7,210, including the Loan Termination Payment and the unamortized debt discount and termination payment balance was \$405. At September 30, 2014, the principal balance on the Loan Agreements was \$6,515, including the Loan Termination Payment, and the unamortized debt discount and termination payment balance was \$241. Principal payments on the Loans are scheduled to be \$1,410, of which \$695 was paid during the nine months ended September 30, 2014, in 2014, \$3,063 in 2015 and \$2,737, including the Loan Termination Payment, in 2016.

Convertible Promissory Notes

On July 2, 2012, the Company entered into convertible note purchase agreements (the "Convertible Note Agreements") with 11 of its principal investors pursuant to which the investors agreed to make loans to the Company in installments aggregating \$3,500 in exchange for 8% convertible promissory notes (the "Convertible Notes"). The Convertible Notes' maturity date was July 2, 2013.

In July and November 2012, \$1,500 and \$1,000, respectively, of Convertible Notes were issued by the Company and reflected as a current liability at December 31, 2012.

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The Convertible Notes plus the accrued interest thereon were convertible into shares issued in the Company's next sale of preferred stock on or before the maturity date of the Convertible Notes in an amount of at least \$10,000 from one or more institutional investors. The conversion price was at a 10% discount from the issue price of such preferred stock. Based upon the terms of the Convertible Notes, and the intention to convert the notes prior to maturity, the Company deemed the Convertible Notes to be share-settled debt, and the Company accreted the Convertible Notes over their term, to the value of the preferred stock into which the Convertible Notes would be converted (\$3,909), recognizing accretion of this \$409 discount as interest expense.

Pursuant to the terms of the Convertible Note Agreements, if a change-in control event, as defined in the Convertible Note Agreements, occurred prior to repayment or conversion of the Convertible Notes, the Convertible Noteholders would be entitled to receive in cash, an amount equal to two times the principal plus accrued interest. This feature was determined to be an embedded derivative. The Company bifurcated the derivative and accounted for it separately determining the value of the derivative to be de minimis. The Company reassessed the value of the derivative at each reporting period, concluding that the value remained de minimis.

During the years ended December 31, 2012 and 2013 and the nine months ended September 30, 2013, the Company recorded \$213, \$381 and \$381, respectively, of non-cash interest expense related to the accretion of the conversion feature and the accrual of interest on the Convertible Notes.

On June 11, 2013, pursuant to the provisions of the Convertible Note Agreements and in connection with the Company's issuance of Series AA preferred stock (see Note 7), the carrying value of the Convertible Notes of \$3,909 and accrued interest of \$185 were converted into 2,677,731 shares of Series AA preferred stock.

6. Income Taxes

No provision for federal or state income taxes was recorded during the years ended December 31, 2012 and December 31, 2013, as the Company incurred operating losses for each of these years.

A reconciliation between the effective tax rates and statutory rates for the years ended December 31, 2012 and 2013 is as follows:

	December 31,	
	2012	2013
Computed at statutory rate	34.00%	34.00%
State income taxes	5.46%	5.44%
Tax credits	0.00%	4.41%
Other	(1.82%)	(0.51%)
Valuation allowance	(37.64%)	(43.34%)
	<u>-%</u>	<u>-%</u>

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The tax effect of significant temporary differences representing deferred tax assets and liabilities as of December 31, 2012 and 2013 is as follows:

	December 31,	
	2012	2013
Net operating loss ("NOL") and credit carryforwards	\$ 25,255	\$ 28,490
Capitalized research and development costs	11,786	11,890
Capital loss carryover	1,672	1,672
Other	221	183
Valuation allowance	(38,934)	(42,235)
	<u>\$ —</u>	<u>\$ —</u>

As required by ASC 740, *Income Taxes*, management of the Company has evaluated the positive and negative evidence bearing upon the realizability of its deferred tax assets, which are comprised principally of NOL carryforwards and capitalized research and development costs. As a result of the fact that the Company has incurred tax losses from inception, management has determined that it is more likely than not that the Company will not recognize the benefits of federal and state net deferred tax assets and, as a result, a full valuation allowance has been established against its net deferred tax assets as of December 31, 2012 and 2013. The Company has offset certain deferred tax liabilities with deferred tax assets that are expected to generate offsetting deductions within the same period. During the years ended December 31, 2012 and 2013, the valuation allowance changed by \$2,300 and \$3,301, respectively. Realization of deferred tax assets is dependent upon the generation of future taxable income.

As of December 31, 2013, the Company had federal NOL carryforwards for income tax purposes of approximately \$69,300 that expire at various dates through 2033, and state NOL carryforwards of approximately \$45,200 that expire at various dates through 2033, available to reduce future federal and state income taxes, if any. As of December 31, 2013, the Company had federal research and development tax credits of approximately \$2,466, and state research and development tax credits of approximately \$526. If substantial changes in the Company's ownership should occur, as defined in Section 382 of the Internal Revenue Code of 1986, as amended, (the "Code"), there could be annual limitations on the amount of loss carryforwards which can be realized in future periods. The Company has determined that it has experienced a prior ownership change occurring in 2006. The pre-change NOLs, although subject to an annual limitation, can be utilized in future years as well as any post change NOLs, provided that sufficient income is generated and no future ownership changes occur that may limit the Company's NOLs. The Company does not believe it has experienced an ownership change since 2006.

As of December 31, 2012 and 2013, the Company's total unrecognized tax benefits totaled \$235 and \$258, respectively, which if recognized would affect the effective tax rate prior to the adjustment for the Company's valuation allowance. The Company files income tax returns in the U.S. federal and Massachusetts tax jurisdictions. Tax years 2010 through 2013 remain open to examination by the tax jurisdictions to which the Company is subject to tax. Since the Company is in a loss carryforward

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position, the Internal Revenue Service ("IRS") and state taxing authorities are permitted to audit the earlier tax years and propose adjustments up to the amount of the NOLs, generated. The Company is not currently under examination by the IRS or any other jurisdiction for any tax years.

The change in unrecognized tax benefits for each of the years ended December 31, 2012 and 2013 are as follows:

	<u>December 31,</u>	
	<u>2012</u>	<u>2013</u>
Balance at January 1,	\$220	\$235
Additions for current year tax positions	15	23
Reductions for expirations of statute of limitations or settlements	—	—
	<u>\$235</u>	<u>\$258</u>

The Company does not expect significant changes in its unrecognized tax benefits over the next twelve months.

7. Equity***Authorized Shares***

As of December 31, 2013, the authorized stock of the Company was 32,857,171 shares of common stock, \$0.01 par value per share, and 28,659,924 shares of preferred stock, \$0.001 par value per share, of which 25,757,874 shares are authorized Series AA redeemable convertible preferred stock (the "Series AA preferred stock") and 2,902,050 shares are authorized as Series X redeemable convertible preferred stock (the "Series X preferred stock") (collectively, the "Preferred Stock").

Common Stock

All preferences, voting powers, relative, participating, optional, or other specific rights and privileges, limitations, or restrictions of the common stock are expressly subject to those that may be fixed with respect to any shares of preferred stock. Common stockholders are entitled to one vote per share, and to receive dividends, when and if declared by the Board. At December 31, 2012, there were 1,216,746, shares of common stock outstanding and at each of December 31, 2013 and September 30, 2014, there were 1,221,086, shares of common stock outstanding.

Preferred Stock

The Company has evaluated the tranching nature of its Preferred Stock offerings, its investor registration rights, as well as the rights, preferences and privileges of each series of Preferred Stock and has concluded that there are no freestanding derivative instruments or any embedded derivatives requiring bifurcation. Additionally, the Company assessed the conversion terms associated with its Preferred Stock and concluded that there were no beneficial conversion features.

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Series AA Redeemable Convertible Preferred Stock

As of December 31, 2011, there were 15,458,796 shares of Series AA preferred stock issued and outstanding.

In June and July 2013, the Company issued 6,540,221 shares of Series AA preferred stock at a price per share of \$1.529 for cash proceeds in the amount of \$9,961, net of issuance costs of \$39.

In connection with these financings, the Company issued 2,677,731 shares of Series AA preferred stock pursuant to conversion of the Convertible Notes (see Note 5).

Certain investors did not purchase their prescribed pro-rata shares, as defined in the Series AA convertible preferred stock and warrant purchase agreements and in accordance therewith 1,471,965 shares of their previously outstanding Series AA preferred stock were converted into 4,340 shares of common stock and the \$2,253 carrying value of the converted Series AA preferred stock was reclassified to additional paid-in capital.

Additionally, the Company issued warrants to purchase 852,230 shares of Series AA preferred stock at a price of \$0.01 per share, with an expiration date on the earliest of (i) July 11, 2023, (ii) the closing of the Company's initial public offering of its securities, or (iii) the closing of a sale event, as defined in the warrant. The Company allocated \$1,585 of the proceeds received to the warrants issued, representing the grant date fair value of the warrants, and accounts for these warrants as liabilities. The Company recognized any change in the fair value of the warrant liabilities each reporting period in the consolidated statements of operations (Note 9). These warrants were exercised in full during the nine months ended September 30, 2014 for total proceeds of \$8 which was recorded as Series AA preferred carrying value. The \$2,250 fair value of the warrants was reclassified partially to Series AA preferred stock carrying value and the remainder to accumulated paid-in capital.

Due to the optional redemption feature of the Series AA preferred stock, the Company classifies the Series AA preferred stock as temporary equity in the mezzanine section of the balance sheet and is accreting the value to the redemption amount. The carrying amount of the Series AA preferred stock at December 31, 2012 was \$27,856, including \$4,343 of accrued but unpaid and undeclared dividends. The carrying amount of the Series AA preferred stock at December 31, 2013 was \$40,685, including \$6,575 of accrued but unpaid and undeclared dividends. The carrying amount of the Series AA preferred stock at September 30, 2014, was \$45,114, including \$9,073 of accrued but unpaid and undeclared dividends.

Rights, Preferences, and Privileges

Voting:

Series AA preferred stock votes together with all other classes and series of stock as a single class on all actions to be taken by the stockholders of the Company. Each share of Series AA preferred stock shall entitle the holder to such number of votes per share on each such action as shall equal the number of shares of common stock (including fractions of a share) into which each share of Series AA preferred stock is then convertible.

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Dividends:

Series AA preferred stock accrues dividends quarterly at the rate of eight percent (8%) per annum, based upon the Series AA original issue price, whether or not declared, are cumulative and compounded annually. The Series AA original issue price was \$1.529 per share ("Series AA Original Issue Price").

Liquidation Preference:

Upon any liquidation, dissolution or winding up of the Company (a "Liquidation Event"), whether voluntary or involuntary, the holders of the shares of Series AA preferred stock shall be paid out of the assets of the Company available for distribution to its stockholders before any payment shall be made to the holders of Series X preferred stock or common stock, an amount per share equal to two times the Series AA Original Issue Price plus any accrued or declared but unpaid dividends (the "Series AA Initial Preference"). If upon any Liquidation Event, the assets to be distributed to the holders of Series AA preferred stock shall be insufficient to permit payment to the stockholders of the Series AA Initial Preference, then the holders of the Series AA preferred stock shall share ratably in any distribution of the remaining assets of the Company available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

Upon any Liquidation Event, immediately after the holders of Series AA preferred stock have been paid in full the Series AA Initial Preference and after the holders of Series X preferred stock have been paid full the Series X preference (see Series X preferred stock below), the holders of the shares of Series AA preferred stock shall be paid out of the assets of the Company available for distribution to its stockholders before any payment shall be made to the holders of common stock, a per share amount equal to one-half times the Series AA Original Issue Price (the "Series AA Secondary Preference"). If upon any Liquidation Event, the assets to be distributed to the holders of Series AA preferred stock shall be insufficient to permit payment to such stockholders of the Series AA Secondary Preference, then the holders of the Series AA preferred stock shall share ratably in any distribution of the remaining assets of the Company available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

Optional Conversion:

The holder of any share or shares of Series AA preferred stock shall have the right, at its option at any time, to convert any such shares of Series AA preferred stock (except that upon any liquidation of the Company the right of conversion shall terminate at the close of business on the business day fixed for payment of the amounts distributable on the Series AA preferred stock), each such share of Series AA preferred stock being converted into such number of fully paid and nonassessable shares of common stock as is obtained by dividing (1) the Series AA Original Issue Price plus any accrued or declared but unpaid dividends by (2) the Series AA Conversion Price in effect at the date any share or shares of Series AA preferred stock are surrendered for conversion. The "Series AA Conversion Price" was \$1.529 and subject to adjustment as discussed under the section "Anti-Dilution" below.

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Mandatory Conversion:

The Series AA preferred stock (including any accrued and unpaid dividends thereon) shall be automatically converted into common stock, at the then applicable conversion price (i) in the event that the holders of at least two-thirds of the outstanding Series AA preferred stock, voting as a single class, consent to such conversion, or (ii) upon the closing of a firmly underwritten public offering (a "Qualified Public Offering") of shares of common stock of the Company at a price per share of not less than \$7.65 per share and a total gross offering proceeds to the Company in excess of \$40,000 (before deduction of underwriters' commissions and discounts). The Qualified Public Offering shall be underwritten by an investment bank approved by a majority of the board of directors and acceptable to two-thirds of the Series AA preferred stock.

Special Mandatory Conversion:

In the event that any investor does not participate in a qualified financing by purchasing in the aggregate, in such qualified financing and within the time period specified by the Company its pro rata amount of the qualified financing (such Investor's "Pro Rata Amount"), then the applicable portion of the shares of Series AA preferred stock held by such investor immediately prior to the initial closing of the qualified financing shall automatically, and without any further action on the part of such Investor, be converted into common stock at a conversion ratio of one hundred-to-one (100:1) (such that every one hundred shares of Series AA preferred Stock are converted into one share of common stock), effective upon, subject to, and concurrently with, the consummation of the final closing. For purposes of determining the number of shares of Series AA preferred stock owned by an investor, and for determining the number of offered securities an investor has purchased in a qualified financing, all shares of Series AA preferred stock held by affiliates of such investor shall be aggregated with such investor's shares and all offered securities purchased by affiliates of such Investor shall be aggregated with the offered securities purchased by such Investor (provided that no shares or securities shall be attributed to more than one entity or person within any such group of affiliated entities or persons).

Anti-dilution:

The conversion price of the Series AA preferred stock is subject to adjustment to reduce dilution in the event that the Company issues additional equity securities at a purchase price less than the applicable conversion price. The conversion price will also be subject to proportional adjustment for events such as stock splits, stock dividends, and recapitalization, such as the reverse stock split disclosed in Note 11 to the financial statements.

Redemption:

Shares of Series AA preferred stock shall be redeemed by the Company out of funds lawfully available there for at a price equal to the Series AA Original Issue Price per share, plus all accrued or declared but unpaid dividends thereon (the "Redemption Price"), in three annual installments commencing not more than 60 days after receipt by the Company at any time on or after the fifth anniversary of June 9, 2010, from the holders of at least sixty-six and two-thirds percent (66 and 2/3%) of the then outstanding shares of Series AA preferred stock of written notice requesting redemption of all shares of Series AA preferred stock. The date of each such installment shall be referred to as a "Redemption Date." If the Company does not have sufficient funds legally available to redeem on any

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Redemption Date all shares of Series AA preferred stock to be redeemed on such Redemption Date, the Company shall redeem a pro rata portion of each holder's redeemable shares of such capital stock out of funds legally available.

Certain "change in control" events, as defined in the Company's certificate of incorporation, are considered to be liquidation events upon which the holders of Series AA preferred stock have the option to require the Company redeem the shares held, at their liquidation value, as discussed above.

Series X Redeemable Convertible Preferred Stock

In June 2010, the Company sold 2,451,184 shares of Series X redeemable convertible preferred stock ("Series X preferred stock") to employees and consultants to the Company at a purchase price of \$0.001 per share, subject to stock purchase and restriction agreements. Pursuant to these agreements, the shares vest upon the third anniversary of the issuance if the purchaser of the Series X preferred shares remained an employee or maintained a business relationship with the Company. The Series X preferred stockholder cannot sell, assign, transfer, pledge, encumber or dispose of all or any of the unvested shares except to the Company. The Company determined that the issuance of these restricted shares was compensatory in nature and accounted for the issuance as stock-based compensation. The excess grant date value, over the proceeds received from each purchase was determined to be compensation expense.

Simultaneous with the issuance of Series X preferred stock, the Company entered into termination and separation agreements with certain employees and consultants who purchased 392,189 shares of Series X preferred stock. The Company determined that there was no substantive future services required of these employees and consultants and recognized all of the associated compensation expense upon issuance.

The remaining 2,058,995 shares were issued to continuing employees of the Company and the Company recognized the compensation expense on a straight-line basis over the requisite service period, net of an estimated forfeiture rate. The Company recognized compensation expense of \$211 and \$185 related to the vesting of these shares, during the years ended December 31, 2012 and 2013, respectively.

Two of the employees that purchased Series X preferred stock were terminated by the Company in May 2013. Upon termination, the Company repurchased an aggregate of 558,864 shares of Series X preferred stock and modified the vesting terms on the remaining 558,862 shares of Series X preferred stock held by these employees. The modified vesting terms provide that the shares will vest upon the occurrence of a liquidation event, if such liquidation event occurs within two years of the date of the modifications. The Company retains the right to repurchase the invested shares at the purchase price of \$0.01 per share if a liquidation event does not occur within two years of the date of the modification. In connection with this modification, during the year ended December 31, 2013, and the nine months ended September 30, 2013, the Company reversed the cumulative \$343 of stock-based compensation that had been recorded related to these shares. During the nine months ended September 30, 2014, the Company further modified the vesting terms of these 558,862 shares of Series X preferred stock

Inotek Pharmaceuticals Corporation

Notes to Consolidated Financial Statements

(Information as of September 30, 2014 and for the nine months ended September 30, 2013 and 2014 is unaudited)
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such that the Company's repurchase right will expire upon consummation of an initial public offering of its common stock occurring prior to June 30, 2015. The Company has estimated the fair value of the modified award at the modification date and at September 30, 2014 to be \$950 and will recognize the compensation expense if and when a liquidation event or an initial public offering occurs.

The following table is a rollforward of unvested Series X preferred stock shares;

Unvested—December 31, 2011	2,451,184
Vested	—
Repurchased	—
Unvested—December 31, 2012	2,451,184
Vested	1,333,458
Repurchased	558,864
Unvested—December 31, 2013	558,862
Vested	—
Repurchased	—
Unvested—September 30, 2014	<u>558,862</u>

Due to the redemption feature of the Series X preferred stock, discussed further below, the Company classifies the Series X preferred stock as temporary equity in the mezzanine section of the balance sheet.

Rights, Preferences, and Privileges

Voting Rights:

The Series X preferred stock does not have any voting rights, except as related to the election of certain directors. When the Series X preferred stock has voting rights, each share of Series X preferred stock entitles the holder to such number of votes per share on each such action as shall equal the number of shares of common stock into which each share of Series X preferred stock is then convertible.

Liquidation Preference:

Upon any liquidation event, such as a liquidation, dissolution or winding up of the Company, immediately after the holders of Series AA preferred stock have been paid in full, the Series AA preferred stock initial preference as described above and before any payment is made to the holders of common stock, the holders of the shares of Series X preferred stock shall be paid out of assets of the Company available for distribution to its stockholders a per share amount determined by taking the product of (1) the percentage calculated as (i) the total number of issued and outstanding shares of common stock owned by the holders of Series X preferred stock determined on an as converted fully-diluted basis divided by (ii) the total number of issued and outstanding shares of common stock of the Company on an as converted fully diluted basis, and (2) the remaining assets of the Company available for distribution to its stockholders, and dividing such product by the number of issued and outstanding shares of Series X preferred stock (the "Series X Preference").

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**(Information as of September 30, 2014 and for the nine months ended September 30, 2013 and 2014 is unaudited)
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Certain change in control events, as defined in the Company's certificate of incorporation, are considered to be liquidation events upon which the holders of Series X preferred stock have the option to require the Company redeem the shares held, at their liquidation value, as discussed above.

Right to Convert:

The holder of any share of Series X preferred stock shall have the right, at any time to convert any such share (except that upon any liquidation of the Company the right of conversion shall terminate at the close of business on the business day fixed for payment of the amounts distributable on the Series X preferred stock), into fully paid and nonassessable shares of common stock based on the Series X Conversion Ratio. The Series X Conversion Ratio was initially 1:1, and subject to adjustment as discussed under the section "Anti-Dilution" below.

Mandatory Conversion:

The Series X preferred stock shall be automatically converted into common stock, at the then applicable conversion price (i) in the event that the holders of at least two-thirds of the outstanding Series AA preferred stock, voting as a single class, consent to such conversion, or (ii) upon the closing of a Qualified Public Offering.

Anti-Dilution:

The conversion price of the Series X preferred stock is subject to adjustment to reduce dilution in the event that the Company issues additional equity securities at a price less than the applicable conversion price. The conversion price will also be subject to proportional adjustment for events such as stock splits, stock dividends, and recapitalization, such as the reverse stock split disclosed in Note 11 to the financial statements.

Treasury Stock

Treasury stock of \$176 at December 31, 2012 and 2013 reflects 2,256 shares on common stock repurchased by the Company and recorded at cost. During the nine months ended September 30, 2014, the treasury stock was retired.

2004 Stock Option and Incentive Plan

In July 2004, the Company's board of directors adopted the 2004 Stock Option and Incentive Plan (the 2004 "Plan") for the issuance of incentive stock options, restricted stock, and other equity awards, all for common stock, as determined by the board of directors to employees, officers, directors, consultants, and advisors of the Company and its subsidiaries. There are 24,480 shares issuable under the 2004 Plan. Only stock options were granted under the 2004 Plan. The 2004 Plan expired in February 2014 but remains effective for all outstanding options.

Inotek Pharmaceuticals Corporation

Notes to Consolidated Financial Statements
(Information as of September 30, 2014 and for the nine months ended September 30, 2013 and 2014 is unaudited)
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The following table summarizes the option activity for the years ended December 31, 2012 and 2013 and nine months ended September 30, 2014 under the 2004 Plan:

	Year Ended December 31,				Nine months ended September 30,	
	2012	Weighted-Average Exercise Price Per Share	2013	Weighted-Average Exercise Price Per Share	2014	Weighted-Average Exercise Price Per Share
Outstanding at beginning of the period	15,794	\$ 33.90	15,794	\$ 33.90	14,181	\$ 33.90
Granted during the period	–	–	–	–	–	–
Exercised during the period	–	–	–	–	–	–
Expired during the period	–	–	(1,613)	33.90	(296)	33.90
Outstanding at end of the period	<u>15,794</u>	<u>\$ 33.90</u>	<u>14,181</u>	<u>\$ 33.90</u>	<u>13,885</u>	<u>\$ 33.90</u>
Exercisable at end of period	<u>14,701</u>	<u>\$ 33.90</u>	<u>14,181</u>	<u>\$ 33.90</u>	<u>13,885</u>	<u>\$ 33.90</u>
Weighted-average years remaining on contractual life	5.18		4.17		3.42	
Unrecognized compensation cost related to non-vested stock options	\$ 1		\$ –		\$ –	

No stock options were granted or exercised from January 1, 2012 through September 30, 2014 pursuant to the 2004 Plan.

The Company recorded a total of \$266 and \$1 in the years ended December 31, 2012 and 2013, respectively, as stock-based compensation expense relating to outstanding stock options granted pursuant to the 2004 Plan. At December 31, 2012 and 2013, there was \$1 and \$0 of unrecognized stock-based compensation expense relating to stock options granted pursuant to the 2004 Plan, respectively.

2014 Stock Option and Incentive Plan

In August 2014, the Company's board of directors adopted the 2014 Stock Option and Incentive Plan (the "2014 Plan") for the issuance of incentive and non-qualified stock options, restricted stock, and other equity awards, all for common stock, as determined by the board of directors to employees, officers, directors, consultants, and advisors of the Company and its subsidiaries. There are 1,077,445 shares issuable under the 2014 Plan. The 2014 Plan expires in August 2024.

On August 28, 2014, the board of directors granted 1,077,445 stock options at an exercise price of \$3.627 per share, the fair market value of the common stock as determined by the board of directors. All stock options granted have a ten-year term. Of the stock options granted, 70,794 were fully vested at the date of the grant. The remaining 1,006,651 stock options granted (i) will be of no further force and effect if the Company has not consummated an IPO prior to the one-year anniversary of the grant date or (ii) upon consummation of an IPO, will vest 25% on the one-year anniversary of the grant date and remaining 75% will vest equally over the following 35 monthly anniversaries.

Inotek Pharmaceuticals Corporation

Notes to Consolidated Financial Statements

**(Information as of September 30, 2014 and for the nine months ended September 30, 2013 and 2014 is unaudited)
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The fair value of each stock option granted is estimated on the grant date using a Black-Scholes stock option pricing model based on the following assumptions: an expected term of 5 to 6.25 years; expected stock price volatility of 83.3% to 92.5%; a risk free rate of 1.63% to 1.84%; and a dividend yield of 0%.

The Company recorded stock compensation expense of \$170 in general and administrative expense in the nine months ended September 30, 2014 related to the 70,794 stock options that were granted pursuant to the 2014 Plan and fully vested as of the date of grant. The Company will recognize \$2,798 of stock compensation expense related to the remaining 1,006,651 stock options on a straight-line basis over the vesting period commencing upon the consummation of an IPO if an IPO occurs prior to the one-year anniversary of the grant date.

The Company has historically granted common stock options pursuant to the 2004 and 2014 Plans at an exercise price that is not less than the fair market value of the Company's stock as determined by the board of directors, with input from management. The board of directors has historically determined the estimated fair value of the Company's common stock on the date of grant based on a number of objective and subjective factors, including external market conditions, rights and preferences of securities senior to the common stock at the time of each grant, the likelihood of achieving a liquidity event such as an initial public offering or the sale of the Company, and third party valuations.

The Company recognizes compensation expense based on the estimated grant date fair value method using the Black-Scholes valuation model. The Company reduces compensation expense for expected forfeitures, as estimated by management.

As the Company's stock is not traded publicly, the computation of expected volatility is based on the historical volatilities of peer companies. The peer companies include organizations that are in the same industry, with similar size and stage of growth. The Company estimates that the expected life of the options granted using the simplified method allowable under Staff Accounting Bulletin No. 107, *Share Based Payments*. The expected life is applied to the stock option grant group as a whole, as the Company does not expect substantially different exercise or post vesting termination behavior among its employee population. The interest rate for grants pursuant to the 2004 and 2014 Plans are based on the U.S. treasury bills rate for U.S. treasury bills with terms commensurate with the expected term of the option grants on the grant date of the option.

Inotek Pharmaceuticals Corporation**Notes to Consolidated Financial Statements**

(Information as of September 30, 2014 and for the nine months ended September 30, 2013 and 2014 is unaudited)
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Restricted Common Stock

In 2011, the Company issued 29,064 restricted common shares pursuant to a stock purchase and restriction agreement for a price of \$0.0339 per share. The Company received \$1 from the grantee. These shares vest 25% on each of the first four anniversaries of the date of grant. During the nine months ended September 30, 2014, the board of directors accelerated the vesting of the last tranche resulting in 14,532 shares vesting in such period. The following table is a rollforward of unvested restricted common shares:

Unvested shares—December 31, 2011	29,064
Shares vested	(7,266)
Unvested shares—December 31, 2012	21,798
Shares vested	(7,266)
Unvested shares—December 31, 2013	14,532
Shares vested	(14,532)
Unvested shares—September 30, 2014	—

The Company recorded the excess grant date fair value, over the proceeds received as compensation expense. The Company recorded \$9 of stock-based compensation expense related to this award in the years ended December 31, 2012 and 2013, and \$7 in each of the nine months ended September 30, 2013 and 2014, respectively. At December 31, 2012 and 2013, there was \$16 and \$7, respectively, unrecognized compensation expense related to this grant. At September 30, 2014, there was no unrecognized compensation expense related to this grant.

8. Commitments and Contingencies*Operating leases*

The Company leases office space in Lexington, Massachusetts under a lease agreement expiring in March 2015. Rent expense for the years ended December 31, 2012 and 2013, was \$97 and \$47, respectively, and \$39 and \$41 for the nine months ended September 30, 2013 and 2014, respectively. Future minimum rental payments under the terms of this lease are \$54 and \$13 for the years ended December 31, 2014 and 2015, respectively.

Indemnification Arrangements

As permitted under Delaware law, the Company's bylaws provide that the Company will indemnify any director, officer, employee or agent of the Company or anyone serving in these capacities. The maximum potential amount of future payments the Company could be required to pay is unlimited. The Company has insurance that reduces its monetary exposure and would enable it to recover a portion of any future amounts paid. As a result, the Company believes that the estimated fair value of these indemnification commitments is minimal.

Inotek Pharmaceuticals Corporation

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Throughout the normal course of business, the Company has agreements with vendors that provide goods and services required by the Company to run its business. In some instances, vendor agreements include language that requires the Company to indemnify the vendor from certain damages caused by the Company's use of the vendor's goods and/or services. The Company has insurance that would allow it to recover a portion of any future amounts that could arise from these indemnifications. As a result, the Company believes that the estimated fair value of these indemnification commitments is minimal.

9. Fair Value of Financial Measurements

Items measured at fair value on a recurring basis include cash equivalents and warrant liabilities.

The following table sets forth the Company's financial instruments that were measured at fair value on a recurring basis by level within the fair value hierarchy:

	Fair Value Measurements at December 31, 2012			
	Total	Level 1	Level 2	Level 3
Assets				
Money market mutual fund	\$ 505	\$ —	\$ 505	\$ —
Fair Value Measurements at December 31, 2013				
Assets				
Money market mutual fund	\$5,009	\$ —	\$5,009	\$ —
Liabilities				
Convertible preferred stock warrant liability	\$1,888	\$ —	\$ —	\$1,888
Fair Value Measurements at September 30, 2014				
Liabilities				
Convertible preferred stock warrant liability	\$ 294	\$ —	\$ —	\$ 294

The fair value of the Company's money market mutual funds is based on quoted prices on an active exchange.

As previously discussed (see Notes 5 and 7), the Company has issued warrants to purchase Series AA preferred stock in connection with the 2013 Series AA preferred stock issuance and the Loan Agreements. The Series AA warrant liabilities were recorded at their fair value on the date of issuance and are remeasured on each subsequent balance sheet date and as of the warrant exercise date, with fair value changes recognized as income (decrease in fair value) or expense (increase in fair value) in other income (expense) in the statements of operations.

Inotek Pharmaceuticals Corporation**Notes to Consolidated Financial Statements**

**(Information as of September 30, 2014 and for the nine months ended September 30, 2013 and 2014 is unaudited)
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As of December 31, 2013 and September 30, 2013 and 2014, the Company used a hybrid valuation model in which a Monte Carlo simulation was used to calculate the fair value of the Company's equity securities under three scenarios including: i) an initial public offering scenario, ii) a merger or acquisition scenario or iii) a stay private scenario. The Company then probability-weighted each equity value derived from the Monte Carlo simulation based upon the Company's estimate of the likelihood of the exit scenario occurring.

The assumptions used in calculating the estimated fair value of the warrants represent the Company's best estimates and include probabilities of settlement scenarios, enterprise value, time to liquidity, risk-free interest rates, discount for lack of marketability and volatility. The estimates are based, in part, on subjective assumptions and could differ materially in the future. Generally, increases or decreases in the fair value of the underlying convertible preferred stock would result in a directionally similar impact in the fair value measurement of the warrant liability.

The following table details the assumptions used in the Monte Carlo simulation models used to estimate the fair value of the Series AA preferred stock warrants upon issuance and at each reporting period:

	<u>September 30,</u> <u>2013</u>	<u>December 31,</u> <u>2013</u>	<u>September 30,</u> <u>2014</u>
Volatility	75%	60%	65% – 70%
Expected term (years)	1.25 – 1.50	1.00 – 1.25	0.17 – 0.50
Expected dividend yield	0.0%	0.0%	0.0%
Risk-free rate	0.16% – 0.22%	0.13% – 0.19%	0.02% – 0.03%

In addition to the assumptions above, the Company's estimated fair value of the Series AA preferred stock warrant liabilities is calculated using other key assumptions including the probability of an exit event, the enterprise value as determined on an income approach, and a discount for lack of marketability. Management, with the assistance of an independent valuation firm, made these subjective determinations based on available current information; however, as such information changes, so might management's determinations and such changes could have a material impact of future operating results.

During the periods presented, the Company has not changed the manner in which it values liabilities that are measured at fair value using Level 3 inputs. The Company recognizes transfers between levels of the fair value hierarchy as of the end of the reporting period. There were no transfers within the hierarchy during the years ended December 31, 2012 or 2013 and during the nine months ended September 30, 2014.

Inotek Pharmaceuticals Corporation**Notes to Consolidated Financial Statements**
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The following table reflects the change in the Company's Level 3 warrant liabilities from December 31, 2012 through September 30, 2014:

	Warrant Liabilities
Balance at December 31, 2012	\$ —
Issuance of warrants	1,807
Change in value	29
Balance at September 30, 2013	1,836
Change in value	52
Balance at December 31, 2013	1,888
Change in value	656
Warrant exercises	(2,250)
Balance at September 30, 2014	<u>\$ 294</u>

10. Retirement Plan

The Company sponsors a 401(k) savings plan (the "Savings Plan") for all eligible U.S. employees. The Company reserves the right to modify, amend, or terminate the Savings Plan. Employees may contribute up to the maximum allowed by the IRS, while the Company contributes to the plan at the discretion of the board of directors. The Company's contributions to the plan for the years ended December 31, 2012 and 2013, amounted to \$28 and \$23, respectively, and \$10 for the nine months ended September 30, 2014.

11. Subsequent Events

Management Incentive Plan (unaudited)

In August 2014, the Company adopted the Amended and Restated 2014 Management Incentive Plan (the "2014 MIP"), in which certain of our named executive officers participate. Pursuant to the MIP, upon a "change in control" (as defined in the MIP), a bonus pool will be created from the proceeds received in connection with such change in control (ranging from 7 percent to 9.75 percent of transaction proceeds, depending upon the level of transaction proceeds received in the transaction), and each participant is entitled to receive a bonus equal to a certain percentage of such bonus pool. The MIP terminates automatically upon the earliest of (i) March 31, 2015 (unless a change in control has occurred prior to such date), (ii) the closing of our initial public offering, (iii) the closing of a qualified financing, as defined in the MIP, and (iv) the date all amounts to be paid under the MIP following a change in control have been paid.

Authorized Shares (unaudited)

On October 1, 2014, authorized shares of common stock was increased to 43,509,727 shares.

2014 Plan (unaudited)

In November 2014, the Board of Directors increased the number of shares available for grant under the terms of the 2014 Plan to be 13.7% of the Company's outstanding common stock subsequent to the completion of a public offering.

Inotek Pharmaceuticals Corporation

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Reverse stock split

In November 2014, the board of directors and the stockholders of the Company approved a 1-for-3.39 reverse stock split of the Company's outstanding common stock. As a result of this reverse stock split, the Series X Conversion Ratio was adjusted to 1 for 3.39 and the Series AA Conversion Price was adjusted to \$5.18. Shares of common stock underlying outstanding stock options were proportionally reduced and the respective exercise prices were proportionately increased in accordance with the terms of the option agreements. The Company's historical share and per share information has been retroactively adjusted in the financial statements presented to give effect to this reverse stock split, including reclassifying an amount equal to the reduction in par value to additional paid-in capital.

Bridge Notes (unaudited)

In December 2014, the Company sold an aggregate of \$2.0 million of subordinated convertible promissory notes to existing stockholders (the "2014 Bridge Notes"). The 2014 Bridge Notes mature on June 30, 2015 and accrue interest at the rate of 8% per annum and are subordinate to all other senior indebtedness of the Company. Upon the closing of an initial public offering of common stock of at least \$40.0 million, a qualifying public offering, all outstanding principal and accrued interest thereon will automatically convert into common stock at the initial public offering price. In addition, the 2014 Bridge Notes have the following features: (i) in the event the Company sells new notes prior to a qualifying public offering, the noteholders may convert the 2014 Bridge Notes into the new notes; (ii) if at any time prior to repayment of the 2014 Bridge Notes or a qualifying public offering the Company has a change in control transaction, the noteholders will receive either (a) cash in the amount of twice the principal and interest due as of the effective date of the change in control transaction or (b) shares of Series AA preferred stock based upon the conversion of the principal and interest due as of the effective date of the change in control transaction, whichever yields the greatest return; (iii) at any time after maturity, the noteholders can elect to convert all principal and accrued interest into Series AA Preferred stock at the current Series AA preferred stock conversion price; (v) the maturity date of the 2014 Bridge Notes may be extended two times for additional six-month periods; (vi) upon an event of default, as defined in the notes, the noteholders may declare the 2014 Bridge Notes immediately payable; and (vii) the Company may not prepay the 2014 Bridge Notes without the consent of noteholders owning at least two thirds of the outstanding principal.

Shares



Common Stock

PROSPECTUS

**Cowen and Company
Canaccord Genuity**

**Piper Jaffray
Nomura**

, 2015

Through and including _____, 2015 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

The information in this preliminary prospectus is not complete and may be changed. We may not sell securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell the notes and it is not soliciting an offer to buy the notes in any jurisdiction where the offer or sale is not permitted.

PROSPECTUS (Subject to completion)

January 13, 2015

\$



**% Convertible Senior Notes due 2019
Interest payable on and**

We are offering \$ principal amount of our % Convertible Senior Notes due 2019, or the notes. The notes will bear interest at a rate of % per year, payable semiannually in arrears on and of each year, beginning on , 2015. The notes will mature on , 2019 unless earlier converted or repurchased.

Holders may convert all or any portion of their notes at their option at any time prior to the close of business on the business day immediately preceding , 2019 only under the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ending on December 31, 2014 (and only during such calendar quarter), if the last reported sale price of our common stock for at least 20 trading days (whether or not consecutive) during the period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to % of the conversion price for the notes on each applicable trading day; (2) during the five business day period after any five consecutive trading day period, or the measurement period, in which the trading price per \$1,000 principal amount of notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of our common stock and the conversion rate on each such trading day; or (3) upon the occurrence of specified corporate events. On or after , 2019 holders may convert all or any portion of their notes at any time prior to the close of business on the second scheduled trading day immediately preceding the maturity date, regardless of the foregoing conditions. Upon conversion of a note, we will satisfy our conversion obligation by paying and/or delivering, as the case may be, cash, shares of our common stock or a combination of cash and shares of our common stock, at our election, as described in this prospectus.

The conversion rate will initially be shares of our common stock per \$1,000 principal amount of notes (equivalent to an initial conversion price of approximately \$ per share of our common stock). The conversion rate will be subject to adjustment in some events but will not be adjusted for any accrued and unpaid interest. In addition, following certain corporate events that occur prior to the maturity date, we will increase the conversion rate for a holder who elects to convert its notes in connection with such corporate event in certain circumstances.

We may not redeem the notes prior to maturity. No sinking fund is provided for the notes.

If we undergo a fundamental change, holders may require us to repurchase for cash all or any portion of their notes at a repurchase price equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date.

The notes will be our general unsecured obligations and will rank senior in right of payment to all of our indebtedness that is expressly subordinated in right of payment to the notes; equal in right of payment with all of our existing and future liabilities that are not so subordinated; effectively rank junior to any of our secured indebtedness to the extent of the value of the assets securing such indebtedness; and structurally junior to all indebtedness and other liabilities of our future subsidiaries, if any.

For a more complete description of the terms of the notes, see the "Description of Notes" section of this prospectus. We do not intend to list the notes on any securities exchange or any automated dealer quotation system. We intend to apply to list our common stock on The NASDAQ Global Market under the symbol "ITEK".

Concurrently with this offering of notes, we are offering shares of our common stock (or up to shares of our common stock if the underwriters for that offering exercise their over-allotment option), in an underwritten initial public offering of shares of our common stock pursuant to a separate prospectus. The closing of this offering of notes is contingent upon the closing of the concurrent offering of common stock and the listing of our common stock on The NASDAQ Global Market, but the closing of the concurrent offering of common stock is not contingent upon the closing of this offering of notes.

Our business and an investment in the notes involve significant risks. These risks are described under the caption "Risk Factors" beginning on page 13 of this prospectus.

	<i>Per note</i>	<i>Total</i>
Initial public offering price(1)	%	\$
Underwriting discount	%	\$
Proceeds, before expenses, to Inotek	%	\$

(1) Plus accrued interest from , 2014, if settlement occurs after that date.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.

The underwriters may also purchase up to an additional \$ principal amount of notes from us at the public offering price, less the underwriting discount, within 30 days from the date of this prospectus to cover over-allotments.

We expect that delivery of the notes will be made to investors in book-entry form through The Depository Trust Company on , 2015.

Nomura

Cowen and Company

Piper Jaffray

Canaccord Genuity

, 2015

The Offering

Issuer	Inotek Pharmaceuticals Corporation, a Delaware corporation
Securities offered by us	\$ principal amount of % Convertible Senior Notes due 2019, or the notes (\$ principal amount of notes if the underwriters exercise their option to purchase additional notes to cover overallotments)
Underwriters' option to purchase additional notes to cover overallotments	\$ principal amount of notes
Maturity	, 2019, unless earlier converted or repurchased
Interest and payment dates	% per year. Interest will accrue from , 2014 and will be payable semiannually in arrears on and of each year, beginning on , 2015 to holders of record at the close of business on the or , as the case may be, immediately preceding each interest payment date. We will pay additional interest, if any, at our election, as the sole remedy relating to the failure to comply with our reporting obligations as described under "Description of Notes—Events of Default."
Conversion rights	Holders may convert all or any portion of their notes at their option prior to the close of business on the business day immediately preceding , 2019, in multiples of \$1,000 principal amount, only under the following circumstances: <ul style="list-style-type: none">n during any calendar quarter commencing after the calendar quarter ending on December 31, 2014 (and only during such calendar quarter), if the last reported sale price of our common stock for at least 20 trading days (whether or not consecutive) during the period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to % of the conversion price for the notes on each applicable trading day;n during the five business day period after any five consecutive trading day period, or the measurement period, in which the "trading price" (as defined under "Description of Notes—Conversion Rights—Conversion upon Satisfaction of Trading Price Condition") per \$1,000 principal amount of notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of our

common stock and the conversion rate on each such trading day; or
n upon the occurrence of specified corporate events described under
“Description of Notes—Conversion Rights—Conversion upon Specified
Corporate Events.”

On or after _____, 2019 holders may convert all or any portion of their
notes at any time prior to the close of business on the second scheduled trading
day immediately preceding the maturity date, in multiples of \$1,000 principal
amount, regardless of the foregoing circumstances.

The conversion rate will initially be _____ shares of our common stock per
\$1,000 principal amount of notes (equivalent to an initial conversion price of
approximately \$ _____ per share of our common stock), subject to adjustment as
described in this prospectus.

Upon conversion of a note, we will satisfy our conversion obligation by paying
and/or delivering, as the case may be, cash, shares of our common stock or a
combination of cash and shares of our common stock, at our election, as
described in this prospectus. If we satisfy our conversion obligation solely in cash
or through payment and delivery, as the case may be, of a combination of cash
and shares of our common stock, the amount of cash and shares, if any, due
upon conversion will be based on a daily conversion value (as described herein)
calculated on a proportionate basis for each trading day in an 80 trading day
observation period (as described herein). See “Description of Notes—Conversion
Rights—Settlement upon Conversion.”

In addition, following certain corporate events that occur prior to the maturity
date, we may be required to increase the conversion rate for a holder who elects
to convert its notes in connection with such corporate event in certain
circumstances as described under “Description of Notes—Conversion Rights—
Adjustment to Conversion Rate upon Conversion upon a Make-Whole
Fundamental Change.”

You will not receive any additional cash payment or additional shares
representing accrued and unpaid interest, if any, upon conversion of a note,
except in limited circumstances. Instead, interest will be deemed to be paid by
the cash, shares of our common stock or combination of cash and shares of our
common stock paid and/or delivered, as the case may be, to you upon
conversion of a note.

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No redemption	We may not redeem the notes pursuant to the indenture governing the notes prior to maturity though the indenture will not limit our ability to make open-market purchases or tender offers for the notes at any time. No “sinking fund” is provided for the notes, which means that we are not required to redeem or retire the notes periodically.
Fundamental change	If we undergo a “fundamental change” (as defined in this prospectus under “Description of Notes—Fundamental Change Permits Holders to Require Us to Repurchase Notes”), subject to certain conditions, holders may require us to repurchase for cash all or any portion of their notes in principal amounts of \$1,000 or an integral multiple thereof. The fundamental change repurchase price will be equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest to, but excluding, the fundamental change repurchase date. See “Description of Notes—Fundamental Change Permits Holders to Require Us to Repurchase Notes.”
Ranking	<p>The notes will be our general unsecured obligations and will rank:</p> <ul style="list-style-type: none">n senior in right of payment to all of our indebtedness that is expressly subordinated in right of payment to the notes;n equal in right of payment with all of our existing and future liabilities that are not so subordinated;n effectively rank junior to any of our secured indebtedness to the extent of the value of the assets securing such indebtedness; andn structurally junior to all indebtedness and other liabilities of our future subsidiaries, if any. <p>As of _____, 2014, we had total consolidated indebtedness of \$ _____ million, of which an aggregate \$ _____ was secured indebtedness. After giving effect to the issuance of the notes (assuming no exercise by the underwriters’ of their overallotment option) our total consolidated indebtedness would have been \$ _____ million. See “Description of Notes—Ranking.”</p> <p>The indenture governing the notes will not limit the amount of debt that we or our future subsidiaries, if any, may incur.</p>
Use of proceeds	We estimate that we will receive net proceeds from this offering of approximately \$ _____ million, or \$ _____ million if the underwriters exercise their overallotment option,

Concurrent offering of common stock

after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

We estimate that the net proceeds to us from the concurrent offering of common stock of approximately \$ million, or \$ million, if the underwriters for the concurrent offering of common stock exercise their overallotment option, based on an assumed initial public offering price of \$ per share, the midpoint of the price range set forth on the cover page of the prospectus for the concurrent offering of common stock, or the Common Stock Prospectus, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

We intend to use the net proceeds from this offering and the concurrent offering of common stock to fund the continued development of our product candidates and for other general corporate purposes. We intend to repay borrowings under and terminate our existing notes payable agreements with Horizon Technology Finance Corporation and Fortress Credit Co LLC with a portion of the net proceeds from this offering. See "Use of Proceeds."

Concurrently with this offering, we are also making a public offering of shares of our common stock (shares if the underwriters for the concurrent offering of common stock exercise their overallotment option) in an underwritten initial public offering pursuant to the separate Common Stock Prospectus. Prior to the concurrent offering of common stock, there has been no public market for our common stock.

This prospectus shall not be deemed an offer to sell or a solicitation of an offer to buy any of the common stock offered in the concurrent offering of common stock. The closing of this offering of notes is contingent upon the closing of the concurrent offering of common stock and the listing of our common stock on The NASDAQ Global Market, but the closing of the concurrent offering of common stock is not contingent upon the closing of this offering of notes.

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Book-entry form	The notes will be issued in book-entry form and will be represented by permanent global certificates deposited with, or on behalf of, The Depository Trust Company, or DTC, and registered in the name of a nominee of DTC. Beneficial interests in any of the notes will be shown on, and transfers will be effected only through, records maintained by DTC or its nominee and any such interest may not be exchanged for certificated securities, except in limited circumstances. See “Description of Notes—Book-Entry, Settlement and Clearance.”
Form and denomination	The notes will be issued in minimum denominations of \$1,000 and integral multiples of \$1,000.
Absence of a public market for the notes	The notes are new securities and there is currently no established market for the notes. Accordingly, we cannot assure you as to the development or liquidity of any market for the notes. The underwriters have advised us that they currently intend to make a market in the notes. However, they are not obligated to do so, and may discontinue any market making with respect to the notes without notice. We do not intend to apply for a listing of the notes on any securities exchange or any automated dealer quotation system.
U.S. federal income tax consequences	For a description of the U.S. federal income tax consequences of the holding, disposition and conversion of the notes, and the holding and disposition of shares of our common stock, see “Certain Material U.S. Federal Income Tax Considerations For U.S. and non-U.S. Holders of the Notes.”
Governing law	The notes and the indenture governing the notes will be governed by New York law.
Proposed NASDAQ Global Market symbol for our common stock	“ITEK”
Trustee, paying agent, registrar, bid solicitation agent and conversion agent	Wilmington Trust, National Association
Risk factors	You should carefully read “Risk Factors” in this prospectus for a discussion of factors that you should consider before deciding to invest in the notes.

Risks Related to the Notes and Our Common Stock

The notes are effectively subordinated to our secured debt and will be structurally subordinated to the liabilities of our future subsidiaries, if any.

The notes will rank senior in right of payment to all of our indebtedness that is expressly subordinated in right of payment to the notes; equal in right of payment with all of our existing and future liabilities that are not so subordinated; effectively rank junior to any of our secured indebtedness to the extent of the value of the assets securing such indebtedness; and structurally junior to all indebtedness and other liabilities of our future subsidiaries, if any. In the event of our bankruptcy, liquidation, reorganization or other winding up, our assets that secure debt ranking senior in right of payment to the notes will be available to pay obligations on the notes only after the secured debt has been repaid in full from these assets and the assets of our future subsidiaries, if any, will be available to pay obligations on the notes only after all claims senior to the notes have been paid in full. There may not be sufficient assets remaining to pay amounts due on any or all of the notes then outstanding. The indenture governing the notes will not prohibit us from incurring additional senior debt or secured debt, nor will it prohibit any of our future subsidiaries, if any, from issuing preferred stock or incurring liabilities.

As of September 30, 2014, we had total consolidated indebtedness of \$6.3 million, all of which was secured indebtedness. After giving effect to the issuance of the notes (assuming no exercise by the underwriters' of their option to purchase additional notes to cover overallocments) our total consolidated indebtedness would have been \$ million.

The absence of a public market in our common stock prior to the concurrent offering of common stock and recent and future regulatory actions and other events may adversely affect the trading price and liquidity of the notes.

We expect that many investors in, and potential purchasers of, the notes may seek to employ a convertible arbitrage strategy with respect to the notes. Investors would typically implement such a strategy by selling short the common stock underlying the notes and dynamically adjusting their short position while continuing to hold the notes. Investors may also implement this type of strategy by entering into swaps on the common stock in lieu of or in addition to short selling the common stock. However, prior to the consummation of the concurrent offering of common stock, there has been no public market for our common stock. As a result, there may not be sufficient liquidity or available stock borrow to effect such convertible arbitrage strategies, which could adversely impact the trading price and liquidity of the notes. In addition, any specific rules regulating equity swaps or short selling of securities or other governmental action that interferes with the ability of market participants to effect short sales or equity swaps with respect to our common stock could adversely affect the ability of investors in, or potential purchasers of, the notes to conduct the convertible arbitrage strategy with respect to the notes.

The Securities and Exchange Commission, or SEC, and other regulatory and self-regulatory authorities have implemented various rules and taken certain actions, and may in the future adopt additional rules and take other actions, that may impact those engaging in short selling activity involving equity securities (including our common stock). Such rules and actions include Rule 201 of SEC Regulation SHO, the adoption by the Financial Industry Regulatory Authority, Inc. and the national securities exchanges of a "Limit Up-Limit Down" program, the imposition of market-wide circuit breakers that halt trading of securities for certain periods following specific market declines, and the implementation of certain regulatory reforms required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, or Dodd-Frank Act. Any governmental or regulatory action that restricts the ability of investors in, or potential purchasers of, the notes to effect short sales of our common stock, borrow our common stock or enter into swaps on our common stock could adversely affect the trading price and the liquidity of the notes.

The market price of our common stock may be highly volatile, which could adversely impact the trading price of our common stock and the trading price of the notes.

Prior to the concurrent offering of common stock, there has not been a public market for our common stock. Although we expect to list our common stock on The NASDAQ Global Market, if an active trading market for our common stock does not develop following the concurrent offering of common stock, you may not be able to sell the shares of our common stock, if any, you receive upon conversion of your notes, quickly or above the initial public offering price. The initial public offering price for the shares was determined by negotiations between us and representatives of the underwriters for the concurrent offering of common stock and may not be indicative of prices that will prevail in the trading market, and the value of our common stock may decrease from the initial public offering price.

The trading price of our common stock is likely to be volatile. The following factors, in addition to other factors described in this “Risk Factors” section and elsewhere in this prospectus, may have a significant impact on the market price of our common stock:

- n announcements of regulatory approval or a complete response letter, or specific label indications or patient populations for its use, or changes or delays in the regulatory review process;
- n announcements of therapeutic innovations or new products by us or our competitors;
- n adverse actions taken by regulatory agencies with respect to our clinical trials, manufacturing supply chain or sales and marketing activities;
- n any adverse changes to our relationship with manufacturers or suppliers;
- n the results of our testing and clinical trials;
- n the results of our efforts to acquire or license additional product candidates;
- n variations in the level of expenses related to our existing product candidates or preclinical and clinical development programs;
- n any intellectual property infringement actions in which we may become involved;
- n announcements concerning our competitors or the pharmaceutical industry in general;
- n achievement of expected product sales and profitability;
- n manufacture, supply or distribution shortages;
- n actual or anticipated fluctuations in our quarterly or annual operating results;
- n changes in financial estimates or recommendations by securities analysts;
- n trading volume of our common stock;
- n sales of our common stock by us, our executive officers and directors or our stockholders in the future;
- n sales by us of securities linked to our common stock, such as the notes;
- n general economic and market conditions and overall fluctuations in the U.S. equity markets;
- n changes in accounting principles; and
- n the loss of any of our key scientific or management personnel.

In addition, the stock market, in general, and small pharmaceutical and biotechnology companies have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of these companies. Broad market and industry factors may negatively affect the market price of our common stock, regardless of our actual operating performance. Further, the current decline in the financial markets and related factors beyond our control may cause our stock price to decline rapidly and unexpectedly. A decrease in the market price of our common stock would likely adversely impact the trading price of the notes. The market price of our common stock could also be affected by possible sales of our common stock by investors who view the notes as a more attractive means of equity participation in us and by hedging or arbitrage trading activity that we expect to develop involving our common stock. This trading activity could, in turn, affect the trading prices of the notes.

We may incur substantially more debt or take other actions which would intensify the risks discussed above.

We and our future subsidiaries, if any, may be able to incur substantial additional debt in the future, subject to the restrictions contained in our debt instruments, some or all of which may be secured debt. Our existing notes payable agreements do substantially limit our ability to incur additional debt without lender consent, however, we intend to repay and terminate our existing notes payable agreements with Horizon Technology Finance Corporation and Fortress Credit Co LLC with a portion of the net proceeds from this offering. We will not be restricted under the terms of the indenture governing the notes from incurring additional debt, securing existing or future debt, recapitalizing our debt or taking a number of other actions that are not limited by the terms of the indenture governing the notes that could have the effect of diminishing our ability to make payments on the notes when due.

Servicing our debt requires a significant amount of cash. We may not have sufficient cash flow from our business to make payments on our debt, and we may not have the ability to repay the principal amount of the notes at maturity, to raise the funds necessary to settle conversions of the notes or to repurchase the notes upon a fundamental change, and our existing debt contains and our future debt may contain limitations on our ability to pay cash upon conversion or repurchase of the notes.

We currently have no source of revenue. Our ability to make scheduled payments of the principal of, to pay interest on or to refinance our indebtedness, including the notes, depends on our future performance, which is subject to economic, financial, competitive and other factors that may be beyond our control. Our business has not historically generated cash flow from operating activities and may not in the future generate cash flow from operating activities sufficient to service our debt, including the notes, and make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on desirable terms, which could result in a default on our debt obligations, including the notes.

At maturity, the entire outstanding principal amount of the notes will become due and payable by us. Holders of the notes will also have the right to require us to repurchase their notes upon the occurrence of a fundamental change at a repurchase price equal to 100% of the principal amount of the notes to be repurchased, plus accrued and unpaid interest, if any, as described under "Description of Notes—Fundamental Change Permits Holders to Require Us to Repurchase Notes." In addition, upon conversion of the notes, unless we elect to deliver solely shares of our common stock to settle such conversion (other than paying cash in lieu of delivering any fractional share), we will be required to make cash payments in respect of the notes being converted as described under "Description of Notes—Conversion Rights—Settlement upon Conversion." However, we may not have enough available cash or be able to obtain financing at the time we are required to repay the principal amount of the notes, make repurchases of the notes surrendered therefor or settle conversions of the notes. In addition, our ability to repurchase the notes or to pay cash upon conversions of the notes may be limited by law, by regulatory authority or by agreements governing our future indebtedness. Our failure to repay the principal amount of the notes, repurchase notes at a time when the repurchase is required by the indenture or to pay any cash payable on future conversions of the notes as required by the indenture would constitute a default under the indenture. A default under the indenture or the fundamental change itself could also lead to a default under agreements governing our future indebtedness. If the repayment of the related indebtedness were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay the indebtedness and repurchase the notes or make cash payments upon conversions thereof.

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In addition, our significant indebtedness, combined with our other financial obligations and contractual commitments, could have other important consequences. For example, it could:

- n make us more vulnerable to adverse changes in general U.S. and worldwide economic, industry and competitive conditions and adverse changes in government regulation;
- n limit our flexibility in planning for, or reacting to, changes in our business and our industry;
- n place us at a disadvantage compared to our competitors who have less debt; and
- n limit our ability to borrow additional amounts for working capital and other general corporate purposes, including to fund possible acquisitions of, or investments in, complementary businesses, products, services and technologies.

Any of these factors could materially and adversely affect our business, financial condition and results of operations. In addition, if we incur additional indebtedness, the risks related to our business and our ability to service or repay our indebtedness would increase.

The conditional conversion feature of the notes, if triggered, may adversely affect our financial condition and operating results.

In the event the conditional conversion feature of the notes is triggered, holders of notes will be entitled to convert the notes at any time during specified periods at their option. See “Description of Notes—Conversion Rights.” If one or more holders elect to convert their notes, unless we elect to satisfy our conversion obligation by delivering solely shares of our common stock (other than cash in lieu of any fractional share), we would be required to settle a portion or all of our conversion obligation through the payment of cash, which could adversely affect our liquidity. In addition, even if holders do not elect to convert their notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the notes as a current rather than long-term liability, which may result in a material reduction of our net working capital.

Sales of a substantial number of shares of our common stock in the public market by our existing stockholders could cause our stock price to fall and adversely impact the trading price of the notes.

Sales of a substantial number of shares of our common stock or any of our securities linked to our common stock, such as the notes, in the public market or the perception that these sales might occur, could depress the market price of our common stock, which would likely adversely affect the trading price of the notes, and could impair our ability to raise capital through the sale of additional equity securities or equity-linked securities. Substantially all of our existing stockholders are subject to lock-up agreements with the underwriters of the concurrent offering of common stock that restrict the stockholders’ ability to transfer shares of our common stock for a period of 180 days after the date of the Common Stock Prospectus. After the concurrent offering of common stock, we will have outstanding _____ shares of common stock based on the number of shares outstanding as of September 30, 2014 and we will have reserved _____ shares of our common stock to be issued upon the conversion of the notes (assuming an initial public offering price per share of our common stock equal to the midpoint of the price range set forth on the cover page of the Common Stock Prospectus and no exercise by the underwriters of their option to purchase additional notes to cover over-allotments in full). Subject to limitations, approximately 10.1 million shares will become eligible for sale upon expiration of the lock-up period, as calculated and described in more detail in the section entitled “Shares Eligible for Future Sale”. In addition, shares issued or issuable upon exercise of options and warrants vested as of the expiration of the lock-up period will be eligible for sale at that time. Sales of stock by these stockholders could have a material adverse effect on the trading price of our common stock, which would likely adversely affect the trading price of the notes.

Moreover, after the concurrent offering of common stock, holders of an aggregate of shares of our common stock will have rights, subject to certain conditions, to require us to file registration statements covering their shares or to include their shares in registration statements that we may file for ourselves

or other stockholders. Registration of these shares under the Securities Act of 1933, as amended, or the Securities Act, would result in the shares becoming freely tradable without restriction under the Securities Act, except for shares held by our affiliates as defined in Rule 144 under the Securities Act. Any sales of securities by these stockholders could have a material adverse effect on the trading price of our common stock, which would likely adversely affect the trading price of the notes.

The availability of our common stock and securities linked to our common stock for sale in the future could reduce the market price of our common stock which would likely adversely affect the trading price of the notes.

In the future, we may issue equity and equity-linked securities to raise cash for acquisitions or otherwise. We may also acquire interests in other companies by using a combination of cash and our common stock or just our common stock. We also will have the option to issue common stock in respect of conversions of the notes. We may also issue preferred stock or additional securities convertible into our common stock or preferred stock. Any of these events may dilute the ownership interest of stockholders in our Company and have an adverse effect on the price of our common stock which would likely adversely affect the trading price of the notes.

Holders of notes will not be entitled to any rights with respect to shares of our common stock, but will be subject to all changes made with respect to them to the extent our conversion obligation includes shares of our common stock.

Holders of notes will not be entitled to any rights with respect to our common stock (including, without limitation, voting rights and rights to receive any dividends or other distributions on our common stock) prior to the conversion date relating to such notes (if we elect to settle the relevant conversion by delivering solely shares of our common stock (other than cash in lieu of any fractional share)) or the last trading day of the relevant observation period (if we elect to pay and deliver, as the case may be, a combination of cash and shares of our common stock in respect of the relevant conversion). For example, if an amendment is proposed to our certificate of incorporation or bylaws requiring approval of holders of shares of common stock and the record date for determining the stockholders of record entitled to vote on the amendment occurs prior to the conversion date related to a holder's conversion of its notes (if we elect to settle the relevant conversion by delivering solely shares of our common stock (other than cash in lieu of any fractional share)) or the last trading day of the relevant observation period (if we elect to pay and deliver, as the case may be, a combination of cash and shares of our common stock in respect of the relevant conversion), such holder will not be entitled to vote on the amendment, although such holder will nevertheless be subject to any changes affecting our common stock.

The conditional conversion feature of the notes could result in your receiving less than the value of the consideration into which the notes would otherwise be convertible.

Prior to the close of business on the business day immediately preceding _____, 2019, you may convert your notes only if specified conditions are met. If the specific conditions for conversion are not met, you will not be able to convert your notes, and you may not be able to receive the value of the common stock (or the value of the cash, shares of our common stock or combination of cash and shares of common stock, as applicable) into which the notes would otherwise be convertible.

