OSCIENT PHARMACEUTICALS CORP
Form 424B3
November 25, 2008
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Registration No. 333-153394

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

100 shares of our Common Stock, par value $0.10 or common stock .

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 expired 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 21, 2008, the last reported sale price of our common shares on the NASDAQ Global Market was $0.47 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 revised letter of transmittal on November 7, 2008.

See Risk Factors beginning on page 20 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 November 24, 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 September 30, 2008, ANTARA generated $68 million in net sales.

Since we began marketing ANTARA on August 18, 2006, net revenues from the drug totaled $124 million through September 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 nine months ended September 30, 2008, FACTIVE generated $11.3 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 November 4, 2008, we announced financial results for the third quarter of 2008. We recorded total revenues of approximately $21.8 million for the three-months ended September 30, 2008, compared to approximately $15.6 million in total revenues for the three-months ended September 30, 2007 and recorded total revenues of approximately $60.4 million for the nine months ended September 30, 2008 compared to approximately $54.7 million for the nine months ended September 30, 2007.

As of September 30, 2008, we had approximately $29.0 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 November 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 a net decrease in cash of approximately $33 million in fiscal 2008. This guidance does not include any cash impact of steps taken to recalibrate our capital structure or the acquisition and marketing of a third product, which remains one of our top business development goals for fiscal 2008. 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.

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 if raised to repay approximately $17 million of indebtedness which comes due in February 2009, for operating cash and to execute our business strategy. We currently do not expect to complete any capital raise before the expiration of the exchange offer and we cannot guarantee that we will be able to raise additional capital in the future.

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 100 shares of common stock. 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 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 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 of $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 issued in the exchange offer and any additional new notes we may issue under the new notes indenture up to an aggregate of $140,000,000 principal amount, plus interest and fees, 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 $53.2 million, $15.2 million, $29.5 million, $78.3 million, $88.6 million, $93.5 million and $29.4 million for the nine month periods ended September 30, 2008 and 2007 and the years ended December 31, 2007, 2006, 2005, 2004 and 2003, respectively.

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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 anytime on or prior to maturity, into shares of our common stock at an initial conversion rate of 909.0909 shares per $1,000 principal amount of new notes (equal to a conversion price of approximately $1.10 per share).	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
	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 2,133.10 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.	

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	New Notes	Existing 2011 Notes
Limitations on indebtedness and liens	The new notes indenture provides that the Company may not incur additional indebtedness in excess of $50 million (Permitted 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. Any indebtedness incurred to finance new product acquisitions or in connection with refinancing Permitted Indebtedness, our existing indebtedness or obligations or the new notes would not be counted toward the aforementioned limit. See Description of New Notes General.	None.
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 if raised to repay approximately $17 million of indebtedness which comes due in February 2009, for operating cash and to execute our business strategy. We currently do not expect to complete any capital raise before the expiration of the exchange offer and we cannot guarantee that we will be able to raise additional capital in the future.

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 100 shares of our common stock.
- 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, at the option of the holder, at anytime on or prior to maturity, into shares of our common stock at an initial conversion rate of 909.0909 shares per $1,000 principal amount of new notes (equal to a conversion price of approximately $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 nine months ended September 30, 2008 and 2007 and the consolidated balance sheet data as of September 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 Nine Months Ended September 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	$ 60,156	$ 53,262	$ 78,458	$ 38,244	$ 20,458	$ 4,067	
Co-promotion				6,890	2,954		
Biopharmaceutical/other	282	1,418	1,511	1,018	197	2,546	7,009
Total revenues[1]	60,438	54,680	79,969	46,152	23,609	6,613	7,009
Costs of product sales and operating expenses	89,895	86,823	117,965	118,071	112,281	97,229	39,943
Loss from operations	(29,457)	(32,143)	(37,996)	(71,919)	(88,672)	(90,616)	(32,934)
Net other (expense) income	(23,457)	17,284	8,527	(6,379)	44	(2,863)	3,546
(Loss) income from continuing operations before income tax	(52,914)	(14,859)	(29,469)	(78,298)	(88,628)	(93,479)	(29,388)
Provision for income tax	(315)	(323)	(384)	(179)			
Net (loss) income from continuing operations	(53,229)	(15,182)	(29,853)	(78,477)	(88,628)	(93,479)	(29,388)
Income (loss) from discontinued operations					35	208	(401)
Net (loss) income	$ (53,229)	$ (15,182)	$ (29,853)	$ (78,477)	$ (88,593)	$ (93,271)	$ (29,789)
Net (loss) income per common share: basic[2]	$ (3.86)	$ (1.12)	$ (2.19)	$ (6.58)	$ (9.26)	$ (10.61)	$ (9.06)
Net (loss) income per common share: diluted[2]	$ (3.86)	$ (1.12)	$ (2.19)	$ (6.58)	$ (9.26)	$ (10.61)	$ (9.06)
Weighted average common shares outstanding: basic[2]	13,776	13,591	13,601	11,925	9,569	8,794	3,286
Weighted average common shares outstanding: diluted[2]	13,776	13,591	13,601	11,925	9,569	8,794	3,286

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	For the Nine Months Ended September 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	$ 28,976	$ 61,246	$ 52,466	$ 44,808	$ 80,044	$ 176,628	$ 28,665
Working capital	(11,376)	49,023	42,011	40,444	77,750	156,021	18,897
Total assets	234,659	282,427	274,184	279,407	241,095	340,560	40,516
Long-term liabilities	258,714	265,747	269,179	250,977	191,289	193,397	292
Shareholders (deficit) equity	(80,706)	(14,714)	(28,715)	(1,996)	28,101	114,400	29,940
Net book value per common share[2]	$ (5.66)	$ (1.06)	$ (2.07)	$ (0.15)	$ 2.91	$ 12.07	$ 7.61

(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 used in 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 if raised to repay approximately $17 million of indebtedness which comes due in February 2009, for operating cash and to execute our business strategy. We currently do not expect to complete any capital raise before the expiration of the exchange offer and we cannot guarantee that we will be able to raise additional capital in the future. 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 and our efforts to recalibrate our capital structure (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 $499 million as of September 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 with 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 (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 ten (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 business 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 the 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 our 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 $225.7 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 a Boxed Warning relating to the risk of tendonitis and tendon rupture associated with the use of fluoroquinolone product. Warnings regarding the risk of tendon related adverse events were already 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 required that all manufacturers of fluoroquinolones submit a Medication Guide. We have finalized the changes to the package insert and Medication Guide as required by FDA to ensure patient safety and improve physician understanding of the risk-benefit profile for fluoroquinolone products, including FACTIVE. We have also submitted a proposed Risk Evaluation and Mitigation Strategy (REMS) as required by FDA of all sponsors of fluoroquinolone products to ensure patients safe and effective use of such products.

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

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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.

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 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 September 30, 2008, we had approximately $310.9 million of indebtedness outstanding (including accrued interest and excluding a bond discount of approximately $36.9

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million), which includes approximately $41.3 million in revenue interest that entitles Paul Capital to receive a royalty on the sales of both ANTARA and FACTIVE. Approximately $16.7 million of outstanding indebtedness will mature on 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 $230.2 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 effect 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 89% of U.S. fenofibrate sales for the three-month period ended September 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 competes with Triglide®, a 160 mg fenofibrate product and Fenoglide®, a 120mg branded fenofibrate product, both of which are marketed by Sciele Pharma, Inc., a wholly owned subsidiary of Shionogi & Co. Ltd. Triglide and Fenoglide accounted for approximately 2% of U.S. fenofibrate sales for the three-month period ended September 30, 2008. ANTARA also competes with Lipofen®, a 150 mg fenofibrate product, which is marketed by Kowa Pharmaceuticals America, Inc. Additionally, Abbott Laboratories has developed a new product, TriLipix™, whose active ingredient is fenofibric acid, the active metabolite of fenofibrate. An NDA has been filed for this product and is currently under review by FDA. In public comments, Abbott has indicated that it expects that FDA will complete its review of TriLipix before the end of 2008.

Additionally, several generic versions of fenofibrate in varying doses are also available for the treatment of dyslipidemias. Revenues from these products accounted for approximately 4% of total U.S. sales of fenofibrate sales in the third 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, the 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 experience 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 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 93% of our product shipments during the three-month period ended September 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 (the Put 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 be considered a Put Event and 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 September 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 the 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. The 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 and decrease early in the year. There can be no assurance that the demand for our products or the wholesaler buying pattern will not change.

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;
- our ability to continue to be listed on The NASDAQ Global Markets;
- 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 $0.72. 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 November 3, 2008, we had approximately 14,256,628 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 100 shares of our common stock. 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.

As part of the exchange offer, the new notes indenture provides restrictions on our ability to incur additional debt which could prevent our ability to raise additional capital.

The new notes indenture provides that we may not incur additional indebtedness in excess of $50 million (Permitted 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 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. These restrictions on our ability to incur additional debt could have a negative effect on our ability to raise additional capital in the future.

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 indebtedness in excess of $50 million (Permitted 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 Indebtedness, our existing indebtedness including existing 2011

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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.

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. 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.

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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.

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 new note in a principal amount of $2,000,000 to Paul Capital which 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.

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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 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.

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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 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.

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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.

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;

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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;

our ability to continue to be listed on The NASDAQ Global Market;

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.

Over the two-year period ending September 30, 2008 the closing price of our stock as reported on The NASDAQ Global Market ranged from a high of $9.12 to a low of $0.72. 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 21, 2008)	$ 1.15	$ 0.36

[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 21, 2008 was $0.47.

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 periods ended September 30, 2008 and 2007.

	Nine months ended September 30,		Year ended December 31,				
	2008	2007	2007	2006	2005	2004	2003
					(in thousands)		
Deficiency of earnings available to cover fixed charges[1][2]	$ (53,229)	$ (15,182)	$ (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 September 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 $45,662,000 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 $332,000; 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 $2,602,000 as the principal and interest on the $2,000,000 note, $270,000 to record the fair value of the 500,000 common shares issued and $37,000 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 September 30, 2008	
	Actual	As Adjusted
	(dollars in thousands)	
Cash and cash equivalents	$ 24,778	$ 15,939
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]	188,780	
12.50% Convertible Guaranteed Senior Notes due 2011[3]		121,259
12% Senior Secured Note	20,000	20,000
3 1/2% Convertible Senior Notes due 2011[5]	829	829
Revenue Interests Assignment[4]	39,304	39,304
Other Indebtedness	76	76
Total long-term debt	248,989	181,468
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 14,255,459 and 37,322,059 shares at September 30, 2008 actual and as adjusted, respectively[6]	1,425	3,732
Additional paid-in capital[6]	416,856	427,042
Accumulated deficit[7]	(498,987)	(453,325)
Total Shareholder (deficit) equity	(80,706)	(22,551)
Total capitalization	$ 181,583	$ 172,217

(1) Excludes accrued interest of $3,437.

(2) Excludes accrued interest of $3,699.

(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 $121,259 represents $92,266 of principal of the new notes plus $28,993 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 September 30, 2008.

(5) Excludes accrued interest of $13.

(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. The adjustment is calculated based on the closing price of the Company s common stock as of November 13, 2008, of $0.54. The actual adjustment will be based on the closing price of the Company s common stock used to determine the consideration in the exchange offer.

(7) The as adjusted amount reflects the adjustment for the estimated net gain of approximately $45,662 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 100 shares of our common stock. 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 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 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 exchange offer. For purposes of the exchange offer, we shall be deemed to have accepted properly tendered existing 2011 notes for exchange when, as and if we have given oral or written notice to the exchange agent, with written confirmation of any oral notice to be given promptly after giving such notice.

The new notes will be issued in denominations of $1,000 and any integral multiples of $1,000. We will settle any fractional new notes in shares of the Company s 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 and any fractional shares of common stock will be rounded up to the next full share. The new notes will bear interest from the date of issuance of the new notes. Existing 2011 notes accepted for exchange will accrue interest up to but excluding the closing date of the exchange offer. We will pay such accrued and unpaid interest in cash at closing to holders of existing 2011 notes whose existing 2011 notes are tendered in the exchange offer and accepted by us.

In all cases, issuance of new notes for existing 2011 notes that are accepted for exchange in the exchange offer will be made only after timely receipt by the exchange agent of:

- your existing 2011 notes or a timely book-entry confirmation of such existing 2011 notes into the exchange agent s account at the DTC book-entry transfer facility;
- a properly completed and duly executed letter of transmittal or letter of transmittal and consent or an electronic confirmation of the submitting holder s acceptance through DTC s ATOP system; and
- all other required documents, if any.

Return of Existing 2011 Notes Accepted for Exchange

If we do not accept any tendered existing 2011 notes for any reason set forth in the terms and conditions of the exchange offer, or if existing 2011 notes are submitted for a greater principal amount than the holder desires to exchange, the unaccepted or non-exchanged existing 2011 notes will be returned to you. Existing 2011 notes tendered by book-entry transfer into the exchange agent s account at the book-entry transfer facility will be returned in accordance with the book-entry procedures described above, and the existing 2011 notes that are not to be exchanged will be credited to an account maintained with DTC, promptly after the expiration or termination of the exchange offer.

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Guaranteed Delivery Procedures

If you desire to tender your existing 2011 notes and (1) the certificates for the existing 2011 notes are not immediately available or (2) you cannot complete the procedures for book-entry transfer set forth above on a timely basis, you may still tender your existing 2011 notes if:

your tender is made through an eligible institution;

prior to the expiration date, the exchange agent received from the eligible institution a properly completed and duly executed letter of transmittal, or a facsimile of such letter of transmittal or an electronic confirmation pursuant to DTC s ATOP system and notice of guaranteed delivery, substantially in the form provided by us, by facsimile transmission, mail or hand delivery, that:

(1) sets forth the name and address of the holder of the existing 2011 notes tendered;

(2) states that the tender is being made thereby;

(3) guarantees that within three trading days after the expiration date, the certificates or a book-entry confirmation and any other documents required by the letter of transmittal, if any, will be deposited by the eligible institution with the exchange agent; and

the certificates or book-entry confirmation and all other documents, if any, required by the letter of transmittal are received by the exchange agent within three trading days after the expiration date.

