Guardian II Acquisition CORP
Form S-4/A
November 07, 2008
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As filed with the Securities and Exchange Commission on November 7, 2008

Registration No. 333-153394

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

AMENDMENT NO. 3 TO

FORM S-4

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

(with respect to the 12.50% Convertible Guaranteed Senior Notes due 2011 and common stock being offered in the exchange offer)

Oscient Pharmaceuticals Corporation

(Exact name of registrant as specified in its charter)

Massachusetts (State or other jurisdiction of incorporation or organization)	2834 (Primary Industrial Classification Code Number)	04-2297484 (I.R.S. Employer Identification No.)

Guardian II Acquisition Corporation

(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	2834 (Primary Industrial Classification Code Number)	20-5239620 (I.R.S. Employer Identification No.)

1000 Winter Street, Suite 2200

Waltham, Massachusetts 02451

(781) 398-2300

(Address, including ZIP code, and telephone number, including area code, of the registrants principal executive office)

Philippe Maitre

Oscient Pharmaceuticals Corporation

1000 Winter Street, Suite 2200

Waltham, Massachusetts 02451

(781) 398-2300

(Name, address, including ZIP code, and telephone number, including area code, of agent for service for the registrants)

Copies to:

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(617) 951-7000

Shearman & Sterling LLP

801 Pennsylvania Avenue, N.W.

Washington, D.C. 20004
(202) 508-8000

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

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, 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 of 1933, as amended (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(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. ¨

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box. ¨

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, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. ¨

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(c) under the Securities Act, check the following box. ¨

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of securities pursuant to Rule 413(b) under the Securities Act, check the following box. ¨

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 definition of accelerated filer, large accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ¨	Accelerated filer ¨
Non-accelerated filer ¨ (do not check if smaller reporting company)	Smaller Reporting Company x

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Calculation of Registration Fee

Title of Each Class of Securities to be Registered	Amount to be Registered(1)(2)(3)	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
12.50% Convertible Guaranteed Senior Notes due 2011[4]	$ 5,735,887	$ 5,735,887	$ 226.00[5]
Total Registration Fee			$ 226.00

(1) The $2,704 filing fee in connection with the 58,316,012 shares of common stock being registered was previously paid with Registration Statement (333-153394) on Form S-4 filed on September 10, 2008.

(2) The $2,174 filing fee in connection with the $225,700,000 principal amount of 12.50% Convertible Guaranteed Senior Notes due 2011 that may be received by the registrant from tendering holders in the exchange offer was previously paid with Registration Statement (333-153394) on Form S-4 filed on September 10, 2008.

(3) The $836 filing fee in connection with $21,277,468 principal amount of 12.50% Convertible Guaranteed Senior Notes due 2011 issuable if the registrant elects for each interest period to make payments of additional interest in kind by increasing the principal amount of the new notes or issuing additional new notes was previously paid with Registration Statement (333-153394) on Form S-4 filed on September 10, 2008.

(4) We are registering an additional amount of 12.50% Convertible Guaranteed Senior Notes due 2011 issuable if the registrant elects for each interest period to make payments of additional interest in kind by increasing the principal amount of the new notes or issuing additional new notes.

(5) The registration fee has been calculated pursuant to Rule 457(f) under the Securities Act.

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, as amended, or until the Registration Statement shall become effective on such date as the SEC acting pursuant to Section 8(a) may determine.

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The information in this prospectus may change. We may not complete the exchange offer and issue these securities until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities, and it is not soliciting an offer to buy these securities, in any state where the offer or sale is not permitted.

Subject to Completion, dated November 7, 2008

Oscient Pharmaceuticals

Exchange Offer

12.50% Convertible Guaranteed Senior Notes due 2011 and Common Stock for its 3.50% Convertible Senior Notes due 2011

If you elect to participate in the exchange offer, for each $1,000 principal amount of our 3.50% Convertible Senior Notes due 2011, or existing 2011 notes, you tender, you will receive from us:

- $400 principal amount of our 12.50% Convertible Guaranteed Senior Notes due 2011, or new notes ; and
- shares of our Common Stock, par value $0.10 or common stock having a value equal to $100 based on the simple average of the daily volume-weighted average price of a share of our common stock on the NASDAQ Global Market for each of the five trading days prior to and including the second business day before the expiration date of the exchange offer; provided, that in no event shall we issue more than 100 shares of our common stock per each $1,000 principal amount of existing 2011 notes tendered, which reflects a minimum issue price of $1.00 per share.

The new notes will be guaranteed by our subsidiary Guardian II Acquisition Corporation, or Guardian II, and Guardian II s guarantee will be secured on a second priority lien basis by substantially all of its assets. The security granted in favor of the guarantee will be subject to standstill and turnover provisions. The security may be released in certain circumstances. The security will also be subject to contractual and legal limitations under applicable law.

The new notes will be issued in denominations of $1,000 and any integral multiples of $1,000.

The new notes will accrue interest at a rate of 12.50% per annum. We may elect to pay interest on the new notes in cash or in kind by increasing the principal amount of the new notes or issuing additional new notes (PIK interest). If we elect to pay PIK interest, we will increase the principal amount of the new notes or issue additional new notes in an amount equal to the amount of PIK interest for the applicable interest payment period to the holders of the new notes on the relevant record date (in integral multiples of $1,000).

The exchange offer is open to all holders of our 3.50% Convertible Senior Notes due 2011. The exchange offer expires at 11:59 p.m., New York City time, on November 21, 2008.

Our common shares are traded on the NASDAQ Global Market under the symbol OSCI. On November 3, 2008, the last reported sale price of our common shares on the NASDAQ Global Market was $0.67 per share. The new notes will not be listed on the NASDAQ Global Market or

any national securities exchange. We mailed a preliminary prospectus and letters of transmittal on October 21, 2008.

See Risk Factors beginning on page 21 for a discussion of factors you should consider before deciding to participate in the exchange offer.

We have retained The Altman Group, Inc. as our information agent to assist you in connection with the exchange offer. You may call The Altman Group, Inc. at (866) 751-6316, to receive additional documents and to ask questions relating to the process of tendering your existing 2011 notes in the exchange offer.

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 dealer managers for the exchange offer:

Lazard Capital Markets **MTS Securities, LLC**

The date of this Prospectus is , 2008

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You should rely only on the information contained in this prospectus. We have not, and the dealer managers have not, authorized any other person to provide you with different information. This prospectus is not an offer to sell, nor is it seeking an offer to buy, these securities in any state where the offer or sale is not permitted. The information in this prospectus is complete and accurate as of the date on the front cover, but the information may have changed since that date.

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WHERE YOU CAN FIND MORE INFORMATION

We have filed a registration statement on Form S-4 with the Securities and Exchange Commission, or SEC, for the exchange offer. This prospectus does not include all of the information contained in the registration statement. You should refer to the registration statement and its exhibits for additional information. Although we have disclosed the material terms of any contracts, agreements, or other documents that are referenced in this prospectus, you should refer to the exhibits attached to the registration statement for copies of the actual contracts, agreements, or other documents.

We are a public company and file annual, quarterly and current reports, proxy statements and other information with the SEC. You may read and copy any document we file at the SEC s Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. You can request copies of these documents by writing to the SEC and paying a fee for the copying cost. Please call the SEC at 1-800-SEC-0330 for more information about the operation of the public reference room. Our SEC filings are also available to the public at the SEC s website at *http://www.sec.gov*. In addition, our common stock is listed for trading on the NASDAQ Global Market. You can read and copy reports and other information concerning us at the offices of the Financial Industry Regulation Authority located at 1735 K Street, Washington, D.C. 20006. You may also access our filings with the SEC and obtain other information about us through the website maintained by Oscient, which is located at http://www.oscient.com, as soon as reasonably practicable after these materials have been electronically filed with, or furnished to, the SEC. Please note that all references to www.oscient.com in this registration statement and prospectus are inactive textual references only and that the information contained on Oscient s website is neither incorporated by reference into this registration statement or prospectus nor intended to be used in connection with either the exchange.

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PROSPECTUS SUMMARY

This summary does not contain all of the information you should consider before exchanging your existing 2011 notes for the new notes in connection with the exchange offer. For a more complete understanding of Oscient and the exchange offer, we encourage you to read carefully this entire prospectus. Unless otherwise stated, all references to us, our, Oscient, we, the Company and similar designations refer to Oscient Pharmaceuticals Corporation and its consolidated subsidiaries unless the context otherwise requires.

Our Company

Overview

We are a commercial-stage pharmaceutical company marketing two FDA-approved products to community-based primary care physicians through our national primary care sales force, ANTARA® (fenofibrate) capsules, a cardiovascular product, approved by the FDA for the adjunct treatment of hypercholesterolemia (high blood cholesterol) and hypertriglyceridemia (high triglycerides) in combination with a healthy diet and FACTIVE® (gemifloxacin mesylate) tablets, an antibiotic approved by the FDA for the five-day treatment of acute bacterial exacerbations of chronic bronchitis (AECB) and the five-day treatment of community-acquired pneumonia of mild to moderate severity (CAP).

We market ANTARA and FACTIVE in the U.S. through our 250-person national sales force, which focuses on primary care physicians who predominantly treat older patients and those with co-morbid conditions that may benefit from our products. With FACTIVE, our strategy outside of the U.S. has been to grant commercialization rights to third parties in order to leverage the additional resources that a pharmaceutical marketing partner with expertise in such countries can provide. Pfizer, S.A. de C.V. (Pfizer Mexico) is currently commercializing FACTIVE in Mexico, Abbott Laboratories, Ltd. (Abbott Canada) has launched FACTIVE in Canada, and Menarini International Operation Luxembourg SA (the Menarini Group) has licensed the drug for sale in Europe.

We are currently exploring partnering and other strategic opportunities for the continued development of our late-stage antibiotic candidate, Ramoplanin, for the treatment of *Clostridium difficile*-associated disease.

Our business growth strategy is to increase the sales of our existing products and to gain access to new products via transactions, including acquisition, in-licensing and co-promotion for the U.S. marketplace in order to leverage our existing commercial infrastructure. Our review of potential additions to our portfolio of marketed products is focused on those products which are commonly prescribed by those primary care physicians that we currently visit during the marketing of ANTARA and FACTIVE. As we currently direct our sales effort largely at those primary care physicians that treat older patients with co-morbities, a range of therapeutic categories can be considered for our portfolio, including cardiovascular, diabetes, metabolic, anti-infectives among others.

ANTARA

ANTARA is approved by the FDA to treat hypercholesterolemia and hypertriglyceridemia in combination with a healthy diet. On August 18, 2006, we acquired rights to ANTARA in the U.S. from Reliant Pharmaceuticals Inc. for $78.0 million plus a $4.3 million payment for ANTARA inventory. In connection with this acquisition, we were assigned rights to and assumed obligations under an exclusive license to the U.S. rights to ANTARA from Ethypharm S.A.

In 2007, total U.S. sales of fenofibrate products were approximately $1.7 billion, a 12% increase over 2006 sales. The fenofibrate market has experienced a 25% average annual growth in sales since 2003. Prior to our

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acquisition, in the 12 months ended June 30, 2006, ANTARA generated approximately $35 million in sales. Comparatively, in the 12 months ended June 30, 2008, ANTARA generated $63 million in net sales.

Since we began marketing ANTARA on August 18, 2006, net revenues from the drug totaled $106 million through June 30, 2008.

It is estimated that nearly 37 million Americans have total cholesterol values above recommended levels and heart disease remains the number one cause of death in the U.S. Abnormal cholesterol and lipid levels, known as dyslipidemia, can lead to the development of atherosclerosis, a dangerous hardening of blood vessels and a major risk factor for the development of coronary heart disease.

ANTARA is a once-daily formulation of fenofibrate approved for use in combination with a diet restricted in saturated fat and cholesterol to reduce elevated low-density lipoprotein cholesterol (LDL or bad cholesterol), triglyceride and apolipoprotein B (free floating fats in the blood) levels and to increase high-density lipoprotein cholesterol (HDL or good cholesterol) in adult patients with high cholesterol or an abnormal concentration of lipids in the blood. ANTARA received FDA approval in November 2004 and is approved and marketed in 43 mg and 130 mg doses.

In a clinical trial conducted in 2004, ANTARA was studied in the Triglyceride Reduction in Metabolic Syndrome study, known as TRIMS, to measure the impact of ANTARA on cholesterol levels in patients with multiple cardiovascular risk factors and to assess the use of ANTARA without regard to meals. Of the 146 patients studied, 70% had hypertension and 32% had diabetes. The double-blind, placebo-controlled trial measured levels of total cholesterol, triglycerides, HDLs and LDLs, as well as other types of cholesterol, during eight weeks of therapy. In the study, ANTARA demonstrated the ability to reduce triglyceride and increase HDL cholesterol levels after two weeks of therapy. At the end of therapy, patients treated with ANTARA had a statistically significant 37% reduction in their triglyceride levels and a statistically significant 14% increase in their HDL levels.

FACTIVE

In April 2003, FACTIVE, a fluoroquinolone antibiotic, was approved by the FDA for the five-day treatment of AECB (acute bacterial exacerbations of chronic bronchitis) and seven-day treatment of CAP (community acquired pneumonia) of mild to moderate severity. On May 1, 2007, the FDA approved FACTIVE for the five-day treatment of CAP. We license the rights to gemifloxacin, the active ingredient in FACTIVE tablets, from LG Life Sciences. We launched FACTIVE in the U.S. in September 2004. In fiscal year 2007, FACTIVE generated $21.4 million in net revenues. For the twelve months ended December 31, 2005, 2006 and 2007, FACTIVE generated $20.5 million, $22.1 million and $21.4 million in net revenues, respectively. For the six months ended June 30, 2008, FACTIVE generated $7.7 million in net revenues.

Chronic bronchitis is a health problem associated with significant morbidity and mortality. It is estimated that chronic bronchitis affects more than 9 million adults in the U.S. Patients with chronic bronchitis are prone to frequent exacerbations, characterized by increased cough and other symptoms of respiratory distress. Studies have estimated that 1 to 4 exacerbations occur each year in patients with chronic bronchitis; studies estimate that two-thirds are caused by bacteria. These exacerbations are estimated to account for approximately 12 million physician visits per year in the U.S.

CAP (community-acquired pneumonia) is a common and serious illness in the U.S. Of the 4 to 5 million reported cases per year, nearly 1 million cases occur in patients over the age of 65. CAP cases result in approximately

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10 million physician visits and as many as 1 million hospitalizations annually. Antibiotics are the mainstay of treatment for most patients with pneumonia, and where possible, antibiotic treatment should be specific to the pathogen responsible for the infection and individualized.

Over the last decade, resistance to penicillins and macrolides has increased significantly, and in many cases, fluoroquinolones are now recommended as first-line therapy due to their efficacy against a wide range of respiratory pathogens, including many antibiotic resistant strains. The most recent treatment guidelines from the Infectious Diseases Society of America and the American Thoracic Society recommend fluoroquinolones as a first-line treatment for certain higher-risk patients with CAP and as therapy for treating patients with pneumonia in geographic regions of the U.S. with high levels of macrolide-resistant *Streptococcus pneumoniae*.

Clinical Candidate

Given our strategic decision to concentrate our financial resources on building our commercial business, we have been seeking to out-license, co-develop or sell our rights to our late-stage antibiotic candidate Ramoplanin to a partner.

In October 2001, we in-licensed U.S. and Canadian rights to Ramoplanin from Vicuron Pharmaceuticals Inc., or Vicuron, now a wholly-owned subsidiary of Pfizer Inc., and on February 3, 2006, acquired worldwide rights from Vicuron. Ramoplanin is a novel glycolipodepsipeptide antibiotic. In July 2004, we completed a Phase II trial to assess the safety and efficacy of two doses of Ramoplanin versus vancomycin in the treatment of *Clostridium difficile*-associated disease (CDAD) the most commonly recognized microbial cause of diarrhea, resulting from high rates of colonization in hospitalized patients and the frequent use of antimicrobials. While the study did not meet its primary endpoint, non-inferiority at the test-of-cure visit, the response rates for all three arms were comparable.

Based on the results we observed in our Phase II trial, we had discussions with the FDA on the design of a Phase III program. In December 2005, we agreed with the FDA to a Special Protocol Assessment regarding the specific components of a Phase III program that, if completed successfully, would support regulatory approval of Ramoplanin for the indication. Oscient has not initiated the Phase III program and expects that clinical development for Ramoplanin will advance only under the direction of a development partner. Because the Special Protocol Assessment was agreed to by the FDA in 2005, we cannot guarantee that the FDA will continue to regard it as binding on the agency if and when a prospective partner re-initiates the Ramoplanin clinical development process.

Financial

In fiscal 2007, our revenues increased to approximately $80.0 million from approximately $46.2 million in fiscal 2006. On August 1, 2008, we announced financial results for the second quarter of 2008. We recorded total revenues of approximately $20.3 million for the three-months ended June 30, 2008, compared to approximately $15.9 million in total revenues for the three-months ended June 30, 2007 and recorded total revenues of approximately $38.7 million for the six months ended June 30, 2008 compared to approximately $39.1 million for the six months ended June 30, 2007.

As of June 30, 2008, we had approximately $31.8 million in total cash, cash equivalents and restricted cash. Of that total, approximately $4.2 million consists of restricted cash related to letters of credit on our facilities. We believe our existing funds, anticipated cash generated from operations and our ability to manage expenses will be sufficient to support our current plans to February 2009.

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In financial guidance provided to investors in August 2008, we have stated that we expect total revenue for fiscal 2008 to increase by approximately 15% from fiscal 2007 revenue levels, to approximately $92 million in ANTARA and FACTIVE revenues, with approximately 80% of those revenues from ANTARA. We anticipate net cash utilization of approximately $30 to $33 million in fiscal 2008. This guidance does not include any cash impact of the acquisition and marketing of a third product, which remains one of our top business development goals for fiscal 2008.

We are currently pursuing privately raising additional capital from investors through equity financing, the incurrence of indebtedness, or a combination of equity and debt. We plan to use the additional capital to repay approximately $17 million of indebtedness which comes due in February 2009, for operating cash and to execute our business strategy.

The statements of financial guidance set forth above are forward-looking statements and are based on management s assumptions of our future financial performance. Some of the important risk factors that could cause our actual results to differ materially from those expressed in our forward-looking statements are included under the heading Risk Factors in this prospectus. We encourage you to read these risks carefully. We caution investors not to place significant reliance on the forward-looking statements contained in this prospectus.

Recent Developments

On November 4, 2008, we reported financial results for the third quarter ended September 30, 2008. Total revenues for the third quarter of 2008 were $21.8 million, compared to $15.6 million in the third quarter of 2007. Revenue from ANTARA increased 41% to $18.1 million in the third quarter of 2008, from $12.8 million in the third quarter of 2007. Revenues from FACTIVE totaled $3.7 million in the third quarter of 2008, compared to $2.8 million in the third quarter of 2007.

For the third quarter ended September 30, 2008, we reported a net loss of $15.0 million, or $1.09 per basic and diluted share. For the third quarter ended September 30, 2007, we reported a net loss of $19.5 million, or $1.43 per basic and diluted share. During the quarter ended September 30, 2008, the our cash position decreased by approximately $2.8 million to approximately $29.0 million in total cash, cash equivalents and restricted cash.

Selling and marketing expenses were $18.3 million in the third quarter of 2008, compared to $17.6 million in the third quarter of 2007. General and administrative expenses for the third quarter of 2008 totaled $2.9 million, compared to $3.4 million in the third quarter of 2007. Third quarter 2008 results included $6.2 million in non-cash charges, compared to $6.6 million in the third quarter of 2007. Non-cash charges in the third quarter of 2008 included $3.6 million recorded as interest expense, $2.3 million related to the amortization of intangible assets and $0.3 million of stock-based compensation. Non-cash charges in the third quarter of 2007 included $3.6 million recorded as interest expense, $2.3 million related to the amortization of intangible assets and $0.7 million of stock-based compensation.

For the nine months ended September 30, 2008, we reported total revenues of $60.4 million, reflecting ANTARA revenues of $49.1 million and FACTIVE revenues of $11.3 million. This compares to total revenues of $54.7 million in the first nine months of 2007, including ANTARA revenues of $39.2 million and FACTIVE revenues of $15.5 million. The Company reported a net loss of $53.2 million, or $3.86 per basic and diluted share, for the first nine months of 2008. We reported a net loss of $15.2 million, or $1.12 per basic and diluted share, for the first nine months of 2007. Exclusive of the one-time, non-cash gain related to the convertible debt exchange completed during the first half of 2007, our pro forma net loss for the first nine months of 2007 was $46.0 million, or $3.38 per basic and diluted share.

In financial guidance provided to investors in our earnings release, we stated that we expect 2008 revenue from ANTARA and FACTIVE to be approximately $92 million, with approximately 80 percent of those revenues

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derived from sales of ANTARA. The Company also expects a net decrease in cash in 2008 of approximately $33 million. This guidance does not include any cash impact of steps taken to recalibrate the Company s capital structure or the acquisition and marketing of a third product, which remains one of our top business development goals. Our guidance and projections are based on results to date, as well as historical wholesaler buying patterns. However, in this economic climate, wholesalers may not follow historical year-end buying patterns, which could impact our results.

The statements of financial guidance set forth above are forward-looking statements and are based on management s assumptions of our future financial performance. Some of the important risk factors that could cause our actual results to differ materially from those expressed in our forward-looking statements are included under the heading Risk Factors in this prospectus. We encourage you to read these risks carefully. We caution investors not to place significant reliance on the forward-looking statements contained in this prospectus.

Guarantor

Our wholly-owned subsidiary Guardian II Acquisition Corporation, or Guardian II, is incorporated in Delaware. Guardian II s assets include certain license rights to sell ANTARA capsules in the U.S. and the associated intellectual property rights, ANTARA inventory and the accounts receivable from sales of ANTARA.