Upon conversion of the notes, you may receive less valuable consideration than expected because the value of our common stock may decline after you exercise your conversion right but before we settle our conversion obligation.

Under the notes, a converting holder will be exposed to fluctuations in the value of our common stock during the period from the date such holder surrenders notes for conversion until the date we settle our conversion obligation.

Upon conversion of the notes, we will satisfy our conversion obligation by paying and/or delivering, as the case may be, cash, shares of our common stock or a combination of cash and shares of our common stock, at our election, together with cash payments for fractional shares, if any. If we elect to

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satisfy our conversion obligation in cash or a combination of cash and shares of our common stock, the amount of consideration that you will receive upon conversion of your notes will be determined by reference to the volume-weighted average prices of our common stock for each trading day in an 80 trading day observation period. As described under “Description of Notes—Conversion Rights—Settlement upon Conversion,” this observation period would be (i) if the relevant conversion date occurs prior to _____, 2019, the 80 consecutive trading day period beginning on, and including, the second trading day immediately succeeding such conversion date; and (ii) if the relevant conversion date occurs on or after _____, 2019, the 80 consecutive trading days beginning on, and including, the 82nd scheduled trading day immediately preceding the maturity date. Accordingly, if the price of our common stock decreases during this period, the amount and/or value of consideration you receive will be adversely affected. In addition, if the market price of our common stock at the end of such period is below the average of the volume-weighted average price of our common stock during such period, the value of any shares of our common stock that you will receive in satisfaction of our conversion obligation will be less than the value used to determine the number of shares that you will receive.

If we elect to satisfy our conversion obligation solely in shares of our common stock upon conversion of the notes, we will be required to deliver such shares of our common stock, together with cash for any fractional share, on the third business day following the relevant conversion date. Accordingly, if the price of our common stock decreases during this period, the value of the shares that you receive will be adversely affected and would be less than the conversion value of the notes on the conversion date.

The notes are not protected by restrictive covenants.

The indenture governing the notes will not contain any financial or operating covenants or restrictions on the payments of dividends, the incurrence of indebtedness or the issuance or repurchase of securities by us or any of our future subsidiaries, if any. The indenture will not contain covenants or other provisions to afford protection to holders of the notes in the event of a fundamental change or other corporate transaction involving us except to the extent described under “Description of Notes—Fundamental Change Permits Holders to Require Us to Repurchase Notes,” “Description of Notes—Conversion Rights—Adjustment to Conversion Rate upon Conversion upon a Make-Whole Fundamental Change” and “Description of Notes—Consolidation, Merger and Sale of Assets.” Accordingly, subject to restrictions contained in our future debt instruments, we could enter into certain transactions that could increase the amounts of our debt or otherwise affect our capital structure or any credit ratings and the value of the notes and our common stock but would not constitute a fundamental change or a make-whole fundamental change.

The adjustment to the conversion rate for notes converted in connection with a make-whole fundamental change may not adequately compensate you for any lost value of your notes as a result of such transaction.

If a make-whole fundamental change occurs prior to the maturity date, under certain circumstances, we will increase the conversion rate for notes converted in connection with such make-whole fundamental change. The increase, if any, in the conversion rate will be determined based on the date on which the make-whole fundamental change becomes effective and the price paid (or deemed to be paid) per share of our common stock in such transaction, as described under “Description of Notes—Conversion Rights—Adjustment to Conversion Rate upon Conversion upon a Make-Whole Fundamental Change.” The adjustment to the conversion rate for notes converted in connection with a make-whole fundamental change may not adequately compensate you for any lost value of your notes as a result of such transaction. In addition, if the price paid (or deemed paid) per share of our common stock in the transaction is greater than \$ _____ per share or less than \$ _____ per share (in each case, subject to adjustment), the conversion rate will not be increased. Moreover, in no event will the conversion rate per \$1,000 principal amount of notes as a result of this adjustment exceed _____, subject to adjustments in the same manner as the conversion rate as set forth under “Description of Notes—Conversion rights—Conversion Rate Adjustments.”

Our obligation to increase the conversion rate in connection with a make-whole fundamental change could be considered a penalty, in which case the enforceability thereof would be subject to general principles of reasonableness and equitable remedies.

The conversion rate of the notes may not be adjusted for all dilutive events.

The conversion rate of the notes is subject to adjustment for certain events, including, but not limited to, the issuance of certain stock dividends to holders of our common stock, the issuance of certain rights, options or warrants to holders of our common stock, subdivisions or combinations of our common stock, distributions of capital stock, indebtedness, or assets to holders of our common stock, cash dividends on our common stock and certain issuer tender or exchange offers for our common stock as described under “Description of Notes—Conversion Rights—Conversion Rate Adjustments.” However, the conversion rate will not be adjusted for other events, such as a third-party tender or exchange offer or an issuance of our common stock for cash, that may adversely affect the trading price of the notes or our common stock. An event that adversely affects the value of the notes may occur, and that event may not result in an adjustment to the conversion rate.

Some significant restructuring transactions may not constitute a fundamental change, in which case we would not be obligated to offer to repurchase the notes.

Upon the occurrence of a fundamental change, you have the right to require us to repurchase your notes. However, the fundamental change provisions will not afford protection to holders of notes in the event of other transactions that could adversely affect the notes. For example, transactions such as leveraged recapitalizations, refinancings, restructurings, or acquisitions initiated by us may not constitute a fundamental change requiring us to repurchase the notes. In the event of any such transaction, the holders would not have the right to require us to repurchase the notes, even though each of these transactions could increase the amount of our indebtedness, or otherwise adversely affect our capital structure or any credit ratings, thereby adversely affecting the holders of notes.

The fundamental change repurchase feature of the notes may delay or prevent an otherwise beneficial takeover attempt of us.

The indenture governing the notes will require us to repurchase the notes for cash upon the occurrence of a fundamental change of us and, in certain circumstances, to increase the conversion rate for a holder that converts its notes in connection with a make-whole fundamental change. A takeover of us may trigger the requirement that we repurchase the notes and/or increase the conversion rate, which could make it more costly for a potential acquirer to engage in a combinatory transaction with us. Such additional costs may have the effect of delaying or preventing a takeover of us that would otherwise be beneficial to investors.

We cannot assure you that an active trading market will develop for the notes.

Prior to this offering, there has been no trading market for the notes, and we do not intend to apply to list the notes on any securities exchange or to arrange for quotation on any automated dealer quotation system. We have been informed by the underwriters that they intend to make a market in the notes after the offering is completed. However, the underwriters may cease their market-making at any time without notice. In addition, the liquidity of the trading market in the notes, and the market price quoted for the notes, may be adversely affected by changes in the overall market for this type of security and by changes in our financial performance or prospects or in the prospects for companies in our industry generally and other factors. As a result, we cannot assure you that an active trading market will develop for the notes. If an active trading market does not develop or is not maintained, the market price and liquidity of the notes may be adversely affected. In that case you may not be able to sell your notes at a particular time or you may not be able to sell your notes at a favorable price.

Any adverse rating of the notes may cause their trading price to fall.

We do not intend to seek a rating on the notes. However, if a rating service were to rate the notes and if such rating service were to lower its rating on the notes below the rating initially assigned to the notes or otherwise announces its intention to put the notes on credit watch, the trading price of the notes could decline.

You may have to pay taxes if we make or fail to make certain adjustments to the conversion rate of the notes even though you do not receive a corresponding distribution.

The conversion rate of the notes is subject to adjustment in certain circumstances, including the payment of certain cash dividends. If the conversion rate is adjusted, under certain circumstances you may be deemed to have received a dividend from us, resulting in ordinary income to you for U.S. federal income tax purposes, even though you would not receive any cash related to that adjustment and even though you might not exercise your conversion right. If a make-whole fundamental change occurs prior to the maturity date, under some circumstances, we will increase the conversion rate for notes converted in connection with the make-whole fundamental change. This increase may be treated as a distribution subject to U.S. federal income tax as a dividend. See "Certain Material U.S. Federal Income Tax Considerations For U.S. and non-U.S. Holders of the Notes."

You will not receive cash payments of accrued but unpaid interest upon conversion of the notes.

Upon conversion of your notes, we will satisfy our conversion obligation by paying and/or delivering, as the case may be, cash, shares of our common stock or a combination of cash and shares of our common stock, at our election, together with cash payments for fractional shares, if any. Except in limited circumstances, our obligation to pay accrued but unpaid interest attributable to the period from the most recent interest payment date through the conversion date will be deemed to be satisfied upon delivery of the consideration due upon conversion.

We may be subject to securities litigation, which is expensive and could divert management attention.

Our share price may be volatile, and in the past companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. We may be the target of this type of litigation in the future. Litigation of this type could result in substantial costs and diversion of management's attention and resources, which could adversely impact our business. Any adverse determination in litigation could also subject us to significant liabilities.

Our existing principal stockholders, executive officers and directors own a significant percentage of our common stock and will be able to exert a significant control over matters submitted to our stockholders for approval.

After the concurrent offering of common stock, our officers and directors, and stockholders who own more than 5% of our outstanding common stock before the concurrent offering of common stock will, in the aggregate, beneficially own approximately % of our common stock (after giving effect to the conversion of all outstanding shares of our convertible preferred stock but assuming no exercise by the underwriters of the concurrent offering of common stock of their overallotment option and no exercise of outstanding options or warrants).

This significant concentration of share ownership may adversely affect the trading price for our common stock because investors often perceive disadvantages in owning stock in companies with controlling stockholders. As a result, these stockholders, if they acted together, could significantly influence all matters requiring approval by our stockholders, including the election of directors and the approval of mergers or other business combination transactions. These stockholders may be able to determine all matters requiring stockholder approval. The interests of these stockholders may not always coincide with our interests or the interests of other stockholders. This may also prevent or discourage unsolicited acquisition proposals or offers for our common stock that you may feel are in your best interest as a holder of notes or one of our stockholders, if you receive common stock upon conversion of your notes, and they may act in a manner that advances their best interests and not necessarily those of other stockholders, including seeking a premium value for their common stock, and might affect the prevailing market price for our common stock and the notes.

The notes may adversely affect the market price of our common stock.

The market price of our common stock is likely to be influenced by the notes. For example, the market price of our common stock could become more volatile and could be depressed by:

- n investors' anticipation of the potential resale in the market of a substantial number of additional shares of our common stock received upon conversion of the notes;
- n possible sales of our common stock by investors who view the notes as a more attractive means of equity participation in us than owning shares of our common stock; and
- n hedging or arbitrage trading activity that may develop involving the notes and our common stock.

Our management will have broad discretion in the use of the net proceeds from this offering and the concurrent offering of common stock and may allocate the net proceeds from this offering in ways that you and other stockholders may not approve.

Our management will have broad discretion in the use of the net proceeds, including for any of the purposes described in the section entitled "Use of Proceeds," and you will not have the opportunity as part of your investment decision to assess whether the net proceeds are being used appropriately. Because of the number and variability of factors that will determine our use of the net proceeds from this offering and the concurrent offering of common stock, their ultimate use may vary substantially from their currently intended use. The failure of our management to use these funds effectively could have a material adverse effect on our business, cause the market price of our common stock to decline, which would likely adversely affect the trading price of the notes, and delay the development of our product candidates. Pending their use, we may invest the net proceeds from this offering in short-term, investment-grade, interest-bearing instruments and U.S. government securities. These investments may not yield a favorable return to our stockholders.

If securities or industry analysts do not publish or cease publishing research or reports about us, our business or our market, or if they adversely change their recommendations or publish negative reports regarding our business or our stock, our stock price and trading volume and trading price of the notes could decline.

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts may publish about us, our business, our market or our competitors. We do not have any control over these analysts and we cannot provide any assurance that analysts will cover us or provide favorable coverage. If any of the analysts who may cover us adversely change their recommendation regarding our stock, or provide more favorable relative recommendations about our competitors, our stock price could decline, which would likely adversely affect the trading price of the notes. If any analyst who may cover us were to cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline, which would likely adversely affect the trading price of the notes.

Because we do not intend to declare cash dividends on our shares of common stock in the foreseeable future, stockholders must rely on appreciation of the value of our common stock for any return on their investment.

We currently anticipate that we will retain future earnings for the development, operation and expansion of our business and do not anticipate declaring or paying any cash dividends in the foreseeable future. In addition, the terms of any future debt agreements may preclude us from paying dividends. As a result, we expect that only appreciation of the price of our common stock, if any, will provide a return to investors that receive common stock in partial or full satisfaction of conversions of the notes, if any, for the foreseeable future.

If we are unable to substantially utilize our net operating loss carryforward, our financial results will be adversely affected.

As of December 31, 2013, we had net operating losses of approximately \$69.3 million, which may be utilized against future federal and state income taxes. In general, a corporation that undergoes an "ownership change" is subject to limitations on its ability to utilize its pre-change net operating losses, or NOLs, to offset future taxable income. In general, an ownership change occurs if the aggregate stock ownership of certain stockholders (generally 5% stockholders, applying certain look-through and aggregation rules) increases by more than 50% over such stockholders' lowest percentage ownership during the testing period (generally three years). Purchases of our common stock in amounts greater than specified levels, which will be beyond our control, could create a limitation on our ability to utilize our NOLs for tax purposes in the future. Limitations imposed on our ability to utilize NOLs could cause U.S. federal and state income taxes to be paid earlier than would be paid if such limitations were not in effect and could cause such NOLs to expire unused, in each case reducing or eliminating the benefit of such NOLs. Furthermore, we may not be able to generate sufficient taxable income to utilize our NOLs before they expire. If any of these events occur, we may not derive some or all of the expected benefits from our NOLs. In addition, at the state level there may be periods during which the use of NOLs is suspended or otherwise limited, which would accelerate or may permanently increase state taxes owed.

The requirements associated with being a public company will require significant company resources and management attention.

Following the concurrent offering of common stock, we will become subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act, the Sarbanes-Oxley Act of 2002, as amended, or the Sarbanes-Oxley Act, the listing requirements of the securities exchange on which our common stock is traded and other applicable securities rules and regulations. The Exchange Act requires that we file annual, quarterly and current reports with respect to our business and financial condition and maintain effective disclosure controls and procedures and internal control over financial reporting. In addition, subsequent rules implemented by the SEC and The NASDAQ Global Market may also impose various additional requirements on public companies. As a result, we will incur additional legal, accounting and other expenses that we did not incur as a nonpublic company, particularly after we are no longer an "emerging growth company" as defined in the Jumpstart Our Business Startups Act, or JOBS Act. Further, the need to establish the corporate infrastructure demanded of a public company may divert management's attention from implementing our growth strategy. We have made, and will continue to make, changes to our corporate governance standards, disclosure controls and financial reporting and accounting systems to meet our reporting obligations. However, the measures we take may not be sufficient to satisfy our obligations as a public company, which could subject us to delisting of our common stock, fines, sanctions and other regulatory action and potentially civil litigation.

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 compliance initiatives. Failure to build our finance infrastructure and improve our accounting systems and controls could impair our ability to comply with the financial reporting and internal controls requirements for publicly traded companies.

As a public company, we will operate in an increasingly challenging regulatory environment. Once we no longer qualify as an "emerging growth company" under the JOBS Act, we will be required to comply with the Sarbanes-Oxley Act and the related rules and regulations of the SEC, expanded disclosures, accelerated reporting requirements and more complex accounting rules. Our management and other personnel will need to devote a substantial amount of time to these compliance initiatives. Moreover, these rules and regulations will increase our legal and financial compliance costs and will make some activities more time-consuming and costly. For example, we expect these rules and regulations to make it more difficult and more expensive for us to obtain director and officer liability

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insurance and we may be required to incur substantial costs to maintain the same or similar coverage. We estimate that we will annually incur approximately \$1.5 million to \$2.5 million in expenses to ensure compliance with these requirements.

Section 404(a) of the Sarbanes-Oxley Act requires annual management assessments of the effectiveness of our internal control over financial reporting, starting with the second annual report that we would expect to file with the SEC and we will be required to disclose material changes made in our internal controls and procedures on a quarterly basis. Company responsibilities required by the Sarbanes-Oxley Act include establishing corporate oversight and adequate internal control over financial reporting and disclosure controls and procedures. Effective internal controls are necessary for us to produce reliable financial reports and are important to help prevent financial fraud. However, our independent registered public accounting firm will not be required to attest to the effectiveness of our internal control over financial reporting pursuant to Section 404(b) of the Sarbanes-Oxley Act until the later of the year following our first annual report required to be filed with the SEC or the date we are no longer an "emerging growth company" as defined in the JOBS Act, because we are taking advantage of the exemptions contained in the JOBS Act.

To build the infrastructure to allow us to assess the effectiveness of our internal control over financial reporting, we will need to hire additional accounting personnel and improve our accounting systems, disclosure policies, procedures and controls. We are currently in the process of:

- n hiring additional accounting and financial staff with appropriate public company experience;
- n initiating plans to establish an outsourced internal audit function;
- n initiating plans to upgrade our computer systems, including hardware and software;
- n establishing more robust policies and procedures; and
- n enhancing internal controls and our financial statement review process.

If we are unsuccessful in building an appropriate accounting infrastructure, we may not be able to prepare and disclose, in a timely manner, our financial statements and other required disclosures, or comply with existing or new reporting requirements.

During the evaluation and testing process, if we identify one or more material weaknesses in our internal control over financial reporting, we will be unable to assert that our internal control over financial reporting is effective. We cannot assure you that there will not be material weaknesses in our internal control over financial reporting in the future. Any failure to maintain internal control over financial reporting could severely inhibit our ability to accurately report our financial condition, results of operations or cash flows. If we are unable to conclude that our internal control over financial reporting is effective, or if our independent registered public accounting firm determines we have a material weakness in our internal control over financial reporting, we could lose investor confidence in the accuracy and completeness of our financial reports, the market price of our common stock could decline, and we could be subject to sanctions or investigations by The NASDAQ Global Market, the SEC and comparable non-U.S. regulatory authorities. Failure to remedy any material weakness in our internal control over financial reporting, or to implement or maintain other effective control systems required of public companies, could also restrict our future access to the capital markets.

The recently enacted JOBS Act will allow us to postpone the date by which we must comply with some of the laws and regulations intended to protect investors and to reduce the amount of information we provide in our reports filed with the SEC, which could undermine investor confidence in our company and adversely affect the market price of our common stock, which would likely adversely affect the trading price of the notes.

For so long as we remain an “emerging growth company” as defined in the JOBS Act, we may take advantage of certain exemptions from various requirements that are applicable to public companies that are not “emerging growth companies” including:

- n the provisions of Section 404(b) of the Sarbanes-Oxley Act requiring that our independent registered public accounting firm provide an attestation report on the effectiveness of our internal control over financial reporting;
- n the “say on pay” provisions (requiring a non-binding stockholder vote to approve compensation of certain executive officers) and the “say on golden parachute” provisions (requiring a nonbinding stockholder vote to approve golden parachute arrangements for certain executive officers in connection with mergers and certain other business combinations) of the Dodd-Frank Act and some of the disclosure requirements of the Dodd-Frank Act relating to compensation of its chief executive officer;
- n the requirement to provide detailed compensation discussion and analysis in proxy statements and reports filed under the Exchange Act, and instead provide a reduced level of disclosure concerning executive compensation; and
- n any rules that may be adopted by the Public Company Accounting Oversight Board requiring mandatory audit firm rotation or a supplement to the auditor’s report on the financial statements.

We may take advantage of these exemptions until we are no longer an “emerging growth company.” We would cease to be an “emerging growth company” upon the earliest of: (i) the last day of the first fiscal year following the fifth anniversary of the closing of this offering; (ii) the last day of the first fiscal year in which our annual gross revenues are \$1 billion or more; (iii) the date on which we have, during the previous three-year period, issued more than \$1 billion in non-convertible debt securities; or (iv) as of the end of any fiscal year in which the market value of our common stock held by non-affiliates exceeded \$700 million as of the end of the second quarter of that fiscal year.

Although we are still evaluating the JOBS Act, we currently intend to take advantage of some, but not all, of the reduced regulatory and reporting requirements that will be available to us so long as we qualify as an “emerging growth company.” For example, we have irrevocably elected under Section 107 of the JOBS Act not to take advantage of the extension of time to comply with new or revised financial accounting standards available under Section 102(b) of the JOBS Act. Our independent registered public accounting firm will not be required to provide an attestation report on the effectiveness of our internal control over financial reporting so long as we qualify as an “emerging growth company,” which may increase the risk that weaknesses or deficiencies in our internal control over financial reporting go undetected. Likewise, so long as we qualify as an “emerging growth company,” we may elect not to provide you with certain information, including certain financial information and certain information regarding compensation of our executive officers, that we would otherwise have been required to provide in filings we make with the SEC, which may make it more difficult for investors and securities analysts to evaluate our company. We cannot predict if investors will find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock, and our stock price may be more volatile and may decline, which would likely adversely affect the trading price of the notes.

Some provisions of our charter documents, Delaware law and the indenture that will govern the notes, if issued, 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 amended and restated certificate of incorporation and our bylaws that will become effective prior to the closing of this offering, as well as provisions of the Delaware General Corporation Law, or DGCL, could make it more difficult for a third party to acquire us or increase the cost of acquiring us, even if doing so would benefit our stockholders, including transactions in which stockholders might otherwise receive a premium for their shares. These provisions include:

- n establishing a classified board of directors such that not all members of the board are elected at one time;
- n allowing the authorized number of our directors to be changed only by resolution of our board of directors;
- n limiting the removal of directors by the stockholders;
- n 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;
- n prohibiting stockholder action by written consent, thereby requiring all stockholder actions to be taken at a meeting of our stockholders;
- n eliminating the ability of stockholders to call a special meeting of stockholders;
- n 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; and
- n requiring the approval of the holders of at least 75% of the votes that all our stockholders would be entitled to cast to amend or repeal our bylaws.

These provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management. In addition, we are subject to Section 203 of the DGCL, 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.

DESCRIPTION OF NOTES

We will issue the notes under an indenture, or the indenture, to be entered into upon the closing of this offering between us and Wilmington Trust, National Association, a national banking association, as trustee, or the trustee.

You may request a copy of the indenture, which includes the form of the notes, from us as described under “Where You Can Find More Information”. The terms of the notes include those expressly set forth in the indenture and those made part of the indenture by reference to the Trust Indenture Act of 1939, as amended, or the Trust Indenture Act.

The following description is a summary of the material provisions of the notes and the indenture and does not purport to be complete. This summary is subject to and is qualified by reference to all of the provisions of the notes and the indenture, including the definitions of certain terms used in the notes and the indenture. We urge you to read these documents because they, and not this description, define your rights as a holder of the notes.

For purposes of this description, references to “we,” “our” and “us” refer only to Inotek Pharmaceuticals Corporation and not to any of our existing and future subsidiaries.

General

The notes will:

- n be our general unsecured, senior obligations;
- n initially be limited to an aggregate principal amount of \$ million (\$ million if the underwriters exercise their option to purchase additional notes to cover overallocments);
- n bear cash interest from 2014 at an annual rate of % payable semi-annually on and of each year, beginning on , 2015;
- n not be redeemable at our option prior to their maturity date;
- n be subject to repurchase by us at the option of the holders following a fundamental change (as defined below under “—Fundamental Change Permits Holders to Require Us to Repurchase Notes”), at a repurchase price equal to 100% of the principal amount of the notes to be repurchased, *plus* accrued and unpaid interest to, but excluding, the relevant fundamental change repurchase date;
- n mature on , 2019, unless earlier converted or repurchased;
- n be issued in denominations of \$1,000 and integral multiples of \$1,000; and
- n be represented by one or more registered notes in global form, but in certain limited circumstances may be represented by notes in certificated form. See “—Book-Entry, Settlement and Clearance.”

Subject to satisfaction of certain conditions and during the periods described below, the notes may be converted at an initial conversion rate of shares of our common stock per \$1,000 principal amount of notes (equivalent to an initial conversion price of approximately \$ per share of our common stock). The conversion rate is subject to adjustment if certain events occur.

Upon conversion, we will settle conversions of notes by paying and/or delivering, as the case may be, cash, shares of our common stock or a combination of cash and shares of our common stock, at our election, as described under “—Conversion Rights—Settlement upon Conversion.” You will not receive any separate cash payment for interest, if any, accrued and unpaid to the conversion date except under the limited circumstances described below.

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The indenture does not limit the amount of debt, including secured debt, that may be issued by us or our subsidiaries under the indenture or otherwise. The indenture does not contain any financial covenants and does not restrict us from paying dividends or issuing or repurchasing our other securities. Other than restrictions described under “—Fundamental Change Permits Holders to Require Us to Repurchase Notes” and “—Consolidation, Merger and Sale of Assets” below and except for the provisions set forth under “—Conversion Rights—Adjustment to Conversion Rate upon Conversion upon a Make-Whole Fundamental Change,” the indenture does not contain any covenants or other provisions designed to afford holders of the notes protection in the event of a highly leveraged transaction involving us or in the event of a decline in our credit rating as the result of a takeover, recapitalization, highly leveraged transaction or similar restructuring involving us that could adversely affect such holders.

We may, without the consent of the holders, reopen the indenture for the notes and issue additional notes under the indenture with the same terms as the notes offered hereby (except for any differences in issue date, issue price and interest accrued, if any) in an unlimited aggregate principal amount; *provided* that if any such additional notes are not fungible with the notes initially offered hereby for U.S. federal income tax and securities law purposes, such additional notes will have a separate CUSIP number.

We do not intend to list the notes on any securities exchange or any interdealer quotation system.

Purchase and Cancellation

We will cause all notes surrendered for payment, repurchase (including as described below, but excluding notes repurchased pursuant to cash-settled swaps or other derivatives), registration of transfer or exchange or conversion, if surrendered to any person other than the trustee (including any of our agents, subsidiaries or affiliates), to be delivered to the trustee for cancellation in accordance with its customary procedures, and they will no longer be considered “outstanding” under the indenture upon their repurchase. All notes delivered to the trustee shall be cancelled promptly by the trustee in accordance with its procedures. Except for notes surrendered for registration of transfer or exchange, no notes shall be issued to replace any notes cancelled as provided in the indenture.

We may, to the extent permitted by law, and directly or indirectly (regardless of whether such notes are surrendered to us), repurchase notes in the open market or otherwise, whether by us or our subsidiaries or through a privately negotiated transaction or public tender or exchange offer or through counterparties to private agreements, including by cash-settled swaps or other derivatives, in each case, without prior notice to the holders of the notes.

Payments on the Notes; Paying Agent and Registrar; Transfer and Exchange

We will pay or cause the paying agent to pay the principal of, and interest on, the notes in global form registered in the name of or held by The Depository Trust Company, or DTC, or its nominee in immediately available funds to DTC or its nominee, as the case may be, as the registered holder of such global note.

We will pay or cause the paying agent to pay the principal of any certificated notes at the office or agency designated by us for that purpose. We have initially designated the trustee as our paying agent and registrar and its agency in the continental United States of America as a place where notes may be presented for payment or for registration of transfer. We may, however, change the paying agent or registrar without prior notice to the holders of the notes, and we may act as paying agent or registrar; *provided* that the paying agent and registrar must be located within the continental United States of America. Interest on certificated notes will be payable (i) to holders holding certificated notes having an

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aggregate principal amount of \$5.0 million or less, by check mailed to the holders of these notes and (ii) to holders holding certificated notes having an aggregate principal amount of more than \$5.0 million, either by check mailed to each holder or, upon application by such a holder to the registrar not later than the relevant regular record date, by wire transfer in immediately available funds to that holder's account within the United States, which wire instructions shall be received by the Paying Agent at least 5 business days prior to the date when payment is due, which application shall remain in effect until the holder notifies, in writing, the registrar to the contrary.

A holder of certificated notes may transfer or exchange its notes at the office of the registrar in accordance with the indenture. The registrar and the trustee may require a holder, among other things, to furnish appropriate endorsements and transfer documents. No service charge will be imposed by us, the trustee or the registrar for any registration of transfer or exchange of notes, but we may require a holder to pay a sum sufficient to cover any transfer tax or other similar governmental charge required by law or permitted by the indenture.

The registered holder of a note will be treated as its owner for all purposes.

Interest

The notes will bear cash interest at a rate of % per year until maturity. Interest on the notes will accrue from , 2014 or from the most recent date to which interest has been paid or duly provided for. Interest will be payable semi-annually in arrears on and of each year, beginning on , 2015.

Interest will be paid to the person in whose name a note is registered at the close of business on the or , as the case may be, immediately preceding the relevant interest payment date (each, a "regular record date"). Interest on the notes will be computed on the basis of a 360-day year composed of twelve 30-day months or, in the case of a partial month, the number of days elapsed over a 30-day month.

If any interest payment date, the maturity date or any earlier required repurchase date upon a fundamental change occurs on a day that is not a business day, the required payment will be made on the next succeeding business day and no interest on such payment will accrue in respect of the delay. The term "business day" means, with respect to any note, any day other than a Saturday, a Sunday or other day on which banking institutions in New York State or the place of payment are authorized or required by law or executive order to close or be closed.

Unless the context otherwise requires, all references to interest in this prospectus include additional interest, if any, payable at our election as the sole remedy relating to the failure to comply with our reporting obligations as described under "—Events of Default."

Ranking

The notes will be our general unsecured obligations that rank senior in right of payment to all of our indebtedness that is expressly subordinated in right of payment to the notes. The notes will rank equal in right of payment with all of our existing and future liabilities that are not so subordinated. The notes will effectively rank junior to any of our secured indebtedness to the extent of the value of the assets securing such indebtedness. In the event of our bankruptcy, liquidation, reorganization or other winding up, our assets that secure secured debt will be available to pay obligations on the notes only after all indebtedness under such secured debt has been repaid in full from such assets. The notes will rank structurally junior to all indebtedness and other liabilities of our subsidiaries. We advise you that there may not be sufficient assets remaining to pay amounts due on any or all the notes then outstanding.

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As of _____, 2014, we had total consolidated indebtedness of \$ _____ million, of which an aggregate of \$ _____ million was secured indebtedness. After giving effect to the issuance of the notes (assuming no exercise by the underwriters of their overallotment option) and the use of proceeds therefrom, our total consolidated indebtedness would have been \$ _____ million.

No Optional Redemption or Sinking Fund

We may not redeem the notes pursuant to the indenture prior to their maturity, though the indenture will not limit our ability to make open-market purchases or tender offers for the notes at any time. No sinking fund is provided for the notes, which means that we are not required to redeem or retire the notes periodically, and the notes will not be subject to defeasance.

Conversion Rights

General

Prior to the close of business on the business day immediately preceding _____, 2019, the notes will be convertible only upon satisfaction of one or more of the conditions described under the headings “—Conversion upon Satisfaction of Sale Price Condition,” “—Conversion upon Satisfaction of Trading Price Condition” and “—Conversion upon Specified Corporate Events.” On or after _____, 2019 until the close of business on the second scheduled trading day immediately preceding the maturity date, holders may convert all or any portion of their notes at any time irrespective of the foregoing conditions.

The conversion rate will initially be _____ shares of our common stock per \$1,000 principal amount of notes (equivalent to an initial conversion price of approximately \$ _____ per share of our common stock). Upon conversion of a note, we will satisfy our conversion obligation by paying and/or delivering, as the case may be, cash, shares of our common stock or a combination of cash and shares of our common stock, at our election, all as set forth below under “—Settlement upon Conversion.” If we satisfy our conversion obligation solely in cash or through payment and delivery, as the case may be, of a combination of cash and shares of our common stock, the amount of cash and shares of common stock, if any, due upon conversion will be based on a daily conversion value (as defined below) calculated on a proportionate basis for each trading day in an 80 trading day observation period (as defined below under “—Settlement upon Conversion”). The trustee initially will act as the conversion agent.

A holder may convert fewer than all of such holder’s notes so long as the notes converted are an integral multiple of the \$1,000 principal amount.

If a holder of notes has submitted notes for repurchase upon a fundamental change, the holder may convert those notes only if that holder first withdraws its repurchase notice.

Upon conversion, you will not receive any separate cash payment for accrued and unpaid interest, if any, except as described below. Our payment and/or delivery, as the case may be, to you of the cash, shares of our common stock or a combination thereof, as the case may be, into which a note is convertible will be deemed to satisfy in full our obligation to pay:

- n the principal amount of the note; and
- n accrued and unpaid interest, if any, to, but excluding, the relevant conversion date.

As a result, accrued and unpaid interest, if any, to, but excluding, the relevant conversion date will be deemed to be paid in full rather than cancelled, extinguished or forfeited. Upon a conversion of notes into a combination of cash and shares of our common stock, accrued and unpaid interest will be deemed to be paid first out of the cash paid upon such conversion.

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Notwithstanding the immediately preceding paragraph, if notes are converted after 5:00 p.m., New York City time, on a regular record date for the payment of interest, holders of such notes at 5:00 p.m., New York City time, on such regular record date will receive the full amount of interest payable on such notes on the corresponding interest payment date notwithstanding the conversion. However, notes surrendered for conversion during the period beginning after 5:00 p.m., New York City time, on any regular record date and ending at 9:00 a.m., New York City time, on the immediately following interest payment date must be accompanied by funds equal to the amount of interest payable on the notes so converted; *provided* that no such payment need be made:

- n for notes surrendered for conversion after 5:00 p.m., New York City time, on the regular record date immediately preceding the maturity date;
- n if we have specified a fundamental change repurchase date that is after a regular record date and on or prior to the second business day immediately following the corresponding interest payment date; or
- n to the extent of any overdue interest, if any overdue interest exists at the time of conversion with respect to such note.

Therefore, all record holders of notes on the regular record date immediately preceding the maturity date and any fundamental change repurchase date described in the second bullet in the preceding paragraph will receive the full interest payment due on the maturity date or other corresponding interest payment date regardless of whether their notes have been converted or repurchased, as applicable, following such regular record date.

If a holder converts notes, we will pay any documentary, stamp or similar issue or transfer tax due on any issuance of any shares of our common stock upon the conversion, unless the tax is due because the holder requests any such shares to be issued in a name other than such holder's name, in which case such holder must pay that tax.

Holders may surrender their notes for conversion only under the following circumstances:

Conversion upon Satisfaction of Sale Price Condition

Prior to the close of business on the business day immediately preceding _____, 2019, a holder may surrender all or any portion of its notes for conversion at any time during any calendar quarter commencing after the calendar quarter ending on December 31, 2014 (and only during such calendar quarter), if the last reported sale price of our common stock for at least 20 trading days (whether or not consecutive) during the period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to _____ % of the conversion price for the notes on each applicable trading day.

The "last reported sale price" of our common stock or any other security on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the relevant stock exchange (as defined below). If our common stock or such other security is not listed for trading on a relevant stock exchange on the relevant date, the "last reported sale price" will be the average of the last quoted bid and ask prices per share for our common stock or such other security in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization. If our common stock or such other security is not so quoted, the "last reported sale price" will be the average of the mid-point of the last bid and ask prices per share for our common stock or such other security on the relevant date received from each of at least three nationally recognized independent investment banking firms selected by us for this purpose. The "last reported sale price" will be determined without regard to after-hours trading or any other trading outside of regular trading session hours. None of the Trustee, paying agent or conversion agent shall be responsible for monitoring the last reported sale price.

Except for the purposes of determining amounts due upon conversion, "trading day" means a day on which (i) trading in our common stock (or any other security for which a last reported sale price must be determined) generally occurs on the relevant stock exchange or, if our common stock (or such other security) is not then listed on a relevant stock exchange, on the principal other market on which our common stock (or such other security) is then traded, and (ii) a last reported sale price for our common stock (or such other security) is available on such securities exchange or market. If our common stock (or such other security) is not so listed or traded, "trading day" means a "business day."

Conversion upon Satisfaction of Trading Price Condition

Prior to the close of business on the business day immediately preceding _____, 2019, a holder of notes may surrender all or any portion of its notes for conversion at any time during the five business day period after any five consecutive trading day period, or the measurement period, in which the "trading price" per \$1,000 principal amount of notes, as determined following a request by a holder of notes in accordance with the procedures described below, for each trading day of the measurement period was less than 98% of the product of the last reported sale price of our common stock and the conversion rate on each such trading day, subject to compliance with the procedures and conditions described below concerning the bid solicitation agent's obligation to make a trading price determination.

The "trading price" per \$1,000 principal amount of the notes on any date of determination means the average of the secondary market bid quotations obtained by the bid solicitation agent for \$1.0 million principal amount of notes at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers we select for this purpose; *provided* that if three such bids cannot reasonably be obtained by the bid solicitation agent but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the bid solicitation agent, that one bid shall be used. If the bid solicitation agent cannot reasonably obtain at least one bid for \$1.0 million principal amount of notes from a nationally recognized securities dealer selected by us, then the trading price per \$1,000 principal amount of notes for such determination date will be deemed to be less than 98% of the product of the last reported sale price of our common stock and the conversion rate. If (x) we are not acting as bid solicitation agent, and we do not, when we are required to, instruct the bid solicitation agent to obtain bids, or if we give such instruction to the bid solicitation agent and the bid solicitation agent fails to make such determination or (y) we are acting as bid solicitation agent and we fail to make such determination, then, in either case, the trading price per \$1,000 principal amount of notes will be deemed to be less than 98% of the product of the last reported sale price of our common stock and the conversion rate on each trading day of such failure.

The bid solicitation agent (if other than us) shall have no obligation to determine the trading price per \$1,000 principal amount of notes unless we have requested such determination in writing, and we shall have no obligation to make such request (or, if we are acting as bid solicitation agent, we shall have no obligation to determine the trading price) unless a holder of at least \$1.0 million aggregate principal amount of notes provides us with reasonable evidence that the trading price per \$1,000 principal amount of notes would be less than 98% of the product of the last reported sale price of our common stock and the conversion rate. At such time, we shall instruct the bid solicitation agent in writing (if other than us) to determine, or if we are acting as bid solicitation agent, we shall determine, the trading price per \$1,000 principal amount of notes beginning on the next trading day and on each successive trading day until the trading price per \$1,000 principal amount of notes is greater than or equal to 98% of the product of the last reported sale price of our common stock and the conversion rate. At such time as we direct the bid solicitation agent in writing to solicit bid quotations we will provide the bid solicitation with the names and contact details of the three independent national recognized securities dealers we select, and we will direct those security dealers to provide bids to the bid solicitation agent.

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If the trading price condition has been met on any trading day, we will so notify the holders, the trustee and the conversion agent (if other than the trustee) in writing on or within one business day of such trading day. If, at any time after the trading price condition has been met, the trading price per \$1,000 principal amount of notes is greater than or equal to 98% of the product of the last reported sale price of our common stock and the conversion rate for such trading day, we will promptly so notify the holders, the trustee and the conversion agent (if other than the trustee) in writing that the trading price condition is no longer met and thereafter neither we, nor the bid solicitation agent shall be required to measure the trading price again until a new holder request is made as provided above.

The trustee will initially act as the bid solicitation agent.

Conversion upon Specified Corporate Events

Certain Distributions

If, prior to the close of business on the business day immediately preceding _____, 2019, we elect to:

- n issue to all or substantially all holders of our common stock any rights, options or warrants (other than any issuance of any rights, options or warrants issued under a stockholder rights plan that are (i) transferable with shares of our common stock, including upon conversion, and (ii) not exercisable until the occurrence of a triggering event; provided that such rights, options or warrants will be deemed issued under this bullet upon the separation of such rights, options or warrants from our common stock, or upon the occurrence of such triggering event) entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance, to subscribe for or purchase shares of our common stock at a price per share that is less than the average of the last reported sale prices of our common stock for the 10 consecutive trading day period ending on, and including, the trading day immediately preceding the date of announcement of such issuance; or
- n distribute to all or substantially all holders of our common stock our assets, securities or rights, options or warrants to purchase our securities, which distribution has a per share value, as reasonably determined by our board of directors or a committee thereof, exceeding 10% of the last reported sale price of our common stock on the trading day immediately preceding the date of announcement for such distribution,

then, in either case, we will notify the holders of the notes at least 85 scheduled trading days prior to the ex-dividend date for such issuance or distribution (or, with respect to the separation of any rights, options or warrants described in the parenthetical included in the first bullet above, within three business days of such separation). Once we have given such notice, holders may surrender all or any portion of their notes for conversion at any time until the earlier of 5:00 p.m., New York City time, on the second business day immediately preceding the ex-dividend date for such issuance or distribution and our announcement that such issuance or distribution will not take place.

Certain corporate events

If a transaction or event that constitutes a "fundamental change" (as defined under "—Fundamental Change Permits Holders to Require Us to Repurchase Notes") or a "make-whole fundamental change" (as defined under "—Adjustment to Conversion Rate upon Conversion upon a Make-Whole Fundamental Change") occurs prior to the close of business on the business day immediately preceding _____, 2019, regardless of whether a holder has the right to require us to repurchase the notes as described under "—Fundamental Change Permits Holders to Require Us to Repurchase Notes," or if we are a party to a specified corporate event (as defined under "—Recapitalizations, Reclassifications and Changes of Our Common Stock") (other than any specified corporate event that is solely for the purpose of changing our jurisdiction of organization that (x) does

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not constitute a fundamental change or a make-whole fundamental change and (y) results in a reclassification, conversion or exchange of outstanding shares of our common stock solely into shares of common stock of the surviving entity) that occurs prior to the close of business on the business day immediately preceding _____, 2019, the notes may be surrendered for conversion at any time from or after the date that is 85 scheduled trading days prior to the anticipated effective date of such transaction or event (or, if later, the business day after we give notice of such transaction or event) until 35 trading days after the actual effective date of such transaction or event or, if such transaction or event also constitutes a fundamental change, until the close of business on the second scheduled trading day immediately preceding the related fundamental change repurchase date. We will notify holders, the trustee and the conversion agent (if other than the trustee) in writing (i) as promptly as practicable following the date we publicly announce such transaction or event but in no event less than 85 scheduled trading days prior to the anticipated effective date of such transaction or event; or (ii) if we do not have knowledge of the anticipated effective date of such transaction or event at least 85 scheduled trading days prior to the anticipated effective date of such transaction or event, within one business day of the date upon which we publicly announce such transaction, but in no event later than the actual effective date of such transaction.

Conversions on or After _____, 2019

On or after _____, 2019 a holder may convert all or any portion of its notes at any time prior to the close of business on the second scheduled trading day immediately preceding the maturity date regardless of the foregoing conditions.

Conversion Procedures

If you hold a beneficial interest in a global note, to convert you must comply with DTC's procedures for converting a beneficial interest in a global note and, if required, pay funds equal to interest payable on the next interest payment date to which you are not entitled and, if required, pay certain specified taxes or duties, if any.

If you hold a certificated note, to convert you must:

- n complete and manually sign the conversion notice on the back of the note, or a facsimile of the conversion notice;
- n deliver the conversion notice, which is irrevocable, and the note to the conversion agent;
- n if required, furnish appropriate endorsements and transfer documents;
- n if required, pay all transfer or similar taxes; and
- n if required, pay funds equal to the interest payable on the next interest payment date to which you are not entitled.

We will pay any documentary, stamp or similar issue or transfer tax on the issuance of any shares of our common stock upon conversion of the notes, unless the tax is due because the holder requests such shares to be issued in a name other than the holder's name, in which case the holder must pay the tax.

We refer to the date you comply with the relevant procedures for conversion described above as the "conversion date."

If a holder has already delivered a repurchase notice as described under "—Fundamental Change Permits Holders to Require Us to Repurchase Notes" with respect to a note, the holder may not surrender that note for conversion until the holder has withdrawn the fundamental change repurchase notice in accordance with the relevant provisions of the indenture. If a holder submits its notes for required repurchase, the holder's right to withdraw the fundamental change repurchase notice and convert the notes that are subject to repurchase will terminate at the close of business on the second business day immediately preceding the relevant fundamental change repurchase date.

Settlement upon Conversion

Upon conversion, we may choose to pay and/or deliver, as the case may be, either cash, or cash settlement, shares of our common stock, or physical settlement, or a combination of cash and shares of our common stock, or combination settlement, as described below. We refer to each of these settlement methods as a “settlement method”.

All conversions for which the relevant conversion date occurs on or after _____, 2019 will be settled using the same settlement method. Except for any conversions for which the relevant conversion date occurs on or after _____, 2019, we will use the same settlement method for all conversions with the same conversion date, but we will not have any obligation to use the same settlement method with respect to conversions with different conversion dates. That is, we may choose for notes converted on one conversion date to settle conversions through physical settlement, and choose for notes converted on another conversion date cash settlement or combination settlement.

If we elect a settlement method, we will inform holders so converting through the trustee of the settlement method we have selected no later than the close of business on the second trading day immediately following the related conversion date (or in the case of any conversions for which the relevant conversion date occurs on or after _____, 2019, no later than _____, 2019). If we do not timely elect a settlement method, we will no longer have the right to elect cash settlement or physical settlement and we will be deemed to have elected combination settlement in respect of our conversion obligation, as described below, and the specified dollar amount (as defined below) per \$1,000 principal amount of notes will be equal to \$1,000. If we elect (or are deemed to have elected) combination settlement, but we do not timely notify converting holders of the specified dollar amount per \$1,000 principal amount of notes, such specified dollar amount will be deemed to be \$1,000. It is our current intent and policy to settle conversions through combination settlement with a specified dollar amount per \$1,000 principal amount of notes of \$1,000.

Settlement amounts will be computed as follows:

- n if we elect physical settlement, we will deliver to the converting holder in respect of each \$1,000 principal amount of notes being converted a number of shares of our common stock equal to the conversion rate in effect on the conversion date;
- n if we elect cash settlement, we will pay to the converting holder in respect of each \$1,000 principal amount of notes being converted cash in an amount equal to the sum of the daily conversion values for each of the 80 consecutive trading days during the related observation period; and
- n if we elect (or are deemed to have elected) combination settlement, we will pay or deliver, as the case may be, to the converting holder in respect of each \$1,000 principal amount of notes being converted a “settlement amount” equal to the sum of the daily settlement amounts for each of the 80 consecutive trading days during the related observation period.

The “daily settlement amount,” for each of the 80 consecutive trading days during the observation period, shall consist of:

- n cash equal to the lesser of (i) the maximum cash amount per \$1,000 principal amount of notes being converted to be received upon conversion as specified in the notice specifying our chosen settlement method, or the specified dollar amount, if any, *divided by* 80 (such quotient, the “daily measurement value”) and (ii) the daily conversion value; and
- n if the daily conversion value exceeds the daily measurement value, a number of shares equal to (i) the difference between the daily conversion value and the daily measurement value, *divided by* (ii) the daily VWAP for such trading day.

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The “daily conversion value” means, for each of the 80 consecutive trading days during the observation period, 1.25% of the product of (1) the conversion rate on such trading day and (2) the daily VWAP on such trading day.

The “daily VWAP” means, for each of the 80 consecutive trading days during the applicable observation period, the per share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page “ITEK <equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such trading day (or if such volume-weighted average price is unavailable, the market value of one share of our common stock on such trading day determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by us). The “daily VWAP” will be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

The “observation period” with respect to any note surrendered for conversion means:

- n if the relevant conversion date occurs prior to _____, 2019, the 80 consecutive trading day period beginning on, and including, the third trading day immediately succeeding such conversion date; and
- n if the relevant conversion date occurs on or after _____, 2019, the 80 consecutive trading days beginning on, and including, the 82nd scheduled trading day immediately preceding the maturity date.

For the purposes of determining amounts due upon conversion only, “trading day” means a day on which (i) there is no “market disruption event” (as defined below) and (ii) trading in our common stock generally occurs on the relevant stock exchange or, if our common stock is not then listed on a relevant stock exchange, on the principal other market on which our common stock is then listed or admitted for trading. If our common stock is not so listed or admitted for trading, “trading day” means a “business day.”

“Relevant stock exchange” means The NASDAQ Global Market, or if our common stock is not then listed on The NASDAQ Global Market, the principal other U.S. national or regional securities exchange on which our common stock is then listed.

“Scheduled trading day” means a day that is scheduled to be a trading day on the relevant stock exchange. If our common stock is not listed or admitted for trading on a relevant stock exchange, “scheduled trading day” means a “business day.”

“Market disruption event” means (i) a failure by the relevant stock exchange to open for trading during its regular trading session or (ii) the occurrence or existence prior to 1:00 p.m., New York City time, on any scheduled trading day for our common stock for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in our common stock or in any options contracts or futures contracts relating to our common stock.

Except as described under “—Adjustment to Conversion Rate upon Conversion upon a Make-Whole Fundamental Change” and “—Recapitalizations, Reclassifications and Changes of Our Common Stock,” we will deliver the consideration due upon conversion on the third business day immediately following the relevant conversion date, if we elect to satisfy our conversion obligation by physical settlement, or on the third business day immediately following the last trading day of the relevant observation period, in the case of any other settlement method.

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We will pay cash in lieu of delivering any fractional share of our common stock issuable upon conversion based on the daily VWAP on the relevant conversion date (in the case of physical settlement) or based on the daily VWAP on the last trading day of the relevant observation period (in the case of combination settlement).

Each conversion will be deemed to have been effected as to any notes surrendered for conversion on the conversion date in accordance with the requirements set forth in the indenture; *provided, however*, that the person in whose name any shares of our common stock shall be issuable upon such conversion will become the holder of record of such shares as of the close of business on the conversion date (in the case of physical settlement) or the last trading day of the relevant observation period (in the case of combination settlement).

Exchange in Lieu of Conversion

When a holder surrenders its notes for conversion, we may, at our election (an “exchange election”), direct the conversion agent in writing to surrender, on or prior to the second trading day following the related conversion date, such notes to a financial institution designated by us for exchange in lieu of conversion. In order to accept any notes surrendered for conversion, the designated institution must agree to timely deliver, in exchange for such notes, cash, the shares of our common stock or combination thereof due upon conversion as described above under “—Settlement upon Conversion.” If we make an exchange election, we will, by the close of business on the second trading day following the relevant conversion date, notify the holder surrendering its notes for conversion that we have made the exchange election, and we will notify the designated financial institution of the settlement method we have elected with respect to such conversion and the relevant deadline for payment and/or delivery of cash, shares of our common stock or a combination thereof due upon conversion.

If the designated financial institution accepts any such notes, it will pay and/or deliver the cash, shares of our common stock or combination thereof due upon conversion to the conversion agent and the conversion agent will pay and/or deliver such cash, shares of common stock or combination thereof to the holder. Any notes exchanged by the designated institution will remain outstanding. If the designated institution agrees to accept any notes for exchange but does not timely pay and/or deliver the required cash, shares of our common stock or a combination thereof due upon conversion, or if such designated financial institution does not accept the notes for exchange, we will pay and/or deliver the required cash, shares of our common stock or a combination thereof due upon conversion to the converting holder at the time and in the manner required under the indenture as if we had not made an exchange election.

Our designation of an institution to which the notes may be submitted for exchange does not require the institution to accept any notes (unless the financial institution has separately made an agreement with us). We may, but will not be obligated to, enter into a separate agreement with any designated financial institution that would compensate it for any such transaction.

Conversion Rate Adjustments

The conversion rate will be adjusted as described below, except that we will not make any adjustments to the conversion rate if holders of the notes participate (other than in the case of (x) a share split or share combination or (y) a tender or exchange offer, in each case, that would result in an adjustment to the conversion rate pursuant to clause (1) or (5) below), at the same time and upon the same terms as holders of our common stock and solely as a result of holding the notes, in any of the transactions described below without having to convert their notes as if they held a number of shares of our common stock equal to the conversion rate, *multiplied by* the principal amount (expressed in thousands) of notes held by such holder.

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- (1) If we exclusively issue shares of our common stock as a dividend or distribution on shares of our common stock, or if we effect a share split or share combination, the conversion rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where,

- CR_0 = the conversion rate in effect immediately prior to the open of business on the ex-dividend date of such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or share combination, as applicable;
- CR_1 = the conversion rate in effect immediately after the open of business on such ex-dividend date or effective date;
- OS_0 = the number of shares of our common stock outstanding immediately prior to the open of business on such ex-dividend date or effective date; and
- OS_1 = the number of shares of our common stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Any adjustment made under this clause (1) shall become effective immediately after the open of business on the ex-dividend date for such dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this clause (1) is declared but not so paid or made, the conversion rate shall be immediately readjusted, effective as of the date our board of directors or a committee thereof determines not to pay such dividend or distribution, to the conversion rate that would then be in effect if such dividend or distribution had not been declared.

- (2) If we issue to all or substantially all holders of our common stock any rights, options or warrants entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance, to subscribe for or purchase shares of our common stock at a price per share that is less than the average of the last reported sale prices of our common stock for the 10 consecutive trading day period ending on, and including, the trading day immediately preceding the date of announcement of such issuance, the conversion rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

- CR_0 = the conversion rate in effect immediately prior to the open of business on the ex-dividend date for such issuance;
- CR_1 = the conversion rate in effect immediately after the open of business on such ex-dividend date;
- OS_0 = the number of shares of our common stock outstanding immediately prior to the open of business on such ex- dividend date;
- X = the total number of shares of our common stock issuable pursuant to such rights, options or warrants; and

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Y = the number of shares of our common stock equal to the aggregate price payable to exercise such rights, options or warrants, *divided by* the average of the last reported sale prices of our common stock over the 10 consecutive trading day period ending on, and including, the trading day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Any increase made under this clause (2) will be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the open of business on the ex-dividend date for such issuance. To the extent that such rights, options or warrants are not exercised prior to their expiration or shares of our common stock are not delivered after the expiration of such rights, options or warrants, the conversion rate shall be decreased to the conversion rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of our common stock actually delivered. If such rights, options or warrants are not so issued or if no such right, option or warrant is exercised prior to its expiration, the conversion rate shall be decreased to the conversion rate that would then be in effect if such ex-dividend date for such issuance had not occurred.

For the purpose of this clause (2) and for the purpose of the first bullet point under “—Conversion upon Specified Corporate Events—Certain Distributions,” in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of our common stock at a price per share that is less than such average of the last reported sale prices of our common stock for the 10 consecutive trading day period ending on, and including, the trading day immediately preceding the date of announcement of such issuance, and in determining the aggregate offering price of such shares of our common stock, there shall be taken into account any consideration received by us for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by our board of directors or a committee thereof.

- (3) If we distribute shares of our capital stock, evidences of our indebtedness, other assets or property of ours or rights, options or warrants to acquire shares of our capital stock or other securities, to all or substantially all holders of our common stock, excluding:
- n dividends, distributions or issuances as to which an adjustment was effected pursuant to clause (1) or (2) above;
 - n dividends or distributions paid exclusively in cash as to which an adjustment was effected pursuant to clause (4) below;
 - n any dividends or distributions of reference property in exchange for our common stock in connection with any reclassification, change, consolidation, merger, conveyance, transfer, sale, lease or other disposition described below under “—Recapitalization, Reclassification and Changes of our Common Stock”; and
 - n spin-offs as to which the provisions set forth below in this clause (3) shall apply;

then the conversion rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

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where,

- CR_0 = the conversion rate in effect immediately prior to the open of business on the ex-dividend date for such distribution;
- CR_1 = the conversion rate in effect immediately after the open of business on such ex-dividend date;
- SP_0 = the average of the last reported sale prices of our common stock over the 10 consecutive trading day period ending on, and including, the trading day immediately preceding the ex-dividend date for such distribution; and
- FMV = the fair market value (as determined by our board of directors or a committee thereof) of the shares of capital stock, evidences of indebtedness, assets, property, rights, options or warrants distributed with respect to each outstanding share of our common stock on the ex-dividend date for such distribution.

Any increase made under the portion of this clause (3) above will become effective immediately after the open of business on the ex-dividend date for such distribution. If such distribution is not so paid or made, the conversion rate shall be decreased to be the conversion rate that would then be in effect if such distribution had not been declared.

Notwithstanding the foregoing, if “ FMV ” (as defined above) is equal to or greater than “ SP_0 ” (as defined above), in lieu of the foregoing increase, each holder of a note shall receive, in respect of each \$1,000 principal amount thereof, at the same time and upon the same terms as holders of our common stock, the amount and kind of our shares of capital stock, evidences of our indebtedness, other assets or property of ours or rights, options or warrants to acquire our shares of capital stock or other securities that such holder would have received if such holder owned a number of shares of our common stock equal to the conversion rate in effect on the record date for the distribution.

With respect to an adjustment pursuant to this clause (3) where there has been a payment of a dividend or other distribution on our common stock of shares of capital stock of any class or series, or similar equity interest, of or relating to a subsidiary or other business unit, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange, which we refer to as a “spin-off,” the conversion rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

- CR_0 = the conversion rate in effect immediately prior to the open of business on the ex-dividend date for such spin-off;
- CR_1 = the conversion rate in effect immediately after the open of business on the ex-dividend date for such spin-off;
- FMV_0 = the average of the last reported sale prices of the shares or similar equity interest distributed to holders of our common stock applicable to one share of our common stock (determined by reference to the definition of last reported sale price set forth under “— Conversion upon Satisfaction of Sale Price Condition” as if references therein to our common stock were to such capital stock or similar equity interest) over the first 10 consecutive trading day period after, and including, the ex-dividend date of the spin-off, or the valuation period; and
- MP_0 = the average of the last reported sale prices of our common stock over the valuation period.

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The increase to the conversion rate under the preceding paragraph will be determined on the last trading day of the valuation period but will be given effect at the open of business on the ex-dividend date for such spin-off. Notwithstanding the foregoing, in respect of any conversion of notes during the valuation period, references in the preceding paragraph with respect to 10 consecutive trading days shall be deemed to be replaced with such lesser number of trading days as have elapsed from, and including, the ex-dividend date of such spin-off to, but excluding, the conversion date in determining the conversion rate. If the ex-dividend date for the spin-off is less than 10 trading days prior to, and including, the end of the observation period in respect of any conversion, references in the preceding paragraph to 10 consecutive trading days will be deemed to be replaced, solely in respect of that conversion, with such lesser number of trading days as have elapsed from, and including, the ex-dividend date for the spin-off to, and including, the last trading day of such observation period. If such spin-off does not occur, the conversion rate shall be decreased to be the conversion rate that would then be in effect if such distribution had not been declared, effective as of the date on which our board of directors or a committee thereof determines not to consummate such spin-off.

(4) If we make any cash dividend or distribution to all or substantially all holders of our common stock, the conversion rate will be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR₀ = the conversion rate in effect immediately prior to the open of business on the ex-dividend date for such dividend or distribution;

CR₁ = the conversion rate in effect immediately after the open of business on the ex-dividend date for such dividend or distribution;

SP₀ = the last reported sale price of our common stock on the trading day immediately preceding the ex-dividend date for such dividend or distribution; and

C = the amount in cash per share we distribute to all or substantially all holders of our common stock.

Any increase to the conversion rate made under this clause (4) shall become effective immediately after the open of business on the ex-dividend date for such dividend or distribution. If such dividend or distribution is not so paid, the conversion rate shall be decreased, effective as of the date our board of directors or a committee thereof determines not to make or pay such dividend or distribution, to be the conversion rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP₀" (as defined above), in lieu of the foregoing increase, each holder of a note shall receive, for each \$1,000 principal amount of notes, at the same time and upon the same terms as holders of our common stock, the amount of cash that such holder would have received if such holder owned a number of shares of our common stock equal to the conversion rate on the record date for such cash dividend or distribution.

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- (5) If we or any of our subsidiaries make a payment in respect of a tender or exchange offer for our common stock, other than an odd lot tender offer, to the extent that the cash and value of any other consideration included in the payment per share of our common stock exceeds the last reported sale price of our common stock on the trading day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the conversion rate will be increased based on the following formula:

$$CR_1 = CR_0 \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where,

CR₀ = the conversion rate in effect immediately prior to the open of business on the trading day next succeeding the date such tender or exchange offer expires;

CR₁ = the conversion rate in effect immediately after the open of business on the trading day next succeeding the date such tender or exchange offer expires;

AC = the aggregate value of all cash and any other consideration (as determined by our board of directors or a committee thereof) paid or payable for shares purchased in such tender or exchange offer;

OS₀ = the number of shares of our common stock outstanding immediately prior to the time such tender or exchange offer expires (prior to giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer);

OS₁ = the number of shares of our common stock outstanding immediately after the time such tender or exchange offer expires (after giving effect to the purchase of all shares accepted for purchase or exchange in such tender or exchange offer); and

SP₁ = the average of the last reported sale prices of our common stock over the 10 consecutive trading day period commencing on, and including, the trading day next succeeding the date such tender or exchange offer expires.

The increase to the conversion rate under the preceding paragraph will be determined at the close of business on the 10th trading day immediately following, and including, the trading day next succeeding the date such tender or exchange offer expires but will be given effect at the open of business on the trading day next succeeding the date such tender or exchange offer expires. Notwithstanding the foregoing, in respect of any conversion within the 10 trading days immediately following, and including, the trading day next succeeding the expiration date of any tender or exchange offer, references in the preceding paragraph with respect to 10 consecutive trading days shall be deemed replaced with such lesser number of trading days as have elapsed between the expiration date of such tender or exchange offer and the conversion date in determining the conversion rate. In addition, if the trading day next succeeding the expiration date is less than 10 trading days prior to, and including, the end of the observation period (if applicable) in respect of any conversion, references in the preceding paragraph to 10 consecutive trading days shall be deemed to be replaced, solely in respect of that conversion, with such lesser number of trading days as have elapsed from, and including, the trading day next succeeding the expiration date to, and including, the last trading day of such observation period. For the avoidance of doubt, no adjustment under this clause (5) will be made if such adjustment would result in a decrease in the conversion rate.

If we or one of our subsidiaries are obligated to purchase our common stock pursuant to any such tender or exchange offer described in this clause (5) but we or such subsidiary are permanently prevented by applicable law from effecting all or any such purchases or all or any portion of such purchases are rescinded, the conversion rate will be readjusted to be the conversion rate that would then be in effect if such tender or exchange offer had not been made or had been made only in respect of the purchases that have been effected.

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Notwithstanding the foregoing, if a conversion rate adjustment becomes effective on any ex-dividend date as described above, and a holder that has converted its notes on or after such ex-dividend date and on or prior to the related record date would be treated as the record holder of shares of our common stock as of the related conversion date as described under “—Settlement upon Conversion” based on an adjusted conversion rate for such ex-dividend date, then, notwithstanding the foregoing conversion rate adjustment provisions, the conversion rate adjustment relating to such ex-dividend date will not be made for such converting holder. Instead, such holder will be treated as if such holder were the record owner of the shares of our common stock on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment. If, however, the application of the foregoing formulas would result in a decrease in the conversion rate, no adjustment to the conversion rate will be made (other than as a result of a reverse share split or share combination or the reversal of an increase to the conversion rate where the relevant event did not occur, as expressly specified in the indenture).