Withdrawal Rights

You may withdraw your tender of existing 2011 notes at any time prior to 11:59 p.m., New York City time, on the expiration date. 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 the expiration of the exchange offer.

For a withdrawal to be effective, the exchange agent must receive a written notice of withdrawal at the address or, in the case of eligible institutions, at the facsimile number, set forth below under the heading Exchange Agent prior to 11:59 p.m., New York City time, on the expiration date. Any notice of withdrawal must:

specify the name of the person who tendered the existing 2011 notes to be withdrawn;

contain a statement that you are withdrawing your election to have your existing 2011 notes exchanged;

be signed by the holder in the same manner as the original signature on the letter of transmittal or letter of transmittal and consent by which the existing 2011 notes were tendered, including any required signature guarantees; and

if you delivered existing 2011 notes to the exchange agent, you must submit the certificate numbers of the existing 2011 notes to be withdrawn or if you have tendered your existing 2011 notes in accordance with the procedure for book-entry transfer described above, specify the name and number of the account at DTC to be credited with the withdrawn existing 2011 notes and otherwise

comply with the procedures of such facility.

Any existing 2011 notes that have been tendered for exchange, but which are not exchanged for any reason, will be returned to you or credited to an account maintained with the book-entry transfer facility for the existing 2011 notes, promptly after withdrawal, rejection of tender or termination of the exchange offer. Properly withdrawn existing 2011 notes may be retendered by following the procedures described under the heading Procedures for Tendering Existing 2011 Notes , at any time on or prior to 11:59 p.m., New York City time, on the expiration date.

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Conditions for Completion of the Exchange Offer

We will not accept existing 2011 notes for new notes and may terminate or not complete the exchange offer if the registration statement or, if applicable, a post-effective amendment, covering the exchange offer is not effective under the Securities Act.

We may elect not to accept existing 2011 notes for exchange and may terminate or not complete the exchange offer if:

- any action, proceeding or litigation seeking to enjoin, make illegal or delay completion of the exchange offer is instituted or is reasonably likely to be instituted;
- any order, stay, judgment or decree is issued by any court, government, governmental authority or other regulatory or administrative authority and is in effect, or any statute, rule, regulation, governmental order or injunction shall have been proposed, enacted, enforced or deemed applicable to the exchange offer, any of which would restrain, prohibit or delay completion of the exchange offer or prohibit any of the material terms of the new notes;
- any of the following occurs and the adverse effect of such occurrence shall, in our reasonable judgment, be continuing:
  - any general suspension of trading in, or limitation on prices for, securities on any national securities exchange or in the over-the-counter market in the U.S.;
  - any extraordinary or material adverse change in U.S. financial markets generally, including, without limitation, a decline of at least twenty percent in either the Dow Jones Average of Industrial Stocks, Standard & Poor s 500 Index or NASDAQ Composite Index after commencement of the exchange offer;
  - a declaration of a banking moratorium or any suspension of payments in respect of banks in the U.S.;
  - any material disruption has occurred in commercial banking or securities settlement or clearance services in the U.S.;
  - any limitation, whether or not mandatory, by any governmental entity on, or any other event that would reasonably be expected to materially adversely affect, the extension of credit by banks or other lending institutions;
  - a commencement of a war, an act of terrorism or other national or international calamity directly or indirectly involving the U.S., which would reasonably be expected to affect materially and adversely, or to delay materially, the completion of the exchange offer; or
  - if any of the situations described above existed at the time of commencement of the exchange offer and that situation deteriorates materially after commencement of the exchange offer;
- any tender or exchange offer, other than the exchange offer by us, with respect to some or all of our issued and outstanding common shares or the existing 2011 notes or any amalgamation, merger, acquisition or other business combination proposal or change of control involving us shall have been proposed, announced or made by any person or entity;

any event or events occur that have resulted or may result, in our reasonable judgment, in a material adverse change in the business condition, income, operations, indebtedness, share ownership or prospects of us or of us and our subsidiaries, taken as a whole;

the occurrence of any of the following (as calculated pursuant to Rule 13d-3):

any person, entity or group acquires more than 5% or the right to acquire more than 5% of our issued and outstanding common shares after the commencement of the exchange offer;

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any person, entity or group which owned more than 5% or the right to acquire more than 5% of our issued and outstanding common shares before the commencement of the exchange offer shall acquire additional common shares or the right to acquire additional common shares constituting more than 2% of our issued and outstanding shares after the commencement of the exchange offer; or

any new group shall have been formed that beneficially owns or has the right to acquire more than 5% of our issued and outstanding common shares, which in our judgment in any such case, and regardless of the circumstances, makes it inadvisable to proceed with the exchange offer or with such acceptance for exchange of shares; or

the registration statement of which this prospectus is a part shall have not become effective under the Securities Act or shall be the subject of any stop order.

If any of the above events occur, we may:

terminate the exchange offer and promptly return all tendered existing 2011 notes to tendering existing note holders;

extend the exchange offer and, subject to the withdrawal rights described in Withdrawal Rights, above, retain all tendered existing 2011 notes until the extended exchange offer expire;

amend the terms of the exchange offer; or

waive the unsatisfied condition and, subject to any requirement to extend the period of time during which the exchange offer is open, complete the exchange offer.

These conditions are for our sole benefit. We may assert these conditions with respect to all or any portion of the exchange offer regardless of the circumstances giving rise to them. We may waive any condition, other than those subject to applicable law, in whole or in part in our discretion. We may not assert or waive any condition in a manner that would violate Rule 13e-4(f)(8)(i). Our failure to exercise our rights under any of the above conditions does not represent a waiver of these rights. Each right is an ongoing right which may be asserted at any time prior to the expiration of the exchange offer. Any determination by us concerning the conditions described above will be final and binding upon all parties, 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. There are no federal or state regulatory requirements that must be met, except for requirements under applicable securities laws. Satisfaction or waiver of these conditions, other than those that relate to applicable securities laws, will be determined as of the expiration date of the exchange offer which is currently scheduled to be November 21, 2008.

We confirm to you that if we make a material change in the terms of the exchange offer or the information concerning the exchange offer, or if we waive a material condition of the exchange offer, we will promptly disclose the amendment or waiver in a prospectus supplement and will extend the exchange offer to the extent required under the Exchange Act.

Fees and Expenses

Lazard Capital Markets LLC and MTS Securities, LLC are acting as the dealer managers in connection with the exchange offer. Each of Lazard Capital Markets LLC and MTS Securities, LLC will receive a fee in connection with its services as dealer manager. This fee will be based on the principal amount of the existing 2011 notes tendered and will be paid in cash.

If all of the notes are exchanged in the exchange offer Lazard Capital Markets LLC will receive a maximum dealer manager fee of $2,273,928, payable in cash and MTS Securities, LLC will receive a maximum dealer

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manager fee of $1,224,423, payable in cash. Lazard Capital Markets LLC and MTS Securities, LLC s fees in connection with the exchange offer will be payable if and when the exchange offer is completed.

Each of Lazard Capital Markets LLC and MTS Securities, LLC will also be reimbursed for its reasonable out-of-pocket expenses incurred in connection with the exchange offer (including reasonable fees and disbursements of counsel), whether or not the transaction closes, in an amount, together with fees and expenses, reimbursed up to $600,000.

We have agreed to indemnify Lazard Capital Markets LLC and MTS Securities, LLC against specified liabilities relating to or arising out of the offers, including civil liabilities under the federal securities laws, and to contribute to payments which Lazard Capital Markets LLC and MTS Securities, LLC may be required to make in respect thereof. However, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. Lazard Capital Markets LLC and MTS Securities, LLC may from time to time hold existing 2011 notes, new notes and our common shares in their proprietary accounts, and to the extent they own existing 2011 notes in these accounts at the time of the exchange offer, Lazard Capital Markets LLC and MTS Securities, LLC may tender these existing 2011 notes.

We have engaged Lazard Frères & Co. LLC and MTS Securities, LLC as our financial advisors in connection with the exchange offer. The dealer managers, Lazard Frères & Co. LLC and their respective affiliates may provide to us from time to time in the future in the ordinary course of their business certain financial advisory, investment banking and other services for which they will be entitled to receive fees. Lazard Frères & Co. LLC referred this transaction to Lazard Capital Markets LLC and will receive a referral fee from Lazard Capital Markets LLC in connection therewith.

We have retained The Altman Group, Inc. to act as information agent and U.S. Bank National Association to act as the exchange agent in connection with the exchange offer. The information agent may contact holders of existing 2011 notes by mail, telephone, facsimile transmission and personal interviews and may request brokers, dealers and other nominee existing note holders to forward materials relating to the exchange offer to beneficial owners. The information agent and the exchange agent will receive an aggregate of approximately $10,000 and $25,000, respectively, in compensation for their respective services, will be reimbursed for reasonable out-of-pocket expenses and will be indemnified against liabilities in connection with their services, including liabilities under the federal securities laws.

Neither the information agent nor the exchange agent has been retained to make solicitations or recommendations. The fees they receive will not be based on the principal amount of existing 2011 notes tendered under the exchange offer.

We will not pay any fees or commissions to any broker or dealer, or any other person, other than Lazard Capital Markets LLC and MTS Securities, LLC for soliciting tenders of existing 2011 notes under the exchange offer. Brokers, dealers, commercial banks and trust companies will, upon request, be reimbursed by us for reasonable and necessary costs and expenses incurred by them in forwarding materials to their customers.

We estimate that other aggregate fees and expenses to be incurred in connection with the exchange offer, assuming maximum existing 2011 note holder participation, will be approximately $1.3 million and will be paid by us.

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Further Information

You may call the information agent, 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.

Exchange Agent

U.S. Bank National Association has been appointed as the exchange agent for the exchange offer. All executed letters of transmittal should be directed to the exchange agent at its address as set forth below. Questions about the tender of existing 2011 notes, requests for assistance, and requests for notices of guaranteed delivery should be directed to the exchange agent addressed as follows:

By Mail or Overnight Courier:

U.S. Bank National Association

Attn. Specialized Finance

60 Livingston Avenue

St. Paul, MN 55107

By Facsimile Transmission:

(617) 603-6683

If you deliver the letter of transmittal to an address other than as set forth above or transmit instructions via facsimile other than as set forth above, then such delivery or transmission does not constitute a valid delivery of such letter of transmittal. If you need additional copies of this prospectus or the letter of transmittal, please contact the information agent at the address or telephone number set forth above and on the back cover of this prospectus.

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DESCRIPTION OF NEW NOTES

The new notes will be issued under an indenture dated as of the date of issuance, which we refer to as the new notes indenture, between us and U.S. Bank National Association, as trustee, which we refer to as the trustee. The terms of the new notes include those expressly set forth in the new notes indenture and those made part of the new notes indenture by reference to the Trust Indenture Act of 1939, as amended, which we refer to as the Trust Indenture Act.

This description of provisions of the new notes is not complete and is subject to, and qualified in its entirety by reference to, the new notes and the new notes indenture. We urge you to read the new notes indenture because it will define your rights as a holder of the new notes. You may request a copy of the new notes indenture from the trustee.

For purposes of this description, references to Oscient Pharmaceuticals, we, our and us refer only to Oscient Pharmaceuticals Corporation and not to any of its subsidiaries.

General

We are offering to issue up to $90,280,000 aggregate principal amount of new notes in the exchange offer assuming 100% of the principal amount of the outstanding existing 2011 notes are tendered and accepted in the exchange offer.

The new notes:

- are Oscient s unsecured obligations;
- 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 Capital and secures 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 revenue interests assignment agreement described herein. See Risk Factors 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. ;
- are convertible, at the option of the holder, at anytime on or prior to maturity, into shares of our common stock at an initial conversion rate of 909.0909 shares per $1,000 principal amount of new notes (equal to a conversion price of approximately $1.10 per share). (see Conversion Rights and Automatic conversion);
- mature on January 15, 2011, unless earlier converted or repurchased. See Risk Factors 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. ;
- will accrue interest at a rate of 12.50% per annum payable on each April 15 and October 15 of each year, commencing on April 15, 2009, except as set forth under Interest. Interest will be paid, at our election, in cash or in kind by increasing the principal amount of the new notes or by issuing additional new notes (PIK interest);
- will be issued in denominations of $1,000 and integral multiples of $1,000;
- are represented by one or more registered notes in global form, but in certain limited circumstances may be represented by notes in definitive form (see Form, denomination and registration and Book-entry, delivery and form);

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are redeemable by us for cash, at our option, in whole or in part, beginning on October 15, 2010 (see Optional redemption);

are subject to repurchase by us upon a fundamental change (as defined below); and

provide for an increase in the conversion rate for new notes surrendered for conversion in connection with certain fundamental changes, as described under Conversion rate adjustment on a fundamental change.

We may also issue additional new notes under the new notes indenture that rank equally with the new notes that we are offering in the exchange offer up to a combined maximum aggregate principal amount of $140,000,000. Any such additional new notes that we issue may be registered or unregistered.

The registered holder of a new note will be treated as the owner of it for all purposes, including, without limitation, for purposes of determining to whom we will send any notice required to be sent to holders of the new notes pursuant to the new notes indenture.

The new notes indenture provides that we may not incur additional indebtedness in excess of $50 million (Permitted 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 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. With respect to each noteholder issued new notes in the exchange offer on the original issue date, we will agree under the letter of transmittal that this restriction survives any conversion by such noteholder and will continue for the benefit of such noteholder for so long as it owns any securities issued upon such conversion or until we are otherwise permitted to incur additional indebtedness pursuant to the foregoing. 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.

Other than restriction on the incurrence of additional indebtedness described above and as described under Repurchase of the new notes at the option of holders upon a fundamental change and Consolidation, merger and sale of assets below, the new notes indenture does not contain any covenants or other provisions which may afford holders of the new notes protection in the event of a highly leveraged transaction involving us. We may not reissue a new note that has matured or been converted, repurchased by us at the option of a holder, redeemed or otherwise canceled.