Corporate Information

Oscient is incorporated in The Commonwealth of Massachusetts. Our principal executive offices are located at 1000 Winter Street, Suite 2200, Waltham, MA 02451. Our telephone number at this location is (781) 398-2300. Our sales and marketing functions are located in Skillman, NJ. Our website is located at http://www.oscient.com . The content on our website and on websites linked from it are for informational purposes and not incorporated into or a part of this prospectus nor intended to be used in connection with the exchange offer.

Our logo, trademarks and service marks are the property of Oscient. FACTIVE is a trademark of LG Life Sciences, Ltd. ANTARA is a trademark of Oscient. Other trademarks or service marks appearing in this prospectus are the property of their respective holders.

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The Exchange Offer

We have summarized the terms of the exchange offer in this section. Before you decide whether to tender your existing 2011 notes in the exchange offer, you should read the detailed description of the offer under The Exchange Offer and of the new notes under Description of New Notes and of our common stock under Description of Capital Stock for further information.

Terms of the exchange offer	We are offering to exchange for each $1,000 principal amount of existing 2011 notes $400 principal amount of new notes and shares of our common stock having a value equal to $100, based on the simple average of the daily volume-weighted average price of a share of our common stock on the NASDAQ Global Market for each of the five trading days prior to and including the second business day before the expiration date of the exchange offer; provided, that in no event shall we issue more than 100 shares of our common stock per each $1,000 principal amount of existing 2011 notes tendered, which reflects a minimum issue price of $1.00 per share. New notes will be issued in denominations of $1,000 and any integral multiples of $1,000. You may tender all, some or none of your existing 2011 notes. We will settle any fractional new notes in shares of the Company s common stock based on the daily volume-weighted average price described above and any fractional shares of common stock will be rounded up to the next full share.
Conversion Price	The new notes will be convertible into our common stock at any time on or prior to maturity at a conversion price equal to a 10% premium over the simple average of the daily volume-weighted average price of a share of our common stock on the NASDAQ Global Market for each of the five trading days prior to and including the second business day before the expiration date of the exchange offer; provided, that in no event will the conversion price be less than $1.10 per share.
Deciding whether to participate in the exchange offer	Neither we nor our officers or directors make any recommendation as to whether you should tender or refrain from tendering all or any portion of your existing 2011 notes in the exchange offer. Further, we have not authorized anyone to make any such recommendation. You must make your own decision whether to tender your existing 2011 notes in the exchange offer and, if so, the aggregate amount of existing 2011 notes to tender. You should read this prospectus and the letter of transmittal and consult with your advisors, if any, to make that decision based on your own financial position and requirements. In particular, you should know that there are certain significant adverse tax consequences that could result from the exchange of existing 2011 notes or the holding, conversion or other disposition of the new notes. Investors considering the exchange of existing 2011 notes for new notes should discuss the tax consequences with their own tax advisors. See Material U.S. Federal Income Tax Consequences.

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Expiration date; extension; termination	The exchange offer and withdrawal rights will expire at 11:59 p.m., New York City time, on November 21, 2008, or any subsequent time or date to which the exchange offer is extended. We may extend the expiration date or amend any of the terms or conditions of the exchange offer for any reason. In the case of an extension, we will issue a press release or other public announcement no later than 9:00 a.m., New York City time, on the next business day after the previously scheduled expiration date. If we extend the expiration date, you must tender your existing 2011 notes prior to the date identified in the press release or public announcement if you wish to participate in the exchange offer. In the case of an amendment, we will issue a press release or other public announcement. We have the right to: • extend the expiration date of the exchange offer and retain all tendered existing 2011 notes, subject to your right to withdraw your tendered existing 2011 notes; and • waive any condition or otherwise amend any of the terms or conditions of the exchange offer in any respect, other than the condition that the registration statement relating to the exchange offer be declared effective.
Conditions to the exchange offer	The exchange offer is subject to the registration statement, and any post-effective amendment to the registration statement covering the new notes and the common stock, being effective under the Securities Act of 1933, as amended, or the Securities Act. The exchange offer is also subject to customary conditions, which we may waive. The satisfaction or waiver of the conditions, other than those that relate to governmental or regulatory conditions necessary to the consummation of the exchange offer, will be determined as of the expiration date of the exchange offer currently scheduled for November 21, 2008.
Withdrawal rights	You may withdraw a tender of your existing 2011 notes at any time before the exchange offer expires by delivering a written notice of withdrawal to U.S. Bank National Association, the exchange agent, before the expiration date. If you change your mind, you may re-tender your existing 2011 notes by again following the exchange offer procedures before the exchange offer expires. In addition, if we have not accepted your tendered existing 2011 notes for exchange, you may withdraw your existing 2011 notes at any time after 30 days after expiration of the exchange offer.
Procedures for tendering existing 2011 notes	If you hold existing 2011 notes through a broker, dealer, commercial bank, trust company or other nominee, you should contact that person promptly if you wish to tender your existing 2011 notes. Tenders of your existing 2011 notes will be effected by book-entry transfers through The Depository Trust Company. If you hold existing 2011 notes through a broker, dealer, commercial bank, trust company or other nominee, you may also comply with the procedures for guaranteed delivery.

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Please do not send letters of transmittal to us. You should send letters of transmittal to U.S. Bank National Association, the exchange agent, at its office as indicated under The Exchange Offer at the end of this prospectus or in the letter of transmittal. The exchange agent can answer your questions regarding how to tender your existing 2011 notes.

Secured Guarantee	The new notes will be guaranteed by our subsidiary Guardian II and Guardian II s guarantee will be secured on a second priority lien basis by substantially all of its assets.
Accrued interest on existing 2011 notes	Holders of existing 2011 notes will receive accrued and unpaid interest on any existing 2011 notes accepted in the exchange offer. The amount of accrued interest will be calculated from the last interest payment date up to, but excluding, the closing date of the exchange offer and will be paid in cash. Accordingly, there will not be a gap in the interest accrual on existing 2011 notes tendered in the exchange offer.
Interest on new notes	Interest on the new notes will be payable at a rate of 12.50% per year, payable semiannually on April 15 and October 15 of each year, commencing April 15, 2009. Interest on the new notes will begin to accrue from the closing date of the exchange offer.

We may elect to pay interest on the new notes at our option:

- in cash, or
- by increasing the principal amount of the new notes or by issuing additional new notes (PIK interest).

If we elect to pay PIK interest, we will increase the principal amount of the new notes or issue additional new notes in an amount equal to the amount of PIK interest for the applicable interest payment period to the holders of the new notes on the relevant record date (in integral multiples of $1,000).

Trading	Our common shares are traded on the NASDAQ Global Market under the symbol OSCI. For additional information, see Risk Factors Risks Related to our Business Failure to regain compliance of the NASDAQ Global Market continued listing requirements may result in our common stock being delisted from The NASDAQ Global Market.
Information agent	The Altman Group, Inc.
Exchange agent	U.S. Bank National Association
Dealer managers	Lazard Capital Markets LLC and MTS Securities, LLC
Further information	You may call The Altman Group, Inc. at (866) 751-6316, to receive additional documents and to ask questions relating to the process of tendering your existing 2011 notes in the exchange offer.

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If you wish to contact the dealer managers, please contact Lazard Capital Markets LLC at (415) 281-3420, attention Simon Manning.

Risk factors	You should carefully consider the matters described under Risk Factors, as well as other information, set forth in this prospectus and in the letter of transmittal.
Consequences of not exchanging existing 2011 notes	The liquidity and trading market for existing 2011 notes not tendered in the exchange offer could be adversely affected to the extent a significant amount of the existing 2011 notes are tendered and accepted in the exchange offer.
Tax consequences	Subject to the limitations set forth in Material United States Federal Income Tax Consequences (below), it is more likely than not that the exchange of existing 2011 notes for shares of common stock should qualify as a tax-free recapitalization for U.S. federal income tax purposes with the result that U.S. holders of existing 2011 notes should not recognize any gain or loss on the exchange with respect thereto. However, based on all the relevant facts and circumstances of the new notes, including the guarantee by Guardian II secured by a second lien on its property, the convertibility of the new notes, the term being less than three years and their other terms, it is not clear whether the new notes received in exchange for the existing 2011 notes would be considered securities eligible for tax-free receipt as part of a recapitalization. If the exchange qualifies as a recapitalization and the new notes are treated as securities for this purpose, a U.S. Holder should not recognize any gain or loss on the exchange. Alternatively, the exchange could be treated as a recapitalization with respect to the exchange of existing 2011 notes for shares of common stock, but with the receipt of the new notes being treated as other property, with the result that U.S. Holders of the existing 2011 notes would not recognize any loss, but would recognize gain (if any), on the entire exchange of existing 2011 notes for new notes and shares of common stock to the extent of the fair market value of the new notes received. It is also possible that the exchange of the existing 2011 notes for new notes and shares of common stock could be treated as a taxable exchange with the result that U.S. Holders of existing 2011 notes could recognize gain or loss on such exchange. You should read Material United States Federal Income Tax Consequences for a more complete description of the U.S. federal income tax consequences of the exchange.

Tax matters are very complicated, and the tax consequences of the exchange to you will depend on your own situation. You should consult your own tax advisor to determine the effect of the exchange on you under U.S. Federal, State, local and foreign tax laws.

Ratio of earnings to fixed charges	Earnings were insufficient to cover fixed charges by $38.0 million, $29.5 million, $78.3 million, $88.6 million, $93.5 million and $29.4 million for the six month period ended June 30, 2008 and the years ended December 31, 2007, 2006, 2005, 2004 and 2003, respectively. For the six month period ended June 30, 2007, the Company had a ratio of earnings to fixed charges of 1.4x.

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Comparison of New Notes and Existing 2011 Notes

The following is a brief summary of the terms of the new notes and the existing 2011 notes. For a more detailed description of the new notes and existing 2011 notes, see Description of New Notes and Description of Existing 2011 Notes.

	New Notes	Existing 2011 Notes
Securities	Up to $90,280,000 in principal amount of our 12.50% Convertible Guaranteed Senior Notes due 2011.	As of the date of this prospectus, there is $225,700,000 in principal amount of our existing 3.50% Convertible Senior Notes due 2011 outstanding.
Issuer	Oscient Pharmaceuticals Corporation, a Massachusetts corporation.	Oscient Pharmaceuticals Corporation, a Massachusetts corporation.
Maturity	January 15, 2011.	April 15, 2011.
Interest	Interest on the new notes will be payable at a rate of 12.50% per year, payable semiannually on April 15 and October 15 of each year, commencing April 15, 2009, except that the final interest payment date will be January 15, 2011.	Interest on the existing 2011 notes is payable at a rate of 3.50% per year, payable semiannually on April 15 and October 15 of each year.
	We may elect to pay interest on the new notes in cash or by increasing the principal amount of the new notes or by issuing additional new notes (PIK interest) in an amount equal to the amount of interest for the applicable interest payment period. PIK interest will be paid in $1,000 minimum denominations and in integral multiples thereof (with fractional interest paid in cash).	Interest on the existing 2011 notes is payable only in cash.
Conversion rights	The new notes will be convertible, at the option of the holder, at any time on or prior to maturity, into shares of our common stock at a conversion price equal to a 10% premium over the simple average of the daily volume-weighted average price of a share of our common stock on the NASDAQ Global Market for each of the five trading days prior to and including the second business day before the expiration date of the exchange	The existing 2011 notes are convertible, at the option of the holder, at anytime on or prior to maturity, into shares of our common stock at a conversion rate of 74.0741 shares per $1,000 principal amount of existing 2011 notes (equal to a conversion price of approximately $13.50 per share). The conversion rate is subject to adjustment.

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	New Notes	Existing 2011 Notes
	offer; provided, that in no event will the conversion price be less than $1.10 per share. The conversion rate is subject to adjustment. There will be no limitation as to the principal amount of the new notes you can convert at any time.	There is no limitation as to the principal amount of existing 2011 notes you can convert at any time.
Auto-conversion	We will have the right to automatically convert some or all of the new notes (an automatic conversion) on or prior to January 15, 2011 if the closing price of our common shares has exceeded 130% of the conversion price then in effect for at least 20 trading days during any consecutive 30 trading day period ending within five trading days prior to the notice of automatic conversion (an automatic conversion price).	We have the right to automatically convert some or all of the existing 2011 notes (an automatic conversion) on or prior to the maturity date if the closing price of our common shares has exceeded 130% of the conversion price then in effect for at least 20 trading days during any consecutive 30 trading day period ending within five trading days prior to the notice of automatic conversion (an automatic conversion price).
Additional interest upon automatic conversion	If we elect to automatically convert some or all of your new notes on or prior to the date that is one year from the original issue date of the new notes issued in the exchange offer, we will pay additional interest to holders of new notes being converted. This additional interest will be equal to the amount of interest that would have been payable on the new notes from the last day interest was paid on the new notes, through and including the date which is one year from the original issue date of the new notes issued in the exchange offer. Additional interest, if any, will be paid in cash or, solely at our option, in our common shares or a combination of cash and our common shares. If we pay additional interest upon an automatic conversion with our common shares, such shares will be valued at 90% of the automatic conversion price that is in effect at that time.	If we elect to automatically convert some or all of your existing 2011 notes on or prior to May 10, 2010, we will pay additional interest to holders of existing 2011 notes being converted. This additional interest will be equal to the amount of interest that would have been payable on the existing 2011 notes from the last day interest was paid on the existing 2011 notes, through and including May 10, 2010. Additional interest, if any, will be paid in cash or, solely at our option, in our common shares or a combination of cash and our common shares. If we pay additional interest upon an automatic conversion with our common shares, such shares will be valued at 90% of the automatic conversion price that is in effect at that time.

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	New Notes	Existing 2011 Notes
Additional interest upon voluntary conversion	If you elect to voluntarily convert some or all of your new notes on or prior to the date that is two years from the original issue date of the new notes issued in the exchange offer, we will pay additional interest to holders of new notes being converted. This additional interest will be equal to the amount of interest that would have been payable on the new notes from the last day interest was paid on the new notes, through and including the date which is two years from the original issue date of the new notes issued in the exchange offer. Additional interest, if any, will be paid in cash or, solely at our option, in our common shares or a combination of cash and our common shares. If we pay additional interest upon a voluntary conversion with our common shares, such shares will be valued at the conversion price that is in effect at that time.	If you elect to voluntarily convert some or all of your existing 2011 notes on or prior to May 10, 2010, we will pay additional interest to holders of existing 2011 notes being converted. This additional interest will be equal to the amount of interest that would have been payable on the existing 2011 notes from the last day interest was paid on the existing 2011 notes, through and including May 10, 2010. Additional interest, if any, will be paid in cash or, solely at our option, in our common shares or a combination of cash and our common shares. If we pay additional interest upon a voluntary conversion with our common shares, such shares will be valued at the conversion price then in effect.
Repurchase or redemption at holder s option upon a fundamental change	You may require us to repurchase your new notes upon a fundamental change, as described in Description of New Notes, in cash at 100% of the principal amount, plus accrued and unpaid interest, to but excluding the fundamental change repurchase date.	You may require us to repurchase your existing 2011 notes upon a fundamental change, as described in Description of Existing 2011 Notes, in cash at 100% of the principal amount, plus accrued and unpaid interest, to but excluding the fundamental change repurchase date.
Conversion rate adjustment upon a fundamental change	In the event of a fundamental change, we may be required to increase the conversion rate for the new notes surrendered for conversion in connection with the fundamental change. See Description of New Notes Conversion rate adjustment on a fundamental change. In no event will the conversion rate exceed shares per $1,000 principal amount of new notes (subject to adjustment).	In the event of a fundamental change, we may be required to increase the conversion rate for the existing 2011 notes surrendered for conversion in connection with the fundamental change. See Description of Existing 2011 Notes Conversion rate adjustment on a fundamental change. In no event will the conversion rate exceed 113.0741 shares per $1,000 principal amount of the existing 2011 notes (subject to adjustment).

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	New Notes	Existing 2011 Notes
Optional redemption	Prior to October 15, 2010, the new notes are not redeemable. On or after October 15, 2010, we may redeem some or all of the new notes for cash at 100% of the principal amount of the new notes to be redeemed, plus accrued and unpaid interest, to but excluding the redemption date.	Prior to May 10, 2010, the existing 2011 notes are not redeemable. On or after May 10, 2010, we may redeem some or all of the existing 2011 notes for cash at 100% of the principal amount of the existing 2011 notes to be redeemed, plus accrued and unpaid interest, to but excluding the redemption date.
Secured Guarantee	The new notes will be guaranteed by our subsidiary Guardian II and this guarantee will be secured by a second priority lien on substantially all of the assets of Guardian II. The second priority lien is subject to the first priority lien on substantially all of the assets of Guardian II which is held by Paul Royalty Fund Holdings II, LP (PRF), an affiliate of Paul Capital Partners, or Paul Capital, and secures our and Guardian II s payment obligations to Paul Capital. Guardian II s assets include certain license rights to sell ANTARA capsules in the U.S. and the associated intellectual property rights, ANTARA inventory and the accounts receivable from sales of ANTARA.	None
Ranking	The new notes will be Oscient s unsecured obligations guaranteed by our subsidiary Guardian II and this guarantee will be secured by a second priority lien on substantially all of the assets of Guardian II. The new notes will: rank senior in right of payment to any of our future indebtedness that by its terms is junior or subordinated in right of payment to the new notes; rank equally in right of payment with all of our existing and future senior unsecured indebtedness but, to the extent of the value of the	The existing 2011 notes are unsecured and unsubordinated obligations and rank equal in priority with all of our existing and future unsecured and unsubordinated indebtedness, and senior in right of payment to all of our future subordinated indebtedness. The existing 2011 notes effectively rank junior to any of our secured indebtedness and any of our indebtedness that is guaranteed by our subsidiaries. The existing 2011 notes are structurally subordinated to all liabilities of our subsidiaries.

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	New Notes	Existing 2011 Notes
	second priority lien on substantially all of the assets of our subsidiary Guardian II, effectively senior to all of Oscient s existing and future unsecured senior indebtedness (including existing 2011 notes not tendered in the exchange offer and our 5% Convertible Promissory Notes due 2009). See Description of New Notes Ranking ;	
	be effectively subordinated in right of payment to Guardian II s indebtedness to Paul Capital under the $20.0 million aggregate principal amount 12% senior secured note due August 2010 and the interest accrued to date thereon (the Paul Capital Note) and our and Guardian II s payment obligations to Paul Capital under the amended revenue interests assignment agreement as described herein. See Description of New Notes Ranking.	
Intercreditor Agreement	The trustee under the indenture governing the new notes and Paul Capital will enter into an intercreditor agreement as to the relative priorities of their relative security interests in Guardian II s assets securing the guarantee of the new notes and Guardian II s indebtedness to Paul Capital under the Paul Capital Note and our and Guardian II s payment obligations to Paul Capital under the revenue interests assignment agreement. See Description of New Notes Intercreditor Agreement.	
Limitations on indebtedness and liens	None.	None.

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	New Notes	Existing 2011 Notes
Extension of cure period for event of default for late SEC reports	If we fail to timely file our annual or quarterly reports with the SEC in accordance with the new notes indenture or to comply with the requirements of Section 314(a)(1) of the Trust Indenture Act, which we refer to as a filing failure, we may elect to pay the holders an extension fee which will accrue at a rate of 1.00% per annum of the aggregate principal amount of new notes then outstanding. The extension fee will accrue on the new notes from the date that is 60 days after notice of the filing failure is given by holders to, but excluding, the earlier of the date on which we make the filings that gave rise to the filing failure and the date that is 180 days after the date such notice was given by holders.	If we fail to timely file our annual or quarterly reports with the SEC in accordance with the existing 2011 notes indenture or to comply with the requirements of Section 314(a)(1) of the Trust Indenture Act, which we refer to as a filing failure, we may elect to pay the holders an extension fee which will accrue at a rate of 1.00% per annum of the aggregate principal amount of existing 2011 notes then outstanding. The extension fee will accrue on the existing 2011 notes from the date that is 60 days after notice of the filing failure is given by holders to, but excluding, the earlier of the date on which we make the filings that gave rise to the filing failure and the date that is 180 days after the date such notice was given by holders.

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Questions and Answers About the Exchange Offer

Why is the Company doing the exchange offer?

We believe that the exchange offer is an important component of our plan to recalibrate our capital structure in order to better execute our business strategy.

We are simultaneously with the exchange offer pursuing privately raising additional capital from investors through equity financing, the incurrence of indebtedness, or a combination of equity and debt. We plan to use the additional capital to repay approximately $17 million of indebtedness which comes due in February 2009, for operating cash and to execute our business strategy.

The exchange offer is intended to:

- immediately improve our capital structure by reducing our indebtedness through exchanging a portion of our debt for a lower principal amount of debt and our common shares;
- increase our ability to pursue business development activities, including the acquisition, in-licensing or co-promotion of products complimentary to our own; and
- allow us to further reduce our indebtedness by converting a substantial portion of our debt into common shares if the closing price of our common shares exceeds 130% of the conversion price, providing us with additional flexibility to execute our growth strategy.

What will I receive in exchange for my existing 2011 notes?