“Ex-dividend date” means the first date on which the shares of our common stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from us or, if applicable, from the seller of our common stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market

As used in this section, “effective date” means the first date on which the shares of our common stock trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable and “record date” means, with respect to any dividend, distribution or other transaction or event in which the holders of our common stock (or other applicable security) have the right to receive any cash, securities or other property or in which our common stock (or such other security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of our common stock (or such other security) entitled to receive such cash, securities or other property (whether such date is fixed by our board of directors or a duly authorized committee thereof, statute, contract or otherwise).

We are permitted to increase the conversion rate of the notes by any amount for a period of at least 20 business days if our board of directors or a committee thereof determines that such increase would be in our best interest. We may also (but are not required to) increase the conversion rate to avoid or diminish income tax to holders of our common stock or rights to purchase shares of our common stock in connection with a dividend or distribution of shares (or rights to acquire shares) or similar event.

A holder may, in some circumstances, including a distribution of cash dividends to holders of our common stock, be deemed to have received a distribution subject to U.S. federal income tax as a result of an adjustment or the nonoccurrence of an adjustment to the conversion rate. For a discussion of the U.S. federal income tax treatment of an adjustment to the conversion rate, see “Certain Material U.S. Federal Income Tax Consequences For U.S. and Non-U.S. Holders of Notes.”

Upon consummation of this offering of notes, we will not have a shareholder rights plan. If we have a rights plan in effect upon conversion of the notes into shares of our common stock, you will receive, in addition to any shares of our common stock received in connection with such conversion, the rights under the rights plan. However, if, prior to any conversion, the rights have separated from the shares of our common stock in accordance with the provisions of the applicable rights plan, the conversion rate will be adjusted at the time of separation as if we distributed to all or substantially all holders of our common stock, shares of our capital stock, evidences of indebtedness, assets, property, rights, options or warrants as described in clause (3) above, subject to readjustment in the event of the expiration, termination or redemption of such rights.

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Except as stated herein, the conversion rate will not be adjusted:

- n upon the issuance of any shares of our common stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on our securities and the investment of additional optional amounts in shares of our common stock under any plan;
- n upon the issuance of any shares of our common stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by us or any of our subsidiaries;
- n upon the issuance of any shares of our common stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in the preceding bullet;
- n the repurchase of any shares of our common stock pursuant to an open-market share repurchase program or other buy-back transaction that is not a tender offer or exchange offer of the kind described under clause (5) above;
- n solely for a change in the par value (or lack of par value) of our common stock; or
- n for accrued and unpaid interest, if any.

We will not adjust the conversion rate pursuant to the clauses above unless the adjustment would result in a change of at least 1% in the then effective conversion rate. However, we will carry forward any adjustment to the conversion rate that we would otherwise have to make and take that adjustment into account in any subsequent adjustment. Notwithstanding the foregoing, all such carried-forward adjustments shall be made (i) in connection with any subsequent adjustment to the conversion rate of at least 1% and (ii) (x) on the conversion date for any notes (in the case of physical settlement) or (y) on each trading day of any observation period (in the case of cash settlement or combination settlement). Adjustments to the conversion rate will be calculated to the nearest 1/10,000th of a share.

The trustee and any conversion agent shall not at any time be under any duty or responsibility to any holder to determine whether any facts exist which may require any adjustment of the conversion rate, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, in the indenture or in any supplemental indenture provided to be employed, in making the same, or whether a supplemental indenture need be entered into. Neither the trustee nor any conversion agent shall be accountable with respect to the validity or value (or the kind or amount) of any common stock, or of any other securities or property or cash, which may at any time be issued or delivered upon the conversion of any notes; and it or they do not make any representation with respect thereto. Neither the trustee nor any conversion agent shall be responsible for any failure of ours to make or calculate any cash payment or to issue, transfer or deliver any shares of common stock or share certificates or other securities or property or cash upon the surrender of any note for the purpose of conversion; and the trustee and any conversion agent shall not be responsible for any failure of ours to comply with any of our covenants related to such conversion.

Whenever the conversion rate is adjusted as herein provided, we shall promptly file with the trustee and any conversion agent (if other than the trustee) an officer's certificate setting forth the conversion rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a responsible officer of the trustee shall have received such officer's certificate, the trustee shall not be deemed to have knowledge of any adjustment of the conversion rate and may assume that the last conversion rate of which it has actual knowledge is still in effect. Promptly after delivery of such certificate, we shall prepare a notice of such adjustment of the conversion rate setting forth the adjusted conversion rate and the date on which each adjustment becomes effective and shall deliver such notice of such adjustment of the conversion rate to the holder of each note at his or her last address appearing on the register, within 20 days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

Recapitalizations, Reclassifications and Changes of Our Common Stock

In the case of:

- n any recapitalization, reclassification or change of our common stock (other than changes resulting from a subdivision or combination),
- n any consolidation, merger or combination involving us,
- n any sale, lease or other transfer to a third party of the consolidated assets of ours and our subsidiaries substantially as an entirety, or
- n any statutory share exchange,

in each case, as a result of which our common stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (each, a “specified corporate event”), then we or the successor or acquiring corporation, as the case may be, will execute with the trustee a supplemental indenture providing that, at and after the effective time of the specified corporate event, the right to convert each \$1,000 principal amount of notes will be changed into a right to convert such principal amount of notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of our common stock equal to the conversion rate immediately prior to such specified corporate event would have owned or been entitled to receive (the “reference property”) upon the occurrence of such specified corporate event. However, at and after the effective time of the specified corporate event, (i) we or the successor or acquiring company, as the case may be, will continue to have the right to determine the form of consideration to be paid or delivered, as the case may be, upon conversion of notes, as set forth under “—Settlement upon Conversion” and (ii)(x) any amount payable in cash upon conversion of the notes as set forth under “—Settlement upon Conversion” will continue to be payable in cash, (y) any shares of our common stock that we would have been required to deliver upon conversion of the notes as set forth under “—Settlement upon Conversion” will instead be deliverable in the amount and type of reference property that a holder of that number of shares of our common stock would have received in such specified corporate event and (z) the daily VWAP will be calculated based on the value of a unit of reference property that a holder of one share of our common stock would have received in such specified corporate event. If the specified corporate event causes our common stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of shareholder election), the reference property into which the notes will be convertible will be deemed to be (i) the weighted average of the types and amounts of consideration received by the holders of our common stock that affirmatively make such an election or (ii) if no holders of our common stock affirmatively make such an election, the types and amounts of consideration actually received by the holders of our common stock. If the holders receive only cash in such specified corporate event, then for all conversions that occur after the effective date of such specified corporate event (i) the consideration due upon conversion of each \$1,000 principal amount of notes shall be solely cash in an amount equal to the conversion rate in effect on the conversion date (as may be increased by any additional shares as described under “—Adjustment to Conversion Rate upon Conversion upon a Make-Whole Fundamental Change”), *multiplied by* the price paid per share of our common stock in such specified corporate event and (ii) we will satisfy our conversion obligation by paying such cash amount to converting holders on the third business day immediately following the conversion date. We will notify holders, the trustee and the conversion agent (if other than the trustee) in writing of the weighted average as soon as practicable after such determination is made. The supplemental indenture will also provide for (x) anti-dilution adjustments that are as nearly equivalent as practicable to the adjustments described under “—Conversion Rate Adjustments” above, with respect to any reference property consisting of shares of common equity, and (y) with respect to any other reference property, such adjustments (if any) that our board of directors determines in good faith are appropriate. If the reference property in respect of any such transaction includes shares of stock, securities or other property or assets of a company other than us or the successor or purchasing corporation, as the case

may be, in such transaction, such other company will also execute such supplemental indenture, and such supplemental indenture will contain such additional provisions to protect the interests of the holders, including the right of holders to require us to purchase their notes upon a fundamental change as described under “Fundamental Change Permits Holders to Require Us to Repurchase Notes” below, as we reasonably consider necessary by reason of the foregoing. If the notes become convertible into reference property, we will notify in writing the holders of the notes, the trustee and the conversion agent (if other than the trustee).

We will agree in the indenture not to become a party to any such specified corporate event unless its terms are consistent with the foregoing.

Adjustments of Prices

Whenever any provision of the indenture requires us to calculate the last reported sale prices, the daily VWAPs, the daily conversion values or the daily settlement amounts over a span of multiple days (including an observation period and, if applicable, the period for determining the “stock price” for purposes of a make-whole fundamental change), our board of directors or a committee thereof will make appropriate adjustments (to the extent no corresponding adjustment is otherwise made pursuant to the provisions described under “—Conversion Rate Adjustments” above) to each to account for any adjustment to the conversion rate that becomes effective, or any event requiring an adjustment to the conversion rate where the ex-dividend date, effective date or expiration date, as the case may be, of the event occurs, at any time during the period when the last reported sale prices, the daily VWAPs, the daily conversion values or the daily settlement amounts are to be calculated.

Adjustment to Conversion Rate upon Conversion upon a Make-Whole Fundamental Change

If, prior to the maturity date of the notes, the “effective date” (as defined below) of a “fundamental change” (as defined below and determined after giving effect to any exceptions to or exclusions from such definition, but without regard to the *proviso* in clause (2) of the definition thereof, a “make-whole fundamental change”) occurs and a holder elects to convert its notes in connection with such make-whole fundamental change, we will, under certain circumstances, increase the conversion rate for the notes so surrendered for conversion by a number of additional shares of our common stock (the “additional shares”), as described below. A conversion of notes will be deemed for these purposes to be “in connection with” a make-whole fundamental change if the relevant notice of conversion for such notes is received by the conversion agent from, and including, the effective date of the make-whole fundamental change up to, and including, the second business day immediately prior to the related fundamental change repurchase date (or, in the case of a make-whole fundamental change that would have been a fundamental change but for the *proviso* in clause (2) of the definition thereof, the 35th trading day immediately following the effective date of such make-whole fundamental change) (such period, the “make-whole fundamental change period”).

Upon surrender of notes for conversion in connection with a make-whole fundamental change, we will, at our option, satisfy our conversion obligation by physical settlement, cash settlement or combination settlement, as described under “—Conversion Rights—Settlement upon Conversion.” However, if the consideration for our common stock in any make-whole fundamental change described in clause (2) of the definition of fundamental change is composed entirely of cash, for any conversion of notes following the effective date of such make-whole fundamental change, the conversion obligation will be calculated based solely on the “stock price” (as defined below) for the transaction and will be deemed to be an amount of cash per \$1,000 principal amount of converted notes equal to the conversion rate (including any adjustment as described in this section), *multiplied by* such stock price. In such event, the conversion obligation will be determined and paid to holders in cash on the third business day following the conversion date. We will notify holders of the effective date of any make-whole fundamental change no later than five business days after such effective date.

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The number of additional shares, if any, by which the conversion rate will be increased will be determined by reference to the table below, based on the date on which the make-whole fundamental change occurs or becomes effective, or the effective date, and the price paid (or deemed to be paid) per share of our common stock in the make-whole fundamental change, or the stock price. If the holders of our common stock receive in exchange for their common stock only cash in a make-whole fundamental change described in clause (2) of the definition of fundamental change, the stock price will be the cash amount paid per share. In the case of any other make-whole fundamental change (regardless of whether such transaction also constitutes a fundamental change pursuant to one or more other clauses of the definition thereof), the stock price will be the average of the last reported sale prices of our common stock over the five trading day period ending on, and including, the trading day immediately preceding the effective date of the make-whole fundamental change.

The stock prices set forth in the column headings of the table below will be adjusted as of any date on which the conversion rate of the notes is otherwise adjusted. The adjusted stock prices will equal the stock prices immediately prior to such adjustment, *multiplied by* a fraction, the numerator of which is the conversion rate immediately prior to the adjustment giving rise to the stock price adjustment and the denominator of which is the conversion rate as so adjusted. The amounts by which the conversion rate will be increased as set forth in the table below will be adjusted in the same manner and at the same time as the conversion rate as set forth under “—Conversion Rate Adjustments.”

The following table sets forth the amount, if any, by which the conversion rate will be increased per \$1,000 principal amount of notes for each stock price and effective date set forth below:

Effective Date	Stock Price												
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
, 2014													
, 2015													
, 2016													
, 2017													
, 2018													
, 2019													

The exact stock prices and effective dates may not be set forth in the table above, in which case:

- n If the stock price is between two stock prices in the table or the effective date is between two effective dates in the table, the amount by which the conversion rate will be increased will be determined by a straight-line interpolation between the amount of the conversion rate increase set forth for the higher and lower stock prices and the earlier and later effective dates, as applicable, based on a 365-day year.
- n If the stock price is greater than \$ _____ per share (subject to adjustment in the same manner as the stock prices set forth in the column headings of the table above), the conversion rate will not be increased.
- n If the stock price is less than \$ _____ per share (subject to adjustment in the same manner as the stock prices set forth in the column headings of the table above), the conversion rate will not be increased.

Notwithstanding the foregoing, in no event will the conversion rate per \$1,000 principal amount of notes exceed _____ shares of our common stock, subject to adjustment in the same manner as the conversion rate as set forth under “—Conversion Rate Adjustments.”

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For the avoidance of doubt, if you convert your notes prior to the effective date of a make-whole fundamental change, then, whether or not the make-whole fundamental change occurs, you will not be entitled to an increased conversion rate in connection with such transaction.

Our obligation to increase the conversion rate for notes converted in connection with a make-whole fundamental change could be considered a penalty, in which case the enforceability thereof would be subject to general principles of reasonableness and equitable remedies.

Fundamental Change Permits Holders to Require Us to Repurchase Notes

If a “fundamental change” (as defined below in this section) occurs or becomes effective at any time prior to the maturity date, holders will have the right, at their option, to require us to repurchase for cash all of their notes, or any portion of the principal amount thereof that is equal to \$1,000 or an integral multiple of \$1,000. The fundamental change repurchase date will be a date specified by us that is not less than 20 or more than 35 business days following the date of our fundamental change notice as described below.

The fundamental change repurchase price we are required to pay will be equal to 100% of the principal amount of the notes to be repurchased, *plus* accrued and unpaid interest to, but excluding, the fundamental change repurchase date (unless the fundamental change repurchase date falls after a regular record date but on or prior to the interest payment date to which such regular record date relates, in which case we will instead pay the full amount of accrued and unpaid interest to the holder of record on such regular record date, and the fundamental change repurchase price will be equal to 100% of the principal amount of the notes to be repurchased).

A “fundamental change” will be deemed to have occurred at the time after the notes are originally issued if any of the following occurs:

- (1) other than as described in clause (2) below, a “person” or “group” within the meaning of Section 13(d) of the Exchange Act, other than us, our wholly owned subsidiaries and our and their employee benefit plans, has become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of our common equity representing more than 50% of the voting power of our common equity;
- (2) the consummation of (A) any recapitalization, reclassification or change of our common stock (other than changes resulting from a subdivision, combination) as a result of which our common stock would be converted into, or exchanged for, stock, other securities, other property or assets; (B) any share exchange, consolidation or merger involving us pursuant to which our common stock will be converted into cash, securities or other property or assets; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of us and our subsidiaries, taken as a whole, to any person other than one of our subsidiaries; provided, however, that a transaction described in clause (A) or (B) in which the holders of all classes of our common equity immediately prior to such transaction own, directly or indirectly, more than 50% of all classes of common equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions as such ownership immediately prior to such transaction shall not be a fundamental change pursuant to this clause (2);
- (3) our stockholders or, if no stockholder approval is necessary, our board of directors approves any plan or proposal for the liquidation or dissolution of us; or
- (4) our common stock (or other common stock underlying the notes) ceases to be listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Capital Market or The NASDAQ Global Market (or any of their respective successors) (any such exchange, a “permitted exchange”).

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A transaction or transactions described in clause (1) or (2) above will not constitute a fundamental change, however, if at least 90% of the consideration received or to be received by our common shareholders, excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights, in connection with such transaction or transactions consists of shares of common stock that are listed or quoted on any permitted exchange or will be so listed or quoted when issued or exchanged in connection with such transaction or transactions and as a result of such transaction or transactions the notes become convertible into such consideration, excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights (subject to the provisions set forth above under "—Conversion Rights—Settlement Upon Conversion").

If any transaction in which our common stock is replaced by the securities of another entity occurs, following completion of any related make-whole fundamental change period, references to us in the definition of "fundamental change" above shall instead be references to such other entity.

On or before the 20th day after the occurrence of a fundamental change, we will provide to all holders of the notes and the trustee and paying agent a written notice of the occurrence of the fundamental change and of the resulting repurchase right. Such notice shall state, among other things:

- n the events causing a fundamental change;
- n the effective date of the fundamental change;
- n the last date on which a holder may exercise the repurchase right;
- n the fundamental change repurchase price;
- n the fundamental change repurchase date;
- n the name and address of the paying agent and the conversion agent, if applicable;
- n if applicable, the conversion rate and any adjustments to the conversion rate;
- n that the notes with respect to which a fundamental change repurchase notice has been delivered by a holder may be converted only if the holder withdraws the fundamental change repurchase notice in accordance with the terms of the indenture; and
- n the procedures that holders must follow to require us to repurchase their notes.

To exercise the fundamental change repurchase right, you must deliver, prior to the close of business on the second business day immediately preceding the fundamental change repurchase date, the notes to be repurchased, duly endorsed for transfer, together with a written repurchase notice, to the paying agent. Each repurchase notice must state:

- n if certificated, the certificate numbers of your notes to be delivered for repurchase;
- n the portion of the principal amount of notes to be repurchased, which must be \$1,000 or an integral multiple thereof; and
- n that the notes are to be repurchased by us pursuant to the applicable provisions of the notes and the indenture.

If the notes are not in certificated form, such repurchase notice must comply with appropriate DTC procedures.

Holders may withdraw any repurchase notice (in whole or in part) by a written notice of withdrawal delivered to the paying agent prior to the close of business on the second business day immediately preceding the fundamental change repurchase date. The notice of withdrawal shall state:

- n the principal amount of the withdrawn notes, which must be \$1,000 aggregate principal amount or an integral multiple thereof;
- n if certificated notes have been issued, the certificate numbers of the withdrawn notes; and
- n the principal amount, if any, which remains subject to the repurchase notice, which must be \$1,000 aggregate principal amount or an integral multiple thereof.

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If the notes are not in certificated form, such notice of withdrawal must comply with appropriate DTC procedures.

We will be required to repurchase the notes on the fundamental change repurchase date, subject to postponement to comply with applicable law. Holders who have exercised the repurchase right will receive payment of the fundamental change repurchase price on the later of (i) the fundamental change repurchase date and (ii) the time of book-entry transfer or the delivery of the notes. If the paying agent holds money sufficient to pay the fundamental change repurchase price of the notes on the fundamental change repurchase date, then, with respect to the notes that have been properly surrendered for repurchase and have not been validly withdrawn:

- n the notes will cease to be outstanding and interest will cease to accrue (whether or not book-entry transfer of the notes is made or whether or not the notes are delivered to the paying agent); and
- n all other rights of the holder will terminate (other than the right to receive the fundamental change repurchase price and, if the fundamental change repurchase date falls after a regular record date but on or prior to the related interest payment date, the right of the holder of record on such regular record date to receive the related interest payment).

In connection with any repurchase offer pursuant to a fundamental change repurchase notice, we will, if required:

- n comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act that may then be applicable;
- n file a Schedule TO or any other required schedule under the Exchange Act; and
- n otherwise comply with all federal and state securities laws in connection with any offer by us to repurchase the notes;

in each case, so as to permit the rights and obligations under this “—Fundamental Change Permits Holders to Require Us to Repurchase Notes” to be exercised in the time and in the manner specified in the indenture.

No notes may be repurchased by us on any date at the option of holders upon a fundamental change if the principal amount of the notes has been accelerated, and such acceleration has not been rescinded, on or prior to such date (except in the case of an acceleration resulting from a default by us in the payment of the fundamental change repurchase price with respect to such notes).

The repurchase rights of the holders upon a fundamental change could discourage a potential acquirer of us. The fundamental change repurchase feature, however, is not the result of management’s knowledge of any specific effort to obtain control of us by any means or part of a plan by management to adopt a series of anti-takeover provisions.

We will not be required to purchase, or to make an offer to purchase, the notes upon a fundamental change if a third party makes such an offer in the same manner, at the same time and otherwise in compliance with the requirements for an offer made by us as set forth above and such third party purchases all notes properly surrendered and not validly withdrawn under its offer in the same manner, at the same time and otherwise in compliance with the requirements for an offer made by us as set forth above.

To the extent that the provisions of any securities laws or regulations conflict with the provisions of the indenture relating to our obligations to purchase the notes upon a fundamental change, we will comply with the applicable securities laws and regulations and will not be deemed to have breached our obligations under such provisions of the indenture by virtue of such conflict.

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The term fundamental change is limited to specified transactions and may not include other events that might adversely affect our financial condition. In addition, the requirement that we offer to repurchase the notes upon a fundamental change may not protect holders in the event of a highly leveraged transaction, reorganization, merger or similar transaction involving us.

Furthermore, holders may not be entitled to require us to repurchase their notes upon a fundamental change or entitled to an increase in the conversion rate upon conversion as described under “—Adjustment to Conversion Rate upon Conversion upon a Make-Whole Fundamental Change” in certain circumstances involving a significant change in the composition of our board, unless such change is in connection with a fundamental change or make-whole fundamental change as described herein.

The definition of fundamental change includes a phrase relating to the sale, lease or other transfer of “all or substantially all” of our consolidated assets. There is no precise, established definition of the phrase “substantially all” under applicable law. Accordingly, the ability of a holder of the notes to require us to repurchase its notes as a result of the sale, lease or other transfer of less than all of our assets may be uncertain.

If a fundamental change were to occur, we may not have enough funds to pay the fundamental change repurchase price. Our ability to repurchase the notes for cash may be limited by restrictions on our ability to obtain funds for such repurchase through dividends from our subsidiaries, the terms of our then existing borrowing arrangements or otherwise. See “Risk Factors—Risks Related to the Notes and Our Common Stock—Servicing our debt requires a significant amount of cash. We may not have sufficient cash flow from our business to make payments on our debt, and we may not have the ability to repay the principal amount of the notes at maturity or to raise the funds necessary to settle conversions of the notes or repurchase the notes upon a fundamental change, and our future debt may contain limitations on our ability to pay cash upon conversion or repurchase of the notes.” If we fail to repurchase the notes when required following a fundamental change, we will be in default under the indenture. In addition, we may in the future incur, other indebtedness with similar change in control provisions permitting our holders to accelerate or to require us to repurchase our indebtedness upon the occurrence of similar events or on some specific dates.

Consolidation, Merger and Sale of Assets

The indenture provides that we shall not consolidate with or merge with or into, or sell, convey, assign, transfer, lease or otherwise dispose of all or substantially all of our properties and assets in one transaction or series of related transactions, to another person unless:

- n the resulting, surviving or transferee person (if other than us) shall be a corporation organized or existing under the laws of the United States, any state thereof or the District of Columbia;
- n the corporation formed by or surviving any such consolidation or merger (if other than us) or the corporation to which the sale, conveyance, assignment, transfer, lease or other disposition shall have been made assumes all our obligations under the notes and the indenture pursuant to a supplemental indenture;
- n immediately after giving effect to such transaction, no default shall have occurred and be continuing;
- n the trustee shall have received an officer’s certificate and an opinion of counsel providing that the transaction and such supplemental indenture comply with this covenant and all conditions precedent to the transactions provided for in the indenture have been satisfied.

In the case of any such consolidation, merger, sale, conveyance, assignment, transfer, lease or other disposition, such successor corporation shall succeed to and be substituted for us and may

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exercise every right and power of ours under the notes and the indenture, and thereupon we shall be relieved of all obligations and covenants under the notes and the indenture (except in the case of any such lease).

Although these types of transactions are permitted under the indenture, certain of the foregoing transactions could constitute a fundamental change permitting each holder to require us to repurchase the notes of such holder as described above.

Events of Default

Each of the following is an event of default with respect to the notes:

- (1) default in any payment of interest on any note when due and payable and the default continues for a period of 30 days;
- (2) default in the payment of principal of any note when due and payable at its stated maturity, upon any required repurchase, upon declaration of acceleration or otherwise;
- (3) our failure to comply with our obligation to convert the notes in accordance with the indenture upon exercise of a holder's conversion right and such failure continues for a period of five business days;
- (4) our failure to give a fundamental change notice as described under "—Fundamental Change Permits Holders to Require Us to Repurchase Notes", notice of a make-whole fundamental change as described under "—Adjustment to Conversion Rate upon Conversion upon a Make-Whole Fundamental Change" or notice of a specified corporate event as described under "—Conversion upon Specified Corporate Events," in each case when due;
- (5) our failure to comply with our obligations under "—Consolidation, Merger and Sale of Assets";
- (6) our failure for 60 days after written notice from the trustee or the holders of at least 25% in principal amount of the notes then outstanding has been received to comply with any of our other agreements contained in the notes or indenture;
- (7) default by us or any of our significant subsidiaries with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of \$5.0 million (or the foreign currency equivalent thereof) in the aggregate of ours and/or of any such significant subsidiary, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable prior to its stated maturity or (ii) constituting a failure to pay the principal or interest of any such debt when due and payable (after the expiration of all applicable grace periods) at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, and such acceleration shall not have been rescinded or annulled or such failure to pay shall not have been cured, as the case may be, within 30 days after written notice to us by the trustee or to us and the trustee by the holders of at least 25% in principal amount of the notes then outstanding has been received;
- (8) certain events of bankruptcy, insolvency, or reorganization of us or any of our significant subsidiaries; or
- (9) a final judgment or judgments for the payment of \$5.0 million (or the foreign currency equivalent thereof) or more (excluding any amounts covered by insurance) in the aggregate rendered against us or any of our significant subsidiaries, which judgment is not discharged or stayed within 60 days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished.

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A “significant subsidiary” is a subsidiary that is a “significant subsidiary” as defined in Article 1, Rule 1-02 of Regulation S-X promulgated by the SEC; provided that, in the case of a subsidiary that meets the criteria of clause (3) of the definition thereof but not clause (1) or (2) thereof, such subsidiary shall not be deemed to be a significant subsidiary unless the subsidiary’s income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle exclusive of amounts attributable to any non-controlling interests for the last completed fiscal year prior to the date of such determination exceeds \$5.0 million.

If an event of default with respect to the outstanding notes (other than an event of default with respect to us described in clause (8) above) occurs and is continuing, the trustee or the holders of at least 25% in principal amount of the outstanding notes by notice to us, may declare 100% of the principal amount of and accrued and unpaid interest, if any, on all the notes to be due and payable. Upon such a declaration of acceleration, such principal and accrued and unpaid interest, if any, will be due and payable immediately. In the case of any event of default with respect to us described in clause (8) above, the principal amount of and accrued and unpaid interest, if any, on the notes will automatically become and be immediately due and payable without any declaration or other act on the part of the trustee or any holder of the notes.

Notwithstanding the foregoing, the indenture will provide that, to the extent we elect, the sole remedy for an event of default under the indenture relating to our failure to comply with our obligations as set forth under “—Reports” below and for any failure to comply with the requirements of Section 314(a)(1) of the Trust Indenture Act, will (i) for the first 90 days after the occurrence of such an event of default, consist exclusively of the right to receive additional interest on the notes at a rate equal to 0.25% per annum of the principal amount of the notes outstanding for each day during such 90-day period on which such an event of default is continuing and (ii) for the period from, and including, the 91st day after the occurrence of such an event of default to, and including, the 180th day after the occurrence of such an event of default, consist exclusively of the right to receive additional interest on the notes at a rate equal to 0.50% per annum of the principal amount of the notes outstanding for each day during such additional 90-day period on which such an event of default is continuing. In no event will the additional interest described in this paragraph accrue at a rate in excess of 0.50% per annum, regardless of the number of events or circumstances giving rise to the requirement to pay such additional interest.

If we so elect, such additional interest will be payable in the same manner and on the same dates as the stated interest payable on the notes. On the 181st day after such event of default (if the event of default relating to the reporting obligations or the failure to comply with the requirements of Section 314(a)(1) of the Trust Indenture Act is not cured or waived prior to such 181st day), the notes will be subject to acceleration as provided above. The provisions of the indenture described in this paragraph will not affect the rights of holders of notes in the event of the occurrence of any other event of default. In the event we do not elect to pay the additional interest following an event of default under the indenture in accordance with this paragraph or we elected to make such payment but do not pay the additional interest when due, the notes will be immediately subject to acceleration as provided above.

In order to elect to pay the additional interest as the sole remedy during the first 180 days after the occurrence of an event of default relating to the failure to comply with the reporting obligations or the failure to comply with the requirements of Section 314(a)(1) of the Trust Indenture Act in accordance with the immediately preceding paragraph, we must notify all holders of notes, the trustee and the paying agent (if other than the trustee) in an officer’s certificate of such election prior to the beginning of such 180-day period. Upon our failure to timely give such notice, the notes will be immediately subject to acceleration as provided above.

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If any portion of the amount payable on any note upon acceleration is considered by a court to be unearned interest (through the allocation of the value of the instrument to the embedded warrant or otherwise), the court could disallow recovery of any such portion.

The holders of a majority in aggregate principal amount of the outstanding notes by notice to the trustee may waive an existing default and its consequences (except with respect to nonpayment of the principal of and accrued and unpaid interest, if any, on the notes; with respect to our failure to repurchase the notes when required under the indenture; with respect to a default in respect of certain provisions that under the indenture cannot be amended without the consent of each affected holder; and with respect to the failure to deliver the consideration due upon conversion). At any time after the principal of the notes shall have been declared due and payable (or have become immediately due and payable) and before any judgment or decree for the payment of moneys due shall have been obtained or entered as provided in the indenture, the holders of a majority in aggregate principal amount of the outstanding notes by written notice to us and the trustee, may rescind and annul any such acceleration with respect to the notes and its consequences if (i) we have paid or deposited with the trustee a sum sufficient to pay all matured installments of interest upon the notes and the principal of any and all notes that shall have become due otherwise than by acceleration (with interest upon such principal and, to the extent that such payment is enforceable under applicable law, upon overdue installments of interest, at the rate per annum expressed in the notes to the date of such payment or deposit) and the amount payable to the trustee under the compensation and indemnification provisions of the indenture, and (ii) any and all events of default under the indenture with respect to the notes, other than the nonpayment of the principal of and interest on the notes that shall not have become due by their terms, shall have been remedied or waived as described above.

Each holder shall have the right to receive payment or delivery, as the case may be, of the principal (including the fundamental change repurchase price, if applicable) of and accrued and unpaid interest, if any, on the notes held by such holder and the consideration due upon conversion of its notes, on or after their respective due dates expressed or provided for in the indenture, or to bring suit for the enforcement of any such payment or delivery, as the case may be, and such right to receive such payment or delivery, as the case may be, on or after such respective dates, shall not be impaired or affected without the consent of such holder.

Subject to the provisions of the indenture relating to the duties of the trustee, if an event of default occurs and is continuing, the trustee will be under no obligation to exercise any of the rights or powers under the indenture at the request or direction of any of the holders of the notes unless such holders have offered to the trustee indemnity or security satisfactory to it against all losses and expenses. Except to enforce the right to receive payment of principal or interest when due, or the right to receive payment or delivery of the consideration due upon conversion, no holder may pursue any remedy with respect to the indenture or the notes unless:

- (1) such holder has previously given the trustee written notice that an event of default with respect to the notes is continuing;
- (2) holders of at least 25% in aggregate principal amount of the outstanding notes have made a written request to the trustee to pursue the remedy;
- (3) such holders have offered the trustee indemnity or security satisfactory to it against all loss and expenses;
- (4) the trustee has not complied with such request within 60 days after the receipt of the request and the offer of such indemnity or security; and
- (5) the holders of a majority in aggregate principal amount of the outstanding notes have not given the trustee a direction that is inconsistent with such request within such 60-day period.

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Subject to the trustee's right to request indemnity or security from the relevant holders as described above, the holders of a majority in aggregate principal amount of the outstanding notes may direct the time, method and place of conducting any proceeding for any remedy available to the trustee or of exercising any trust or power conferred on the trustee under the indenture. The trustee, however, may refuse to follow any direction that conflicts with law or the indenture or that the trustee determines is unduly prejudicial to the rights of any other holder or that would involve the trustee in personal liability.

Prior to taking any action under the indenture at our instruction, the trustee will be entitled to indemnification by us satisfactory to it against all losses and expenses caused by taking or not taking such action.

The indenture provides that in the event an event of default has occurred and is continuing with respect to the notes, the trustee shall exercise the rights and powers vested in it by the indenture and use the same degree of care and skill that a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

The indenture provides that if a default with respect to the notes occurs and is continuing and is actually known to a responsible officer of the trustee, the trustee must send to each holder of the notes notice of the default within 90 days after it occurs. Except in the case of a default in the payment of principal of or interest on any note (including default in the payment of the fundamental change repurchase price) or a default in the payment or delivery of the consideration due upon conversion, the trustee may withhold notice if and so long as the trustee in good faith determines that withholding the notice is in the interests of the holders. In addition, we are required to deliver to the trustee, within 120 days after the end of each fiscal year, an officer's certificate indicating whether the signer thereof knows of any default that occurred during such previous year. We are also required to deliver to the trustee, within 30 days after the occurrence thereof, written notice of any event of default and any event which with the giving of notice or the lapse of time would become an event of default, its status and what action we are taking or proposing to take in respect thereof.

Payments of the fundamental change repurchase price, principal and interest that are not made when due will accrue interest per annum at the then-applicable interest rate from the required payment date.

Modification and Amendment

Subject to certain exceptions, the indenture or the notes may be amended with the consent of the holders of at least a majority in aggregate principal amount of the notes then outstanding (including without limitation, consents obtained in connection with a repurchase of, or tender or exchange offer for, notes) and, subject to certain exceptions, any past default or compliance with any provisions may be waived with the consent of the holders of a majority in aggregate principal amount of the notes then outstanding (including, without limitation, consents obtained in connection with a repurchase of, or tender or exchange offer for, notes). However, without the consent of each holder of an outstanding note affected, no amendment may:

- (1) reduce the consideration due upon conversion of the notes;
- (2) reduce the rate of or extend the stated time for payment of interest on any note;
- (3) reduce the principal of or change the stated maturity of any note;
- (4) make any change that adversely affects the conversion rights of any notes other than as required by the indenture;
- (5) reduce the fundamental change repurchase price of any note or amend or modify in any manner adverse to the holders of notes our obligation to make such payment, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;

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- (6) make any note payable in a currency other than that stated in the note;
- (7) change the ranking of the notes;
- (8) impair the right of any holder to receive payment of principal and interest on such holder's notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such holder's notes; or
- (9) make any change in the amendment provisions that require each holder's consent or in the waiver provisions.

Without the consent of any holder, we and the trustee may amend or supplement the indenture or the notes to:

- (1) cure any ambiguity, omission, defect or inconsistency;
- (2) provide for the assumption by a successor corporation of our obligations under the indenture and the notes in accordance with the provisions of the indenture described above under "—Consolidation, Merger and Sale of Assets;"
- (3) add guarantees with respect to the notes;
- (4) secure the notes;
- (5) add to our covenants or events of default for the benefit of the holders or surrender any right or power conferred upon us;
- (6) make any change that does not adversely affect the rights of any holder;
- (7) conform the provisions of the indenture to the "Description of Notes" section in this preliminary prospectus as supplemented or amended by the related pricing term sheet, as evidenced by an officer's certificate;
- (8) comply with any requirement of the SEC in connection with the qualification of the indenture under the Trust Indenture Act;
- (9) increase the conversion rate as provided in the indenture;
- (10) provide for the issuance of additional notes in accordance with the limitations set forth in the indenture;
- (11) provide for the acceptance of appointment by a successor trustee or facilitate the administration of the trusts under the indenture by more than one trustee;
- (12) irrevocably elect one or more, or eliminate any of, the settlement methods or irrevocably select a specified dollar amount; or
- (13) in connection with any specified corporate event (as defined under "Conversion Rights—Recapitalizations, Reclassifications and Changes of Our Common Stock" above), provide that the notes are convertible into reference property, subject to the provisions described under "Conversion Rights—Settlement upon Conversion" above, and make certain related changes to the terms of the notes to the extent expressly contemplated by the indenture.

Holdings do not need to approve the particular form of any proposed amendment. It will be sufficient if such holders approve the substance of the proposed amendment. After an amendment under the indenture or the notes becomes effective, we are required to mail to the holders a notice briefly describing such amendment. However, the failure to give such notice to all the holders, or any defect in the notice, will not impair or affect the validity of the amendment.

Discharge

We may satisfy and discharge our obligations under the indenture and the notes by delivering to the registrar for cancellation all outstanding notes or by depositing with the trustee or delivering to the holders, as applicable, after all outstanding notes have become due and payable, whether at maturity, at any fundamental change repurchase date, upon conversion or otherwise, cash or, solely to satisfy outstanding conversions, cash and/or shares of our common stock sufficient to pay all of the outstanding notes or satisfy all outstanding conversions, as the case may be, and pay all other sums payable under the indenture by us. Such discharge is subject to terms contained in the indenture. The notes will not be subject to defeasance.

Calculations in Respect of Notes

Except as otherwise provided above, we will be responsible for making all calculations called for under the notes. These calculations include, but are not limited to, determinations of the stock price, last reported sale prices of our common stock, daily VWAPs, daily conversion values, daily settlement amounts, accrued interest payable on the notes and the conversion rate of the notes. We will make all these calculations in good faith and, absent manifest error, our calculations will be final and binding on holders of notes. Upon written request, we will provide a schedule of our calculations to each of the trustee and the conversion agent, and each of the trustee and the conversion agent is entitled to rely conclusively upon the accuracy of our calculations without independent verification. The trustee will forward our calculations to any holder of notes upon the written request of that holder.

Reports

The indenture provides that any documents or reports that we are required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act (excluding, for the avoidance of doubt, any such documents or reports (or portions thereof) that are subject to confidential treatment and any correspondence with the SEC) must be delivered or filed by us with the trustee within 15 days after the same are required to be filed with the SEC (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act). Documents filed by us with the SEC via the EDGAR system (or any successor thereto) will be deemed to be delivered and filed with the trustee as of the time such documents are filed via EDGAR (or any successor thereto); provided, however, that the trustee shall have no obligation whatsoever to determine whether or not such information, documents or reports have been filed pursuant to EDGAR (or its successor).

Delivery of such reports, information and documents to the trustee is for informational purposes only and the trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including our compliance with any of our covenants under this indenture (as to which the trustee is entitled to rely exclusively on officer's certificates).

Trustee

Wilmington Trust, National Association is the initial trustee, registrar, bid solicitation agent, paying agent, and conversion agent, in each of its capacities, including without limitation as trustee, registrar, paying agent and conversion agent, assumes no responsibility for the accuracy or completeness of the information concerning us or our affiliates or any other party contained in this document or the related documents or for any failure by us or any other party to disclose events that may have occurred and may affect the significance or accuracy of such information.

Governing Law

The indenture provides that it and the notes, and any claim, controversy or dispute arising under or related to the indenture or the notes, will be governed by and construed in accordance with the laws of the State of New York.

Book-Entry, Settlement and Clearance

The Global Notes

The notes will be initially issued in the form of one or more registered notes in global form, without interest coupons, or the global notes. Upon issuance, each of the global notes will be deposited with the trustee as custodian for DTC and registered in the name of Cede & Co., as nominee of DTC.

Ownership of beneficial interests in a global note will be limited to persons who have accounts with DTC, or DTC participants, or persons who hold interests through DTC participants. We expect that under procedures established by DTC:

- n upon deposit of a global note with DTC's custodian, DTC will credit portions of the principal amount of the global note to the accounts of the DTC participants designated by the underwriters; and
- n ownership of beneficial interests in a global note will be shown on, and transfer of ownership of those interests will be effected only through, records maintained by DTC (with respect to interests of DTC participants) and the records of DTC participants (with respect to other owners of beneficial interests in the global note).

Beneficial interests in global notes may not be exchanged for notes in physical, certificated form except in the limited circumstances described below.

Book-entry Procedures for the Global Notes

All interests in the global notes will be subject to the operations and procedures of DTC. We provide the following summary of those operations and procedures solely for the convenience of investors. The operations and procedures of DTC are controlled by that settlement system and may be changed at any time. Neither we nor the underwriters are responsible for those operations or procedures.

DTC has advised us that it is:

- n a limited purpose trust company organized under the laws of the State of New York;
- n a "banking organization" within the meaning of the New York State Banking Law;
- n a member of the Federal Reserve System;
- n a "clearing corporation" within the meaning of the Uniform Commercial Code; and
- n a "clearing agency" registered under Section 17A of the Exchange Act.

DTC was created to hold securities for its participants and to facilitate the clearance and settlement of securities transactions between its participants through electronic book-entry changes to the accounts of its participants. DTC's participants include securities brokers and dealers, including the underwriters; banks and trust companies; clearing corporations and other organizations. Indirect access to DTC's system is also available to others such as banks, brokers, dealers and trust companies; these indirect participants clear through or maintain a custodial relationship with a DTC participant, either directly or indirectly. Investors who are not DTC participants may beneficially own securities held by or on behalf of DTC only through DTC participants or indirect participants in DTC.

So long as DTC's nominee is the registered owner of a global note, that nominee will be considered the sole owner or holder of the notes represented by that global note for all purposes under the indenture. Except as provided below, owners of beneficial interests in a global note:

- n will not be entitled to have notes represented by the global note registered in their names;
- n will not receive or be entitled to receive physical, certificated notes; and
- n will not be considered the owners or holders of the notes under the indenture for any purpose, including with respect to notices or the giving of any direction, instruction or approval to the trustee under the indenture.

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As a result, each investor who owns a beneficial interest in a global note must rely on the procedures of DTC to exercise any rights of a holder of notes under the indenture (and, if the investor is not a participant or an indirect participant in DTC, on the procedures of the DTC participant through which the investor owns its interest).

Payments of principal and interest with respect to the notes represented by a global note will be made by the trustee to DTC's nominee as the registered holder of the global note. Neither we nor the trustee will have any responsibility or liability for the payment of amounts to owners of beneficial interests in a global note, for any aspect of the records relating to or payments made on account of those interests by DTC, or for maintaining, supervising or reviewing any records of DTC relating to those interests.

Payments by participants and indirect participants in DTC to the owners of beneficial interests in a global note will be governed by standing instructions and customary industry practice and will be the responsibility of those participants or indirect participants and DTC.

Transfers between participants in DTC will be effected under DTC's procedures and will be settled in same- day funds.

Certificated Notes

Notes in physical, certificated form will be issued and delivered (i) to each person that DTC identifies as a beneficial owner of the related notes only if (a) DTC notifies us at any time that it is unwilling or unable to continue as depository for the global notes and a successor depository is not appointed within 90 days; or (b) DTC ceases to be registered as a clearing agency under the Exchange Act and a successor depository is not appointed within 90 days; or (ii) if an event of default with respect to the notes has occurred and is continuing, to each beneficial owner who requests that its beneficial interests in the notes be exchanged for notes in physical, certificated form.

CERTAIN MATERIAL U.S. FEDERAL INCOME TAX CONSIDERATIONS FOR U.S. AND NON-U.S. HOLDERS OF NOTES

The following discussion is a summary of certain material U.S. federal income tax considerations relating to the purchase, ownership and disposition of the notes and the common stock issuable upon conversion of the notes, but does not purport to be a complete analysis of all potential U.S. federal income tax aspects and does not address the effects of any state, local, alternative minimum, estate, gift or non-U.S. tax laws. This discussion is based upon the U.S. Internal Revenue Code of 1986, as amended, or the Code, Treasury regulations issued thereunder, and judicial and administrative interpretations thereof, each as in effect on the date hereof, all of which are subject to change, possibly with retroactive effect and to differing interpretations, and all of which could result in U.S. federal income tax considerations different from those described below. No rulings from the Internal Revenue Service, or the IRS, have been or are expected to be sought with respect to the matters discussed below. The discussion below is not binding on the IRS or the courts. Accordingly, there can be no assurance that the IRS will not take a different position concerning the tax consequences of the purchase, ownership or disposition of the notes and the common stock issuable upon conversion of the notes or that any such position would not be sustained.

This discussion does not address any specific U.S. federal income tax considerations that might be relevant to a beneficial owner in light of such beneficial owner's particular facts or circumstances or to beneficial owners subject to special treatment under the U.S. federal income tax laws, including:

- n a dealer in securities;
- n a financial institution;
- n a regulated investment company;
- n a real estate investment trust;
- n a tax-exempt organization;
- n an insurance company;
- n a person holding the notes as part of a hedging, integrated, or conversion transaction or a straddle, or a person deemed to sell notes or common stock under the constructive sale provisions of the Code;
- n a trader in securities that has elected the mark-to-market method of accounting for securities;
- n an entity that is treated as a partnership for U.S. federal income tax purposes;
- n a person who is an investor in a pass-through entity;
- n a U.S. person whose "functional currency" is not the U.S. dollar;
- n a "controlled foreign corporation";
- n a "passive foreign investment company"; or
- n a U.S. expatriate.

In addition, this discussion is limited to persons who purchase the notes for cash at original issue and at their "issue price" (the first price at which a substantial amount of the notes are sold to the public for cash, excluding sales to bond houses, brokers or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers) and who hold the notes as capital assets within the meaning of Section 1221 of the Code.

For purposes of this discussion, a "U.S. holder" is a beneficial owner of a note or a share of common stock received upon conversion of the note that is:

- n an individual citizen of the United States or a resident of the United States for U.S. federal income tax purposes;

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- n a corporation (or any other entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- n an estate the income of which is subject to U.S. federal income taxation regardless of its source; or
- n a trust if (1) it is subject to the primary supervision of a court within the United States and one or more United States persons have the authority to control all substantial decisions of the trust or (2) it has a valid election in effect under applicable United States Treasury regulations to be treated as a U.S. person.

For purposes of this discussion, a “non-U.S. holder” is a beneficial owner of a note or share of common stock received upon conversion of the note that is (i) a foreign corporation, (ii) a nonresident alien individual, or (iii) a foreign estate or trust that in either case is not subject to U.S. federal income tax on a net-income basis on income or gain from a note or share of common stock.

If a partnership holds the notes or shares of common stock, the tax treatment of a partner will generally depend upon the status of the partner and the activities of the partnership. A partner of a partnership holding the notes or shares of common stock should consult its own tax advisors.

Prospective investors considering the purchase of notes should consult their own tax advisors concerning the particular U.S. federal income tax consequences to them of the ownership of the notes or shares of common stock in light of their specific situation, as well as the consequences to them arising under the laws of any other taxing jurisdiction.

U.S. Holders

The following discussion is a summary of certain U.S. federal income tax considerations applicable to a U.S. holder.

Payment of Interest. Payments of stated interest on the notes generally will be taxable to a U.S. holder as ordinary income at the time that such payments are received or accrued, in accordance with such U.S. holder’s method of accounting for U.S. federal income tax purposes.

This discussion assumes that the notes will be issued with less than a *de minimis* amount of original issue discount. If, however, the notes’ principal amount exceeds the issue price by at least a *de minimis* amount, as determined under applicable Treasury regulations, a U.S. holder will be required to include such excess of principal amount over issue price in income as original issue discount, as it accrues, in accordance with a constant-yield method based on a compounding of interest, before the receipt of cash payments attributable to this income.

Additional Interest. As described under the heading “Description of Notes—Events of Default,” we may be required to pay additional interest on the notes in certain circumstances. We intend to take the position that the notes should not be treated as contingent payment debt instruments because of the anticipated remote possibility of such additional payments. Assuming such position is respected, any additional interest paid to a U.S. holder would be taxable as additional ordinary income when received or accrued, in accordance with the U.S. holder’s method of accounting for U.S. federal income tax purposes. However, the IRS may take a position contrary to our position, which could materially and adversely affect the timing and character of income with respect to the notes.

Sale, Exchange, or Other Taxable Disposition of Notes, Including a Conversion of the Notes for Cash. Except as provided below under “—Conversion of Notes into Common Stock” and “—Conversion of Notes into a Combination of Common Stock and Cash,” a U.S. holder will generally

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recognize gain or loss upon the sale, exchange, or other taxable disposition of a note, including a conversion of the note into cash, equal to the difference between the amount realized upon the sale, exchange, or other taxable disposition (less an amount equal to any accrued but unpaid interest, which will be taxable as interest income as discussed above to the extent not previously included in income by the U.S. holder) and the U.S. holder's adjusted U.S. federal income tax basis in the note. A U.S. holder's adjusted tax basis in a note will generally be its cost for that note. Any such gain or loss will generally be capital gain or loss. Capital gains of non-corporate U.S. holders (including individuals) derived in respect of capital assets held for more than one year currently are eligible for reduced rates of taxation. The deductibility of capital losses is subject to limitations under the Code.

Conversion of Notes into Common Stock. A U.S. holder who receives solely stock and cash in lieu of a fractional share of common stock upon conversion will generally not recognize any gain or loss, except to the extent of cash received in lieu of a fractional share and except to the extent of the fair market value of common stock received with respect to accrued interest, which will be taxable as interest income as discussed above to the extent not previously included in income by the U.S. holder.

A U.S. holder's tax basis in the shares of common stock received upon a conversion (other than common stock attributable to accrued interest, the tax basis of which common stock will equal its fair market value) will equal the tax basis in the note that was converted (excluding the portion of the tax basis that is allocable to any fractional share). A U.S. holder's holding period for shares of common stock will include the period during which the U.S. holder held the notes, except that the holding period of any common stock received with respect to accrued interest will commence on the day after the date of receipt.

The amount of gain or loss recognized on the receipt of cash in lieu of a fractional share will be equal to the difference between the amount of cash a U.S. holder receives in respect of the fractional share and the portion of the U.S. holder's tax basis in the note that is allocable to the fractional share. Any gain recognized on conversion will generally be capital gain and will be long-term capital gain if, at the time of the conversion, the note has been held for more than one year.

If a U.S. holder surrenders notes for conversion and such notes are exchanged with an entity other than us, the U.S. holder will be required to recognize gain or loss as described under "—Sale, Exchange, or Other Taxable Disposition of Notes, Including a Conversion of the Notes for Cash." In such case, the U.S. holder's tax basis in the common stock received will equal the fair market value of the stock on the date of the exchange, and the U.S. holder's holding period in the common stock received will begin on the day after the date of the exchange.

Conversion of Notes into a Combination of Common Stock and Cash. If a combination of cash and common stock is received in exchange for a U.S. holder's notes upon conversion, we intend to take the position that the conversion should be treated as a recapitalization. In this case, gain, but not loss, will be recognized in an amount equal to the excess of the fair market value of the common stock and cash received (other than amounts attributable to accrued interest, which will be taxable as interest income as discussed above to the extent not previously included in income by the U.S. holder) over the U.S. holder's tax basis in the note, but such gain will only be recognized to the extent of such cash received (excluding cash attributable to accrued interest or received in lieu of a fractional share).

The amount of gain or loss recognized on the receipt of cash in lieu of a fractional share will be equal to the difference between the amount of cash a U.S. holder receives in respect of the fractional share and the portion of the U.S. holder's tax basis in the note that is allocable to the fractional share. Any gain recognized on conversion will generally be capital gain and will be long-term capital gain if, at the time of the conversion, the note has been held for more than one year.

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The tax basis in the shares of common stock received upon a conversion (other than common stock attributable to accrued interest, the tax basis of which common stock will equal its fair market value) will equal the tax basis in the note that was converted (excluding the portion of the tax basis that is allocable to any fractional share), reduced by the amount of any cash received (other than cash received in lieu of a fractional share and cash attributable to accrued interest), and increased by the amount of gain, if any, recognized (other than with respect to a fractional share). A U.S. holder's holding period for shares of common stock will include the period during which the U.S. holder held the notes except that the holding period of any common stock received with respect to accrued interest will commence on the day after the date of receipt.

Alternative treatments of the conversion of the notes into cash and common stock are possible. For example, the conversion of a note into cash and common stock may instead be treated for U.S. federal income tax purposes as in part a conversion into stock and in part a payment in redemption of a portion of the note. U.S. holders should consult their tax advisors regarding the tax treatment of the receipt of cash and stock in exchange for notes upon conversion or repurchase, including any alternative treatments.

If a U.S. holder surrenders notes for conversion and such notes are exchanged with an entity other than us, the U.S. holder will be required to recognize gain or loss as described under "—Sale, Exchange, or Other Taxable Disposition of Notes, Including a Conversion of the Notes for Cash." In such case, the U.S. holder's tax basis in the common stock received will equal the fair market value of the stock on the date of the exchange, and the U.S. holder's holding period in the common stock received will begin on the day after the date of the exchange.

Constructive Distribution. The conversion rate of the notes will be adjusted in certain circumstances, including upon the payment of certain cash dividends. Under Section 305(c) of the Code, adjustments (or failures to make adjustments) that have the effect of increasing a U.S. holder's proportionate interest in our assets or earnings may in some circumstances result in a deemed distribution. Certain adjustments to the conversion rate made pursuant to a bona fide reasonable adjustment formula that have the effect of preventing the dilution of the interest of the beneficial owners of the notes, however, will generally not be considered to result in a deemed distribution. Certain of the possible conversion rate adjustments provided in the notes (including, without limitation, upon the payments of cash dividends to holders of common stock) will not qualify as being pursuant to a bona fide reasonable adjustment formula. If such adjustments are made, a U.S. holder may be deemed to have received a distribution even though it has not received any cash or property because of such adjustments. In addition, a failure to adjust (or to adjust adequately) the conversion rate after an event that increases a U.S. holder's proportionate interest could be treated as a deemed taxable dividend. Other increases in the conversion rate of the notes (including an adjustment to the conversion rate in connection with a make-whole fundamental change) may, depending on the circumstances, be a deemed distribution. Any deemed distribution would be taxable as a dividend, return of capital, or capital gain in accordance with the earnings and profits rules under the Code. It is not clear whether a constructive dividend deemed paid would be eligible for the preferential rates of U.S. federal income tax applicable to certain dividends paid to non-corporate beneficial owners. It is also not clear whether corporate beneficial owners would be entitled to claim the dividends-received deduction with respect to any such constructive dividends.

Common Stock. Distributions, if any, made on our common stock generally will be included in a U.S. holder's income as ordinary dividend income to the extent of our current or accumulated earnings and profits. However, for individual U.S. holders, such dividends currently are generally taxed at the lower applicable long-term capital gains rates, provided certain holding period and other requirements are satisfied. Distributions in excess of our current and accumulated earnings and profits will be treated

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as a return of capital to the extent of a U.S. holder's tax basis in the common stock and thereafter as capital gain from the sale or exchange of such common stock. For corporate U.S. holders, dividends received may be eligible for the dividends-received deduction, subject to applicable limitations.

Upon the sale or exchange or other taxable disposition of our common stock (including certain redemptions), a U.S. holder generally will recognize capital gain or loss equal to the difference between (i) the amount of cash and the fair market value of any property received upon such taxable disposition and (ii) the U.S. holder's tax basis in the common stock. Such capital gain or loss will be long-term capital gain or loss if a U.S. holder's holding period in the common stock is more than one year at the time of the taxable disposition. The deductibility of capital losses is subject to certain limits under the Code.

Unearned Income Medicare Contribution Tax. Certain U.S. holders who are individuals, estates or trusts will be required to pay an additional 3.8% tax on, among other things, interest and dividends and capital gains from the sale, exchange, redemption, retirement or other taxable disposition of notes and our common stock.

Information Reporting and Backup Withholding. Information reporting requirements generally will apply to payments of interest on the notes and to the proceeds of a sale of a note unless a U.S. holder is an exempt recipient, such as a corporation. Backup withholding will apply to those payments if a U.S. holder fails to provide its correct taxpayer identification number and certification of exempt status, or fails to report in full interest and dividend income. Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against U.S. federal income tax liability, provided the required information is timely furnished to IRS.

Non-U.S. Holders

The following is a summary of the U.S. federal income tax considerations applicable to a non-U.S. holder (as defined above) of notes or shares of common stock.

Payments of Interest. The gross amount of payments to a non-U.S. holder of interest that does not qualify for the portfolio interest exemption and that is not effectively connected with the conduct by such non-U.S. holder of a trade or business within the United States (or, if required by an applicable income tax treaty, is not attributable to a permanent establishment of such non-U.S. holder in the United States) ("U.S. Trade or Business Income") will be subject to U.S. withholding tax at the rate of 30%, unless a U.S. income tax treaty applies to reduce or eliminate such withholding tax. The 30% U.S. federal withholding tax will not apply to any payment to a non-U.S. holder of interest on a note under the "portfolio interest exemption" provided the non-U.S. holder:

- n does not actually (or constructively) own 10% or more of the total combined voting power of all of our stock entitled to vote;
- n is not a "controlled foreign corporation" with respect to which we are a "related person" within the meaning of the Code; and
- n either (1) provides the non-U.S. holder's name and address on an IRS Form W-8BEN or W-8BEN-E (or other applicable or successor form), and certifies under penalties of perjury that it is not a U.S. person or (2) owns through a securities clearing organization, bank or other financial institution that holds customers' securities in the ordinary course of its trade or business, under penalties of perjury, that such a form has been received from the non-U.S. holder by it or by a financial institution between it and the non-U.S. holder.

If a non-U.S. holder is engaged in a trade or business in the United States and interest paid on the note constitutes U.S. Trade or Business Income, such interest will be taxed on a net basis at regular

graduated U.S. income tax rates rather than the 30% gross rate. In the case of a non-U.S. holder that is a corporation, such U.S. Trade or Business Income may also be subject to the branch profits tax at a 30% rate (or lower applicable income tax treaty rate).

To claim the benefit of a tax treaty exemption from or reduction in withholding, or to claim exemption from withholding because the income is U.S. Trade or Business Income, a non-U.S. holder must provide a properly executed IRS Form W-8BEN, W-8BEN-E or W-8ECI (or other applicable or successor forms as the IRS designates), as applicable. The non-U.S. holder must provide the form to its withholding agent. These forms must be periodically updated. A non-U.S. holder who is claiming the benefits of a treaty may be required in certain instances to obtain a U.S. taxpayer identification number and to provide certain documentary evidence issued by foreign governmental authorities to prove residence in the foreign country.

Dividends and Constructive Dividends. Any dividends paid to a non-U.S. holder with respect to shares of our common stock (and any deemed dividends resulting from certain adjustments, or failure to make adjustments, to the conversion rate including, without limitation, for cash dividends paid to holders of our common stock, see “—U.S. Holders—Constructive Distribution” above) will be subject to withholding tax at a 30% rate (or lower applicable treaty rate). Because any constructive dividend a non-U.S. holder is deemed to receive would not give rise to any cash from which any applicable withholding tax could be satisfied, it is possible that this tax would be withheld from any amount owed to the non-U.S. holder, including, but not limited to, interest payments, cash or shares of common stock otherwise due on conversion, dividends or sales proceeds subsequently paid or credited to the non-U.S. holder. Dividends and constructive dividends that constitute U.S. Trade or Business Income are attributable to a U.S. permanent establishment, are not subject to the withholding tax, but instead are subject to U.S. federal income tax on a net income basis at applicable graduated individual or corporate rates. Certain certification requirements and disclosure requirements must be complied with in order for effectively connected income to be exempt from withholding. Any such effectively connected income received by a foreign corporation may, under certain circumstances, be subject to an additional branch profits tax at a 30% rate (or lower applicable income tax treaty rate).

A non-U.S. holder of shares of our common stock who wishes to claim the benefit of an applicable treaty or to claim an exemption from withholding because the income is U.S. Trade or Business Income is required to satisfy applicable certification and other requirements and must provide a properly executed IRS Form W-8BEN, W-8BEN-E (or other applicable or successor form as the IRS designates). Non-U.S. holders eligible for a reduced rate of United States withholding tax pursuant to an income tax treaty may obtain a refund of any excess amounts withheld by filing an appropriate claim for refund with the IRS.

Sale, Exchange, Conversion or Other Disposition of Notes or Shares of Common Stock. A non-U.S. holder will recognize gain on the sale, exchange, or other taxable disposition of notes or shares of common stock, including a conversion of notes into cash or into a combination of cash and stock. Nevertheless, such gain generally will not be subject to U.S. federal income tax unless:

- n such gain is U.S. Trade or Business Income;
- n in the case of any gain realized by an individual non-U.S. holder, such non-U.S. holder is present in the United States for 183 days or more in the taxable year of such sale, exchange, retirement, conversion, or other disposition and certain other conditions are met; or
- n we are or have been a “United States real property holding corporation” for U. S. federal income tax purposes during the shorter of the non-U.S. holder’s holding period and the five-year period ending on the date of such sale, exchange, retirement, conversion or other disposition.

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An individual non-U.S. holder described in the first bullet point above will be subject to tax on the net gain derived from the sale, exchange, conversion or other taxable disposition under regular graduated U. S. federal income tax rates. An individual non-U.S. holder described in the second bullet point above will be subject to a flat 30% tax on the gain derived from the sale, exchange, conversion or other taxable disposition, which may be offset by U.S. source capital losses, even though such non-U.S. holder is not considered a resident of the United States. A corporate non-U.S. holder that falls under the first bullet point above will be subject to tax on any net gain in the same manner as if such non-U.S. holder was a U.S. person as defined under the Code and, in addition, may be subject to the branch profits tax equal to 30% of such non-U.S. holder's U.S. Trade or Business Income or such lower rate as may be specified by an applicable income tax treaty.

We believe that we are not, and do not anticipate becoming, a "United States real property holding corporation" for United States federal income tax purposes.

Any stock that a non-U.S. holder receives on the sale, exchange, conversion or other disposition of a note that is attributable to accrued interest will not give rise to gain, as described above, but will instead generally be subject to U. S. federal income tax in accordance with the rules for taxation of interest described above under "—Payments of Interest."

Information Reporting and Backup Withholding. The amount of interest and dividends paid (including dividends deemed paid) and the amount of tax, if any, withheld with respect to those payments will be reported to the non-U.S. holder and the IRS. Copies of the information returns reporting such interest and dividend payments and any withholding may also be made available to the tax authorities in the country in which a non-U.S. holder resides, under the provisions of an applicable income tax treaty.