Payments on the new notes; paying agent and registrar

We will pay principal and cash interest, if any, on the new notes at the office or agency designated by us in the Borough of Manhattan, The City of New York. We have initially designated U.S. Bank National Association as our paying agent and registrar and its agency in New York, New York as a place where new notes may be presented for payment or for registration of transfer. We may, however, change the paying agent or registrar without prior notice to the holders of the new notes, and we may act as paying agent or registrar.

We will pay principal and cash interest, if any, on new notes in global form registered in the name of or held by The Depository Trust Company (DTC) or its nominee in immediately available funds to DTC or its nominee, as the case may be, as the registered holder of such global note.

Interest

The new notes accrue interest at a rate of 12.50% per year from the date of issuance. 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

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new notes (PIK interest) in an amount equal to the amount of PIK interest for the applicable payment period to the holders of the new notes on the relevant record date (in integral multiples of $1,000). Interest on the new notes is payable in cash or in PIK interest semi-annually in arrears on April 15 and October 15 of each year, beginning on April 15, 2009, to record holders at the close of business on the preceding April 1 and October 1, respectively, except the final interest payment date will be January 15, 2011, provided that:

- interest payable upon redemption will be paid to the person to whom principal is payable, unless the redemption date is an interest payment date, in which case interest shall be paid to the record holder on the relevant record date; and
- as set forth in the next sentence.

If you convert your new notes into common stock during the period after any record date but prior to the next interest payment date we will not be required to pay interest on the interest payment date if the new notes have been called for redemption on a redemption date that occurs during this period, but accrued and unpaid interest on such new notes will be paid on the redemption date.

Interest is computed on the basis of a 360-day year comprised of twelve 30-day months. We will not be required to make any payment on the new notes due on any day which is not a business day until the next succeeding business day. The payment made on the next succeeding business day will be treated as though it were paid on the original due date and no interest will accrue on the payment for the additional period of time.

We must elect the form of interest payment for the new notes with respect to each interest period by delivering a notice to the trustee prior to the beginning of each interest period. The trustee shall promptly deliver a corresponding notice to the holders. In the absence of such an election for any interest period, interest on the new notes shall be payable according to the election for the previous interest period. Interest for the first interest period commencing on the original issue date shall be payable in PIK interest. Notwithstanding anything to the contrary, the payment of accrued interest in connection with any redemption of new notes as described under Optional redemption or Repurchase of the new notes at the option of holders upon a fundamental change shall be made solely in cash.

If we elect to pay PIK interest on the new notes such PIK interest will be payable (x) with respect to new notes represented by one or more global notes registered in the name of, or held by, The Depository Trust Company (DTC) or its nominee on the relevant record date, by increasing the principal amount of the outstanding global new notes by an amount equal to the amount of PIK interest for the applicable interest period (or, if necessary, pursuant to the requirements of DTC, to authenticate new global new notes executed by us with such increased principal amounts) and (y) with respect to new notes represented by certificated notes, by issuing PIK notes in certificated form in an aggregate principal amount equal to the amount of PIK interest for the applicable period, in the case of each of (x) and (y) in integral multiples of $1,000 (with fractional interest paid in cash) and the trustee will, at our request, authenticate and deliver such PIK notes in certificated form for original issuance to the holders on the relevant record date, as shown by the records of the register of holders. Following an increase in the principal amount of the outstanding global new notes as a result of a PIK interest payment, the global new notes will bear interest on such increased principal amount from and after the date of such PIK interest payment. Any PIK notes issued in certificated form will be dated as of the applicable interest payment date and will bear interest of 12.50% from and after such date. All new notes issued pursuant to a PIK interest payment will be governed by, and subject to the terms, provisions and conditions of, the indenture and shall have the same rights and benefits as the new notes issued on the original issue date, except as noted in the prior sentence. Any certificated PIK notes will be issued with the description PIK on the face of such PIK note. In connection with the payment of PIK interest in respect of the new notes, we are entitled to, without the consent of the holders, increase the outstanding principal amount of the new notes or issue additional new notes (the PIK notes) under the indenture on the same terms and conditions as the new notes offered hereby.

Unless the context requires otherwise, references to notes for all purposes of the indenture and this Description of the new notes section include any PIK notes that are actually issued, and references to

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principal amount of the notes includes any increase in the outstanding principal amount of the notes as a result of a PIK interest payment.

Transfer and exchange

You may transfer or exchange new notes at the office of the registrar in accordance with the new notes indenture. The registrar and the trustee may require a holder, among other things, to furnish appropriate endorsements and transfer documents. No service charge will be imposed by us, the trustee or the registrar for any registration of transfer or exchange of new notes, but we may require a holder to pay a sum sufficient to cover any transfer tax or other similar governmental charge required by law or permitted by the new notes indenture. We are not required to exchange or register the transfer of:

- any new note or portion thereof selected for redemption;
- any new note or portion thereof surrendered for conversion; or
- any new note or portion thereof surrendered for repurchase but not withdrawn in connection with a repurchase 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, an affiliate of Paul Capital Partners, or 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.

Ranking

The new notes will be:

- unsecured obligations of Oscient;
- 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;
- ranked equally in right of payment with all existing and future senior unsecured indebtedness of Oscient but, to the extent of the value of the second priority lien on substantially all of the assets of our subsidiary Guardian II, effectively senior to all of the Oscient s existing and future unsecured senior indebtedness (including, the existing 2011 notes not tendered in the exchange offer and our 5% Convertible Promissory Notes due 2009);
- effectively junior in right of payment to 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 described below and
- ranked 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.

Our subsidiary Guardian II incurred debt and other obligations in connection with the acquisition of the U.S. rights to ANTARA, including $20 million of debt payable to Paul Capital in August 2010 under the Paul Capital Note and obligations under the revenue interests assignment agreement pursuant to which we sold to Paul Capital the right to receive specified royalties on Oscient s net sales in the U.S. (and the net sales of its affiliates and licensees) of the ANTARA products and FACTIVE tablets until December 31, 2016. The royalty payable to Paul Capital on net sales of ANTARA and FACTIVE are tiered as follows: 9% for the first $75 million in annual net revenues, 6% for annual net revenues in excess of $75M, but less than $150 million, and 2% for annual net revenues which exceed $150 million. Once the cumulative royalty payments to Paul Capital exceed $100 million, the royalties become nominal. We have the option under the Paul Capital Note to pay 50% of the interest due for

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each applicable interest payment period in-kind by increasing the aggregate principal amount of the Paul Capital Note. As of September 30, 2008, we have accrued $2,675,250 of additional principal under the Paul Capital Note as a result of payment in-kind interest.

Guardian II granted Paul Capital a security interest in substantially all of its assets to secure its 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, and the ANTARA inventory and accounts receivables. Under the terms of the agreements with Paul Capital, we are also obligated to maintain a portion of our consolidated cash in an account in the name of Guardian II.

Guardian II s assets include certain license rights to sell ANTARA capsules in the U.S. and the associated intellectual property rights, and the ANTARA inventory and accounts receivables. Under the terms of the agreements with Paul Capital, we are also obligated to maintain a portion of our consolidated cash in an account in the name of Guardian II. Guardian II s other indebtedness, in addition to the Paul Capital Note and obligations under the revenue interests assignment agreement discussed above, consists of trade payables related to ANTARA inventories.

On November 5, 2008 we entered into a first amendment (the Amendment) to the revenue interests assignment agreement. The effectiveness of the Amendment is contingent upon, among other closing conditions, the closing of the exchange offer.

The Amendment provides 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 notes that will be issued in the Exchange Offer. Guardian II granted a first priority security interest to PRF in 2006 in substantially all of its assets in order to secure the obligations of the Company and Guardian II under the revenue interests assignment agreement and the note purchase agreement dated July 21, 2006.

Under the terms of the Amendment, in the event that the sum of the net sales of ANTARA and FACTIVE in the U.S. and the gross margin received by the Company from sales of FACTIVE within its territory outside of the U.S. (for which the definition of Net Revenues has been expanded to include in the Amendment) is less than 85% of certain specified annual sales thresholds, then PRF will be entitled to a (i) 3% increase in the applicable royalty percentage payable on the first $75 million of sales of such products in the applicable year and (ii) 2% increase in the applicable royalty percentage payable on net sales of such products in excess of $75 million and less than $150 million in the applicable year. The specified sales thresholds are $115 million in 2009, $135 million in 2010, $150 million in 2011 and $175 million thereafter through the term. Furthermore, the Amendment provides that in the event that the Company fails to achieve the specified sales threshold in any applicable year, the increased applicable royalty percentage shall also be payable on the net sales of any future drug products acquired or in-licensed by the Company or its subsidiaries. The increase in the applicable percentage payable on net sales shall be limited to a maximum payment to PRF of $2.25 million per year and $15 million during the term of the Agreement, and in no event shall such payment exceed the amount which PRF would have received in the applicable year had the specified sales threshold for that year been achieved.

The Amendment also provides that in the event that the Company or its subsidiaries acquires or in-licenses additional drug products, the Company shall make a one-time milestone payment to PRF of $1.25 million on the second anniversary of the Company s first commercial sale of such product.

Under the terms of the Amendment, in the event that PRF and the Company determine that the fair market value of the collateral in which PRF has been granted a security interest by Guardian II is less than the Put/Call Price, the Company will elect, in its sole discretion, to either grant PRF a security interest in 25% of each additional drug product acquired or in-licensed by the Company or its subsidiaries, or pay PRF $1.5 million on the second year anniversary of the Company s first commercial sale of each such product.

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The Amendment also provides that any acceleration or failure to pay the notes to be issued in the exchange offer shall be considered a Put Event.

Upon the effectiveness of the Amendment the Company will issue to PRF (i) a $2.0 million aggregate principal amount note which will be substantially identical to the notes issued in the exchange offer and (ii) 500,000 shares of the Company s common stock. The Company also has granted certain registration rights to PRF with respect to the note and the shares. Additionally, upon the effectiveness of the Amendment, the Company agreed to amend the exercise price of the common stock purchase warrant dated August 18, 2006 issued to PRF to purchase 288,018 shares of the Company s common stock to be equal to the closing price of the Company s Common Stock on the NASDAQ Global Market on the date immediately preceding the closing of the exchange offer.

The effectiveness of the Amendment is contingent upon, among other things, PRF entering into the Intercreditor Agreement, Guardian II entering into a security agreement granting the second ranking security interest and the closing of the exchange offer.

The cash and other assets of Guardian II, including the ANTARA assets, may not be available to holders of the new notes in the event of any liquidation, dissolution, bankruptcy or other similar proceedings. The new notes will be effectively subordinated to Guardian II s obligations to Paul Capital. In the event of our bankruptcy, liquidation, reorganization or other winding up, Guardian II s assets will be available to pay obligations on the new notes only after all obligations to Paul Capital has been repaid in full from such assets. We advise you that there may not be sufficient assets remaining to pay amounts due on any or all the new notes then outstanding. See Risk Factors 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.

We are obligated to pay reasonable compensation to the trustee and to indemnify the trustee against certain losses, liabilities or expenses incurred by the trustee in connection with its duties relating to the new notes. The trustee s claims for these payments will generally be senior to those of holders of new notes in respect of all funds collected or held by the trustee.

As of September 30, 2008, we had approximately $310.9 million of indebtedness outstanding (including accrued interest).

Security Agreements and Intercreditor Agreement

Guardian II and PRF entered into a security agreement in August 2006 under which Guardian II granted to Paul Capital a senior security interest in and to substantially all assets owned by Guardian II (the First Priority Lien) in order to secure our and Guardian II s payment obligations (the First Lien Obligations) to Paul Capital under the Revenue Interests Assignment Agreement and Guardian II s obligations of payment under the Paul Capital Note. Guardian II and the trustee, in its capacity as collateral agent for the holders of new notes issued in the exchange offer, will enter into a Security Agreement under which Guardian II will grant to the trustee a second priority security interest in and to substantially all assets owned by Guardian II (the Second Priority Lien) in order to secure Guardian II s guarantee of our obligations with respect to the new notes to be issued in the exchange offer and the additional new notes that may be issued under the new notes indenture (the Second Lien Obligations).

To establish the relative rights of Paul Capital (the First Lien Holder) and the trustee, as collateral agent for the holders of new notes (the Second Lien Agent), Oscient, Guardian II, the First Lien Holder and the Second Lien Agent will enter into an intercreditor agreement (the Intercreditor Agreement). The new notes indenture will provide that each holder of new notes, by accepting a new note, shall be deemed to have agreed to and accepted the terms and conditions of the Intercreditor Agreement.

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The following description is a summary of certain provisions, among others, contained in the Intercreditor Agreement that will relate to the rights and obligations of the First Lien Holder and the Second Lien Agent. It does not restate the Intercreditor Agreement in its entirety nor does it describe provisions relating to the rights and obligations of other holders of our indebtedness. As such, we urge you to read that document because it, and not the discussion that follows, defines certain rights of the holders of the new notes.

Ranking and Priority

Pursuant to the terms of the Intercreditor Agreement, the Second Priority Lien in favor of the trustee will be junior in ranking to the First Priority Lien in favor of Paul Capital.

The ranking and priority of our and Guardian II s debt obligations to the holders of new notes under the new notes indenture (as opposed to security claims) will not be regulated or affected by the Intercreditor Agreement.

Limitations on Second Lien Obligations

The Second Lien Obligations (other than Second Lien Obligations owned or controlled by the First Lien Holder or its affiliates) will not exceed $140,000,000 principal amount, plus any interest and fees, payable by us or Guardian II in connection with the Second Lien Obligations (the Second Lien Cap). 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 new note in a principal amount of $2,000,000 to Paul Capital which note will not be registered. In the event that we or Guardian II incur obligations under the new notes indenture in excess of the Second Lien Cap, such obligations would not have the benefit of the Second Priority Lien. See Risk Factors Risk Factors Related to the Exchange Offer We are permitted to incur additional indebtedness which will be secured by the second priority lien and is on par with the new notes.