If you tender your existing 2011 notes in the exchange offer you will receive new notes and shares of common stock with the following characteristics:

- For each $1,000 in principal amount of your existing 2011 notes exchanged, you will receive $400 in principal amount of our new notes and shares of our common stock having a value equal to $100, based on the simple average of the daily volume-weighted average price of a share of our common stock on the NASDAQ Global Market for each of the five trading days prior to and including the second business day before the expiration date of the exchange offer; provided, that in no event shall we issue more than 100 shares of our common stock per each $1,000 principal amount of existing 2011 notes tendered, which reflects a minimum issue price of $1.00 per share.
- The new notes will accrue interest at a rate of 12.50% per annum. We may elect to pay interest on the new notes in cash or in kind by increasing the principal amount of the new notes or by issuing additional new notes (PIK interest). If we elect to pay PIK interest, we will increase the principal amount of the new notes or issue additional new notes in an amount equal to the amount of interest for the applicable interest payment period to the holders of the new notes on the relevant record date (in integral multiples of $1,000).
- The new notes will be convertible into our common stock at any time on or prior to maturity at a conversion price equal to a 10% premium over the simple average of the daily volume-weighted average price of a share of our common stock on the NASDAQ Global Market for each of the five trading days prior to and including the second business day before the expiration date of the exchange offer; provided, that in no event will the conversion price be less than $1.10 per share.
- On or after October 15, 2010, we may redeem some or all of the new notes at 100% of the principal amount of the notes to be redeemed, plus accrued and unpaid interest.

The new notes will mature on January 15, 2011.

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The new notes will be guaranteed by Guardian II, the guarantee will be secured on a second priority lien basis over certain assets. Enforcement of that security interest is limited by rights granted to the first lien holders. See Description of New Notes Security Agreements and Intercreditor Agreement and Risk Factors Risk Related to the Exchange Offer .

These are only some of the material terms of the new notes, and you should read the Questions and Answers About Voluntary Conversion and Automatic Conversion of the New Notes and the detailed description of the new notes under Description of New Notes for further information.

Is the exchange offer conditioned upon a minimum number of existing 2011 notes being tendered?

No, the exchange offer is not conditioned upon any minimum number of existing 2011 notes being tendered. The exchange offer is subject to customary conditions, which we may waive.

How soon must I act if I decide to participate in the exchange offer?

Unless we extend the expiration date, the exchange offer will expire on November 21, 2008 at 11:59 p.m., New York City time. The exchange agent must receive all required documents and instructions on or before November 21, 2008 or you will not be able to participate in the exchange offer.

What happens if I do not participate in the exchange offer?

If a significant number of the existing 2011 notes are tendered and accepted in the exchange offer, the liquidity and the trading market for the existing 2011 notes that remain outstanding will likely be impaired.

How will fractional new notes be settled in the exchange offer for the existing 2011 notes?

We will settle any fractional new notes in shares of the Company s common stock and any fractional shares of common stock based on the simple average of the daily volume-weighted average price of a share of our common stock on the NASDAQ Global Market for each of the five trading days prior to and including the second business day before the expiration date of the exchange offer. Fractional shares of common stock will be rounded up to the next full share. For example, if you tender four existing 2011 notes ($4,000 aggregate principal amount), you will receive one new note ($1,000 aggregate principal amount) and in lieu of fractional new notes you will receive shares of our common stock having a value equal to $600 based on the simple average of the daily volume-weighted average price of a share of our common stock on the NASDAQ Global Market for each of the five trading days prior to and including the second business day before the expiration date of the exchange offer ($4,000 aggregate principal amount of existing 2011 notes x .40 = $1,600 which you would receive in the form of one new note ($1,000 principal amount) and shares of our common stock having a value equal to $600 in lieu of fractional new notes).

What should I do if I have additional questions about the exchange offer?

We have retained The Altman Group, Inc. as our information agent to assist you in connection with the exchange offer. You may call The Altman Group, Inc. at (866) 751-6316, to receive additional documents and to ask questions relating to the process of tendering your existing 2011 notes in the exchange offer.

If you wish to contact the dealer managers, please contact Lazard Capital Markets LLC at (415) 281-3420, attention Simon Manning.

To receive copies of our recent SEC filings, you can contact us by mail or refer to the other sources described under Where You Can Find More Information.

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QUESTIONS AND ANSWERS ABOUT VOLUNTARY CONVERSION AND

AUTOMATIC CONVERSION OF THE NEW NOTES

When can I voluntarily convert my new notes?

Unless we call some or all of the new notes for redemption, you can voluntarily convert all or a portion of your new notes at any time on or prior to maturity. If we call some or all of the new notes for redemption or an automatic conversion date is set and you want to voluntarily convert your new notes, you must convert your new notes before the close of business on the last business day prior to the redemption date or automatic conversion date, as applicable.

What will I receive when I voluntarily convert my new notes?

If you voluntarily elect to convert some or all of your new notes on or before the date that is two years from the original issue date of the new notes issued in the exchange offer, you will receive additional interest. This additional interest will be equal to the amount of interest that would have been payable on the new notes from the last day interest was paid on the new notes, through and including the date which is two years from the original issue date of the new notes issued in the exchange offer. Additional interest, if any, will be paid in cash or, solely at our option, in our common shares or a combination of cash and our common shares. If we pay additional interest upon a voluntary conversion with our common shares, such shares will be valued at the conversion price that is in effect at that time.

When can the Company automatically convert my new notes?

We may elect, at our option, to automatically convert all or a portion of your new notes at any time prior to the maturity of the new notes, if the closing price of our common shares has exceeded the automatic conversion price for at least 20 trading days during any consecutive 30 trading day period ending within five trading days prior to the notice of automatic conversion.

What will I receive if the Company automatically converts my new notes?

If we elect to automatically convert all or a portion of your notes on or before the date that is one year from the original issue date of the new notes issued in the exchange offer, you will receive additional interest. This additional interest will be equal to the amount of interest that would have been payable on the new notes from the last day interest was paid on the new notes, through and including the date which is one year from the original issue date of the new notes issued in the exchange offer. Additional interest, if any, will be paid in cash or, solely at our option, in our common shares or a combination of cash and our common shares. If we pay additional interest upon an automatic conversion with our common shares, such shares will be valued at 90% of the automatic conversion price that is in effect at that time.

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SUMMARY HISTORICAL FINANCIAL DATA

The following table presents our summary historical financial data. You should read carefully the financial statements included in this prospectus, including the notes to the financial statements and Management s Discussion and Analysis of Financial Condition and Results of Operations. The summary financial data in this section are not intended to replace the financial statements. We derived the statement of operations data for the years ended December 31, 2007, 2006 and 2005 and the balance sheet data as of December 31, 2007 and 2006 from our audited financial statements, which are included elsewhere in this prospectus. We derived the statement of operations data for the years ended December 31, 2004 and 2003 and the balance sheet data as of December 31, 2005, 2004 and 2003 from our audited financial statements which are not included herein. The consolidated statement of operations data for the six months ended June 30, 2008 and 2007 and the consolidated balance sheet data as of June 30, 2008 and 2007 are derived from our unaudited consolidated financial statements that are included elsewhere in this prospectus and in the opinion of the Company s management, includes all adjustments necessary for a fair presentation of results for the interim periods. Historical results are not necessarily indicative of future results. See the notes to the financial statements for an explanation of the method used to determine the number of shares used in computing basic and diluted net loss per common share.

	For the Six Months Ended June 30,		For the Year Ended December 31,				
	2008	2007	2007	2006[3]	2005	2004[4]	2003
	(unaudited)		(in thousands, except per share data)				
Statement of Operations Data:							
Revenues:							
Product sales	$ 38,461	$ 37,805	$ 78,458	$ 38,244	$ 20,458	$ 4,067	
Co-promotion				6,890	2,954		
Biopharmaceutical/other	190	1,307	1,511	1,018	197	2,546	7,009
Total revenues[1]	38,651	39,112	79,969	46,152	23,609	6,613	7,009
Costs of product sales and operating expenses	60,995	56,418	117,965	118,071	112,281	97,229	39,943
Loss from operations	(22,344)	(17,306)	(37,996)	(71,919)	(88,672)	(90,616)	(32,934)
Net other (expense) income	(15,647)	21,836	8,527	(6,379)	44	(2,863)	3,546
(Loss) income from continuing operations before income tax	(37,991)	4,530	(29,469)	(78,298)	(88,628)	(93,479)	(29,388)
Provision for income tax	(210)	(215)	(384)	(179)			
Net (loss) income from continuing operations	(38,201)	4,315	(29,853)	(78,477)	(88,628)	(93,479)	(29,388)
Income (loss) from discontinued operations					35	208	(401)
Net (loss) income	$ (38,201)	$ 4,315	$ (29,853)	$ (78,477)	$ (88,593)	$ (93,271)	$ (29,789)
Net (loss) income per common share: basic[2]	$ (2.73)	$ 0.32	$ (2.19)	$ (6.58)	$ (9.26)	$ (10.61)	$ (9.06)
Net (loss) income per common share: diluted[2]	$ (2.73)	$ 0.32	$ (2.19)	$ (6.58)	$ (9.26)	$ (10.61)	$ (9.06)
Weighted average common shares outstanding: basic[2]	13,970	13,585	13,601	11,925	9,569	8,794	3,286
Weighted average common shares outstanding: diluted[2]	13,970	13,590	13,601	11,925	9,569	8,794	3,286

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	For the Six Months Ended June 30,		For the Year Ended December 31,				
	2008	2007	2007	2006[3]	2005	2004[4]	2003
	(unaudited)						
Balance Sheet Data:							
Cash and cash equivalents, restricted cash, and long and short-term marketable securities	$ 31,753	$ 69,734	$ 52,466	$ 44,808	$ 80,044	$ 176,628	$ 28,665
Working capital	(735)	64,246	42,011	40,444	77,750	156,021	18,897
Total assets	241,281	295,489	274,184	279,407	241,095	340,560	40,516
Long-term liabilities	258,316	265,480	269,179	250,977	191,289	193,397	292
Shareholders (deficit) equity	(66,029)	4,075	(28,715)	(1,996)	28,101	114,400	29,940
Net book value per common share	$ (4.73)	$ 0.30	$ (2.11)	$ (0.17)	$ 2.94	$ 13.01	$ 9.11

(1) Does not include revenue from discontinued operations related to our genomics business.
(2) Adjusted to account for the effect of the one-for-eight reverse stock split effectuated on November 15, 2006.
(3) We acquired the ANTARA assets on August 18, 2006.
(4) We completed a merger with Genesoft on February 6, 2004.

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RISK FACTORS

SPECIAL NOTE REGARDING FORWARD LOOKING STATEMENTS

You should carefully consider the risks described below and all other information contained in this prospectus before you decide to exchange your existing 2011 notes for new notes. Some of the following risks relate principally to our business and the industry in which we operate. Other risks relate principally to the securities markets and ownership of our securities. Additional risks and uncertainties not presently known to us, or risks that we currently consider immaterial, may also impair our operations or results. If any of the following risks actually occurs, we may not be able to conduct our business as currently planned, and our financial condition and operating results could be seriously harmed. In that case, the market price of our common stock, the existing 2011 notes and the new notes could decline, and you could lose all or part of your investment.

RISKS RELATED TO OUR BUSINESS

The following are significant factors known to us that could materially adversely affect our business, financial condition, or operating results. The risks described below are not the only risks facing us. Additional risks and uncertainties not currently known to us or that we currently deem to be immaterial also may materially adversely affect our business, financial condition and/or operating results.

We will need to raise additional funds in the near future or refinance our existing debt by February 2009 and if sufficient funds are not available or we are unable to refinance our debt, it will have a material affect on our business.

We believe our existing funds, anticipated cash generated from operations and our ability to manage expenses will be sufficient to support our current plans and obligations to February 2009. In addition to this exchange offer for the existing 2011 notes, we will need to raise additional capital and/or refinance our existing debt by February 2009 to fund our operations, repay our debt that is maturing at such time, fund other potential commercial or development opportunities, support our sales and marketing activities and fund clinical trials and other research and development activities. We are currently pursuing privately raising additional capital from investors through equity financing, the incurrence of indebtedness or a combination of equity and debt. We plan to use the additional capital to repay approximately $17 million of indebtedness which comes due in February 2009, for operating cash and to execute our business strategy. Our ability to raise additional capital, however, will be impacted by, among other factors, the investment market for pharmaceutical companies and the progress of the ANTARA and FACTIVE commercial programs, the status of the credit markets, our ability to acquire, in-license or enter into co-promotion agreements for additional products, our progress in finding a development and commercialization partner for Ramoplanin and our progress with other business development transactions (including this exchange offer and our ability to refinance our existing debt due in February 2009). Additional financing may not be available to us when needed, or, if available, may not be available on favorable terms. If we cannot obtain adequate financing on acceptable terms when such financing is required, we may have to scale back our operations or take other measures to significantly reduce our expenses which will have a material adverse effect on our business. If we are unable to refinance or repay our indebtedness as it becomes due, we may become insolvent and be unable to continue operations.

We have a history of significant operating losses and expect losses to continue for some time.

We have a history of significant operating losses and expect losses to continue for some time. We expect to continue to have net losses in the near future and we had an accumulated deficit of approximately $483,959,000 as of June 30, 2008. These losses are primarily a result of costs incurred in research and development, including our clinical trials and product acquisitions, from sales and marketing, and from general and administrative costs associated with our operations and product sales. These costs have exceeded our revenues which to date have been generated principally from sales of ANTARA and FACTIVE, sublicensing agreements, and our legacy collaborations, government grants and sequencing services.

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We anticipate that we will incur additional losses in the current year and in future years. These losses are expected to continue, principally due to the expenses in the sales and marketing area, as we seek to grow sales of ANTARA capsules and FACTIVE tablets and as we seek to acquire additional approved products or product candidates.

Failure to regain compliance of The NASDAQ Global Market continued listing requirements may result in our common stock being delisted from The NASDAQ Global Market.

Our common stock is currently listed on The NASDAQ Global Market under the symbol OSCI . Currently, we are not compliant with the continued listing requirements of the NASDAQ Global Market. In the event that we do not regain compliance and/or fail to satisfy any of the additional listing requirements, our common stock may be delisted from The NASDAQ Global Market.

On October 3, 2008, we received a notification from The NASDAQ Listings Qualifications of The NASDAQ Stock Market LLC (NASDAQ) that, as of October 2, 2008, the Company s market value of publicly held shares (MVPHS) had closed below the minimum $15 million threshold set forth in Marketplace Rule 4450(b)(3) for the previous thirty (30) consecutive business days, a requirement for continued listing. For NASDAQ purposes, MVPHS is the market value of the Company s publicly held shares, which is calculated by subtracting all shares held by officers, directors or beneficial owners of 10% or more of an issuer s common stock from the issuer s total shares outstanding.

On October 23, 2008 we received notification from NASDAQ that, given the current extraordinary market conditions, NASDAQ has suspended the enforcement of the rules requiring a MVPHS and a minimum $1 closing bid price, effective immediately (Rule Suspension). As a result of the Rule Suspension, all companies presently in the compliance process will remain at that same stage of the process; however, companies can regain compliance during the suspension period. NASDAQ will not take any action to delist any security for these concerns during the suspension period, which will remain in effect through Friday, January 16, 2009. These rules will be reinstated on Monday, January 19, 2009. Under the Rule Suspension, we will now have until April 7, 2009 to regain compliance by evidencing a minimum $15 million MVPHS for 10 consecutive business days. If we do not regain compliance with the MVPHS requirement by April 7, 2009, we will receive written notification of delisting from NASDAQ and at that time will be entitled to request a hearing before a NASDAQ Listing Qualifications Panel (Panel) to present our plan to regain compliance with the MVPHS requirement.

If our efforts to regain compliance are successful and the MVPHS exceeds $15 million for ten (10) consecutive days before April 7, 2009, we will regain compliance with respect to the MVPHS requirement. In the event we do not regain compliance, we may appeal the staff determination to a Panel. In the event that we fail to regain compliance and are unsuccessful in an appeal to the Panel, our securities will be delisted from The NASDAQ Global Market. In the event that our securities are delisted from The NASDAQ Global Market, we may not be able to meet the requirements necessary for its common stock (i) to transfer to, or list on, a U.S. national securities exchange, including The NASDAQ Capital Market or (ii) be approved for listing on a U.S. system of automated dissemination of quotations. If such event in (i) or (ii) above occurred, holders of our existing 2011 notes have, and holders of the new notes will have, the right to require us to repurchase for cash the outstanding principal amount of the existing 2011 notes and the new notes, as applicable, plus accrued and unpaid interest through such date. There is currently approximately $225 million principal amount of existing 2011 notes outstanding. We may not have sufficient cash or be able raise sufficient additional capital to repay the existing 2011 notes or the new notes, as applicable, if requested to be repurchased by the holders.

Our business is very dependent on the commercial success of ANTARA and FACTIVE.

ANTARA capsules and FACTIVE tablets are currently our only commercial products and we expect that they will likely account for substantially all of our product revenues until we are able to acquire and successfully market additional FDA approved products through acquisitions, in-licensing or co-promotion agreements.

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ANTARA is approved by the FDA to treat hypercholesterolemia (high blood cholesterol) and hypertriglyceridemia (high triglycerides) in combination with a healthy diet. FACTIVE tablets have FDA marketing approval for the treatment of community-acquired pneumonia of mild to moderate severity, or CAP, and acute bacterial exacerbations of chronic bronchitis, or AECB.

The commercial success of ANTARA and FACTIVE will depend upon their continued acceptance by regulators, physicians, patients and other key decision-makers as a safe, therapeutic and cost-effective alternative to other products used, or currently being developed, to treat CAP and AECB, in the case of FACTIVE tablets, or hypercholesterolemia and hypertriglyceridemia, in the case of ANTARA capsules. In addition, if concerns should arise about the safety or efficacy of our products, regardless of whether or not such concerns have a basis in generally accepted science or peer-reviewed scientific research, such concerns could adversely affect the market for these products. Furthermore, regulatory authorities may withdraw the approval of our products, or require the addition of restrictive safety labeling statements, to our products.

On July 7, 2008, we received notice from the FDA directing that the prescribing information for all fluoroquinolone products, including FACTIVE, be revised to include enhanced safety labeling, including a Boxed Warning relating to the increased risk of tendonitis and tendon rupture associated with use of fluoroquinolones. Currently, warnings regarding the risk of tendon-related adverse events are included in the prescribing information, as part of a class labeling, for all fluoroquinolones. The FDA has cautioned that such risk is increased in patients over the age of 60 and in those on concomitant corticosteroid therapy, as well as kidney, heart and lung transplant recipients. The FDA has also informed us that, along with the other sponsors of all marketed oral fluoroquinolone products, we should submit a proposed Medication Guide and implement a Risk Evaluation and Mitigation Strategy (REMS) to ensure patients safe and effective use of FACTIVE.

We cannot predict what further action, if any, the FDA may take, including, among others things, further label restrictions in the fluoroquinolone class or even the removal of indications or products from the market. Any of these events could prevent us from achieving or maintaining market acceptance of our products or could substantially increase the costs and expenses of commercializing our products, which in turn could delay or prevent us from generating significant revenues from their sales. If ANTARA and FACTIVE are not commercially successful, we will have to find additional sources of funding or curtail or cease operations.

If third parties challenge the validity of the patents or proprietary rights of our marketed products or assert that we have infringed their patents or proprietary rights, we may become involved in intellectual property disputes and litigation that would be costly, time consuming, and prevent the commercialization of ANTARA, FACTIVE and/or any other products that we acquire.

The intellectual property rights of pharmaceutical companies, including us, are generally uncertain and involve complex legal, scientific and factual questions. Our success in developing and commercializing pharmaceutical products may depend, in part, on our ability to operate without infringing on the intellectual property rights of others and to prevent others from infringing on our intellectual property rights. There has been substantial litigation regarding patents and other intellectual property rights in the pharmaceutical industry. For example, third parties seeking to market generic versions of branded pharmaceutical products often file an Abbreviated New Drug Application (ANDA) with the FDA, wherein such ANDA contains a certification by the applicant that the patents protecting the branded pharmaceutical product are invalid, unenforceable and/or not infringed, a so-called Paragraph IV certification.

On May 30, 2008 we received notice of a Paragraph IV certification from Orchid Healthcare, a Division of Orchid Chemicals & Pharmaceuticals Ltd. (Orchid), notifying us of the filing of an ANDA with the FDA for a generic version of FACTIVE. Orchid s notice sets forth allegations that eight of the nine FDA Orange Book listed patents are invalid and/or will not be infringed by Orchid s manufacture, importation, use, or sale of the product for which the ANDA was submitted. The notice does not, however, include a Paragraph IV certification with respect to U.S. Patent No. 5,633,262, which is also listed in the FDA Orange Book. Accordingly, the FDA cannot finally approve Orchid s ANDA until the expiry of U.S. Patent No. 5,633,262 in June 2015.

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We have not commenced a lawsuit against Orchid relating to these eight patents and are continuing to evaluate whether to commence litigation in response to Orchid s Paragraph IV certification. In the event Orchid elects to amend its ANDA to include a Paragraph IV certification with respect to the ninth patent, U.S. Patent No. 5,633,262, we believe that we will be entitled to an automatic thirty-month stay of FDA approval of the ANDA if either we and/or LG Life Sciences initiate a timely patent infringement lawsuit against Orchid, however, we are not guaranteed the benefit of such a thirty-month stay. Patent infringement litigation against Orchid could be a substantial cost and there are no assurances that we would be successful.

If additional ANDA filings are made referencing either ANTARA or FACTIVE, we may need to defend and/or assert our patents, including filing lawsuits alleging patent infringement. If we were unsuccessful in such a proceeding and the FDA approved a generic version of any one or both of our products, such an outcome would have a material adverse effect on our business.

We may also become party to patent litigation or proceedings at the U.S. Patent and Trademark Office or a foreign patent office to determine our patent rights with respect to third parties which may include competitors in the pharmaceutical industry. Interference proceedings in the U.S. Patent and Trademark Office or opposition proceedings in a foreign patent office may be necessary to establish which party was the first to discover such intellectual property. The cost to us of any patent litigation or similar proceeding could be substantial, and it may absorb significant management time.