In general, a non-U.S. holder will not be subject to backup withholding with respect to payments of interest or dividends, provided that the withholding agent does not have actual knowledge or reason to know that such non-U.S. holder is a U.S. person, as defined under the Code, and has received the statement described above in the third bullet point under "—Payments of Interest." In addition, information returns will not be filed with the IRS in connection with the payment of proceeds from a sale or other disposition of the notes or the shares of our common stock unless paid within the United States or through certain U.S.-related payors and, unless the withholding agent has not received the statement described above in the third bullet point under "—Payments of Interest," a non-U.S. holder may also be subject to U.S. backup withholding on such proceeds.

Any amounts withheld under the backup withholding rules will be allowed as a refund or a credit against a non-U.S. holder's U.S. federal income tax liability, provided the required information is timely furnished to the IRS.

Withholding on Foreign Accounts. Legislation known as the Foreign Account Tax Compliance Act and guidance issued thereunder, or FATCA, imposes withholding taxes on certain types of payments made to "foreign financial institutions" and certain other non-U.S. entities (including financial intermediaries). FATCA imposes a 30% withholding tax on certain payments of interest, dividends, or gross proceeds from the sale or other disposition of common stock or notes paid to a foreign financial institution or to certain non-financial foreign entities unless certain certification, information reporting and other specified requirements are met or an exemption applies. FATCA withholding is currently in effect with respect to payments of interest on the notes and payments of dividends on the common stock. Under transition rules, any obligation to withhold under FATCA will not begin with respect to the gross proceeds of a sale or other disposition of the notes or common stock, until January 1, 2017. Prospective investors should consult their tax advisors regarding FATCA.

UNDERWRITING

We and the underwriters for the offering named below have entered into an underwriting agreement with respect to the notes being offered. Subject to the terms and conditions of the underwriting agreement, each underwriter has severally agreed to purchase from us the principal amounts of the notes set forth opposite its name below. Nomura Securities International, Inc., Cowen and Company, LLC and Piper Jaffray & Co. are the representatives of the underwriters.

<u>Underwriters</u>	<u>Principal Amount of Notes</u>
Nomura Securities International, Inc.	\$
Cowen and Company, LLC	\$
Piper Jaffray & Co.	\$
Canaccord Genuity Inc.	\$
Total	\$

The underwriting agreement will provide that the underwriters are committed to take and pay for all of the notes being offered, if any are taken, other than the notes covered by the option described below unless and until this option is exercised. The offering of the notes by the underwriters is subject to receipt and acceptance and subject to the underwriters' right to reject any order in whole or in part.

We have agreed to indemnify the several underwriters against specified liabilities in connection with this offering, including liabilities under the Securities Act, and to contribute to payments the underwriters may be required to make in respect thereof.

Overallotment Option to Purchase Additional Notes

We have granted to the underwriters an option to purchase up to an additional \$ _____ in aggregate principal amount of the notes to cover overallotments, less the underwriting discount, in this offering of notes. This option is exercisable for a period of 30 days. The underwriters may exercise this option solely for the purpose of covering overallotments, if any, made in connection with the sale of the notes offered hereby. To the extent that the underwriters exercise this option, the underwriters will purchase additional notes from us in approximately the same proportion as shown in the table above.

Underwriting Discounts and Expenses

The initial public offering price is set forth on the cover page of this prospectus. Any notes sold by the underwriters to securities dealers may be sold at a discount from the initial public offering price set forth on the cover of this prospectus. Any such securities dealers may resell any notes purchased from the underwriters to certain other brokers or dealers at a discount from the initial public offering price set forth on the cover of this prospectus. If all the notes are not sold at the initial public offering price, the underwriters may change the offering price and the other selling terms. Sales of notes made outside of the United States may be made by affiliates of certain of the underwriters.

The following table shows the underwriting discount to be received by the underwriters in connection with the sale of the notes, assuming both no exercise and full exercise of the option to purchase additional notes to cover overallotments.

	<u>Without Over- Allotment</u>	<u>With Over- Allotment</u>
Per note	\$ _____	\$ _____
Total	\$ _____	\$ _____

We estimate that the total expenses of this offering of notes, excluding underwriting discounts and commissions, will be approximately \$ _____ and are payable by us. We have also agreed to reimburse

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the underwriters for certain of their expenses as set forth in the underwriting agreement, including legal fees incurred in the qualification of this offering and the concurrent offering of common stock with the Financial Regulatory Authority, or FINRA, in an amount of up to \$30,000, which amount is deemed to be underwriting compensation by FINRA.

New Issue of Notes

The notes are a new issue of securities with no established trading market. We have been advised by the underwriters that the underwriters intend to make a market in the notes but are not obligated to do so and may discontinue market making at any time without notice. No assurance can be given as to the liquidity of the trading market for the notes. We do not intend to apply for listing of the notes on any securities exchange or for inclusion of the notes in any automated quotation system.

Lock-Up Agreements

Pursuant to certain "lock-up" agreements, we and our executive officers, directors and certain of our other stockholders, have agreed, subject to certain exceptions, not to offer, sell, assign, transfer, pledge, contract to sell, or otherwise dispose of or announce the intention to otherwise dispose of, or enter into any swap, hedge or similar agreement or arrangement that transfers, in whole or in part, the economic consequence of ownership of, directly or indirectly, or make any demand or request or exercise any right with respect to the registration of, or file with the SEC a registration statement under the Securities Act relating to, any common stock or securities convertible into or exchangeable or exercisable for any common stock without the prior written consent of Cowen and Company, LLC and Piper Jaffray & Co., for a period of 180 days after the date of the underwriting agreement.

This lock-up provision applies to common stock and to securities convertible into or exchangeable or exercisable for common stock. It also applies to common stock owned now or acquired later by the person executing the agreement or for which the person executing the agreement later acquires the power of disposition. The exceptions to the lock-up for executive officers, directors and stockholders include: (a) transfers made as a bona fide gift to an immediate family member, to a trust the beneficiaries of which are exclusively the executive officer, director or stockholder or immediate family member, or to a charity or educational institution; (b) transfers made by will or intestate succession; (c) transfers not for value to a stockholder, partner, member or similar equity owner of, or business entity that is an affiliate of, a similar equity interest in, a stockholder that is an entity; (d) transfers made by an employee or director pursuant to a net exercise or cashless exercise of outstanding equity awards pursuant to our equity plans or as forfeitures or sales to us of common stock or securities convertible into common stock to cover tax withholding obligations in connection with the vesting, settlement or exercise of equity awards outstanding on the date of the underwriting agreement; (e) the conversion, exchange or exercise of any securities convertible into or exchangeable for our common stock; (f) transactions relating to our common stock or other securities convertible into or exercisable or exchangeable for our common stock acquired in open market transactions after the date of this prospectus, provided that no such transaction is required to be, or is, publicly announced; (g) transactions relating to our common stock acquired through our concurrent initial public offering of common stock, provided that no such transaction is required to be, or is, publicly announced, and provided further that this subclause will not apply to our officers and directors; (h) the establishment of a trading plan in accordance with Rule 10b5-1(c) under the Exchange Act, provided that no sale or other disposition under such trading plan may occur during the 180-day restricted period; and (i) transfers pursuant to a bona fide third party tender offer, merger, consolidation or other similar transaction made to holders of our common stock involving the transfer in one or more transactions to a person or affiliated persons of our voting securities if, after such transfer, such person or group of affiliated persons would hold 90% of our outstanding voting securities. The exceptions to the lock-up for us are: (i) our sale of notes in this offering and our sale of common stock in the concurrent offering of common stock, including any notes issued pursuant to the exercise of the underwriters' over-allotment option; (ii) the issuance of common stock

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or options to acquire common stock pursuant to our employee benefit plans, equity compensation plans or other compensation plans in existence on the date hereof and as described in this prospectus; and (iii) the issuance of common stock pursuant to the conversion or exercise of existing securities and the notes. In addition, the lock-up provision will not restrict brokerdealers from engaging in market making and similar activities conducted in the ordinary course of their business.

Cowen and Company, LLC and Piper Jaffray & Co. may release our common stock and other securities subject to the lock-up agreements described above in whole or in part at any time. When determining whether or not to release our common stock and other securities from lock-up agreements, Cowen and Company, LLC and Piper Jaffray & Co. will consider, among other factors, the holder's reasons for requesting the release, the number of shares for which the release is being requested and market conditions at the time of the request. In addition, Cowen and Company, LLC and Piper Jaffray & Co. have agreed that they will not grant any such release without the prior written consent of Nomura Securities International, Inc. Cowen and Company, LLC, Piper Jaffray & Co. and Nomura Securities International, Inc. may make any such determination in their sole discretion. In the event of such a release or waiver for one of our directors or officers, Cowen and Company, LLC, Piper Jaffray & Co. and Nomura Securities International, Inc. shall provide us with notice of the impending release or waiver at least three business days before the effective date of such release or waiver and we will announce the impending release or waiver by issuing a press release at least two business days before the effective date of the release or waiver.

Price Stabilization and Short Positions

In connection with the offering, the underwriters may purchase and sell notes and common stock in the open market. These transactions may include stabilizing transactions, short sales and purchases to cover positions created by short sales. Stabilizing transactions consist of certain bids or purchases made for the purpose of preventing or retarding a decline in the market price of the notes while the offering is in progress. Short sales involve the sale by the underwriters of a greater number of notes than they are required to purchase in the offering. If the underwriters create a short position in the notes in connection with the offering, the underwriters may cover that short position by purchasing notes in the open market or by exercising all or a part of the overallotment option described above.

The underwriters also may impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased notes sold by or for the account of such underwriter in stabilizing or short covering transactions.

Neither we nor any of the underwriters makes any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of the notes. In addition, neither we nor any of the underwriters makes any representation that the underwriters will engage in these transactions or that these transactions, once commenced, will not be discontinued at any time without notice. These transactions may be effected in the over-the-counter market or otherwise.

Other Relationships

The underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. Certain of the underwriters and their respective affiliates have provided, and may in the future provide, a variety of these services to the issuer and to persons and entities with relationships with the issuer, for which they received or will

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receive customary fees and expenses. The underwriters are acting as underwriters in our concurrent common stock offering for which they will receive customary underwriting discounts and commissions.

In the ordinary course of their various business activities, the underwriters and their respective affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments and actively trade securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers, and such investment and trading activities may involve or relate to assets, securities and/or instruments of the issuer (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with the issuer. The underwriters and their respective affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

Selling Restrictions

Certain of the underwriters are expected to make offers and sales outside the United States through one or more of their affiliates as selling agents.

Hong Kong

The notes may not be offered or sold by means of any document other than (i) in circumstances that do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap.32, Laws of Hong Kong), or (ii) to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap.571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances that do not result in the document being a "prospectus" within the meaning of the Companies Ordinance (Cap.32, Laws of Hong Kong). Furthermore, no advertisement, invitation or document relating to the notes may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), that is directed at, or the contents of which are likely to be accessed or read by the public in Hong Kong (except if permitted under the laws of Hong Kong), other than with respect to notes that are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap.571, Laws of Hong Kong) and any rules made thereunder.

Singapore

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the notes may not be circulated or distributed, nor may the notes be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore, or the SFA, (ii) to a relevant person (or any person pursuant to Section 275(1A)) in accordance with the conditions specified in Section 275 of the SFA, or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the notes are subscribed or purchased under Section 275 of the SFA by a relevant person that is: (a) a corporation (which is not an accredited investor) whose sole business is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or (b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of which is an accredited investor, then shares, debentures and units of shares and debentures of that corporation or the beneficiaries' rights and interest in that corporation or trust shall not be transferable for six months after that corporation or trust had acquired the notes under Section 275. However, such restriction shall not apply: (1) to an

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institutional investor under Section 274 of the SFA or to a relevant person, or any person pursuant to Section 275(1A), and in accordance with the conditions, specified in Section 275 of the SFA; (2) where no consideration is given for the transfer; and (3) by operation of law.

United Kingdom

Each of the underwriters has, separately and not jointly, represented and agreed that:

- n it has not made or will not make an offer of the notes to the public in the United Kingdom within the meaning of section 102B of the Financial Services and Markets Act 2000 (as amended), or the FSMA, except to legal entities which are authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities or otherwise in circumstances which do not require the publication by us of a prospectus pursuant to the Prospectus Rules of the Financial Services Authority, or FSA;
- n it has only communicated or caused to be communicated and will only communicate or cause to be communicated an invitation or inducement to engage in investment activity (within the meaning of section 21 of FSMA) to persons who have professional experience in matters relating to investments falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 or in circumstances in which section 21 of FSMA does not apply to us; and
- n it has complied with and will comply with all applicable provisions of FSMA with respect to anything done by it in relation to the securities in, from or otherwise involving the United Kingdom.

Switzerland

The notes will not be offered, directly or indirectly, to the public in Switzerland and this prospectus does not constitute a public offering prospectus as that term is understood pursuant to article 652a or 1156 of the Swiss Federal Code of Obligations.

European Economic Area

In relation to each Member State of the European Economic Area, or the EEA, which has implemented the European Prospectus Directive (each, a "Relevant Member State"), an offer of our notes may not be made to the public in a Relevant Member State other than:

- n to any legal entity which is a qualified investor, as defined in the European Prospectus Directive;
- n to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150 natural or legal persons (other than qualified investors as defined in the European Prospectus Directive), subject to obtaining the prior consent of the relevant dealer or dealers nominated by us for any such offer, or
- n in any other circumstances falling within Article 3(2) of the European Prospectus Directive,

provided that no such offer of our notes shall require us or any underwriter to publish a prospectus pursuant to Article 3 of the European Prospectus Directive or supplement prospectus pursuant to Article 16 of the European Prospectus Directive.

For the purposes of this description, the expression an "offer to the public" in relation to the notes in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the notes to be offered so as to enable an investor to decide to purchase or subscribe for the notes, as the expression may be varied in that Relevant Member State by any measure implementing the European Prospectus Directive in that member state, and the expression "European Prospectus Directive" means Directive 2003/71/EC (and amendments hereto, including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member State)

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and includes any relevant implementing measure in each Relevant Member State. The expression 2010 PD Amending Directive means Directive 2010/73/EU.

We have not authorized and do not authorize the making of any offer of securities through any financial intermediary on our behalf, other than offers made by the underwriters and their respective affiliates, with a view to the final placement of the notes as contemplated in this document. Accordingly, no purchaser of the notes, other than the underwriters, is authorized to make any further offer of notes on our behalf or on behalf of the underwriters.

§



% Convertible Senior Notes due 2019

PROSPECTUS

Nomura

**Cowen and Company
Canaccord Genuity**

Piper Jaffray

, 2015

Through and including _____, 2015 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to a dealer's obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

PART II**Information Not Required in Prospectus****Item 13. Other Expenses of Issuance and Distribution.**

The following table sets forth the fees and expenses, other than underwriting discounts and commissions, payable in connection with the registration of the common stock hereunder. All amounts are estimates except the SEC registration fee.

SEC registration fee	\$ 13,936.27
FINRA filing fee	20,337.50
NASDAQ listing fee	125,000.00
Blue Sky fees and expenses	10,000.00
Printing and engraving expenses	175,000.00
Legal fees and expenses	1,200,000.00
Accounting fees and expenses	425,000.00
Transfer agent and registrar fees and expenses	3,000.00
Miscellaneous	27,726.23
Total	<u>\$ 2,000,000.00</u>

Item 14. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law, or the DGCL, authorizes a corporation to indemnify its directors and officers against liabilities arising out of actions, suits and proceedings to which they are made or threatened to be made a party by reason of the fact that they have served or are currently serving as a director or officer to a corporation. The indemnity may cover expenses (including attorneys' fees) judgments, fines and amounts paid in settlement actually and reasonably incurred by the director or officer in connection with any such action, suit or proceeding. Section 145 permits corporations to pay expenses (including attorneys' fees) incurred by directors and officers in advance of the final disposition of such action, suit or proceeding. In addition, Section 145 provides that a corporation has the power to purchase and maintain insurance on behalf of its directors and officers against any liability asserted against them and incurred by them in their capacity as a director or officer, or arising out of their status as such, whether or not the corporation would have the power to indemnify the director or officer against such liability under Section 145.

We have adopted provisions in our certificate of incorporation and bylaws to be in effect upon the closing of this offering that limit or eliminate the personal liability of our directors to the fullest extent permitted by the DGCL, as it now exists or may in the future be amended. Consequently, a director will not be personally liable to us or our stockholders for monetary damages or breach of fiduciary duty as a director, except for liability for:

- n any breach of the director's duty of loyalty to us or our stockholders;
- n any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- n any unlawful payments related to dividends or unlawful stock purchases, redemptions or other distributions; or
- n any transaction from which the director derived an improper personal benefit.

These limitations of liability do not alter director liability under the federal securities laws and do not affect the availability of equitable remedies such as an injunction or rescission.

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In addition, our bylaws provide that:

- n we will indemnify our directors, officers and, in the discretion of our board of directors, certain employees to the fullest extent permitted by the DGCL, as it now exists or may in the future be amended; and
- n we will advance reasonable expenses, including attorneys' fees, to our directors and, in the discretion of our board of directors, to our officers and certain employees, in connection with legal proceedings relating to their service for or on behalf of us, subject to limited exceptions.

We have entered into indemnification agreements with each of our directors and intend to enter into such agreements with certain of our executive officers. These agreements provide that we will indemnify each of our directors, certain of our executive officers and, at times, their affiliates to the fullest extent permitted by Delaware law. We will advance expenses, including attorneys' fees (but excluding judgments, fines and settlement amounts), to each indemnified director, executive officer or affiliate in connection with any proceeding in which indemnification is available and we will indemnify our directors and officers for any action or proceeding arising out of that person's services as a director or officer brought on behalf of us and/or in furtherance of our rights. Additionally, each of our directors may have certain rights to indemnification, advancement of expenses and/or insurance provided by their affiliates, which indemnification relates to and might apply to the same proceedings arising out of such director's services as a director referenced herein. Nonetheless, we have agreed in the indemnification agreements that our obligations to those same directors are primary and any obligation of the affiliates of those directors to advance expenses or to provide indemnification for the expenses or liabilities incurred by those directors are secondary.

We also maintain general liability insurance which covers certain liabilities of our directors and officers arising out of claims based on acts or omissions in their capacities as directors or officers, including liabilities under the Securities Act.

The underwriting agreement filed as Exhibit 1.1 to this registration statement provides for indemnification of us and our directors and officers by the underwriters against certain liabilities under the Securities Act and the Exchange Act.

Item 15. Recent Sales of Unregistered Securities.

The following list sets forth information as to all securities we have sold since January 1, 2011, which were not registered under the Securities Act, and gives effect to a 1-for-3.39 reverse stock split of our common stock and a proportional adjustment to the existing conversion ratio for each series of our redeemable convertible preferred stock, which became effective on November 26, 2014.

(a) Issuances of Capital Stock and Warrants to Purchase Capital Stock.

1. In June 2013, we issued a Warrant to Purchase Shares of Series Preferred Stock to each of Drawbridge Special Opportunities Fund LP and Horizon Technology Finance Corporation, each exercisable for up to 114,453 shares of our Series AA preferred stock (228,906 shares in the aggregate) at \$1.529 per share, as partial consideration for their provision of a credit facility to us.

2. In June 2013, we issued an aggregate of 8,365,722 shares of our Series AA preferred stock to 11 investors for aggregate consideration of approximately \$8.7 million in cash and the conversion of approximately \$3.7 million in convertible promissory notes. In July 2013, we issued an aggregate of 852,230 shares of our Series AA preferred stock to eight investors for aggregate consideration of \$1.3 million and warrants to purchase 852,230 shares of our Series AA preferred stock at an exercise price of \$0.01 per share to the same eight investors, which warrants will terminate upon the closing of this offering.

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3. In May 2011, we issued an aggregate of 2,329,464 shares of our Series AA preferred stock to 11 investors for aggregate consideration of approximately \$3.6 million. In June, 2011, we issued an aggregate of 3,651,425 shares of our Series AA preferred stock to 11 investors for aggregate consideration of approximately \$5.5 million.

We deemed the offers, sales and issuances of the securities described in the paragraphs above to be exempt from registration under the Securities Act, in reliance on Section 4(2) of the Securities Act, including Regulation D and Rule 506 promulgated thereunder, regarding transactions by an issuer not involving a public offering. All purchasers of securities in transactions exempt from registration pursuant to Regulation D represented to us that they were accredited investors and were acquiring the shares for investment purposes only and not with a view to, or for sale in connection with, any distribution thereof and that they could bear the risks of the investment and could hold the securities for an indefinite period of time. The purchasers received written disclosures that the securities had not been registered under the Securities Act and that any resale must be made pursuant to a registration statement or an available exemption from such registration.

(b) Grants of Stock Options.

Since January 1, 2011, we have granted stock options to purchase an aggregate of 1,077,445 shares of our common stock, at an exercise price of \$3.627 per share, to employees and directors pursuant to our 2014 Stock Option and Incentive Plan. The issuances of these securities were exempt either pursuant to Rule 701 promulgated under the Securities Act, as a transaction pursuant to a compensatory benefit plan, or pursuant to Section 4(2) of the Securities Act, as a transaction by an issuer not involving a public offering. All recipients either received adequate information about us or had access, through employment or other relationships, to such information.

All certificates representing the securities issued in the transactions described in this Item 15 included appropriate legends setting forth that the securities had not been offered or sold pursuant to a registration statement and describing the applicable restrictions on transfer of the securities. There were no underwriters employed in connection with any of the transactions set forth in this Item 15.

(c) Issuance and Sale of Subordinated Convertible Promissory Notes.

In December 2014, we sold subordinated convertible promissory notes, or the 2014 bridge notes, in the aggregate original principal amount of \$2.0 million to certain of our existing stockholders. Pursuant to their terms, all of 2014 bridge notes will automatically convert upon the closing of this offering into that number of the same securities sold in this offering equal to all principal plus all accrued and unpaid interest of the 2014 bridge notes divided by the price per share of common stock sold in this offering. The issuance of the 2014 bridge notes was exempt from registration under Section 4(a)(2) of the Securities Act, as a sale not involving a public offering.

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits:

The exhibits to the registration statement are listed in the Exhibit Index to this registration statement and are incorporated herein by reference.

(b) Financial Statements Schedules:

Schedules have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes thereto.

Item 17. Undertakings.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended, or the Act, may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is therefore unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

The Registrant hereby undertakes that:

(a) The Registrant will provide to the underwriter at the closing as specified in the underwriting agreement, certificates in such denominations and registered in such names as required by the underwriter to permit prompt delivery to each purchaser.

(b) For purposes of determining any liability under the Securities Act of 1933, as amended, the information omitted from a form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the Registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act of 1933, as amended, shall be deemed to be part of this registration statement as of the time it was declared effective.

(c) For the purpose of determining any liability under the Securities Act of 1933, as amended, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this Registration Statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Lexington, Commonwealth of Massachusetts, on January 13, 2015.

INOTEK PHARMACEUTICALS CORPORATION

By: /s/ David P. Southwell
Name: David P. Southwell
Title: President, Chief Executive Officer and Director

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement and Power of Attorney has been signed by the following person in the capacities and on the date indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ DAVID P. SOUTHWELL</u> David P. Southwell	President, Chief Executive Officer and Director (Principal Executive Officer)	January 13, 2015
<u>*</u> Dale Ritter	Vice President—Finance (Principal Financial and Accounting Officer)	January 13, 2015
<u>*</u> A.N. "Jerry" Karabelas, Ph.D.	Director	January 13, 2015
<u>*</u> Ittai Harel	Director	January 13, 2015
<u>*</u> Paul G. Howes	Director	January 13, 2015

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<u>Signature</u>	<u>Title</u>	<u>Date</u>
* _____ Devang V. Kantesaria, M.D.	Director	January 13, 2015
* _____ Isai Peimer	Director	January 13, 2015
* _____ Martin Vogelbaum	Director	January 13, 2015

*Pursuant to Power of Attorney

By: _____
/s/ David P. Southwell
David P. Southwell

EXHIBIT INDEX

Exhibit No.	Exhibit Index
1.1*	Form of Underwriting Agreement
1.2*	Form of Underwriting Agreement relating to the Convertible Senior Notes
3.1	Fifth Amended and Restated Certificate of Incorporation of the Registrant, as amended and currently in effect
3.2	Form of Seventh Amended and Restated Certificate of Incorporation of the Registrant (to be effective upon the consummation of this offering)
3.3.1**	By-Laws
3.3.2**	Amendment No. 1 to By-Laws
3.3.3**	Amendment No. 2 to By-Laws
3.3.4**	Amendment No. 3 to By-Laws
3.4**	Amended and Restated Bylaws of the Registrant (to be effective upon the consummation of this offering)
4.1	Form of Common Stock certificate of the Registrant
4.2**	Third Amended and Restated Investor Rights Agreement, dated as of June 9, 2010, by and among the Registrant and each of the parties listed on Schedule A thereto
4.3.1**	Third Amended and Restated Stockholders Agreement, dated as of June 9, 2010, by and among the Registrant and each of the parties listed on Schedule I thereto, as amended and currently in effect
4.3.2**	Amendment No. 1 to the Third Amended and Restated Stockholders Agreement, dated as of June 11, 2010, by and among the Registrant and each of the parties listed on the signature pages thereto
4.4	Form of Indenture between Inotek Pharmaceuticals Corporation, and Wilmington Trust, National Association, as the trustee, relating to the % Convertible Senior Notes due 2019
5.1.1*	Opinion of Goodwin Procter LLP related to the Offering of Common Stock
5.1.2*	Opinion of Goodwin Procter LLP related to the Offering of % Convertible Senior Notes due 2019
10.1†**	2004 Stock Option and Incentive Plan
10.2†*	2014 Stock Option and Incentive Plan and forms of agreements thereunder, as amended
10.3†**	Letter Agreement, dated as of July 28, 2014, by and between the Registrant and David P. Southwell
10.4†**	Letter Agreement, dated as of May 2, 2007, by and between the Registrant and Dr. Rudolf A. Baumgartner, M.D., as amended and currently in effect
10.5†**	Letter Agreement, dated as of August 23, 2007, by and between the Registrant and Dr. William K. McVicar, Ph.D., as amended and currently in effect
10.6†**	Letter Agreement, dated as of August 28, 2014, by and between the Registrant and Dale Ritter
10.7**	Venture Loan and Security Agreement, dated as of June 28, 2013, by and among the Registrant, Horizon Technology Finance Corporation and Fortress Credit Co LLC
10.8.1†**	Form of Indemnification Agreement, to be entered into between the Registrant and its directors
10.8.2†**	Form of Indemnification Agreement, to be entered into between the Registrant and its officers
10.9**	Lease, dated as of May 11, 2012, by and between the Registrant and Farley White Kilnbrook Three, LLC, as amended and currently in effect

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Exhibit No.	Exhibit Index
10.10*	Inotek Pharmaceuticals Corporation 2014 Employee Stock Purchase Plan, dated as of November 18, 2014
23.1	Consent of McGladrey LLP
23.2	Consent of Goodwin Procter LLP (included in Exhibit 5.1)
24.1**	Power of Attorney (included in signature page)
25.1	Statement of Eligibility of Trustee on Form T-1

* To be included by amendment.

** Previously filed.

† Indicates a management contract or any compensatory plan, contract or arrangement.

FIFTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
INOTEK PHARMACEUTICALS CORPORATION

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

FIRST: The name of the Corporation is Inotek Pharmaceuticals Corporation. A Certificate of Incorporation of the Corporation originally was filed by the Corporation with the Secretary of State of Delaware on July 7, 1999 under the name Inotek Corporation, and was (i) amended by a Certificate of Amendment of Certificate of Incorporation on April 4, 2002, (ii) amended and restated by a Restated Certificate of Incorporation on February 11, 2004, (iii) corrected by a Certificate of Correction on February 12, 2004; (iv) amended and restated by a Restated Certificate of Incorporation on August 15, 2005; (v) amended and restated by a Restated Certificate of Incorporation on August 21, 2007; (vi) amended by a Certificate of Amendment of Certificate of Incorporation on May 18, 2010; (vii) amended and restated by a Restated Certificate of Incorporation on June 8, 2010; (viii) amended by a Certificate of Amendment of Certificate of Incorporation on June 10, 2010; and (ix) amended by a Certificate of Amendment of Certificate of Incorporation on April 22, 2013.

SECOND: This Fifth Amended and Restated Certificate of Incorporation amends and restates the certificate of incorporation of the Corporation, was duly adopted in accordance with the provisions of Sections 141(f), 242 and 245 of the Delaware General Corporation Law, and was approved by written consent of the stockholders of the Corporation given in accordance with the provisions of Section 228 of the Delaware General Corporation Law (prompt notice of such action having been given to those stockholders who did not consent in writing).

THIRD: The text of the certificate of incorporation of the Corporation is hereby restated and amended to read in its entirety as set forth on Exhibit A attached hereto.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the undersigned has caused this Fifth Amended and Restated Certificate of Incorporation to be duly executed on behalf of the Corporation on June 11, 2013.

INOTEK PHARMACEUTICALS CORPORATION

By: /s/ James G. Ham, III

Name: James G. Ham, III

Title: Chief Financial Officer

Exhibit A

ARTICLE I

Name

The name of the corporation is Inotek Pharmaceuticals Corporation.

ARTICLE II

Registered Office

The address of the registered office of the Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, New Castle County, Delaware 19808. Corporation Service Company is the Corporation's registered agent at that address.

ARTICLE III

Purpose

The Corporation is organized to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware.

ARTICLE IV

Capital Stock

The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 32,857,171 shares of Common Stock, \$0.01 par value per share ("Common Stock"), and (ii) 28,659,924 shares of Preferred Stock, \$0.001 par value per share ("Preferred Stock").

The rights, preferences, privileges and restrictions granted to or imposed upon the Common Stock and the Preferred Stock are as follows:

Part A. Preferred Stock

Preferred Stock may be issued from time to time in one or more series, each of such series to consist of such number of shares and to have such terms, rights, powers and preferences, and the qualifications and limitations with respect thereto, as stated or expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board of Directors of the Corporation as hereinafter provided. Except as and to the extent otherwise specified herein, different series of Preferred Stock shall not be construed to constitute different classes of shares for the purpose of voting by classes.

25,757,874 shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated "Series AA Convertible Preferred Stock" and 2,902,050 shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated "Series X Convertible Preferred Stock", with the following rights, preferences, powers, privileges and

restrictions, qualifications and limitations. Unless otherwise indicated, references to “Sections” or “Subsections” in this Part A of this Article Fourth refer to sections and subsections of Part A of this Article Fourth.

1. Voting.

1A. General. Except as may be otherwise provided in this Fifth Amended and Restated Certificate of Incorporation or as required by law, the Series AA Convertible Preferred Stock shall vote together with all other classes and series of stock of the Corporation as a single class on all actions to be taken by the stockholders of the Corporation. Each share of Series AA Convertible Preferred Stock shall entitle the holder thereof to such number of votes per share on each such action as shall equal the number of shares of Common Stock (including fractions of a share) into which each share of Series AA Convertible Preferred Stock is then convertible. The Series X Convertible Preferred Stock shall not have any voting rights, except as set forth in Subsection 1(C)(2) below. When the Series X Convertible Preferred Stock has voting rights, each share of Series X Convertible Preferred Stock shall entitle the holder thereof to such number of votes per share on each such action as shall equal the number of shares of Common Stock into which each share of Series X Convertible Preferred Stock is then convertible.

1B. Board Size. The Corporation shall not, without the written consent or affirmative vote of the holders of at least sixty six and two-thirds percent (66 and 2/3%) in interest of the then outstanding shares of Series AA Convertible Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as one class, increase the maximum number of directors constituting the Board of Directors to a number in excess of eight (8) directors, elected as set forth in Subsection 1C.

1C. Board Seats.

1C(1) The holders of the Series AA Convertible Preferred Stock shall be entitled to elect five (5) directors of the Corporation (the “Preferred Directors”). At any meeting (or in a written consent in lieu thereof) held for the purpose of electing directors, the presence in person or by proxy (or the written consent) of the holders of at least a majority in interest of the then outstanding shares of Series AA Convertible Preferred Stock shall constitute a quorum of the Series AA Convertible Preferred Stock for the election of the Preferred Directors. A vacancy in any directorship elected by the holders of the Series AA Convertible Preferred Stock shall be filled only by vote or written consent of the holders of the Series AA Convertible Preferred Stock consenting or voting, as the case may be. A Preferred Director may be removed only by vote or written consent of the holders of the Series AA Convertible Preferred Stock, consenting or voting, as the case may be. The Preferred Directors shall be elected or removed by the written consent of the holders of at least a majority in interest of the outstanding Series AA Convertible Preferred Stock or by or affirmative vote representing a majority of the votes cast at a meeting at which a quorum of the then outstanding shares of Series AA Convertible Preferred Stock is present in person or by proxy. The Preferred Directors shall serve for terms extending from the date of their election and qualification until the time of the next succeeding annual meeting of stockholders and until their successors have been elected and qualified.

1C(2) The holders of the Common Stock, the Series X Convertible Preferred Stock and the Series AA Convertible Preferred Stock, voting together as a single class and on an as-converted basis, shall be entitled to elect one director of the Corporation, who shall serve as the Chairperson (the “Independent Director”). At any meeting (or in a written consent in lieu thereof) held for the purpose of electing directors, the presence in person or by proxy (or the written consent) of the holders of at least a majority in interest of the then outstanding shares of Common Stock, Series X Convertible Preferred Stock and Series AA Convertible Preferred Stock, voting together as a single class and on an as-converted basis, shall constitute a quorum for the election of the Independent Director. A vacancy in any directorship elected by the holders of the Common Stock, Series X Convertible Preferred Stock and Series AA Convertible Preferred Stock pursuant to this Subsection 1C(2) shall be filled only by vote or written consent of the holders of the Common Stock, Series X Convertible Preferred Stock and the Series AA Convertible Preferred Stock, consenting or voting, as the case may be, together as a single class and on an as-converted basis. The Independent Director may be removed only by vote or written consent of the holders of the Common Stock, Series X Convertible Preferred Stock and the Series AA Convertible Preferred Stock, consenting or voting, as the case may be, as a single class and on an as-converted basis. The Independent Director shall be elected or removed by the written consent of the holders of at least a majority in interest of the outstanding Common Stock, Series X Convertible Preferred Stock and Series AA Convertible Preferred Stock, consenting as a single class and on an as-converted basis, or by affirmative vote representing a majority of the votes cast at a meeting at which a quorum of the then outstanding shares of Common Stock, Series X Convertible Preferred Stock and Series AA Convertible Preferred Stock is present in person or by proxy, voting together as a single class and on an as-converted basis. The Independent Director shall serve for a term extending from the date of his or her election and qualification until the time of the next succeeding annual meeting of stockholders and until his or her successor has been elected and qualified.

1C(3) The holders of the Common Stock and the Series AA Convertible Preferred Stock, voting together as a single class and on an as-converted basis, shall be entitled to elect one director of the Corporation, who shall be the Chief Executive Officer of the Corporation. At any meeting (or in a written consent in lieu thereof) held for the purpose of electing directors, the presence in person or by proxy (or the written consent) of the holders of at least a majority in interest of the then outstanding shares of Common Stock and Series AA Convertible Preferred Stock, voting together as a single class and on an as-converted basis, shall constitute a quorum for the election of the director. A vacancy in any directorship elected by the holders of the Common Stock and Series AA Convertible Preferred Stock pursuant to this Subsection 1C(3) shall be filled only by vote or written consent of the holders of the Common Stock and the Series AA Convertible Preferred Stock, consenting or voting, as the case may be, together as a single class and on an as-converted basis. The director referred to in this subsection may be removed only by vote or written consent of the holders of the Common Stock and the Series AA Convertible Preferred Stock, consenting or voting, as the case may be, as a single class on an as-converted basis. The director referred to in this Subsection shall be elected or removed by the written consent of the holders of at least a majority in interest of the outstanding Common Stock and Series AA Convertible Preferred Stock, consenting together as a single class and on an as-converted basis, or by affirmative vote representing a majority of the votes cast at a meeting at which a quorum of the then outstanding shares of Common Stock and Series AA

Convertible Preferred Stock is present in person or by proxy, voting together as a single class and on an as-converted basis. Each director referred to in this Subsection shall serve for a term extending from the date of his or her election and qualification until the time of the next succeeding annual meeting of stockholders and until his or her successor has been elected and qualified.

2. Dividends.

2A. Dividends on Series AA Convertible Preferred Stock. From and after the date of the issuance of any shares of Series AA Convertible Preferred Stock, dividends at the rate of eight percent (8%) per annum on the Series AA Original Issue Price shall accrue on such shares of Series AA Convertible Preferred Stock quarterly, whether or not declared, and shall be cumulative and compounding annually. The “Series AA Original Issue Price” shall mean \$1.529 per share of Series AA Convertible Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series AA Convertible Preferred Stock).

2B. Dividends on Common Stock. In the event the Board of Directors of the Corporation shall declare a dividend (other than a dividend payable in Common Stock) payable upon the then outstanding shares of the Common Stock of the Corporation, the Board of Directors shall declare at the same time a dividend upon the then outstanding shares of Series AA Convertible Preferred Stock, payable at the same time as the dividend paid on the Common Stock, in an amount equal to the amount of dividends per share of Series AA Convertible Preferred Stock as would have been payable on the largest number of whole shares of Common Stock into which all shares of Series AA Convertible Preferred Stock held by each holder thereof if such Series AA Convertible Preferred Stock had been converted to Common Stock pursuant to the provisions of Section 5 hereof as of the record date for the determination of holders of Common Stock entitled to receive such dividends. All dividends declared upon the Series AA Convertible Preferred Stock pursuant to this Subsection 2B shall be declared and paid pro rata per share.

3. Liquidation, Dissolution and Winding-up.

3A. Liquidation. Upon any liquidation, dissolution or winding up of the Corporation (a “Liquidation Event”), whether voluntary or involuntary, the holders of the shares of Series AA Convertible Preferred Stock shall be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Series X Convertible Preferred Stock or Common Stock, an amount per share equal to two (2) times the Series AA Original Issue Price plus any accrued or declared but unpaid dividends (the “Series AA Initial Preference”). If upon any Liquidation Event, the assets to be distributed to the holders of Series AA Convertible Preferred Stock shall be insufficient to permit payment to such stockholders of the Series AA Initial Preference, then the holders of the Series AA Convertible Preferred Stock shall share ratably in any distribution of the remaining assets of the Corporation available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full. For the avoidance of doubt, the “remaining assets

of the Corporation available for distribution” as used in the Article IV Subsection 3 shall include the total realized value attributable to any Liquidation Event, including, without limitation, any contingent or other payments actually received by the Corporation or any holders of the Corporation’s securities in connection with such Liquidation Event.

3B. Upon any Liquidation Event, immediately after the holders of Series AA Convertible Preferred Stock have been paid in full the Series AA Initial Preference, and before any payment shall be made with respect to the Series AA Secondary Preference pursuant to Subsection 3C below and before any payment shall be made to the holders of Common Stock, the holders of the shares of Series X Convertible Preferred Stock shall be paid out of assets of the Corporation available for distribution to its stockholders a per share amount determined by taking the product of (1) (i) the total number of issued and outstanding shares of Common Stock owned by the holders of Series X Convertible Preferred Stock determined on an as converted, fully-diluted basis divided by (ii) the total number of issued and outstanding shares of Common Stock of the Corporation on an as converted fully diluted basis, and (2) the remaining assets of the Corporation available for distribution to its stockholders, and dividing such product by the number of issued and outstanding shares of Series X Convertible Preferred Stock (the “Series X Preference”). For the avoidance of doubt, the “remaining assets of the Corporation available for distribution” shall include the total realized value attributable to any Liquidation Event, including, without limitation, any contingent or other payments actually received by the Corporation or any holders of the Corporation’s securities in connection with such Liquidation Event.

3C. Upon any Liquidation Event, immediately after the holders of Series AA Convertible Preferred Stock have been paid in full the Series AA Initial Preference and after the holders of Series X Convertible Preferred Stock have been paid in full the Series X Preference, the holders of the shares of Series AA Convertible Preferred Stock shall be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Common Stock, a per share amount equal to 0.5 times the Series AA Original Issue Price (the “Series AA Secondary Preference”). If upon any Liquidation Event, the assets to be distributed to the holders of Series AA Convertible Preferred Stock shall be insufficient to permit payment to such stockholders of the Series AA Secondary Preference, then the holders of the Series AA Convertible Preferred Stock shall share ratably in any distribution of the remaining assets of the Corporation available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

3D. Upon any Liquidation Event, immediately after the holders of Series AA Convertible Preferred Stock and the holders of Series X Convertible Preferred Stock have been paid in full the Series AA Initial Preference, the Series X Preference and the Series AA Secondary Preference, the remaining assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of the shares of Series AA Convertible Preferred Stock and Common Stock (which for purposes of clarity, shall not include the Series X Convertible Preferred Stock), pro rata based on the number of shares held by each such holder, treating for this purpose all such shares of Series AA Convertible Preferred Stock as if they had been converted to Common Stock pursuant to the terms of this Fifth Amended and Restated Certificate of Incorporation immediately prior to such Liquidation Event.

3E. Unless waived by holders of greater than sixty six and two-thirds percent (66 and 2/3%) of the then outstanding shares of Series AA Convertible Preferred Stock, the (1) consolidation or merger of the Corporation into or with any other entity or entities (except a consolidation or merger into a Subsidiary or merger in which the Corporation is the surviving corporation and the holders of the Corporation's voting stock outstanding immediately prior to the transaction constitute not less than the holders of a majority of the voting stock outstanding immediately following the transaction), (2) the sale, lease, transfer or exclusive license by the Corporation of all or substantially all of its intellectual property relating to the Corporation's product INO-8875 (other than a sale, lease, transfer or exclusive license to a Subsidiary or to an entity in which the holders of the Corporation's voting stock outstanding immediately prior to the transaction constitute not less than the holders of a majority of the voting stock outstanding immediately following the transaction), (3) the sale, lease, transfer or exclusive license by the Corporation of all or substantially all its assets (other than a sale, lease, transfer or exclusive license to a Subsidiary or to an entity in which the holders of the Corporation's voting stock outstanding immediately prior to the transaction constitute not less than the holders of a majority of the voting stock outstanding immediately following the transaction), or (4) the sale, exchange or transfer by the Corporation's stockholders, in a single transaction or series of related transactions, of capital stock representing a majority of the voting power at elections of directors of the Corporation (other than a transaction or series of transactions in which the Corporation is the surviving entity and the holders of the Corporation's voting stock outstanding immediately prior to such transaction or series of transactions constitute a majority of the holders of voting stock outstanding immediately following such transaction or series of transactions), shall be deemed to be a Liquidation Event within the meaning of the provisions of this Section 3 and shall be referred to herein as a "Change of Control Transaction."

3F. Consideration. If any of the assets of this Corporation are to be distributed under this Section 3 in a form other than cash, the fair market value of such assets shall be determined in good faith by the Board of Directors. Any securities shall be valued as follows:

3F(1) Securities not subject to investment letter or other similar restrictions on free marketability covered by 3F(2) below:

(A) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the ten (10) trading day period ending two (2) trading days prior to the closing;

(B) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the ten (10) trading day period ending two (2) trading days prior to the closing; and

(C) If there is no active public market, the value shall be the fair market value thereof as determined in good faith by the Board of Directors.

3F(2) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in 3F(1) (A), (B) or (C) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors.

3G Effecting a Change of Control Transaction.

(1) The Corporation shall not have the power to effect a Liquidation Event referred to in Subsection 3A unless the agreement or plan of merger or consolidation for such transaction provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 3A, 3B, 3C and 3D.

(2) In the event of any Change of Control Transaction where proceeds from such Change of Control Transaction are retained by the Company and not immediately distributed, if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within 90 days after such Change of Control Transaction, then (i) the Corporation shall send a written notice to each holder of Series AA Convertible Preferred Stock and Series X Convertible Preferred Stock no later than the 90th day after the Change of Control Transaction advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (ii) to require the redemption of such shares of Series AA Convertible Preferred Stock or Series X Convertible Preferred Stock, as applicable, and (ii) if the holders of at least sixty six and two-thirds percent (66 and 2/3%) of the then outstanding shares of Series AA Convertible Preferred Stock so request in a written instrument delivered to the Corporation not later than 120 days after such Change of Control Transaction, the Corporation shall use the consideration received by the Corporation for such Change of Control Transaction (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation), together with any other assets of the Corporation available for distribution to its stockholders (the "Available Proceeds"), to the extent legally available therefor, on the 150th day after such Change of Control Transaction, to redeem all outstanding shares of Series AA Convertible Preferred Stock and Series X Convertible Preferred Stock as follows:

(a) first, the Company shall redeem the Series AA Convertible Preferred Stock and pay to the holders of the Series AA Convertible Preferred Stock consideration out of the Available Proceeds in the amounts and manner set forth in Subsection 3A;

(b) if after completing the redemption in clause (a) above there are Available Proceeds remaining, then the Company shall redeem the Series X Convertible Preferred Stock and pay to the holders of the Series X Convertible Preferred Stock consideration out of the Available Proceeds in the amounts and manner set forth in Subsection 3B; and

(c) if after completing the redemptions in clauses (a) and (b) above there are Available Proceeds remaining, then the Company shall pay to the holders of the Series AA Convertible Preferred Stock additional consideration out of the Available Proceeds in the amounts and manner set forth in Subsection 3C.

The provisions of Sections 6B through 6F shall apply, with such necessary changes in the details thereof as are necessitated by the context, to the redemption of the Series AA Convertible Preferred Stock and Series X Convertible Preferred Stock pursuant to this Subsection 3G(2). Prior to the distribution or redemption provided for in this Subsection 3G(2), the Corporation shall not expend or dissipate the consideration received for such Change of Control Transaction, except to discharge expenses incurred in connection with such Change of Control Transaction or in the ordinary course of business.

3H. Allocation of Escrow. In the event of a Change of Control Transaction pursuant to Subsection 3A, if any portion of the consideration payable to the stockholders of the Corporation is placed into escrow and/or is payable to the stockholders of the Corporation subject to contingencies, the applicable transaction agreement shall provide that (a) the portion of such consideration that is not placed in escrow and not subject to any contingencies (the “Initial Consideration”) shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 3A, 3B, 3C and 3D as if the Initial Consideration were the only consideration payable in connection with such Change of Control Transaction and (b) any additional consideration which becomes payable to the stockholders of the Corporation upon release from escrow or satisfaction of contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 3A, 3B, 3C and 3D after taking into account the previous payment of the Initial Consideration as part of the same transaction

4. Restrictions.

4A. Series AA Convertible Preferred Stock. At any time when shares of Series AA Convertible Preferred Stock are outstanding, except where the vote or written consent of the holders of a greater number of shares of the Corporation is required by law or by the Fifth Amended and Restated Certificate of Incorporation of the Corporation, and in addition to any other vote required by law or the Fifth Amended and Restated Certificate of Incorporation of the Corporation, without the affirmative vote or written consent of the holders of at least sixty six and two-thirds percent (66 and 2/3%) of the then outstanding shares of Series AA Convertible Preferred Stock, the Corporation will not, directly or indirectly, whether by merger, consolidation or otherwise:

(i) Consent to or engage in any Liquidation Event (including any Change of Control Transaction);

(ii) Amend, alter, waive or repeal any provision of its Fifth Amended and Restated Certificate of Incorporation or By-laws, whether by merger, consolidation or otherwise;

(iii) Increase or decrease the number of authorized shares of Common Stock or Preferred Stock or the number of shares reserved for issuance under the Corporation’s equity incentive plan;

(iv) Create or authorize the creation of or issue any additional class or series of shares of stock or any security convertible into shares of any class or series of stock unless such class or series of stock ranks junior to the Series AA Convertible Preferred Stock, including without limitation as to dividends, voting, redemption and the distribution of assets upon a Liquidation Event (including a Change of Control Transaction);

(v) Purchase or redeem, or set aside any sums for the purchase or redemption of, or pay any dividend or make any distribution on, any shares of Common Stock or, except as specifically provided herein, Preferred Stock, other than the repurchase of shares of Common Stock repurchased from employees or consultants at the original purchase price thereof pursuant to existing contractual arrangements;

(vi) Acquire any capital stock or other equity interests of any other corporation or entity, unless such corporation or entity is wholly-owned by the Corporation, or acquire all or substantially all of the assets of any other corporation or entity;

(vii) Sell or otherwise dispose of any shares of capital stock of any Subsidiary, except to the Corporation or any other Subsidiary, or cause or permit any Subsidiary to issue any securities of such Subsidiary to any person or entity other than the Corporation or any other Subsidiary;

(viii) Issue any options or other securities to directors, officers or employees or consultants or service providers to the Corporation, or under any "employee benefit plan" within the meaning of the Securities Act of 1933, as amended, with respect to more than, or in excess of, the Reserved Employee Shares (as defined below);

(ix) Make any material change to the Corporation's lines of business or business model;

(x) Pay or declare any dividend on any Common Stock;

(xi) Make any loan or advance to any person or entity; provided the foregoing shall not restrict the Corporation from reimbursing employees, officers or directors, in accordance with the Corporation's standard policies and procedures, for out-of-pocket business expenses incurred on behalf of the Corporation in the ordinary course of business;

(xii) Grant a guarantee, directly or indirectly, of any indebtedness or obligation, except for trade accounts of a Subsidiary arising in the ordinary course of business;

(xiii) Incur debt for money borrowed in excess of \$250,000;

(xiv) Grant an exclusive license to any of the Corporation's intellectual property;

(xv) Increase or decrease the authorized size of the Corporation's Board of Directors; or

(xvi) Enter into any agreement to do any of the foregoing.

5. Conversion of the Preferred Stock. The holders of shares of Preferred Stock shall have the following conversion rights:

5A. Right to Convert.

5A(1) Subject to the terms and conditions of this Section 5, the holder of any share or shares of Series AA Convertible Preferred Stock shall have the right, at its option at any time, to convert any such shares of Series AA Convertible Preferred Stock (except that upon any liquidation of the Corporation the right of conversion shall terminate at the close of business on the business day fixed for payment of the amounts distributable on the Series AA Convertible Preferred Stock), each such share of Series AA Convertible Preferred Stock being converted into such number of fully paid and nonassessable shares of Common Stock as is obtained by dividing (1) the Series AA Original Issue Price plus any accrued or declared but unpaid dividends by (2) the Series AA Conversion Price (as defined below) in effect at the date any share or shares of Series AA Convertible Preferred Stock are surrendered for conversion. The "Series AA Conversion Price" shall as of the adoption of this Fifth Amended and Restated Certificate of Incorporation be \$1.529, and shall be adjusted from time to time pursuant to the further provisions of this Section 5.

5A(2) Subject to the terms and conditions of this Section 5, the holder of any share or shares of Series X Convertible Preferred Stock shall have the right, at its option at any time, to convert any such shares of Series X Convertible Preferred Stock (except that upon any liquidation of the Corporation the right of conversion shall terminate at the close of business on the business day fixed for payment of the amounts distributable on the Series X Convertible Preferred Stock), each such share of Series X Convertible Preferred Stock being converted into fully paid and nonassessable shares of Common Stock based on the Series X Conversion Ratio. The "Series X Conversion Ratio" shall initially be 1:1 (i.e., one share of Common Stock for one share of Series X Convertible Preferred Stock) and shall be adjusted from time to time pursuant to the further provisions of this Section 5.

Such rights of conversion shall be exercised by the holder thereof by giving notice that the holder elects to convert a stated number of shares of Preferred Stock into Common Stock and by surrender of a certificate or certificates for the shares so to be converted to the Corporation at its principal office (or such other office or agency of the Corporation as the Corporation may designate by notice in writing to the holders of the Preferred Stock) at any time during its usual business hours on the date set forth in such notice, together with a statement of the name or names (with address) in which the certificate or certificates for shares of Common Stock shall be issued. Notwithstanding any other provisions hereof, if a conversion of Preferred Stock is to be made in connection with any transaction affecting the Corporation, the conversion of any shares of Preferred Stock, may, at the election of the holder thereof, be conditioned upon the consummation of such transaction, in which case such conversion shall not be deemed to be effective until immediately prior to the consummation of such transaction, subject in all events to the terms hereof applicable to such transaction.

5B. Issuance of Certificates; Time Conversion Effected. Promptly after the receipt of the notice referred to in Subsection 5A and surrender of the certificate or certificates for the share or shares of Preferred Stock to be converted, the Corporation shall issue and deliver, or cause to be issued and delivered, to the holder, registered in such name or names as such holder may direct, a certificate or certificates for the number of whole shares of Common Stock issuable upon the conversion of such share or shares of Preferred Stock. To the extent permitted by law, such conversion shall be deemed to have been effected and the Series AA Conversion Price and Series X Conversion Ratio, as applicable, shall be determined as of the close of business on the date on which such notice shall have been received by the Corporation and the certificate or certificates for such share or shares shall have been surrendered as aforesaid, and at such time the rights of the holder of such share or shares of Preferred Stock shall cease, and the person or persons in whose name or names any certificate or certificates for shares of Common Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the shares represented thereby.

5C. Fractional Shares; Partial Conversion. No fractional shares shall be issued upon conversion of Preferred Stock into Common Stock and no payment or adjustment shall be made upon any such conversion with respect to any cash dividends previously payable on the Common Stock issued upon such conversion. In case the number of shares of Preferred Stock represented by the certificate or certificates surrendered pursuant to Subsection 5A exceeds the number of shares converted, the Corporation shall, upon such conversion, execute and deliver to the holder, at the expense of the Corporation, a new certificate or certificates for the number of shares of Preferred Stock represented by the certificate or certificates surrendered which are not to be converted. If any fractional share of Common Stock would, except for the provisions of the first sentence of this Subsection 5C, be delivered upon such conversion, the Corporation, in lieu of delivering such fractional share, shall pay to the holder surrendering the Preferred Stock for conversion an amount in cash equal to the current market price of such fractional share as determined in good faith by the Board of Directors of the Corporation, and based upon the aggregate number of shares of Preferred Stock surrendered by any one holder.

5D. Adjustment of Series AA Conversion Price Upon Issuance of Additional Shares of Common Stock. Except as provided in Subsections 5E and 5F and subject to Subsection 5N, if after the Series AA Original Issue Date (as defined below) the Corporation shall issue or sell any Additional Shares of Common Stock (as defined below) for no consideration or a consideration per share less than the Series AA Conversion Price in effect immediately prior to the time of such issue or sale (such number being appropriately adjusted to reflect the occurrence of any event described in Subsection 5F), then the Series AA Conversion Price shall be reduced concurrently with such issuance to a price (calculated to the nearest tenth of a cent) determined in accordance with the following formula:

$$CP2 = CP1 * (A + B) \div (A + C)$$

For purposes of the foregoing formula, the following definitions shall apply:

- (i) "CP2" shall mean the Series AA Conversion Price in effect immediately after such issue of Additional Shares of Common Stock;
- (ii) "CP1" shall mean the Series AA Conversion Price in effect immediately prior to such issue of Additional Shares of Common Stock;
- (iii) "A" shall mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options (as defined below) outstanding immediately prior to such issue or upon conversion or exchange of Convertible Securities (including the Series AA Convertible Preferred Stock and the Series X Convertible Preferred Stock) outstanding immediately prior to such issue);
- (iv) "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to CP1 (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP1); and
- (v) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

For purposes of this Subsection 5D, (i) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to Subsections 5D(1) to 5D(7) below, deemed to be issued) by the Corporation after the Series AA Original Issue Date, other than securities described in Subsection 5E; and (ii) "Series AA Original Issue Date" shall mean the date on which the shares of Series AA Convertible Preferred Stock were first issued.

For purposes of this Subsection 5D, the following Subsections 5D(1) to 5D(7) shall also be applicable:

5D(1) Issuance of Rights or Options. In case at any time the Corporation shall in any manner grant (whether directly or by assumption in a merger or otherwise) on or after the Series AA Original Issue Date any warrants or other rights to subscribe for or to purchase, or any options for the purchase of, Common Stock or any stock or security convertible into or exchangeable for Common Stock (such warrants, rights or options being called "Options" and such convertible or exchangeable stock or securities being called "Convertible Securities") whether or not such Options or the right to convert or exchange any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon the exercise of such Options or upon the conversion or exchange of such Convertible Securities (determined by dividing (i) the total amount, if any, received or receivable by the Corporation as consideration for the granting of such Options, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution) payable to the Corporation upon the exercise of all such Options, plus, in the case of such Options which relate to Convertible

Securities, the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution), if any, payable upon the issue or sale of such Convertible Securities and upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon the conversion or exchange of all such Convertible Securities issuable upon the exercise of such Options) shall be less than the Series AA Conversion Price in effect immediately prior to the time of the granting of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of such Convertible Securities issuable upon the exercise of such Options shall be deemed to have been issued for such price per share as of the date of granting of such Options or the issuance of such Convertible Securities and thereafter shall be deemed to be outstanding. Except as otherwise provided in Subsection 5D(3), no adjustment of the Series AA Conversion Price shall be made upon the actual issue of such Common Stock or of such Convertible Securities upon exercise of such Options or upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities.

5D(2) Issuance of Convertible Securities. In case the Corporation shall in any manner issue (whether directly or by assumption in a merger or otherwise) or sell on or after the Series AA Original Issue Date any Convertible Securities, whether or not the rights to exchange or convert any such Convertible Securities are immediately exercisable, and the price per share for which Common Stock is issuable upon such conversion or exchange (determined by dividing (i) the total amount received or receivable by the Corporation as consideration for the issue or sale of such Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein designed to protect against dilution), if any, payable to the Corporation upon the conversion or exchange thereof, by (ii) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities) shall be less than the Series AA Conversion Price in effect immediately prior to the time of such issue or sale, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of all such Convertible Securities shall be deemed to have been issued for such price per share as of the date of the issue or sale of such Convertible Securities and thereafter shall be deemed to be outstanding, provided that (a) except as otherwise provided in Subsection 5D(3), no adjustment of the Series AA Conversion Price shall be made upon the actual issue of such Common Stock upon conversion or exchange of such Convertible Securities and (b) if any such issue or sale of such Convertible Securities is made upon exercise of any Options to purchase any such Convertible Securities for which adjustments of the Series AA Conversion Price have been or are to be made pursuant to other provisions of this Subsection 5D, no further adjustment of the Series AA Conversion Price shall be made by reason of such issue or sale.

5D(3) Change in Option Price or Conversion Rate. Upon the happening of any of the following events, namely, if the purchase price provided for in any Option referred to in Subsection 5D(1), the additional consideration, if any, payable upon the conversion or exchange of any Convertible Securities referred to in Subsections 5D(1) or 5D(2), or the rate at which Convertible Securities referred to in Subsections 5D(1) or 5D(2) are convertible into or

exchangeable for Common Stock shall change at any time (including, but not limited to, changes under or by reason of provisions designed to protect against dilution), the Series AA Conversion Price in effect at the time of such event shall forthwith be readjusted to the Series AA Conversion Price which would have been in effect at such time had such Options or Convertible Securities still outstanding provided for such changed purchase price, additional consideration or conversion rate, as the case may be, at the time initially granted, issued or sold; and on the expiration of any such Option or the termination of any such right to convert or exchange such Convertible Securities, the Series AA Conversion Price then in effect hereunder shall forthwith be increased to the Series AA Conversion Price which would have been in effect at the time of such expiration or termination had such Option or Convertible Securities, to the extent outstanding immediately prior to such expiration or termination, never been issued.

5D(4) Stock Dividends. If the Corporation at any time, or from time to time, after the Series AA Original Issue Date, shall make or issue a dividend or other distribution payable in additional shares of Common Stock, then and in each such event the Series AA Conversion Price then in effect shall be decreased concurrently with the issuance of such dividend or distribution, by multiplying the Series AA Conversion Price then in effect by a fraction: (x) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance, and (y) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

5D(5) Consideration for Stock. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for cash, the consideration received therefor shall be deemed to be the amount received by the Corporation therefor, without deduction therefrom of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any shares of Common Stock, Options or Convertible Securities shall be issued or sold for a consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be deemed to be the fair value of such consideration as determined in good faith by the Board of Directors of the Corporation, without deduction of any expenses incurred or any underwriting commissions or concessions paid or allowed by the Corporation in connection therewith. In case any Options shall be issued in connection with the issue and sale of other securities of the Corporation, together comprising one integral transaction in which no specific consideration is allocated to such Options by the parties thereto, such Options shall be deemed to have been issued for such consideration as determined in good faith by the Board of Directors of the Corporation.

5D(6) Record Date. In case the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them (i) to receive a dividend or other distribution payable in Common Stock, Options or Convertible Securities or (ii) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

5D(7) Treasury Shares. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation, and the disposition of any such shares shall be considered an issue or sale of Common Stock for the purpose of this Subsection 5D.

5E. Certain Issues of Common Stock Excepted. Anything herein to the contrary notwithstanding, the Corporation shall not be required to make any adjustment of the Series AA Conversion Price in the case of the issuance of:

(i) Common Stock in a transaction described in Subsection 5D(4) or 5F (any such adjustment being specified in such Subsection);

(ii) Series AA Convertible Preferred Stock issued as a dividend to holders of Series AA Convertible Preferred Stock or upon any subdivision or combination of shares of Series AA Convertible Preferred Stock,

(iii) Common Stock issued as a dividend to holders of Series AA Convertible Preferred Stock or upon any subdivision or combination of shares of Series AA Preferred Stock,

(iv) any shares of Common Stock, Options or Convertible Securities issued from time to time to directors, officers, or employees or service providers of the Corporation under the 2004 Stock Option and Incentive Plan, as amended, of the Corporation, up to the Reserved Employee Shares,

(v) any securities issued pursuant to the acquisition of another entity by the Corporation by merger (whereby the Corporation owns no less than 51% of the voting power of such corporation) or purchase of substantially all of such entity's stock or assets, if such acquisition is approved by a majority of the Board of Directors,

(vi) any securities issued in connection with a commercial loan or lease with a financial institution, strategic partnership, joint venture, license agreement, or other similar agreement that is primarily of a non-equity financing nature, provided that such transaction is approved by a majority of the Board of Directors,

(viii) Common Stock issued upon the conversion, exercise or exchange of Options or Convertible Securities outstanding on the Series AA Original Issue Date,

(ix) Common Stock issued pursuant to a bona fide, firm commitment public offering,

(x) any securities issued pursuant to that certain Series AA Convertible Preferred Stock and Warrant Purchase Agreement dated on or about June 7, 2013, by and among the Corporation and the purchasers listed therein, as the same may be amended from time to time (the "Purchase Agreement"), and any shares of Series X Convertible Preferred Stock issued by the Corporation, or

(xi) Common Stock upon conversion of the Prior Preferred Stock or the Series AA Convertible Preferred Stock pursuant to Subsection 5(O).