Enforcement Action

Prior to the date the First Priority Lien is extinguished, neither the trustee nor the holders of the new notes may, without the prior written consent of the First Lien Holder, take any action to enforce the Second Priority Lien. Even if an event of default under the new notes indenture has occurred and the new notes have been accelerated, the trustee is not permitted to enforce the Second Priority Lien until the First Lien Obligations are discharged, but the trustee and any holder of the new notes may:

(a) file a claim or statement of interest with respect to the Second Lien Obligations in any insolvency proceeding commenced by or against us or Guardian II;

(b) take any action not adverse to the priority status of the First Lien Obligations or the rights of the First Lien Holder to exercise remedies thereof in order to create, perfect, preserve or protect (but not enforce) its rights in the collateral securing the Second Priority Lien;

(c) file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any person objecting to or seeking the disallowance of the claims of the holders of the new notes, including any claims secured by the collateral;

(d) vote on any plan of reorganization, file any proof of claim, initiate or file claims for fraud or breach of representations and warranties, provided that in no event shall the Second Lien Agent or the holders of the new notes vote on any plan of reorganization that does not recognize and give effect to the rights and the relative priorities and provisions of the Intercreditor Agreement; or

(e) join (but not exercise any control with respect to) any judicial foreclosure proceeding or other judicial lien enforcement proceeding with respect to the collateral initiated by the First Lien Holder solely to the extent necessary to protect the collateral of the Second Lien Agent and the holders of the new notes and to the extent that such action could not reasonably be expected, in any material respect, to restrain, hinder, limit, delay for any material period or otherwise interfere with enforcement action of the First Lien Holder.

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See Risk Factors Risks Related to the Exchange Offer 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 new notes will not control decisions regarding collateral.

After the payment of claims of the First Lien Holder, the trustee in accordance with the provisions of the new notes indenture will distribute any remaining cash proceeds (after payment of the costs of enforcement and collateral administration and any other amounts owed to the trustee) of the collateral received by it for the ratable benefit of the holders of the new notes. The proceeds from the sale of the collateral remaining after the satisfaction of all First Priority Lien claims may not be sufficient to satisfy the obligations owed to the holders of the new notes. See Risk Factors Risk Factors 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.

Turnover

So long as the discharge of First Lien Obligations has not occurred, whether or not any insolvency proceeding has been commenced by or against Oscient or Guardian II, any collateral or proceeds thereof received by the Second Lien Agent or any holders of the new notes relating to the collateral, including any enforcement action relating to the collateral, will be segregated and held in trust and immediately paid over to the First Lien Holder in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The First Lien Holder is authorized to make any such endorsements as agent for the Second Lien Agent or any such holders of the new notes. This authorization is coupled with an interest and is irrevocable until the discharge of First Lien Obligations.

Subordination

Notwithstanding the date, time, method, manner or order of recognition, creation, grant, attachment or perfection (including, without limitation, the order of filing or recordation of any mortgage, financing statement or other document or notice in any jurisdiction or under any applicable law) of any liens securing the Second Lien Obligations granted on the collateral or of any liens securing the First Lien Obligations granted on the collateral and notwithstanding any provision of the Uniform Commercial Code or any other applicable law or the provisions of the First Lien Documents (as defined below under the heading *Control*) or the Second Lien Documents, or any defect or deficiencies in, or failure to perfect, the liens securing the First Lien Obligations or any other circumstance whatsoever (including whether or not any liens securing any First Lien Obligations are subordinated to any lien securing any other obligation of Guardian II or Oscient, or any other person) each of the Second Lien Agent, on behalf of itself and the holders of the new notes, and the First Lien Holder hereby agrees that:

(i) all liens on the Collateral granted under or pursuant to the First Lien Documents in favor of the First Lien Holder or any agent or trustee therefor securing the First Lien Principal Obligations (defined as the sum of (a) the unpaid amount of the First Lien Obligations and (b) any amount payable under the Revenue Interests Assignment Agreement) up to but not exceeding the First Lien Cap (defined as (i) $22,675,250.83, less the amount of all subsequent repayments, prepayments, repurchases or other retirements for value of principal of the Paul Capital Note; plus (ii) any and all amounts payable from time to time under the revenue interests assignment agreement as currently in effect, including without limitation, the amount of the Put/Call Price (as from time to time in effect); plus (iii) $5,000,000) will be and remain senior in all respects and prior to all Liens on the collateral that are held by the Second Lien Agent, the holders of the new notes or any agent or trustee therefor, whether obtained by grant, possession, operation of law, subrogation or otherwise, securing any Second Lien Obligations; and

(ii) all liens on the collateral that are held from time to time by the Second Lien Agent, the holders of the new notes or any agent or trustee therefor, whether obtained by grant, possession, operation of law, subrogation or otherwise, securing any Second Lien Obligations will be and remain junior and subordinate in all respects to all liens on the collateral granted under or pursuant to the First Lien Documents in favor of the First Lien Holder or any agent or trustee therefor securing First Lien Obligations up to but not exceeding the Maximum First Lien Debt Amount.

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The lien priorities in respect of the collateral cannot be altered or otherwise affected by any permitted modification of the Second Lien Documents or permitted modification of the First Lien Documents or any permitted refinancing of the Second Lien Obligations or permitted refinancing of the First Lien Obligations, or by any action that any creditor may take or fail to take in respect of any grantor or the collateral. Except as expressly provided in the Intercreditor Agreement, the First Lien Holder has agreed not to contractually subordinate its lien on any collateral to the lien of any other creditor (Third Party Creditor) of any grantor without the prior written consent of Second Lien Agent, unless the aggregate of the First Lien Obligations and the principal obligations owed to the Third Party Creditor equals an amount which does not exceed the First Lien Cap.

Control

The Intercreditor Agreement provides that, prior to the discharge of the First Lien Obligations, the First Lien Holder shall have the exclusive right to make determinations regarding the release of the collateral without the consent of the holders of the new notes. Moreover, the Intercreditor Agreement provides that if the First Priority Lien is released by the First Lien Holder including in circumstances where (i) the First Lien Holder exercises any remedies in respect of the collateral or (ii) the collateral is sold or otherwise disposed of by the First Lien Holder, then the Second Priority Lien shall also be automatically, unconditionally and simultaneously released.

The First Lien Holder may modify, extend or amend the terms of the security agreement governing the First Priority Lien, the Revenue Interests Assignment Agreement and the Paul Capital Note without notice to or the consent of the Second Lien Agent or the holders of the new notes (collectively, the First Lien Documents), provided that, the Second Lien Agent s consent shall be required if any modification would:

(1) increase the sum of Paul Capital Note if such increase would cause the then outstanding aggregate principal amount of the amounts owed to Paul Capital under the revenue interests assignment agreement and the Paul Capital Note to exceed the First Lien Cap; or

(2) modify or add any covenant or event of default under an agreement relating to the First Priority Lien which directly restricts us from making payments with respect to the new notes which would otherwise be permitted under the agreements relating to the First Priority Lien as in effect on the date hereof.

The holders of the Second Priority Lien may change, waive, modify or vary the security agreement governing the Second Priority Lien, the new notes indenture, or the new notes, each in accordance with their terms, and the new notes may be refinanced, in each case, with the consent of the First Lien Holder, which consent will not be unreasonably withheld, all without affecting the lien subordination or other provisions of the Intercreditor Agreement; provided, however, that (x) the holders of such refinancing debt (or the agent for such holders) bind themselves in a writing addressed to the First Lien Holder to the terms of the Intercreditor Agreement and (y) any such amendment, supplement, modification or refinancing cannot, without the consent of the First Lien Holder:

(1) modify the method of computing interest or increase the interest rate or yield provisions applicable to the Second Lien Obligations by more than 4% per annum in the aggregate (excluding increases (A) resulting from increases in an underlying reference rate not caused by any amendment, supplement, modification or refinancing of the Second Lien Obligations or (B) resulting from the accrual of interest at the default rate specified in the new notes indenture; or

(2) modify or add any covenant or event of default under the security agreement governing the Second Priority Lien, the new notes indenture, or the new notes which in any way, directly or indirectly, restricts the us or Guardian from making payments to Paul Capital under the security agreement governing the First Priority Lien, the Revenue Interests Assignment Agreement or the Paul Capital Note;

(3) change to earlier dates any dates upon which payments of principal or interest are due thereon;

(4) change the prepayment or redemption provisions thereof; or

(5) change or amend any other term of such documents if such change or amendment would result in a default under such documents as in effect on the date of the Intercreditor Agreement.

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Purchase Option

If the First Lien Holder has initiated any action to enforce its rights with respect to the First Priority Lien, the Second Lien Agent may, within 30 days of the First Lien Holder initiating any such action and on giving not less than five business days notice to the First Lien Holder, at the expense of the holder of the new notes purchase or procure the purchase by the holders of the new notes (or a person or persons nominated by them) of all (but not part only) of the First Lien Obligations and the rights and obligations of the First Lien Holder under the First Lien Documents, provided however, that nothing herein will require the First Lien Holder to postpone or defer any enforcement action pending exercise of the purchase option under this section.

A purchase will take effect on the following terms:

(1) payment in full in cash of an amount equal to the First Lien Obligations (including any make whole, prepayment premium or fees payable in connection with the First Lien Obligations) outstanding as at the date that amount is to be paid and including, without limitation, the Put/Call Price;

(2) after the transfer, the First Lien Holder will not be under any actual or contingent liability to any obligor or any other person under the Intercreditor Agreement or any First Lien Document for which it is not holding cash collateral in an amount and established on terms reasonably satisfactory to it in respect of the First Lien Obligations; and

(3) the relevant transfer shall be without recourse to, or warranty from, the First Lien Holder, except that the First Lien Holder shall be deemed to have warranted on the date of that transfer that: (A) it is the owner of the beneficial interest, free from all security interests and third party interests (other than any arising under the First Lien Documents or by operation of law) in all rights and interests under the First Lien Documents purporting to be transferred by it by that transfer; (B) it has the corporate power to effect that transfer; (C) it has taken all necessary action to authorize the making by it of that transfer; and (D) it will not contest or challenge the validity or effectiveness of that transfer.

Insolvency

If we or Guardian II is subject to any insolvency or liquidation proceeding, the trustee and the new note holders agree that:

(1) Until the First Lien Obligations have been discharged, if Oscient or Guardian II enters any insolvency proceeding and the First Lien Holder consents to the use of Cash Collateral (as such term is defined in Section 363(a) of Title II of the United States the Bankruptcy Code (the Bankruptcy Code), on which the First Lien Holder or any other creditor has a lien, or permits Oscient or Guardian II to obtain financing under Section 364 of the Bankruptcy Code or any similar bankruptcy law (each, a DIP Financing), then, so long as the maximum principal amount of indebtedness under such DIP Financing, together with the aggregate principal amount owed to Paul Capital under the First Lien Obligations outstanding at such time (after giving effect to the application of the proceeds of any DIP Financing to refinance all or any portion of the First Lien Obligations) does not exceed the First Lien Cap, then the Second Lien Agent, on behalf of itself and the holders of the new notes,

(A) has agreed that it will raise no objection to, or otherwise contest or interfere with, such use of Cash Collateral or DIP Financing on the grounds of adequate protection or otherwise nor support any other person objecting to, or otherwise contest or interfere with, such sale, use, or lease of Cash Collateral or DIP Financing and will not request any form of adequate protection or any other relief in connection therewith (except to the extent expressly permitted under the Intercreditor Agreement) and, to the extent the liens securing the First Lien Obligations are subordinated to or pari passu with such DIP Financing, the Second Lien Agent will subordinate its liens in the collateral to (x) the liens securing such DIP Financing (and all obligations relating thereto), (y) any adequate protection liens provided to the First Lien Holder and (z) any carve-out for professional and United States Trustee fees agreed to by the First Lien Holder; and

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(B) agrees that notice received two (2) calendar days prior to the entry of an order approving such usage of Cash Collateral or approving such DIP Financing shall be adequate notice provided that the foregoing shall not prohibit the Second Lien Agent from objecting solely to any provisions in any DIP Financing relating to, describing or requiring any provision or content of a plan of reorganization other than any provisions requiring that the DIP Financing be paid in full in cash.

Nothing set forth in the Intercreditor Agreement will restrict the Second Lien Agent from proposing DIP Financing, or the First Lien Holder from objecting thereto on any grounds. The sole effect of this provision is to specify when the Second Lien Agent and the holders of the new notes will consent to DIP Financing. This provision will not affect the relative priority of the First Lien Obligations whether or not the First Lien Holder consents to or permits such DIP Financing.

(2) The Second Lien Agent, on behalf of the holders of the new notes, agrees that it will raise no objection to or otherwise contest or oppose a sale or other disposition of any collateral (and any post-petition assets subject to adequate protection liens in favor of the First Lien Holder) free and clear of its liens or other claims under Section 363 of the Bankruptcy Code if the First Lien Holder has consented to such sale or disposition of such assets, so long as the interests of the holders of the new notes in the collateral (and any post-petition assets subject to adequate protection liens, if any, in favor of the Second Lien Agent) attach to the proceeds thereof, subject to the terms of the Intercreditor Agreement, and the motion to sell or dispose of such assets does not impair the rights of the holders of the new notes under Section 363(k) of the Bankruptcy Code; provided, that the First Lien Cap shall be reduced by an amount equal to the net cash proceeds of such sale or other disposition which are used to permanently pay or prepay the principal amount of any DIP Financing provided by the First Lien Holder or its affiliates or the obligations to Paul Capital under the First Lien Obligations.

(3) Until the First Lien Obligations have been discharged, the Second Lien Agent, on behalf of itself and the holders of the new notes, agrees that none of them shall seek (or support any other person seeking) relief from the automatic stay or any other stay in any insolvency proceeding in respect of the collateral, without the prior written consent of the First Lien Holder.