We do not expect to maintain separate insurance to cover intellectual property infringement. Our general liability insurance policy does not cover our infringement of the intellectual property rights of others. If infringement litigation against us is resolved unfavorably, we may be enjoined from manufacturing or selling certain of our products or services and be liable for damages. In certain cases, a license may be available, although we may not be able to obtain such a license on commercially acceptable terms, or at all. Even if we were able to obtain such a license to a third party s intellectual property, the license may be non-exclusive and thereby accessible to our competitors. We may be forced to reformulate, rebrand or rename our products to avoid infringing the intellectual property rights of third parties, which, if possible, could be costly and time-consuming. The commercialization of our products or product candidates may be delayed or discontinued as a result of patent infringement claims against us or due to our failure to license necessary intellectual property, which could adversely affect our business.

We are aware of United States patents that are controlled by third parties that may be construed to encompass ANTARA. However, we believe that, if these patents were asserted against us, we would have valid defenses that ANTARA does not infringe any valid claims of these patents or that the patents would be found to be unenforceable. Nonetheless, in order to successfully challenge the validity of any United States patent, we would need to overcome the presumption of validity which is accorded to issued patents in the United States. If any of these patents were found to be valid and enforceable and we were found to infringe any of them, or any other patent rights of third parties, we would be required to pay damages, cease the sale of ANTARA or pay additional royalties on manufacture and sales of ANTARA. If we are unable to market or sell ANTARA, or if we are obligated to pay significant damages or additional royalties, our earnings attributable to ANTARA would be reduced and our business would be materially adversely affected. Even if we prevail, the cost to us of any patent litigation would likely be substantial, and it may absorb significant management time. If the other party in any such litigation has substantially greater resources than us, we may be forced, due to cost constraints, to seek to settle any such litigation on terms less favorable to us than we might be able to obtain if we had greater resources.

Our debt obligations expose us to risks that could adversely affect our business, operating results and financial condition.

We have a substantial level of debt. As of June 30, 2008, we had approximately $309.1 million of indebtedness outstanding (including accrued interest and excluding a bond discount of approximately $40.0 million), which includes approximately $41.7 million in revenue interest that entitles Paul Capital to receive a royalty on the sales of both ANTARA and FACTIVE. Approximately $16.5 million of outstanding indebtedness will mature on

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February 6, 2009, approximately $22.7 million of outstanding indebtedness will mature in 2010 or may be extended at our option to 2012 through issuance of warrants and approximately $228.2 million of indebtedness will mature in 2011. The level and nature of our indebtedness, among other things, could:

- make it difficult for us to make payments on our outstanding debt from time to time or to refinance it;
- make it difficult for us to obtain any necessary financing in the future for working capital, capital expenditures, debt service, product and company acquisitions or general corporate purposes;
- limit our flexibility in planning for or reacting to changes in our business including life cycle management;
- reduce funds available for use in our operations;
- impair our ability to incur additional debt because of financial and other restrictive covenants;
- make us more vulnerable in the event of a downturn in our business;
- place us at a possible competitive disadvantage relative to less leveraged competitors and competitors that have better access to capital resources;
- restrict the operations of our business as a result of provisions in the Revenue Interests Agreement with Paul Capital that restrict our ability to (i) amend, waive any rights under, or terminate any material license agreements, including the agreements relating to the ANTARA and FACTIVE products, (ii) enter into any new agreement or amend or fail to exercise any of our material rights under existing agreements that would materially adversely affect Paul Capital s royalty interest, and (iii) sell any material assets related to ANTARA or FACTIVE products; or
- impair our ability to merge or otherwise affect the sale of the Company due to the right of the holders of certain of our indebtedness to accelerate the maturity date of the indebtedness in the event of a change of control of the Company.

If we do not grow our revenues as we expect, we could have difficulty making required payments on our indebtedness. If we are unable to generate sufficient cash flow or otherwise obtain funds necessary to make required payments, or if we fail to comply with the various requirements of our indebtedness, we would be in default, which would permit the holders of our indebtedness to accelerate the maturity of the indebtedness and could cause defaults under any indebtedness we may incur in the future. Any default under our indebtedness would have a material adverse effect on our business, operating results and financial condition. If we are unable to refinance or repay our indebtedness as it becomes due, we may become insolvent and be unable to continue operations.

Future fundraising could adversely affect the value of the conversion right of our convertible securities and dilute the ownership interests of our shareholders.

In order to raise additional funds, we may issue equity or convertible debt securities in the future. Depending upon the market price of our shares at the time of any transaction, we may be required to sell a significant percentage of the authorized and unissued shares of our common stock in order to fund our operating plans, potentially requiring a shareholder vote, which we may not be able to obtain. In addition, we may have to sell securities at a discount to the prevailing market price, which could adversely affect the value of the conversion right of any outstanding convertible securities and result in further dilution to our shareholders.

We need to continue to develop marketing and sales capabilities to successfully commercialize ANTARA capsules, FACTIVE tablets and our other product candidates.

ANTARA capsules and FACTIVE tablets are the first two FDA-approved products which we license and promote. To date, we still have limited marketing and sales experience. The continued development of these

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marketing and sales capabilities, including any expansion of our sales force, will require significant expenditures, management resources and time. Failure to establish sufficient sales and marketing capabilities in a timely and regulatory compliant manner may adversely affect our ability to continue to grow the ANTARA and FACTIVE brands and related product sales.

Our products and product candidates face significant competition in the marketplace.

ANTARA

ANTARA is a fenofibrate product approved by the FDA to treat hypercholesterolemia and hypertriglyceridemia in combination with a healthy diet. The marketing of current and additional branded versions of fenofibrate by competitors could reduce our net sales of ANTARA and adversely impact our revenues. The primary competition for ANTARA in the fenofibrate market is TriCor® 145 mg, a product manufactured by Abbott Laboratories, which accounted for approximately 90% of U.S. fenofibrate sales for the three-month period ended June 30, 2008. Abbott has announced its development and evaluation of another branded fenofibrate-type product, both as mono and combination therapy.

In addition to TriCor, there are several other branded fenofibrate products which compete with ANTARA. ANTARA also competes with Triglide®, a 160 mg fenofibrate product marketed by Sciele Pharma, Inc., which accounted for approximately 2% of U.S. fenofibrate sales for the three-month period ended June 30, 2008. Additionally, ANTARA competes with Lipofen®, a 150 mg fenofibrate product, which was recently launched and is currently being marketed by ProEthic Pharmaceuticals, Inc. ANTARA also competes with Fenoglide™, a 120 mg branded fenofibrate product, which the FDA approved in August 2007 referencing ANTARA in accordance with the provisions of section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act and was recently launched by Sciele Pharmaceuticals in North America.

Additionally, several generic versions of fenofibrate in varying doses are also available for the treatment of dyslipidemias. Revenues from these products accounted for approximately 3% of total U.S. sales of fenofibrate sales in the second quarter of 2008. In May 2005, Teva Pharmaceutical Industries, Ltd. (Teva) obtained FDA approval to market a generic version of Abbott Laboratories 160 mg TriCor tablet (which is no longer marketed or sold) and Par Pharmaceuticals and Impax Labs received FDA approval for similar generic products in October 2007 and March 2008, respectively. In addition, Solvay S.A., Abbott Laboratories partner announced on January 23, 2008, that Teva had filed an Abbreviated New Drug Application (ANDA) with a Paragraph IV certification seeking the approval of a generic version of TriCor 145 mg. Additionally, Biovail Corporation announced on September 3, 2008 that it also has filed an ANDA seeking approval for a generic version of TriCor 145 mg. If a generic version of Abbott Laboratories TriCor 145 mg product is approved by the FDA, the percentage of total revenues attributable to generic fenofibrate products would likely increase. There are also several other FDA-approved products and products in development for similar indications as ANTARA which could compete with ANTARA, including statins, omega-3 fatty acids (including Lovaza® marketed by GlaxoSmithKline), niacin (including Niaspan® marketed by Abbott), ezetimibe and fixed-dose combination products.

The growth of any of these competitive branded products, the marketing of generic fenofibrate products or the FDA approval and subsequent marketing of products with similar indications including combination therapy products currently in development, could result in a decrease in ANTARA sales, place pressure on the price at which we are able to sell ANTARA, reduce our profit margins, reduce our net sales of ANTARA and adversely impact our revenues.

FACTIVE

FACTIVE tablets are approved for the treatment of community-acquired pneumonia of mild to moderate severity and acute bacterial exacerbations of chronic bronchitis. There are several classes of antibiotics that are primary

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competitors for the treatment of these indications, including other fluoroquinolones (levofloxacin, ciprofloxacin and moxifloxacin), macrolides (clarithromycin and azithromycin), cephalosporins (cefdinir) and penicillins (amoxicillin/clavulanate potassium).

Many generic antibiotics are also currently prescribed to treat these infections. Moreover, a number of the antibiotic products that are competitors of FACTIVE tablets have composition of matter patents which have expired or will expire at dates ranging from 2003 to 2016. As these competitors lose patent protection, their manufacturers will likely decrease their promotional efforts. However, manufacturers of generic drugs will likely begin to produce some of these competing products and this could result in pressure on the price at which we are able to sell FACTIVE tablets and reduce our profit margins.

In addition, as described under If third parties challenge the validity of the patents or proprietary rights of our marketed products or assert that we have infringed their patents or proprietary rights, we may become involved in intellectual property disputes and litigation that would be costly, time consuming, and prevent the commercialization of ANTARA, FACTIVE and/or any other products that we acquire, Orchid has recently filed an ANDA seeking approval to market a generic version of FACTIVE. Currently, final approval of Orchid s ANDA may not be granted until 2015, because Orchid has not filed a Paragraph IV certification with respect to U.S. Patent No. 5,633,262, which expires in June 2015. However, Orchid could amend its ANDA filing to include a Paragraph IV certification against all of our FDA Orange Book listed patents and attempt to launch a generic version of FACTIVE before 2015. If Orchid were to amend its ANDA to include a Paragraph IV certification with respect to U.S. Patent No. 5,633,262, and we and/or LG Life Sciences initiate a timely patent infringement lawsuit against Orchid, we believe we will be eligible for an automatic thirty-month stay of FDA approval of Orchid s ANDA, however, we are not guaranteed the benefit of such a thirty-month stay.

Ramoplanin

We have completed Phase II clinical trials studying the use of Ramoplanin for the treatment of *Clostridium difficile*-associated disease (CDAD). We are aware of two products currently utilized in the marketplace for the treatment of this indication: Vancocin® pulvules (vancomycin), a product marketed by ViroPharma Inc., and metronidazole, a generic product. We are also aware of several companies with products in development for the treatment of CDAD, as well as the potential approval of generic vancomycin. Due to strategic and financial considerations, we have suspended the clinical development of Ramoplanin pending identification of a partner, licensee, or buyer for the product candidate.

Many of our competitors have substantially greater capital resources and human resources than us. Furthermore, many of those competitors are more experienced than us in drug discovery, clinical development and commercialization, and in obtaining regulatory approvals. As a result, those competitors may discover, develop and commercialize pharmaceutical products or services before us. In addition, our competitors may discover, develop and commercialize products or services that are more effective than, or otherwise render non-competitive or obsolete, the products or services that we or our collaborators are seeking to develop and commercialize. Moreover, these competitors may obtain patent protection or other intellectual property rights that would limit our rights or the ability of our collaborators to develop or commercialize pharmaceutical products or services.

Our failure to in-license, co-promote or acquire and develop additional product candidates or approved products will impair our ability to grow.

As part of our growth strategy, we intend to acquire, develop and commercialize additional product candidates or approved products. The success of this strategy depends upon our ability to identify, select and acquire products that meet our criteria. We may not be able to acquire the rights to additional product candidates and approved products on terms that we find acceptable, or at all. The acquisition of rights to additional products would likely

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require us to make significant up-front cash payments, which could adversely affect our liquidity and/or may require us to raise additional capital and/or secure external sources of financing. We may seek funding for product acquisitions through equity or debt offerings, through royalty-based financings or by a combination of these methods, such as the financing we completed with Paul Capital to fund the ANTARA acquisition. There is no assurance that we will be able to raise the funds necessary to complete any product acquisitions on acceptable terms or at all. If we raise funds it could dilute shareholders, or if we use existing resources it could adversely affect our liquidity and accelerate our need to raise additional capital.

New product candidates acquired or in-licensed by us may require additional research and development efforts prior to commercial sale, including extensive preclinical and/or clinical testing and approval by the FDA and corresponding foreign regulatory authorities. All product candidates are prone to the risks of failure inherent in pharmaceutical product development, including the possibility that the product candidate will not be safe, effective or approved by regulatory authorities. In addition, it is uncertain whether any approved products that we develop or acquire will be:

manufactured or produced economically;

successfully commercialized; or

widely accepted in the marketplace.

We, as well as our partners, are subject to numerous complex regulatory requirements and failure to comply with these regulations, or the cost of compliance with these regulations, may harm our business.

Virtually all aspects of our and our partners activities are subject to regulation by numerous governmental authorities in the U.S., Europe, Canada, Mexico and elsewhere. These regulations govern or affect the testing, manufacture, safety, effectiveness, labeling, storage, record-keeping, approval, distribution, advertising and promotion of ANTARA, FACTIVE, Ramoplanin and any other product candidates we may acquire, as well as safe working conditions and the experimental use of animals. We are required to report any serious and unexpected adverse experiences with our products to the FDA and other similar regulatory authorities in other jurisdictions. Noncompliance by us or our commercial partners with any applicable regulatory requirements or failure to obtain adequate documentation from any governmental agency can result in refusal of the government to approve products for marketing, criminal prosecution and fines, recall or seizure of products, injunctions, total or partial suspension of production, whistleblower lawsuits, prohibitions or limitations on the commercial sale of products or refusal to allow the entering into of federal and state supply contracts. These enforcement actions would detract from management s ability to focus on our daily business and would have an adverse effect on the way we conduct our daily business, which could severely impact future profitability. Our corporate compliance program cannot fully ensure that we are in compliance with all applicable laws and regulations, and a failure to comply with such regulations by us or our commercial partners could harm our business.

For instance, we, along with many other pharmaceutical companies, received correspondence in 2007 from the FDA stating that it had some concerns over the reliability of studies conducted by MDS Pharma Services between 2000 and 2004. The predecessor owner of the rights to ANTARA, Reliant Pharmaceuticals, had engaged MDS Pharma to perform certain bioequivalence studies for ANTARA, including some studies that were submitted in support of the original approval of ANTARA. The FDA suggested that we take one of the following steps to assess the accuracy of such data: conduct an independent audit of the trials to verify the data, re-assay samples or repeat the studies. The FDA also stated that it has not detected any signals or any evidence that the products mentioned in its correspondence pose a safety risk or that there has been any impact on efficacy. On May 30, 2007, we responded to the FDA informing the FDA that we do not believe that these steps are necessary because the FDA audited the pivotal MDS Pharma study at issue prior to its approval of ANTARA, and further because there are other non-MDS Pharma data that support the safety and effectiveness of ANTARA. To date, FDA has not responded to our response. As a result, the outcome of this issue is uncertain, and we cannot predict whether this issue will have a material impact on our results of operations.

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New legal and regulatory requirements could make it more difficult for us to obtain expanded or new product approvals, and could limit or make more burdensome our ability to commercialize our approved products.

Numerous proposals have been made in recent years to impose new requirements on drug approvals, expand post-approval requirements, and restrict sales and promotional activities. Without limiting the generality of the foregoing, Congress has recently enacted, and the President has signed into law, the Food and Drug Administration Amendments Act of 2007 (FDAAA). The recently enacted amendments authorize the FDA, among other things, to require submission of REMS with new drug applications, or post-approval upon the discovery of new safety information, to monitor and address potential safety issues for products upon approval. The FDAAA also grants the FDA the authority to mandate labeling changes in certain circumstances and establishes new requirements for registering and disclosing the results of clinical trials. For example, as discussed under Our business is very dependent on the commercial success of ANTARA and FACTIVE the FDA has informed us, along with the other sponsors of all marketed fluoroquinolone products of the need to have a Boxed Warning with respect to tendonitis and tendon rupture in certain patients. The FDA has also informed us that, based on new safety information, we (along with other sponsors of marketed fluoroquinolone products) must submit a proposed Medication Guide and a proposed REMS to ensure patients safe and effective use of all fluoroquinolones, including FACTIVE. Such changes may increase our costs and adversely affect our operations.

Additional measures have also been enacted to address the perceived shortcomings in the FDA s handling of drug safety issues, and to limit pharmaceutical company sales and promotional practices. The implementation of the recently enacted amendments or other proposed legal or regulatory changes may make it more difficult or burdensome for us to obtain extended or new product approvals, and our current approvals may be restricted or subject to onerous post-approval requirements.

Failure to comply with or changes to the regulatory requirements that are applicable to ANTARA, FACTIVE or our product candidates may result in a variety of consequences, including the following:

- restrictions on our products or manufacturing processes;
- notice of violation letters regarding promotional and marketing materials and activities;
- withdrawal of the product from the market;
- voluntary or mandatory recall of the product;
- fines against us or our partners;
- suspension or withdrawal of regulatory approvals for ANTARA, FACTIVE or a product candidate which subsequently receives regulatory approval;
- suspension or termination of any clinical trials of a product candidate;
- refusal to permit import or export of our products;
- refusal to approve pending applications or supplements to approved applications that we or our partners submit;

denial of permission to file an application or supplement in a jurisdiction;

product seizure; and

injunctions or the imposition of civil or criminal penalties against us or our partners.

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If we market or distribute products in a manner that violates federal or state healthcare fraud and abuse, marketing disclosure, or drug pedigree laws, we may be subject to civil or criminal penalties.

In addition to FDA and related regulatory requirements, we are subject to health care fraud and abuse laws, such as the federal False Claims Act, the anti-kickback provisions of the federal Social Security Act, and other state and federal laws and regulations. Federal and state anti-kickback laws prohibit, among other things, knowingly and willfully offering, paying, soliciting or receiving remuneration to induce, or in return for purchasing, leasing, ordering or arranging for the purchase, lease or order of any health care item or service reimbursable under Medicare, Medicaid, or other federally or state financed health care programs. This statute has been interpreted to apply to arrangements between pharmaceutical manufacturers on one hand and prescribers, patients, purchasers and formulary managers on the other. Although there are a number of statutory exemptions and regulatory safe harbors protecting certain common activities from prosecution, the exemptions and safe harbors are drawn narrowly, and practices that involve remuneration intended to induce prescribing, purchasing, or recommending may be subject to scrutiny if they do not qualify for an exemption or safe harbor.

Federal false claims laws prohibit any person from knowingly presenting, or causing to be presented, a false claim for payment to the federal government, or knowingly making, or causing to be made, a false statement to get a false claim paid. Numerous pharmaceutical companies have been investigated, prosecuted or entered into settlement agreements in connection with a variety of allegedly impermissible promotional and marketing activities, such as allegedly providing free product to customers with the expectation that the customers would bill federal programs for the product; reporting to pricing services inflated average wholesale prices that were then used by federal programs to set reimbursement rates; promoting uses that the FDA has not approved (i.e., off-label uses) that caused claims to be submitted to Medicaid for non-covered off-label uses; and submitting inflated best price information to the Medicaid Drug Rebate Program.

The majority of states also have statutes or regulations similar to the federal anti-kickback law and false claims laws, which apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payor. Sanctions under these federal and state laws may include civil monetary penalties, exclusion of a manufacturer s products from reimbursement under government programs, criminal fines, and imprisonment. Even if we are not determined to have violated these laws, government investigations into these issues typically require the expenditure of significant resources and generate negative publicity, which would also harm our financial condition. Because of the breadth of these laws and the narrowness of the safe harbors, it is possible that some of our business activities could be subject to challenge under one or more of such laws.

In recent years, several states and localities, including California, the District of Columbia, Maine, Massachusetts, Minnesota, Nevada, New Mexico, Texas, Vermont, and West Virginia, have enacted legislation requiring pharmaceutical companies to establish marketing compliance programs that comply with the PhRMA Code and OIG Guidelines with respect to interactions with health care providers, and/or file periodic reports with the state or make periodic public disclosures on sales, marketing, pricing, clinical trials, and other activities. Similar legislation is being considered by Congress and other states. Many of these requirements are new and uncertain, and the penalties for failure to comply with these requirements are unclear. We are not aware of any companies against which fines or penalties have been assessed under these special state reporting and disclosure laws to date. Nonetheless, while we have established a compliance program, we may face enforcement, fines and other penalties, and could receive adverse publicity if this program is found not to be in full compliance with these laws.

In recent years, some states have passed or have proposed laws and regulations obligating pharmaceutical manufacturers and distributors to provide prescription drug pedigrees that are intended to protect the safety of the drug supply channel. For example, the Florida Prescription Drug Pedigree laws and regulations that became effective in July 2006 imposed obligations upon us to deliver prescription drug pedigrees to various categories of customers. Also, effective January 1, 2011, California will require the implementation of costly track and trace

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chain of custody technologies. At the federal level, a bill was recently introduced that would establish national standards for the drug supply chain (H.R. 5839). Overall, compliance with these pedigree laws requires implementation of extensive tracking systems as well as heightened documentation and coordination with distributors and customers. While we fully intend to comply with these laws, there is uncertainty around the interpretation of the recently passed laws, future changes in legislation and government enforcement of these laws. Failure to comply could result in fines or penalties, as well as loss of business that could have a material adverse effect on our business.

We depend on third parties to manufacture and distribute our products and product candidates.