5F. Subdivision or Combination of Common Stock. If the Corporation shall at any time subdivide (by any stock split, stock dividend or otherwise) its outstanding shares of Common Stock into a greater number of shares: (1) the Series AA Conversion Price in effect immediately prior to such subdivision shall be proportionately reduced, and (2) the Series X Conversion Ratio in effect immediately prior to such subdivision shall be proportionately increased and, conversely, if the outstanding shares of Common Stock shall be combined into a smaller number of shares, (i) the Series AA Conversion Price in effect immediately prior to such combination shall be proportionately increased, and (ii) the Series X Conversion Ratio in effect immediately prior to such combination shall be proportionately decreased.

5G. Reorganization or Reclassification. If the Common Stock issuable upon the conversion of the Series AA Convertible Preferred Stock or the Series X Convertible Preferred Stock shall be changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification, exchange, substitution or other similar event (other than pursuant to Subsections 5F or 5D(4) or a Change of Control Transaction which is deemed to be a Liquidation Event), each holder of Series AA Convertible Preferred Stock or Series X Convertible Preferred Stock, as applicable, shall thereafter receive upon conversion of such Preferred Stock, in lieu of the number of shares of Common Stock which such holder would otherwise have been entitled to receive, the number of shares of such other class or classes of stock which a holder of the number of shares of Common Stock deliverable upon conversion of the shares of Preferred Stock held by such holder of Preferred Stock would have been entitled to receive upon such recapitalization, reclassification, exchange, substitution or other similar event.

5H. Notice of Adjustment. Upon any adjustment of the Series AA Conversion Price or the Series X Conversion Ratio, then and in each such case the Corporation shall give written notice thereof, by first class mail, postage prepaid, or by facsimile transmission to non-U.S. residents, addressed to each holder of shares of Series AA Convertible Preferred Stock or Series X Convertible Preferred Stock, as applicable, at the address of such holder as shown on the books of the Corporation, which notice shall state the adjusted Series AA Conversion Price or Series X Conversion Ratio, as applicable, resulting from such adjustment, setting forth in reasonable detail the method upon which such calculation is based.

5I. Stock to be Reserved. The Corporation will at all times reserve and keep available out of its authorized Common Stock, solely for the purpose of issuance upon the conversion of Preferred Stock as herein provided, such number of shares of Common Stock as shall then be issuable upon the conversion of all outstanding shares of Preferred Stock. The Corporation covenants that all shares of Common Stock which shall be so issued shall be duly and validly issued and fully paid and nonassessable and free from all taxes, liens and charges with respect to the issue thereof, and, without limiting the generality of the foregoing, the

Corporation covenants that it will from time to time take all such action as may be required to assure that the par value per share of the Common Stock is at all times equal to or less than the Series AA Conversion Price in effect at the time. The Corporation will take all such action as may be necessary to assure that all such shares of Common Stock may be so issued without violation of any applicable law or regulation, or of any requirement of any national securities exchange upon which the Common Stock may be listed.

5J. No Reissuance of Prior Preferred Stock. Shares of Preferred Stock which are converted into shares of Common Stock as provided herein shall not be reissued.

5K. Issue Tax. The issuance of certificates for shares of Common Stock upon conversion of Preferred Stock shall be made without charge to the holders thereof for any issuance tax in respect thereof, provided that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Preferred Stock which is being converted.

5L. Closing of Books. The Corporation will at no time close its transfer books against the transfer of any shares of Preferred Stock or of any shares of Common Stock issued or issuable upon the conversion of any shares of Preferred Stock, in any manner which interferes with the timely conversion of such Preferred Stock except as may otherwise be required to comply with applicable securities laws.

5M. Definition of Common Stock. As used in this Section 5, the term "Common Stock" shall mean and include the Corporation's authorized Common Stock, par value \$0.01 per share, as constituted on the date of filing of this Fifth Amended and Restated Certificate of Incorporation, and shall also include any capital stock of any class of the Corporation thereafter authorized which shall neither be limited to a fixed sum or percentage of par value in respect of the rights of the holders thereof to participate in dividends nor entitled to a preference in the distribution of assets upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation; provided that the shares of Common Stock receivable upon conversion of shares of Preferred Stock shall include only shares designated as Common Stock of the Corporation on the date of filing of this instrument, or in case of any reorganization or reclassification of the outstanding shares thereof, the stock, securities or assets provided for in Subsection 5G.

5N. Mandatory Conversion. All outstanding shares of Series AA Convertible Preferred Stock (including all accrued or declared but unpaid dividends thereon) and Series X Convertible Preferred Stock shall automatically convert to shares of Common Stock (i) upon the vote or written consent of the holders of at least sixty six and two-thirds percent (66 and 2/3%) of the issued and outstanding Series AA Convertible Preferred Stock, or (ii) upon the closing of a firm commitment underwritten public offering of shares of Common Stock pursuant to an effective registration statement under the Securities Act of 1933, as amended, that is underwritten by an investment bank approved by the Board of Directors and by a vote or written consent of the holders of at least sixty six and two-thirds percent (66 and 2/3%) of the issued and outstanding Series AA Convertible Preferred Stock at a price of not less than \$7.65 per share

(subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock), with aggregate proceeds from such offering to the Corporation in excess of \$40,000,000, before deduction of the underwriting discounts and commissions (a “Qualifying Public Offering”).

50. Special Mandatory Conversion.

50(1) Qualified Financing Trigger. In the event that any Investor (as defined below) does not participate in a Qualified Financing (as defined below) by purchasing in the aggregate, in such Qualified Financing and within the time period specified by the Corporation (provided that the Corporation has sent to each Investor written notice at least twenty (20) days prior to the Final Closing (as defined below) of the opportunity to purchase its Pro Rata Amount (as defined below) of the Qualified Financing), such Investor’s Pro Rata Amount, then the Applicable Portion (as defined below) of the shares of Series AA Preferred Stock held by such Investor immediately prior to the initial closing of the Qualified Financing shall automatically, and without any further action on the part of such Investor, be converted into Common Stock at a conversion ratio of one hundred-to-one (100:1) (such that every one hundred shares of Series AA Preferred Stock are converted into one share of Common Stock), effective upon, subject to, and concurrently with, the consummation of the Final Closing. For purposes of determining the number of shares of Series AA Preferred Stock owned by an Investor, and for determining the number of Offered Securities (as defined below) an Investor has purchased in a Qualified Financing, all shares of Series AA Preferred Stock held by Affiliates (as defined below) of such Investor shall be aggregated with such Investor’s shares and all Offered Securities purchased by Affiliates of such Investor shall be aggregated with the Offered Securities purchased by such Investor (provided that no shares or securities shall be attributed to more than one entity or person within any such group of affiliated entities or persons).

50(2) Procedural Requirements. Upon a Special Mandatory Conversion, each Investor converted pursuant to subparagraph 50(1) shall be sent written notice of such Special Mandatory Conversion and the place designated for mandatory conversion of all such shares of Series AA Preferred Stock pursuant to this paragraph 50. Upon receipt of such notice, each Investor shall surrender his, her or its certificate or certificates for all such shares (or, if such Investor alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Series AA Preferred Stock converted pursuant to subparagraph 50(1), including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the time of the Special Mandatory Conversion (notwithstanding the failure of the holder or holders thereof to surrender the certificates for such shares at or prior to such time), except only the rights of the holders thereof, upon surrender of their certificate or certificates therefor (or lost

certificate affidavit and agreement), to receive the items provided for in the next sentence of this subparagraph 5O(2). As soon as practicable after the Special Mandatory Conversion and the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Series AA Preferred Stock so converted, the Corporation shall issue and deliver to such Investor, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash as provided in subparagraph 5C in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment of any declared but unpaid dividends on the shares of Series AA Preferred Stock converted and a new certificate or certificates for the number of shares, if any, of Series AA Preferred Stock represented by such surrendered certificate or certificates and not converted pursuant to Subsection 5O(1). Such converted Series AA Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

5O(3) For purposes of this Subsection 5O, the following definitions shall apply:

“Affiliate” shall mean, with respect to any holder of shares of Designated Preferred Stock, any person, entity or firm which, directly or indirectly, controls, is controlled by or is under common control with such holder, including, without limitation, any entity of which the holder is a partner or member, any partner, officer, director, member or employee of such holder.

“Applicable Portion” shall mean, with respect to any Investor, the number of shares of Series AA Preferred Stock held by such Investor calculated by multiplying the aggregate number of shares of Series AA Preferred Stock held by such Investor immediately prior to a Qualified Financing by a fraction, the numerator of which is equal to the amount, if positive, by which such Investor’s Pro Rata Amount exceeds the number of Offered Securities actually purchased by such Investor in such Qualified Financing, (including for the avoidance of doubt Offered Securities purchased by such Investor by cancellation or conversion of indebtedness), and the denominator of which is equal to such Investor’s Pro Rata Amount.

“Final Closing” means the last closing of a Qualified Financing specified in the transaction documents for the Qualified Financing.

“Investor” shall mean any holder of shares of Series AA Preferred Stock.

“Offered Securities” shall mean the equity securities of the Corporation set aside by the Board of Directors for purchase by Investors in connection with a Qualified Financing and offered to such Investors.

“Pro Rata Amount” shall mean, with respect to any Investor a number of Offered Securities calculated by multiplying the aggregate number of Offered Securities by a fraction, the numerator of which is equal to the number of shares of Series AA Preferred Stock owned by such Investor, and the denominator of which is equal to the aggregate number of shares of Series AA Preferred Stock held by all Investors, in each case, as of immediately prior to the initial closing of the Qualified Financing.

“Qualified Financing” shall mean the sale of shares of Series AA Preferred Stock pursuant to the Purchase Agreement, unless the holders of at least sixty six and two-thirds percent (66 and 2/3%) of the then outstanding shares of Series AA Convertible Preferred Stock elect, by written notice sent to the Corporation at least five (5) days prior to the consummation of the Qualified Financing, that such transaction not be treated as a Qualified Financing for purposes of this paragraph 5O.

5P. No Impairment. The Corporation will not, by amendment of this Fifth Amended and Restated Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 5 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of Series AA Convertible Preferred Stock and Series X Convertible Preferred Stock against impairment.

6. Redemption.

6A. Redemption. Shares of Series AA Convertible Preferred Stock shall be redeemed by the Corporation out of funds lawfully available therefor at a price equal to the Series AA Original Issue Price per share, plus all accrued or declared but unpaid dividends thereon (the “Redemption Price”), in three annual installments commencing not more than 60 days after receipt by the Corporation at any time on or after the fifth anniversary of the Series AA Original Issue Date, from the holders of at least sixty six and two-thirds percent (66 and 2/3%) of the then outstanding shares of Series AA Convertible Preferred Stock, of written notice requesting redemption of all shares of Series AA Convertible Preferred Stock. The date of each such installment shall be referred to as a “Redemption Date.” On each Redemption Date, the Corporation shall redeem, on a pro rata basis in accordance with the number of shares of Series AA Convertible Preferred Stock owned by each holder, that number of outstanding shares of Series AA Convertible Preferred Stock determined by dividing (i) the total number of shares of Series AA Convertible Preferred Stock outstanding immediately prior to such Redemption Date by (ii) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies). If the Corporation does not have sufficient funds legally available to redeem on any Redemption Date all shares of Series AA Convertible Preferred Stock to be redeemed on such Redemption Date, the Corporation shall redeem a pro rata portion of each holder’s redeemable shares of such capital stock out of funds legally available therefor, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor.

6B. Redemption Notice. The Corporation shall send written notice of the mandatory redemption (the “Redemption Notice”) to each holder of record of Series AA Convertible Preferred Stock not less than 40 days prior to each Redemption Date. Each Redemption Notice shall state:

(1) the number of shares of Series AA Convertible Preferred Stock held by the holder that the Corporation shall redeem on the Redemption Date specified in the Redemption Notice;

(2) the Redemption Date and the Redemption Price; and

(3) that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Series AA Convertible Preferred Stock to be redeemed.

6C. Surrender of Certificates; Payment. On or before the applicable Redemption Date, each holder of shares of Series AA Convertible Preferred Stock to be redeemed on such Redemption Date shall surrender the certificate or certificates representing such shares (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof. In the event less than all of the shares of Series AA Convertible Preferred Stock represented by a certificate are redeemed, a new certificate representing the unredeemed shares of Series AA Convertible Preferred Stock shall promptly be issued to such holder.

6D. Rights Subsequent to Redemption. If the Redemption Notice shall have been duly given, and if on the applicable Redemption Date the Redemption Price payable upon redemption of the shares of Series AA Convertible Preferred Stock to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor in a timely manner, then notwithstanding that the certificates evidencing any of the shares of Series AA Convertible Preferred Stock so called for redemption shall not have been surrendered, dividends with respect to such shares of Series AA Convertible Preferred Stock shall cease to accrue after such Redemption Date and all rights with respect to such shares shall forthwith after the Redemption Date terminate, except only the right of the holders to receive the Redemption Price without interest upon surrender of their certificate or certificates therefor.

6E. Redeemed Shares. Any shares of Series AA Convertible Preferred Stock that are redeemed by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Series AA Convertible Preferred Stock following redemption.

6F. Priority. In no event shall any other series of capital stock of the Corporation be redeemed in advance of the Series AA Convertible Preferred Stock, except for repurchases by the Corporation of shares of Common Stock or Series X Convertible Preferred Stock from officers, employees, directors or consultants of the Corporation which are subject to restrictive stock purchase agreements under which the Corporation has the option to repurchase such shares upon the occurrence of certain events, including termination of employment.

7. Definitions. As used herein, the following terms shall have the following meanings:

(A) The term “Reserved Employee Shares” shall mean shares of Common Stock reserved by the Corporation from time to time for (i) the sale of shares of Common Stock to employees, consultants, directors and service providers of the Corporation or (ii) the issuance and/or exercise of options to purchase Common Stock granted to employees, consultants, directors and service providers of the Corporation, provided that (i) and (ii) above shall not in the aggregate exceed 8,298,879 shares of Common Stock (appropriately adjusted to reflect an event described in Subsection 5F hereof). The foregoing number of Reserved Employee Shares may be increased by vote or written consent of at least a majority of the members of the Board of Directors of the Corporation.

(B) The term “Subsidiary” shall mean any corporation, partnership, trust or other entity of which the Corporation and/or any of its other subsidiaries directly or indirectly owns at the time a majority of the outstanding shares of every class of equity security of such corporation, partnership, trust or other entity.

8. Notices. In case at any time:

(A) the Corporation shall declare any dividend upon its Common Stock payable in cash or stock or make any other distribution to the holders of its Common Stock;

(B) the Corporation shall offer for subscription pro rata to the holders of its Common Stock any additional shares of stock of any class or other rights;

(C) there shall be any capital reorganization or reclassification of the capital stock of the Corporation, or a consolidation or merger of the Corporation with or into, or a sale of all or substantially all its assets to, another entity or entities; or

(D) there shall be a Liquidation Event, including a Change of Control Transaction;

then, in any one or more of said cases, the Corporation shall give, by first class mail, postage prepaid, or by facsimile transmission to non-U.S. residents, addressed to each holder of any shares of Preferred Stock at the address of such holder as shown on the books of the Corporation, (a) at least 10 days’ prior written notice of the date on which the books of the Corporation shall close or a record shall be taken for such dividend, distribution or subscription rights or for determining rights to vote in respect of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up and (b) in the case of any such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, at least 10 days’ prior written notice of the date when the same shall take place. Such notice in accordance with the foregoing clause (a) shall also specify, in the case of any such dividend,

distribution or subscription rights, the date on which the holders of Common Stock shall be entitled thereto and such notice in accordance with the foregoing clause (b) shall also specify the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation or winding up, as the case may be.

Part B. Common Stock

1. All preferences, voting powers, relative, participating, optional or other special rights and privileges, and qualifications, limitations, or restrictions of the Common Stock are expressly made subject to those that may be fixed with respect to any shares of Preferred Stock.
2. Subject to the provisions of Part A, Subsection 4A(iii), the number of authorized shares of Common 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 stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of Delaware.
3. The holder of each outstanding share of Common Stock shall have the right to one vote, and shall be entitled to notice of any stockholders meeting in accordance with the bylaws of the Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law; provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to the Fifth Amended and Restated Certificate of Incorporation 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 with the holders of one or more other such series, to vote thereon pursuant to the Fifth Amended and Restated Certificate of Incorporation or pursuant to the Delaware General Corporation Law.
4. The holders of Common Stock shall be entitled to receive, when, as and if declared by the Board of Directors, but only out of any assets legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

ARTICLE V

By-laws

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to adopt, amend or repeal the By-laws of the Corporation, subject to the provisions of Subsection 4A(ii) of Part A of Article IV hereof.

ARTICLE VI

Perpetual Existence

The Corporation is to have perpetual existence.

ARTICLE VII
Amendments and Repeal

Except as otherwise specifically provided in this Fifth Amended and Restated Certificate of Incorporation, the Corporation reserves the right at any time, and from time to time, to amend, alter, change or repeal any provision contained in this Fifth Amended and Restated Certificate of Incorporation, and to add or insert other provisions authorized at such time by the laws of the State of Delaware, in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Fifth Amended and Restated Certificate of Incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this Article VII.

ARTICLE VIII
Compromises and Arrangements

Whenever a compromise or arrangement is proposed between the Corporation and its creditors or any class of them and/or between the Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of the Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for the Corporation under Section 291 of the Delaware General Corporation Law or on the application of trustees in dissolution or of any receiver or receivers appointed for the Corporation under Section 279 of the Delaware General Corporation Law, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, to be summoned in such manner as such court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of the Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of the Corporation as a consequence of such compromise or arrangement, then such compromise or arrangement and such reorganization shall, if sanctioned by the court to which such application has been made, be binding on all the creditors or class of creditors, and/or on all of the stockholders or class of stockholders of the Corporation, as the case may be, and also on the Corporation.

ARTICLE IX
Limitation of Liability

The Corporation shall indemnify each of the Corporation's directors and officers in each and every situation where, under Section 145 of the General Corporation Law of the State of Delaware, as amended from time to time ("Section 145"), the Corporation is permitted or empowered to make such indemnification. The Corporation may, in the sole discretion of the Board of Directors of the Corporation, indemnify any other person who may be indemnified pursuant to Section 145 to the extent the Board of Directors deems advisable, as permitted by Section 145. The Corporation shall promptly make or cause to be made any determination required to be made pursuant to Section 145.

No director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of his or her fiduciary duty as director; provided, however, that nothing contained in this Article IX shall eliminate or limit the liability of a director:

- (a) for any breach of the director's duty of loyalty to the Corporation or its stockholders;
- (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law;
- (c) under Section 174 of the General Corporation Law of the State of Delaware; or
- (d) for any transaction from which the director derived improper personal benefit.

No amendment to or repeal of this Article IX shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

ARTICLE X
Business Opportunities

The Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "Excluded Opportunity" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Series A Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "Covered Persons"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person's capacity as a director of the Corporation.

**CERTIFICATE OF AMENDMENT
TO THE
FIFTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
INOTEK PHARMACEUTICALS CORPORATION**

Pursuant to Section 242
of the General Corporation Law of the State of Delaware

Inotek Pharmaceuticals Corporation (hereinafter called the "Corporation"), organized and existing under and by virtue of the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY pursuant to Section 242 of the General Corporation Law:

FIRST: The name of the Corporation is Inotek Pharmaceuticals Corporation

SECOND: The date on which the Certificate of Incorporation of the Corporation was originally filed with the Secretary of State of the State of Delaware is July 7, 1999, under the name of Inotek Pharmaceuticals Corporation.

THIRD: The Fifth Amended and Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on June 11, 2013.

FOURTH: That the Board of Directors of the Corporation duly adopted a resolution setting forth a proposed amendment to the Certificate of Incorporation, declaring said amendment to be advisable and in the best interests of the Corporation, which resolution setting forth the proposed amendment is as follows:

RESOLVED: That the Fifth Amended and Restated Certificate of Incorporation of the Corporation be amended as follows:

1. That the first full paragraph of Article IV be amended and restated in its entirety as follows:

"The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 43,509,727 shares of Common Stock, \$0.01 par value per share ("Common Stock"), and (ii) 28,659,924 shares of Preferred Stock, \$0.001 par value per share ("Preferred Stock")."

2. That Section 5E(iv) of Part A of Article IV be amended and restated in its entirety as follows:

"(iv) any shares of Common Stock, Options or Convertible Securities issued from time to time to directors, officers, or employees or service providers of the Corporation under the 2004 Stock Option and Incentive Plan, as amended, of the Corporation or the 2014 Stock Option and Incentive Plan of the Corporation, up to the Reserved Employee Shares in the aggregate,".

FIFTH: That thereafter said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware by written consent of the stockholders holding the requisite number of shares required by statute given in accordance with and pursuant to Section 228 of the General Corporation Law of the State of Delaware.

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IN WITNESS WHEREOF, Inotek Pharmaceuticals Corporation has caused this Certificate of Amendment to be executed on this 1st day of October, 2014.

INOTEK PHARMACEUTICALS CORPORATION

By: /s/ David Southwell

Name: David Southwell

Title: President and Chief Executive Officer

**CERTIFICATE OF AMENDMENT
TO THE
FIFTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
INOTEK PHARMACEUTICALS CORPORATION**

Pursuant to Section 242
of the General Corporation Law of the State of Delaware

Inotek Pharmaceuticals Corporation (hereinafter called the "Corporation"), organized and existing under and by virtue of the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY pursuant to Section 242 of the General Corporation Law:

FIRST: The name of the Corporation is Inotek Pharmaceuticals Corporation

SECOND: The date on which the Certificate of Incorporation of the Corporation was originally filed with the Secretary of State of the State of Delaware is July 7, 1999, under the name of Inotek Pharmaceuticals Corporation.

THIRD: The Fifth Amended and Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on June 11, 2013, as amended from time to time.

FOURTH: That the Board of Directors of the Corporation duly adopted a resolution setting forth a proposed amendment to the Certificate of Incorporation, declaring said amendment to be advisable and in the best interests of the Corporation, which resolution setting forth the proposed amendment is as follows:

RESOLVED: That the Fifth Amended and Restated Certificate of Incorporation of the Corporation be amended by inserting the following into Article FOURTH, immediately before the first sentence therein:

"Effective immediately upon the filing of this Certificate of Amendment to the Fifth Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware (the "Effective Time"), every 3.39 shares of Common Stock then issued and outstanding or held in the treasury of the Corporation immediately prior to the Effective Time shall automatically be combined into one (1) share of Common Stock, without any further action by the holders of such shares (the "Reverse Stock Split"). The Reverse Stock Split will be effected on a certificate-by-certificate basis, and any fractional shares resulting from such combination shall be rounded down to the nearest whole share on a certificate-by-certificate basis."

FIFTH: That thereafter said amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware by written consent of the stockholders holding the requisite number of shares required by statute given in accordance with and pursuant to Section 228 of the General Corporation Law of the State of Delaware.

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IN WITNESS WHEREOF, Inotek Pharmaceuticals Corporation has caused this Certificate of Amendment to be executed on this 26th day of November, 2014.

INOTEK PHARMACEUTICALS CORPORATION

By: /s/ David P. Southwell

Name: David P. Southwell

Title: President and Chief Executive Officer

[Signature Page to Charter Amendment]

SEVENTH AMENDED AND RESTATED**CERTIFICATE OF INCORPORATION****OF****INOTEK PHARMACEUTICALS CORPORATION**

Inotek Pharmaceuticals Corporation, a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

1. The name of the Corporation is Inotek Pharmaceuticals Corporation. The date of the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was July 7, 1999 (the "Original Certificate"). The name under which the Corporation filed the Original Certificate was Inotek Pharmaceuticals Corporation.

2. This Seventh Amended and Restated Certificate of Incorporation (the "Certificate") amends, restates and integrates the provisions of the Sixth Amended and Restated Certificate of Incorporation that was filed with the Secretary of State of the State of Delaware on [], 2015, as amended from time to time, (the "Amended and Restated Certificate") and was duly adopted in accordance with the provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware (the "DGCL").

3. The text of the Amended and Restated Certificate is hereby amended and restated in its entirety to provide as herein set forth in full.

ARTICLE I**NAME**

The name of the Corporation is Inotek Pharmaceuticals Corporation.

ARTICLE II**REGISTERED AGENT**

The address of the Corporation's registered office in the State of Delaware is c/o The Corporation Services Company, 2711 Centerville Road Suite 400 in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Service Company.

ARTICLE III

PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

ARTICLE IV

CAPITAL STOCK

The total number of shares of capital stock which the Corporation shall have authority to issue is One Hundred Twenty-Five Million (125,000,000), of which (i) One Hundred Twenty Million (120,000,000) shares shall be a class designated as common stock, par value \$0.01 per share (the "Common Stock"), and (ii) Five Million (5,000,000) shares shall be a class designated as undesignated preferred stock, par value \$0.001 per share (the "Undesignated Preferred Stock").

Except as otherwise provided in any certificate of designations of any series of Undesignated Preferred Stock, the number of authorized shares of the class of Common Stock or Undesignated Preferred Stock may from time to time be increased or decreased (but not below the number of shares of such class outstanding) by the affirmative vote of the holders of a majority in voting power of the outstanding shares of capital stock of the Corporation irrespective of the provisions of Section 242(b)(2) of the DGCL.

The powers, preferences and rights of, and the qualifications, limitations and restrictions upon, each class or series of stock shall be determined in accordance with, or as set forth below in, this Article IV.

A. COMMON STOCK

Subject to all the rights, powers and preferences of the Undesignated Preferred Stock and except as provided by law or in this Certificate (or in any certificate of designations of any series of Undesignated Preferred Stock):

(a) the holders of the Common Stock shall have the exclusive right to vote for the election of directors of the Corporation (the "Directors") and on all other matters requiring stockholder action, each outstanding share entitling the holder thereof to one vote on each matter properly submitted to the stockholders of the Corporation for their vote; provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate (or on any amendment to a certificate of designations of any series of Undesignated Preferred Stock) that alters or changes the powers, preferences, rights or other terms of one or more outstanding series of Undesignated Preferred Stock if the holders of such affected series of Undesignated Preferred Stock are entitled to vote, either separately or together with the holders of one or more other such series, on such amendment pursuant to this Certificate (or pursuant to a certificate of designations of any series of Undesignated Preferred Stock) or pursuant to the DGCL;

(b) dividends may be declared and paid or set apart for payment upon the Common Stock out of any assets or funds of the Corporation legally available for the payment of dividends, but only when and as declared by the Corporation's Board of Directors (the "Board of Directors") or any authorized committee thereof; and

(c) upon the voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the net assets of the Corporation shall be distributed pro rata to the holders of the Common Stock.

B. UNDESIGNATED PREFERRED STOCK

The Board of Directors or any authorized committee thereof is expressly authorized, to the fullest extent permitted by law, to provide by resolution or resolutions for, out of the unissued shares of Undesignated Preferred Stock, the issuance of the shares of Undesignated Preferred Stock in one or more series of such stock, and by filing a certificate of designations pursuant to applicable law of the State of Delaware, to establish or change from time to time the number of shares of each such series, and to fix the designations, powers, including voting powers, full or limited, or no voting powers, preferences and the relative, participating, optional or other special rights of the shares of each series and any qualifications, limitations and restrictions thereof.

ARTICLE V

STOCKHOLDER ACTION

1. Action without Meeting. Any action required or permitted to be taken by the stockholders of the Corporation at any annual or special meeting of stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders and may not be taken or effected by a written consent of stockholders in lieu thereof.

2. Special Meetings. Except as otherwise required by statute and subject to the rights, if any, of the holders of any series of Undesignated Preferred Stock, special meetings of the stockholders of the Corporation may be called only by the Board of Directors acting pursuant to a resolution approved by the affirmative vote of a majority of the Directors then in office, and special meetings of stockholders may not be called by any other person or persons. Only those matters set forth in the notice of the special meeting may be considered or acted upon at a special meeting of stockholders of the Corporation.

ARTICLE VI

DIRECTORS

1. General. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors except as otherwise provided herein or required by law.

2. Election of Directors. Election of Directors need not be by written ballot unless the By-laws of the Corporation (the “By-laws”) shall so provide.

3. Number of Directors; Term of Office. The number of Directors of the Corporation shall be fixed solely and exclusively by resolution duly adopted from time to time by the Board of Directors. The Directors, other than those who may be elected by the holders of any series of Undesignated Preferred Stock, shall be classified, with respect to the term for which they severally hold office, into three classes. The initial Class I Directors of the Corporation shall be Devang Kantesaria and David P. Southwell; the initial Class II Directors of the Corporation shall be Martin Vogelbaum, Isai Peimer and Ittai Harel; and the initial Class III Directors of the Corporation shall be Paul Howes and A.N. “Jerry” Karabelas. The initial Class I Directors shall serve for a term expiring at the annual meeting of stockholders to be held in 2015, the initial Class II Directors shall serve for a term expiring at the annual meeting of stockholders to be held in 2016, and the initial Class III Directors shall serve for a term expiring at the annual meeting of stockholders to be held in 2017. At each annual meeting of stockholders, Directors elected to succeed those Directors whose terms expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election. Notwithstanding the foregoing, the Directors elected to each class shall hold office until their successors are duly elected and qualified or until their earlier resignation, death or removal.

Notwithstanding the foregoing, whenever, pursuant to the provisions of Article IV of this Certificate, the holders of any one or more series of Undesignated Preferred Stock shall have the right, voting separately as a series or together with holders of other such series, to elect Directors at an annual or special meeting of stockholders, the election, term of office, filling of vacancies and other features of such directorships shall be governed by the terms of this Certificate and any certificate of designations applicable to such series.

4. Vacancies. Subject to the rights, if any, of the holders of any series of Undesignated Preferred Stock to elect Directors and to fill vacancies in the Board of Directors relating thereto, any and all vacancies in the Board of Directors, however occurring, including, without limitation, by reason of an increase in the size of the Board of Directors, or the death, resignation, disqualification or removal of a Director, shall be filled solely and exclusively by the affirmative vote of a majority of the remaining Directors then in office, even if less than a quorum of the Board of Directors, and not by the stockholders. Any Director appointed in accordance with the preceding sentence shall hold office for the remainder of the full term of the

class of Directors in which the new directorship was created or the vacancy occurred and until such Director's successor shall have been duly elected and qualified or until his or her earlier resignation, death or removal. Subject to the rights, if any, of the holders of any series of Undesignated Preferred Stock to elect Directors, when the number of Directors is increased or decreased, the Board of Directors shall, subject to Article VI.3 hereof, determine the class or classes to which the increased or decreased number of Directors shall be apportioned; provided, however, that no decrease in the number of Directors shall shorten the term of any incumbent Director. In the event of a vacancy in the Board of Directors, the remaining Directors, except as otherwise provided by law, shall exercise the powers of the full Board of Directors until the vacancy is filled.

5. Removal. Subject to the rights, if any, of any series of Undesignated Preferred Stock to elect Directors and to remove any Director whom the holders of any such series have the right to elect, any Director (including persons elected by Directors to fill vacancies in the Board of Directors) may be removed from office (i) only with cause and (ii) only by the affirmative vote of the holders of 75% or more of the outstanding shares of capital stock then entitled to vote at an election of Directors, voting together as a single class. At least forty-five (45) days prior to any annual or special meeting of stockholders at which it is proposed that any Director be removed from office, written notice of such proposed removal and the alleged grounds thereof shall be sent to the Director whose removal will be considered at the meeting.

ARTICLE VII

LIMITATION OF LIABILITY

A Director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except for liability (a) for any breach of the Director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the DGCL or (d) for any transaction from which the Director derived an improper personal benefit. If the DGCL is amended after the effective date of this Certificate to authorize corporate action further eliminating or limiting the personal liability of Directors, then the liability of a Director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

Any amendment, repeal or modification of this Article VII by either of (i) the stockholders of the Corporation or (ii) an amendment to the DGCL, shall not adversely affect any right or protection existing at the time of such amendment, repeal or modification with respect to any acts or omissions occurring before such amendment, repeal or modification of a person serving as a Director at the time of such amendment, repeal or modification.

ARTICLE VIII

EXCLUSIVE JURISDICTION OF DELAWARE COURTS

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL or the Corporation's Certificate of Incorporation or Bylaws, or (iv) any action asserting a claim against the Corporation governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article VIII.

ARTICLE IX

AMENDMENT OF BY-LAWS

1. Amendment by Directors. Except as otherwise provided by law, the By-laws of the Corporation may be amended or repealed by the Board of Directors by the affirmative vote of a majority of the Directors then in office.

2. Amendment by Stockholders. The By-laws of the Corporation may be amended or repealed at any annual meeting of stockholders, or special meeting of stockholders called for such purpose, by the affirmative vote of at least 75% of the outstanding shares of capital stock entitled to vote on such amendment or repeal, voting together as a single class; provided, however, that if the Board of Directors recommends that stockholders approve such amendment or repeal at such meeting of stockholders, such amendment or repeal shall only require the affirmative vote of the majority of the outstanding shares of capital stock entitled to vote on such amendment or repeal, voting together as a single class.

ARTICLE X

AMENDMENT OF CERTIFICATE OF INCORPORATION

The Corporation reserves the right to amend or repeal this Certificate in the manner now or hereafter prescribed by statute and this Certificate, and all rights conferred upon stockholders herein are granted subject to this reservation. Whenever any vote of the holders of capital stock of the Corporation is required to amend or repeal any provision of this Certificate, and in addition to any other vote of holders of capital stock that is required by this Certificate or by law, such amendment or repeal shall require the affirmative vote of the majority of the outstanding shares of capital stock entitled to vote on such amendment or repeal, and the affirmative vote of the majority of the outstanding shares of each class entitled to vote thereon as a class, at a duly constituted meeting of stockholders called expressly for such purpose; provided, however, that the affirmative vote of not less than 75% of the outstanding shares of capital stock entitled to vote on such amendment or repeal, and the affirmative vote of not less than 75% of the outstanding shares of each class entitled to vote thereon as a class, shall be required to amend or repeal any provision of Article V, Article VI, Article VII, Article VIII, Article IX or Article X of this Certificate.

[End of Text]

THIS SEVENTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION is executed as of this day of , 2015.

INOTEK PHARMACEUTICALS CORPORATION

By: _____

Name: _____

Title: _____

[Signature Page to Charter]

SEE REVERSE SIDE FOR RESTRICTIONS ON TRANSFER

Incorporated Under the Laws of the State of Delaware



No. **C0000**

**** Shares

Inotek Pharmaceuticals Corporation

Par Value \$.01

**THIS
CERTIFIES
THAT**

SPECIMEN

** 0 **

*is the owner of
Shares of the Capital Stock of*

Common Stock of Inotek Pharmaceuticals Corporation

transferable only on the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed.

IN WITNESS WHEREOF, the said Corporation has caused this Certificate to be signed by its duly authorized officers and its Corporate Seal to be hereunto affixed this _____ day of _____ A.D. 20__

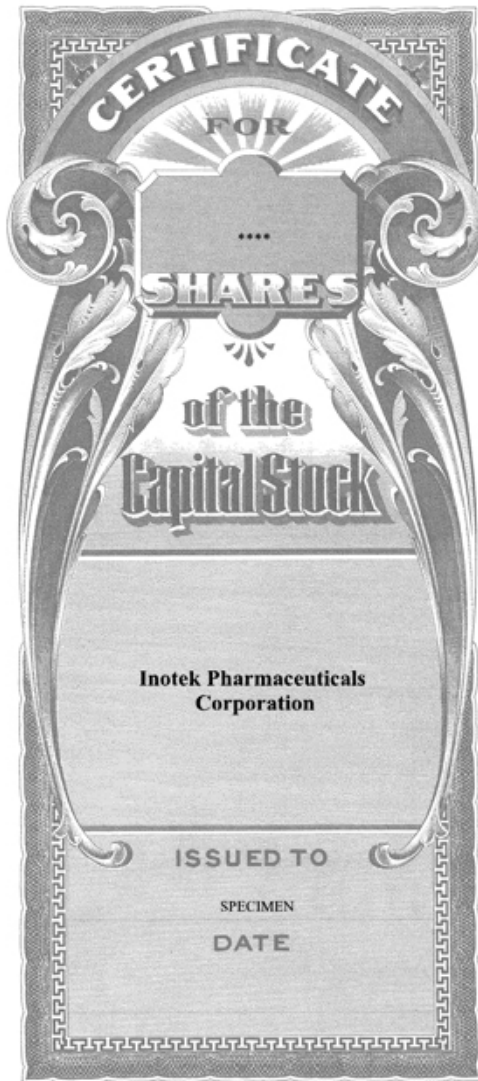
President

Secretary

SHARES

Par Value \$.01

EACH



THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THESE SHARES HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO DISTRIBUTION OR RESALE, AND MAY NOT SOLD, MORTGAGED, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT FOR SUCH SHARES UNDER THE SECURITIES ACT OF 1933, OR AN OPINION OF COUNSEL FOR THE CORPORATION THAT REGISTRATION IS NOT REQUESTED UNDER SUCH ACT.

THE CORPORATION IS AUTHORIZED TO ISSUE MORE THAN ONE CLASS OR SERIES OF STOCK. A COPY OF THE PREFERENCES, POWERS, QUALIFICATIONS AND RIGHTS OF EACH CLASS AND SERIES WILL BE FURNISHED BY THE CORPORATION UPON WRITTEN REQUEST AND WITHOUT CHARGE.

THE SHARES OF STOCK REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO RESTRICTIONS SET FORTH IN A CERTAIN STOCK OPTION AGREEMENT BETWEEN THE CORPORATION AND THE REGISTERED OWNER OF THIS CERTIFICATE, AND SUCH AGREEMENT IS AVAILABLE FOR INSPECTION WITHOUT CHARGE AT THE OFFICE OF THE TREASURER OF THE CORPORATION.

For Value Received _____ *has by self, assign, and transfer*

and _____ *Shares*
of the Capital Stock represented by the within
Certificate, and do hereby irrevocably constitute and appoint
_____ attorney
to transfer the said Stock on the books of the within named
Corporation with full power of substitution in the premises.

Dated _____ 20__

In presence of _____

NOTICE: THE SIGNATURE OF THIS ASSIGNMENT
 MUST CORRESPOND WITH THE NAME AS WRITTEN UPON THE
 FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT
 ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

INOTEK PHARMACEUTICALS CORPORATION
AND
WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee
INDENTURE

Dated as of December [], 2014

[.]% Convertible Senior Notes due 2019

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INOTEK PHARMACEUTICALS CORPORATION

Reconciliation and tie between Trust Indenture Act of 1939, as amended and Indenture, dated as of December [], 2014

<u>Section of Trust Indenture Act of 1939, as Amended</u>	<u>Section of Indenture</u>
310(a)	7.08
310(b)	7.09
	7.14
310(c)	Inapplicable
311(a)	7.15
311(b)	7.15
311(c)	Inapplicable
312(a)	5.01
	5.02
312(b)	17.11
312(c)	17.11
313(a)	7.11
313(b)	7.11
313(c)	7.11
313(d)	7.11
314(a)	4.06
	4.08
314(b)	Inapplicable
314(c)	17.05
314(d)	Inapplicable
314(e)	17.05
314(f)	Inapplicable
315(a)	7.01
315(b)	6.10
315(c)	7.01
315(d)	7.01
315(e)	6.11
316(a)	6.09
	8.04
316(b)	6.06
316(c)	8.01
317(a)	6.04
317(b)	4.04
318(a)	17.12

(1) This Cross-Reference Table does not constitute part of the Indenture and shall not have any bearing on the interpretation of any of its terms or provisions.

INDENTURE dated as of December [], 2014 between INOTEK PHARMACEUTICALS CORPORATION, a Delaware corporation, as issuer (the “Company,” as more fully set forth in Section 1.01) and WILMINGTON TRUST, NATIONAL ASSOCIATION, a national banking association, as trustee (the “Trustee,” as more fully set forth in Section 1.01).

WITNESSETH:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issuance of its [.]% Convertible Senior Notes due 2019 (the “Notes”), initially in an aggregate principal amount not to exceed \$[—,000,000]¹ [—,000,000] (as increased by an amount equal to the aggregate principal amount of any additional Notes purchased by the Underwriters pursuant to the exercise of their over-allotment option as set forth in the Underwriting Agreement)², and in order to provide the terms and conditions upon which the Notes are to be authenticated, issued and delivered, the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, the Form of Note, the certificate of authentication to be borne by each Note, the Form of Notice of Conversion, the Form of Fundamental Change Repurchase Notice and the Form of Assignment and Transfer to be borne by the Notes are to be substantially in the forms hereinafter provided; and

WHEREAS, all acts and things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Trustee or a duly authorized authenticating agent, as in this Indenture provided, the valid, binding and legal obligations of the Company, and this Indenture a legal, valid and binding agreement according to its terms, have been done and performed, and the execution of this Indenture and the issuance hereunder of the Notes have in all respects been duly authorized.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That in order to declare the terms and conditions upon which the Notes are, and are to be, authenticated, issued and delivered, and in consideration of the premises and of the purchase and acceptance of the Notes by the Holders thereof, the Company covenants and agrees with the Trustee for the equal and proportionate benefit of the respective Holders from time to time of the Notes (except as otherwise provided below), as follows:

¹ **Insert if greenshoe is exercised in full before initial closing and will be settled on closing date for initial issuance.**

² **Delete if greenshoe is exercised in full before initial closing and will be settled on closing date for initial issuance.**

ARTICLE 1
DEFINITIONS

Section 1.01. *Definitions.* The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. All other terms used in this Indenture that are defined in the Trust Indenture Act, or that are by reference in the Trust Indenture Act defined in the Securities Act (except as herein or any indenture supplemental hereto otherwise expressly provided or unless the context otherwise requires), shall have the meanings assigned to such terms in the Trust Indenture Act and in the Securities Act as in force at the date of the execution of this instrument. The words “herein,” “hereof,” “hereunder” and words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article include the plural as well as the singular.

“**Additional Interest**” means all amounts, if any, payable pursuant to Section 6.03.

“**Additional Shares**” shall have the meaning specified in Section 14.03(a).

“**Affiliate**” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control,” when used with respect to any specified Person means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Bid Solicitation Agent**” means the Company or the Person appointed by the Company to solicit bids for the Trading Price of the Notes in accordance with Section 14.01(b)(i). The Trustee shall initially act as the Bid Solicitation Agent.

“**Board of Directors**” means the board of directors of the Company or a committee of such board duly authorized to act for it hereunder.

“**Board Resolution**” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors, and to be in full force and effect on the date of such certification, and delivered to the Trustee.

“**Business Day**” means, with respect to any Note, any day other than a Saturday, a Sunday or other day on which banking institutions in New York State or the place of payment are authorized or required by law or executive order to close or be closed.

“**Capital Stock**” means, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity.

“**Cash Settlement**” shall have the meaning specified in Section 14.02(a).

“**Clause A Distribution**” shall have the meaning specified in Section 14.04(c).

“**Clause B Distribution**” shall have the meaning specified in Section 14.04(c).

“**Clause C Distribution**” shall have the meaning specified in Section 14.04(c).

“**close of business**” means 5:00 p.m. (New York City time).

“**Combination Settlement**” shall have the meaning specified in Section 14.02(a).

“**Commission**” means the U.S. Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this instrument such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

“**Common Equity**” of any Person means Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

“**Common Stock**” means the common stock of the Company, par value \$0.001 per share, at the date of this Indenture, subject to Section 14.07.

“**Company**” shall have the meaning specified in the first paragraph of this Indenture, and subject to the provisions of Article 11, shall include its successors and assigns.

“**Company Order**” means a written order of the Company, signed by any Officer.

“**Conversion Agent**” shall have the meaning specified in Section 4.02.

“**Conversion Date**” shall have the meaning specified in Section 14.02(c).

“**Conversion Obligation**” shall have the meaning specified in Section 14.01(a).

“**Conversion Price**” means as of any time, \$1,000, *divided by* the Conversion Rate as of such time.

“**Conversion Rate**” shall have the meaning specified in Section 14.01(a).

“**Corporate Trust Office**” means the designated office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at 50 S. 6th Street, Suite 1290, Minneapolis, MN 55402, Attention: Inotek Pharmaceuticals Corporation Account Manager, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor trustee (or such other address as such successor trustee may designate from time to time by notice to the Holders and the Company).

“**Custodian**” means the Trustee, as custodian for The Depository Trust Company, with respect to the Global Notes, or any successor entity thereto.

“**Daily Conversion Value**” means, for each of the 80 consecutive Trading Days during the Observation Period, one-eightieth (1/80th) of the product of (a) the Conversion Rate on such Trading Day and (b) the Daily VWAP on such Trading Day.

“**Daily Measurement Value**” means the Specified Dollar Amount (if any), *divided by* 80.

“**Daily Settlement Amount**,” for each of the 80 consecutive Trading Days during the Observation Period, shall consist of:

- (a) cash in an amount equal to the lesser of (i) the Daily Measurement Value and (ii) the Daily Conversion Value on such Trading Day; and
- (b) if the Daily Conversion Value on such Trading Day exceeds the Daily Measurement Value, a number of shares of Common Stock equal to (i) the difference between the Daily Conversion Value and the Daily Measurement Value, *divided by* (ii) the Daily VWAP for such Trading Day.

“**Daily VWAP**” means, for each of the 80 consecutive Trading Days during the applicable Observation Period, the per share volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page “ITEK <equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one share of the Common Stock on such Trading Day determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Company). The “**Daily VWAP**” shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours. On or after the occurrence of a Specified Corporate Event, the “**Daily VWAP**” of a unit of Reference Property on any date shall be determined in accordance with the two immediately preceding sentences except that (i) in the case of a Specified Corporate Event in connection with which holders of Common Stock receive only cash as set forth in Section 14.07(a), the “**Daily VWAP**” shall be equal to the per share amount of cash received by holders of Common Stock in such Specified Corporate Event, (ii) in the case of a Specified Corporate Event in connection with which holders of Common Stock receive a type of consideration other than cash or Common Equity (or, if applicable, American depository receipts) as set forth in Section 14.07(a), the “**Daily VWAP**” shall be the fair market value of such unit of Reference Property determined by a nationally recognized independent investment banking firm retained for this purpose by the Company and (iii) in the case of a Specified Corporate Event in connection with which holders of Common Stock receive a combination of Common Equity (or, if applicable, American depository receipts), cash and/or a

type of consideration of the kind described in clause (ii), the “Daily VWAP” shall be equal to the sum of values of each component or portion of such unit of Reference Property determined in accordance with the two immediately preceding sentences, clause (i) and/or clause (ii), as the case may be.

“**Default**” means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

“**Defaulted Amounts**” means any amounts on any Note (including, without limitation, the Fundamental Change Repurchase Price, cash due upon conversion, if any, principal and interest) that are payable but are not punctually paid or duly provided for.

“**Depository**” means, with respect to each Global Note, the Person specified in Section 2.05(c) as the Depository with respect to such Notes, until a successor shall have been appointed and become such pursuant to the applicable provisions of this Indenture, and thereafter, “**Depository**” shall mean or include such successor.

“**Designated Institution**” shall have the meaning specified in Section 14.12(a).

“**Distributed Property**” shall have the meaning specified in Section 14.04(c).

“**Effective Date**” means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

“**Event of Default**” shall have the meaning specified in Section 6.01.

“**Ex-Dividend Date**” means the first date on which shares of the Common Stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“**Exchange Election**” shall have the meaning specified in Section 14.12(a).

“**Form of Assignment and Transfer**” means the “Form of Assignment and Transfer” attached as Attachment 3 to the Form of Note attached hereto as Exhibit A.

“**Form of Fundamental Change Repurchase Notice**” means the “Form of Fundamental Change Repurchase Notice” attached as Attachment 2 to the Form of Note attached hereto as Exhibit A.

“**Form of Note**” means the “Form of Note” attached hereto as Exhibit A.

“**Form of Notice of Conversion**” means the “Form of Notice of Conversion” attached as Attachment 1 to the Form of Note attached hereto as Exhibit A.

“**Fundamental Change**” shall be deemed to have occurred at the time after the Notes are originally issued if any of the following occurs:

(a) other than as described in clause (b) below, a “person” or “group” within the meaning of Section 13(d) of the Exchange Act, other than the Company, its Wholly Owned Subsidiaries and the employee benefit plans of the Company and its Wholly Owned Subsidiaries, has become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of the Company’s Common Equity representing more than 50% of the voting power of the Company’s Common Equity;

(b) the consummation of (A) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination) as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets; (B) any share exchange, consolidation or merger involving the Company pursuant to which the Common Stock will be converted into cash, securities or other property or assets; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries, taken as a whole, to any Person other than one of the Company’s Subsidiaries; *provided, however*, that a transaction described in clause (A) or (B) in which the holders of all classes of the Company’s Common Equity immediately prior to such transaction own, directly or indirectly, more than 50% of all classes of Common Equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions as such ownership immediately prior to such transaction shall not be a Fundamental Change pursuant to this clause (b);

(c) the stockholders of the Company or, if no stockholder approval is necessary, the Board of Directors approve any plan or proposal for the liquidation or dissolution of the Company; or

(d) the Common Stock (or other common stock underlying the Notes) ceases to be listed or quoted on any Permitted Exchange;

provided, however, that a transaction or transactions described in clause (a) or (b) above shall not constitute a Fundamental Change, if at least 90% of the consideration received or to be received by holders of the Common Stock, excluding cash payments for fractional shares and cash payments made pursuant to dissenters’ appraisal rights, in connection with such transaction or transactions consists of shares of common stock that are listed or quoted on any Permitted Exchange or will be so listed or quoted when issued or exchanged in connection with such transaction or transactions and as a result of such transaction or transactions the Notes become convertible into such consideration, excluding cash payments for fractional shares and cash payments made pursuant to dissenters’ appraisal rights (subject to Section 14.02). If any

transaction in which the Common Stock is replaced by the securities of another Person occurs, following completion of any related Make-Whole Fundamental Change Period, references to the Company in the definition of “Fundamental Change” shall instead be references to such other entity.

“**Fundamental Change Company Notice**” shall have the meaning specified in Section 15.02(c).

“**Fundamental Change Repurchase Date**” shall have the meaning specified in Section 15.02(a).

“**Fundamental Change Repurchase Notice**” shall have the meaning specified in Section 15.02(b)(i).

“**Fundamental Change Repurchase Price**” shall have the meaning specified in Section 15.02(a).

“**Global Note**” shall have the meaning specified in Section 2.05(b).

“**Holder**,” as applied to any Note, or other similar terms (but excluding the term “beneficial holder”), means any Person in whose name at the time a particular Note is registered on the Note Register.

“**Indenture**” means this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented.

“**Interest Payment Date**” means each June 15 and December 15 of each year, beginning on June 15, 2015.

“**Last Reported Sale Price**” of the Common Stock or any other security on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the Relevant Stock Exchange. If the Common Stock or such other security is not listed for trading on a Relevant Stock Exchange on the relevant date, the “**Last Reported Sale Price**” shall be the average of the last quoted bid and ask prices per share for the Common Stock or such other security in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization. If the Common Stock or such other security is not so quoted, the “**Last Reported Sale Price**” shall be the average of the mid-point of the last bid and ask prices per share for the Common Stock or such other security on the relevant date received from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose. The “**Last Reported Sale Price**” will be determined without regard to after-hours trading or any other trading outside of regular trading session hours. None of the Trustee, Paying Agent or Conversion Agent shall be responsible for monitoring the “**Last Reported Sale Price**.” On or after the occurrence of a Specified Corporate Event, the “**Last Reported Sale Price**” of a

unit of Reference Property on any date shall be determined in accordance with the four immediately preceding sentences except that (i) in the case of a Specified Corporate Event in connection with which holders of Common Stock receive only cash as set forth in Section 14.07(a), the “**Last Reported Sale Price**” shall be equal to the per share amount of cash received by holders of Common Stock in such Specified Corporate Event, (ii) in the case of a Specified Corporate Event in connection with which holders of Common Stock receive a type of consideration other than cash or Common Equity (or, if applicable, American depositary receipts) as set forth in Section 14.07(a), the “**Last Reported Sale Price**” shall be the fair market value of such unit of Reference Property determined by a nationally recognized independent investment banking firm retained for this purpose by the Company and (iii) in the case of a Specified Corporate Event in connection with which holders of Common Stock receive a combination of Common Equity (or, if applicable, American depositary receipts), cash and/or a type of consideration of the kind described in clause (ii), the “**Last Reported Sale Price**” shall be equal to the sum of values of each component or portion of such unit of Reference Property determined in accordance with the four immediately preceding sentences, clause (i) and/or clause (ii), as the case may be.

“**Make-Whole Fundamental Change**” means any transaction or event that constitutes a Fundamental Change (as defined above and determined after giving effect to any exceptions to or exclusions from such definition, but without regard to the *proviso* in clause (b) of the definition thereof).

“**Make-Whole Fundamental Change Effective Date**” means date on which such Make-Whole Fundamental Change occurs or becomes effective.

“**Make-Whole Fundamental Change Period**” shall have the meaning specified in Section 14.03(a).

“**Market Disruption Event**” means, for the purposes of determining amounts due upon conversion (a) a failure by the Relevant Stock Exchange to open for trading during its regular trading session or (b) the occurrence or existence prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the Common Stock for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in the Common Stock or in any options contracts or futures contracts relating to the Common Stock.

“**Maturity Date**” means December 15, 2019.

“**Measurement Period**” shall have the meaning specified in Section 14.01(b)(i).

“**Note**” or “**Notes**” shall have the meaning specified in the first paragraph of the recitals of this Indenture.

“**Note Register**” shall have the meaning specified in Section 2.05(a).

“**Note Registrar**” shall have the meaning specified in Section 2.05(a).

“**Notice of Conversion**” shall have the meaning specified in Section 14.02(b).

“**Observation Period**” with respect to any Note surrendered for conversion means: (i) if the relevant Conversion Date occurs prior to June 15, 2019, the 80 consecutive Trading Day period beginning on, and including, the third Trading Day immediately succeeding such Conversion Date; and (ii) if the relevant Conversion Date occurs on or after June 15, 2019, the 80 consecutive Trading Days beginning on, and including, the 82nd Scheduled Trading Day immediately preceding the Maturity Date.

“**Officer**” means, with respect to the Company, the President, the Chief Executive Officer, the Chief Financial Officer, the Treasurer, the Secretary, any Executive or Senior Vice President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title “Vice President”).

“**Officer’s Certificate**,” when used with respect to the Company, means a certificate that is signed by any Officer of the Company. Each such certificate shall include the statements provided for in Section 17.05 if and to the extent required by the provisions of such Section. The Officer giving an Officer’s Certificate pursuant to Section 4.08 shall be the principal executive, financial or accounting officer of the Company.

“**open of business**” means 9:00 a.m. (New York City time).

“**Opinion of Counsel**” means an opinion in writing signed by legal counsel, who may be an employee of or counsel to the Company, which is reasonably acceptable to the Trustee, which opinion may contain customary exceptions and qualifications as to the matters set forth therein. Each such opinion shall include the statements provided for in Section 17.05 if and to the extent required by the provisions of such Section 17.05.

“**outstanding**,” when used with reference to Notes, shall, subject to the provisions of Section 8.04, mean, as of any particular time, all Notes authenticated and delivered by the Trustee under this Indenture, except:

(a) Notes theretofore canceled by the Trustee or accepted by the Trustee for cancellation;

(b) Notes, or portions thereof, that have become due and payable and in respect of which monies in the necessary amount shall have been deposited in trust with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent);

(c) Notes that have been paid pursuant to Section 2.06 or Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 2.06 unless proof satisfactory to the Trustee is presented that any such Notes are held by protected purchasers in due course;

(d) Notes converted pursuant to Article 14 and required to be cancelled pursuant to Section 2.08; and

(e) Notes repurchased by the Company pursuant to the penultimate sentence of Section 2.10.

“**Paying Agent**” shall have the meaning specified in Section 4.02.

“**Permitted Exchange**” means any of The New York Stock Exchange, The NASDAQ Global Select Market, The NASDAQ Capital Market or The NASDAQ Global Market (or any of their respective successors).

“**Person**” means an individual, a corporation, a limited liability company, an association, a partnership, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

“**Physical Notes**” means permanent certificated Notes in registered form issued in denominations of \$1,000 principal amount and integral multiples thereof.

“**Physical Settlement**” shall have the meaning specified in Section 14.02(a).

“**Predecessor Note**” of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 2.06 in lieu of or in exchange for a mutilated, lost, destroyed or stolen Note shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note that it replaces.

“**Prospectus**” means the preliminary prospectus dated December [], 2014, as supplemented by the related pricing term sheet dated December [], 2014, relating to the offering and sale of the Notes.

“**Record Date**” means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock (or other applicable security) have the right to receive any cash, securities or other property or in which the Common Stock (or such other security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the Common Stock (or such other security) entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors, by statute, by contract or otherwise).

“**Reference Property**” shall have the meaning specified in Section 14.07(a).

“Regular Record Date,” with respect to any Interest Payment Date, means the June 1 or December 1 (whether or not such day is a Business Day) immediately preceding the applicable June 15 or December 15 Interest Payment Date, respectively.

“Relevant Stock Exchange” means The NASDAQ Global Market, or if the Common Stock is not then listed on The NASDAQ Global Market, the principal other U.S. national or regional securities exchange on which the Common Stock is then listed or admitted for trading.

“Responsible Officer” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“Rule 144” means Rule 144 as promulgated under the Securities Act.

“Scheduled Trading Day” means a day that is scheduled to be a Trading Day on the Relevant Stock Exchange. If the Common Stock is not listed or admitted for trading on any Relevant Stock Exchange, **“Scheduled Trading Day”** means a Business Day.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Settlement Amount” shall have the meaning specified in Section 14.02(a)(iv).

“Settlement Method” means, with respect to any conversion of Notes, Physical Settlement, Cash Settlement or Combination Settlement, as elected (or deemed to have been elected) by the Company.

“Settlement Notice” shall have the meaning specified in Section 14.02(a)(iii).

“Significant Subsidiary” means a Subsidiary of the Company that meets the definition of “significant subsidiary” in Article 1, Rule 1-02 of Regulation S-X promulgated by the Commission under the Exchange Act; *provided* that, in the case of a Subsidiary of the Company that meets the criteria of clause (3) of the definition thereof but not clause (1) or (2) of the definition thereof, such Subsidiary shall not be deemed to be a Significant Subsidiary unless the Subsidiary’s income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle exclusive of amounts attributable to any non-controlling interests for the last completed fiscal year prior to the date of such determination exceeds \$5,000,000.

“Specified Corporate Event” shall have the meaning specified in Section 14.07(a).

“**Specified Dollar Amount**” means the maximum cash amount per \$1,000 principal amount of Notes being converted to be received upon conversion as specified in the Settlement Notice related to any converted Notes.

“**Spin-Off**” shall have the meaning specified in Section 14.04(c).

“**Stock Price**” shall have the meaning specified in Section 14.03(c).

“**Subsidiary**” means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

“**Successor Company**” shall have the meaning specified in Section 11.01(a).

“**Trading Day**” means a day on which (i) trading in the Common Stock (or any other security for which a Last Reported Sale Price must be determined) generally occurs on the Relevant Stock Exchange or, if the Common Stock (or such other security) is not then listed on a Relevant Stock Exchange, on the principal other market on which the Common Stock (or such other security) is then traded and (ii) a Last Reported Sale Price for the Common Stock (or such other security) is available on such securities exchange or market; *provided* that if the Common Stock (or such other security) is not so listed or traded, “**Trading Day**” means a Business Day; and *provided, further*, that for purposes of determining amounts due upon conversion only, “**Trading Day**” means a day on which (x) there is no Market Disruption Event and (y) trading in the Common Stock generally occurs on the Relevant Stock Exchange or, if the Common Stock is not then listed on any Relevant Stock Exchange, on the principal other market on which the Common Stock is then listed or admitted for trading, except that if the Common Stock is not so listed or admitted for trading, “**Trading Day**” means a Business Day.

“**Trading Price**” per \$1,000 principal amount of the Notes on any date of determination means the average of the secondary market bid quotations obtained by the Bid Solicitation Agent for \$1,000,000 principal amount of Notes at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers the Company selects for this purpose; *provided* that if three such bids cannot reasonably be obtained by the Bid Solicitation Agent but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Bid Solicitation Agent, that one bid shall be used. If the Bid Solicitation Agent cannot reasonably obtain at least one bid for \$1,000,000 principal amount of Notes from an independent nationally recognized securities dealer selected by the Company on any determination date, then the Trading Price per \$1,000 principal amount of Notes for such determination date shall be deemed to be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate.

“transfer” shall have the meaning specified in Section 2.05(c).

“Trigger Event” shall have the meaning specified in Section 14.04(c).

“Trust Indenture Act” means the Trust Indenture Act of 1939, as amended, as it was in force at the date of execution of this Indenture; *provided, however*, that in the event the Trust Indenture Act of 1939 is amended after the date hereof, the term “Trust Indenture Act” shall mean, to the extent required by such amendment, the Trust Indenture Act of 1939, as so amended.

“Trustee” means the Person named as the “Trustee” in the first paragraph of this Indenture until a successor trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean or include each Person who is then a Trustee hereunder.

[“Underwriters” means Nomura Securities International, Inc., Cowen and Company, LLC, Piper Jaffray & Co. and Canaccord Genuity Inc.]³

[“Underwriting Agreement” means that certain Underwriting Agreement, dated as of December [], 2014, among the Company and the Underwriters.]⁴

“unit of Reference Property” shall have the meaning specified in Section 14.07(a).

“Valuation Period” shall have the meaning specified in Section 14.04(c).

“Wholly Owned Subsidiary” means, with respect to any Person, any Subsidiary of such Person, except that, solely for purposes of this definition, the reference to “50%” in the definition of “Subsidiary” shall be deemed replaced by a reference to “100%”.