(4) The Second Lien Agent, on behalf of itself and the holders of the new notes, agrees that none of them shall contest (or support any other person contesting):

(1) any request by the First Lien Holder for adequate protection; or

(2) any objection by the First Lien Holder to any motion, relief, action or proceeding based on the First Lien Holder claiming a lack of adequate protection.

Notwithstanding the foregoing, in any insolvency proceeding, if the First Lien Holder is granted adequate protection in the form of additional collateral in connection with any Cash Collateral use or DIP Financing, then the Second Lien Agent, on behalf of itself or any of the holders of the new notes, may seek or request adequate protection in the form of a lien on such additional collateral, so long as such lien will be subordinated to the liens securing the First Lien Obligations and such Cash Collateral use or DIP Financing (and all obligations relating thereto) on the same basis Second Lien Obligations are subordinated to the First Lien Obligations under the Intercreditor Agreement; and so long as the Second Lien Agent and the holders of the new notes each waive all rights, privileges, powers and remedies, if any, to seek and receive payment in cash of any claims arising by virtue of such liens, unless the discharge of First Lien Obligations has occurred.

(5) The Second Lien Agent, for itself and on behalf of the holders of the new notes, agrees that notice of a hearing to approve DIP Financing or use of Cash Collateral on an interim basis shall be adequate if delivered to the Second Lien Agent by facsimile transmission, email or other means as soon as reasonably practicable after the date such hearing is established by the court and that notice of a hearing to approve DIP Financing or use of Cash Collateral on a final basis shall be adequate if delivered to the Second Lien Agent at least five (5) days in advance of such hearing.

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Optional redemption

No sinking fund will be provided for the new notes, which means that the new notes indenture will not require us to redeem or retire the new notes periodically. Prior to October 15, 2010, the new notes will not be redeemable. Beginning October 15, 2010, we may redeem at any time for cash all or part of the new notes, upon not less than 30 nor more than 60 days notice before the redemption date by mail to the trustee, the paying agent and each holder of new notes, for a price equal to 100% of the principal amount of the new notes to be redeemed plus accrued and unpaid interest to but excluding the redemption date.

If we decide to redeem fewer than all of the outstanding new notes, the trustee will select the new notes to be redeemed (in principal amounts of $1,000 or integral multiples thereof) by lot, on a pro rata basis or by another method the trustee considers fair and appropriate.

If the trustee selects a portion of your new notes for redemption and you convert a portion of the same new notes, the converted portion will be deemed to be from the portion selected for redemption.

In the event of any redemption in part, we will not be required to:

- issue, register the transfer of or exchange any new note during a period of 15 days before the redemption date; or
- register the transfer of or exchange any new notes so selected for redemption, in whole or in part, except the unredeemed portion of any new notes being redeemed in part.

Conversion rights

Subject to satisfaction of the conditions described under the headings Conversion upon redemption, and Conversion rate adjustments, holders may convert each of their new notes into shares of our common stock at any time on or prior to January 15, 2011 at an initial conversion rate of 909.0909 shares per $1,000 principal amount of new notes (equal to a conversion price of approximately $1.10 per share). The conversion rate and the equivalent conversion price in effect at any given time are referred to as the applicable conversion rate and the applicable conversion price, respectively, and will be subject to adjustment as described below. A holder may convert fewer than all of such holder s new notes so long as the new notes converted are an integral multiple of $1,000 principal amount.

If you elect to voluntarily convert some or all of the 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. 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.

Subject to the provisions described in the paragraph above and under the heading Automatic conversion, unless you convert your new notes on an interest payment date, you will not receive any cash payment representing accrued and unpaid interest upon conversion of a new note. Instead, upon conversion, we will deliver to you a fixed number of shares of our common stock and a cash payment to account for any fractional shares. Any cash payment for fractional shares will be based on the closing sale price of our common stock on the trading day immediately prior to the conversion date. Delivery of shares of common stock upon conversion of the new notes will be deemed to satisfy our obligation to pay the principal amount of the new notes and accrued

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and unpaid interest. Accrued and unpaid interest will be deemed paid in full rather than canceled, extinguished or forfeited. We will not adjust the conversion rate to account for accrued and unpaid interest. The trustee will initially act as the conversion agent.

If any new notes not called for redemption are converted after a record date for any interest payment date and prior to the next interest payment date, the new notes must be accompanied by an amount equal to the interest payable on the next interest payment date on the converted principal amount, unless at the time of conversion there is a default in the payment of interest on the new notes.

If a holder converts new notes, we will pay any documentary, stamp or similar issue or transfer tax due on the issue of shares of our common stock upon conversion, unless the tax is due because the holder requests the shares to be issued in a name other than the holder s name, in which case the holder will pay that tax.

If a holder wishes to exercise its conversion right, the holder must deliver a conversion notice, together, if the new notes are in certificated form, with the certificated security, to the conversion agent along with appropriate endorsements and transfer documents, if required, and pay any transfer or similar tax, if required. Holders may obtain copies of the required form of the conversion notice from the conversion agent.

If a holder has already delivered a repurchase notice as described under Repurchase of the new notes at the option of holders upon a fundamental change with respect to a new note, however, the holder may not surrender that new note for conversion until the holder has withdrawn the repurchase notice in accordance with the new notes indenture.

Conversion upon redemption

You may surrender for conversion any of your new notes called by us for redemption at any time prior to the close of business one business day prior to the redemption date. If you have already submitted a new note for repurchase on a fundamental change repurchase date, you may not surrender that new note for conversion until you have withdrawn your repurchase election in accordance with the new notes indenture.

Automatic conversion

We may elect to automatically convert some or all of the new notes (an automatic conversion) at any time on or prior to maturity if the closing price of our common shares has exceeded 130% of the conversion price for at least 20 trading days during any consecutive 30-day trading period ending within five trading days prior to the notice of automatic conversion (an automatic conversion price). The notice of automatic conversion must be given not more than 30 and not less than 20 days prior to the date of automatic conversion.

If an automatic conversion occurs 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. 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 on 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. We will specify in the automatic conversion notice whether we will pay the additional interest in cash or common shares.

If we do not automatically convert all of the new notes, the trustee will select the new notes to be automatically converted in principal amount of $1,000 or in whole multiples thereof, by lot or on a pro rata basis or by another method that the trustee considers fair and appropriate. If any new notes are to be automatically converted in part only, we will issue a new note or new notes with a principal amount equal to the unredeemed principal portion thereof. If a portion of your new notes is selected for partial automatic conversion and you voluntarily convert a portion of your new notes, the voluntarily converted portion will be deemed to be taken from the portion selected for automatic conversion.

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You will not be required to pay any stamp, transfer, documentary or similar taxes or duties upon automatic conversion but will be required to pay any stamp or transfer tax or duty if the common shares issued upon conversion of the new notes is in a name other than your name. Certificates representing common shares will not be issued or delivered unless all stamp or transfer taxes and duties, if any, payable by the holder have been paid.

Conversion rate adjustment on a fundamental change

If and only to the extent you elect to convert your new notes in connection with a fundamental change (as defined below under Repurchase of the new notes at the option of holders upon a fundamental change) that occurs on or prior to January 15, 2011, pursuant to which 10% or more of the consideration for our common stock (other than cash payments for fractional shares) in such fundamental change transaction consists of cash or securities (or other property) that are not traded or scheduled to be traded immediately following such transaction on a United States national securities exchange, we will increase the conversion rate for the new notes surrendered for conversion by the amount, if any, determined by reference to the table below, based on the date on which such fundamental change becomes effective (the effective date) and the price paid per share for our common stock in such fundamental change transaction (the share price). If holders of our common stock receive only cash in such fundamental change transaction, the share price shall be the cash amount paid per share. Otherwise, the share price will be the average of the closing prices of our common stock for each of the ten trading days immediately prior, but not including the effective date of such fundamental change transaction.

The share prices set forth in the first row of the table below (i.e., column headers) will be adjusted as of any date on which the conversion rate of the new notes is adjusted, as described below under Conversion rate adjustments. The adjusted share prices will equal the share prices applicable immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the conversion rate immediately prior to the adjustment giving rise to the share price adjustment and the denominator of which is the conversion rate as so adjusted. The conversion rate adjustment amounts set forth in the table below will be adjusted in the same manner as the conversion rate set forth under Conversion rate adjustments.

The following table sets forth the amount, if any, by which the applicable conversion rate will increase for each share price and effective date set forth below. The applicable conversion rate will be increased by 110% of the amount set forth in the following table, for each share price and effective date set forth below.

	Stock Price											
	$0.47	**$0.50**	**$0.60**	**$0.70**	**$0.80**	**$0.90**	**$1.00**	**$1.10**	**$1.20**	**$1.30**	**$1.40**	**$1.50**
Effective Date												
November 25, 2008	996.74	863.64	530.30	292.21	113.64	0.00	0.00	0.00	0.00	0.00	0.00	0.00
April 15, 2009	1,041.25	908.14	574.81	336.72	158.14	19.26	0.00	0.00	0.00	0.00	0.00	0.00
October 15, 2009	1,098.07	964.96	631.63	393.53	214.96	76.07	0.00	0.00	0.00	0.00	0.00	0.00
April 15, 2010	1,154.89	1,021.78	688.45	450.35	271.78	132.89	21.78	0.00	0.00	0.00	0.00	0.00
October 15, 2010	1,211.70	1,078.60	745.27	507.17	328.60	189.71	78.60	0.00	0.00	0.00	0.00	0.00
November 25, 2010	1,224.01	1,090.91	757.58	519.48	340.91	202.02	90.91	0.00	0.00	0.00	0.00	0.00
January 15, 2011	1,224.01	1,090.91	757.58	519.48	340.91	202.02	90.91	0.00	0.00	0.00	0.00	0.00

The exact share prices and effective dates may not be set forth in the table above, in which case:

If the share price is between two share price amounts in the table or the effective date is between two effective dates in the table, the amount of the conversion rate adjustment will be determined by a straight-line interpolation between the adjustment amounts set for the two share prices and the two dates, as applicable, based on a 365-day year.

If the share price on the effective date is in excess of $1.50 per share (subject to adjustment), no adjustment to the applicable conversion rate will be made.

If the share price on the effective date is less than $0.47 per share (subject to adjustment), no adjustment to the applicable conversion rate will be made.

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Notwithstanding the foregoing, in no event will the conversion rate exceed 2,133.10 per $1,000 principal amount of new notes, subject to adjustments in the same manner as the conversion rate as set forth under Conversion rate adjustments.

Conversion rate adjustments

The conversion rate will be adjusted as described below, except that we will not make any adjustments to the conversion rate if holders of the new notes participate in any of the transactions described below.

(1) If we issue shares of our common stock as a dividend or distribution on our common stock, or if we effect a stock split or stock combination, the conversion rate will be adjusted based on the following formula:

$$CR = CR_0 \times \frac{OS}{OS_0}$$

where,

CR_0	=	the conversion rate in effect immediately prior to such event
CR	=	the conversion rate in effect immediately after such event
OS_0	=	the number of shares of our common stock outstanding immediately prior to such event
OS	=	the number of shares of our common stock outstanding immediately after such event

(2) If we issue to all or substantially all holders of our common stock any rights or warrants entitling them for a period of not more than 60 days to subscribe for or purchase shares of our common stock, or securities convertible into shares of our common stock, at a price per share or a conversion price per share less than the sale price of our common stock on the business day immediately preceding the time of announcement of such issuance, the conversion rate will be adjusted based on the following formula (provided that the conversion rate will be readjusted to the extent that such rights or warrants are not exercised prior to their expiration):

$$CR = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR_0	=	the conversion rate in effect immediately prior to such event
CR	=	the conversion rate in effect immediately after such event
OS_0	=	the number of shares of our common stock outstanding immediately prior to such event
X	=	the total number of shares of our common stock issuable pursuant to such rights
Y	=	the number of shares of our common stock equal to the aggregate price payable to exercise such rights divided by the average sale price of our common stock for the ten consecutive trading days prior to the business day immediately preceding the record date for the issuance of such rights

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(3) If we distribute shares of our capital stock, evidences of our indebtedness or other assets or property of ours to all or substantially all holders of our common stock, excluding:

dividends, distributions and rights or warrants referred to in clause (1) or (2) above; and

dividends or distributions in cash referred to in clause (4) below;

then the conversion rate will be adjusted based on the following formula:

$$CR = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR_0	=	the conversion rate in effect immediately prior to such distribution
CR	=	the conversion rate in effect immediately after such distribution
SP_0	=	the average sale price per share of our common stock for the ten consecutive trading days prior to the business day immediately preceding the record date for such distribution
FMV	=	the fair market value (as determined by our board of directors) of the shares of capital stock, evidences of indebtedness, assets or property distributed with respect to each outstanding share of our common stock on the record date for such distribution

(4) If we make cash distributions to all or substantially all holders of our common stock, the conversion rate will be adjusted based on the following formula:

$$CR = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR_0	=	the conversion rate in effect immediately prior to the record date for such distribution
CR	=	the conversion rate in effect immediately after the record date for such distribution
SP_0	=	the average sale price of our common stock for the ten consecutive trading days prior to the business day immediately preceding the record date of such distribution
C	=	the amount in cash per share we distribute to holders of our common stock

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(5) If we or any of our subsidiaries purchase shares of our common stock pursuant to a tender offer, the conversion rate will be increased based on the following formula:

$$CR = CR_0 \times \frac{AC + (SP \times OS)}{OS_0 \times SP}$$

where,

CR_0	=	the conversion rate in effect on the date such tender offer expires
CR	=	the conversion rate in effect on the day next succeeding the date such tender offer expires
AC	=	the aggregate value of all cash and any other consideration (as determined by our board of directors) paid for shares purchased in such tender offer
OS_0	=	the number of shares of our common stock outstanding immediately prior to the date such tender offer expires
OS	=	the number of shares of our common stock outstanding immediately after the date such tender offer expires
SP	=	the average sale price of our common stock for the ten days commencing on the trading day next succeeding the date such tender offer expires

If however, the application of the foregoing formula would result in a decrease in the conversion rate, no adjustment to the conversion rate will be made.