We do not have the internal capability to manufacture pharmaceutical products. Under our agreement with LG Life Sciences, LG Life Sciences manufactures the active pharmaceutical ingredient (API) of FACTIVE and is our only source of supply. We use Patheon Inc. (Patheon) to produce the finished FACTIVE tablets and it is currently our only source of FACTIVE tablets. Currently, our only source of supply of bulk capsules of ANTARA is Ethypharm which manufactures the bulk capsules in France and is able to receive ANTARA API from two vendors in Spain and Italy. Further, we have an agreement with Catalent Pharma Solutions, Inc. to package finished ANTARA capsules and FACTIVE tablets.

If Ethypharm, LG Life Sciences, Patheon or Catalent Pharma Solutions experiences any significant difficulties in their respective manufacturing processes for our products, including the API or finished product, or is found otherwise not to be in compliance with applicable legal and regulatory requirements, we could experience significant interruptions in the supply of ANTARA and FACTIVE. Our inability to coordinate the efforts of our third party manufacturing partners, or the lack of capacity available at our third party manufacturing partners, could impair our ability to supply ANTARA and FACTIVE at required levels. Such an interruption could cause us to incur substantial costs and our ability to generate revenue from ANTARA and FACTIVE may be adversely affected. We may not be able to enter into alternative supply arrangements at commercially acceptable rates, if at all. Also, if we change the source or location of supply or modify the manufacturing process, regulatory authorities will require us to demonstrate that the new process or source meets applicable legal and regulatory requirements and that the product manufactured by the new source or from the modified process is equivalent to the product used in the clinical trials that supported FDA approval. Due to these regulatory requirements, we could incur substantial expenses and/or experience significant interruptions in the supply of ANTARA and FACTIVE if we decided to transfer the manufacture of our products to one or more suppliers in an effort to deal with such difficulties.

As the ANTARA bulk capsules and FACTIVE API are manufactured in France and South Korea, respectively, we must ship our products to the United States for finishing, packaging and labeling, and manufacturing in the case for FACTIVE. While in transit, our API and product, each shipment of which is of significant value, could be lost or damaged. Moreover, at any time after shipment to the United States, our API or finished product could be lost or damaged as our FACTIVE API is stored at Patheon and our ANTARA and FACTIVE finished product is stored at our third party logistics provider, Integrated Commercialization Solutions, Inc. (ICS). Appropriate risk mitigation steps have been taken and insurance is in place. However, depending on when in the process the API or finished product is lost or damaged, we may have limited recourse for recovery against our manufacturers or insurers. As a result, our financial performance could be impacted by any such loss or damage to our API or finished product.

We may also experience interruption or significant delay in the supply of ANTARA and FACTIVE due to natural disasters, acts of war or terrorism, shipping embargoes, labor unrest or political instability in France or South Korea. In any such event, the supply of our products stored at Ethypharm or LG Life Sciences could also be impacted.

Pursuant to our acquisition of worldwide rights to Ramoplanin from Vicuron, a wholly-owned subsidiary of Pfizer Inc., we are responsible for the manufacture of both the active pharmaceutical ingredient and finished

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dosage form of Ramoplanin. Although we plan to seek a partner for Ramoplanin, a contract manufacturer or the partner would be required to produce both the active pharmaceutical ingredient and the final dosage form to support related manufacturing activities. If there is a significant delay in securing a qualified supplier on commercially favorable terms, we could experience a supply shortage of Ramoplanin bulk drug, possibly affecting our ability to consummate partnering arrangements for the commercialization of Ramoplanin.

Moreover, while we may choose to manufacture products in the future, we have no experience in the manufacture of pharmaceutical products for clinical trials or commercial purposes. If we decide to manufacture products, it would be subject to the regulatory requirements described above. In addition, we would require substantial additional capital and would be subject to delays or difficulties encountered in manufacturing pharmaceutical products.

We depend on third parties to assist in the management and execution of our product supply chain for ANTARA capsules and FACTIVE tablets.

We do not have the internal capability to perform product supply chain services including warehousing, inventory management, storage and distribution of commercial and sample quantities of ANTARA capsules and FACTIVE tablets. We have an exclusive arrangement with Integrated Commercialization Solutions, Inc. (ICS) to perform such supply chain services with respect to commercial product through the second quarter of 2010.

We cannot be certain that ICS will be able to perform uninterrupted supply chain services. If ICS were unable to perform their services for any period, we may incur substantial loss of sales to wholesalers and other purchasers of our products. If we are forced to find an alternative supply chain service provider for ANTARA and FACTIVE, in addition to loss of sales, we may also incur costs in establishing a new arrangement.

Wholesalers, pharmacies and hospitals may not maintain adequate inventory for the distribution for our products.

We sell ANTARA and FACTIVE to wholesale drug distributors who generally sell products to retail pharmacies and other institutional customers. We do not promote ANTARA and FACTIVE to these wholesalers, and they do not determine such products prescription demand. However, approximately 91% of our product shipments during the three-month period ended June 30, 2008 was to only three wholesalers. Our ability to commercialize ANTARA and/or FACTIVE will depend, in part, on the extent to which we maintain adequate distribution of ANTARA capsules and FACTIVE tablets via wholesalers, pharmacies and hospitals, as well as other customers. Although a majority of the larger wholesalers and retailers distribute and stock ANTARA and FACTIVE, they may be reluctant to do so in the future if demand is not established. Further, it is possible that wholesalers could decide to change their policies or fees, or both, at some time in the future. This could result in their refusal to distribute smaller volume products, or cause higher product distribution costs, lower margins or the need to find alternative methods of distributing products. Such alternative methods may not exist or may not be economically viable. If we do not maintain adequate distribution of ANTARA capsules or FACTIVE tablets, the commercialization of ANTARA and/or FACTIVE and our anticipated revenues and results of operations could be adversely affected.

Under our financing arrangement with Paul Capital, upon the occurrence of certain events, Paul Capital may require us to repurchase the right to receive revenues that we assigned to it or may foreclose on certain assets that secure our obligations to Paul Capital. Any exercise by Paul Capital of its right to cause us to repurchase the assigned right or any foreclosure by Paul Capital could adversely affect our results of operations and our financial condition.

On August 18, 2006, we and our subsidiary Guardian II Acquisition Corporation, or Guardian II, entered into a revenue interests assignment agreement with PRF pursuant to which we assigned to Paul Capital the right to receive a portion of our net revenues from FACTIVE tablets and Guardian II assigned to Paul Capital the right to

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receive a portion of its net revenue from ANTARA capsules. To secure its obligations to Paul Capital, Guardian II also granted Paul Capital a security interest in substantially all of its assets, including the U.S. rights to ANTARA.

Under our arrangement with Paul Capital, upon the occurrence of certain events, including if we experience a change of control, undergo certain bankruptcy events of us or our subsidiary, transfer any or substantially all of our rights in ANTARA or FACTIVE, transfer all or substantially all of our assets, breach certain of the covenants, representations or warranties under the Revenue Interests Assignment Agreement, or sales of ANTARA are suspended due to an injunction or if we elect to suspend sales of ANTARA as a result of a lawsuit filed by certain third parties, Paul Capital may (i) require us to repurchase the rights we assigned to it at the price in cash which equals the greater of (a) 200% of cumulative payments made by Paul Capital under the Revenue Interests Assignment Agreement less the cumulative royalties previously paid to Paul Capital; or (b) the amount which will provide Paul Capital, when taken together with the royalties previously paid, a 22% internal rate of return (the Put/Call Price) in effect on the date such right is exercised or (ii) foreclose on the ANTARA assets that secure our obligations to Paul Capital. Except in the case of certain bankruptcy events, if Paul Capital exercises its right to cause us to repurchase the rights we assigned to it, Paul Capital may not foreclose unless we fail to pay the Put/Call Price as required.

On November 5, 2008 we entered into a first amendment to the revenue interests assignment agreement. The amendment provides, among other things, that PRF will consent to the grant by Guardian II of a second-ranking security interest in and to the assets of Guardian II to secure Guardian II s guarantee of the new notes that will be issued in the exchange offer. The effectiveness of the amendment is contingent upon, among other closing conditions, the closing of the exchange offer. The amendment provides that any acceleration or failure to pay the new notes to be issued in the exchange offer would trigger Paul Capital s right to cause us to repurchase the right we assigned to it as described above.

If Paul Capital were to exercise its right to cause us to repurchase the right we assigned to it, there can be no assurance that we would have sufficient funds available to pay the Put/Call Price in effect at that time. Even if we have sufficient funds available, we may have to use funds that we planned to use for other purposes and our results of operations and financial condition could be adversely affected. If Paul Capital were to foreclose on the ANTARA assets that secure our obligations to Paul Capital, our results of operations and financial condition could also be adversely affected. Paul Capital s right to cause us to repurchase the rights we assigned to it is triggered by, among other things, a change in control, transfer of any of our interests in ANTARA or transfer of all or substantially all of our assets, the existence of that right could discourage us or a potential acquirer from entering into a business transaction that would result in the occurrence of any of those events.

The development and commercialization of our products may be terminated or delayed, and the costs of development and commercialization may increase, if third parties upon whom we rely to support the development and commercialization of our products do not fulfill their obligations.

In addition to using third parties to fulfill our manufacturing, distribution and supply chain services, our development and commercialization strategy entails entering into arrangements with corporate collaborators, contract research organizations, licensors, licensees and others to conduct development work, manage our clinical trials and market and sell our products outside of the United States. We do not have the expertise or the resources to conduct such activities on our own and, as a result, we are particularly dependent on third parties in these areas. For instance, we have entered into exclusive arrangements granting rights to Pfizer, S.A. de C.V, Abbott Laboratories, Ltd. and Menarini International Operation Luxembourg S.A. to develop and sell FACTIVE in Mexico, Canada and Europe, respectively. However, we amended our agreement with Abbott Canada on January 31, 2008, whereby Abbott Canada s development and commercial obligations were substantially reduced.

We may not be able to maintain our existing arrangements with respect to the commercialization of our existing products, ANTARA and FACTIVE, or establish and maintain arrangements or partnerships to develop and

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commercialize Ramoplanin or any additional product candidates or products we may acquire on terms that are acceptable to us. Any current or future arrangements for development and commercialization may not be successful. If we are not able to establish or maintain agreements relating to our current products, Ramoplanin, our other product candidates or any additional products we may acquire on terms which we deem favorable, our results of operations would be materially adversely affected.

Third parties may not perform their obligations as expected. The amount and timing of resources that third parties devote to developing and commercializing our products are not within our control. Furthermore, our interests may differ from those of third parties that commercialize our products. Disagreements that may arise with these third parties could delay or lead to the termination of the development or commercialization of our product candidates, or result in litigation or arbitration, which would be time consuming and expensive.

If any third party that supports the development or commercialization of our products breaches or terminates its agreement with us, or fails to conduct its activities in a timely and regulatory compliant manner, such breach, termination or failure could:

- delay or otherwise adversely impact the development or commercialization of ANTARA capsules, FACTIVE tablets, Ramoplanin, or any additional product candidates that we may acquire or develop;
- require us to undertake unforeseen additional responsibilities or devote unforeseen additional resources to the development or commercialization of our products; or
- result in the termination of the development or commercialization of our products.

We bear substantial responsibilities under our license agreements for ANTARA and FACTIVE and our sublicense agreements to Pfizer, S.A. de C.V., Abbott Laboratories, Ltd. and Menarini International Operation Luxembourg S.A., and there can be no assurance that we will successfully fulfill our responsibilities.

ANTARA

Our exclusive rights to ANTARA are licensed to us by Ethypharm, S.A. (Ethypharm). If we breach the obligations in any of our license agreements relating to ANTARA, including the development, license and supply agreement with Ethypharm, the licensor may be entitled to terminate the agreement. Further, in order to maintain our exclusive rights, we must achieve certain minimum annual sales of ANTARA until February 2012 or make payments to Ethypharm to compensate for the difference. Ethypharm also has a right of first refusal on any divestiture of our rights to ANTARA.

We believe that we are currently in compliance with our obligations under the Ethypharm agreement, but there can be no assurance that we will be able to remain in compliance or that we will be able to meet the milestones required for extension of the agreement. As of June 30, 2008, we recorded approximately $605,000 related to a minimum royalty obligation to Ethypharm for the period February 2006 to January 2007. Moreover, Ethypharm s right of first refusal on a divestiture of our rights to ANTARA may adversely affect our ability to effect a change of control or sale of our assets.

FACTIVE

We have an exclusive license from LG Life Sciences to develop and market FACTIVE in North America, France, Germany, the United Kingdom, Luxembourg, Ireland, Italy, Spain, Portugal, Belgium, the Netherlands, Austria, Greece, Sweden, Denmark, Finland, Norway, Iceland, Switzerland, Andorra, Monaco, San Marino, Vatican City, Poland, Czech Republic, Slovakia, Slovenia, Hungary, Estonia, Latvia, Lithuania, Liechtenstein, Malta, Cyprus, Romania, Bulgaria, Croatia, Serbia and Montenegro, Bosnia and Herzegovina, Albania and the Former Yugoslav Republic of Macedonia. Under this agreement, we are responsible, at our expense and through consultation with LG Life Sciences, for the clinical and commercial development of FACTIVE in the countries covered by the license, including the conduct of clinical trials, the filing of drug approval applications with the

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FDA and other applicable regulatory authorities and the marketing, distribution and sale of FACTIVE in our territory. The agreement with LG Life Sciences also requires that we achieve a minimum gross sales level of $30 million from our licensed territories over a 12-month period of time starting in approximately the third quarter of 2007 to the third quarter of 2008 which, if not met, LG Life Sciences could elect to terminate the agreement and have the technology be returned to LG Life Sciences. We believe that we are currently in compliance with our obligations under the agreement with LG Life Sciences, but there can be no assurance that we will be able to remain in compliance and meet all of our obligations due to the limitations on our resources and the challenges inherent in the commercialization of new products as described above in Our product candidates will face significant competition in the marketplace.

LG Life Sciences has the obligation under the agreement to diligently maintain its patents and the patents of third parties to which it has rights that, in each case relating to gemifloxacin, the active ingredient in FACTIVE tablets. We have the right, at our expense, to control any litigation relating to suits brought by a third party alleging that the manufacture, use or sale of gemifloxacin in its licensed field in the territories covered by the license infringes upon our rights. We also have the primary right to pursue actions for infringement of any patent licensed from LG Life Sciences under the license agreement within the territories covered by the license. If we elect not to pursue any infringement action, LG Life Sciences has the right to pursue it. The costs of any infringement actions are first paid out of any damages recovered. If we are the plaintiff, the remainder of the damages are retained by us, subject to our royalty obligations to LG Life Sciences. If LG Life Sciences is the plaintiff, the remainder of the damages are divided evenly between us and LG Life Sciences, subject to our royalty obligations to LG Life Sciences. The costs of pursuing any such action could substantially diminish our resources.

In February 2006, we entered into a Sublicensing and Distribution Agreement with Pfizer, S.A. de C.V. (Pfizer Mexico) whereby we sublicensed our rights to commercialize FACTIVE tablets in Mexico to Pfizer Mexico. Under this agreement, we are obligated to exclusively supply all active pharmaceutical ingredient for FACTIVE required by Pfizer Mexico in Mexico. The agreement with Pfizer Mexico may be terminated by either party upon the occurrence of certain termination events, including Pfizer Mexico s right to terminate at any time after August 2007, the first anniversary of launch of FACTIVE tablets in Mexico upon six-months prior written notice.

In August 2006, we entered into a Supply, Development and Marketing Agreement with Abbott Laboratories, Ltd. (Abbott Canada), the Canadian affiliate of Abbott. Under this agreement, we are obligated to exclusively supply all finished packaged FACTIVE product required by Abbott Canada. The agreement also provides that we can terminate the agreement at any time with prior notice to Abbott Canada and Abbott Canada can terminate with prior notice to us after November 30, 2008.

In December 2006, we entered into a License, Supply and Marketing Agreement with Menarini International Operation Luxembourg S.A. (Menarini), whereby we sublicensed our rights to sell FACTIVE tablets in Europe to Menarini. Under the terms of our agreement with Menarini, Menarini is also obligated to exclusively purchase from us, and we must exclusively supply, all API for FACTIVE to be sold in Europe for the earlier to occur of the expiration of the life of certain patents covering the product or expiration of data exclusivity. Our agreement with Menarini may be terminated by either party upon the occurrence of certain termination events, including Menarini s right to terminate if the European regulatory authorities do not recommend approval of FACTIVE at various stages of the approval process with a package insert, or label, that meets certain requirements as to the safety, dosing and indications for which FACTIVE may be prescribed. Menarini may also terminate the agreement if it does not receive approval for reimbursement from European Union member countries that is above a certain minimum price per tablet.

We believe that, together with our manufacturing partners, we will be able to meet such supply and other obligations under these sublicense and supply agreements but can make no assurances that we will be able to remain in compliance with such responsibilities, which would result in our breach of such agreement.

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Our intellectual property protection and other protections may be inadequate to protect our products.

Our success will depend, in part, on our ability to obtain commercially valuable patent claims and protect our intellectual property. The degree of protection afforded by a patent varies on a country-by-country and a product-by-product basis and depends upon many factors, including the scope of the patent s claims, the availability of regulatory-related patent term extensions, the validity and enforceability of the patent and the availability of legal remedies in a particular country. We currently own or license approximately 56 issued U.S. patents, approximately 40 pending U.S. patent applications, approximately 60 issued foreign patents and approximately 109 pending foreign patent applications. We are not currently involved in any litigation, settlement negotiations, or other legal action regarding patent issues and we are not aware of any patent litigation threatened against us. Our patent position involves complex legal and factual questions, and legal standards relating to the issuance, scope, validity and enforceability of claims in the applicable technology fields are still evolving. Therefore, the degree of future protection for our proprietary rights is uncertain.

Under our Development, License and Supply Agreement with Ethypharm, S.A., we assumed all of the rights and obligations related to the development, manufacturing, marketing and sale of ANTARA in the United States. This license includes one issued U.S. patent and several pending patent applications. In conjunction with the financing of our acquisition of ANTARA, we entered into a Security Agreement with Paul Royalty Fund Holdings II, LP, an affiliate of Paul Capital Partners, or Paul Capital, under which our wholly-owned subsidiary granted Paul Capital a security interest in substantially all of its assets, including all rights to ANTARA intellectual property, in order to secure its performance under the financing agreements with Paul Capital. In connection with the issuance of the new notes, Guardian II and the collateral agent for the new note holders will enter into a Security Agreement under which Guardian II will grant the collateral agent a second priority security interest in substantially all of the assets of Guardian II to secure Guardian II s guarantee of our obligations with respect to the new notes. These patents and applications include claims that relate to pharmaceutical compositions containing fenofibrate using the drug delivery technologies incorporated in ANTARA, methods of their use and treatment, and methods of preparing the same. The patent issued to Ethypharm which is listed in the FDA Orange Book is set to expire in 2020.

Under our license agreement with LG Life Sciences, we obtained an exclusive license to develop and market gemifloxacin in certain territories. This license covers 18 issued U.S. patents and a broad portfolio of corresponding foreign patents and pending patent applications. These patents include claims that relate to the chemical composition of FACTIVE, methods of manufacturing and its use for the prophylaxis and treatment of bacterial infections. We have received a Notice of Final Determination from the U.S. Patent and Trademark Office on our patent term extension application for U.S. Patent No. 5,776,944 extending its patent term 659 days to April 4, 2017. The principal U.S. patents for FACTIVE are currently set to expire at various dates, ranging from 2015 to 2019. As discussed under, If third parties challenge the validity of the patents or proprietary rights of our marketed products or assert that we have infringed their patents or proprietary rights, we may become involved in intellectual property disputes and litigation that would be costly, time consuming, and prevent the commercialization of ANTARA, FACTIVE and/or any other products that we acquire we recently received notice of a Paragraph IV certification from Orchid Healthcare, a Division of Orchid Chemicals & Pharmaceuticals Ltd. (Orchid), notifying us of their filing of an ANDA for a generic version of FACTIVE. The certification alleges that eight of the nine FDA Orange Book listed patents are invalid and/or will not be infringed by Orchid s manufacture, importation, use, or sale of the product for which the ANDA was submitted. The certification does not, however include a Paragraph IV certification with respect to U.S. Patent No. 5,633,262 which is listed in the Orange Book and expires in June 2015. We are continuing to evaluate whether to commence litigation in response to Orchid s Paragraph IV certification. In the event Orchid elects to amend its ANDA to include a Paragraph IV certification with respect to the ninth patent, U.S. Patent No. 5,633,262, we believe that we will be entitled to an automatic thirty-month stay of FDA approval of the ANDA if either we and/or LG Life Sciences initiate a timely patent infringement lawsuit against Orchid, however, we are not guaranteed the benefit of such a thirty month stay. Patent infringement litigation against Orchid could be a substantial cost and there are no assurances that we would be successful.

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We may depend, in part, on the ability of our licensors to successfully obtain, maintain and enforce patent protection for our licensed intellectual property. Without protection for the intellectual property we license, other companies might be able to offer substantially identical products for sale, which could adversely affect our competitive business position and harm our business prospects.

On January 8, 2008 the United States Patent and Trademark Office (USPTO) issued us U.S. Patent No. 7,317,001 relating to the treatment of *Clostridium difficile*-associated disease (CDAD) using Ramoplanin. We received a patent term adjustment of 565 days thus extending the term through December 20, 2024. In addition to the recently issued patent, we have an additional patent which includes claims relating to methods of manufacturing Ramoplanin. We also have several applications pending relating to additional novel uses of Ramoplanin as well as formulations containing Ramoplanin. The patent covering the chemical composition of Ramoplanin has expired. To provide additional protection for Ramoplanin, we rely on proprietary know-how relating to maximizing yields in the manufacture of Ramoplanin, and intend to rely on the five years of data exclusivity we believe we would receive under the Hatch-Waxman Act in the U.S. and the ten years of market exclusivity in Europe available through the European Medicines Agency (EMEA), because Ramoplanin would be a new chemical entity not previously marketed commercially.