Section 1.02. *References to Interest.* Unless the context otherwise requires, any reference to interest on, or in respect of, any Note in this Indenture shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to Section 6.03. Unless the context otherwise requires, any express mention of Additional Interest in any provision hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made.

³ **Delete if greenshoe is exercised in full before initial closing and will be settled on closing date for initial issuance.**

⁴ **Delete if greenshoe is exercised in full before initial closing and will be settled on closing date for initial issuance.**

ARTICLE 2
ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01. *Designation and Amount.* The Notes shall be designated as the “[.]% Convertible Senior Notes due 2019.” The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is initially limited to \$[—,000,000]⁵ [[—,000,000] (as increased by an amount equal to the aggregate principal amount of any additional Notes purchased by the Underwriters pursuant to the exercise of their over-allotment option as set forth in the Underwriting Agreement)]⁶, subject to Section 2.10 and except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes to the extent expressly permitted hereunder.

Section 2.02. *Form of Notes.* The Notes and the Trustee’s certificate of authentication to be borne by such Notes shall be substantially in the respective forms set forth in Exhibit A, the terms and provisions of which shall constitute, and are hereby expressly incorporated in and made a part of this Indenture. To the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

Any Global Note may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Indenture as may be required by the Custodian or the Depositary, or as may be required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the Notes may be listed, quoted or traded or designated for issuance or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject.

Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends or endorsements as any Officer executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed, quoted or designated for issuance, or to conform to usage or to indicate any special limitations or restrictions to which any particular Notes are subject.

Each Global Note shall represent such principal amount of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of

⁵ **Insert if greenshoe is exercised in full before initial closing and will be settled on closing date for initial issuance.**

⁶ **Delete if greenshoe is exercised in full before initial closing and will be settled on closing date for initial issuance.**

outstanding Notes represented thereby may from time to time be increased or reduced to reflect repurchases, cancellations, conversions, transfers, exchanges or issuances of additional Notes pursuant to Section 2.10 (to the extent such issuances are fungible with the Notes represented by such Global Note for U.S. federal income tax or securities law purposes) permitted hereby. Any endorsement of a Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Custodian, at the direction of the Trustee, in such manner and upon instructions given by the Holder of such Notes in accordance with this Indenture. Payment of principal (including the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, a Global Note shall be made to the Holder of such Note on the date of payment, unless a record date or other means of determining Holders eligible to receive payment is provided for herein.

Section 2.03. *Date and Denomination of Notes; Payments of Interest and Defaulted Amounts.* (a) The Notes shall be issuable in registered form without coupons in denominations of \$1,000 principal amount and integral multiples thereof. Each Note shall be dated the date of its authentication and shall bear interest from the date specified on the face of such Note. Accrued interest on the Notes shall be computed on the basis of a 360-day year composed of twelve 30-day months or, in the case of a partial month, the number of days elapsed over a 30-day month. The Company shall pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

(b) The Person in whose name any Note (or its Predecessor Note) is registered on the Note Register at the close of business on any Regular Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date. The principal amount of any Note (x) in the case of any Physical Note, shall be payable at the office or agency of the Company maintained by the Company for such purposes in the continental United States of America, which shall initially be the Corporate Trust Office and (y) in the case of any Global Note, shall be payable by wire transfer of immediately available funds to the account of the Depositary or its nominee. The Company shall pay interest (i) on any Physical Notes (A) to Holders holding Physical Notes having an aggregate principal amount of \$5,000,000 or less, by check mailed to the Holders of these Notes at their address as it appears in the Note Register and (B) to Holders holding Physical Notes having an aggregate principal amount of more than \$5,000,000, either by check mailed to each Holder or, upon application by such a Holder to the Note Registrar not later than the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's account within the United States, which wire instructions shall be received by the Paying Agent at least 5 Business Days prior to the date when payment is due, and which application shall remain in effect until the Holder notifies, in writing, the Note Registrar to the contrary or (ii) on any Global Note by wire transfer of immediately available funds to the account of the Depositary or its nominee.

(c) Any Defaulted Amounts shall forthwith cease to be payable to the Holder on the relevant payment date but shall accrue interest per annum at the rate borne by the Notes, subject to the enforceability thereof under applicable law, from, and including, such relevant payment date, and such Defaulted Amounts together with such interest thereon shall be paid by the Company, at its election in each case, as provided in clause (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Amounts to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on a special record date for the payment of such Defaulted Amounts, which shall be fixed in the following manner. The Company shall notify the Trustee in writing in an Officer's Certificate of the amount of the Defaulted Amounts proposed to be paid on each Note and the date of the proposed payment (which shall be not less than 25 calendar days after the receipt by the Trustee of such notice, unless the Trustee shall consent to an earlier date), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Amounts or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Amounts as in this clause provided. Thereupon the Company shall fix a special record date for the payment of such Defaulted Amounts which shall be not more than 15 calendar days and not less than 10 calendar days prior to the date of the proposed payment, and not less than 10 calendar days after the receipt by the Trustee of the notice of the proposed payment. The Company shall promptly notify the Trustee in writing of such special record date and in such notice, instruct the Trustee, in the name and at the expense of the Company, to deliver notice of the proposed payment of such Defaulted Amounts and the special record date therefor to each Holder, not less than 10 calendar days prior to such special record date. Notice of the proposed payment of such Defaulted Amounts and the special record date therefor having been so delivered, such Defaulted Amounts shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on such special record date and shall no longer be payable pursuant to the following clause (ii) of this Section 2.03(c).

(ii) The Company may make payment of any Defaulted Amounts in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, and upon such notice as may be required by such exchange or automated quotation system, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee. The Trustee shall not at any time be under any duty or responsibility to any Holder to determine the Defaulted Amounts, or with respect to the nature, extent, or calculation of the amount of Defaulted Amounts owed, or with respect to the method employed in such calculation of the Defaulted Amounts.

Section 2.04. *Execution, Authentication and Delivery of Notes.* The Notes shall be signed in the name and on behalf of the Company by the manual or facsimile signature of any one Officer.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Notes, and the Trustee in accordance with such Company Order shall authenticate and deliver such Notes, without any further action by the Company hereunder.

Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the Form of Note attached as Exhibit A hereto, executed manually by an authorized signatory of the Trustee (or an authenticating agent appointed by the Trustee as provided by Section 17.10), shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee (or such an authenticating agent) upon any Note executed by the Company shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture.

In case any Officer of the Company who shall have signed any of the Notes shall cease to be such Officer before the Notes so signed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such Notes nevertheless may be authenticated and delivered or disposed of as though the person who signed such Notes had not ceased to be such Officer of the Company; and any Note may be signed on behalf of the Company by such persons as, at the actual date of the execution of such Note, shall be the Officers of the Company, although at the date of the execution of this Indenture any such person was not such an Officer.

Section 2.05. *Exchange and Registration of Transfer of Notes; Restrictions on Transfer; Depositary.* (a) The Company shall cause to be kept at the Corporate Trust Office a register (the register maintained in such office or in any other office or agency of the Company designated pursuant to Section 4.02, the “**Note Registrar**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. Such register shall be in written form or in any form capable of being converted into written form within a reasonable period of time. The Trustee is hereby initially appointed the “**Note Registrar**” for the purpose of registering Notes and transfers of Notes as herein provided. The Company may appoint one or more co-Note Registrars in accordance with Section 4.02.

Upon surrender for registration of transfer of any Note to the Note Registrar or any co-Note Registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.05, the Company shall execute, and the Trustee shall, upon receipt of a Company Order, authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture.

Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at any such office or agency maintained by the Company pursuant to Section 4.02. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Trustee shall, upon receipt of a Company Order, authenticate and deliver, the Notes that the Holder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding.

All Notes presented or surrendered for registration of transfer or for exchange, repurchase or conversion shall (if so required by the Company, the Trustee, the Note Registrar or any co-Note Registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and duly executed, by the Holder thereof or its attorney-in-fact duly authorized in writing.

No service charge shall be imposed on the Holder by the Company, the Trustee, the Note Registrar, any co-Note Registrar or the Paying Agent for any exchange or registration of transfer of Notes, but the Company or the Trustee may require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax required in connection therewith as a result of the name of the Holder of new Notes issued upon such exchange or registration of transfer being different from the name of the Holder of the old Notes surrendered for exchange or registration of transfer.

None of the Company, the Trustee, the Note Registrar or any co-Note Registrar shall be required to exchange or register a transfer of (i) any Notes surrendered for conversion or, if a portion of any Note is surrendered for conversion, such portion thereof surrendered for conversion or (ii) any Notes, or a portion of any Note, surrendered for repurchase (and not withdrawn) in accordance with Article 15.

All Notes issued upon any registration of transfer or exchange of Notes in accordance with this Indenture shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture as the Notes surrendered upon such registration of transfer or exchange.

(b) So long as the Notes are eligible for book-entry settlement with the Depositary, unless otherwise required by law, subject to the fourth paragraph from the end of Section 2.05(c) all Notes shall be represented by one or more Notes in global form (each, a “**Global Note**”) registered in the name of the Depositary or the nominee of the Depositary. Each Global Note shall bear the legend required on a Global Note set forth in Exhibit A hereto. The transfer and exchange of beneficial interests in a Global Note that does not involve the issuance of a Physical Note shall be effected through the Depositary (but not the Trustee or the Custodian) in accordance with this Indenture (including the restrictions on transfer set forth herein) and the procedures of the Depositary therefor.

(c) As used in this Section 2.05(c), the term “**transfer**” encompasses any sale, pledge, transfer or other disposition whatsoever of any Restricted Security. Notwithstanding any other provisions of this Indenture (other than the provisions set forth in this Section 2.05(c)), a Global Note may not be transferred as a whole or in part except (i) by the Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary and (ii) for exchange of a Global Note or a portion thereof for one or more Physical Notes in accordance with the second immediately succeeding paragraph.

The Depository shall be a clearing agency registered under the Exchange Act. The Company initially appoints The Depository Trust Company to act as Depository with respect to each Global Note. Initially, each Global Note shall be issued to the Depository, registered in the name of Cede & Co., as the nominee of the Depository, and deposited with the Trustee as custodian for Cede & Co.

If (i) the Depository notifies the Company at any time that the Depository is unwilling or unable to continue as depository for the Global Notes and a successor depository is not appointed within 90 calendar days, (ii) the Depository ceases to be registered as a clearing agency under the Exchange Act and a successor depository is not appointed within 90 calendar days or (iii) an Event of Default with respect to the Notes has occurred and is continuing and a beneficial owner of any Note requests that its beneficial interest therein be exchanged for a Physical Note, the Company shall execute, and the Trustee, upon receipt of an Officer's Certificate, an Opinion of Counsel and a Company Order for the authentication and delivery of Notes, shall authenticate and deliver (x) in the case of clause (iii), a Physical Note to such beneficial owner in a principal amount equal to the principal amount of such Note corresponding to such beneficial owner's beneficial interest and (y) in the case of clause (i) or (ii), Physical Notes to each beneficial owner of the related Global Notes (or a portion thereof) in an aggregate principal amount equal to the aggregate principal amount of such Global Notes in exchange for such Global Notes, and upon delivery of the Global Notes to the Trustee such Global Notes shall be canceled.

Physical Notes issued in exchange for all or a part of the Global Note pursuant to this Section 2.05(c) shall be registered in such names and in such authorized denominations as the Depository, pursuant to instructions from its direct or indirect participants or otherwise, or, in the case of clause (iii) of the immediately preceding paragraph, the relevant beneficial owner, shall instruct the Trustee. Upon execution and authentication, the Trustee shall deliver such Physical Notes to the Persons in whose names such Physical Notes are so registered.

At such time as all interests in a Global Note have been converted, canceled, repurchased or transferred, such Global Note shall be, upon receipt thereof, canceled by the Trustee in accordance with standing procedures and existing instructions between the Depository and the Custodian. At any time prior to such cancellation, if any interest in a Global Note is exchanged for Physical Notes, converted, canceled, repurchased or transferred to a transferee who receives Physical Notes therefor or any Physical Note is exchanged or transferred for part of such Global Note, the principal amount of such Global Note shall, in accordance with the standing procedures and instructions existing between the Depository and the Custodian, be appropriately reduced or increased, as the case may be, and an endorsement shall be made on such Global Note, by the Trustee or the Custodian, at the direction of the Trustee, to reflect such reduction or increase.

None of the Company, the Trustee or any agent of the Company or the Trustee shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Note or maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

Neither the Trustee nor any agent shall have any responsibility or liability for any actions taken or not taken by the Depository.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among participants of the Depository or beneficial owners of interests in any Global Note) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by the terms of, this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 2.06. *Mutilated, Destroyed, Lost or Stolen Notes.* In case any Note shall become mutilated or be destroyed, lost or stolen, the Company in its discretion may execute, and upon its written request the Trustee or an authenticating agent appointed by the Trustee shall authenticate and deliver, a new Note, bearing a registration number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case the applicant for a substituted Note shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless from any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company, to the Trustee and, if applicable, to such authenticating agent evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

The Trustee or such authenticating agent may authenticate any such substituted Note and deliver the same upon the receipt of such security or indemnity as the Trustee, the Company and, if applicable, such authenticating agent may require. No service charge shall be imposed on the Holder by the Company, the Trustee, the Note Registrar, any co-Note Registrar or the Paying Agent upon the issuance of any substitute Note, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp or similar issue or transfer tax required in connection therewith as a result of the name of the Holder of the new substitute Note being different from the name of the Holder of the old Note that became mutilated or was destroyed, lost or stolen. In case any Note that has matured or is about to mature or has been surrendered for required repurchase or is about to be converted in accordance with Article 14 shall become mutilated or be destroyed, lost or stolen, the Company may, in its sole discretion, instead of issuing a substitute Note, pay or authorize the payment of or convert or authorize the conversion of the same (without surrender thereof except in the case of a mutilated Note), as the case may be, if the applicant for such payment or conversion shall furnish to the Company, to the Trustee and, if applicable, to such authenticating agent such security or indemnity as may be required by them to save each of them harmless for any loss, liability, cost or expense caused by or connected with

such substitution, and, in every case of destruction, loss or theft, evidence satisfactory to the Company, the Trustee and, if applicable, any Paying Agent or Conversion Agent evidence of their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

Every substitute Note issued pursuant to the provisions of this Section 2.06 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement, payment, conversion or repurchase of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement, payment, conversion or repurchase of negotiable instruments or other securities without their surrender.

Section 2.07. *Temporary Notes.* Pending the preparation of Physical Notes, the Company may execute and the Trustee or an authenticating agent appointed by the Trustee shall, upon written request of the Company, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Physical Notes but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be executed by the Company and authenticated by the Trustee or such authenticating agent upon the same conditions and in substantially the same manner, and with the same effect, as the Physical Notes. Without unreasonable delay, the Company shall execute and deliver to the Trustee or such authenticating agent Physical Notes (other than any Global Note) and thereupon any or all temporary Notes (other than any Global Note) may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 4.02 and the Trustee or such authenticating agent shall authenticate and deliver in exchange for such temporary Notes an equal aggregate principal amount of Physical Notes. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Physical Notes authenticated and delivered hereunder.

Section 2.08. *Cancellation of Notes Paid, Converted, Etc.* The Company shall cause all Notes surrendered for the purpose of payment, repurchase, registration of transfer or exchange or conversion, if surrendered to any Person other than the Trustee (including any of the Company's agents, Subsidiaries or Affiliates), to be surrendered to the Trustee for cancellation. All Notes delivered to the Trustee shall be canceled promptly by it in accordance with its customary procedures, and, except for Notes surrendered for registration of transfer or exchange, no Notes shall be authenticated in exchange thereof except as expressly permitted by any of the provisions of this Indenture. The Trustee shall dispose of canceled Notes in accordance with its customary procedures. After such cancellation and at the Company's written request in a Company Order, shall deliver a certificate of such cancellation to the Company.

Section 2.09. *CUSIP Numbers.* The Company in issuing the Notes may use “CUSIP” numbers (if then generally in use), and, if so, the Trustee shall use “CUSIP” numbers in all notices issued to Holders as a convenience to such Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or on such notice and that reliance may be placed only on the other identification numbers printed on the Notes. The Company shall promptly notify the Trustee in writing of any change in the “CUSIP” numbers.

Section 2.10. *Additional Notes; Repurchases.* The Company may, without the consent of the Holders and notwithstanding Section 2.01, reopen this Indenture and issue additional Notes hereunder with the same terms as the Notes initially issued hereunder (except for any differences in issue date, issue price and interest accrued, if any) in an unlimited aggregate principal amount; *provided* that if any such additional Notes are not fungible with the Notes initially issued hereunder for U.S. federal income tax and securities law purposes, such additional Notes shall have a separate CUSIP number. Prior to the issuance of any such additional Notes, the Company shall deliver to the Trustee a Company Order, an Officer’s Certificate and an Opinion of Counsel, such Officer’s Certificate and Opinion of Counsel to cover such matters, in addition to those required by Section 17.05, as the Trustee shall reasonably request. In addition, the Company may, to the extent permitted by law, and directly or indirectly (regardless of whether such Notes are surrendered to the Company), repurchase Notes in the open market or otherwise, whether by the Company or its Subsidiaries or through a private or public tender or exchange offer or through counterparties to private agreements, including by cash-settled swaps or other derivatives. The Company shall cause any Notes so repurchased (other than Notes repurchased pursuant to cash-settled swaps or other derivatives) to be surrendered to the Trustee for cancellation in accordance with Section 2.08, and such Notes shall no longer be considered outstanding hereunder upon their repurchase.

ARTICLE 3
SATISFACTION AND DISCHARGE

Section 3.01. *Satisfaction and Discharge.* This Indenture shall upon written request of the Company contained in an Officer’s Certificate cease to be of further effect, and the Trustee, at the expense and written instruction of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture and the Notes, when (a) (i) all Notes theretofore authenticated and delivered (other than Notes which have been destroyed, lost or stolen and which have been replaced, paid or converted as provided in Section 2.06 or have otherwise been converted in accordance with the terms of this Indenture) have been delivered to the Trustee for cancellation; or (ii) the Company has deposited with the Trustee or delivered to Holders, as applicable, after the Notes have become due and payable, whether on the Maturity Date, any Fundamental Change Repurchase Date, upon conversion or otherwise, cash or, solely

to satisfy the Company's Conversion Obligation, cash and/or shares of Common Stock sufficient to pay all of the outstanding Notes or satisfy all outstanding conversions, as the case may be, and pay all other sums due and payable under this Indenture by the Company; and (b) the Company has delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with. Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 7.06 shall survive.

ARTICLE 4
PARTICULAR COVENANTS OF THE COMPANY

Section 4.01. *Payment of Principal and Interest.* The Company covenants and agrees that it will pay or cause to be paid the principal (including the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes.

Section 4.02. *Maintenance of Office or Agency.* The Company will maintain in the continental United States of America an office or agency where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase ("**Paying Agent**") or for conversion ("**Conversion Agent**") and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office or the office or agency of the Trustee in the continental United States of America.

The Company may also from time to time designate as co-Note Registrars one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the continental United States of America for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. The terms "**Paying Agent**" and "**Conversion Agent**" include any such additional or other offices or agencies, as applicable.

The Company hereby initially designates the Trustee as the Paying Agent, Note Registrar, Custodian and Conversion Agent and the Corporate Trust Office as the office or agency in the continental United States of America where Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase or for conversion and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served.

Section 4.03. *Appointments to Fill Vacancies in Trustee's Office.* The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 7.09, a Trustee, so that there shall at all times be a Trustee hereunder.

Section 4.04. *Provisions as to Paying Agent.* (a) If the Company shall appoint a Paying Agent other than the Trustee, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 4.04:

(i) that it will hold all sums held by it as such agent for the payment of the principal (including the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Notes in trust for the benefit of the Holders of the Notes;

(ii) that it will give the Trustee prompt notice of any failure by the Company to make any payment of the principal (including the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Notes when the same shall be due and payable; and

(iii) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held in trust.

The Company shall, on or before each due date of the principal (including the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest on, the Notes, deposit with the Paying Agent a sum sufficient to pay such principal (including the Fundamental Change Repurchase Price, if applicable) or accrued and unpaid interest, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee in writing of any failure to take such action; *provided* that if such deposit is made on the due date, such deposit must be received by the Paying Agent by 11:00 a.m., New York City time, on such date.

(b) If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal (including the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, the Notes, set aside, segregate and hold in trust for the benefit of the Holders of the Notes a sum sufficient to pay such principal (including the Fundamental Change Repurchase Price, if applicable) and accrued and unpaid interest so becoming due and will promptly notify the Trustee in writing of any failure to take such action and of any failure by the Company to make any payment of the principal (including the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest on, the Notes when the same shall become due and payable.

(c) Anything in this Section 4.04 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay, cause to be paid or deliver to the Trustee all sums or amounts held in trust by the Company or any Paying Agent hereunder as required by this Section 4.04, such sums or amounts to be held by the Trustee upon the trusts herein contained and upon such payment or delivery by the Company or any Paying Agent to the Trustee, the Company or such Paying Agent shall be released from all further liability but only with respect to such sums or amounts.

(d) Any money and shares of Common Stock deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal (including the Fundamental Change Repurchase Price, if applicable) of, accrued and unpaid interest on and the consideration due upon conversion of any Note and remaining unclaimed for two years after such principal (including the Fundamental Change Repurchase Price, if applicable), interest or consideration due upon conversion has become due and payable shall be paid to the Company on request of the Company contained in an Officer's Certificate, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money and shares of Common Stock, and all liability of the Company as trustee thereof, shall thereupon cease.

Section 4.05. *Existence*. Subject to Article 11, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

Section 4.06. *Annual Reports*. (a) The Company shall file with the Trustee, within 15 days after the same are required to be delivered or filed with the Commission (giving effect to any grace period provided by Rule 12b-25 under the Exchange Act or any successor rule under the Exchange Act), copies of any documents or reports that the Company is required to deliver or file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act (excluding, for the avoidance of doubt, any information, documents or reports, or portions thereof, that are subject to confidential treatment, and any correspondence with the Commission). Any such document or report that the Company files with the Commission via the Commission's EDGAR system (or any successor thereto) shall be deemed to be filed with the Trustee for purposes of this Section 4.06(a) at the time such documents are filed via the EDGAR system (or any successor thereto); *provided, however*, that the Trustee shall have no obligation whatsoever to determine whether or not such information, documents or reports have been filed pursuant to EDGAR (or its successor).

(b) Delivery of the information, documents and reports described in subsection (a) above to the Trustee is for informational purposes only, and the Trustee's receipt of the foregoing shall not constitute constructive notice of any information contained therein, or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to conclusively rely on an Officer's Certificate).

Section 4.07. *Stay, Extension and Usury Laws*. The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law that would prohibit or forgive the Company from paying all or any portion of the principal of or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or that may affect the covenants or the performance of this Indenture; and the Company

(to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 4.08. *Compliance Certificate; Statements as to Defaults.* The Company shall deliver to the Trustee within 120 calendar days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2014) an Officer's Certificate indicating whether the signer thereof knows of any Default that occurred during the previous year.

In addition, the Company shall deliver to the Trustee, as soon as possible, and in any event within 30 calendar days after the occurrence of any Event of Default or Default, an Officer's Certificate setting forth the details of such Event of Default or Default, its status and the action that the Company is taking or proposing to take in respect thereof.

Section 4.09. *Further Instruments and Acts.* Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

ARTICLE 5

LISTS OF HOLDERS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 5.01. *Lists of Holders.* The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee, semi-annually, not more than 5 calendar days after each June 1 and December 1 in each year beginning with June 1, 2015, and at such other times as the Trustee may request in writing, within 30 calendar days after receipt by the Company of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the Holders as of a date not more than 15 calendar days (or such other date as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished, except that no such list need be furnished so long as the Trustee is acting as Note Registrar.

Section 5.02. *Preservation and Disclosure of Lists.* The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders contained in the most recent list furnished to it as provided in Section 5.01 or maintained by the Trustee in its capacity as Note Registrar, if so acting, and shall otherwise comply with Section 312(a) of the Trust Indenture Act. The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01. *Events of Default*. Each of the following events shall be an “**Event of Default**” with respect to the Notes:

(a) default in any payment of interest on any Note when due and payable, and the default continues for a period of 30 days;

(b) default in the payment of principal of any Note when due and payable on the Maturity Date, upon any required repurchase, upon declaration of acceleration or otherwise;

(c) failure by the Company to comply with its obligation to convert the Notes in accordance with this Indenture upon exercise of a Holder’s conversion right, and such failure continues for a period of five Business Days;

(d) failure by the Company to issue a Fundamental Change Company Notice in accordance with Section 15.02(c), notice of a Make-Whole Fundamental Change in accordance with Section 14.03(b) or notice of a specified corporate event in accordance with Section 14.01(b)(ii) or Section 14.01(b)(iii), in each case, when due;

(e) failure by the Company to comply with its obligations under Article 11;

(f) failure by the Company for 60 days after written notice from the Trustee or the Holders of at least 25% in principal amount of the Notes then outstanding has been received by the Company to comply with any of its other agreements contained in the Notes or this Indenture;

(g) default by the Company or any Significant Subsidiary of the Company with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of \$5,000,000 (or the foreign currency equivalent thereof) in the aggregate of the Company and/or of any such Significant Subsidiary, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable prior to its stated maturity or (ii) constituting a failure to pay the principal or interest of any such debt when due and payable (after the expiration of all applicable grace periods) at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise, and such acceleration shall not have been rescinded or annulled or such failure to pay shall not have been cured, as the case may be, within 30 days after written notice to the Company by the Trustee or to the Company and the Trustee by Holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 8.04 has been received;

(h) a final judgment or judgments for the payment of \$5,000,000 (or the foreign currency equivalent thereof) or more (excluding any amounts covered by insurance) in the aggregate rendered against the Company and/or any Significant Subsidiary of the Company, which judgment is not discharged or stayed within 60 days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished;

(i) the Company or any Significant Subsidiary shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company or any such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any such Significant Subsidiary or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due; or

(j) an involuntary case or other proceeding shall be commenced against the Company or any Significant Subsidiary seeking liquidation, reorganization or other relief with respect to the Company or such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Significant Subsidiary or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 consecutive calendar days.

Section 6.02. *Acceleration; Rescission and Annulment.* If one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), then, and in each and every such case (other than an Event of Default specified in Section 6.01(i) or Section 6.01(j) with respect to the Company), unless the principal of all of the Notes shall have already become due and payable, either the Trustee or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 8.04, in each case, by notice in writing to the Company (and to the Trustee if given by Holders), may declare 100% of the principal amount of, and accrued and unpaid interest on, all the Notes then outstanding to be due and payable immediately, and upon any such declaration the same shall become and shall automatically be immediately due and payable, anything contained in this Indenture or in the Notes to the contrary notwithstanding. If an Event of Default specified in Section 6.01(i) or Section 6.01(j) with respect to the Company occurs and is continuing, 100% of the principal amount of, and accrued and unpaid interest, if any, on, all Notes then outstanding shall automatically become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder of Notes.

The immediately preceding paragraph, however, is subject to the conditions that if, at any time after the principal of the Notes shall have been so declared due and payable (or have become immediately due and payable), and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, if (1) the Company shall have paid or deposited with the Trustee a sum sufficient to pay all matured installments of

accrued and unpaid interest upon the Notes and the principal of any and all Notes that shall have become due otherwise than by acceleration (with interest on such principal and, to the extent that such payment is enforceable under applicable law, on overdue installments of accrued and unpaid interest, at the rate borne by the Notes at such time to the date of such payment or deposit) and amounts due to the Trustee pursuant to Section 7.06, (2) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (3) any and all existing Events of Default under this Indenture, other than the nonpayment of the principal of and accrued and unpaid interest, if any, on Notes that shall not have become due by their terms, shall have been remedied or waived pursuant to Section 6.09, then and in every such case (except as provided in the immediately succeeding sentence) the Holders of a majority in aggregate principal amount of the Notes then outstanding, by written notice to the Company and to the Trustee, may waive all Defaults or Events of Default with respect to the Notes and rescind and annul such declaration and its consequences and such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right consequent thereon. Notwithstanding anything to the contrary herein, no such waiver or rescission and annulment shall extend to or shall affect any Default or Event of Default resulting from (i) the nonpayment of the principal (including the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest, if any, on, any Notes, (ii) a failure to repurchase any Notes when required or (iii) a failure to pay or deliver, as the case may be, the consideration due upon conversion of the Notes.

Section 6.03. *Additional Interest.* Notwithstanding anything in this Indenture or in the Notes to the contrary, to the extent the Company elects, the sole remedy for an Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06(a) and for any failure to comply with the requirements of Section 314(a)(1) of the Trust Indenture Act, shall (i) for the first 90 calendar days after the occurrence of such an Event of Default, consist exclusively of the right to receive Additional Interest on the Notes at a rate equal to 0.25% per annum of the principal amount of the Notes outstanding for each day during such 90- calendar day period on which such an Event of Default is continuing and (ii) for the period from, and including, the 181st calendar day after the occurrence of such an Event of Default to, and including, the 180th calendar day after the occurrence of such an Event of Default, consist exclusively of the right to receive Additional Interest on the Notes at a rate equal to 0.50% per annum of the principal amount of Notes outstanding for each day during such additional 90- calendar day period on which such an Event of Default is continuing. In no event shall Additional Interest described in this paragraph accrue at a rate in excess of 0.50% per annum, regardless of the number of events or circumstances giving rise to the requirement to pay such Additional Interest. If the Company so elects, such Additional Interest shall be payable in the same manner and on the same dates as the stated interest payable on the Notes. On the 181st calendar day after such Event of Default (if the Event of Default relating to the Company's failure to file is not cured or waived prior to such 181st calendar day), the Notes shall be immediately subject to acceleration as provided in Section 6.02. The provisions of this paragraph will not affect the rights of Holders of Notes in the event of the occurrence of any Event of Default other than the Company's failure to comply with its obligations as set forth in

Section 4.06(a) or the failure to comply with the requirements of Section 314(a)(1) of the Trust Indenture Act. In the event the Company does not elect to pay Additional Interest following an Event of Default in accordance with this Section 6.03 or the Company elected to make such payment but does not pay the Additional Interest when due, the Notes shall be immediately subject to acceleration as provided in Section 6.02.

In order to elect to pay Additional Interest as the sole remedy during the first 180 calendar days after the occurrence of any Event of Default described in the immediately preceding paragraph, the Company must notify all Holders of the Notes, the Trustee and the Paying Agent (if other than the Trustee) in an Officer's Certificate of such election prior to the beginning of such 180-calendar day period. Upon the failure to timely give such notice or pay Additional Interest, the Notes shall be immediately subject to acceleration as provided in Section 6.02.

Section 6.04. Payments of Notes on Default; Suit Therefor. If an Event of Default described in clause (a) or (b) of Section 6.01 shall have occurred, the Company shall, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of the Notes, the whole amount then due and payable on the Notes for principal and interest, if any, with interest on any overdue principal and interest, if any, at the rate borne by the Notes at such time, and, in addition thereto, such further amount as shall be sufficient to cover any amounts due to the Trustee under Section 7.06. If the Company shall fail to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Notes, wherever situated.

In the event there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Notes under Title 11 of the United States Code, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequestrator or similar official shall have been appointed for or taken possession of the Company or such other obligor, the property of the Company or such other obligor, or in the event of any other judicial proceedings relative to the Company or such other obligor upon the Notes, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 6.04, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal and accrued and unpaid interest, if any, in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents and to take such other actions as it may deem necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceedings relative to the Company or any other obligor on the Notes,

its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due to the Trustee under Section 7.06; and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Holders to make such payments to the Trustee, as administrative expenses, and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it for reasonable compensation, expenses, advances and disbursements, including agents and counsel fees, and including any other amounts due to the Trustee under Section 7.06, incurred by it up to the date of such distribution. To the extent that such payment of reasonable compensation, expenses, advances and disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property that the Holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting such Holder or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Notes.

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Notes, and it shall not be necessary to make any Holders of the Notes parties to any such proceedings.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of any waiver pursuant to Section 6.09 or any rescission and annulment pursuant to Section 6.02 or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Holders and the Trustee shall, subject to any determination in such proceeding, be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Holders and the Trustee shall continue as though no such proceeding had been instituted.

Section 6.05. *Application of Monies Collected by Trustee.* Any monies collected by the Trustee pursuant to this Article 6 with respect to the Notes shall be applied in the following order,

at the date or dates fixed by the Trustee for the distribution of such monies, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

First, to the payment of all amounts due the Trustee and its agents under Section 7.06;

Second, in case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of interest on, and any cash due upon conversion of, the Notes in default in the order of the date due of the payments of such interest and cash due upon conversion, as the case may be, with interest (to the extent that such interest has been collected by the Trustee) upon such overdue payments at the rate borne by the Notes at such time such payments to be made ratably to the Persons entitled thereto;

Third, in case the principal of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid to the payment of the whole amount (including, if applicable, the payment of the Fundamental Change Repurchase Price and any cash due upon conversion) then owing and unpaid upon the Notes for principal and interest, if any, with interest on the overdue principal and, to the extent that such interest has been collected by the Trustee, upon overdue installments of interest at the rate borne by the Notes at such time, and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such principal (including, if applicable, the Fundamental Change Repurchase Price and the cash due upon conversion) and interest without preference or priority of principal over interest, or of interest over principal or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably to the aggregate of such principal (including, if applicable, the Fundamental Change Repurchase Price and any cash due upon conversion) and accrued and unpaid interest; and

Fourth, to the payment of the remainder, if any, to the Company.

Section 6.06. *Proceedings by Holders*. Except to enforce the right to receive payment of principal (including, if applicable, the Fundamental Change Repurchase Price) or interest when due, or the right to receive payment or delivery of the consideration due upon conversion, no Holder shall have any right by virtue of or by availing of any provision of this Indenture or a Note to institute any suit, action or proceeding, judicial or otherwise, in equity or at law upon or under or with respect to this Indenture or a Note, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, unless:

(a) such Holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as herein provided;

(b) Holders of at least 25% in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder;

(c) such Holders shall have offered to the Trustee such security or indemnity satisfactory to it against all losses and expenses to be incurred therein or thereby;

(d) the Trustee for 60 calendar days after its receipt of such notice, request and offer of such security or indemnity, shall have neglected or refused to institute any such action, suit or proceeding; and

(e) no direction that, in the opinion of the Trustee, is inconsistent with such written request shall have been given to the Trustee by the Holders of a majority of the aggregate principal amount of the Notes then outstanding within such 60-calendar day period pursuant to Section 6.09,

it being understood and intended, and being expressly covenanted by the taker and Holder of every Note with every other taker and Holder and the Trustee that no one or more Holders shall have any right in any manner whatever by virtue of or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other Holder (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders), or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders (except as otherwise provided herein). For the protection and enforcement of this Section 6.06, each and every Holder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of this Indenture and any provision of any Note, the right of any Holder to receive payment or delivery, as the case may be, of (x) the principal (including the Fundamental Change Repurchase Price, if applicable) of, (y) accrued and unpaid interest, if any, on, and (z) the consideration due upon conversion of, such Note, on or after the respective due dates expressed or provided for in such Note or in this Indenture, or to bring suit for the enforcement of any such payment or delivery, as the case may be, on or after such respective dates against the Company shall not be impaired or affected without the consent of such Holder.

Section 6.07. *Proceedings by Trustee.* In case of an Event of Default, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as are necessary to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 6.08. *Remedies Cumulative and Continuing.* Except as provided in the last paragraph of Section 2.06, all powers and remedies given by this Article 6 to the Trustee or to the Holders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the Holders of the Notes,

by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any Holder of any of the Notes to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Default or Event of Default or any acquiescence therein; and, subject to the provisions of Section 6.06, every power and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders.

Section 6.09. *Direction of Proceedings and Waiver of Defaults by Majority of Holders.* Subject to the Trustee's right to request security or indemnity from the relevant Holders as described herein, the Holders of at least a majority of the aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to the Notes; *provided, however,* that (a) such direction shall not be in conflict with any rule of law or with this Indenture, and (b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. The Trustee may refuse to follow any direction, subject to the Trustee's duties under the Trust Indenture Act, that it determines is unduly prejudicial to the rights of any other Holder or that would involve the Trustee in personal liability. The Holders of at least a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 may on behalf of the Holders of all of the Notes waive any past Default or Event of Default hereunder and its consequences except (i) a default in the payment of accrued and unpaid interest, if any, on, or the principal (including any Fundamental Change Repurchase Price) of, the Notes when due that has not been cured pursuant to the provisions of Section 6.01, (ii) a failure by the Company to pay or deliver, as the case may be, the consideration due upon conversion of the Notes, (iii) a failure by the Company to repurchase any Notes when required under this Indenture or (iv) a default in respect of a covenant or provision hereof which under Article 10 cannot be modified or amended without the consent of each Holder of an outstanding Note affected. Upon any such waiver the Company, the Trustee and the Holders of the Notes shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. Whenever any Default or Event of Default hereunder shall have been waived as permitted by this Section 6.09, said Default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

Section 6.10. *Notice of Defaults.* Trustee shall, within 90 calendar days after the occurrence and continuance of a Default of which a Responsible Officer has actual knowledge, deliver to all Holders notice of all Defaults actually known to a Responsible Officer in the manner and to the extent provided in Section 313(c) of the Trust Indenture Act, unless such Defaults shall have been cured or waived before the giving of such notice; *provided* that, except in the case of a Default in the payment of the principal of (including the Fundamental Change

Repurchase Price, if applicable), or accrued and unpaid interest on, any of the Notes or a Default in the payment or delivery of the consideration due upon conversion, the Trustee shall be fully protected in withholding such notice if and so long as the Trustee in good faith determines that the withholding of such notice is in the interests of the Holders.

Section 6.11. *Undertaking to Pay Costs.* All parties to this Indenture agree, and each Holder of any Note by its acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided* that the provisions of this Section 6.11 (to the extent permitted by law) shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Notes at the time outstanding determined in accordance with Section 8.04, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or accrued and unpaid interest, if any, on any Note (including, but not limited to, the Fundamental Change Repurchase Price, if applicable) on or after the due date expressed or provided for in such Note or to any suit for the enforcement of the right to convert any Note, or receive the consideration due upon conversion, in accordance with the provisions of Article 14.

ARTICLE 7 CONCERNING THE TRUSTEE

Section 7.01. *Duties and Responsibilities of Trustee.* The Trustee, prior to the occurrence of an Event of Default and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee. In the event an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs; *provided* that if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity or security satisfactory to it against all losses and expenses that might be incurred by it in compliance with such request or direction. Prior to taking any action hereunder at the Company's instruction, the Trustee shall be entitled to indemnification by the Company satisfactory to the Trustee against all losses and expenses caused by taking or not taking such action.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct, except that:

(a) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith and willful misconduct on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions that by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts stated therein);

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless it shall be proved that the Trustee was grossly negligent in ascertaining the pertinent facts;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority of the aggregate principal amount of the Notes at the time outstanding determined as provided in Section 8.04 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(d) whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section;

(e) the Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any Paying Agent or any records maintained by any co-Note Registrar with respect to the Notes;

(f) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively rely on its failure to receive such notice as reason to act as if no such event occurred, unless a Responsible Officer of the Trustee had actual knowledge of such event;

(g) in the absence of written investment direction from the Company, all cash received by the Trustee shall be placed in a non-interest bearing trust account, and in no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon or for losses incurred as a result of the liquidation of any such investment prior to its maturity date or the failure of the party directing such investments prior to its maturity date or the failure of the party directing such investment to provide timely written investment direction, and the Trustee shall have no obligation to invest or reinvest any amounts held hereunder in the absence of such written investment direction from the Company; and

(h) in the event that the Trustee is also acting as Custodian, Note Registrar, Paying Agent, Conversion Agent, Bid Solicitation Agent or transfer agent hereunder, the rights, privileges, immunities and protections afforded to the Trustee pursuant to this Article 7, including, without limitation, its right to be indemnified, are extended to, and shall be enforceable by the Custodian, Note Registrar, Paying Agent, Conversion Agent, Bid Solicitation Agent or transfer agent.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

Section 7.02. *Reliance on Documents, Opinions, Etc.* Except as otherwise provided in Section 7.01:

(a) the Trustee may conclusively rely and (subject to Sections 315(a) through 315(d) of the Trust Indenture Act) shall be fully protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, note, coupon or other paper or document believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officer's Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;

(c) the Trustee may consult with counsel of its own selection and require an Opinion of Counsel and any advice of such counsel or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

(d) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Trustee, in its

discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation;

(e) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, custodians, nominees or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, custodian, nominee or attorney appointed by it with due care hereunder;

(f) the permissive rights of the Trustee enumerated herein shall not be construed as duties;

(g) the Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder;

(h) the Trustee may request that the Company deliver a certificate setting forth the names of individuals and/or titles of Officers authorized at such time to take specified actions pursuant to this Indenture;

(i) the Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture; and

(j) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity satisfactory to the Trustee against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction.

In no event shall the Trustee be liable for special, indirect, punitive or any consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action. The Trustee shall not be charged with knowledge of any Default or Event of Default with respect to the Notes, unless either (1) a Responsible Officer shall have actual knowledge of such Default or Event of Default or (2) written notice of such Default or Event of Default is received by the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Notes and this Indenture.

Section 7.03. *No Responsibility for Recitals, Etc.* The recitals contained herein and in the Notes (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Trustee in conformity with the provisions of this Indenture.

Section 7.04. *Trustee, Paying Agents, Conversion Agents, Bid Solicitation Agent or Note Registrar May Own Notes.* The Trustee, any Paying Agent, any Conversion Agent, Bid Solicitation Agent (if other than the Company) or Note Registrar, in its individual or any other capacity, may become the owner or pledgee of Notes with the same rights it would have if it were not the Trustee, Paying Agent, Conversion Agent, Bid Solicitation Agent or Note Registrar.

Section 7.05. *Monies and Shares of Common Stock to Be Held in Trust.* All monies and shares of Common Stock received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money and shares of Common Stock held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money or shares of Common Stock received by it hereunder except as may be agreed in writing from time to time by the Company and the Trustee.

Section 7.06. *Compensation and Expenses of Trustee.* The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to in writing between the Trustee and the Company, and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances reasonably incurred or made by the Trustee in connection with the exercise or performance of any of its powers or duties hereunder, or in connection with enforcing the provisions of this Indenture in any capacity thereunder (including the reasonable compensation and the fees and expenses and disbursements of its agents and counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as shall have been caused by its gross negligence, willful misconduct or bad faith. The Company also covenants to indemnify the Trustee (and any predecessor Trustee) in any capacity under this Indenture and any other document or transaction entered into in connection herewith and its agents and any authenticating agent for, and to hold them harmless against, any loss, claim, damage, liability or expense incurred without gross negligence, willful misconduct or bad faith on the part of the Trustee, its officers, directors, agents or employees, or such agent or authenticating agent, as the case may be, and arising out of or in connection with the acceptance or administration of this Indenture or in any other capacity hereunder, including the costs and expenses of defending themselves against any claim (whether asserted by the Company, or any Holder or any other Person) or liability in connection with enforcing the provisions under this Indenture. The obligations of the Company under this Section 7.06 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a senior claim to which the Notes are hereby made subordinate on all money or property held or collected by the Trustee, except, subject to the effect of Section 6.05, funds held in trust herewith for the benefit of the Holders of particular Notes. The Trustee's right to receive payment of any amounts due under this Section 7.06 shall not be subordinate to any other liability or

indebtedness of the Company. The obligation of the Company under this Section 7.06 shall survive the satisfaction and discharge of this Indenture and the earlier resignation or removal of the Trustee. The Company need not pay for any settlement made without its consent, which consent shall not be unreasonably withheld. The indemnification provided in this Section 7.06 shall extend to the officers, directors, agents and employees of the Trustee.

Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee and its agents and any authenticating agent incur expenses or render services after an Event of Default specified in Section 6.01(i) or Section 6.01(j) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency or similar laws.

Section 7.07. *Officer's Certificate as Evidence.* Whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Trustee, and such Officer's Certificate, in the absence of bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 7.08. *Eligibility of Trustee.* There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least \$50,000,000. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 7.09. *Resignation or Removal of Trustee.* (a) The Trustee may at any time resign by giving written notice of such resignation to the Company and by delivering notice thereof to the Holders. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 60 calendar days after the delivery of such notice of resignation to the Holders, the resigning Trustee may, petition any court of competent jurisdiction, at the expense of the Company, for the appointment of a successor trustee, or any Holder who has been a bona fide holder of a Note or Notes for at least six months (or since the date of this Indenture) may, subject to the provisions of Section 6.11, on behalf of himself or herself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

- (i) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.08 and shall fail to resign after written request therefor by the Company or by any such Holder,
- (ii) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.10 and shall fail to resign after written request therefor by the Company or by any Holder, or
- (iii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in either case, the Company may by a Board Resolution remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.11, any Holder who has been a bona fide holder of a Note or Notes for at least six months (or since the date of this Indenture) may, on behalf of himself or herself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The Holders of a majority in aggregate principal amount of the Notes at the time outstanding, as determined in accordance with Section 8.04, may at any time remove the Trustee and nominate a successor trustee that shall be deemed appointed as successor trustee unless within ten calendar days after notice to the Company of such nomination the Company objects thereto, in which case the Trustee so removed or any Holder, upon the terms and conditions and otherwise as in Section 7.09(a) provided, may petition any court of competent jurisdiction, at the expense of the Company, for an appointment of a successor trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 7.09 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.10.

Section 7.10. *Acceptance by Successor Trustee.* Any successor trustee appointed as provided in Section 7.09 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights,

powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a senior claim to which the Notes are hereby made subordinate on all money or property held or collected by such trustee as such, except for funds held in trust for the benefit of Holders of particular Notes, to secure any amounts then due it pursuant to the provisions of Section 7.06.

No successor trustee shall accept appointment as provided in this Section 7.10 unless at the time of such acceptance such successor trustee shall be eligible under the provisions of Section 7.08.

Upon acceptance of appointment by a successor trustee as provided in this Section 7.10, each of the Company and the successor trustee, at the written direction and at the expense of the Company shall deliver or cause to be delivered notice of the succession of such trustee hereunder to the Holders. If the Company fails to deliver such notice (or cause such notice to be delivered) within ten calendar days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be delivered at the expense of the Company.

Section 7.11. *Succession by Merger, Etc.* Any corporation or other entity into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee (including the administration of this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto; *provided* that in the case of any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee such corporation or other entity shall be eligible under the provisions of Section 7.08.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor trustee or authenticating agent appointed by such predecessor trustee, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Trustee or an authenticating agent appointed by such successor trustee may authenticate such Notes either in the name of any predecessor trustee hereunder or in the name of the successor trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificate of the Trustee shall have; *provided, however*, that the right to adopt the certificate of authentication of any predecessor trustee or to authenticate Notes in the name of any predecessor trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 7.12. *Trustee's Application for Instructions from the Company.* Any application by the Trustee for written instructions from the Company (other than with regard to any action proposed to be taken or omitted to be taken by the Trustee that affects the rights of the Holders of the Notes under this Indenture) may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable to the Company for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three Business Days after the date any officer that the Company has indicated to the Trustee should receive such application actually receives such application, unless any such officer shall have consented in writing to any earlier date), unless, prior to taking any such action (or the effective date in the case of any omission), the Trustee shall have received written instructions in accordance with this Indenture in response to such application specifying the action to be taken or omitted.

Section 7.13. *Reports by the Trustee.* If required by Section 313(a) of the Trust Indenture Act, the Trustee, within sixty (60) days after each March 15, commencing March 15, 2015, shall transmit by mail, first class postage prepaid, to the Holders, as their names and addresses appear upon the Note Register, a brief report dated as of such March 15, which complies with Section 313(a) of the Trust Indenture Act. The Trustee shall comply with Section 313(b) and 313(c) of the Trust Indenture Act. A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with the Company, with each securities exchange upon which any Notes are listed (if so listed) and also with the Commission. The Company agrees to promptly notify the Trustee in writing when any Notes become listed on any securities exchanges and of any delisting thereof.

Section 7.14. *Disqualification; Conflicting Interests.* If the Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of the Trust Indenture Act, the Trustee and the Company shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

Section 7.15. *Preferential Collection of Claims Against the Company.* The Trustee shall comply with Section 311(a) of the Trust Indenture Act, excluding any creditor relationship described in Section 311(b) of the Trust Indenture Act. A Trustee who has resigned or been removed shall be subject to Section 311(a) of the Trust Indenture Act to the extent included therein.

ARTICLE 8
CONCERNING THE HOLDERS

Section 8.01. *Action by Holders.* Whenever in this Indenture it is provided that the Holders of a specified percentage of the aggregate principal amount of the Notes may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the Holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Holders in person or by agent or proxy appointed in writing, or (b) by the record of the Holders voting in favor thereof at any meeting of Holders duly called and held in accordance with the provisions of Article 9, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Holders. Whenever the Company or the Trustee solicits the taking of any action by the Holders of the Notes, the Company or the Trustee may, but shall not be required to, fix in advance of such solicitation, a date as the record date for determining Holders entitled to take such action. The record date if one is selected shall be not more than fifteen calendar days prior to the date of commencement of solicitation of such action.

Section 8.02. *Proof of Execution by Holders.* Subject to the provisions of Section 7.01, Section 7.02 and Section 9.05, proof of the execution of any instrument by a Holder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the Note Register or by a certificate of the Note Registrar. The record of any Holders' meeting shall be proved in the manner provided in Section 9.06.

Section 8.03. *Who Are Deemed Absolute Owners.* The Company, the Trustee, any authenticating agent, any Paying Agent, any Conversion Agent and any Note Registrar may deem the Person in whose name a Note shall be registered upon the Note Register to be, and may treat it as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Company or any Note Registrar) for the purpose of receiving payment of or on account of the principal of and (subject to Section 2.03) accrued and unpaid interest on such Note, for conversion of such Note and for all other purposes; and neither the Company nor the Trustee nor any Paying Agent nor any Conversion Agent nor any Note Registrar shall be affected by any notice to the contrary. All such payments or deliveries so made to any Holder for the time being, or upon its order, shall be valid, and, to the extent of the sums or shares of Common Stock so paid or delivered, effectual to satisfy and discharge the liability for monies payable or shares deliverable upon any such Note. Notwithstanding anything to the contrary in this Indenture or the Notes following an Event of Default, any holder of a beneficial interest in a Global Note may directly enforce against the Company, without the consent, solicitation, proxy, authorization or any other action of the Depositary or any other Person, such holder's right to exchange such beneficial interest for a Note in certificated form in accordance with the provisions of this Indenture.

Section 8.04. *Company-Owned Notes Disregarded.* In determining whether the Holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes that are owned by the Company, by any Subsidiary thereof or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any Subsidiary thereof shall be disregarded and deemed not to be outstanding for the purpose of any such determination; *provided* that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action only Notes that a Responsible Officer actually knows are so owned shall be so disregarded. Notes so owned that have been pledged in good faith may be regarded as outstanding for the purposes of this Section 8.04 if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to so act with respect to such Notes and that the pledgee is not the Company, a Subsidiary thereof or a Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or a Subsidiary thereof. In the case of a dispute as to such right, any decision by the Trustee taken upon the advice of counsel shall be full protection to the Trustee. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officer's Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described Persons; and, subject to Section 7.01, the Trustee shall be entitled to accept such Officer's Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

Section 8.05. *Revocation of Consents; Future Holders Bound.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the Holders of the percentage of the aggregate principal amount of the Notes specified in this Indenture in connection with such action, any Holder of a Note that is shown by the evidence to be included in the Notes the Holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Note. Except as aforesaid, any such action taken by the Holder of any Note shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Note and of any Notes issued in exchange or substitution therefor or upon registration of transfer thereof, irrespective of whether any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution therefor or upon registration of transfer thereof.

ARTICLE 9 HOLDERS' MEETINGS

Section 9.01. *Purpose of Meetings.* A meeting of Holders may be called at any time and from time to time pursuant to the provisions of this Article 9 for any of the following purposes:

(a) to give any notice to the Company or to the Trustee or to give any directions to the Trustee permitted under this Indenture, or to consent to the waiving of any Default or Event of

Default hereunder (in each case, as permitted under this Indenture) and its consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of Article 6;

(b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article 7;

(c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 10.02; or

(d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Notes under any other provision of this Indenture or under applicable law.

Section 9.02. *Call of Meetings by Trustee.* The Trustee may at any time call a meeting of Holders to take any action specified in Section 9.01, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Holders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting and the establishment of any record date pursuant to Section 8.01, shall be delivered to Holders of such Notes. Such notice shall also be delivered to the Company. Such notices shall be delivered not less than 20 nor more than 90 calendar days prior to the date fixed for the meeting.

Any meeting of Holders shall be valid without notice if the Holders of all Notes then outstanding are present in person or by proxy or if notice is waived before or after the meeting by the Holders of all Notes then outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice.

Section 9.03. *Call of Meetings by Company or Holders.* In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% of the aggregate principal amount of the Notes then outstanding, shall have requested the Trustee to call a meeting of Holders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have delivered the notice of such meeting within 20 calendar days after receipt of such request, then the Company or such Holders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 9.01, by delivering, as the case may be, notice thereof as provided in Section 9.02.

Section 9.04. *Qualifications for Voting.* To be entitled to vote at any meeting of Holders a Person shall (a) be a Holder of one or more Notes on the record date pertaining to such meeting or (b) be a Person appointed by an instrument in writing as proxy by a Holder of one or more Notes on the record date pertaining to such meeting. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 9.05. *Regulations.* Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders, in regard to proof of the holding of Notes and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders as provided in Section 9.03, in which case the Company or the Holders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Holders of a majority in aggregate principal amount of the Notes represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of Section 8.04, at any meeting of Holders each Holder or proxyholder shall be entitled to one vote for each \$1,000 principal amount of Notes held or represented by him or her; *provided, however*, that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Notes held by it or instruments in writing as aforesaid duly designating it as the proxy to vote on behalf of other Holders. Any meeting of Holders duly called pursuant to the provisions of Section 9.02 or Section 9.03 may be adjourned from time to time by the Holders of a majority of the aggregate principal amount of Notes represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Section 9.06. *Voting.* The vote upon any resolution submitted to any meeting of Holders shall be by written ballot on which shall be subscribed the signatures of the Holders or of their representatives by proxy and the outstanding aggregate principal amount of the Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was delivered as provided in Section 9.02. The record shall show the aggregate principal amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 9.07. *No Delay of Rights by Meeting.* Nothing contained in this Article 9 shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders under any of the provisions of this Indenture or of the Notes.

Nothing contained in this Article 9 shall be deemed or construed to limit any Holder actions pursuant to the applicable procedures of the Depository so long as the Notes are Global Notes.

ARTICLE 10
SUPPLEMENTAL INDENTURES

Section 10.01. *Supplemental Indentures Without Consent of Holders.* The Company, when authorized by the resolutions of the Board of Directors and the Trustee, at the Company's expense, may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act) for one or more of the following purposes:

- (a) to cure any ambiguity, omission, defect or inconsistency;
- (b) to provide for the assumption by a Successor Company of the obligations of the Company under this Indenture and the Notes pursuant to Article 11;
- (c) to add guarantees with respect to the Notes;
- (d) to secure the Notes;
- (e) to add to the covenants or Events of Default of the Company for the benefit of the Holders or surrender any right or power conferred upon the Company;
- (f) to make any change that does not adversely affect the rights of any Holder;
- (g) to conform the provisions of this Indenture or the Notes to the "Description of Notes" section of the Prospectus, as evidenced by an Officer's Certificate;
- (h) comply with any requirement of the Commission in connection with the qualification of the Indenture under the Trust Indenture Act;
- (i) to increase the Conversion Rate as provided in Article 14;
- (j) provide for the issuance of additional Notes in accordance with the limitations set forth in Section 2.10.

(k) to provide for the acceptance or appointment of a successor trustee or facilitate the administration of the trusts under this Indenture by more than one trustee;

(l) irrevocably elect one or more, or eliminate any of, the settlement methods or irrevocably select a Specified Dollar Amount; or

(m) in connection with any Specified Corporate Event, provide that the notes are convertible into Reference Property, subject to the provisions of Section 14.02, and make such related changes to the terms of the Notes to the extent expressly contemplated by Section 14.07.

Upon the written request of the Company, the Trustee is hereby authorized to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to, but may in its discretion, enter into any supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section 10.01 may be executed by the Company and the Trustee without the consent of the Holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 10.02.

Section 10.02. *Supplemental Indentures with Consent of Holders.* With the consent (evidenced as provided in Article 8) of the Holders of at least a majority of the aggregate principal amount of the Notes then outstanding (determined in accordance with Article 8 and including, without limitation, consents obtained in connection with a repurchase of, or tender or exchange offer for, Notes), the Company, when authorized by the resolutions of the Board of Directors and the Trustee, at the Company's expense, may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act) for the purpose of adding any provisions to or changing in any manner, waiving or eliminating any of the provisions of this Indenture, the Notes or any supplemental indenture or of modifying in any manner the rights of the Holders; *provided, however*, that, without the consent of each Holder of an outstanding Note affected, no such supplemental indenture shall:

(a) reduce the consideration due upon conversion of the Notes;

(b) reduce the rate of or extend the stated time for payment of interest on any Note;

(c) reduce the principal of or change the Maturity Date of any Note;

(d) make any change that adversely affects the conversion rights of any Notes other than as required by the indenture;

(e) reduce the Fundamental Change Repurchase Price of any Note or amend or modify in any manner adverse to the Holders the Company's obligation to make such payment, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;

(f) make any Note payable in a currency other than that stated in the Note and in this Indenture;

(g) change the ranking of the Notes;

(h) impair the right of any Holder to receive payment of principal and interest on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Notes; or

(i) make any change in this Article 10 that requires each Holder's consent or in the waiver provisions in Section 6.02 or Section 6.09.

Upon the written request of the Company, and upon the filing with the Trustee of evidence of the consent of Holders as aforesaid and subject to Section 10.05, the Trustee shall join with the Company in the execution of such supplemental indenture unless such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

The consent of Holders is not necessary under this Section 10.02 to approve the particular form of any proposed supplemental indenture. It shall be sufficient if such Holders approve the substance thereof. After any such supplemental indenture becomes effective, the Company shall deliver to the Holders a notice briefly describing such supplemental indenture. However, the failure to give such notice to all the Holders, or any defect in the notice, will not impair or affect the validity of the supplemental indenture.

Section 10.03. *Effect of Supplemental Indentures.* Upon the execution of any supplemental indenture pursuant to the provisions of this Article 10, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the Holders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 10.04. *Notation on Notes.* Notes authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 10 may, at the Company's expense, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Notes so modified as to conform, in the opinion of the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may, at the Company's expense, be prepared and executed by the Company, authenticated by the Trustee (or an authenticating agent duly appointed by the Trustee pursuant to Section 17.10) and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 10.05. *Evidence of Compliance of Supplemental Indenture to Be Furnished Trustee.* In addition to the documents required by Section 17.05, the Trustee shall receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article 10 and is permitted or authorized by this Indenture and such Opinion of Counsel shall provide that such supplemental indenture is the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to the effect of (i) applicable bankruptcy, insolvency, reorganization, arrangement, fraudulent transfer or conveyance, moratorium, conservatorship and similar laws affecting creditors' rights and remedies generally, (ii) general principles of equity (whether considered in a proceeding in equity or at law), including, without limitation, the possible unavailability of specific performance, injunctive relief or any other equitable remedy, and (iii) principles of materiality and reasonableness and implied covenants of good faith and fair dealing.

ARTICLE 11
CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

Section 11.01. *Company May Consolidate, Etc. on Certain Terms.* Subject to the provisions of Section 11.02, the Company shall not consolidate with, merge with or into, or sell, convey, assign, transfer, lease or otherwise dispose of all or substantially all its properties and assets, in one transaction or any series of related transactions, to another Person, unless:

(a) the resulting, surviving or transferee Person (if other than the Company) (the "**Successor Company**") shall be a corporation organized and existing under the laws of the United States of America, any State thereof or the District of Columbia;

(b) the Successor Company (if not the Company) shall expressly assume, by supplemental indenture, all of the obligations of the Company under the Notes and this Indenture; and

(c) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing under this Indenture.

Section 11.02. *Successor Corporation to Be Substituted.* In case of any such consolidation, merger, sale, conveyance, assignment, transfer, lease or other disposition and upon the assumption by the Successor Company, by supplemental indenture (which shall conform to the provisions of the Trust Indenture Act, as then in effect), executed and delivered to the Trustee and reasonably satisfactory in form to the Trustee, of the due and punctual payment of the principal of and accrued and unpaid interest on all of the Notes, the due and punctual delivery or payment, as the case may be, of any consideration due upon conversion of the Notes and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Company, such Successor Company (if not the Company) shall succeed to and, except in the case of a lease of all or substantially all of the consolidated properties or assets

of the Company and its Subsidiaries, taken as a whole, shall be substituted for the Company, with the same effect as if it had been named herein as the party of the first part. Such Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such Successor Company instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the Officers of the Company to the Trustee for authentication, and any Notes that such Successor Company thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, sale, conveyance, assignment, transfer or other disposition (but not in the case of a lease), upon compliance with this Article 11 the Person named as the "Company" in the first paragraph of this Indenture (or any successor that shall thereafter have become such in the manner prescribed in this Article 11) may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture and the Notes.

In case of any such consolidation, merger, sale, conveyance, assignment, transfer, lease or other disposition, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

Section 11.03. *Opinion of Counsel to Be Given to Trustee.* No such consolidation, merger, sale, conveyance, assignment, transfer, lease or other disposition shall be effective unless the Trustee shall receive an Officer's Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale, conveyance, assignment, transfer, lease or other disposition and any such assumption and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, complies with the provisions of this Article 11.

ARTICLE 12 IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 12.01. *Indenture and Notes Solely Corporate Obligations.* No recourse for the payment of the principal of or accrued and unpaid interest on any Note, nor for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture or in any Note, nor because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, Officer or director or Subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of

law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes.