To the extent that we adopt any future rights plan, upon conversion of the new notes into our common stock you will receive, in addition to the common stock, the rights under the future stockholder rights plan whether or not the rights have separated from the common stock at the time of conversion and no adjustment to the conversion rate shall be made in accordance with clause (3) above.

Except as stated herein, we will not adjust the conversion rate for the issuance of our common stock or any securities convertible into or exchangeable for our common stock or the right to purchase our common stock or such convertible or exchangeable securities.

In the event of:

any reclassification of our common stock, or

a consolidation, merger or combination involving us, or

a sale or conveyance to another person of our property and assets as an entirety or substantially as an entirety,

in which holders of our outstanding common stock would be entitled to receive stock, other securities, other property, assets or cash for their common stock, holders of new notes will generally be entitled thereafter to convert their new notes into the same type of consideration received by common stock holders immediately prior to one of these types of events.

We are permitted to increase the conversion rate of the new notes by any amount for a period of at least 20 days if our board of directors determines that such increase would be in our best interest. We are required to give at least 15 days prior notice of any increase in the conversion rate. We may also (but are not required to) increase the conversion rate to avoid or diminish income tax to holders of our common stock or rights to purchase common stock in connection with a dividend or distribution of stock (or rights to acquire stock) or similar event.

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Holders of the new notes may, in some circumstances, be deemed to have received a distribution or dividend subject to U.S. federal income tax as a result of an adjustment or the nonoccurrence of an adjustment to the conversion rate. See Material United States Federal Income Tax Consequences Tax Consequences to U.S. Holders Constructive Distributions in Respect of New Notes.

We will not be required to make an adjustment in the conversion rate unless the adjustment would require a change of at least 1% in the conversion rate. However, we will carry forward any adjustments that are less than 1% of the conversion rate.

Repurchase of the new notes at the option of holders upon a fundamental change

If a fundamental change (as defined below in this section) occurs at any time, you will have the right, at your option, to require us to repurchase all or any portion of your new notes that is equal to $1,000 or an integral multiple of $1,000 on a repurchase date that is no earlier than 25 days and no later than 35 days after the date of our notice of the fundamental change.

The price we are required to pay is equal to 100% of the principal amount of the new notes to be repurchased plus accrued and unpaid interest to but excluding the fundamental change repurchase date. If the repurchase date is an interest payment date, we will pay interest on the interest payment date to the record holder on the relevant record date. Otherwise, we will pay accrued and unpaid interest to the same holder that receives the principal amount to be repurchased.

A fundamental change will be deemed to have occurred upon a change of control event or a termination of trading (as defined below).

A change of control event is any transaction or event (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization, sale of all or substantially all of our consolidated assets or otherwise) in connection with which all or substantially all of our common stock is exchanged for, converted into, acquired for or constitutes solely the right to receive, consideration which is not all or substantially all common stock or American Depositary Shares that:

- is listed on, or immediately after the transaction or event will be listed on, a U.S. national securities exchange, or
- is approved, or immediately after the transaction or event will be approved, for quotation on a U.S. system of automated dissemination of quotations of securities prices.

A termination of trading will be deemed to have occurred if our common stock or other common stock into which the new notes are convertible is neither listed for trading on a U.S. national securities exchange nor approved for listing on any U.S. system of automated dissemination of quotations of securities prices, and no American Depositary Shares or similar instruments for such common stock are so listed or approved for listing in the U.S.

However, notwithstanding the foregoing, a holder will not have the right to require us to repurchase its new notes if the sale price per share of our common stock for any five trading days within the period of 10 consecutive trading days ending immediately after the later of the fundamental change or the public announcement of the fundamental change equals or exceeds 110% of the conversion price of the new notes in effect on each of those five trading days.

On or before the 15th day after we know or reasonably should know a fundamental change has occurred, we will provide to all holders of the new notes and the trustee and paying agent a notice of the occurrence of the fundamental change and of the resulting repurchase right. Such notice shall state, among other things:

- the fundamental change repurchase date; and
- the procedures that holders must follow to require us to repurchase their new notes.

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Simultaneously with providing such notice, we will publish a notice containing this information in a newspaper of general circulation in the City of New York or publish the information on our website or through such other public medium as we may use at that time.

If you elect to exercise your right to cause us to repurchase all or any portion of your new notes, you must deliver to us or our designated agent, on or before the business day preceding the fundamental change repurchase date, subject to extension to comply with applicable law, the new notes to be repurchased, duly endorsed for transfer, together with a written repurchase notice and the form entitled Form of Fundamental Change Repurchase Notice on the reverse side of the new notes duly completed, to the paying agent. Your repurchase notice must state:

- if certificated, the certificate numbers of your new notes to be delivered for repurchase, or if not certificated, your notice must comply with appropriate DTC procedures;
- the portion of the principal amount of new notes to be repurchased, which must be $1,000 or an integral multiple thereof; and
- that the new notes are to be purchased by us pursuant to the applicable provisions of the new notes and the new notes indenture.

You may withdraw any repurchase notice (in whole or in part) by a written notice of withdrawal delivered to us or our agent prior to the close of business on the business day prior to the fundamental change repurchase date. The notice of withdrawal shall state:

- the principal amount of the withdrawn new notes;
- if certificated new notes have been issued, the certificate numbers of the withdrawn new notes, or if not certificated, your notice must comply with appropriate DTC procedures; and
- the principal amount, if any, which remains subject to the repurchase notice.

If a fundamental change results from a change of control event, as described below, instead of paying the repurchase price in cash we may elect to pay all or a portion of the repurchase price in shares of our common stock, or, in the case of a merger in which we are not the surviving corporation, common stock or American Depositary Shares of the surviving corporation or its direct or indirect parent corporation or a combination of the applicable securities and cash, at our option. The number of shares of the applicable common stock or securities a holder will receive will equal the relevant amount of the repurchase price divided by 97% of the average sale prices of the applicable common stock or securities for the five trading days immediately preceding the second business day immediately preceding the fundamental change repurchase date. However, we may not pay any portion of the repurchase price in the applicable common stock or securities or a combination of the applicable common stock or securities and cash, unless we satisfy certain conditions prior to the repurchase date as provided in the new notes indenture, including:

- registration of the shares of the applicable common stock or securities to be issued upon repurchase under the Securities Act and the Exchange Act, if required;
- qualification of the shares of the applicable common stock or securities to be issued upon repurchase under applicable state securities laws, if necessary, or the availability of an exemption therefrom; and
- listing of the applicable common stock or securities on a U.S. national securities exchange or quotation thereof on an inter-dealer quotation system of any registered U.S. national securities association.

If the paying agent holds money and/or applicable stock sufficient to pay the fundamental change repurchase price of the new notes on the fundamental change repurchase date, then:

the new notes will cease to be outstanding (whether or not book-entry transfer of the new notes is made or whether or not the new note is delivered to the paying agent); and

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all other rights of the holder will terminate (other than the right to receive the fundamental change repurchase price upon delivery or transfer of the new notes).

We will comply with any applicable provisions of Rule 13e-4 and any other tender offer rules under the Exchange Act in the event of a fundamental change.

The repurchase rights of the holders could discourage a potential acquirer of us. The fundamental change repurchase feature, however, is not the result of management s knowledge of any specific effort to obtain control of us by any means or part of a plan by management to adopt a series of anti-takeover provisions.

The term fundamental change is limited to specified events and may not include other events that might adversely affect our financial condition. In addition, the requirement that we offer to purchase the new notes upon a fundamental change may not protect holders in the event of a highly leveraged transaction, reorganization, merger or similar transaction involving us.

No new notes may be repurchased at the option of holders upon a fundamental change if there has occurred and is continuing an event of default other than an event of default that is cured by the payment of the fundamental change repurchase price of the new notes.

The definition of fundamental change includes a phrase relating to the conveyance, transfer, sale or lease of substantially all of our properties and assets. There is no precise, established definition of the phrase substantially all under applicable law. Accordingly, the ability of a holder of the new notes to require us to repurchase its new notes as a result of the conveyance, transfer, sale, lease or other disposition of less than all of our properties and assets may be uncertain.

If a fundamental change were to occur, we may not have enough funds to pay the fundamental change repurchase price in cash. See Risk Factors under the caption We may be unable to repay or repurchase the new notes or our other indebtedness. If we fail to repurchase the new notes when required following a fundamental change, we will be in default under the new notes indenture. In addition, we have, and may in the future incur, other indebtedness with similar change in control provisions permitting our holders to accelerate or to require us to repurchase our indebtedness upon the occurrence of similar events or on some specific dates.

Consolidation, merger and sale of assets

The new notes indenture provides that we may not consolidate with or merge with or into, or convey, transfer or lease all or substantially all of our properties and assets to, another person, unless (i) the resulting, surviving or transferee person other than us is a person either (a) organized and existing under the laws of the U.S., any State thereof or the District of Columbia, or (b) organized under the laws of a jurisdiction outside the U.S. and has common stock traded on a national securities exchange in the U.S. and a worldwide total market capitalization of its equity securities before giving effect to the consolidation or merger of at least U.S. $2 billion, and in either case such entity other than us expressly assumes by supplemental indenture all of our obligations under the new notes and the new notes indenture; and (ii) immediately after giving effect to such transaction, no default has occurred and is continuing under the new notes indenture. Upon any such consolidation, merger or transfer, the resulting, surviving or transferee person shall succeed to, and may exercise every right and power of,

Oscient Pharmaceuticals under the new notes indenture.

Although these types of transactions are permitted under the new notes indenture, certain of the foregoing transactions could constitute a fundamental change (as defined above) permitting each holder to require us to repurchase the new notes of such holder as described above.

Events of default

Each of the following is an event of default:

default in the payment of interest on any note when due and payable and the default continues for a period of 30 days;

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default in the payment of principal of any new note when due and payable at its maturity, upon redemption, upon repurchase (including upon a fundamental change) or otherwise;

failure by us to comply with any of our other agreements contained in the new notes, the new notes indenture or any agreements, including, without limitation, the security agreement and the deposit agreement, deeds of trust, mortgages, instruments, documents, pledges or filings that are executed in connection with granting, or that otherwise evidence, the second priority lien on the assets of Guardian II for 60 days after written notice of such non-compliance has been received from the trustee or the holders of at least 25% in principal amount of the new notes then outstanding;

default for 10 days in the performance of our conversion obligation upon exercise of a holder s conversion rights;

default by us or our subsidiaries in the payment of the principal or interest on any loan agreement or other instrument under which there may be outstanding, or by which there may be evidenced any, debt for money borrowed in excess of $20.0 million in the aggregate of ours and such subsidiaries (other than indebtedness for borrowed money secured only by the real property to which the indebtedness relates and which is non-recourse to us or to such material subsidiaries), whether such debt now exists or shall hereafter be created, resulting in such debt becoming or being declared due and payable prior to its stated maturity, and such acceleration shall not have been rescinded or annulled within 30 days after written notice has been received by us or such subsidiary from the trustee or by the trustee, us and such subsidiary by the holders of at least 25% in principal amount of the new notes then outstanding;

our failure to give you notice of your right to require us to repurchase your new notes upon a fundamental change;

our failure to file our annual or quarterly reports with the SEC in accordance with the terms of 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, except during an extension period (as defined below); or

certain events involving our or Guardian II s bankruptcy, insolvency, or reorganization (the bankruptcy provisions).

If an event of default occurs and is continuing, the trustee by notice to us may, or the holders of at least 25% in principal amount of the outstanding new notes by notice to us and the trustee may request, and the trustee upon such request shall, declare 100% of the principal of and accrued and unpaid interest on all the new notes to be due and payable. Upon such a declaration, such principal and accrued and unpaid interest will be due and payable immediately. Notwithstanding the previous sentence, in the case of an event of default arising under the bankruptcy provisions, all outstanding new notes will become due and payable without further action or notice.

Upon the occurrence of a filing failure, we may elect, within 60 days of the date notice is provided to us by the holders of at least 25% in principal amount of the outstanding new notes, to pay to the holders an extension fee which will accrue at a rate of 1.00% per annum of the aggregate principal amount of the new notes then outstanding. Such extension fee will extend the cure period for a filing failure for a period of up to 120 days, which period we refer to as the extension period. If we elect to pay such an extension fee, we will provide notice of our election to pay the extension fee to the holders and the trustee on or before the business day immediately prior to the 60th day after the date on which the filing failure first occurred. We will pay any such extension fee on the same dates and in the same manner as we pay interest that accrues on the new notes. 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 the 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 the holders.

The holders of a majority in principal amount of the outstanding new notes may waive all past defaults (except with respect to nonpayment of principal or interest) and rescind any such acceleration with respect to the new notes and its consequences if (1) rescission would not conflict with any judgment or decree of a court of

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competent jurisdiction and (2) all existing events of default, other than the nonpayment of the principal of and interest on the new notes that have become due solely by such declaration of acceleration, have been cured or waived.

Subject to the provisions of the new notes indenture relating to the duties of the trustee, if an event of default occurs and is continuing, the trustee will be under no obligation to exercise any of the rights or powers under the new notes indenture at the request or direction of any of the holders unless such holders have offered to the trustee reasonable indemnity or security against any loss, liability or expense. Except to enforce the right to receive payment of principal or interest when due, no holder may pursue any remedy with respect to the new notes indenture or the new notes unless:

- such holder has previously given the trustee notice that an event of default is continuing;
- holders of at least 25% in principal amount of the outstanding new notes have requested the trustee to pursue the remedy;
- such holders have offered the trustee reasonable security or indemnity against any loss, liability or expense;
- the trustee has not complied with such request within 60 days after the receipt of the request and the offer of security or indemnity; and
- the holders of a majority in principal amount of the outstanding new notes have not given the trustee a direction that, in the opinion of the trustee, is inconsistent with such request within such 60-day period.