We also have the exclusive right to use FACTIVE trademarks, trade names, domain names and logos in conjunction with the use or sale of the product in the territories covered by the license. We acquired exclusive rights to ANTARA trademarks, trade names, domain names and logos. After becoming aware that Antara Biosciences, Inc. filed trademark applications with the USPTO for the ANTARA and ANTARA BIOSCIENCES marks in connection with biotechnology related goods and services we filed a complaint in Federal District Court alleging, among other things, trademark infringement seeking to enjoin ANTARA BIOSCIENCES from using the ANTARA mark. We have reached a settlement with ANTARA BIOSCIENCES whereby they have agreed to abandon their ANTARA trademark applications and cease using the ANTARA marks. Accordingly we have dismissed our complaint before the Federal District Court.

The risks and uncertainties that we will face with respect to our patents and other proprietary rights include the following:

- the pending patent applications that we have filed or to which we have exclusive rights may not result in issued patents, may result in issued patents with narrower claims than anticipated or may take longer than expected to result in issued patents;
- the claims of any patents which are issued may be limited from those in the patent applications and may not provide meaningful protection;
- U.S. Patents may be subject to reexamination or reissue proceedings before the USPTO, and foreign patents may be subject to comparable proceedings in corresponding patent offices;
- we may not be able to develop additional proprietary technologies that are patentable;
- the patents licensed or issued to us or our partners may not provide a competitive advantage;
- other companies, such as Orchid, may challenge patents licensed or issued to us or our partners;
- patents issued to other companies may harm our ability to do business;
- the April 30, 2007 U.S. Supreme Court decision in *KSR International Co. vs. Teleflex, Inc.* may raise the standard for patentability for both patent applications and holders, thus making it more difficult to either obtain patents or withstand challenges to patentability based on a determination of obviousness;

other companies may independently develop similar or alternative technologies or duplicate our technologies; and

the patents may be narrow in scope and accordingly other companies may design around technologies we have licensed or developed.

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International patent protection is uncertain.

Patent law outside the United States is uncertain and is currently undergoing review and revision in many countries. Further, the laws of some foreign countries may not protect our intellectual property rights to the same extent as U.S. laws. We may participate in opposition proceedings to determine the validity of our or our competitors foreign patents, which could result in substantial costs and diversion of our efforts.

Our proprietary position may depend on our ability to protect our proprietary confidential information and trade secrets.

We rely upon certain proprietary confidential information, trademarks, unpatented trade secrets and improvements, unpatented know-how and continuing technological innovation to develop and maintain our competitive position. We generally protect this information with confidentiality agreements that provide that all confidential information developed or made known to others during the course of the employment, consulting or business relationship shall be kept confidential except in specified circumstances. Agreements with employees provide that all inventions conceived by an individual while employed by us are our exclusive property. We cannot guarantee, however, that these agreements will be honored, that we will have adequate remedies for breach if they are not honored or that our proprietary confidential information and trade secrets will not otherwise become known or be independently discovered by competitors.

Seasonal fluctuations in demand for FACTIVE, and even possibly ANTARA, may cause our operating results to vary significantly from quarter to quarter.

We expect demand for FACTIVE to be highest between December 1 and March 31 as the incidence of respiratory tract infections, including CAP and AECB, tends to increase during the winter months. In addition, fluctuations in the duration and severity of the annual respiratory tract infection season may cause our product sales to vary from year to year. Due to these seasonal fluctuations in demand, our results in one quarter may not be indicative of the results for any other quarter or for the entire year. Although not related to seasonal weather changes, wholesaler buying patterns may fluctuate for ANTARA during the year and possibly increase toward year end.

Clinical trials are costly, time consuming and unpredictable, and we have limited experience conducting and managing necessary preclinical and clinical trials for product candidates.

To obtain FDA approval to market a new drug product or to expand the approved uses of an existing product, we or our partners must demonstrate proof of safety and efficacy in humans. To meet these requirements, we or our partners will have to conduct extensive testing, including potentially preclinical testing and adequate and well- controlled clinical trials. Conducting clinical trials is a lengthy, time-consuming and expensive process. The length of time required to conduct required studies may vary substantially according to the type, complexity, novelty and intended use of the product candidate, and often can be several years or more per trial. Delays associated with products for which clinical trials are required may cause us to incur additional operating expenses.

The Phase II trial for our product candidate, Ramoplanin, to assess the safety and efficacy of treating *Clostridium difficile*-associated disease, or CDAD, was completed in 2004 but did not meet its primary endpoint. Prior clinical and preclinical trials for Ramoplanin were conducted by Vicuron and its licensees, from whom we acquired rights to Ramoplanin. In December 2005 we agreed with the FDA to a Special Protocol Assessment regarding specific components of a Phase III program that, if completed successfully, would support regulatory approval for the indication. However, due to the nature of Special Protocol Assessments and the fact that our Special Protocol Assessment was agreed to by the FDA in 2005, we can give no assurance that as clinical trials proceed or as part of an NDA review process, if any, the FDA will not determine that a previously approved

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Special Protocol Assessment for a particular protocol is no longer valid. Additionally, in October 2007, the FDA issued draft guidance on the use of non-inferiority studies to support approval of antibiotics. Under this draft guidance, the FDA recommends that for some antibiotic indications, sponsor companies carefully consider study designs other than non-inferiority, such as placebo-controlled trials demonstrating the superiority of a drug candidate to placebo. While the indications identified by the FDA in the draft guidance are not indications which we are currently pursuing, the draft guidance does not articulate clear standards or policies for demonstrating the safety and efficacy of antibiotics generally. The lack of clear guidance from the FDA creates uncertainties about the standards for the approval of antibiotics and could delay or ultimately prevent commercialization of new antibiotic product candidates such as Ramoplanin or additional indications for FACTIVE. If the trials or the filings are delayed or not approved by the FDA, our business may be adversely affected. Currently, we have suspended the clinical development program for Ramoplanin pending identification of a partner, licensee, or buyer for the product.

If we choose to pursue additional indications or expand the label for ANTARA or FACTIVE, or are required to conduct additional clinical trials, we may not be able to demonstrate the safety and efficacy of FACTIVE or ANTARA for those indications to the satisfaction of the FDA, or other regulatory authorities. We may also be required to demonstrate that our proposed products represent an improved form of treatment over existing therapies and we may be unable to do so without conducting further clinical studies. Negative, inconclusive or inconsistent clinical trial results could prevent regulatory approval, increase the cost and timing of regulatory approval or require additional studies or a filing for a narrower indication or label expansion.

In addition, the cost of human clinical trials varies dramatically based on a number of factors, including the order and timing of clinical indications pursued, the extent of development and financial support from alliance partners, the number of patients required for enrollment, the difficulty of obtaining clinical supplies of the product candidate, and the difficulty in obtaining sufficient patient populations and clinicians.

We have limited experience in conducting and managing the preclinical and clinical trials necessary to obtain regulatory marketing approvals. We may not be able to obtain the approvals necessary to conduct clinical studies. Also, the results of our clinical trials may not be consistent with the results obtained in preclinical studies or the results obtained in later phases of clinical trials may not be consistent with those obtained in earlier phases. A number of companies in the pharmaceutical industry have suffered significant setbacks in advanced clinical trials, even after experiencing promising results in early animal and human testing.

Even if a product gains regulatory approval, the product and the manufacturer of the product will be subject to continuing regulatory review, including the requirement to conduct post-approval clinical studies, post-approval adverse event reporting requirements and, potentially, a REMS. We may be restricted or prohibited from marketing or manufacturing a product, even after obtaining product approval, if previously unknown problems with the product or its manufacture are subsequently discovered.

We could experience delays in clinical development which could delay anticipated product launches.

The speed with which we are able to complete clinical trials for future product candidates, when and if we, or any third party with whom we partner, elects to commence Phase III development of Ramoplanin, and our applications for marketing approval will depend on several factors, including the following:

- the rate of patient enrollment, which is a function of many factors, including the size of the patient population, the proximity of patients to clinical sites, the eligibility criteria for the study and the nature of the protocol;
- fluctuations in the disease incidence for patients available to enroll in our trials;
- compliance of patients and investigators with the protocol and applicable regulations;

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prior regulatory agency review and approval of our applications and procedures;

Institutional Review Board (IRB) review and monitoring;

analysis of data obtained from preclinical and clinical activities which are susceptible to varying interpretations, which interpretations could delay, limit or prevent regulatory approval;

changes in the policies of regulatory authorities for drug approval during the period of product development including the FDA s recent draft guidance released in October 2007 relating to Antibacterial Drug Products: Use of Noninferiority Studies to Support Approval; and

the availability of skilled and experienced staff to conduct and monitor clinical studies, to accurately collect data and to prepare the appropriate regulatory applications.

We depend on key personnel, including members of our direct sales force, in a highly competitive market for such skilled personnel.

We are highly dependent on the principal members of our senior management and key scientific, sales and technical personnel. The loss of any of our personnel could have a material adverse effect on our ability to achieve our goals. We currently maintain employment agreements with the following executive officers: Steven M. Rauscher, President and Chief Executive Officer; Dominick Colangelo, Esq., Executive Vice President, Corporate Development and Operations; Philippe M. Maitre, Executive Vice President and Chief Financial Officer; and Mark A. Glickman, Senior Vice President, Sales and Marketing. The term of each employment agreement continues until it is terminated by the officer or Oscient.

Our future success is dependent upon our ability to attract and retain additional qualified sales and marketing, clinical development, scientific and managerial personnel. Like others in our industry, we may face, and in the past we have faced from time to time, difficulties in attracting and retaining certain employees with the requisite expertise and qualifications. We believe that our historical recruiting periods and employee turnover rates are similar to those of others in our industry; however, we cannot be certain that we will not encounter greater difficulties in the future.

With routine employee turnover, we also face the risk of being unable to enforce our rights under non-compete and non-solicitation provisions as well as confidentiality obligations that protect the Company. We also need to guard against the same obligations that our employees or our potential employees have with their former employers, otherwise we may be subject to claims that these employees or we have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers and disputes may arise as to rights in related or resulting know-how and inventions. Litigation may be necessary to defend against these claims, which may result in substantial costs, be a distraction to management, require payment of money claims, and result in a loss of valuable intellectual property or personnel.

Failure to obtain or maintain regulatory approvals in foreign jurisdictions will prevent us from marketing FACTIVE abroad.

We have entered into commercialization relationships with Pfizer Mexico, Abbott Canada and Menarini whereby we sublicensed our rights to sell FACTIVE tablets in Mexico to Pfizer Mexico, in Canada to Abbott Canada and in Europe to Menarini. Obtaining foreign approvals may require additional trials and expense. Further, in order to market FACTIVE in Europe, we or our distribution partners may need to obtain multiple regulatory approvals. For instance, in the first quarter of 2008, Menarini, submitted a regulatory filing seeking approval of FACTIVE in Europe. Menarini is seeking approval of FACTIVE for the treatment of community-acquired pneumonia and acute bacterial exacerbations of chronic bronchitis. The regulatory review time in Europe is approximately twelve (12) months. Menarini may not be able to obtain regulatory approval for FACTIVE, which could delay or prevent us from receiving revenue from sales of FACTIVE in Europe, and/or may require additional expenditures.

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We may not be able to obtain approval or may be delayed in obtaining approval from any or all of the jurisdictions in which we seek approval to market FACTIVE. Further, based on the amendment of our agreement with Abbott Canada of January 31, 2008, Abbott Canada is no longer obligated to pursue the CAP and ABS indications in Canada. If our partners are unsuccessful in their efforts to obtain and/or expand their respective marketing approvals, the revenues that we expect to obtain from the sales of FACTIVE could be significantly limited.

We rely on operational data obtained from third party vendors which could be inaccurate.

We rely on prescription and wholesaler data obtained from industry-accepted, third-party data sources. These third-party data projections may not accurately reflect actual prescriptions or trade levels of inventory. If this data turns out to be inaccurate or unreliable and our controls are not effective, there could be an adverse effect on our ability to properly manage inventory and our financial performance.

RISKS RELATED TO OUR INDUSTRY

Health care insurers, the government and other payers may not pay for our products or may impose limits on reimbursement.

Our ability to commercialize ANTARA capsules, FACTIVE tablets, Ramoplanin and our future products will depend, in part, on the extent to which reimbursement for such products will be available from third-party payers, such as Medicare, Medicaid, health maintenance organizations, health insurers and other public and private payers. We cannot assure you that third-party payers will pay for such products or will establish and maintain price levels sufficient for realization of an appropriate return on our investment in product development. If government and private payers do not cover our products or do not reimburse for use of our products at adequate reimbursement levels, our products may fail to achieve market acceptance and our results of operations may be materially adversely affected. Under the Medicare Part D outpatient prescription drug benefit, Medicare beneficiaries (primarily the elderly over 65 and the disabled) may enroll in private drug plans. There are multiple types of Part D plans and numerous plan sponsors, each with its own formulary and product access requirements. The plans have considerable discretion in establishing formularies and tiered co-pay structures and in placing prior authorization and other restrictions on the utilization of specific products. In addition, Part D plan sponsors are permitted and encouraged to negotiate rebates with manufacturers. The profitability of our products may depend on the extent to which they enjoy preferred status on the formularies of a significant portion of the largest Part D prescription drug plans. Our ability to obtain such preferred status on favorable economic terms cannot be assured. Additionally, the Part D program has been the subject of much controversy since its enactment in 2003, and significant amendments, including an amendment to authorize the Federal Government to directly negotiate drug prices with manufacturers, are possible. Such amendments could adversely affect our anticipated revenues and results of operations, possibly materially.

Most state Medicaid programs have established preferred drug lists, or PDLs, and the process, criteria and timeframe for obtaining placement on the PDL varies from state to state. Under the Medicaid drug rebate program, a manufacturer must pay a rebate for Medicaid utilization of a product. The rebate for an innovator product is based on the greater of (i) 15.1% of the product s average manufacturer price (AMP) or (ii) the difference between the product s AMP and the best price offered by the manufacturer, plus an inflation adjustment if AMP increases faster than inflation. In addition, many states have established supplemental rebate programs as a condition for including a drug product on a PDL. The profitability of our products may depend on the extent to which they appear on the PDLs of a significant number of state Medicaid programs and the amount of the rebates that must be paid to such states. In addition, there is significant fiscal pressure on the Medicaid program, and amendments to lower the pharmaceutical costs of the program and/or lower manufacturers rebate liability are possible. Such amendments could adversely affect our anticipated revenues and results of operations, possibly materially.

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As a part of the effort to control the costs of prescription drugs, many health maintenance organizations and other third-party payers use formularies, or lists of drugs for which coverage is provided under their benefit plans. Each payer that maintains a drug formulary makes its own determination as to whether a drug will be included in the formulary and whether particular drugs in a therapeutic class will have preferred status over other drugs in the same class. This determination often involves an assessment of the clinical appropriateness of the drug and sometimes the cost of the drug in comparison to alternative products. We cannot assure you that ANTARA capsules, FACTIVE tablets, Ramoplanin or any of our future products will be added to payers formularies, whether our products will have preferred status over alternative therapies, nor whether the formulary decisions will be made in a timely manner. We may also decide to enter into discount or formulary fee arrangements with payers, which could result in our receiving lower or discounted prices for our products.

If a successful product liability claim or series of claims is brought against us for uninsured liabilities or in excess of insured liabilities, we could be forced to pay substantial damage awards.

The use of any of our product candidates in clinical trials, and the sale of any approved products, might expose us to product liability claims. We currently maintain, and we expect that we will continue to maintain, product liability insurance coverage in the amount of $10.0 million per occurrence and $10.0 million in the aggregate. Such insurance coverage might not protect us against all of the claims to which we might become subject. We might not be able to maintain adequate insurance coverage at a reasonable cost or in sufficient amounts or scope to protect us against potential losses. In the event a claim is brought against us, we might be required to pay legal and other expenses to defend the claim, as well as uncovered damage awards resulting from a claim brought successfully against us. Furthermore, whether or not we are ultimately successful in defending any such claims, we might be required to direct financial and managerial resources to such defense and adverse publicity could result, all of which could harm our business.

In addition, a product recall or excessive warranty claims (in any such case, whether arising from manufacturing deficiencies, labeling errors or other safety or regulatory reasons) could have an adverse effect on our product sales or require a change in the indications for which our products may be used.

RISKS RELATED TO THE EXCHANGE OFFER

The value of the guarantee and the collateral securing the new notes may not be sufficient to satisfy obligations under the new notes.

The new notes will be guaranteed by our subsidiary Guardian II and this guarantee will be secured by a second priority lien on the collateral described in this prospectus. The collateral also secures, on a first priority lien basis, our obligations under the $20.0 million aggregate principal amount 12% senior secured note due August 2010 and interest accrued thereon (the Paul Capital Note) and our and Guardian II s obligations to Paul Capital under the revenue interests assignment agreement. In the event of foreclosure on the collateral, the proceeds from the sale of the collateral securing indebtedness under the new notes may not be sufficient to satisfy the new notes because proceeds from a sale of the collateral would be distributed first to satisfy indebtedness under the Paul Capital Note and ours and Guardian II s payment obligation under the revenue interests assignment agreement. Only after all of Guardian II s obligations under the first priority lien have been satisfied will proceeds from the sale of collateral be available to holders of the new notes.

No appraisals of any collateral have been prepared in connection with this exchange offer. The value of the collateral and the amount to be received upon a sale of the collateral will depend upon many factors including, among others, the condition of the collateral and our industry, the ability to sell the collateral in an orderly sale, the condition of the international, national and local economies, the availability of buyers, the availability of credit to a buyer and similar factors. The book value of the collateral should not be relied on as a measure of realizable value for such assets. A substantial portion of the collateral consists of certain license rights to sell ANTARA and by their nature, such portions of the collateral may be illiquid and may have no readily ascertainable market value. In addition, a significant portion of the collateral includes assets that may only be

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usable, and thus retain value, as part of our existing operating businesses. Accordingly, any such sale of the collateral separate from the sale of certain operating businesses may not be feasible or of significant value.

There is no market for the new notes, an active trading market for the new notes may not develop, and you may not be able to sell the new notes at a price acceptable to you.

There is no public market for the new notes and we do not intend to apply for listing of the new notes on any national exchange or quotation system. We cannot assure you of the liquidity of any markets that may develop for the new notes, your ability to sell the new notes or the price at which you may be able to sell the new notes. In addition, we do not know whether an active trading market will ever develop for the new notes. If a market for the new notes were to develop, the new notes could trade at prices that may be higher or lower than the principal amount or public offering price. Additionally, there is a risk that the liquidity of, and the trading market for, the new notes will be limited if few new notes are issued in connection with the exchange offer. If only a limited number of new notes are outstanding after the completion of the exchange offer, it may be more difficult for a market to develop in the new notes and any market that does develop may be less liquid than would be the case if more new notes were outstanding. The liquidity of the trading market for the new notes, if any, and the market price quoted for the new notes may be adversely affected by changes in interest rates for comparable securities, by changes in our financial performance or prospects and by declines in the price of our common shares, as well as by declines in the prices of securities, or the financial performance or prospects of similar companies.

If you do not exchange your existing 2011 notes, they may be difficult to resell.

To the extent any existing 2011 notes are tendered and accepted in the exchange offers, the trading market, if any, for the existing 2011 notes that remain outstanding after the exchange offers would be adversely affected because the market will be less liquid.

If you hold new notes, you will not be entitled to any rights with respect to our common stock, but you will be subject to all changes made with respect to our common stock.

If you hold new notes, you will not be entitled to any rights with respect to our common stock (including voting rights and rights to receive any dividends or other distributions on our common stock), but you will be subject to all changes affecting the common stock. You will have rights with respect to our common stock only if and when your notes are converted. For example, in the event that an amendment is proposed to our articles of organization or by-laws requiring stockholder approval and the record date for determining the stockholders of record entitled to vote on the amendment occurs prior to delivery of the common stock to you, you will not be entitled to vote on the amendment, although you will nevertheless be subject to any changes in the powers, preferences or special rights of our common stock.

We may be unable to repay or repurchase the new notes or our other indebtedness.

At maturity, the entire outstanding principal amount of the new notes will become due and payable. In addition, if a fundamental change, as defined under Description of New Notes Repurchase of the new notes at the option of holders upon a fundamental change, occurs, you may require us to repurchase all or a portion of your new notes. We may not have sufficient funds or may be unable to arrange for additional financing to pay the repurchase price of the new notes or the principal amount due at maturity. Any future borrowing arrangements or debt agreements to which we become a party may contain restrictions on or prohibitions against our redemption or repurchase of the new notes. If we are prohibited from redeeming or repurchasing the new notes, we could try to obtain the consent of lenders under those arrangements, or we could attempt to refinance the borrowings that contain the restrictions. If we do not obtain the necessary consents or refinance the borrowings, we will be unable to repurchase the new notes. Such a failure would constitute an event of default under the new notes indenture which could, in turn, constitute a default under the terms of our other indebtedness.

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The price of our common stock, and therefore the price of the new notes, may fluctuate significantly, which may make it difficult for holders to resell the new notes or the common stock issuable upon conversion of the new notes when desired or at attractive prices.