ARTICLE 13
INTENTIONALLY OMITTED

ARTICLE 14
CONVERSION OF NOTES

Section 14.01. *Conversion Privilege.* (a) Subject to and upon compliance with the provisions of this Article 14, each Holder of a Note shall have the right, at such Holder's option, to convert all or any portion (if the portion to be converted is \$1,000 principal amount or an integral multiple thereof) of such Note (i) subject to satisfaction of the conditions described in Section 14.01(b), at any time prior to the close of business on the Business Day immediately preceding June 15, 2019 under the circumstances and during the periods set forth in Section 14.01(b), and (ii) regardless of the conditions described in Section 14.01(b), on or after June 15, 2019 and prior to the close of business on the second Scheduled Trading Day immediately preceding the Maturity Date, in each case, at an initial conversion rate of [] shares of Common Stock (subject to adjustment as provided in this Article 14, the "**Conversion Rate**") per \$1,000 principal amount of Notes (subject to, and in accordance with, the settlement provisions of Section 14.02, the "**Conversion Obligation**").

(b) (i) Prior to the close of business on the Business Day immediately preceding June 15, 2019, a Holder may surrender all or any portion of its Notes for conversion at any time during the five Business Day period immediately after any five consecutive Trading Day period (the "**Measurement Period**") in which the Trading Price per \$1,000 principal amount of Notes, as determined following a request by a Holder of Notes in accordance with this subsection (b)(i), for each Trading Day of the Measurement Period was less than 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate on each such Trading Day. The Trading Prices shall be determined by the Bid Solicitation Agent pursuant to this subsection (b)(i) and the definition of Trading Price set forth in this Indenture. At such time as the Company directs the Bid Solicitation Agent in writing to solicit bid quotations, the Company shall (x) provide written notice to the Bid Solicitation Agent (if other than the Company) of the three independent nationally recognized securities dealers selected by the Company pursuant to the definition of Trading Price, along with appropriate contact information for each and (y) direct those security dealers to provide bids to the Bid Solicitation Agent. The Bid Solicitation Agent (if other than the Company) shall have no obligation to determine the Trading Price per \$1,000 principal amount of Notes unless the Company has requested such determination in writing, and the Company shall have no obligation to make such request (or, if the Company is acting as Bid Solicitation Agent, the Company shall have no obligation to determine the Trading Price per \$1,000 principal amount of Notes) unless a Holder of at least \$1,000,000 aggregate principal

amount of Notes provides the Company with reasonable evidence that the Trading Price per \$1,000 principal amount of Notes would be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate, at which time the Company shall instruct the Bid Solicitation Agent in writing (if other than the Company) to determine, or if the Company is acting as Bid Solicitation Agent, the Company shall determine, the Trading Price per \$1,000 principal amount of Notes beginning on the next Trading Day and on each successive Trading Day until the Trading Price per \$1,000 principal amount of Notes is greater than or equal to 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate. If (x) the Company is not acting as Bid Solicitation Agent, and the Company does not instruct the Bid Solicitation Agent in writing to determine the Trading Price per \$1,000 principal amount of Notes when obligated as provided in the preceding sentence, or if the Company instructs the Bid Solicitation Agent to obtain bids and the Bid Solicitation Agent fails to make such determination, or (y) the Company is acting as Bid Solicitation Agent and the Company fails to make such determination when obligated as provided in the preceding sentence, then, in either case, the Trading Price per \$1,000 principal amount of Notes shall be deemed to be less than 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate on each Trading Day of such failure. If the Trading Price condition set forth above has been met on any Trading Day, the Company shall so notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing on or within one Business Day of such Trading Day. If, at any time after the Trading Price condition set forth above has been met, the Trading Price per \$1,000 principal amount of Notes is greater than or equal to 98% of the product of the Last Reported Sale Price of the Common Stock and the Conversion Rate for such Trading Day, the Company shall promptly so notify the Holders of the Notes, the Trustee and the Conversion Agent (if other than the Trustee) in writing that the Trading Price condition set forth above is no longer met and thereafter neither the Company, nor the Bid Solicitation Agent, as applicable, shall be required to measure the Trading Price again until a new request is made as provided in this subsection (b)(i).

(ii) If, prior to the close of business on the Business Day immediately preceding June 15, 2019, the Company elects to:

(A) issue to all or substantially all holders of the Common Stock any rights, options or warrants (other than any issuance of any rights, options or warrants issued under a stockholder rights plan that are (x) transferable with shares of the Common Stock, including upon conversion, and (y) not exercisable until the occurrence of a Triggering Event; *provided* that such rights, options or warrants will be deemed issued under this clause upon the separation of such rights, options or warrants from the Common Stock, or upon the occurrence of such Triggering Event) entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance, to subscribe for or purchase shares of the Common Stock at a price per share that is less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance; or

(B) distribute to all or substantially all holders of the Common Stock the Company's assets, securities or rights, options or warrants to purchase securities of the Company, which distribution has a per share value, as reasonably determined by the Board of Directors, exceeding 10% of the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the date of announcement for such distribution,

then, in either case, the Company shall notify all Holders of the Notes, the Trustee and the Conversion Agent (if other than the Trustee) in writing at least 85 Scheduled Trading Days prior to the Ex-Dividend Date for such issuance or distribution (or, with respect to the separation of any rights, options or warrants described in Section 14.01(b)(ii)(A) above, within three Business Days of such separation). Once the Company has given such notice, a Holder may surrender all or any portion of its Notes for conversion at any time until the earlier of (1) the close of business on the second Business Day immediately preceding the Ex-Dividend Date for such issuance or distribution and (2) the Company's announcement that such issuance or distribution will not take place.

(iii) If a transaction or event that constitutes a Fundamental Change or a Make-Whole Fundamental Change occurs prior to the close of business on the Business Day immediately preceding June 15, 2019, regardless of whether a Holder has the right to require the Company to repurchase the Notes pursuant to Section 15.02, or if the Company is a party to a Specified Corporate Event (other than any Specified Corporate Event that is solely for the purpose of changing the Company's jurisdiction of organization that (x) does not constitute a Fundamental Change or a Make-Whole Fundamental Change and (y) results in a reclassification, conversion or exchange of outstanding shares of the Common Stock solely into shares of the Common Stock of the surviving entity) that occurs prior to the close of business on the Business Day immediately preceding June 15, 2019, all or any portion of a Holder's Notes may be surrendered for conversion at any time from or after the date that is 85 Scheduled Trading Days prior to the anticipated effective date of the transaction or event (or, if later, the Business Day after the Company gives notice of such transaction or event) until 35 Trading Days after the actual effective date of such transaction or event or, if such transaction or event also constitutes a Fundamental Change, until the close of business on the second Scheduled Trading Day immediately preceding the related Fundamental Change Repurchase Date. The Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing (i) as promptly as practicable following the date the Company publicly announces such transaction or event but in no event less than 85 Scheduled Trading Days prior to the anticipated effective date of such transaction or event or (ii) if the Company does not have knowledge of the anticipated effective date of such transaction or event at least 85 Scheduled Trading Days prior to the anticipated effective date of such transaction or event, within one Business Day of the date upon which the Company publicly announces such transaction, but in no event later than the actual effective date of such transaction.

(iv) Prior to the close of business on the Business Day immediately preceding June 15, 2019, a Holder may surrender all or any portion of its Notes for conversion at any time during any calendar quarter commencing after the calendar quarter ending on December 31, 2014 (and only during such calendar quarter), if the Last Reported Sale Price of the Common Stock for at least 20 Trading Days (whether or not consecutive) during the period of 30 consecutive Trading Days ending on the last Trading Day of the immediately preceding calendar quarter is greater than or equal to []% of the Conversion Price on each applicable Trading Day. The Company shall determine at the beginning of each calendar quarter commencing after the quarter ending on December 31, 2014, whether the Notes may be surrendered for conversion in accordance with this clause (iv) and shall notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing each calendar quarter as to whether or not the Notes have become convertible in accordance with this clause (iv).

Section 14.02. *Conversion Procedure; Settlement Upon Conversion.*

(a) Subject to this Section 14.02, Section 14.03(b) and Section 14.07(a), upon conversion of any Note, the Company shall pay and/or deliver, as the case may be, to the converting Holder, in respect of each \$1,000 principal amount of Notes being converted, cash (“**Cash Settlement**”), shares of Common Stock, together with cash, if applicable, in lieu of delivering any fractional share of Common Stock in accordance with subsection (j) of this Section 14.02 (“**Physical Settlement**”) or a combination of cash and shares of Common Stock, together with cash, if applicable, in lieu of delivering any fractional share of Common Stock in accordance with subsection (j) of this Section 14.02 (“**Combination Settlement**”), at its election, as set forth in this Section 14.02.

(i) All conversions for which the relevant Conversion Date occurs during the period from, and including, June 15, 2019 to, and including, the second Scheduled Trading Day immediately preceding the Maturity Date, shall be settled using the same Settlement Method.

(ii) Except for any conversions described in Section 14.02(a)(i), the Company shall use the same Settlement Method for all conversions with the same Conversion Date, but the Company shall not have any obligation to use the same Settlement Method with respect to conversions with different Conversion Dates.

(iii) If, in respect of any Conversion Date (or the period described in the third immediately succeeding set of parentheses, as the case may be), the Company elects to deliver a notice (the “**Settlement Notice**”) of the relevant Settlement Method in respect of such Conversion Date (or such period, as the case may be), the Company, through the Trustee (upon written instruction from the Company to send such notice), shall deliver such Settlement Notice to converting Holders no later than the close of business on the second Trading Day immediately following the relevant Conversion Date (or, in the case of any conversions occurring during the period from, and including, June 15, 2019 to the close of business on the second Scheduled Trading Day immediately preceding the

Maturity Date, no later than the close of business on June 15, 2019). If the Company does not elect a Settlement Method prior to the deadline set forth in the immediately preceding sentence, the Company shall no longer have the right to elect Cash Settlement or Physical Settlement and the Company shall be deemed to have elected Combination Settlement in respect of its Conversion Obligation, and the Specified Dollar Amount per \$1,000 principal amount of Notes shall be equal to \$1,000. Such Settlement Notice shall specify the relevant Settlement Method and in the case of an election of Combination Settlement, the relevant Settlement Notice shall indicate the Specified Dollar Amount per \$1,000 principal amount of Notes. If the Company delivers a Settlement Notice electing (or is deemed to have elected) Combination Settlement in respect of its Conversion Obligation but does not indicate a Specified Dollar Amount per \$1,000 principal amount of Notes in such Settlement Notice, the Specified Dollar Amount per \$1,000 principal amount of Notes shall be deemed to be \$1,000.

(iv) With respect to any conversion, the cash, shares of Common Stock or combination of cash and shares of Common Stock in respect of any conversion of Notes (the "**Settlement Amount**") shall be computed as follows:

(A) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by Physical Settlement, the Company shall deliver to the converting Holder in respect of each \$1,000 principal amount of Notes being converted a number of shares of Common Stock equal to the Conversion Rate in effect on the Conversion Date;

(B) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by Cash Settlement, the Company shall pay to the converting Holder in respect of each \$1,000 principal amount of Notes being converted cash in an amount equal to the sum of the Daily Conversion Values for each of the 80 consecutive Trading Days during the related Observation Period; and

(C) if the Company elects (or is deemed to have elected) to satisfy its Conversion Obligation in respect of such conversion by Combination Settlement, the Company shall pay or deliver, as the case may be, in respect of each \$1,000 principal amount of Notes being converted, a Settlement Amount equal to the sum of the Daily Settlement Amounts for each of the 80 consecutive Trading Days during the related Observation Period.

(v) The Daily Settlement Amounts (if applicable) and the Daily Conversion Values (if applicable) shall be determined by the Company promptly following the last day of the Observation Period. Promptly after such determination of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash payable in lieu of delivering any fractional share of Common Stock, the Company shall notify the Trustee and the Conversion Agent (if other than the Trustee) in writing of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the

amount of cash payable in lieu of delivering fractional shares of Common Stock. Neither the Trustee nor the Conversion Agent (if other than the Trustee) shall have any responsibility for any such determination.

(b) Subject to Section 14.02(e), before any Holder of a Note shall be entitled to convert a Note as set forth above, such Holder shall provide an irrevocable notice (a “**Notice of Conversion**”) by (i) in the case of a Global Note, complying with the procedures of the Depository in effect at that time and, if required, (1) paying funds equal to the interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 14.02(h) and (2) paying all transfer and similar taxes as set forth in Section 14.02(d) and Section 14.02(e) and (ii) in the case of a Physical Note (1) completing, manually signing and delivering the irrevocable written notice to the Conversion Agent as set forth in the Form of Notice of Conversion (or a facsimile thereof) at the office of the Conversion Agent and stating in writing therein the principal amount of Notes to be converted and the name or names (with addresses) in which such Holder wishes the certificate or certificates for any shares of Common Stock to be delivered upon settlement of the Conversion Obligation to be registered, (2) surrendering such Notes, duly endorsed to the Company or in blank (and accompanied by appropriate endorsement and transfer documents), at the office of the Conversion Agent, (3) if required, furnishing appropriate endorsements and transfer documents, (4) if required, paying funds equal to the interest payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 14.02(h) and (5) paying all transfer and similar taxes as set forth in Section 14.02(d) and Section 14.02(e). The Trustee (and if different, the Conversion Agent) shall notify the Company of any conversion pursuant to this Article 14 on the Conversion Date for such conversion. No Notice of Conversion with respect to any Notes may be surrendered by a Holder thereof if such Holder has also delivered a Fundamental Change Repurchase Notice to the Company in respect of such Notes and has not validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 15.03.

If more than one Note shall be surrendered for conversion at one time by the same Holder, the Conversion Obligation with respect to such Notes shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted thereby) so surrendered.

(c) A Note shall be deemed to have been converted immediately prior to the close of business on the date (the “**Conversion Date**”) that the Holder has complied with the requirements set forth in subsection (b) above. Except as set forth in Section 14.03(b) and Section 14.07(a), the Company shall pay or deliver, as the case may be, the consideration due in respect of the Conversion Obligation on the third Business Day immediately following the relevant Conversion Date, if the Company elects Physical Settlement, or on the third Business Day immediately following the last Trading Day of the Observation Period, in the case of any other Settlement Method. If any shares of Common Stock are due to converting Holders, the Company shall issue or cause to be issued, and deliver to the Conversion Agent or to such Holder, or such Holder’s nominee or nominees, certificates or a book-entry transfer through the Depository for the full number of shares of Common Stock to which such Holder shall be entitled in satisfaction of the Company’s Conversion Obligation.

(d) In case any Physical Note shall be surrendered for partial conversion, the Company shall execute and the Trustee shall authenticate and deliver to or upon the written order of the Holder of the Note so surrendered a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Note, without payment of any service charge by the converting Holder but, if required by the Company or Trustee, with payment of a sum sufficient to cover any documentary, stamp or similar issue or transfer tax or similar governmental charge required by law or that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such conversion being different from the name of the Holder of the old Notes surrendered for such conversion.

(e) If a Holder submits a Note for conversion, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of any shares of Common Stock upon conversion, unless the tax is due because the Holder requests any such shares to be issued in a name other than the Holder's name, in which case the Holder must pay that tax. The Conversion Agent may refuse to deliver the certificates representing the shares of Common Stock being issued in a name other than the Holder's name until the Trustee receives a sum sufficient to pay any tax that is due by such Holder in accordance with the immediately preceding sentence.

(f) Except as provided in Section 14.04, no adjustment shall be made for dividends on any shares of Common Stock issued upon the conversion of any Note as provided in this Article 14.

(g) Upon the conversion of an interest in a Global Note, the Trustee, or the Custodian at the direction of the Trustee, shall make a notation on such Global Note as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversion of Notes effected through any Conversion Agent other than the Trustee.

(h) Upon conversion, a Holder shall not receive any separate cash payment for accrued and unpaid interest, if any, except as set forth below. The Company's settlement of the full Conversion Obligation shall be deemed to satisfy in full its obligation to pay the principal amount of the Note and accrued and unpaid interest, if any, to, but excluding, the relevant Conversion Date. As a result, accrued and unpaid interest, if any, to, but excluding, the relevant Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. Upon a conversion of Notes into a combination of cash and shares of Common Stock, accrued and unpaid interest will be deemed to be paid first out of the cash paid upon such conversion. Notwithstanding the foregoing, if Notes are converted after the close of business on a Regular Record Date, Holders of such Notes as of the close of business on such Regular Record Date will receive the full amount of interest payable on such Notes on the corresponding Interest Payment Date notwithstanding the conversion. However, Notes surrendered for conversion during the period beginning after the close of business on any Regular Record Date and ending at the open of business on the immediately following Interest Payment Date must be

accompanied by funds equal to the amount of interest payable on the Notes so converted; *provided* that no such payment shall be required (1) for Notes surrendered for conversion after the close of business on the Regular Record Date immediately preceding the Maturity Date; (2) if the Company has specified a Fundamental Change Repurchase Date that is after a Regular Record Date and on or prior to the second Business Day immediately following the corresponding Interest Payment Date; or (3) to the extent of any Defaulted Amounts, if any Defaulted Amounts exists at the time of conversion with respect to such Note. Therefore, for the avoidance of doubt, all Holders of record at the close of business on the Regular Record Date immediately preceding the Maturity Date and any Fundamental Change Repurchase Date described in clause (2) of the immediately preceding sentence shall receive the full interest payment due on the Maturity Date or other applicable Interest Payment Date regardless of whether their Notes have been converted or repurchased, as applicable, following such Regular Record Date.

(i) The Person in whose name the shares of Common Stock shall be issuable upon conversion shall be treated as a stockholder of record as of the close of business on the relevant Conversion Date (if the Company elects, or is required, to satisfy the related Conversion Obligation by Physical Settlement) or the last Trading Day of the relevant Observation Period (if the Company satisfies the related Conversion Obligation by Combination Settlement), as the case may be. Upon a conversion of Notes, such Person shall no longer be a Holder of such Notes surrendered for conversion.

(j) The Company shall not issue any fractional share of Common Stock upon conversion of the Notes and shall instead pay cash in lieu of delivering any fractional share of Common Stock issuable upon conversion based on the Daily VWAP on the relevant Conversion Date (in the case of Physical Settlement) or based on the Daily VWAP on the last Trading Day of the relevant Observation Period (in the case of Combination Settlement). For each Note surrendered for conversion, if the Company has elected Combination Settlement, the full number of shares that shall be issued upon conversion thereof shall be computed on the basis of the aggregate Daily Settlement Amounts for the relevant Observation Period and any fractional shares remaining after such computation shall be paid in cash.

Section 14.03. *Increased Conversion Rate Applicable to Certain Notes Surrendered in Connection with Make-Whole Fundamental Changes.* (a) If, prior to the Maturity Date, a Make-Whole Fundamental Change Effective Date occurs and a Holder elects to convert its Notes in connection with such Make-Whole Fundamental Change, the Company shall, under the circumstances described below, increase the Conversion Rate for the Notes so surrendered for conversion by a number of additional shares of Common Stock (the “**Additional Shares**”), as described below. A conversion of Notes shall be deemed for these purposes to be “in connection with” such Make-Whole Fundamental Change if the relevant Notice of Conversion is received by the Conversion Agent from, and including, the Make-Whole Fundamental Change Effective Date up to, and including, the Business Day immediately prior to the related Fundamental Change Repurchase Date (or, in the case of a Make-Whole Fundamental Change that would have been a Fundamental Change but for the *proviso* in clause (b) of the definition thereof, the 35th Trading Day immediately following the Make-Whole Fundamental Change Effective Date) (such period, the “**Make-Whole Fundamental Change Period**”).

(b) Upon surrender of Notes for conversion in connection with a Make-Whole Fundamental Change pursuant to Section 14.01(b)(iii), the Company shall, at its option, satisfy the related Conversion Obligation by Physical Settlement, Cash Settlement or Combination Settlement in accordance with Section 14.02; *provided, however*, that if, at the effective time of a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Reference Property following such Make-Whole Fundamental Change is composed entirely of cash, for any conversion of Notes following the Make-Whole Fundamental Change Effective Date, the Conversion Obligation shall be calculated based solely on the Stock Price for the transaction and shall be deemed to be an amount of cash per \$1,000 principal amount of converted Notes equal to the Conversion Rate (including any adjustment for Additional Shares), *multiplied by* such Stock Price. In such event, the Conversion Obligation shall be paid to Holders in cash on the third Business Day following the Conversion Date. The Company shall notify the Holders of Notes of any Make-Whole Fundamental Change Effective Date no later than five Business Days after such Effective Date.

(c) The number of Additional Shares, if any, by which the Conversion Rate shall be increased shall be determined by reference to the table below, based on the Make-Whole Fundamental Change Effective Date and the price paid (or deemed to be paid) per share of the Common Stock in the Make-Whole Fundamental Change (the “**Stock Price**”). If the holders of the Common Stock receive in exchange for their Common Stock only cash in a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Stock Price shall be the cash amount paid per share. In the case of any other Make-Whole Fundamental Change (regardless of whether such transaction also constitutes a Fundamental Change pursuant to one or more other clauses of the definition thereof), the Stock Price shall be the average of the Last Reported Sale Prices of the Common Stock over the five Trading Day period ending on, and including, the Trading Day immediately preceding the Make-Whole Fundamental Change Effective Date. The Board of Directors shall make appropriate adjustments to the Stock Price, in its good faith determination, to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date, Make-Whole Fundamental Change Effective Date or expiration date of the event occurs during such five consecutive Trading Day period.

(d) The Stock Prices set forth in the column headings of the table below shall be adjusted as of any date on which the Conversion Rate of the Notes is otherwise adjusted. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, *multiplied by* a fraction, the numerator of which is the Conversion Rate immediately prior to such adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The amounts by which the Conversion Rate shall be increased as set forth in the table below shall be adjusted in the same manner and at the same time as the Conversion Rate as set forth in Section 14.04.

(e) The following table sets forth the amounts, if any, by which the Conversion Rate shall be increased per \$1,000 principal amount of Notes pursuant to this Section 14.03 for each Stock Price and Make-Whole Fundamental Change Effective Date set forth below:

Make-Whole Fundamental Change Effective Date	Stock Price												
	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	
December [], 2014													
December 15, 2015													
December 15, 2016													
December 15, 2017													
December 15, 2018													
December 15, 2019													

The exact Stock Prices and Make-Whole Fundamental Change Effective Dates may not be set forth in the table above, in which case:

(i) if the Stock Price is between two Stock Prices in the table above or the Effective Date is between two Make-Whole Fundamental Change Effective Dates in the table, the amount by which the Conversion Rate will be increased shall be determined by a straight-line interpolation between the amount of Conversion Rate increase set forth for the higher and lower Stock Prices and the earlier and later Make-Whole Fundamental Change Effective Dates based on a 365-day year;

(ii) if the Stock Price is greater than \$[] per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above pursuant to subsection (d) above), the Conversion Rate shall not be increased; and

(iii) if the Stock Price is less than \$[] per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table above pursuant to subsection (d) above), the Conversion Rate shall not be increased.

Notwithstanding the foregoing, in no event shall the Conversion Rate per \$1,000 principal amount of Notes exceed [] shares of Common Stock, subject to adjustment in the same manner as the Conversion Rate pursuant to Section 14.04. For the avoidance of doubt, if a Holder converts any or all of its Notes prior to a Make-Whole Fundamental Change Effective Date, then, whether or not the Make-Whole Fundamental Change occurs, such Holder will not be entitled to an increased Conversion Rate for such converted Notes in connection with such transaction.

(f) Nothing in this Section 14.03 shall prevent an adjustment to the Conversion Rate pursuant to Section 14.04 in respect of a Make-Whole Fundamental Change.

Section 14.04. *Adjustment of Conversion Rate.* The Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company shall not make any adjustments to the Conversion Rate if Holders of the Notes participate (other than in the case of (x) a share split or share combination or (y) a tender or

exchange offer, in each case, that would result in an adjustment to the Conversion Rate pursuant to Section 14.04(a) or Section 14.04(e) below), at the same time and upon the same terms as holders of the Common Stock and solely as a result of holding the Notes, in any of the transactions described in this Section 14.04, without having to convert their Notes, as if they held a number of shares of Common Stock equal to the Conversion Rate, *multiplied* by the principal amount (expressed in thousands) of Notes held by such Holder.

(a) If the Company exclusively issues shares of Common Stock as a dividend or distribution on shares of the Common Stock, or if the Company effects a share split or share combination, the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{OS'}{OS_0}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date of such dividend or distribution, or immediately prior to the open of business on the Effective Date of such share split or share combination, as applicable;
- CR' = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date or Effective Date;
- OS₀ = the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Dividend Date or Effective Date; and
- OS' = the number of shares of Common Stock outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Any adjustment made under this Section 14.04(a) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution, or immediately after the open of business on the Effective Date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 14.04(a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) If the Company issues to all or substantially all holders of the Common Stock any rights, options or warrants entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance, to subscribe for or purchase shares of the Common Stock at a price per share that is less than the average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such issuance;
- CR' = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date;
- OS₀ = the number of shares of Common Stock outstanding immediately prior to the open of business on such Ex-Dividend Date;
- X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and
- Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants, *divided by* the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Any increase made under this Section 14.04(b) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the open of business on the Ex-Dividend Date for such issuance. To the extent that such rights, options or warrants are not exercised prior to their expiration or shares of the Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so issued or if no such right, option or warrant is exercised prior to its expiration, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such Ex-Dividend Date for such issuance had not occurred.

For purposes of this Section 14.04(b) and for the purpose of Section 14.01(b)(ii)(A), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of the Common Stock at a price per share that is less than such average of the Last Reported Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement for such issuance, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire shares of its Capital Stock or other securities, to all or substantially all holders of the Common Stock, excluding (i) dividends, distributions or issuances as to which an adjustment was effected pursuant to Section 14.04(a) or Section 14.04(b), (ii) dividends or distributions paid exclusively in cash as to which an adjustment was effected pursuant to Section 14.04(d), (iii) any dividends or distributions of Reference Property in exchange for the Common Stock in connection with any Specified Corporate Event pursuant to Section 14.07 and (iv) Spin-Offs as to which the provisions set forth below in this Section 14.04(c) shall apply (any of such shares of Capital Stock, evidences of indebtedness, other assets or property or rights, options or warrants to acquire shares of Capital Stock or other securities, the “**Distributed Property**”), then the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such distribution;
- CR' = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date;
- SP₀ = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and
- FMV = the fair market value (as determined by the Board of Directors) of the Distributed Property with respect to each outstanding share of the Common Stock on the Ex-Dividend Date for such distribution.

Any increase made under the portion of this Section 14.04(c) above shall become effective immediately after the open of business on the Ex-Dividend Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such distribution had not been declared.

Notwithstanding the foregoing, if “FMV” (as defined above) is equal to or greater than “SP₀” (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, in respect of each \$1,000 principal amount thereof, at the same time and upon the same terms as holders of the Common Stock receive the Distributed Property, the amount and kind of Distributed Property such Holder would have received if such Holder owned a number of shares

of Common Stock equal to the Conversion Rate in effect on the Record Date for the distribution. If the Board of Directors determines the “FMV” (as defined above) of any distribution for purposes of this Section 14.04(c) by reference to the actual or when-issued trading market for any securities, it shall in doing so consider the prices in such market over the same period used in computing the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution.

With respect to an adjustment pursuant to this Section 14.04(c) where there has been a payment of a dividend or other distribution on the Common Stock of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a “Spin-Off”), the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such Spin-Off;
- CR' = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such Spin-Off;
- FMV₀ = the average of the Last Reported Sale Prices of the shares of Capital Stock or similar equity interest distributed to holders of the Common Stock applicable to one share of the Common Stock (determined by reference to the definition of Last Reported Sale Price as set forth in Section 1.01 as if references therein to Common Stock were to such Capital Stock or similar equity interest) over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the “Valuation Period”); and
- MP₀ = the average of the Last Reported Sale Prices of the Common Stock over the Valuation Period.

The increase to the Conversion Rate under the preceding paragraph shall be determined on the last Trading Day of the Valuation Period, but shall be given effect at the open of business on the Ex-Dividend Date for such Spin-Off. Notwithstanding the foregoing, in respect of any conversion of Notes during the Valuation Period, references in the portion of this Section 14.04(c) related to Spin-Offs with respect to 10 consecutive Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date of such Spin-Off to, but excluding, the Conversion Date in determining the Conversion

Rate. If the Ex-Dividend Date for the Spin-Off is less than 10 Trading Days prior to, and including, the end of the Observation Period in respect of any conversion of Notes, references in the preceding paragraph to 10 consecutive Trading Days will be deemed to be replaced, solely in respect of that conversion of Notes, with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date for the Spin-Off to, and including, the last Trading Day of such Observation Period. If such Spin-Off does not occur, the Conversion Rate shall be decreased to be the Conversion Rate that would then be in effect if such distribution had not been declared, effective as of the date on which the Board of Directors determines not to consummate such Spin-Off.

For purposes of this Section 14.04(c) (and subject in all respect to Section 14.10(a)), rights, options or warrants distributed by the Company to all holders of the Common Stock entitling them to subscribe for or purchase shares of the Company's Capital Stock, including Common Stock (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("**Trigger Event**"): (i) are deemed to be transferred with such shares of the Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Common Stock, shall be deemed not to have been distributed for purposes of this Section 14.04(c) (and no adjustment to the Conversion Rate under this Section 14.04(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 14.04(c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Ex-Dividend Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 14.04(c) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or purchase price received by a holder or holders of Common Stock with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Common Stock as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated (or deemed to have expired or been terminated pursuant to the immediately preceding sentence) without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued (to the extent any adjustment to the Conversion Rate was made in connection with such issuance).

For purposes of Section 14.04(a), Section 14.04(b) and this Section 14.04(c), if any dividend or distribution to which this Section 14.04(c) is applicable also includes one or both of:

(A) a dividend or distribution of shares of Common Stock to which Section 14.04(a) is applicable (the “**Clause A Distribution**”); or

(B) a dividend or distribution of rights, options or warrants to which Section 14.04(b) is applicable (the “**Clause B Distribution**”),

then, in either case, (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 14.04(c) is applicable (the “**Clause C Distribution**”) and any Conversion Rate adjustment required by this Section 14.04(c) with respect to such Clause C Distribution shall then be made, and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 14.04(a) and Section 14.04(b) with respect thereto shall then be made, except that, if determined by the Company (I) the “Ex-Dividend Date” of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Ex-Dividend Date of the Clause C Distribution and (II) any shares of Common Stock included in the Clause A Distribution or Clause B Distribution shall be deemed not to be “outstanding immediately prior to the open of business on such Ex-Dividend Date or Effective Date” within the meaning of Section 14.04(a) or “outstanding immediately prior to the open of business on such Ex-Dividend Date” within the meaning of Section 14.04(b).

(d) If the Company makes any cash dividend or distribution to all or substantially all holders of the Common Stock, the Conversion Rate shall be adjusted based on the following formula:

$$CR' = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for such dividend or distribution;

CR' = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution;

SP₀ = the Last Reported Sale Price of the Common Stock on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

C = the amount in cash per share the Company distributes to all or substantially all holders of the Common Stock.

Any increase pursuant to this Section 14.04(d) shall become effective immediately after the open of business on the Ex-Dividend Date for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors determines not to make or pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if “C” (as defined above) is equal to or greater than “SP₀” (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, for each \$1,000 principal amount of Notes, at the same time and upon the same terms as holders of shares of the Common Stock, the amount of cash that such Holder would have received if such Holder owned a number of shares of Common Stock equal to the Conversion Rate on the Record Date for such cash dividend or distribution.

(e) If the Company or any of its Subsidiaries make a payment in respect of a tender or exchange offer for the Common Stock, other than an odd lot tender offer, to the extent that the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the Last Reported Sale Price of the Common Stock on the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Conversion Rate shall be increased based on the following formula:

$$CR' = CR_0 \times \frac{AC + (SP' \times OS')}{OS_0 \times SP'}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the open of business on the Trading Day next succeeding the date such tender or exchange offer expires;
- CR' = the Conversion Rate in effect immediately after the open of business on the Trading Day next succeeding the date such tender or exchange offer expires;
- AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for shares of Common Stock purchased in such tender or exchange offer;
- OS₀ = the number of shares of Common Stock outstanding immediately prior to the time such tender or exchange offer expires (prior to giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);
- OS' = the number of shares of Common Stock outstanding immediately after the time such tender or exchange offer expires (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and
- SP' = the average of the Last Reported Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

The increase to the Conversion Rate under this Section 14.04(e) shall be determined at the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires, but shall be given effect at the open of business on the Trading Day next succeeding the date such tender or exchange offer expires. Notwithstanding the foregoing, in respect of any conversion of Notes within the 10 Trading Days immediately following, and including, the Trading Day next succeeding the expiration date of any tender or exchange offer, references in this Section 14.04(e) with respect to 10 consecutive Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed between the date that such tender or exchange offer expires and the Conversion Date in determining the Conversion Rate. In addition, if the Trading Day next succeeding the expiration date for such tender or exchange offer is less than 10 Trading Days prior to, and including, the end of the Observation Period (if applicable) in respect of any conversion of Notes, references in the preceding paragraph to 10 consecutive Trading Days shall be deemed to be replaced, solely in respect of that conversion of Notes, with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the expiration date for such tender or exchange offer to, and including, the last Trading Day of such Observation Period. For the avoidance of doubt, no adjustment pursuant to this Section 14.04(e) shall be made if such adjustment would result in a decrease in the Conversion Rate.

If the Company or one of its Subsidiaries is obligated to purchase shares of the Common Stock pursuant to any such tender or exchange offer described in this Section 14.04(e) but is permanently prevented by applicable law from effecting all or any such purchase or all or any portion of such purchases are rescinded, the applicable Conversion Rate shall be readjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made or had been made only in respect of the purchases that have been effected.

(f) Notwithstanding this Section 14.04 or any other provision of this Indenture or the Notes, if a Conversion Rate adjustment becomes effective on any Ex-Dividend Date, and a Holder that has converted its Notes on or after such Ex-Dividend Date and on or prior to the related Record Date would be treated as the record holder of the shares of Common Stock as of the related Conversion Date as described under Section 14.02(i) based on an adjusted Conversion Rate for such Ex-Dividend Date, then, notwithstanding the Conversion Rate adjustment provisions in this Section 14.04, the Conversion Rate adjustment relating to such Ex-Dividend Date shall not be made for such converting Holder. Instead, such Holder shall be treated as if such Holder were the record owner of the shares of Common Stock on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

(g) Except as stated herein, the Company shall not adjust the Conversion Rate for the issuance of shares of the Common Stock or any securities convertible into or exchangeable for shares of the Common Stock or the right to purchase shares of the Common Stock or such convertible or exchangeable securities.

(h) In addition to those adjustments required by clauses (a), (b), (c), (d) and (e) of this Section 14.04, and to the extent permitted by applicable law and subject to the applicable rules of any exchange on which any of the Company's securities are then listed, the Company from time to time may increase the Conversion Rate by any amount for a period of at least 20 Business Days if the Board of Directors determines that such increase would be in the Company's best interest. In addition, to the extent permitted by applicable law and subject to the applicable rules of any exchange on which any of the Company's securities are then listed, the Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock in connection with a dividend or distribution of shares of Common Stock (or rights to acquire shares of Common Stock) or similar event. Whenever the Conversion Rate is increased pursuant to either of the preceding two sentences, the Company shall mail to the Holder of each Note at its last address appearing on the Note Register a notice of the increase at least 15 days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(i) Notwithstanding anything to the contrary in this Article 14, the Conversion Rate shall not be adjusted:

(i) upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in shares of Common Stock under any plan;

(ii) upon the issuance of any shares of Common Stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of the Company's Subsidiaries;

(iii) upon the issuance of any shares of the Common Stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) of this subsection;

(iv) upon the repurchase of any shares of the Common Stock pursuant to an open-market share repurchase program or other buy-back transaction that is not a tender offer or exchange offer of the kind described in Section 14.04(e);

(v) solely for a change in the par value (or lack of par value) of the Common Stock; or

(vi) for accrued and unpaid interest, if any.

(j) All calculations and other determinations under this Article 14 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000th) of a share. The Company shall not adjust the Conversion Rate pursuant to clauses (a) through (e) of this Section 14.04 unless the adjustment would result in a change of at least 1% in the then effective Conversion Rate. However, the Company shall carry forward any adjustment to the Conversion Rate that the Company would otherwise have to make and take that adjustment into account in any subsequent adjustment. Notwithstanding the foregoing, all such carried-forward adjustments shall be made (i) in connection with any subsequent adjustment to the Conversion Rate of at least 1% and (ii) (x) on the Conversion Date for any Notes (in the case of Physical Settlement) or (y) on each Trading Day of any Observation Period (in the case of Cash Settlement or Combination Settlement).

(k) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee (and the Conversion Agent if not the Trustee) an Officer's Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officer's Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such Officer's Certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall deliver such notice of such adjustment of the Conversion Rate to each Holder at its last address appearing on the Note Register of this Indenture, within 20 calendar days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(l) For purposes of this Section 14.04, the number of shares of Common Stock at any time outstanding shall not include shares of Common Stock held in the treasury of the Company so long as the Company does not pay any dividend or make any distribution on shares of Common Stock held in the treasury of the Company, but shall include shares of Common Stock issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

(m) If the application of Conversion Rate adjustments pursuant to clauses (a), (b), (c), (d) and (e) of this Section 14.04 would result in a decrease in the Conversion Rate, no adjustment to the Conversion Rate will be made (other than as a result of a reverse share split or share combination or the reversal of an increase to the Conversion Rate where the relevant event did not occur, as specified in this Indenture).

(n) The Trustee and any Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine whether any facts exist which may require any adjustment of the Conversion Rate, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, in this Indenture or in any supplemental indenture provided to be employed, in making the same, or whether a supplemental indenture

need be entered into. Neither the Trustee nor any Conversion Agent shall be accountable with respect to the validity or value (or the kind or amount) of any Common Stock, or of any other securities or property or cash, which may at any time be issued or delivered upon the conversion of any Notes; and it or they do not make any representation with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to make or calculate any cash payment or to issue, transfer or deliver any shares of Common Stock or share certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion; and the Trustee and any Conversion Agent shall not be responsible for any failure of the Company to comply with any of the Company's covenants related to such conversion.

Section 14.05. *Adjustments of Prices.* Whenever any provision of this Indenture requires the Company to calculate the Last Reported Sale Prices, the Daily VWAPs, the Daily Conversion Values or the Daily Settlement Amounts over a span of multiple days (including an Observation Period and, if applicable, the period for determining the Stock Price for purposes of a Make-Whole Fundamental Change), the Board of Directors shall make appropriate adjustments (to the extent that no corresponding adjustment is otherwise made pursuant to clauses (a), (b), (c), (d) and (e) of Section 14.04) to each to account for any adjustment to the Conversion Rate that becomes effective, or any event requiring an adjustment to the Conversion Rate where the Ex-Dividend Date, Effective Date or expiration date, as the case may be, of the event occurs, at any time during the period when the Last Reported Sale Prices, the Daily VWAPs, the Daily Conversion Values or the Daily Settlement Amounts are to be calculated.

Section 14.06. *Shares to Be Fully Paid.* The Company shall provide, free from preemptive rights, out of its authorized but unissued shares or shares held in treasury, sufficient shares of Common Stock to provide for conversion of the Notes from time to time as such Notes are presented for conversion (assuming that at the time of computation of such number of shares, all such Notes would be converted by a single Holder and that Physical Settlement were applicable).

Section 14.07. *Effect of Recapitalizations, Reclassifications and Changes of the Common Stock.*

(a) In the case of:

(i) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination),

(ii) any consolidation, merger or combination involving the Company,

(iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and the Company's Subsidiaries substantially as an entirety

or

(iv) any statutory share exchange,

in each case, as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a “**Specified Corporate Event**”), then the Company or the successor or acquiring corporation, as the case may be, shall execute with the Trustee a supplemental indenture permitted under Section 10.01(m) providing that, at and after the effective time of such Specified Corporate Event, the right to convert each \$1,000 principal amount of Notes shall be changed into a right to convert such principal amount of Notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such Specified Corporate Event would have owned or been entitled to receive (the “**Reference Property**,” with each “**unit of Reference Property**” meaning the kind and amount of Reference Property that a holder of one share of Common Stock is entitled to receive) upon the occurrence of such Specified Corporate Event; *provided, however*, that at and after the effective time of the Specified Corporate Event, (A) the Company or the successor or acquiring corporation, as the case may be, shall continue to have the right to determine the form of consideration to be paid or delivered upon conversion of Notes in accordance with Section 14.02 and (B) (x) any amount payable in cash upon conversion of the Notes in accordance with Section 14.02 shall continue to be payable in cash, (y) any shares of Common Stock that the Company would have been required to deliver upon conversion of the Notes in accordance with Section 14.02 shall instead be deliverable in the amount and type of Reference Property that a holder of that number of shares of Common Stock would have been entitled to receive in such Specified Corporate Event and (z) the Daily VWAP shall be calculated based on the value of a unit of Reference Property.

If the Specified Corporate Event causes the Common Stock to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of shareholder election), then (i) the Reference Property into which the Notes will be convertible shall be deemed to be (x) the weighted average of the types and amounts of consideration received by the holders of Common Stock that affirmatively make such an election or (y) if no holders of Common Stock affirmatively make such an election, the types and amounts of consideration actually received by the holders of Common Stock, and (ii) the unit of Reference Property for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (i) attributable to one share of Common Stock. If the holders of the Common Stock receive only cash in such Specified Corporate Event, then for all conversions for which the relevant Conversion Date occurs after the effective date of such Specified Corporate Event (A) the consideration due upon conversion of each \$1,000 principal amount of Notes shall be solely cash in an amount equal to the Conversion Rate in effect on the Conversion Date (as may be increased by any Additional Shares pursuant to Section 14.03), *multiplied* by the price paid per share of Common Stock in such Specified Corporate Event and (B) the Company shall satisfy the Conversion Obligation by paying such cash amount to converting Holders on the third Business Day immediately following the relevant Conversion Date. The Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing of such weighted average as soon as practicable after such determination is made.

Such supplemental indenture described in the second immediately preceding paragraph shall provide for (x) anti-dilution adjustments that shall be as nearly equivalent as practicable to the adjustments provided for in this Article 14, with respect to any Reference Property consisting of shares of Common Equity, and (y) with respect to any other Reference Property (other than cash), such adjustments (if any) that the Board of Directors determines in good faith are appropriate. If, in the case of any Specified Corporate Event, the Reference Property includes shares of stock, securities or other property or assets of a Person other than the Company or the successor or purchasing corporation, as the case may be, in such Specified Corporate Event, such other Person will also execute such supplemental indenture, and such supplemental indenture will contain such additional provisions to protect the interests of the Holders, including the right of holders to require the Company to purchase their Notes upon a Fundamental Change as set forth in Article 15, as the Board of Directors reasonably consider necessary by reason of the foregoing. If the notes become convertible into Reference Property, the Company shall notify in writing the Holders, the Trustee and the Conversion Agent (if other than the Trustee).

(b) When the Company executes a supplemental indenture pursuant to subsection (a) of this Section 14.07, the Company shall promptly file with the Trustee an Officer's Certificate briefly stating the reasons therefor, the kind or amount of cash, securities or property or asset that will comprise a unit of Reference Property after any such Specified Corporate Event, any adjustment to be made with respect thereto and that all conditions precedent have been complied with, and shall promptly mail notice thereof to all Holders. The Company shall cause notice of the execution of such supplemental indenture to be mailed to each Holder, at its address appearing on the Note Register provided for in this Indenture, within 20 calendar days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

(c) The Company shall not become a party to any Specified Corporate Event unless its terms are consistent with this Section 14.07. None of the foregoing provisions shall affect the right of a holder of Notes to convert its Notes into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, all as set forth in Section 14.01 and Section 14.02, prior to the effective date of such Specified Corporate Event.

(d) The above provisions of this Section shall similarly apply to successive Specified Corporate Events.

Section 14.08. *Certain Covenants.* (a) The Company covenants that all shares of Common Stock issued upon conversion of Notes will be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

(b) The Company covenants that, if any shares of Common Stock to be provided for the purpose of conversion of Notes hereunder require registration with or approval of any governmental authority under any federal or state law before such shares of Common Stock may be validly issued upon conversion, the Company will, to the extent then permitted by the rules and interpretations of the Commission, secure such registration or approval, as the case may be.

(c) The Company further covenants that if at any time the Common Stock shall be listed on any national securities exchange or automated quotation system the Company will list and keep listed, so long as the Common Stock shall be so listed on such exchange or automated quotation system, any Common Stock issuable upon conversion of the Notes.

Section 14.09. *Responsibility of Trustee.* The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine the Conversion Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment (including any increase) of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock, or of any securities, property or cash that may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company contained in this Article. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 14.07 relating either to the kind or amount of shares of stock or securities or property (including cash) receivable by Holders upon the conversion of their Notes after any event referred to in such Section 14.07 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 7.01, may accept (without any independent investigation) as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officer's Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto. Neither the Trustee nor the Conversion Agent shall be responsible for determining whether any event contemplated by this Article 14 has occurred that makes the Notes eligible for conversion or no longer eligible therefor until the Company has delivered to the Trustee and the Conversion Agent the notices referred to in this Article 14 with respect to the commencement or termination of such conversion rights, on which notices the Trustee and the Conversion Agent may conclusively rely, and the Company agrees to deliver such notices to the Trustee and the Conversion Agent immediately after the occurrence of any such event or at such other times as shall be provided for in this Article 14.

Section 14.10. *Notice to Holders Prior to Certain Actions.* In case of any:

- (a) action by the Company that would require an adjustment in the Conversion Rate pursuant to Section 14.04 or Section 14.11;
- (b) Specified Corporate Event; or
- (c) voluntary or involuntary dissolution, liquidation or winding up of the Company;

then, in each case (unless notice of such event is otherwise required pursuant to another provision of this Indenture) and to the extent applicable, the Company shall cause to be filed with the Trustee and the Conversion Agent (if other than the Trustee) and to be mailed to each Holder at its address appearing on the Note Register, a notice stating the date on which a record is to be taken for the purpose of such action by the Company or, if a record is not to be taken, the date as of which the holders of Common Stock of record are to be determined for the purposes of such action by the Company no later than the earlier of the date notice of such date is required to be provided under Rule 10b-17 of the Exchange Act or applicable rules of the Relevant Stock Exchange and such date is publicly announced by the Company. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such action by the Company, Specified Corporate Event, dissolution, liquidation or winding-up.

Section 14.11. *Shareholder Rights Plans.* If the Company has a shareholder rights plan in effect upon conversion of the Notes, each share of Common Stock, if any, issued upon such conversion shall be entitled to receive the appropriate number of rights, if any, and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any such shareholder rights plan, as the same may be amended from time to time. However, if, prior to any conversion of Notes, the rights have separated from the shares of Common Stock in accordance with the provisions of the applicable shareholder rights plan, the Conversion Rate shall be adjusted at the time of separation as if the Company distributed to all or substantially all holders of the Common Stock Distributed Property as provided in Section 14.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 14.12. *Exchange in Lieu of Conversion.* (a) When a Holder surrenders its Notes for conversion, the Company may, at its election (an “**Exchange Election**”), direct the Conversion Agent in writing to surrender, on or prior to the second Trading Day following the related Conversion Date, such Notes to a financial institution designated by the Company (the “**Designated Institution**”) for exchange in lieu of conversion. In order to accept any Notes surrendered for exchange in lieu of conversion, the Designated Institution must agree to timely deliver, in exchange for such Notes, the cash, shares of Common Stock or combination thereof that would otherwise be due upon conversion pursuant to Section 14.02 and in respect of which the Company has notified converting Holders. If the Company makes an Exchange Election, the Company shall, by the close of business on the second Trading Day following the relevant Conversion Date, notify the Holder surrendering its Notes for conversion that the Company has made an Exchange Election. In addition, the Company shall concurrently notify the Designated Institution of the settlement method the Company has elected with respect to such conversion and the relevant deadline for payment and/or delivery of cash, shares of Common Stock or combination thereof due upon conversion. Any Notes exchanged by the Designated Institution will remain outstanding.

(b) If the Designated Institution accepts any Notes for exchange, it will pay and/or deliver the cash, shares of Common Stock or combination thereof due upon conversion to the Conversion Agent, and the Conversion Agent will pay and/or deliver such cash, shares of Common Stock or combination thereof to the Holders of such Notes in accordance with the applicable provisions of Section 14.02.

(c) If the Designated Institution agrees to accept any Notes for exchange but does not timely pay and/or deliver the required cash, shares of Common Stock or combination thereof due upon conversion to the Conversion Agent, or if the Designated Institution does not accept such Notes for exchange, the Company shall, within the time period specified in Section 14.02(c), pay and/or deliver the required cash, shares of Common Stock or combination thereof due upon conversion to the converting Holder at the time and in the manner required under the provisions of Section 14.02 as if the Company had not made an Exchange Election.

(d) For the avoidance of doubt, in no event will the Company's designation of a Designated Institution pursuant to this Section 14.12 require such Designated Institution to accept any Notes for exchange except pursuant to a separate agreement between the Company and such Designated Institution. The Company may, but has no obligation to, enter into such a separate agreement with any Designated Institution that provides for compensation to the Designated Institution pursuant to this Section 14.12.

ARTICLE 15
REPURCHASE OF NOTES AT OPTION OF HOLDERS

Section 15.01. *Intentionally Omitted.*

Section 15.02. *Repurchase at Option of Holders Upon a Fundamental Change.* (a) If a Fundamental Change occurs or becomes effective at any time prior to the Maturity Date, each Holder shall have the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes, or any portion thereof that is equal to \$1,000 or an integral multiple of \$1,000, on the date (the "**Fundamental Change Repurchase Date**"), subject to postponement to comply with any applicable law, specified by the Company that is not less than 20 calendar days or more than 35 Business Days following the date of the Fundamental Change Company Notice at a repurchase price equal to 100% of the principal amount thereof, *plus* accrued and unpaid interest thereon to, but excluding, the Fundamental Change Repurchase Date (the "**Fundamental Change Repurchase Price**"), unless the Fundamental Change Repurchase Date falls after a Regular Record Date but on or prior to the Interest Payment Date to which such Regular Record Date relates, in which case the Company shall instead pay the full amount of accrued and unpaid interest to Holders of record as of such Regular Record Date, and the Fundamental Change Repurchase Price shall be equal to 100% of the principal amount of Notes to be repurchased pursuant to this Article 15.

(b) Repurchases of Notes under this Section 15.02 shall be made, at the option of the Holder thereof, upon:

(i) delivery to the Paying Agent by a Holder of a duly completed notice (the "**Fundamental Change Repurchase Notice**") in the form set forth in Attachment 2 to

the Form of Note attached hereto as Exhibit A, if the Notes are Physical Notes, or in compliance with the Depository's procedures for surrendering interests in Global Notes, if the Notes are Global Notes, in each case prior to the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date; and

(ii) delivery of the Notes, if the Notes are Physical Notes, to the Paying Agent at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements for transfer) at the Corporate Trust Office of the Paying Agent, or book-entry transfer of the Notes, if the Notes are Global Notes, in compliance with the procedures of the Depository, in each case such delivery being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor.

The Fundamental Change Repurchase Notice in respect of any Notes to be repurchased shall state:

- (i) in the case of Physical Notes, the certificate numbers of the Notes to be delivered for repurchase;
- (ii) the portion of the principal amount of Notes to be repurchased, which must be \$1,000 or an integral multiple thereof; and
- (iii) that the Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and this Indenture;

provided, however, that if the Notes are Global Notes, the Fundamental Change Repurchase Notice must comply with appropriate Depository procedures.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Fundamental Change Repurchase Notice contemplated by this Section 15.02 shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent in accordance with Section 15.03.

The Paying Agent (if other than the Company) shall promptly notify the Company of the receipt by it of any Fundamental Change Repurchase Notice or written notice of withdrawal thereof.

(c) On or before the 20th calendar day after the occurrence of the effective date of a Fundamental Change, the Company shall provide to all Holders of Notes and the Trustee and the Paying Agent (in the case of a Paying Agent other than the Trustee) a written notice (the "**Fundamental Change Company Notice**") of the occurrence of the Fundamental Change and of the repurchase right at the option of the Holders arising as a result thereof. In the case of Physical Notes, such notice shall be by first class mail or, in the case of Global Notes, such notice shall be delivered in accordance with the applicable procedures of the Depository. Each Fundamental Change Company Notice shall specify:

- (i) the events causing the Fundamental Change;

- (ii) the effective date of the Fundamental Change;
- (iii) the last date on which a Holder may exercise the repurchase right pursuant to this Article 15;
- (iv) the Fundamental Change Repurchase Price;
- (v) the Fundamental Change Repurchase Date;
- (vi) the name and address of the Paying Agent and the Conversion Agent, if applicable;
- (vii) if applicable, the Conversion Rate and any adjustments to the Conversion Rate;
- (viii) that the Notes with respect to which a Fundamental Change Repurchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Fundamental Change Repurchase Notice in accordance with the terms of this Indenture; and
- (ix) the procedures that Holders must follow to require the Company to repurchase their Notes.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 15.02.

At the Company's written request, the Trustee shall give such notice in the Company's name and at the Company's expense; *provided, however*, that, in all cases, the text of such Fundamental Change Company Notice shall be prepared by the Company.

(d) Notwithstanding the foregoing, no Notes may be repurchased by the Company on any date at the option of the Holders upon a Fundamental Change if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to such date (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes). The Paying Agent will promptly return to the respective Holders thereof any Physical Notes held by it during the acceleration of the Notes (except in the case of an acceleration resulting from a Default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes), or any instructions for book-entry transfer of the Notes in compliance with the

procedures of the Depository shall be deemed to have been cancelled, and, upon such return or cancellation, as the case may be, the Fundamental Change Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

(e) Notwithstanding the foregoing, the Company shall not be required to purchase, or to make an offer to purchase, any Notes upon a Fundamental Change if a third party makes such an offer in the same manner, at the same time and otherwise in compliance with the requirements for an offer made by the Company as set forth in this Article 15 and such third party purchases all Notes properly surrendered and not validly withdrawn under its offer in the same manner, at the same time and otherwise in compliance with the requirements for an offer made by the Company as set forth in this Article 15.

(f) To the extent that the provisions of any securities laws or regulations conflict with the provisions of this Article 15, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under such provisions of this Article 15 by virtue of such conflict; *provided* that the Company shall have complied with Section 15.05.

Section 15.03. *Withdrawal of Fundamental Change Repurchase Notice.* (a) A Fundamental Change Repurchase Notice may be withdrawn (in whole or in part) by means of a written notice of withdrawal delivered to the Corporate Trust Office of the Paying Agent in accordance with this Section 15.03 at any time prior to the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date, specifying:

- (i) the principal amount of the Notes with respect to which such notice of withdrawal is being submitted,
- (ii) if Physical Notes have been issued, the certificate number of the Note in respect of which such notice of withdrawal is being submitted, and
- (iii) the principal amount, if any, of such Note that remains subject to the original Fundamental Change Repurchase Notice, which portion must be in principal amounts of \$1,000 or an integral multiple of \$1,000;

provided, however, that if the Notes are Global Notes, the notice must comply with appropriate procedures of the Depository.

Section 15.04. *Deposit of Fundamental Change Repurchase Price.* (a) The Company will deposit with the Trustee (or other Paying Agent appointed by the Company, or if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 4.04) on or prior to 11:00 a.m., New York City time, on the Fundamental Change Repurchase Date an amount of money sufficient to repurchase all of the Notes to be repurchased at the appropriate Fundamental Change Repurchase Price. Subject to receipt of funds and/or Notes by the Trustee (or other Paying Agent appointed by the Company), payment for Notes surrendered for repurchase (and not withdrawn prior to the close of business on the second

Business Day immediately preceding the Fundamental Change Repurchase Date) will be made on the later of (i) the Fundamental Change Repurchase Date (*provided* the Holder has satisfied the conditions in Section 15.02) and (ii) the time of book-entry transfer or the delivery of such Note to the Trustee (or other Paying Agent appointed by the Company) by the Holder thereof in the manner required by Section 15.02 by mailing checks for the amount payable to the Holders of such Notes entitled thereto as they shall appear in the Note Register; *provided, however*, that payments to the Depository shall be made by wire transfer of immediately available funds to the account of the Depository or its nominee. The Trustee shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Fundamental Change Repurchase Price.

(b) If by 11:00 a.m. New York City time, on the Fundamental Change Repurchase Date, the Trustee (or other Paying Agent appointed by the Company, or if the Company is acting as its own Paying Agent, sets aside, segregates and holds in trust as provided in Section 4.04) holds money sufficient to make payment on all the Notes or portions thereof that are to be repurchased on such Fundamental Change Repurchase Date, then, with respect to the Notes that have been properly surrendered for repurchase and have not been validly withdrawn, (i) such Notes will cease to be outstanding, (ii) interest will cease to accrue on such Notes (whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Trustee or Paying Agent) and (iii) all other rights of the Holders of such Notes will terminate (other than the right to receive the Fundamental Change Repurchase Price and, if the Fundamental Change Repurchase Date falls after a Regular Record Date but on or prior to the related Interest Payment Date, the right of the Holder of record on such Regular Record Date to receive the related interest payment).

(c) Upon surrender of a Note that is to be repurchased in part pursuant to Section 15.02, the Company shall execute and the Trustee shall authenticate and deliver to the Holder a new Note in an authorized denomination equal in principal amount to the unreurchased portion of the Note surrendered.

Section 15.05. *Covenant to Comply with Applicable Laws Upon Repurchase of Notes.* In connection with any repurchase offer, the Company will, if required:

- (a) comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act;
- (b) file a Schedule TO or any other required schedule under the Exchange Act; and
- (c) otherwise comply with all federal and state securities laws in connection with any offer by the Company to repurchase the Notes;

in each case, so as to permit the rights and obligations under this Article 15 to be exercised in the time and in the manner specified in this Article 15.

ARTICLE 16
NO REDEMPTION

Section 16.01. *No Redemption.* The Notes shall not be redeemable pursuant to the express terms of this Indenture by the Company prior to the Maturity Date, and no sinking fund is provided for the Notes.

ARTICLE 17
MISCELLANEOUS PROVISIONS

Section 17.01. *Provisions Binding on Company's Successors.* All the covenants, stipulations, promises and agreements of the Company contained in this Indenture shall bind its successors and assigns whether so expressed or not.

Section 17.02. *Official Acts by Successor Corporation.* Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or Officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation or other entity that shall at the time be the lawful sole successor of the Company.

Section 17.03. *Addresses for Notices, Etc.* Any notice or demand that by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders on the Company shall be deemed to have been sufficiently given or made, for all purposes if in writing and given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed (until another address is filed by the Company with the Trustee), or provided electronically in PDF format, to Inotek Pharmaceuticals Corporation, 131 Hartwell Avenue, Suite 105, Lexington, MA 02421, Attention: General Counsel, with a copy to Goodwin Procter LLP, Exchange Place, 53 State Street, Boston, MA 02109 (fax no.: 617-523-1231), Attention: James Barri. Any notice, direction, request or demand hereunder to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if in writing and given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed to the Corporate Trust Office or provided electronically in PDF format.

The Trustee, by notice to the Company, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication delivered or to be delivered to a Holder of Physical Notes shall be mailed to it by first class mail, postage prepaid, at its address as it appears on the Note Register and shall be sufficiently given to it if so mailed within the time prescribed. Any notice or communication delivered or to be delivered to a Holder of Global Notes shall be delivered in accordance with the applicable procedures of the Depository and shall be sufficiently given to it if so delivered within the time prescribed.

Failure to mail or deliver a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed or delivered in the manner provided above, it is duly given, whether or not the addressee receives it.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice to Holders by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Notwithstanding any other provision of this Indenture or any Note, where this Indenture or any Note provides for notice of any event (including any notice of purchase) to a Holder (whether by mail or otherwise), such notice shall be sufficiently given (in the case of a Global Note) if given to the Depository (or its designee) pursuant to the standing instructions from the Depository or its designee, including by electronic mail in accordance with accepted practices or procedures at the Depository.

Section 17.04. *Governing Law; Jurisdiction.* THIS INDENTURE AND EACH NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE AND EACH NOTE, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, EXCEPT TO THE EXTENT THAT THE TRUST INDENTURE ACT IS APPLICABLE.

The Company irrevocably consents and agrees, for the benefit of the Holders from time to time of the Notes and the Trustee, that any legal action, suit or proceeding against it with respect to obligations, liabilities or any other matter arising out of or in connection with this Indenture or the Notes may be brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and, until amounts due and to become due in respect of the Notes have been paid, hereby irrevocably consents and submits to the non-exclusive jurisdiction of each such court *in personam*, generally and unconditionally with respect to any action, suit or proceeding for itself in respect of its properties, assets and revenues.

The Company irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions, suits or proceedings arising out of or in connection with this Indenture brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

Section 17.05. *Evidence of Compliance with Conditions Precedent; Certificates and Opinions of Counsel to Trustee.* Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officer's Certificate and an Opinion of Counsel, in each case, stating that such action is permitted by the terms of this Indenture and that all conditions precedent to such action have been complied with.

Each Officer's Certificate or Opinion of Counsel, as the case may be, provided for, by or on behalf of the Company in this Indenture and delivered to the Trustee with respect to compliance with this Indenture (other than an Officer's Certificate provided pursuant to Section 314(a)(4) of the Trust Indenture Act) shall comply with the provisions of Section 314(e) of the Trust Indenture Act and shall also include (a) a statement that the person signing such certificate is familiar with the requested action and this Indenture; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statement contained in such certificate is based; (c) a statement that, in the judgment of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed judgment as to whether or not such action is permitted by this Indenture; and (d) a statement as to whether or not, in the judgment of such person, such action is permitted by this Indenture.

Notwithstanding anything to the contrary in this Section 17.05, if any provision in this Indenture specifically provides that the Trustee shall or may receive an Opinion of Counsel in connection with any action to be taken by the Trustee or the Company hereunder, the Trustee shall be entitled to, or entitled to request, such Opinion of Counsel.

Section 17.06. *Legal Holidays.* In any case where any Interest Payment Date, Fundamental Change Repurchase Date or Maturity Date is not a Business Day, then any action to be taken on such date need not be taken on such date, but may be taken on the next succeeding Business Day with the same force and effect as if taken on such date, and no interest shall accrue in respect of the delay.