Subject to certain restrictions, the holders of a majority in principal amount of the outstanding new notes are given the right to direct the time, method and place of conducting any proceeding for any remedy available to the trustee or of exercising any trust or power conferred on the trustee. The new notes indenture provides that if an event of default has occurred and is continuing, the trustee will be required in the exercise of its powers to use the degree of care that a prudent person would use in the conduct of its own affairs. The trustee, however, may refuse to follow any direction that conflicts with law or the new notes indenture or that the trustee determines is unduly prejudicial to the rights of any other holder or that would involve the trustee in personal liability. Prior to taking any action under the new notes indenture, the trustee will be entitled to indemnification satisfactory to it in its sole discretion against all losses and expenses caused by taking or not taking such action.

The new notes indenture provides that if a default occurs and is continuing and is known to the trustee, the trustee must mail to each holder notice of the default within 60 days after it occurs. Except in the case of a default in the payment of principal of or interest on any new note, the trustee may withhold notice if and so long as a committee of trust officers of the trustee in good faith determines that withholding notice is in the interests of the holders. In addition, we are required to deliver to the trustee an annual certificate indicating whether the signers thereof know of any default that occurred during the previous year. We are also required to deliver to the trustee, within 30 days after the occurrence thereof, written notice of any events which would constitute certain defaults, their status and what action we are taking or propose to take in respect thereof.

Modification and amendment

Subject to certain exceptions, the new notes indenture or the new notes may be amended with the consent of the holders of at least a majority in principal amount of the new notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, new notes) and, subject to certain exceptions, any past default or compliance with any provisions may be waived with the consent of the holders of a majority in principal amount of the new notes then outstanding (including, without limitation, consents obtained in connection with a purchase of, or tender offer or exchange offer for, new notes).

Without the consent of each holder of an outstanding new note affected, no amendment may, among other things:

reduce the rate of or extend the stated time for payment of interest on any new note;

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reduce the principal amount of or change the maturity of the principal of any new note;

make any change that impairs or adversely affects the conversion rights of any new note;

reduce the fundamental redemption price or change repurchase price of any new note or amend or modify in any manner adverse to the holders of new notes our obligation to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;

modify the provisions with respect to the repurchase right of holders upon a fundamental change in a manner adverse to holders;

modify the provisions of the new notes indenture in a manner that adversely affects the interests of the holders of the new notes in any material respect;

make any principal or interest on the new note payable in money or PIK interest other than that stated in the new note or other than in accordance with the provisions of the new notes indenture;

impair the right of any holder to receive payment of principal of or interest on such holder s new notes on or after the due dates therefor or impair the right of any holder to institute suit for the enforcement of any payment on or with respect to such holder s new notes;

reduce the quorum or voting requirements under the new notes indenture;

change the ranking of the new notes in a manner adverse to the holders of the new notes;

make any change in the amendment provisions which require each holder s consent or in the waiver provisions; or

reduce the percentage of new notes required for consent to any modification of the new notes indenture.

We and the trustee may modify or amend the new notes indenture and the new notes without the consent of any holder in order to, among other things:

provide for our successor pursuant to a consolidation, merger or sale of assets;

add to our covenants for the benefit of the holders of the new notes or to surrender any right or power conferred upon us by the new notes indenture;

provide for a successor trustee with respect to the new notes;

cure any ambiguity or correct or supplement any provision in the new notes indenture which may be defective or inconsistent with any other provision;

add any additional events of default with respect to the new notes;

secure the new notes;

increase the conversion rate, provided that the increase is in accordance with the terms of the new notes indenture or will not adversely affect the interests of the holders of the new notes;

supplement any of the provisions of the new notes indenture to such extent as shall be necessary to permit or facilitate the discharge of the notes, provided that such change or modification does not adversely affect the interests of the holders of the new notes; or

add or modify any other provisions with respect to matters or questions arising under the new notes indenture which we and the trustee may deem necessary and desirable and which will not adversely affect the interests of the holders of new notes.

Further issues

We may from time to time, without notice to or the consent of the registered holders of the new notes, create and issue additional debt securities having the same terms as and ranking equally and ratably with the new notes in all respects, so that such additional debt securities shall be consolidated and form a single series with, and shall have the same terms as to status, redemption or otherwise as, the new notes.

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Form, denomination and registration

The new notes (including PIK notes) will be issued:

- in fully registered form; and
- in denominations of $1,000 principal amount and integral multiples of $1,000.

Trustee

U.S. Bank National Association is the initial trustee, security registrar, paying agent and conversion agent.

Governing law

The new notes indenture provides that it and the new notes will be governed by, and construed in accordance with, the laws of the State of New York.

Book-entry, delivery and form

The new notes of each series initially will be represented by one or more permanent global notes in registered form without interest coupons (the global notes).

The global notes will be deposited upon issuance with the trustee as custodian for The Depository Trust Company (DTC) in New York, New York, and registered in the name of DTC s nominee, Cede & Co., in each case for credit to an account of a direct or indirect participant in DTC as described below. Beneficial interests in the global notes may be held through the Euroclear System (Euroclear) and Clearstream Banking, S.A. (Clearstream) (as indirect participants in DTC).

Except as set forth below, the global notes may be transferred, in whole but not in part, only to another nominee of DTC or to a successor of DTC or its nominee. Beneficial interests in the global notes may not be exchanged for notes in registered certificated form (certificated notes) except in the limited circumstances described below. See Exchanges of global notes for certificated notes.

Transfers of beneficial interests in the global notes will be subject to the applicable rules and procedures of DTC and its direct or indirect participants (including, if applicable, those of Euroclear and Clearstream), which may change from time to time.

Depository procedures

The following description of the operations and procedures of DTC, Euroclear and Clearstream are provided solely as a matter of convenience. These operations and procedures are solely within the control of the respective settlement systems and are subject to changes by them. We take no responsibility for these operations and procedures and urge investors to contact the system or their participants directly to discuss these matters.

DTC has advised us that DTC is a limited-purpose trust company created to hold securities for its participating organizations (collectively, the Participants) and to facilitate the clearance and settlement of transactions in those securities between Participants through electronic book-entry changes in accounts of its Participants. The Participants include securities brokers and dealers (including the initial purchasers), banks, trust companies, clearing corporations and certain other organizations. Access to DTC s system is also available to other entities such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a Participant, either directly or indirectly (collectively, the Indirect Participants). Persons who are not Participants may beneficially own securities held by or on behalf of DTC only through the Participants or the Indirect Participants. The ownership interests in, and transfers of ownership interests in, each security held by or on behalf of DTC are recorded on the records of the Participants and Indirect Participants.

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We expect that, pursuant to procedures established by DTC, ownership of these interests in the global notes will be shown on, and the transfer of ownership of these interests will be effected only through, records maintained by DTC (with respect to the Participants) or by the Participants and the Indirect Participants (with respect to other owners of beneficial interests in the global notes).

Investors in the global notes who are Participants in DTC s system may hold their interests therein directly through DTC. Investors in the global notes who are not Participants may hold their interests therein indirectly through organizations (including Euroclear and Clearstream) which are Participants in such system. Euroclear and Clearstream may hold interests in the global notes on behalf of their participants through customers securities accounts in their respective names on the books of their respective depositories, which are Euroclear Bank S.A./N.V., as operator of Euroclear, and Citibank, N.A., as operator of Clearstream. All interests in a global note, including those held through Euroclear or Clearstream, may be subject to the procedures and requirements of DTC. Those interests held through Euroclear or Clearstream may also be subject to the procedures and requirements of such systems.

The laws of some states require that certain persons take physical delivery in definitive form of securities that they own. Consequently, the ability to transfer beneficial interests in a global note to such persons will be limited to that extent. Because DTC can act only on behalf of Participants, which in turn act on behalf of Indirect Participants, the ability of a person having beneficial interests in a global note to pledge such interests to persons that do not participate in the DTC system, or otherwise take actions in respect of such interests, may be affected by the lack of a physical certificate evidencing such interests.

Except as described below, owners of an interest in the global notes will not have notes registered in their names, will not receive physical delivery of certificated notes and will not be considered the registered owners or holders thereof under the indenture for any purpose.

Payments in respect of the principal of, and interest and premium, if any, on a global note registered in the name of DTC or its nominee will be payable to DTC or its nominee in its capacity as the registered holder under the indenture. Under the terms of the indenture, we and the trustee will treat the persons in whose names the notes, including the global notes, are registered as the owners of the notes for the purpose of receiving payments and for all other purposes. Consequently, neither we, the trustee nor any agent of ours or the trustee has or will have any responsibility or liability for:

(1) any aspect of DTC s records or any Participant s or Indirect Participant s records relating to or payments made on account of beneficial ownership interests in the global notes or for maintaining, supervising or reviewing any of DTC s records or any Participant s or Indirect Participant s records relating to the beneficial ownership interests in the global notes; or

(2) any other matter relating to the actions and practices of DTC or any of its Participants or Indirect Participants.

We expect that, under DTC s current practice, at the due date of any payment in respect of securities such as the notes, DTC will credit the accounts of the relevant Participants with the payment on the payment date unless DTC has reason to believe it will not receive payment on such payment date. Each relevant Participant is credited with an amount proportionate to its beneficial ownership of an interest in the principal amount of the notes as shown on the records of DTC. Payments by the Participants and the Indirect Participants to the beneficial owners of notes will be governed by standing instructions and customary practices and will be the responsibility of the Participants or the Indirect Participants and will not be the responsibility of DTC, the trustee or us. Neither we nor the trustee will be liable for any delay by DTC or any of its Participants in identifying the beneficial owners of the notes, and we and the trustee may conclusively rely on and will be protected in relying on instructions from DTC or its nominee for all purposes.

Transfers between Participants in DTC will be effected in accordance with DTC s procedures, and will be settled in same-day funds, and transfers between participants in Euroclear and Clearstream will be effected in accordance with their respective rules and operating procedures. Cross-market transfers between the Participants

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in DTC, on the one hand, and Euroclear or Clearstream participants, on the other hand, will be effected through DTC in accordance with DTC s rules on behalf of Euroclear or Clearstream, as the case may be, by its depositary; however, such cross-market transactions will require delivery of instructions to Euroclear or Clearstream, as the case may be, by the counterparty in such system in accordance with the rules and procedures and within the established deadlines (Brussels time) of such system. Euroclear or Clearstream, as the case may be, will, if the transaction meets its settlement requirements, deliver instructions to its respective depositary to take action to effect final settlement on its behalf by delivering or receiving interests in the relevant global note in DTC, and making or receiving payment in accordance with normal procedures for same-day funds settlement applicable to DTC. Euroclear participants and Clearstream participants may not deliver instructions directly to the depositories for Euroclear or Clearstream.

DTC has advised us that it will take any action permitted to be taken by a holder of notes only at the direction of one or more Participants to whose account DTC has credited the interests in the global notes and only in respect of such portion of the aggregate principal amount of the notes as to which such Participant or Participants has or have given such direction. However, if there is an Event of Default under the notes, DTC reserves the right to exchange the global notes for certificated notes, and to distribute such notes to its Participants.

Although DTC, Euroclear and Clearstream have agreed to the foregoing procedures to facilitate transfers of interests in the global notes among participants in DTC, Euroclear and Clearstream, they are under no obligation to perform or to continue to perform such procedures, and may discontinue such procedures at any time. None of us, the trustee or any of our respective agents will have any responsibility for the performance by DTC, Euroclear or Clearstream or their respective participants or indirect participants of their respective obligations under the rules and procedures governing their operations.

Exchanges of global notes for certificated notes

A global note is exchangeable for certificated notes of the same series in minimum denominations of $1,000 and in integral multiples of $1,000, if:

(1) DTC (a) notifies us that it is unwilling or unable to continue as depositary for the global notes or (b) has ceased to be a clearing agency registered under the Exchange Act and in either event we fail to appoint a successor depositary within 90 days; or

(2) there has occurred and is continuing an Event of Default and DTC notifies the trustee of its decision to exchange the global note for certificated notes.

In all cases, certificated notes delivered in exchange for any global note or beneficial interests in global notes will be registered in the names, and issued in any approved denominations, requested by or on behalf of the depositary (in accordance with its customary procedures).

Neither we nor the trustee will be liable for any delay by the depositary or its nominee in identifying the holders of beneficial interests in the global notes, and each such person may conclusively rely on, and will be protected in relying on, instructions from the depositary for all purposes (including with respect to the registration and delivery, and the respective principal amounts, of the certificated notes to be issued).

Same-day settlement and payment

We will make payments in respect of the notes represented by the global notes (including principal, premium, if any, and interest) by wire transfer of immediately available funds to the account specified by the depositary. The notes represented by the global notes are expected to trade in DTC s Same-Day Funds Settlement System, and any permitted secondary market trading activity in such notes will, therefore, be required by DTC to be settled in immediately available funds. We expect that secondary trading in any certificated notes will also be settled in immediately available funds.

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Because of time zone differences, the securities account of a Euroclear or Clearstream participant purchasing an interest in a global note from a Participant in DTC will be credited, and any such crediting will be reported to the relevant Euroclear or Clearstream participant, during the securities settlement processing day (which must be a business day for Euroclear and Clearstream) immediately following the settlement date of DTC. DTC has advised us that cash received in Euroclear or Clearstream as a result of sales of interests in a global note by or through a Euroclear or Clearstream participant to a Participant in DTC will be received with value on the settlement date of DTC but will be available in the relevant Euroclear or Clearstream cash account only as of the business day for Euroclear or Clearstream following DTC s settlement date.

If the principal of or any premium or interest on the notes is payable on a day that is not a business day, the payment will be made on the following business day.

Subject to any applicable abandoned property law, the trustee and paying agent will pay to us upon written request any money held by them for payments on the notes that remains unclaimed for two years after the date upon which that payment has become due. After payment to us, holders entitled to the money must look to us for payment. In that case, all liability of the trustee or paying agent with respect to that money will cease.