The market price of the new notes is expected to be affected significantly by the market price of our common stock. The market price of our common stock is subject to significant fluctuations in response to the factors in this section and other factors, including:

- the revenues that we may derive from the sale of FACTIVE tablets and ANTARA, as compared to analyst estimates;
- our ability to enter into transactions to acquire, license or co-promote additional products;
- the results of any clinical trials that we may conduct and the pace of our progress in those clinical trials;
- the results of clinical trials conducted by potential partners for Ramoplanin or products developed from any of our legacy alliances and the pace of our progress in those clinical trials;
- whether we will be able to successfully integrate any additional products that we acquire, license or co-promote into our sales and marketing efforts;
- the timing of the achievement of our development milestones and other payments under our strategic alliance agreements;
- termination of, or an adverse development in, our strategic alliances;
- conditions and publicity regarding the biopharmaceutical industry generally;
- price and volume fluctuations in the stock market at large which do not relate to our operating performance;
- variations in our rates of product returns, allowances and rebates and discounts;
- sales of shares of our common stock in the public market and low trading volume of our common stock; and
- comments by securities analysts, or our failure to meet market expectations, including our projected financial performance.

Over the two-year period ending December 31, 2007 and the nine month period ending September 30, 2008, the closing price of our common stock as reported on the NASDAQ Global Market ranged from a high of $22.48 to a low of $0.70. The stock market has from time to time experienced extreme price and volume fluctuations that are unrelated to the operating performance of particular companies. In the past, companies that have experienced volatility have sometimes been the subject of securities class action litigation. If litigation were instituted on this basis, it could result in substantial costs and a diversion of management s attention and resources. These broad market fluctuations may adversely affect the price of our securities, regardless of our operating performance. Because the new notes are convertible into shares of our common stock, volatility of or depressed prices for our common stock could have a similar effect on the trading price of the new notes. A decline in our common stock price may cause the value of the new notes to decline. Holders who receive common stock upon conversion of the new notes also will be subject to the risk of volatility and depressed prices of our common stock.

We may issue additional equity securities and thereby materially and adversely affect the price of our common stock.

Sales of substantial amounts of shares of our common stock in the public market after this offering, or the perception that those sales may occur, could cause the market price of our common stock to decline. The new notes indenture does not restrict our ability to issue additional shares of common stock or other securities convertible into or exchangeable for our common stock. We have used and may continue to use our common

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stock or securities convertible into or exchangeable for our common stock to acquire technology, product rights or businesses, or for other purposes. Our authorized capital stock consists of 175,000,000 shares of common stock, par value $0.10 per share, which includes 625,000 shares of common stock designated as series B restricted common stock. As of September 5, 2008, we had approximately 14,254,435 shares of common stock outstanding and no shares of series B restricted stock outstanding. If we issue additional equity securities, the price of our common stock and, in turn, the price of the new notes may be materially and adversely affected.

The issuance of common shares in the exchange offer will result in immediate dilution to the ownership interests of existing stockholders.

We are offering to exchange for each $1,000 principal amount of existing 2011 notes $400 principal amount of new notes and shares of our common stock having a value equal to $100, based on the simple average of the daily volume-weighted average price of a share of our common stock on the NASDAQ Global Market for each of the five trading days prior to and including the second business day before the expiration date of the exchange offer; provided, that in no event shall we issue more than 100 shares of our common stock per each $1,000 principal amount of existing 2011 notes tendered, which reflects a minimum issue price of $1.00 per share. The issuance of shares of our common stock in the exchange offer will result in immediate dilution to our existing stockholders.

Conversion of the notes will dilute the ownership interests of existing stockholders.

The conversion of some or all of the new notes will dilute the ownership interest of our existing stockholders. Any sales in the public market of the common stock issuable upon such conversion could adversely affect prevailing market prices of our common stock. In addition, the existence of the new notes may encourage short selling by market participants because the conversion of the new notes could depress the price of our common stock and short selling by new note holders engaging in hedging transactions which could further depress the price of our common stock.

The new notes indenture provides only limited restrictions on our ability to incur additional debt and does not limit our ability to take other actions that could negatively impact holders of the new notes.

The new notes indenture provides that we may not incur additional unsecured indebtedness in excess of $50 million (Permitted Unsecured Indebtedness) from the earlier of (i) the date of the issuance of the new notes to the date that is one year from the date on which our common stock has traded at a price which exceeds the conversion price then in effect for at least 20 trading days during any consecutive 30 trading day period and (ii) the first anniversary of the maturity date of the new notes; provided that, any indebtedness incurred to finance new product acquisition or in connection with any refinancing of Permitted Unsecured Indebtedness, our existing indebtedness including existing 2011 notes not tendered in the exchange offer, our obligations to PRF under the Paul Capital Note, revenue interests assignment agreement and our obligations under the 5% Convertible Promissory Notes due 2009 and the new notes shall not be counted toward the aforementioned limit. The new notes indenture otherwise does not limit the amount or kind of debt that may be incurred by us or any of our subsidiaries and we are not otherwise limited from incurring additional indebtedness, including senior indebtedness or secured debt. In addition, the limited covenants applicable to the new notes do not restrict our ability to pay dividends, issue or repurchase stock or other securities or require us to achieve or maintain any minimum financial results relating to our financial position or results of operations. Our ability to recapitalize, incur additional debt and take a number of other actions that are not limited by the terms of the new notes could have the effect of diminishing our ability to make payments on the new notes when due. In addition, the indenture for the new notes does not afford protection to holders of the notes in the event of a fundamental change except to the extent described under Description of New Notes Conversion rate adjustment on a fundamental change and Description of New Notes Repurchase of the new notes at the option of holders upon a fundamental change.

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The conversion rate adjustment that may be made in connection with a transaction constituting a fundamental change may not adequately compensate you for the lost option value of your new notes as a result of such fundamental change.

In connection with a fundamental change, we may be required to increase the conversion rate for the new notes surrendered for conversion. The conversion rate adjustment is described under Description of New Notes Conversion rate adjustment on a fundamental change. The conversion rate adjustment is designed to compensate you for the lost option value of your notes as a result of certain fundamental changes; such increases are only an approximation of such lost value and may not adequately compensate you for such loss. In addition, even if a fundamental change occurs, in some cases there be no such conversion rate adjustment. See Description of New Notes Conversion rate adjustment on a fundamental change.

If we automatically convert the new notes, there is a risk of fluctuation in the price of our common stock from the date we elect to automatically convert the new notes to the automatic conversion date.

We may elect to automatically convert the new notes on or prior to maturity if the closing price of our common stock has exceeded 130% of the conversion price of the new notes then in effect for at least 20 trading days during any 30 consecutive trading day period ending within five trading days prior to the notice of automatic conversion. The new notes are convertible into our common stock at a conversion price equal to a 10% premium over the simple average of the daily volume-weighted average price of a share of our common stock on the NASDAQ Global Market for each of the five trading days prior to and including the second business day before the expiration date of the exchange offer; provided, that in no event will the conversion price be less than $1.10 per share. However, there is a risk of fluctuation in the price of our common stock between the time when we may first elect to automatically convert the new notes and the automatic conversion date. This period must be at least 20 days and not more than 30 days prior to the automatic conversion date. As a result of any such fluctuation in the price of our common stock, the aggregate conversion value you actually receive upon any automatic conversion of the new notes may be less than the principal amount of the new notes.

Rating agencies may provide unsolicited ratings on the new notes that could cause the market value or liquidity of the new notes to decline.

We have not requested a rating of the new notes from any rating agency and believe it is unlikely that the new notes will be rated. However, if one or more rating agencies rate the new notes and assign the notes a rating lower than the rating expected by investors, or reduces their rating in the future, the market price or liquidity of the new notes and our common stock could be harmed.

Your right to recover amounts under the second priority lien will be junior to amounts recovered in respect of the first priority liens.

The second priority liens will rank behind all of the first priority liens. Upon any distribution to our creditors in a bankruptcy, liquidation, reorganization or similar proceedings, the beneficiaries of the first priority liens will be entitled to be paid in full before any payment will be made on the second priority liens.

The new notes will only be guaranteed by our subsidiary Guardian II and are not secured by any assets of the Company.

The new notes will be guaranteed by our subsidiary Guardian II and this guarantee will be secured by a second priority lien on substantially all of the assets of Guardian II. The new notes are not secured by any assets of the Company. The Company may acquire assets in the future and the holders of the new notes would have no security interests in any such assets. The Company may also in the future secure other indebtedness with its assets or assets that it may acquire and the holders of the new notes would not have any security interest therein.

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We are permitted to incur additional indebtedness which will be secured by the second priority lien and is on parity with the new notes.

Pursuant to the Intercreditor Agreement which governs the rights between the first and second lien holders, we are permitted to incur additional indebtedness which will be secured by the second priority lien and will be on parity with the new notes. If all holders of existing 2011 notes were to tender in the exchange offer, we would issue $90,280,000 principal amount of new notes under the new notes indenture. In addition, we will issue under the new notes indenture a note in a principal amount of $2,000,000 to Paul Capital in form and substance substantially identical to the new notes, with the exception that such note will not be registered. We are permitted to incur indebtedness under the Intercreditor Agreement up to $140,000,000. To the extent we issue additional indebtedness on parity with the new 2011 notes that is secured by the same assets as the new notes, this will reduce the proceeds available to satisfy the obligations under the new notes. See Description of New Notes Intercreditor Agreement.

Federal and state statutes allow courts, under specific circumstances, to void guarantees and require holders of the new notes to return payments received from guarantors.

Under the federal bankruptcy law and comparable provisions of state fraudulent transfer laws, a guarantee could be voided, or claims in respect of a guarantee could be subordinated to all other debts of that guarantor, if the guarantor at the time it incurred the indebtedness evidenced by its guarantee:

- received less than reasonably equivalent value or fair consideration for the incurrence of its guarantee and was insolvent or rendered insolvent by reason of such incurrence;
- was engaged in a business or transaction for which the guarantor s remaining assets constituted unreasonably small capital; or
- intended to incur, or believed that it would incur, debts beyond its ability to pay those debts as they mature.

The measures of insolvency for purposes of these fraudulent transfer laws will vary depending upon the law applied in any proceeding to determine whether a fraudulent transfer has occurred. Generally, however, a guarantor would be considered insolvent if:

- the sum of its debts, including contingent liabilities, was greater than the fair saleable value of all of its assets;
- the present fair saleable value of its assets was less than the amount that would be required to pay its probable liability on its existing debts, including contingent liabilities, as they become absolute and mature; or
- it could not pay its debts as they become due.

We cannot assure you as to what standard a court would apply in determining whether a guarantor would be considered to be insolvent. If a court determined that a guarantor was insolvent after giving effect to the guarantee, it could void the guarantee of the new notes by Guardian II and require you to return any payments received from Guardian II.

The Intercreditor agreement will substantially limit the rights of the holders of the new notes with respect to the collateral securing the new notes and holders of the new notes will not control decisions regarding collateral.

The rights of the holders of the new notes with respect to the collateral securing the guarantee on the new notes will be substantially limited pursuant to the terms of the provisions of the Intercreditor agreement. Under the Intercreditor Agreement, at any time the obligations that have the benefit of the first priority liens are outstanding, any actions that may be taken in respect of the collateral, including the ability to cause the

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commencement of enforcement proceedings against the collateral and to control the conduct of such proceedings, the approval of amendments to, releases of collateral from the lien of, and waivers of past defaults under, the collateral documents, will be at the direction of the holders of the obligations secured by the first priority liens. The trustee and the collateral agent, on behalf of the holders of the new notes, will not have the ability to control or direct such actions, even if the rights of the holders of the new notes are adversely affected. Additional releases of collateral from the second priority lien securing the new notes are permitted under some circumstances.

The holders of the first priority liens will control substantially all matters related to the collateral securing the guarantee. They may cause the security agent to dispose of, release, or foreclose on, or take other actions with respect to, the collateral with which noteholders may disagree or that may be contrary to the interests of noteholders.

Bankruptcy laws may limit your ability to realize value from the collateral.

The right of the collateral agent to repossess and dispose of the collateral upon the occurrence of an event of default under the indenture governing the new notes is likely to be significantly impaired by applicable bankruptcy law if a bankruptcy case were to be commenced by or against us before the collateral agent repossessed and disposed of the collateral. Upon the commencement of a case under the bankruptcy code, a secured creditor such as the collateral agent is prohibited from repossessing its security from a debtor in a bankruptcy case, or from disposing of security repossessed from such debtor, without bankruptcy court approval, which may not be given. Moreover, the bankruptcy code permits the debtor to continue to retain and use collateral even though the debtor is in default under the applicable debt instruments, provided that the secured creditor is given adequate protection. The meaning of the term adequate protection may vary according to circumstances, but it is intended in general to protect the value of the secured creditor s interest in the collateral as of the commencement of the bankruptcy case and may include cash payments or the granting of additional security if and at such times as the bankruptcy court in its discretion determines that the value of the secured creditor s interest in the collateral is declining during the pendency of the bankruptcy case. A bankruptcy court may determine that a secured creditor may not require compensation for a diminution in the value of its collateral if the value of the collateral exceeds the debt it secures.

In view of the lack of a precise definition of the term adequate protection and the broad discretionary power of a bankruptcy court, it is impossible to predict:

- how long payments under the new notes could be delayed following commencement of a bankruptcy case;
- whether or when the collateral agent could repossess or dispose of the collateral;
- the value of the collateral at the time of the bankruptcy petition; or
- whether or to what extent holders of the new notes would be compensated for any delay in payment or loss of value of the collateral through the requirement of adequate protection.

In addition, the intercreditor agreement provides that, in the event of a bankruptcy, the trustee, as the collateral agent for the new notes, may not object to a number of important matters following the filing of a bankruptcy petition so long as any first lien debt is outstanding. After such a filing, the value of the collateral securing the new notes could materially deteriorate and you would be unable to raise an objection. The right of the holders of obligations secured by first priority liens on the collateral to foreclose upon and sell the collateral upon the occurrence of an event of default also would be subject to limitations under applicable bankruptcy laws if we or any of our subsidiaries become subject to a bankruptcy proceeding.

Any disposition of the collateral during a bankruptcy case would also require permission from the bankruptcy court. Furthermore, in the event a bankruptcy court determines the value of the collateral is not sufficient to repay all amounts due on first priority lien debt and, thereafter, the new notes, the holders of the new notes would hold a secured claim to the extent of the value of the collateral to which the holders of the new notes are entitled and

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unsecured claims with respect to such shortfall. The bankruptcy code only permits the payment and accrual of post-petition interest, costs and attorney s fees to a secured creditor during a debtor s bankruptcy case to the extent the value of its collateral is determined by the bankruptcy court to exceed the aggregate outstanding principal amount of the obligations secured by the collateral.

Rights of holders of new notes in the collateral may be adversely affected by the failure to perfect security interests in certain collateral.

The security interests in the collateral securing the guarantee on the new notes includes assets, both tangible and intangible, whether now owned by Guardian II or acquired by Guardian II in the future. Applicable law requires that certain property and rights acquired after the grant of a general security interest can only be perfected at the time such property and rights are acquired and identified. There can be no assurance that the trustee and the collateral agent will monitor, or that we will inform the future acquisition of property and rights that constitute collateral, and that the necessary action will be taken to properly perfect the security interest in such after acquired collateral.

The tax treatment of the exchange offer to holders of existing 2011 notes is not clear.

Subject to the limitations set forth in Material United States Federal Income Tax Consequences (below), it is more likely than not that the exchange of existing 2011 notes for shares of common stock should qualify as a tax-free recapitalization for U.S. federal income tax purposes with the result that U.S. holders of existing 2011 notes should not recognize any gain or loss on the exchange with respect thereto. However, based on all the relevant facts and circumstances of the new notes, including the guarantee by Guardian II secured by a second lien on its property, the convertibility of the new notes, the term being less than three years and their other terms, it is not clear whether the new notes received in exchange for the existing 2011 notes would be considered securities eligible for tax-free receipt as part of a recapitalization. If the exchange qualifies as a recapitalization and the new notes are treated as securities for this purpose, a U.S. Holder should not recognize any gain or loss on the exchange. Alternatively, the exchange could be treated as a recapitalization with respect to the exchange of existing 2011 notes for shares of common stock, but with the receipt of the new notes being treated as other property, with the result that U.S. Holders of the existing 2011 notes would not recognize any loss, but would recognize gain (if any), on the entire exchange of existing 2011 notes for new notes and shares of common stock to the extent of the fair market value of the new notes received. It is also possible that the exchange of the existing 2011 notes for new notes and shares of common stock could be treated as a taxable exchange with the result that U.S. Holders of existing 2011 notes could recognize gain or loss on such exchange.

Adjustments to the conversion rate of the new notes may result in a taxable distribution to you.

Although to date we have never paid cash dividends on our common stock, if in the future we pay a cash dividend on our common stock and there is a resulting adjustment to the conversion price, a note holder could be deemed to have received a taxable dividend subject to U.S. federal income tax without the receipt of any cash. Other adjustments in the conversion ratio (or failures to make such adjustments) that have the effect of increasing your proportionate interest in our assets or earnings may have the same result. Any such deemed dividends would be taxable as described in Material United States Federal Income Tax Consequences.

You will be required to pay U.S. federal income tax on the new notes even if we do not pay cash interest.

Because the new notes provide us with the option to pay interest either (i) in cash or (ii) by (A) increasing the principal amount of the new notes or (B) issuing additional new notes, the new notes will be treated as issued with original issue discount, or OID, for U.S. federal income tax purposes. Holders of new notes will be required to include the OID in gross income on a constant yield to maturity basis, regardless of whether the interest is paid currently in cash. It is generally expected that the amount of OID includible in a holder s gross income will correspond to the stated interest payments provided by the new notes. See Material United States Federal Income Tax Consequences.

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The Internal Revenue Service may challenge the status of the existing 2011 notes and new notes as debt for U.S. federal income tax purposes.

The status of the existing 2011 notes and new notes as debt for U.S. federal income tax purposes depends upon a number of factors. While we intend to take the position that both the existing 2011 notes and new notes are debt for this purpose, there can be no assurance that the Internal Revenue Service will not successfully challenge this position. If the existing 2011 notes and new notes were not treated as debt for U.S. federal income tax purposes, the tax consequences of the Exchange and the tax consequences to the holders of new notes could be materially different from that described below in Material United States Federal Income Tax Consequences.

We may incur a U.S. federal income tax liability as a result of the exchange offer.

As a result of the exchange offer, we may realize cancellation of indebtedness (COD) income. COD income must generally be included in gross income for U.S. federal income tax purposes. An exception is available if we are insolvent for U.S. federal income tax purposes (i.e., our liabilities exceed the fair market value of our assets). To the extent that we are not insolvent, we expect that the amount of our net operating losses (NOL) and other tax attributes will offset the amount of recognized COD income for regular U.S. federal income tax purposes. However, the use of NOLs is limited for alternative minimum tax (AMT) purposes and as a consequence we may incur an AMT liability with respect to the COD income recognized on the exchange offer. See Material United States Federal Income Tax Consequences, below.

RISKS RELATED TO THE SECURITIES MARKET

Our stock price is highly volatile.

The market price of our stock has been and is likely to continue to be highly volatile due to the risks and uncertainties described herein, as well as other factors, including:

- the revenues that we may derive from the sale of ANTARA capsules and FACTIVE tablets, as compared to analyst estimates or to our own guidance;
- our ability to enter into transactions to acquire, license or co-promote additional products;
- the results of any clinical trials that we may conduct and the pace of our progress in those clinical trials;
- the results of clinical trials conducted by partners for Ramoplanin or products developed from any of our legacy alliances and the pace of progress in those clinical trials;
- whether we will be able to successfully integrate any additional products that we acquire, license or co-promote into our sales and marketing efforts;
- the timing of the achievement of development milestones and other payments under our strategic alliance agreements;
- termination of, or an adverse development in, our strategic alliances;
- conditions and publicity regarding the pharmaceutical industry generally;

price and volume fluctuations in the stock market at large which do not relate to our operating performance;

variations in our rates of product returns, allowances and rebates and discounts;

sales of shares of our common stock in the public market; and

comments by securities analysts, or our failure to meet market expectations, including our projected financial performance.

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Over the two-year period ended December 31, 2007 and the nine month period ending September 30, 2008 the closing price of our stock as reported on The NASDAQ Global Market ranged from a high of $22.48 to a low of $0.70. The stock market has from time to time experienced extreme price and volume fluctuations that are unrelated to the operating performance of particular companies. In the past, companies that have experienced volatility have sometimes been the subject of securities class action litigation. If litigation were instituted on this basis, it could result in substantial costs and a diversion of management s attention and resources. These broad market fluctuations may adversely affect the price of our securities, regardless of our operating performance.

Multiple factors beyond our control may cause fluctuations in our operating results and may cause our stock price to fall.

Our revenues and results of operations may fluctuate significantly, depending on a variety of factors, including the following:

- the pace of our commercialization of ANTARA capsules and FACTIVE tablets, and in the case of FACTIVE, seasonal fluctuations in the duration and severity of the annual respiratory tract infection season;
- the level of acceptance by physicians and third party payers of ANTARA and FACTIVE;
- the progress of any future clinical trials for our products;
- the progress of any clinical trials conducted by partners for Ramoplanin or products developed through our legacy alliances;
- our success in concluding transactions to acquire additional approved products and product candidates, and the pace of our commercialization of such additional products;
- the introduction of new products and services by our competitors;
- regulatory actions; and
- expenses related to, and the results of, litigation and other proceedings relating to intellectual property rights.

We will not be able to control many of these factors. In addition, if our revenues in a particular period do not meet expectations, we may not be able to adjust our expenditures in that period, which could cause our business to suffer and may cause our stock price to fall. We believe that period-to-period comparisons of our financial results will not necessarily be meaningful. You should not rely on these comparisons as an indication of our future performance. If our operating results in any future period fall below the expectations of securities analysts and investors, our stock price may fall, possibly by a significant amount.