Section 17.07. *No Security Interest Created.* Nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 17.08. *Benefits of Indenture.* Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the Holders, the parties hereto, any Paying Agent, any Conversion Agent, any authenticating agent, any Note Registrar and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 17.09. *Table of Contents, Headings, Etc.* The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 17.10. *Authenticating Agent.* The Trustee may appoint an authenticating agent that shall be authorized to act on its behalf and subject to its direction in the authentication and delivery of Notes in connection with the original issuance thereof and transfers and exchanges of

Notes hereunder, including under Section 2.04, Section 2.05, Section 2.06, Section 2.07, Section 10.04 and Section 15.04 as fully to all intents and purposes as though the authenticating agent had been expressly authorized by this Indenture and those Sections to authenticate and deliver Notes. For all purposes of this Indenture, the authentication and delivery of Notes by the authenticating agent shall be deemed to be authentication and delivery of such Notes "by the Trustee" and a certificate of authentication executed on behalf of the Trustee by an authenticating agent shall be deemed to satisfy any requirement hereunder or in the Notes for the Trustee's certificate of authentication. Such authenticating agent shall at all times be a Person eligible to serve as trustee hereunder pursuant to Section 7.08.

Any corporation or other entity into which any authenticating agent may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, consolidation or conversion to which any authenticating agent shall be a party, or any corporation or other entity succeeding to the corporate trust business of any authenticating agent, shall be the successor of the authenticating agent hereunder, if such successor corporation or other entity is otherwise eligible under this Section 17.10, without the execution or filing of any paper or any further act on the part of the parties hereto or the authenticating agent or such successor corporation or other entity.

Any authenticating agent may at any time resign by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any authenticating agent by giving written notice of termination to such authenticating agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time any authenticating agent shall cease to be eligible under this Section, the Trustee may appoint a successor authenticating agent (which may be the Trustee), shall give written notice of such appointment to the Company and shall mail notice of such appointment to all Holders as the names and addresses of such Holders appear on the Note Register.

The Company agrees to pay to the authenticating agent from time to time reasonable compensation for its services although the Company may terminate the authenticating agent, if it determines such agent's fees to be unreasonable.

The provisions of Section 7.02, Section 7.03, Section 7.04, Section 8.03 and this Section 17.10 shall be applicable to any authenticating agent.

If an authenticating agent is appointed pursuant to this Section 17.10, the Notes may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

[NAME OF TRUSTEE], as Trustee

_____,
as Authenticating Agent, certifies that this is one of the Notes
described in the within-named Indenture.

By: _____
Authorized Signatory

Section 17.11. *Communication by Holders with Other Holders.* Holders may communicate pursuant to Section 312(b) of the Trust Indenture Act with other Holders with respect to their rights under this Indenture or the Notes and, in connection with any such communications, the Trustee shall satisfy its obligations under Section 312(b) of the Trust Indenture Act in accordance with the provisions of Section 312(b) of the Trust Indenture Act. The Company, the Trustee, the Note Registrar and anyone else shall have the protection of Section 312(c) of the Trust Indenture Act.

Section 17.12. *Conflict with Trust Indenture Act.* If and to the extent that any provision of this Indenture limits, qualifies or conflicts with the duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control.

Section 17.13. *Execution in Counterparts.* This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument. The exchange of copies of this Indenture and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Indenture as to the parties hereto and may be used in lieu of the original Indenture for all purposes. Signatures of the parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

Section 17.14. *Severability.* In the event any provision of this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 17.15. *Waiver of Jury Trial.* EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 17.16. *Force Majeure.* In no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 17.17. *Calculations.* Except as otherwise provided herein, the Company shall be responsible for making all calculations called for under the Notes. These calculations include, but are not limited to, determinations of the Stock Price, Last Reported Sale Prices of the Common Stock, Daily VWAPs, Daily Conversion Values, Daily Settlement Amounts, accrued interest payable on the Notes and the Conversion Rate of the Notes. The Company shall make all these calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on Holders. The Company shall provide a schedule of its calculations to each of the Trustee and the Conversion Agent, and each of the Trustee and Conversion Agent is entitled to rely conclusively upon the accuracy of the Company's calculations without independent verification. The Trustee will forward the Company's calculations to any Holder upon the written request of that Holder at the sole cost and expense of the Company.

Section 17.18. *USA PATRIOT Act.* The parties hereto acknowledge that in accordance with Section 326 of the USA PATRIOT Act, the Trustee, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Trustee. The parties to this Indenture agree that they will provide the Trustee with such information as it may request in order for the Trustee to satisfy the requirements of the USA PATRIOT Act.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the date first written above.

INOTEK PHARMACEUTICALS CORPORATION

By: _____

Name:

Title:

WILMINGTON TRUST, NATIONAL ASSOCIATION, as
Trustee

By: _____

Name:

Title:

[FORM OF FACE OF NOTE]

[INCLUDE FOLLOWING LEGEND IF A GLOBAL NOTE]

[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREUNDER IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

A-1

No. []

[Initially]⁷ \$[]

CUSIP No. []

Inotek Pharmaceuticals Corporation, a corporation duly organized and validly existing under the laws of the State of Delaware (the “**Company**,” which term includes any successor corporation or other entity under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [CEDE & CO.]⁸ []⁹, or registered assigns, the principal sum [as set forth in the “Schedule of Exchanges of Notes” attached hereto]¹⁰ [of \$[]]¹¹, which amount, taken together with the principal amounts of all other outstanding Notes, shall not, unless permitted by the Indenture, exceed [\$—,000,000 in aggregate at any time]¹² [\$—,000,000 in aggregate at any time (or \$—,000,000 if the Underwriters exercise their over-allotment option in full as set forth in the Underwriting Agreement)]¹³, in accordance with the rules and procedures of the Depository, on December 15, 2019, and interest thereon as set forth below.

This Note shall bear interest at the rate of [.]% per year from December [], 2014, or from the most recent date to which interest had been paid or provided for to, but excluding, the next scheduled Interest Payment Date until December 15, 2019. Interest is payable semi-annually in arrears on each June 15 and December 15, commencing on June 15, 2015, to Holders of record at the close of business on the preceding June 1 and December 1 (whether or not such day is a Business Day), respectively. Additional Interest will be payable as set forth in Section 6.03 of the within-mentioned Indenture, and any reference to interest on, or in respect of, any Note therein shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to Section 6.03, and any express mention of the payment of Additional Interest in any provision therein shall not be construed as excluding Additional Interest in those provisions thereof where such express mention is not made.

Any Defaulted Amounts shall accrue interest per annum at the rate borne by the Notes, subject to the enforceability thereof under applicable law, from, and including, the relevant payment date to, but excluding, the date on which such Defaulted Amounts shall have been paid by the Company, at its election, in accordance with Section 2.03(c) of the Indenture.

⁷ Include if a global note.

⁸ Include if a global note.

⁹ Include if a physical note.

¹⁰ Include if a global note.

¹¹ Include if a physical note.

¹² **Include if greenshoe is exercised in full before initial closing and will be settled on closing date for initial issuance.**

¹³ **Delete if greenshoe is exercised in full before initial closing and will be settled on closing date for initial issuance.**

The Company shall pay the principal of and interest on this Note, if and so long as such Note is a Global Note, in immediately available funds to the Depository or its nominee, as the case may be, as the registered Holder of such Note. As provided in and subject to the provisions of the Indenture, the Company shall pay the principal of any Notes (other than Notes that are Global Notes) at the office or agency designated by the Company for that purpose. The Company has initially designated the Trustee as its Paying Agent and Note Registrar in respect of the Notes and its agency in the continental United States of America as a place where Notes may be presented for payment or for registration of transfer and exchange.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving the Holder of this Note the right to convert this Note into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, on the terms and subject to the limitations set forth in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Note, and any claim, controversy or dispute arising under or related to this Note, shall be construed in accordance with and governed by the laws of the State of New York, except to the extent that the Trust Indenture Act is applicable.

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control and govern.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed manually by the Trustee or a duly authorized authenticating agent under the Indenture.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed.

INOTEK PHARMACEUTICALS CORPORATION

By: _____
Name:
Title:

Dated:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

WILMINGTON TRUST, NATIONAL ASSOCIATION as
Trustee, certifies that this is one of the Notes described in the
within-named Indenture.

By: _____
Authorized Signatory

[FORM OF REVERSE OF NOTE]

Inotek Pharmaceuticals Corporation
[.]% Convertible Senior Note due 2019

This Note is one of a duly authorized issue of Notes of the Company, designated as its [.]% Convertible Senior Notes due 2019 (the “Notes”), limited to the aggregate principal amount of \$[—,000,000]¹⁴ [—,000,000] (as increased by an amount equal to the aggregate principal amount of any additional Notes purchased by the Underwriters pursuant to the exercise of their over-allotment option as set forth in the Underwriting Agreement)¹⁵ all issued or to be issued under and pursuant to an Indenture dated as of December [], 2014 (the “Indenture”), between the Company and Wilmington Trust, National Association, a national banking association, as trustee (the “Trustee”), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties and immunities thereunder of the Trustee, the Company and the Holders of the Notes. Additional Notes may be issued in an unlimited aggregate principal amount, subject to certain conditions specified in the Indenture. Capitalized terms used in this Note and not defined in this Note shall have the respective meanings set forth in the Indenture.

In case certain Events of Default shall have occurred and be continuing, the principal of, and interest on, all Notes may be declared, by either the Trustee or Holders of at least 25% in aggregate principal amount of Notes then outstanding, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions and certain exceptions set forth in the Indenture.

Subject to the terms and conditions of the Indenture, the Company will make all payments and deliveries in respect of the Fundamental Change Repurchase Price on the Fundamental Change Repurchase Date and the principal amount on the Maturity Date, as the case may be, to the Holder who surrenders a Note to a Paying Agent to collect such payments in respect of the Note. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

The Indenture contains provisions permitting the Company and the Trustee in certain circumstances, without the consent of the Holders of the Notes, and in certain other circumstances, with the consent of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, evidenced as in the Indenture provided, to execute supplemental indentures modifying the terms of the Indenture and the Notes as described therein. It is also provided in the Indenture that, subject to certain exceptions, the Holders of a majority in aggregate principal amount of the Notes at the time outstanding may on behalf of the Holders of all of the Notes waive any past Default or Event of Default under the Indenture and its consequences.

¹⁴ **Include if greenshoe is exercised in full before initial closing and will be settled on closing date for initial issuance.**

¹⁵ **Delete if greenshoe is exercised in full before initial closing and will be settled on closing date for initial issuance.**

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay or deliver, as the case may be, the principal (including the Fundamental Change Repurchase Price, if applicable) of, accrued and unpaid interest on, and the consideration due upon conversion of, this Note at the place, at the respective times, at the rate and in the lawful money or shares of Common Stock, as the case may be, herein prescribed.

The Notes are issuable in registered form without coupons in denominations of \$1,000 principal amount and integral multiples thereof. At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations, without payment of any service charge but, if required by the Company or Trustee, with payment of a sum sufficient to cover any transfer or similar tax that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such exchange of Notes being different from the name of the Holder of the old Notes surrendered for such exchange.

The Notes are not subject to redemption through the operation of any sinking fund or otherwise.

Upon the occurrence of a Fundamental Change prior to the Maturity Date, the Holder has the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes or any portion thereof (in principal amounts of \$1,000 or integral multiples thereof) on the Fundamental Change Repurchase Date at a price equal to the Fundamental Change Repurchase Price.

Subject to the provisions of the Indenture, the Holder hereof has the right, at its option, during certain periods and upon the occurrence of certain conditions specified in the Indenture, prior to the close of business on the second Scheduled Trading Day immediately preceding the Maturity Date, to convert any Notes or portion thereof that is \$1,000 or an integral multiple thereof, into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, at the Conversion Rate specified in the Indenture, as adjusted from time to time as provided in the Indenture.

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM = as tenants in common

UNIF GIFT MIN ACT = Uniform Gifts to Minors Act

CUST = Custodian

TEN ENT = as tenants by the entireties

JT TEN = joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

[FORM OF NOTICE OF CONVERSION]

Inotek Pharmaceuticals Corporation
[.]% Convertible Senior Notes due 2019

To: Wilmington Trust, National Association

The undersigned registered owner of this Note hereby exercises the option to convert this Note, or the portion hereof (that is \$1,000 principal amount or an integral multiple thereof) below designated, into cash, shares of Common Stock or a combination of cash and shares of Common Stock, as applicable, in accordance with the terms of the Indenture referred to in this Note, and directs that any cash payable and any shares of Common Stock issuable and deliverable upon such conversion, together with any cash for any fractional share, and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. If any shares of Common Stock or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will pay all documentary, stamp or similar issue or transfer taxes, if any in accordance with Section 14.02(d) and Section 14.02(e) of the Indenture. Any amount required to be paid to the undersigned on account of interest accompanies this Note. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

Dated: _____

Signature(s)

Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if shares of Common Stock are to be issued, or Notes are to be delivered, other than to and in the name of the registered holder.

Fill in for registration of shares if to be issued, and Notes if to be delivered, other than to and in the name of the registered holder:

(Name)

(Street Address)

(City, State and Zip Code)

Please print name and address

Principal amount to be converted (if less than all):

\$ _____,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Social Security or Other Taxpayer
Identification Number

[FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE]

Inotek Pharmaceuticals Corporation
[.]% Convertible Senior Notes due 2019

To: Wilmington Trust, National Association

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from Inotek Pharmaceuticals Corporation (the “Company”) as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to pay to the registered holder hereof in accordance with Section 15.02 of the Indenture referred to in this Note (1) the entire principal amount of this Note, or the portion thereof (that is \$1,000 principal amount or an integral multiple thereof) below designated, and (2) if such Fundamental Change Repurchase Date does not fall during the period after a Regular Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest, if any, thereon to, but excluding, such Fundamental Change Repurchase Date. Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in the Indenture.

In the case of Physical Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Dated: _____

Signature(s)

Social Security or Other Taxpayer
Identification Number

Principal amount to be repaid (if less than all):
\$ _____,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

[FORM OF ASSIGNMENT AND TRANSFER]

Inotek Pharmaceuticals Corporation
[.]% Convertible Senior Notes due 2019

For value received _____ hereby sell(s), assign(s) and transfer(s) unto _____ (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints _____ attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

Dated: _____

Signature(s)

Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if Notes are to be delivered, other than to and in the name of the registered holder.

NOTICE: The signature on the assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the use in this Amendment No. 2 to the Registration Statement (No. 333-199859) on Form S-1/A of Inotek Pharmaceuticals Corporation of our report dated August 29, 2014, except for the effects of the reverse stock split described in Note 11, as to which the date is November 26, 2014, relating to our audits of the consolidated financial statements, appearing in the Prospectus, which is part of this Registration Statement.

We also consent to the reference to our firm under the caption "Experts" in such Prospectus.

/s/ McGladrey LLP

Boston, Massachusetts

January 13, 2015

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM T-1

**STATEMENT OF ELIGIBILITY
UNDER THE TRUST INDENTURE ACT OF 1939
OF A CORPORATION DESIGNATED TO ACT AS TRUSTEE**

CHECK IF AN APPLICATION TO DETERMINE ELIGIBILITY OF A TRUSTEE PURSUANT TO SECTION 305(b)(2)

WILMINGTON TRUST, NATIONAL ASSOCIATION

(Exact name of trustee as specified in its charter)

16-1486454

(I.R.S. employer identification no.)

**1100 North Market Street
Wilmington, DE 19890**

(Address of principal executive offices)

**Robert C. Fiedler
Vice President and Counsel
1100 North Market Street
Wilmington, Delaware 19890**

(302) 651-8541

(Name, address and telephone number of agent for service)

INOTEK PHARMACEUTICALS CORPORATION

(Exact name of obligor as specified in its charter)

Delaware
(State of incorporation)

04-3475813
(I.R.S. employer
identification no.)

131 Hartwell Avenue, Suite 105
Lexington, MA
(Address of principal executive offices)

02421
(Zip Code)

Convertible Senior Notes
(Title of the indenture securities)

Item 1. GENERAL INFORMATION. Furnish the following information as to the trustee:

(a) *Name and address of each examining or supervising authority to which it is subject.*

Comptroller of Currency, Washington, D.C.

Federal Deposit Insurance Corporation, Washington, D.C.

(b) *Whether it is authorized to exercise corporate trust powers.*

Yes.

Item 2. AFFILIATIONS WITH THE OBLIGOR. *If the obligor is an affiliate of the trustee, describe each affiliation:*

Based upon an examination of the books and records of the trustee and upon information furnished by the obligor, the obligor is not an affiliate of the trustee.

Item 16. LIST OF EXHIBITS. Listed below are all exhibits filed as part of this Statement of Eligibility and Qualification.

1. A copy of the Charter for Wilmington Trust, National Association, incorporated by reference to Exhibit 1 of Form T-1.
2. The authority of Wilmington Trust, National Association to commence business was granted under the Charter for Wilmington Trust, National Association, incorporated herein by reference to Exhibit 1 of Form T-1.
3. The authorization to exercise corporate trust powers was granted under the Charter for Wilmington Trust, National Association, incorporated herein by reference to Exhibit 1 of Form T-1.
4. A copy of the existing By-Laws of Trustee, as now in effect, incorporated herein by reference to Exhibit 4 of form T-1.
5. Not applicable.
6. The consent of Trustee as required by Section 321(b) of the Trust Indenture Act of 1939, incorporated herein by reference to Exhibit 6 of Form T-1.
7. Current Report of the Condition of Trustee, published pursuant to law or the requirements of its supervising or examining authority, attached as Exhibit 7.
8. Not applicable.
9. Not applicable.

SIGNATURE

Pursuant to the requirements of the Trust Indenture Act of 1939, as amended, the trustee, Wilmington Trust, National Association, a national banking association organized and existing under the laws of the United States of America, has duly caused this Statement of Eligibility to be signed on its behalf by the undersigned, thereunto duly authorized, all in the City of Minneapolis and State of Minnesota on the 13th day of January, 2015.

WILMINGTON TRUST, NATIONAL ASSOCIATION

By: /s/ Lynn M. Steiner

Name: Lynn M. Steiner

Title: Vice President

EXHIBIT 1

CHARTER OF WILMINGTON TRUST, NATIONAL ASSOCIATION

**ARTICLES OF ASSOCIATION
OF
WILMINGTON TRUST, NATIONAL ASSOCIATION**

For the purpose of organizing an association to perform any lawful activities of national banks, the undersigned do enter into the following articles of association:

FIRST. The title of this association shall be Wilmington Trust, National Association.

SECOND. The main office of the association shall be in the City of Wilmington, County of New Castle, State of Delaware. The general business of the association shall be conducted at its main office and its branches.

THIRD. The board of directors of this association shall consist of not less than five nor more than twenty-five persons, unless the OCC has exempted the bank from the 25-member limit. The exact number is to be fixed and determined from time to time by resolution of a majority of the full board of directors or by resolution of a majority of the shareholders at any annual or special meeting thereof. Each director shall own common or preferred stock of the association or of a holding company owning the association, with an aggregate par, fair market or equity value \$1,000. Determination of these values may be based as of either (i) the date of purchase or (ii) the date the person became a director, whichever value is greater. Any combination of common or preferred stock of the association or holding company may be used.

Any vacancy in the board of directors may be filled by action of a majority of the remaining directors between meetings of shareholders. The board of directors may not increase the number of directors between meetings of shareholders to a number which:

- 1) exceeds by more than two the number of directors last elected by shareholders where the number was 15 or less; or
- 2) exceeds by more than four the number of directors last elected by shareholders where the number was 16 or more, but in no event shall the number of directors exceed 25, unless the OCC has exempted the bank from the 25-member limit.

Directors shall be elected for terms of one year and until their successors are elected and qualified. Terms of directors, including directors selected to fill vacancies, shall expire at the next regular meeting of shareholders at which directors are elected, unless the directors resign or are removed from office. Despite the expiration of a director's term, the director shall continue to serve until his or her successor is elected and qualifies or until there is a decrease in the number of directors and his or her position is eliminated.

Honorary or advisory members of the board of directors, without voting power or power of final decision in matters concerning the business of the association, may be appointed by resolution of a majority of the full board of directors, or by resolution of shareholders at any annual or special meeting. Honorary or advisory directors shall not be counted to determine the number of directors of the association or the presence of a quorum in connection with any board action, and shall not be required to own qualifying shares.

FOURTH. There shall be an annual meeting of the shareholders to elect directors and transact whatever other business may be brought before the meeting. It shall be held at the main office or any other convenient place the board of directors may designate, on the day of each year specified therefor in the bylaws, or, if that day falls on a legal holiday in the state in which the association is located, on the next following banking day. If no election is held on the day fixed, or in the event of a legal holiday on the following banking day, an election may be held on any subsequent day within 60 days of the day fixed, to be designated by the board of directors, or, if the directors fail to fix the day, by shareholders representing two-thirds of the shares issued and outstanding. In all cases at least 10 days advance notice of the time, place and purpose of a shareholders' meeting shall be given to the shareholders by first class mail, unless the OCC determines that an emergency circumstance exists. The sole shareholder of the bank is permitted to waive notice of the shareholders' meeting.

In all elections of directors, the number of votes each common shareholder may cast will be determined by multiplying the number of shares such shareholder owns by the number of directors to be elected. Those votes may be cumulated and cast for a single candidate or may be distributed among two or more candidates in the manner selected by the shareholder. If, after the first ballot, subsequent ballots are necessary to elect directors, a shareholder may not vote shares that he or she has already fully cumulated and voted in favor of a successful candidate. On all other questions, each common shareholder shall be entitled to one vote for each share of stock held by him or her.

Nominations for election to the board of directors may be made by the board of directors or by any stockholder of any outstanding class of capital stock of the association entitled to vote for election of directors. Nominations other than those made by or on behalf of the existing management shall be made in writing and be delivered or mailed to the president of the association not less than 14 days nor more than 50 days prior to any meeting of shareholders called for the election of directors; provided, however, that if less than 21 days notice of the meeting is given to shareholders, such nominations shall be mailed or delivered to the president of the association not later than the close of business on the seventh day following the day on which the notice of meeting was mailed. Such notification shall contain the following information to the extent known to the notifying shareholder:

- 1) The name and address of each proposed nominee.
- 2) The principal occupation of each proposed nominee.
- 3) The total number of shares of capital stock of the association that will be voted for each proposed nominee.
- 4) The name and residence address of the notifying shareholder.
- 5) The number of shares of capital stock of the association owned by the notifying shareholder.

Nominations not made in accordance herewith may, in his/her discretion, be disregarded by the chairperson of the meeting, and the vote tellers may disregard all votes cast for each such nominee. No bylaw may unreasonably restrict the nomination of directors by shareholders.

A director may resign at any time by delivering written notice to the board of directors, its chairperson, or to the association, which resignation shall be effective when the notice is delivered unless the notice specifies a later effective date.

A director may be removed by shareholders at a meeting called to remove the director, when notice of the meeting stating that the purpose or one of the purposes is to remove the director is provided, if there is a failure to fulfill one of the affirmative requirements for qualification, or for cause; provided, however, that a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal.

FIFTH. The authorized amount of capital stock of this association shall be ten thousand shares of common stock of the par value of one hundred dollars (\$100) each; but said capital stock may be increased or decreased from time to time, according to the provisions of the laws of the United States.

No holder of shares of the capital stock of any class of the association shall have any preemptive or preferential right of subscription to any shares of any class of stock of the association, whether now or hereafter authorized, or to any obligations convertible into stock of the association, issued, or sold, nor any right of subscription to any thereof other than such, if any, as the board of directors, in its discretion, may from time to time determine and at such price as the board of directors may from time to time fix. Preemptive rights also must be approved by a vote of holders of two-thirds of the bank's outstanding voting shares. Unless otherwise specified in these articles of association or required by law, (1) all matters requiring shareholder action, including amendments to the articles of association, must be approved by shareholders owning a majority voting interest in the outstanding voting stock, and (2) each shareholder shall be entitled to one vote per share.

Unless otherwise specified in these articles of association or required by law, all shares of voting stock shall be voted together as a class, on any matters requiring shareholder approval. If a proposed amendment would affect two or more classes or series in the same or a substantially similar way, all the classes or series so affected must vote together as a single voting group on the proposed amendment.

Shares of one class or series may be issued as a dividend for shares of the same class or series on a pro rata basis and without consideration. Shares of one class or series may be issued as share dividends for a different class or series of stock if approved by a majority of the votes entitled to be cast by the class or series to be issued, unless there are no outstanding shares of the class or series to be issued. Unless otherwise provided by the board of directors, the record date for determining shareholders entitled to a share dividend shall be the date authorized by the board of directors for the share dividend.

Unless otherwise provided in the bylaws, the record date for determining shareholders entitled to notice of and to vote at any meeting is the close of business on the day before the first notice is mailed or otherwise sent to the shareholders, provided that in no event may a record date be more than 70 days before the meeting.

If a shareholder is entitled to fractional shares pursuant to a stock dividend, consolidation or merger, reverse stock split or otherwise, the association may: (a) issue fractional shares; (b) in lieu of the issuance of fractional shares, issue script or warrants entitling the holder to receive a full share upon surrendering enough script or warrants to equal a full share; (c) if there is an established and active market in the association's stock, make reasonable arrangements to provide the shareholder with an opportunity to realize a fair price through sale of the fraction, or purchase of the additional fraction required for a full share; (d) remit the cash equivalent of the fraction to the shareholder; or (e) sell full shares representing all the fractions at public auction or to the highest bidder after having solicited and received sealed bids from at least three licensed stock brokers; and distribute the proceeds pro rata to shareholders who otherwise would be entitled to the fractional shares. The holder of a fractional share is entitled to exercise the rights for shareholder, including the right to vote, to receive dividends, and to participate in the assets of the association upon liquidation, in proportion to the fractional interest. The holder of script or warrants is not entitled to any of these rights unless the script or warrants explicitly provide for such rights. The script or warrants may be subject to such additional conditions as: (1) that the script or warrants will become void if not exchanged for full shares before a specified date; and (2) that the shares for which the script or warrants are exchangeable may be sold at the option of the association and the proceeds paid to scripolders.

The association, at any time and from time to time, may authorize and issue debt obligations, whether or not subordinated, without the approval of the shareholders. Obligations classified as debt, whether or not subordinated, which may be issued by the association without the approval of shareholders, do not carry voting rights on any issue, including an increase or decrease in the aggregate number of the securities, or the exchange or reclassification of all or part of securities into securities of another class or series.

SIXTH. The board of directors shall appoint one of its members president of this association, and one of its members chairperson of the board and shall have the power to appoint one or more vice presidents, a secretary who shall keep minutes of the directors' and shareholders' meetings and be responsible for authenticating the records of the association, and such other officers and employees as may be required to transact the business of this association.

A duly appointed officer may appoint one or more officers or assistant officers if authorized by the board of directors in accordance with the bylaws.

The board of directors shall have the power to:

- 1) Define the duties of the officers, employees, and agents of the association.
- 2) Delegate the performance of its duties, but not the responsibility for its duties, to the officers, employees, and agents of the association.
- 3) Fix the compensation and enter into employment contracts with its officers and employees upon reasonable terms and conditions consistent with applicable law.
- 4) Dismiss officers and employees.
- 5) Require bonds from officers and employees and to fix the penalty thereof.
- 6) Ratify written policies authorized by the association's management or committees of the board.
- 7) Regulate the manner in which any increase or decrease of the capital of the association shall be made, provided that nothing herein shall restrict the power of shareholders to increase or decrease the capital of the association in accordance with law, and nothing shall raise or lower from two-thirds the percentage required for shareholder approval to increase or reduce the capital.
- 8) Manage and administer the business and affairs of the association.
- 9) Adopt initial bylaws, not inconsistent with law or the articles of association, for managing the business and regulating the affairs of the association.
- 10) Amend or repeal bylaws, except to the extent that the articles of association reserve this power in whole or in part to shareholders.
- 11) Make contracts.
- 12) Generally perform all acts that are legal for a board of directors to perform.

SEVENTH. The board of directors shall have the power to change the location of the main office to any other place within the limits of Wilmington, Delaware, without the approval of the shareholders, or with a vote of shareholders owning two-thirds of the stock of such association for a relocation outside such limits and upon receipt of a certificate of approval from the Comptroller of the Currency, to any other location within or outside the limits of Wilmington Delaware, but not more than 30 miles beyond such limits. The board of directors shall have the power to establish or change the location of any branch or branches of the association to any other location permitted under applicable law, without approval of shareholders, subject to approval by the Comptroller of the Currency.

EIGHTH. The corporate existence of this association shall continue until termination according to the laws of the United States.

NINTH. The board of directors of this association, or any one or more shareholders owning, in the aggregate, not less than 50 percent of the stock of this association, may call a special meeting of shareholders at any time. Unless otherwise provided by the bylaws or the laws of the United States, a notice of the time, place, and purpose of every annual and special meeting of the shareholders shall be given at least 10 days prior to the meeting by first-class mail, unless the OCC determines that an emergency circumstance exists. If the association is a wholly-owned subsidiary, the sole shareholder may waive notice of the shareholders' meeting. Unless otherwise provided by the bylaws or these articles, any action requiring approval of shareholders must be effected at a duly called annual or special meeting.

TENTH. For purposes of this Article Tenth, the term "institution-affiliated party" shall mean any institution-affiliated party of the association as such term is defined in 12 U.S.C. 1813(u).

Any institution-affiliated party (or his or her heirs, executors or administrators) may be indemnified or reimbursed by the association for reasonable expenses actually incurred in connection with any threatened, pending or completed actions or proceedings and appeals therein, whether civil, criminal, governmental, administrative or investigative, in accordance with and to the fullest extent permitted by law, as such law now or hereafter exists; provided, however, that when an administrative proceeding or action instituted by a federal banking agency results in a final order or settlement pursuant to which such person: (i) is assessed a civil money penalty, (ii) is removed from office or prohibited from participating in the conduct of the affairs of the association, or (iii) is required to cease and desist from or to take any affirmative action described in 12 U.S.C. 1818(b) with respect to the association, then the association shall require the repayment of all legal fees and expenses advanced pursuant to the next succeeding paragraph and may not indemnify such institution-affiliated parties (or their heirs, executors or administrators) for expenses, including expenses for legal fees, penalties or other payments incurred. The association shall provide indemnification in connection with an action or proceeding (or part thereof) initiated by an institution-affiliated party (or by his or her heirs, executors or administrators) only if such action or proceeding (or part thereof) was authorized by the board of directors.

Expenses incurred by an institution-affiliated party (or by his or her heirs, executors or administrators) in connection with any action or proceeding under 12 U.S.C. 164 or 1818 may be paid by the association in advance of the final disposition of such action or proceeding upon (a) a determination by the board of directors acting by a quorum consisting of directors who are not parties to such action or proceeding that the institution-affiliated party (or his or her heirs, executors or administrators) has a reasonable basis for prevailing on the merits, (b) a determination that the indemnified individual (or his or her heirs, executors or administrators) will have the financial capacity to reimburse the bank in the event he or she does not prevail, (c) a determination that the payment of expenses and fees by the association will not adversely affect the safety and soundness of the association, and (d) receipt of an undertaking by or on behalf of such institution-affiliated party (or by his or her heirs, executors or administrators) to repay such advancement in the event of a final order or settlement pursuant to which such person: (i) is assessed a civil money penalty, (ii) is removed from office or prohibited from participating in the conduct of the affairs of the association, or (iii) is required to cease and desist from or to take any affirmative action described in 12 U.S.C. 1818(b) with respect to the association. In all other instances, expenses incurred by an institution-affiliated party (or by his or her heirs, executors or administrators) in connection with any action or proceeding as to which indemnification may be given under these articles of association may be paid by the association in advance of the final disposition of such action or proceeding upon (a) receipt of an undertaking by or on behalf of such institution-affiliated party (or by or

on behalf of his or her heirs, executors or administrators) to repay such advancement in the event that such institution-affiliated party (or his or her heirs, executors or administrators) is ultimately found not to be entitled to indemnification as authorized by these articles of association and (b) approval by the board of directors acting by a quorum consisting of directors who are not parties to such action or proceeding or, if such a quorum is not obtainable, then approval by stockholders. To the extent permitted by law, the board of directors or, if applicable, the stockholders, shall not be required to find that the institution-affiliated party has met the applicable standard of conduct provided by law for indemnification in connection with such action or proceeding.

In the event that a majority of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the remaining members of the board may authorize independent legal counsel to review the indemnification request and provide the remaining members of the board with a written opinion of counsel as to whether the conditions delineated in the first four paragraphs of this Article Tenth have been met. If independent legal counsel opines that said conditions have been met, the remaining members of the board of directors may rely on such opinion in authorizing the requested indemnification.

In the event that all of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the board shall authorize independent legal counsel to review the indemnification request and provide the board with a written opinion of counsel as to whether the conditions delineated in the first four paragraphs of this Article Tenth have been met. If legal counsel opines that said conditions have been met, the board of directors may rely on such opinion in authorizing the requested indemnification.

To the extent permitted under applicable law, the rights of indemnification and to the advancement of expenses provided in these articles of association (a) shall be available with respect to events occurring prior to the adoption of these articles of association, (b) shall continue to exist after any restrictive amendment of these articles of association with respect to events occurring prior to such amendment, (c) may be interpreted on the basis of applicable law in effect at the time of the occurrence of the event or events giving rise to the action or proceeding, or on the basis of applicable law in effect at the time such rights are claimed, and (d) are in the nature of contract rights which may be enforced in any court of competent jurisdiction as if the association and the institution-affiliated party (or his or her heirs, executors or administrators) for whom such rights are sought were parties to a separate written agreement.

The rights of indemnification and to the advancement of expenses provided in these articles of association shall not, to the extent permitted under applicable law, be deemed exclusive of any other rights to which any such institution affiliated party (or his or her heirs, executors or administrators) may now or hereafter be otherwise entitled whether contained in these articles of association, the bylaws, a resolution of stockholders, a resolution of the board of directors, or an agreement providing such indemnification, the creation of such other rights being hereby expressly authorized. Without limiting the generality of the foregoing, the rights of indemnification and to the advancement of expenses provided in these articles of association shall not be deemed exclusive of any rights, pursuant to statute or otherwise, of any such institution-affiliated party (or of his or her heirs, executors or administrators) in any such action or proceeding to have assessed or allowed in his or her favor, against the association or otherwise, his or her costs and expenses incurred therein or in connection therewith or any part thereof.

If this Article Tenth or any part hereof shall be held unenforceable in any respect by a court of competent jurisdiction, it shall be deemed modified to the minimum extent necessary to make it enforceable, and the remainder of this Article Tenth shall remain fully enforceable.

The association may, upon affirmative vote of a majority of its board of directors, purchase insurance to indemnify its institution-affiliated parties to the extent that such indemnification is allowed in these articles of association; provided, however, that no such insurance shall include coverage to pay or reimburse any institution-affiliated party for the cost of any judgment or civil money penalty assessed against such person in an administrative proceeding or civil action commenced by any federal banking agency. Such insurance may, but need not, be for the benefit of all institution-affiliated parties.

ELEVENTH. These articles of association may be amended at any regular or special meeting of the shareholders by the affirmative vote of the holders of a majority of the stock of this association, unless the vote of the holders of a greater amount of stock is required by law, and in that case by the vote of the holders of such greater amount. The association's board of directors may propose one or more amendments to the articles of association for submission to the shareholders.

EXHIBIT 4

BY-LAWS OF WILMINGTON TRUST, NATIONAL ASSOCIATION

AMENDED AND RESTATED BYLAWS

OF

WILMINGTON TRUST, NATIONAL ASSOCIATION

ARTICLE I

Meetings of Shareholders

Section 1. Annual Meeting. The annual meeting of the shareholders to elect directors and transact whatever other business may properly come before the meeting shall be held at the main office of the association, Rodney Square North, 1100 Market Street, City of Wilmington, State of Delaware, at 1:00 o'clock p.m. on the first Tuesday in March of each year, or at such other place and time as the board of directors may designate, or if that date falls on a legal holiday in Delaware, on the next following banking day. Notice of the meeting shall be mailed by first class mail, postage prepaid, at least 10 days and no more than 60 days prior to the date thereof, addressed to each shareholder at his/her address appearing on the books of the association. If, for any cause, an election of directors is not made on that date, or in the event of a legal holiday, on the next following banking day, an election may be held on any subsequent day within 60 days of the date fixed, to be designated by the board of directors, or, if the directors fail to fix the date, by shareholders representing two-thirds of the shares. In these circumstances, at least 10 days' notice must be given by first class mail to shareholders.

Section 2. Special Meetings. Except as otherwise specifically provided by statute, special meetings of the shareholders may be called for any purpose at any time by the board of directors or by any one or more shareholders owning, in the aggregate, not less than fifty percent of the stock of the association. Every such special meeting, unless otherwise provided by law, shall be called by mailing, postage prepaid, not less than 10 days nor more than 60 days prior to the date fixed for the meeting, to each shareholder at the address appearing on the books of the association a notice stating the purpose of the meeting.

The board of directors may fix a record date for determining shareholders entitled to notice and to vote at any meeting, in reasonable proximity to the date of giving notice to the shareholders of such meeting. The record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs a demand for the meeting describing the purpose or purposes for which it is to be held.

A special meeting may be called by shareholders or the board of directors to amend the articles of association or bylaws, whether or not such bylaws may be amended by the board of directors in the absence of shareholder approval.

If an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time or place, if the new date, time or place is announced at the meeting before adjournment, unless any additional items of business are to be considered, or the association becomes aware of an intervening event materially affecting any matter to be voted on more than 10 days prior to the date to which the meeting is adjourned. If a new record date for the adjourned meeting is fixed, however, notice of the adjourned meeting must be given to persons who are shareholders as of the new record date. If, however, the meeting to elect the directors is adjourned before the election takes place, at least ten days' notice of the new election must be given to the shareholders by first-class mail.

Section 3. Nominations of Directors. Nominations for election to the board of directors may be made by the board of directors or by any stockholder of any outstanding class of capital stock of the association entitled to vote for the election of directors. Nominations, other than those made by or on behalf of the existing management of the association, shall be made in writing and shall be delivered or mailed to the president of the association and the Comptroller of the Currency, Washington, D.C., not less than 14 days nor more than 50 days prior to any meeting of shareholders called for the election of directors; *provided, however,* that if less than 21 days' notice of the meeting is given to shareholders, such nomination shall be mailed or delivered to the president of the association not later than the close of business on the seventh day following the day on which the notice of meeting was mailed. Such notification shall contain the following information to the extent known to the notifying shareholder:

- (1) The name and address of each proposed nominee;
- (2) The principal occupation of each proposed nominee;
- (3) The total number of shares of capital stock of the association that will be voted for each proposed nominee;
- (4) The name and residence of the notifying shareholder; and
- (5) The number of shares of capital stock of the association owned by the notifying shareholder.

Nominations not made in accordance herewith may, in his/her discretion, be disregarded by the chairperson of the meeting, and upon his/her instructions, the vote tellers may disregard all votes cast for each such nominee.

Section 4. Proxies. Shareholders may vote at any meeting of the shareholders by proxies duly authorized in writing, but no officer or employee of this association shall act as proxy. Proxies shall be valid only for one meeting, to be specified therein, and any adjournments of such meeting. Proxies shall be dated and filed with the records of the meeting. Proxies with facsimile signatures may be used and unexecuted proxies may be counted upon receipt of a written confirmation from the shareholder. Proxies meeting the above requirements submitted at any time during a meeting shall be accepted.

Section 5. Quorum. A majority of the outstanding capital stock, represented in person or by proxy, shall constitute a quorum at any meeting of shareholders, unless otherwise provided by law, or by the shareholders or directors pursuant to Article IX, Section 2, but less than a quorum may adjourn any meeting, from time to time, and the meeting may be held, as adjourned, without further notice. A majority of the votes cast shall decide every question or matter submitted to the shareholders at any meeting, unless otherwise provided by law or by the articles of association, or by the shareholders or directors pursuant to Article IX, Section 2. If a meeting for the election of directors is not held on the fixed date, at least 10 days' notice must be given by first-class mail to the shareholders.

ARTICLE II
Directors

Section 1. Board of Directors. The board of directors shall have the power to manage and administer the business and affairs of the association. Except as expressly limited by law, all corporate powers of the association shall be vested in and may be exercised by the board of directors.

Section 2. Number. The board of directors shall consist of not less than five nor more than twenty-five members, unless the OCC has exempted the bank from the 25-member limit. The exact number within such minimum and maximum limits is to be fixed and determined from time to time by resolution of a majority of the full board of directors or by resolution of a majority of the shareholders at any meeting thereof.

Section 3. Organization Meeting. The secretary or treasurer, upon receiving the certificate of the judges of the result of any election, shall notify the directors-elect of their election and of the time at which they are required to meet at the main office of the association, or at such other place in the cities of Wilmington, Delaware or Buffalo, New York, to organize the new board of directors and elect and appoint officers of the association for the succeeding year. Such meeting shall be held on the day of the election or as soon thereafter as practicable, and, in any event, within 30 days thereof. If, at the time fixed for such meeting, there shall not be a quorum, the directors present may adjourn the meeting, from time to time, until a quorum is obtained.

Section 4. Regular Meetings. The Board of Directors may, at any time and from time to time, by resolution designate the place, date and hour for the holding of a regular meeting, but in the absence of any such designation, regular meetings of the board of directors shall be held, without notice, on the first Tuesday of each March, June and September, and on the second Tuesday of each December at the main office or other such place as the board of directors may designate. When any regular meeting of the board of directors falls upon a holiday, the meeting shall be held on the next banking business day unless the board of directors shall designate another day.

Section 5. Special Meetings. Special meetings of the board of directors may be called by the Chairman of the Board of the association, or at the request of two or more directors. Each member of the board of directors shall be given notice by telegram, first class mail, or in person stating the time and place of each special meeting.

Section 6. Quorum. A majority of the entire board then in office shall constitute a quorum at any meeting, except when otherwise provided by law or these bylaws, but a lesser number may adjourn any meeting, from time to time, and the meeting may be held, as adjourned, without further notice. If the number of directors present at the meeting is reduced below the number that would constitute a quorum, no business may be transacted, except selecting directors to fill vacancies in conformance with Article II, Section 7. If a quorum is present, the board of directors may take action through the vote of a majority of the directors who are in attendance.

Section 7. Meetings by Conference Telephone. Any one or more members of the board of directors or any committee thereof may participate in a meeting of such board or committees by means of a conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation in a meeting by such means shall constitute presence in person at such meeting.

Section 8. Procedures. The order of business and all other matters of procedure at every meeting of the board of directors may be determined by the person presiding at the meeting.

Section 9. Removal of Directors. Any director may be removed for cause, at any meeting of stockholders notice of which shall have referred to the proposed action, by vote of the stockholders. Any director may be removed without cause, at any meeting of stockholders notice of which shall have referred to the proposed action, by the vote of the holders of a majority of the shares of the Corporation entitled to vote. Any director may be removed for cause, at any meeting of the directors notice of which shall have referred to the proposed action, by vote of a majority of the entire Board of Directors.

Section 10. Vacancies. When any vacancy occurs among the directors, a majority of the remaining members of the board of directors, according to the laws of the United States, may appoint a director to fill such vacancy at any regular meeting of the board of directors, or at a special meeting called for that purpose at which a quorum is present, or if the directors remaining in office constitute fewer than a quorum of the board of directors, by the affirmative vote of a majority of all the directors remaining in office, or by shareholders at a special meeting called for that purpose in conformance with Section 2 of Article I. At any such shareholder meeting, each shareholder entitled to vote shall have the right to multiply the number of votes he or she is entitled to cast by the number of vacancies being filled and cast the product for a single candidate or distribute the product among two or more candidates. A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

ARTICLE III **Committees of the Board**

The board of directors has power over and is solely responsible for the management, supervision, and administration of the association. The board of directors may delegate its power, but none of its responsibilities, to such persons or committees as the board may determine.

The board of directors must formally ratify written policies authorized by committees of the board of directors before such policies become effective. Each committee must have one or more member(s), and who may be an officer of the association or an officer or director of any affiliate of the association, who serve at the pleasure of the board of directors. Provisions of the articles of association and these bylaws governing place of meetings, notice of meeting, quorum and voting requirements of the board of directors, apply to committees and their members as well. The creation of a committee and appointment of members to it must be approved by the board of directors.

Section 1. Loan Committee. There shall be a loan committee composed of not less than 2 directors, appointed by the board of directors annually or more often. The loan committee, on behalf of the bank, shall have power to discount and purchase bills, notes and other evidences of debt, to buy and sell bills of exchange, to examine and approve loans and discounts, to exercise authority regarding loans and discounts, and to exercise, when the board of directors is not in session, all other powers of the board of directors that may lawfully be delegated. The loan committee shall keep minutes of its meetings, and such minutes shall be submitted at the next regular meeting of the board of directors at which a quorum is present, and any action taken by the board of directors with respect thereto shall be entered in the minutes of the board of directors.

Section 2. Investment Committee. There shall be an investment committee composed of not less than 2 directors, appointed by the board of directors annually or more often. The investment

committee, on behalf of the bank, shall have the power to ensure adherence to the investment policy, to recommend amendments thereto, to purchase and sell securities, to exercise authority regarding investments and to exercise, when the board of directors is not in session, all other powers of the board of directors regarding investment securities that may be lawfully delegated. The investment committee shall keep minutes of its meetings, and such minutes shall be submitted at the next regular meeting of the board of directors at which a quorum is present, and any action taken by the board of directors with respect thereto shall be entered in the minutes of the board of directors.

Section 3. Examining Committee. There shall be an examining committee composed of not less than 2 directors, exclusive of any active officers, appointed by the board of directors annually or more often. The duty of that committee shall be to examine at least once during each calendar year and within 15 months of the last examination the affairs of the association or cause suitable examinations to be made by auditors responsible only to the board of directors and to report the result of such examination in writing to the board of directors at the next regular meeting thereafter. Such report shall state whether the association is in a sound condition, and whether adequate internal controls and procedures are being maintained and shall recommend to the board of directors such changes in the manner of conducting the affairs of the association as shall be deemed advisable.

Notwithstanding the provisions of the first paragraph of this section 3, the responsibility and authority of the Examining Committee may, if authorized by law, be given over to a duly constituted audit committee of the association's parent corporation by a resolution duly adopted by the board of directors.

Section 4. Trust Audit Committee. There shall be a trust audit committee in conformance with Section 1 of Article V.

Section 5. Other Committees. The board of directors may appoint, from time to time, from its own members, compensation, special litigation and other committees of one or more persons, for such purposes and with such powers as the board of directors may determine.

However, a committee may not:

- (1) Authorize distributions of assets or dividends;
- (2) Approve action required to be approved by shareholders;
- (3) Fill vacancies on the board of directors or any of its committees;
- (4) Amend articles of association;
- (5) Adopt, amend or repeal bylaws; or
- (6) Authorize or approve issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences and limitations of a class or series of shares.

Section 6. Committee Members' Fees. Committee members may receive a fee for their services as committee members and traveling and other out-of-pocket expenses incurred in attending any meeting of a committee of which they are a member. The fee may be a fixed sum to be paid for attending each meeting or a fixed sum to be paid quarterly, or semiannually, irrespective of the number of meetings attended or not attended. The amount of the fee and the basis on which it shall be paid shall be determined by the Board of Directors.

ARTICLE IV
Officers and Employees

Section 1. Chairperson of the Board. The board of directors shall appoint one of its members to be the chairperson of the board to serve at its pleasure. Such person shall preside at all meetings of the board of directors. The chairperson of the board shall supervise the carrying out of the policies adopted or approved by the board of directors; shall have general executive powers, as well as the specific powers conferred by these bylaws; and shall also have and may exercise such further powers and duties as from time to time may be conferred upon or assigned by the board of directors.

Section 2. President. The board of directors shall appoint one of its members to be the president of the association. In the absence of the chairperson, the president shall preside at any meeting of the board of directors. The president shall have general executive powers and shall have and may exercise any and all other powers and duties pertaining by law, regulation, or practice to the office of president, or imposed by these bylaws. The president shall also have and may exercise such further powers and duties as from time to time may be conferred or assigned by the board of directors.

Section 3. Vice President. The board of directors may appoint one or more vice presidents. Each vice president shall have such powers and duties as may be assigned by the board of directors. One vice president shall be designated by the board of directors, in the absence of the president, to perform all the duties of the president.

Section 4. Secretary. The board of directors shall appoint a secretary, treasurer, or other designated officer who shall be secretary of the board of directors and of the association and who shall keep accurate minutes of all meetings. The secretary shall attend to the giving of all notices required by these bylaws; shall be custodian of the corporate seal, records, documents and papers of the association; shall provide for the keeping of proper records of all transactions of the association; shall have and may exercise any and all other powers and duties pertaining by law, regulation or practice to the office of treasurer, or imposed by these bylaws; and shall also perform such other duties as may be assigned from time to time, by the board of directors.

Section 5. Other Officers. The board of directors may appoint one or more assistant vice presidents, one or more trust officers, one or more assistant secretaries, one or more assistant treasurers, one or more managers and assistant managers of branches and such other officers and attorneys in fact as from time to time may appear to the board of directors to be required or desirable to transact the business of the association. Such officers shall respectively exercise such powers and perform such duties as pertain to their several offices, or as may be conferred upon or assigned to them by the board of directors, the chairperson of the board, or the president. The board of directors may authorize an officer to appoint one or more officers or assistant officers.

Section 6. Tenure of Office. The president and all other officers shall hold office for the current year for which the board of directors was elected, unless they shall resign, become disqualified, or be removed; and any vacancy occurring in the office of president shall be filled promptly by the board of directors.

Section 7. Resignation. An officer may resign at any time by delivering notice to the association. A resignation is effective when the notice is given unless the notice specifies a later effective date.

ARTICLE V
Fiduciary Activities

Section 1. Trust Audit Committee. There shall be a Trust Audit Committee composed of not less than 2 directors, appointed by the board of directors, which shall, at least once during each calendar year make suitable audits of the association's fiduciary activities or cause suitable audits to be made by auditors responsible only to the board, and at such time shall ascertain whether fiduciary powers have been administered according to law, Part 9 of the Regulations of the Comptroller of the Currency, and sound fiduciary principles. Such committee: (1) must not include any officers of the bank or an affiliate who participate significantly in the administration of the bank's fiduciary activities; and (2) must consist of a majority of members who are not also members of any committee to which the board of directors has delegated power to manage and control the fiduciary activities of the bank.

Notwithstanding the provisions of the first paragraph of this section 1, the responsibility and authority of the Trust Audit Committee may, if authorized by law, be given over to a duly constituted audit committee of the association's parent corporation by a resolution duly adopted by the board of directors.

Section 2. Fiduciary Files. There shall be maintained by the association all fiduciary records necessary to assure that its fiduciary responsibilities have been properly undertaken and discharged.

Section 3. Trust Investments. Funds held in a fiduciary capacity shall be invested according to the instrument establishing the fiduciary relationship and applicable law. Where such instrument does not specify the character and class of investments to be made, but does vest in the association investment discretion, funds held pursuant to such instrument shall be invested in investments in which corporate fiduciaries may invest under applicable law.

ARTICLE VI
Stock and Stock Certificates

Section 1. Transfers. Shares of stock shall be transferable on the books of the association, and a transfer book shall be kept in which all transfers of stock shall be recorded. Every person becoming a shareholder by such transfer shall in proportion to such shareholder's shares, succeed to all rights of the prior holder of such shares. The board of directors may impose conditions upon the transfer of the stock reasonably calculated to simplify the work of the association with respect to stock transfers, voting at shareholder meetings and related matters and to protect it against fraudulent transfers.

Section 2. Stock Certificates. Certificates of stock shall bear the signature of the president (which may be engraved, printed or impressed) and shall be signed manually or by facsimile process by the secretary, assistant secretary, treasurer, assistant treasurer, or any other officer appointed by the board of directors for that purpose, to be known as an authorized officer, and the seal of the association shall be engraved thereon. Each certificate shall recite on its face that the stock represented thereby is transferable only upon the books of the association properly endorsed.

The board of directors may adopt or use procedures for replacing lost, stolen, or destroyed stock certificates as permitted by law.

The association may establish a procedure through which the beneficial owner of shares that are registered in the name of a nominee may be recognized by the association as the shareholder. The procedure may set forth:

- (1) The types of nominees to which it applies;
- (2) The rights or privileges that the association recognizes in a beneficial owner;
- (3) How the nominee may request the association to recognize the beneficial owner as the shareholder;
- (4) The information that must be provided when the procedure is selected;
- (5) The period over which the association will continue to recognize the beneficial owner as the shareholder;
- (6) Other aspects of the rights and duties created.

ARTICLE VII

Corporate Seal

Section 1. Seal. The seal of the association shall be in such form as may be determined from time to time by the board of directors. The president, the treasurer, the secretary or any assistant treasurer or assistant secretary, or other officer thereunto designated by the board of directors shall have authority to affix the corporate seal to any document requiring such seal and to attest the same. The seal on any corporate obligation for the payment of money may be facsimile.

ARTICLE VIII

Miscellaneous Provisions

Section 1. Fiscal Year. The fiscal year of the association shall be the calendar year.

Section 2. Execution of Instruments. All agreements, indentures, mortgages, deeds, conveyances, transfers, certificates, declarations, receipts, discharges, releases, satisfactions, settlements, petitions, schedules, accounts, affidavits, bonds, undertakings, proxies and other instruments or documents may be signed, executed, acknowledged, verified, delivered or accepted on behalf of the association by the chairperson of the board, or the president, or any vice president, or the secretary, or the treasurer, or, if in connection with the exercise of fiduciary powers of the association, by any of those offices or by any trust officer. Any such instruments may also be executed, acknowledged, verified, delivered or accepted on behalf of the association in such other manner and by such other officers as the board of directors may from time to time direct. The provisions of this section 2 are supplementary to any other provision of these bylaws.

Section 3. Records. The articles of association, the bylaws and the proceedings of all meetings of the shareholders, the board of directors, and standing committees of the board of directors shall be recorded in appropriate minute books provided for that purpose. The minutes of each meeting shall be signed by the secretary, treasurer or other officer appointed to act as secretary of the meeting.

Section 4. Corporate Governance Procedures. To the extent not inconsistent with federal banking statutes and regulations, or safe and sound banking practices, the association may follow the Delaware General Corporation Law, Del. Code Ann. tit. 8 (1991, as amended 1994, and as amended thereafter) with respect to matters of corporate governance procedures.

Section 5. Indemnification. For purposes of this Section 5 of Article VIII, the term “institution-affiliated party” shall mean any institution-affiliated party of the association as such term is defined in 12 U.S.C. 1813(u).

Any institution-affiliated party (or his or her heirs, executors or administrators) may be indemnified or reimbursed by the association for reasonable expenses actually incurred in connection with any threatened, pending or completed actions or proceedings and appeals therein, whether civil, criminal, governmental, administrative or investigative, in accordance with and to the fullest extent permitted by law, as such law now or hereafter exists; provided, however, that when an administrative proceeding or action instituted by a federal banking agency results in a final order or settlement pursuant to which such person: (i) is assessed a civil money penalty, (ii) is removed from office or prohibited from participating in the conduct of the affairs of the association, or (iii) is required to cease and desist from or to take any affirmative action described in 12 U.S.C. 1818(b) with respect to the association, then the association shall require the repayment of all legal fees and expenses advanced pursuant to the next succeeding paragraph and may not indemnify such institution-affiliated parties (or their heirs, executors or administrators) for expenses, including expenses for legal fees, penalties or other payments incurred. The association shall provide indemnification in connection with an action or proceeding (or part thereof) initiated by an institution-affiliated party (or by his or her heirs, executors or administrators) only if such action or proceeding (or part thereof) was authorized by the board of directors.

Expenses incurred by an institution-affiliated party (or by his or her heirs, executors or administrators) in connection with any action or proceeding under 12 U.S.C. 164 or 1818 may be paid by the association in advance of the final disposition of such action or proceeding upon (a) a determination by the board of directors acting by a quorum consisting of directors who are not parties to such action or proceeding that the institution-affiliated party (or his or her heirs, executors or administrators) has a reasonable basis for prevailing on the merits, (b) a determination that the indemnified individual (or his or her heirs, executors or administrators) will have the financial capacity to reimburse the bank in the event he or she does not prevail, (c) a determination that the payment of expenses and fees by the association will not adversely affect the safety and soundness of the association, and (d) receipt of an undertaking by or on behalf of such institution-affiliated party (or by his or her heirs, executors or administrators) to repay such advancement in the event of a final order or settlement pursuant to which such person: (i) is assessed a civil money penalty, (ii) is removed from office or prohibited from participating in the conduct of the affairs of the association, or (iii) is required to cease and desist from or to take any affirmative action described in 12 U.S.C. 1818(b) with respect to the association. In all other instances, expenses incurred by an institution-affiliated party (or by his or her heirs, executors or administrators) in connection with any action or proceeding as to which indemnification may be given under these articles of association may be paid by the association in advance of the final disposition of such action or proceeding upon (a) receipt of an undertaking by or on behalf of such institution-affiliated party (or by or on behalf of his or her heirs, executors or administrators) to repay such advancement in the event that such institution-affiliated party (or his or her heirs, executors or administrators) is ultimately found not to be entitled to indemnification as authorized by these bylaws and (b) approval by the board of directors acting by a quorum consisting of directors who are not parties to such action or proceeding or, if such a quorum is not obtainable, then approval by stockholders. To the extent permitted by law, the board of directors or, if applicable, the stockholders, shall not be required to find that the institution-affiliated party has met the applicable standard of conduct provided by law for indemnification in connection with such action or proceeding.

In the event that a majority of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the remaining members of the board may authorize independent legal counsel to review the indemnification request and provide the remaining members of the board with a written opinion of counsel as to whether the conditions delineated in the first four paragraphs of this Section 5 of Article VIII have been met. If independent legal counsel opines that said conditions have been met, the remaining members of the board of directors may rely on such opinion in authorizing the requested indemnification.

In the event that all of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the board shall authorize independent legal counsel to review the indemnification request and provide the board with a written opinion of counsel as to whether the conditions delineated in the first four paragraphs of this Section 5 of Article VIII have been met. If legal counsel opines that said conditions have been met, the board of directors may rely on such opinion in authorizing the requested indemnification.

To the extent permitted under applicable law, the rights of indemnification and to the advancement of expenses provided in these articles of association (a) shall be available with respect to events occurring prior to the adoption of these bylaws, (b) shall continue to exist after any restrictive amendment of these bylaws with respect to events occurring prior to such amendment, (c) may be interpreted on the basis of applicable law in effect at the time of the occurrence of the event or events giving rise to the action or proceeding, or on the basis of applicable law in effect at the time such rights are claimed, and (d) are in the nature of contract rights which may be enforced in any court of competent jurisdiction as if the association and the institution-affiliated party (or his or her heirs, executors or administrators) for whom such rights are sought were parties to a separate written agreement.

The rights of indemnification and to the advancement of expenses provided in these bylaws shall not, to the extent permitted under applicable law, be deemed exclusive of any other rights to which any such institution-affiliated party (or his or her heirs, executors or administrators) may now or hereafter be otherwise entitled whether contained in the association's articles of association, these bylaws, a resolution of stockholders, a resolution of the board of directors, or an agreement providing such indemnification, the creation of such other rights being hereby expressly authorized. Without limiting the generality of the foregoing, the rights of indemnification and to the advancement of expenses provided in these bylaws shall not be deemed exclusive of any rights, pursuant to statute or otherwise, of any such institution-affiliated party (or of his or her heirs, executors or administrators) in any such action or proceeding to have assessed or allowed in his or her favor, against the association or otherwise, his or her costs and expenses incurred therein or in connection therewith or any part thereof.

If this Section 5 of Article VIII or any part hereof shall be held unenforceable in any respect by a court of competent jurisdiction, it shall be deemed modified to the minimum extent necessary to make it enforceable, and the remainder of this Section 5 of Article VIII shall remain fully enforceable.

The association may, upon affirmative vote of a majority of its board of directors, purchase insurance to indemnify its institution-affiliated parties to the extent that such indemnification is allowed in these bylaws; provided, however, that no such insurance shall include coverage for a final order assessing civil money penalties against such persons by a bank regulatory agency. Such insurance may, but need not, be for the benefit of all institution-affiliated parties.

ARTICLE IX
Inspection and Amendments

Section 1. Inspection. A copy of the bylaws of the association, with all amendments, shall at all times be kept in a convenient place at the main office of the association, and shall be open for inspection to all shareholders during banking hours.

Section 2. Amendments. The bylaws of the association may be amended, altered or repealed, at any regular meeting of the board of directors, by a vote of a majority of the total number of the directors except as provided below, and provided that the following language accompany any such change.

I, _____, certify that: (1) I am the duly constituted (secretary or treasurer) of and secretary of its board of directors, and as such officer am the official custodian of its records; (2) the foregoing bylaws are the bylaws of the association, and all of them are now lawfully in force and effect.

I have hereunto affixed my official signature on this _____ day of _____.

(Secretary or Treasurer)

The association's shareholders may amend or repeal the bylaws even though the bylaws also may be amended or repealed by the board of directors.

EXHIBIT 6

Section 321(b) Consent

Pursuant to Section 321(b) of the Trust Indenture Act of 1939, as amended, Wilmington Trust, National Association hereby consents that reports of examinations by Federal, State, Territorial or District authorities may be furnished by such authorities to the Securities and Exchange Commission upon requests therefor.

WILMINGTON TRUST, NATIONAL ASSOCIATION

Dated: January 13, 2015

By: /s/ Lynn M. Steiner

Name: Lynn M. Steiner

Title: Vice President

EXHIBIT 7**REPORT OF CONDITION****WILMINGTON TRUST, NATIONAL ASSOCIATION**

As of the close of business on September 30, 2014

ASSETS	Thousands of Dollars
Cash and balances due from depository institutions:	2,209,972
Securities:	5,367
Federal funds sold and securities purchased under agreement to resell:	0
Loans and leases held for sale:	0
Loans and leases net of unearned income, allowance:	457,849
Premises and fixed assets:	8,535
Other real estate owned:	243
Investments in unconsolidated subsidiaries and associated companies:	0
Direct and indirect investments in real estate ventures:	0
Intangible assets:	2,539
Other assets:	62,620
Total Assets:	2,747,125
LIABILITIES	Thousands of Dollars
Deposits	2,148,025
Federal funds purchased and securities sold under agreements to repurchase	97,000
Other borrowed money:	0
Other Liabilities:	68,901
Total Liabilities	2,313,926
EQUITY CAPITAL	Thousands of Dollars
Common Stock	1,000
Surplus	386,419
Retained Earnings	46,207
Accumulated other comprehensive income	(427)
Total Equity Capital	433,199
Total Liabilities and Equity Capital	2,747,125