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DESCRIPTION OF EXISTING 2011 NOTES

The existing 2011 notes were issued under an indenture dated as of May 1, 2007, which we refer to as the existing notes indenture, between us and U.S. Bank National Association, as trustee, which we refer to as the trustee. The terms of the existing 2011 notes include those expressly set forth in the existing notes indenture and those made part of the existing notes indenture by reference to the Trust Indenture Act of 1939, as amended, which we refer to as the Trust Indenture Act.

This description of the provisions of the existing 2011 notes is not complete and is subject to, and qualified in its entirety by reference to, the existing 2011 notes and the existing notes indenture. We urge you to read the existing notes indenture because it will define your rights as a holder of the existing 2011 notes. You may request a copy of the existing notes indenture from the trustee.

For purposes of this description, references to Oscient Pharmaceuticals, we, our and us refer only to Oscient Pharmaceuticals Corporation and not to any of its subsidiaries.

General

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.

The existing 2011 notes:

- are our general unsecured, senior obligations;
- rank equally in right of payment to any of our existing or future unsecured senior indebtedness, including trade payables;
- are convertible into our shares of common stock at an initial conversion rate of 74.0741 shares per $1,000 principal amount of existing 2011 notes, subject to adjustment (equal to a conversion price of approximately $13.50 per shares), as described under Conversion Rights and Automatic conversion;
- mature on April 15, 2011, unless earlier converted, repurchased or redeemed;
- accrue interest at a rate of 3.50% per year payable in cash on each April 15 and October 15, beginning on October 15, 2007, to record holders at the close of business on the preceding April 1 and October 1, respectively, except as set forth under Interest ;
- were issued in denominations of $1,000 and integral multiples of $1,000;
- are represented by one or more registered notes in global form, but in certain limited circumstances may be represented by notes in definitive form (see Form, denomination and registration; and Book-entry, delivery and form ;
- are redeemable by us for cash, at our option, in whole or in part, beginning on May 10, 2010 (see Optional redemption);
- are subject to repurchase by us upon a fundamental change (as defined below); and

provide for an increase in the conversion rate for existing 2011 notes surrendered for conversion in connection with certain fundamental changes, as described under Conversion rate adjustment on a fundamental change.

The registered holder of an existing note will be treated as the owner of it for all purposes, including, without limitation, for purposes of determining to whom we will send any notice required to be sent to holders of the existing notes pursuant to the existing 2011 notes indenture.

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The existing notes indenture does not limit the amount or kind of debt that may be incurred by us or any of our subsidiaries.

Other than restrictions described under Repurchase of the existing 2011 notes at the option of holders upon a fundamental change and Consolidation, merger and sale of assets below, the existing notes indenture does not contain any covenants or other provisions which may afford holders of the existing 2011 notes protection in the event of a highly leveraged transaction involving us. We may not reissue an existing note that has matured or been converted, repurchased by us at the option of a holder, redeemed or otherwise canceled.

Payments on the existing 2011 notes; paying agent and registrar

We will pay principal and interest on the existing 2011 notes at the office or agency designated by us in the Borough of Manhattan, The City of New York. We have initially designated U.S. Bank National Association as our paying agent and registrar and its agency in New York, New York as a place where existing 2011 notes may be presented for payment or for registration of transfer. We may, however, change the paying agent or registrar without prior notice to the holders of the existing 2011 notes, and we may act as paying agent or registrar.

We will pay principal and interest on existing 2011 notes in global form registered in the name of or held by The Depository Trust Company (DTC) or its nominee in immediately available funds to DTC or its nominee, as the case may be, as the registered holder of such global note.

Interest

The existing 2011 notes accrue interest at a rate of 3.50% per year from the date of issuance. Interest is payable semi-annually in arrears on April 15 and October 15 of each year, beginning on October 15, 2007, to record holders at the close of business on the preceding April 1 and October 1, respectively, except:

- interest payable upon redemption will be paid to the person to whom principal is payable, unless the redemption date is an interest payment date, in which case interest shall be paid to the record holder on the relevant record date; and
- as set forth in the next sentence.

If you convert your existing 2011 notes into common stock during the period after any record date but prior to the next interest payment date:

- we will not be required to pay interest on the interest payment date if the existing 2011 notes have been called for redemption on a redemption date that occurs during this period, but accrued and unpaid interest on such existing 2011 notes will be paid on the redemption date; or
- if otherwise, any existing note called for redemption that is submitted for conversion during this period must also be accompanied by an amount equal to the interest due on the interest payment date on the converted principal amount, unless at the time of the conversion there is a default in the payment of interest on the existing 2011 notes. See Conversion rights.

Interest is computed on the basis of a 360-day year comprised of twelve 30-day months. We will not be required to make any payment on the existing 2011 notes due on any day which is not a business day until the next succeeding business day. The payment made on the next succeeding business day will be treated as though it were paid on the original due date and no interest will accrue on the payment for the additional period of time.

Transfer and exchange

You may transfer or exchange existing 2011 notes at the office of the registrar in accordance with the existing 2011 notes indenture. The registrar and the trustee may require a holder, among other things, to furnish

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appropriate endorsements and transfer documents. No service charge will be imposed by us, the trustee or the registrar for any registration of transfer or exchange of existing 2011 notes, but we may require a holder to pay a sum sufficient to cover any transfer tax or other similar governmental charge required by law or permitted by the existing notes indenture. We are not required to exchange or register the transfer of:

- any existing note or portion thereof selected for redemption;
- any existing note or portion thereof surrendered for conversion; or
- any existing note or portion thereof surrendered for repurchase but not withdrawn in connection with a repurchase date.

Ranking

The existing 2011 notes are our general unsecured obligations and rank senior in right of payment to all existing and future debt that is expressly subordinated in right of payment to the existing 2011 notes. The existing 2011 notes rank equally in right of payment with all of our existing and future liabilities that are not so subordinated. The existing 2011 notes effectively rank junior to any of our secured indebtedness to the extent of the assets securing such indebtedness. In the event of our bankruptcy, liquidation, reorganization or other winding up, our assets that secure debt will be available to pay obligations on the existing 2011 notes only after all secured debt has been repaid in full from such assets. We advise you that there may not be sufficient assets remaining to pay amounts due on any or all the existing 2011 notes then outstanding.

In addition, the existing 2011 notes are structurally subordinated to any existing and future liabilities of our subsidiaries. Our subsidiary Guardian II incurred debt and other obligations in connection with the acquisition of the U.S. rights to ANTARA, including $20 million of debt payable to Paul Capital in August 2010 and obligations under the Revenue Interests Assignment Agreement described herein. Guardian II granted Paul Capital a security interest in substantially all of its assets to secure its 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, and the ANTARA inventory and accounts receivables. Under the terms of the agreements with Paul Capital, we are also obligated to maintain a portion of our consolidated cash in an account in the name of Guardian II. As a result, the existing 2011 notes are structurally subordinated to Guardian II s obligation to Paul Capital and the cash and other assets of Guardian II, including the ANTARA assets, may not be available to holders of the existing 2011 notes in the event of any liquidation, dissolution, bankruptcy or other similar proceedings.

We are obligated to pay reasonable compensation to the trustee and to indemnify the trustee against certain losses, liabilities or expenses incurred by the trustee in connection with its duties relating to the existing 2011 notes. The trustee s claims for these payments will generally be senior to those of holders of existing 2011 notes in respect of all funds collected or held by the trustee.

Optional redemption

No sinking fund is provided for the existing 2011 notes, which means that the existing 2011 notes indenture will not require us to redeem or retire the existing 2011 notes periodically. Prior to May 10, 2010, the existing 2011 notes will not be redeemable. Beginning May 10, 2010, we may redeem at any time for cash all or part of the existing 2011 notes, upon not less than 30 nor more than 60 days notice before the redemption date by mail to the trustee, the paying agent and each holder of existing 2011 notes, for a price equal to 100% of the principal amount of the existing 2011 notes to be redeemed plus accrued and unpaid interest to but excluding the redemption date.

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If we decide to redeem fewer than all of the outstanding existing 2011 notes, the trustee will select the existing 2011 notes to be redeemed (in principal amounts of $1,000 or integral multiples thereof) by lot, on a pro rata basis or by another method the trustee considers fair and appropriate.

If the trustee selects a portion of your existing 2011 notes for redemption and you convert a portion of the same existing 2011 notes, the converted portion will be deemed to be from the portion selected for redemption.

In the event of any redemption in part, we will not be required to:

- issue, register the transfer of or exchange any existing 2011 note during a period of 15 days before the redemption date; or
- register the transfer of or exchange any existing 2011 notes so selected for redemption, in whole or in part, except the unredeemed portion of any existing notes being redeemed in part.

Conversion rights

General

Subject to satisfaction of the conditions described under the headings Conversion upon redemption, and Conversion rate adjustments, holders may convert each of their existing 2011 notes into shares of our common stock at an initial conversion rate of 74.0741 shares of common stock per $1,000 principal amount of existing 2011 notes (equivalent to an initial conversion price of approximately $13.50 per share of common stock) prior to the close of business on April 14, 2011. The conversion rate and the equivalent conversion price in effect at any given time are referred to as the applicable conversion rate and the applicable conversion price, respectively, and will be subject to adjustment as described below. A holder may convert fewer than all of such holder s existing 2011 notes so long as the existing 2011 notes converted are an integral multiple of $1,000 principal amount.

If you elect to voluntarily convert some or all of the existing 2011 notes on or prior to May 10, 2010, we will pay additional interest in cash or, at our option, in shares of our common stock, or a combination of cash and shares of our common stock, to holders of existing 2011 notes being voluntarily converted, in an amount equal to the interest that would have been payable on the existing 2011 notes from the last day through which interest was paid on the existing 2011 notes, through and including May 10, 2010. If we elect to pay the additional interest in common shares, the common shares will be valued at the conversion price then in effect.

Subject to the provisions described in the paragraph above and under the heading Automatic conversion, unless you convert your existing 2011 notes on an interest payment date, you will not receive any cash payment representing accrued and unpaid interest upon conversion of an existing note. Instead, upon conversion, we will deliver to you a fixed number of shares of our common stock and a cash payment to account for any fractional shares. Any cash payment for fractional shares will be based on the closing sale price of our common stock on the trading day immediately prior to the conversion date. Delivery of shares of common stock upon conversion of the existing 2011 notes will be deemed to satisfy our obligation to pay the principal amount of the existing 2011 notes and accrued and unpaid interest. Accrued and unpaid interest will be deemed paid in full rather than canceled, extinguished or forfeited. We will not adjust the conversion rate to account for accrued and unpaid interest. The trustee will initially act as the conversion agent.

If any existing 2011 notes not called for redemption are converted after a record date for any interest payment date and prior to the next interest payment date, the existing 2011 notes must be accompanied by an amount equal to the interest payable on the next interest payment date on the converted principal amount, unless at the time of conversion there is a default in the payment of interest on the existing 2011 notes.

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If a holder converts existing 2011 notes, we will pay any documentary, stamp or similar issue or transfer tax due on the issue of shares of our common stock upon conversion, unless the tax is due because the holder requests the shares to be issued in a name other than the holder s name, in which case the holder will pay that tax.

If a holder wishes to exercise its conversion right, the holder must deliver a conversion notice, together, if the existing 2011 notes are in certificated form, with the certificated security, to the conversion agent along with appropriate endorsements and transfer documents, if required, and pay any transfer or similar tax, if required. Holders may obtain copies of the required form of the conversion notice from the conversion agent.

If a holder has already delivered a repurchase notice as described under Repurchase of the existing 2011 notes at the option of holders upon a fundamental change with respect to an existing note, however, the holder may not surrender that existing 2011 note for conversion until the holder has withdrawn the repurchase notice in accordance with the existing notes indenture.

Conversion upon redemption

You may surrender for conversion any of your existing notes called by us for redemption at any time prior to the close of business one business day prior to the redemption date. If you have already submitted an existing note for repurchase on a fundamental change repurchase date, you may not surrender that existing note for conversion until you have withdrawn your repurchase election in accordance with the existing notes indenture.

Automatic conversion

We may elect to automatically convert some or all of the existing 2011 notes (an automatic conversion) at any time on or prior to maturity if the closing price of our common shares has exceeded 130% of the conversion price for at least 20 trading days during any consecutive 30-day trading period ending within five trading days prior to the notice of automatic conversion (an automatic conversion price). The notice of automatic conversion must be given not more than 30 and not less than 20 days prior to the date of automatic conversion.

If an automatic conversion occurs on or prior to May 10, 2010, we will pay additional interest in cash or, at our option, in shares of our common stock, or a combination of cash and shares of our common stock, to holders of existing 2011 notes being converted. This additional interest shall be equal to the amount of interest that would have been payable on the existing 2011 notes from the last day through which interest was paid on the existing 2011 notes, through and including May 10, 2010. We will specify in the automatic conversion notice whether we will pay the additional interest in cash or common shares. If we elect to pay the additional interest in common shares, the common shares will be valued at 90% of the automatic conversion price that is in effect at that time.

If we do not automatically convert all of the existing 2011 notes, the trustee will select the existing 2011 notes to be automatically converted in principal amount of $1,000 or in whole multiples thereof, by lot or on a pro rata basis or by another method that the trustee considers fair and appropriate. If any existing 2011 notes are to be automatically converted in part only, we will issue an existing note or existing 2011 notes with a principal amount equal to the unredeemed principal portion thereof. If a portion of your existing 2011 notes is selected for partial automatic conversion and you voluntarily convert a portion of your existing 2011 notes, the voluntarily converted portion will be deemed to be taken from the portion selected for automatic conversion.

You will not be required to pay any stamp, transfer, documentary or similar taxes or duties upon automatic conversion but will be required to pay any stamp or transfer tax or duty if the common shares issued upon conversion of the existing 2011 notes is in a name other than your name. Certificates representing common shares will not be issued or delivered unless all stamp or transfer taxes and duties, if any, payable by the holder have been paid.