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

Certain statements contained herein related to our anticipated revenue increases for the fiscal year December 31, 2008 and the relative contributions of ANTARA and FACTIVE to such revenues, our anticipated cash utilization and the sufficiency of our cash resources, our discount and rebate programs for ANTARA and FACTIVE, the possible partnering or other strategic opportunities for the continued development of Ramoplanin, our plans to work with the FDA to implement any necessary changes to the FACTIVE labeling, the potential marketing approval of FACTIVE in Europe, the possibility of acquiring a third product, our ability to raise additional funds and/or refinance our maturing and existing debt and to fund operations, as well as other statements related to the progress and timing of product development, present or future licensing, collaborative or financing arrangements or that otherwise relate to future periods, are forward-looking statements. These statements represent, among other things, the expectations, beliefs, plans and objectives of management and assumptions underlying or judgments concerning the future financial performance and other matters discussed in this prospectus. The words may, will, should, plan, believe, estimate, intend, anticipate, project, and expect and similar expressions are intended to identify forward-looking statements. All forward-looking statements involve certain risks, estimates, assumptions, and uncertainties with respect to future revenues, cash flows, expenses and the cost of capital, among other things.

Some of the important risk factors that could cause our actual results to differ materially from those expressed in our forward-looking statements are included under the heading Risk Factors in this prospectus. We encourage you to read these risks carefully. We caution investors not to place significant reliance on the forward-looking statements contained in this prospectus. These statements, like all statements in this prospectus, speak only as of the date of this prospectus (unless another date is indicated) and we undertake no obligation to update or revise forward-looking statements.

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USE OF PROCEEDS

We will not receive any cash proceeds from the issuance of the new notes and common stock pursuant to the exchange offer.

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PRICE RANGE OF COMMON STOCK

Our common stock is traded on the NASDAQ Global Market under the symbol OSCI . As of September 30, 2008, there were approximately 1,342 shareholders of record of our common stock. The table below sets forth the range of high and low sale prices for each fiscal quarter during 2006 and 2007 and through September 30, 2008, as reported by the NASDAQ Global Market.

	High	Low
Year ended December 31, 2006[1]		
First Quarter	$ 22.48	$ 14.16
Second Quarter	$ 16.32	$ 6.16
Third Quarter	$ 11.60	$ 4.40
Fourth Quarter	$ 9.44	$ 4.15
Year ended December 31, 2007		
First Quarter	$ 5.50	$ 4.10
Second Quarter	$ 7.78	$ 4.45
Third Quarter	$ 4.75	$ 2.48
Fourth Quarter	$ 3.27	$ 1.16
Year ended December 31, 2008		
First Quarter	$ 2.30	$ 1.06
Second Quarter	$ 2.84	$ 1.38
Third Quarter	$ 1.53	$ 0.70
Fourth Quarter (through November 4, 2008)	$ 1.15	$ 0.51

[1] High and low sale prices adjusted to reflect one-for-eight reverse stock split effected on November 15, 2006.
The last reported sales price of our common stock on The NASDAQ Global Market on November 4, 2008 was $0.77.

DIVIDEND POLICY

We have not paid any dividends since our inception and presently anticipate that all earnings, if any, will be retained for development of our business and that no dividends on our common stock will be declared in the foreseeable future. Any future dividends will be subject to the discretion of our Board of Directors and will depend upon, among other things, future earnings, the operating and financial condition of our company, our capital requirements and general business conditions.

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RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth our historical deficiency of earnings available to cover fixed charges for each of our most recent fiscal years and the period ended June 30, 2008. For the six months ended June 30, 2007, the Company had a ratio of earnings to fixed charges of 1.4x.

	Six months ended June 30, 2008	Year ended December 31, 2007	2006	2005	2004	2003
				(in thousands)		
Deficiency of earnings available to cover fixed charges[1][2]	$ (37,991)	$ (29,469)	$ (78,298)	$ (88,628)	$ (93,479)	$ (29,388)

(1) Earnings were inadequate to cover fixed charges. We needed additional earnings, as indicated by the deficiency of earnings available to cover fixed charges for each of the periods presented above, to achieve a ratio of earnings to fixed charges of 1.0x.

(2) The deficiency of earnings available to cover fixed charges is computed by subtracting fixed charges from earnings before income taxes and minority interest plus fixed charges. Fixed charges consist of interest expense plus that portion of net rental expense deemed representative of interest.

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CAPITALIZATION

The following table sets forth our cash and cash equivalents and capitalization as of June 30, 2008:

- on an actual basis;
- on an as adjusted basis to give effect to the issuance of approximately $90,266,000 aggregate principal amount of new notes in the exchange offer assuming all of the outstanding existing 2011 notes were tendered and exchanged and the $2,000,000 principal of the new notes issued to Paul Capital;
- as adjusted to reflect the estimated net gain of approximately $30,836,000 on the assumed restructuring of all outstanding existing 2011 notes. This troubled debt restructuring will result in recognition of a gain in our statement of operations in the period in which the exchange offer is consummated. The actual gain will be based on facts and circumstances as of the date the exchange becomes effective. For every $1 million of existing 2011 notes that are not tendered, the estimated gain on extinguishment reflected in the capitalization table would be reduced by approximately $156,000; and
- on an as adjusted basis to give effect to the issuance of 22,566,600 shares of common stock as a result of the exchange offer and 500,000 shares of common stock due to the amendment of the revenue interests assignment agreement.

The Company applied guidance as set forth in Emerging Issues Task Force (EITF) Issue No. 02-4 Determining Whether a Debtor s Modification or Exchange of Debt Instruments in within the Scope of FASB Statement No. 15 and Statement of Financial Accounting Standards No. 15, Accounting for Debtor and Creditors for Troubled Debt Restructurings (SFAS No. 15), Statement of Financial Accounting Standards No. 133, Accounting for Derivative Instruments and Hedging Activities, as amended (SFAS No. 133), EITF Issue No. 00-19 Accounting for Derivative Financial Instruments Indexed to, and Potentially Settled in, a Company s Own Stock and EITF No. 98-5 Accounting for Convertible Securities with Beneficial Conversion Features or Contingently Adjustable Conversion Ratios . The Exchange Offer is being accounted for as troubled debt restructuring in accordance with EITF No. 02-4 and SFAS No. 15. As a result, the carrying value of the new notes will be equal to the sum of all future cash flows on the notes, including interest payments. Accordingly, all future interest expense and debt issuance costs will be accrued upon the date of the Exchange Offer as a reduction to the gain on extinguishment of the existing 2011 notes and no future interest or amortization expense associated with the new notes will be recognized. The additional interest payment upon automatic or voluntary conversion is an embedded derivative requiring separate accounting. The new notes contain other features which may be considered embedded derivatives which would require separate accounting. The Company will evaluate these features after the closing of the exchange offer.

To facilitate the Exchange Offer, on November 5, 2008, the Company, along with its wholly-owned subsidiary, Guardian II Acquisition Corporation (Guardian II) amended the Revenue Interests Assignment Agreement (the RIAA) with Paul Royalty Fund Holdings II (PRF), an affiliate of Paul Capital Partners (the Amendment), the effectiveness of which is contingent upon, among other things, Guardian II entering into a security agreement granting a second priority lien on its assets to secure its guarantee of the new notes. The Company has applied the guidance of SFAS 15 and has reduced the gain on the Exchange Offer for the direct costs incurred as part of the Amendment. The costs of the Amendment included in the gain on restructuring consist of $2,629,000 as the principal and interest on the $2,000,000 note, $360,000 to record the fair value of the 500,000 common shares issued and $59,000 to record the incremental fair value of the repricing of the 288,018 common warrants held by PRF. The Amendment also contains other contingent payments that may be made to PRF in the future dependent upon the occurrence of certain events. These costs will be expensed at the time they become probable.

The additional interest payment provisions contained in the new notes will be separately accounted for as a derivative financial instrument in accordance with SFAS No. 133. The embedded derivative instrument will be measured at fair value and reflected separately on the balance sheet. However no adjustments for this or any embedded derivatives associated with the new 2011 notes have been included in the following table because the related fair value cannot be determined until the final terms of the new 2011 notes are known and a calculation of

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fair value is completed. Actual accounting values will be based on facts and circumstances, including the market price of our common shares, as of the date the exchanges become effective. This derivative liability will be adjusted quarterly for changes in fair value through either the date the additional interest payment provisions expire, at which time the liability will be zero, or the date at which an additional interest payment provision is triggered, with the corresponding charge or credit to other expense or income. This value of the derivative will be recorded as a reduction of the gain on the debt restructuring.

We will also apply the guidance set forth in EITF Issue No. 98-5, which specifies the appropriate basis to account for contingent beneficial conversion premiums. The new notes may have features that could lead to a beneficial conversion premium at issuance. A beneficial conversion premium may arise if and when, upon issuance of the new notes, the market price of our common shares exceeds the effective conversion price, after separating any additional embedded derivatives.

To the extent that existing 2011 notes are not validly tendered or accepted in the exchange offer, the amount attributed to the new notes would decrease and the amount attributed to the existing 2011 notes would increase.

The information set forth in the following table should be read in conjunction with and is qualified in its entirety by the Company s audited consolidated financial statements and notes thereto included in this prospectus.

	As of June 30, 2008	
	Actual	As Adjusted
	(dollars in thousands)	
Cash and cash equivalents	$ 27,555	$ 22,455
Short-term debt:		
5.0% Convertible Promissory Notes due 2009[1]	$ 13,300	$ 13,300
Long-term debt:		
3.50% Convertible Senior Notes due 2011[2]	185,652	
12.50% Convertible Guaranteed Senior Notes due 2011[3]		122,460
12% Senior Secured Note	20,000	20,000
3 1/2% Convertible Senior Notes due 2011[5]	829	829
Revenue Interests Assignment[4]	40,745	40,745
Other Indebtedness	75	75
Total long-term debt	247,301	184,109
Shareholders (deficit) Equity:		
Series B restricted common stock, $0.10 par value Authorized 625,000 shares, Issued and Outstanding None		
Common stock, $0.10 par value Authorized 174,375,000 shares, Issued and Outstanding 14,217,370 and 37,283,970 shares at June 30, 2008 actual and as adjusted respectively[6]	1,414	3,721
Additional paid-in capital[6]	416,516	437,195
Accumulated deficit[7]	(483,959)	(453,123)
Total Shareholder (deficit) equity	(66,029)	(12,207)
Total capitalization	$ 194,572	$ 185,202

(1) Excludes accrued interest of $3,232.

(2) Excludes accrued interest of $1,724.

(3) If we elect to automatically convert some or all of the new notes into our common shares, up to and including the date which is one year from the original issue date of the new notes, we will make an additional payment equal to the amount of interest that would have been payable on the new notes from the last day interest was paid on the new notes through and including the date which is one year from the original issue date of the

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new notes, issued in the exchange offer. This interest will be payable in cash or, at our option, in our common shares. If paid in our common shares, the shares will have a fixed value equivalent to 90% of the automatic conversion price then in effect.

If a holder elects to voluntarily convert some or all of the new notes into our common shares, up to and including the date which is two years from the original issue date of the new notes, we will make an additional payment equal to the amount of interest that would have been payable on the new notes from the last day interest was paid on the new notes through and including the date which is two years from the original issue date of the new notes, issued in the exchange offer. This interest will be payable in cash, or at our option, in our common shares. If paid in our common shares, the shares will be valued at the conversion price then in effect.

This additional interest payment feature may be considered to be an embedded derivative and could be recorded on the balance sheet at fair value as a current liability. If it is determined to be an embedded derivative, we will be required to recognize changes in the derivative s fair value from period to period in other income (expense) in our statements of operations. This additional interest payment that may be settled in shares could be considered to be a beneficial conversion and could result in recognizing as expense any amounts paid by share settlement upon conversion under the additional interest payment.

The carrying value of the new notes was determined in accordance with SFAS No. 15. The amount of $122,460 represents $92,266 of principal of the new notes plus $30,194 of future cash flows related to interest on these notes.

(4) As a result of the put and call options held by Paul Capital relating to the Revenue Interests Assignment Agreement, the agreement contains an embedded derivative which is revalued on quarterly basis. In addition, the interest rate on the indebtedness to Paul Capital under the Revenue Interests Assignment Agreement may vary during the term of the agreement depending on a number of factors, including the level of sales of ANTARA and FACTIVE. For additional information, please see Note 7 of our financials statements for the period ended June 30, 2008.

(5) Excludes accrued interest of $7.

(6) The amounts in the as adjusted column include amounts to reflect the issuance of 22,566,600 common shares as a result of the exchange offering, 500,000 common shares issued as a result of the amendment to the RIAA and the change in the value of the repriced common share warrants held by PRF as a result of the amendment to the RIAA. No adjustments have been made to reflect common shares that may be issued to settle fractional new notes as part of the exchange offer.

(7) The as adjusted amount reflects the adjustment for the estimated net gain of approximately $30,836 on the assumed restructuring of all outstanding existing 2011 notes.

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THE EXCHANGE OFFER

Terms of the Exchange Offer; Period for Tendering Existing 2011 Notes

We are offering to exchange for each $1,000 principal amount of existing 2011 notes, $400 principal amount of new notes and shares of our common stock having a value equal to $100, based on the simple average of the daily volume-weighted average price of a share of our common stock on the NASDAQ Global Market for each of the five trading days prior to and including the second business day before the expiration date of the exchange offer; provided, that in no event shall we issue more than 100 shares of our common stock per each $1,000 principal amount of existing 2011 notes tendered, which reflects a minimum issue price of $1.00 per share. The new notes will be issued in denominations of $1,000 and any integral multiples of $1,000 in excess thereof. We will settle any fractional new notes in shares of the Company s common stock based on the daily volume-weighted average price described above and any fractional shares of common stock will be rounded up to the next full share. Based on the principal amount of existing 2011 notes outstanding as of the date of this prospectus, we are offering to acquire up to $225,700,000 aggregate principal amount of existing 2011 notes that are validly tendered on the terms and subject to the conditions set forth in this prospectus and in the accompanying letter of transmittal.

You may tender all, some or none of your existing 2011 notes, subject to the terms and conditions of the exchange offer. Holders of existing 2011 notes must tender their existing 2011 notes in a minimum $1,000 principal amount and integral multiples thereof.

The exchange offer is not being made to, and we will not accept tenders for exchange from, holders of existing 2011 notes in any jurisdiction in which the exchange offer or the acceptance of such offers would not be in compliance with the securities or blue sky laws of that jurisdiction.

Our Board of Directors and officers do not make any recommendation to you as to whether or not to exchange all or any portion of your existing 2011 notes. In addition, we have not authorized anyone to make any recommendation. You must make your own decision whether to tender your existing 2011 notes in connection with the exchange offer and, if so, the amount of existing 2011 notes to tender.

Expiration Date

The expiration date for the exchange offer is 11:59 p.m., New York City time, on November 21, 2008, unless we extend the offer. We may extend this expiration date for any reason. The last date on which tenders will be accepted, whether on November 21, 2008 or any later date to which the exchange offer may be extended, is referred to as the expiration date.

Extensions; Amendments

We expressly reserve the right, in our discretion, for any reason to:

- delay the acceptance of existing 2011 notes tendered for exchange, for example, in order to allow for the rectification of any irregularity or defect in the tender of existing 2011 notes, provided that, in any event we will promptly issue new notes or return tendered existing 2011 notes after expiration or withdrawal of the exchange offer;

- extend the time period during which the exchange offer is open, by giving oral or written notice of an extension to the holders of existing 2011 notes in the manner described below; during any extension, all existing 2011 notes previously tendered and not withdrawn will remain subject to the exchange offer;

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waive any condition or amend any of the terms or conditions of the exchange offer, other than the condition that the registration statement or, if applicable, a post-effective amendment, becomes effective under the Securities Act; and

terminate the exchange offer, as described under Conditions for Completion of the Exchange Offer below.

If the exchange offer is amended in a manner determined by us to constitute a material change, including the waiver of a material condition, we will extend the exchange offer period if necessary so that at least five business days remain in the exchange offer following notice of the material change. If we

increase or decrease the consideration we are offering in exchange for the existing notes,

decrease the principal amount of existing notes we are seeking to exchange, or

if the exchange offer is amended in a manner determined by us to constitute a similarly significant change,

we will extend the exchange offer period if necessary so that at least ten business days remain in the exchange offer following notice of such change.

We will promptly give oral or written notice of any (1) extension, (2) amendment, (3) non-acceptance or (4) termination of the offers to the holders of the existing 2011 notes. In the case of any extension, we will issue a press release or other public announcement no later than 9:00 a.m., New York City time, on the next business day after the previously scheduled expiration date. In the case of an amendment, we will issue a press release or other public announcement.

Procedures for Tendering Existing 2011 Notes

Your tender to us of existing 2011 notes and our acceptance of your tender will constitute a binding agreement between you and us upon the terms and subject to the conditions set forth in this prospectus and in the accompanying letter of transmittal.

Tender of Existing 2011 Notes Held Through a Custodian. If you are a beneficial holder of the existing 2011 notes that are held of record by a custodian bank, depository institution, broker, dealer, trust company or other nominee, you must instruct the custodian, or such other record holder, to tender the existing 2011 notes on your behalf. Your custodian will provide you with its instruction letter, which you must use to give these instructions.

Tender of Existing 2011 Notes Held Through DTC. Any beneficial owner of existing 2011 notes held of record by The Depository Trust Company, or DTC, or its nominee, through authority granted by DTC, may direct the DTC participant through which the beneficial owner s existing 2011 notes are held in DTC, to tender on such beneficial owner s behalf. To effectively tender existing 2011 notes that are held through DTC, DTC participants should transmit their acceptance through the Automated Tender Offer Program, or ATOP, for which the transaction will be eligible, and DTC will then edit and verify the acceptance and send an agent s message to the exchange agent for its acceptance. Delivery of tendered existing 2011 notes must be made to the exchange agent pursuant to the book-entry delivery procedures set forth below or the tendering DTC participant must comply with the guaranteed delivery procedures set forth below. No letters of transmittal will be required to tender existing 2011 notes through ATOP.

In addition, the exchange agent must receive:

a completed and signed letter of transmittal or an electronic confirmation pursuant to DTC s ATOP system indicating the principal amount of existing 2011 notes to be tendered and any other documents, if any, required by the letter of transmittal; and

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prior to the expiration date, a confirmation of book-entry transfer of such existing 2011 notes, into the exchange agent s account at DTC, in accordance with the procedure for book-entry transfer described below; or

the holder must comply with the guaranteed delivery procedures described below.

Your existing 2011 notes must be tendered by book-entry transfer. The exchange agent will establish an account with respect to the existing 2011 notes at DTC for purposes of the exchange offer within two business days after the date of this prospectus. Any financial institution that is a participant in DTC must make book-entry delivery of existing 2011 notes by having DTC transfer such existing 2011 notes into the exchange agent s account at DTC in accordance with DTC s procedures for transfer. Although your existing 2011 notes will be tendered through the DTC facility, the letter of transmittal, or facsimile, or an electronic confirmation pursuant to DTC s ATOP system, with any required signature guarantees and any other required documents, if any, must be transmitted to and received or confirmed by the exchange agent at its address set forth below under Exchange Agent, prior to 11:59 p.m., New York City time, on the expiration date of the exchange offer. You or your broker must ensure that the exchange agent receives an agent s message from DTC confirming the book-entry transfer of your existing 2011 notes. An agent s message is a message transmitted by DTC and received by the exchange agent that forms a part of the book-entry confirmation which states that DTC has received an express acknowledgement from the participant in DTC tendering existing 2011 notes that such participant agrees to be bound by the terms of the letter of transmittal. Delivery of documents to DTC in accordance with its procedures does not constitute delivery to the exchange agent.

If you are an institution which is a participant in DTC s book-entry transfer facility, you should follow the same procedures that are applicable to persons holding existing 2011 notes through a financial institution.

Do not send letters of transmittal or other exchange offer documents to us or to Lazard Capital Markets LLC or MTS Securities, LLC, the dealer managers.

It is your responsibility to ensure that all necessary materials are received by U.S. Bank National Association, the exchange agent, before the expiration date. If the exchange agent does not receive all of the required materials before the expiration date, your existing 2011 notes will not be validly tendered.

Any existing 2011 notes not accepted for exchange for any reason will be promptly returned, without expense, to the tendering holder after the expiration or termination of the exchange offer.

We will have accepted the validity of tendered existing 2011 notes if and when we give oral or written notice to the exchange agent. The exchange agent will act as the tendering holders agent for purposes of receiving the new notes from us. If we do not accept any tendered existing 2011 notes for exchange because of an invalid tender or the occurrence of any other event, the exchange agent will return those existing 2011 notes to you without expense, promptly after the expiration date via book-entry transfer through DTC.

Binding Interpretations

We will determine in our sole discretion, all questions as to the validity, form, eligibility and acceptance of existing 2011 notes tendered for exchange. Our determination will be final and binding, subject to the tendering noteholder s right to bring any dispute with respect thereto before a court of competent jurisdiction. The judgments of courts of law in a competent jurisdiction are generally considered final and binding in such matters. We reserve the absolute right to reject any and all tenders of any particular existing 2011 notes not properly tendered or to not accept any particular existing 2011 notes which acceptance might, in our reasonable judgment or our counsel s judgment, be unlawful. We also reserve the absolute right to waive any defects or irregularities in the tender of existing 2011 notes. Unless waived, any defects or irregularities in connection with tenders of

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existing 2011 notes for exchange must be cured within such reasonable period of time as we shall determine. Neither we, the exchange agent nor any other person shall be under any duty to give notification of any defect or irregularity with respect to any tender of existing 2011 notes for exchange, nor shall any of them incur any liability for failure to give such notification.

Acceptance of Existing 2011 Notes for Exchange; Delivery of New Notes

Once all of the conditions to the exchange offer is satisfied or waived, we will accept, promptly after the expiration date, all existing 2011 notes properly tendered, and will issue the new notes promptly after acceptance of the existing 2011 notes. The discussion under the heading Conditions for Completion of the Exchange Offer provides further information regarding the conditions to the