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

FORM 10-K

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2007

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission File Number: 001-33500

JAZZ PHARMACEUTICALS, INC.

(Exact name of registrant as specified in its charter)

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

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

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common Stock, par value $.0001 per share	**The NASDAQ Stock Market LLC**

Securities registered pursuant to Section 12(g) of the Act:
None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

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

Large accelerated filer ☐	Accelerated filer ☐	Non-accelerated filer ☒ (Do not check if a smaller reporting company)	Smaller reporting company ☐

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

The aggregate market value of the voting and non-voting stock held by non-affiliates of the registrant as of June 29, 2007, based upon the last sale price reported for such date on the NASDAQ Global Market, was $148,221,856. The calculation of the aggregate market value of voting and non-voting stock excludes 15,286,688 shares of the registrant's common stock held by current executive officers, directors, and affiliated stockholders. For purposes of determining whether a stockholder was an affiliate of the registrant at June 29, 2007, the registrant has assumed that a stockholder was an affiliate of the registrant at June 29, 2007 if such stockholder (i) beneficially owned 10% or more of the registrant's common stock and/or (ii) was affiliated with an executive officer or director of the registrant at June 29, 2007. Exclusion of such shares should not be construed to indicate that any such person possesses the power, direct or indirect, to direct or cause the direction of the management or policies of the registrant or that such person is controlled by or under common control with the registrant.

As of March 25, 2008, a total of 24,622,636 shares of the registrant's Common Stock, $.0001 par value, were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's definitive Proxy Statement for the 2008 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission pursuant to Regulation 14A not later than 120 days after the end of the fiscal year covered by this Form 10-K are incorporated by reference in Part III, Items 10-14 of this Form 10-K.

JAZZ PHARMACEUTICALS, INC.

2007 ANNUAL REPORT ON FORM 10-K

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This Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, which are subject to the "safe harbor" created by those sections. Forward-looking statements are based on our management's beliefs and assumptions and on information currently available to our management. In some cases, you can identify forward-looking statements by terms such as "may," "will," "should," "could," "would," "expect," "plan," "anticipate," "believe," "estimate," "project," "predict," "potential" and similar expressions intended to identify forward-looking statements. These statements involve known and unknown risks, uncertainties and other factors which may cause our actual results, performance, time frames or achievements to be materially different from any future results, performance, time frames or achievements expressed or implied by the forward-looking statements. We discuss many of these risks, uncertainties and other factors in this Annual Report on Form 10-K in greater detail under the heading "Risk Factors." Given these risks, uncertainties and other factors, you should not place undue reliance on these forward-looking statements. Also, these forward-looking statements represent our estimates and assumptions only as of the date of this filing. You should read this Annual Report on Form 10-K completely and with the understanding that our actual future results may be materially different from what we expect. We hereby qualify our forward-looking statements by these cautionary statements. Except as required by law, we assume no obligation to update these forward-looking statements publicly, or to update the reasons actual results could differ materially from those anticipated in these forward-looking statements, even if new information becomes available in the future.

PART I

Item 1. Business

Overview

We are a specialty pharmaceutical company focused on identifying, developing and commercializing innovative products to meet unmet medical needs in neurology and psychiatry. Our goal is to build a broad portfolio of products through a combination of internal development and acquisition and in-licensing activities, and to utilize our specialty sales force to promote our products in our target markets. We apply novel formulations and drug delivery technologies to known drug compounds, and to compounds with the same mechanism of action or similar chemical structure as marketed products, to improve patient care by, among other things, improving efficacy, reducing adverse side effects or increasing patient compliance relative to existing therapies. By working with these drug compounds, we believe that we can substantially mitigate the risks and reduce the costs and time associated with product development and commercialization of new therapies with significant market opportunities. Through the application of novel formulations and drug delivery technologies, we also explore potential new indications for known drug compounds. Since our inception in 2003, we have built a commercial operation and assembled a portfolio of products and product candidates that currently includes two marketed products that generated net product sales of $53.2 million in 2007, one product approved by the U.S. Food and Drug Administration, or FDA, on February 28, 2008 which we are currently launching, and four product candidates in various stages of clinical development. We also have additional product candidates in earlier stages of development.

Our marketed and approved products are:

- *Xyrem® (sodium oxybate) oral solution*. Xyrem is the only product approved by the FDA for the treatment of both cataplexy and excessive daytime sleepiness in patients with narcolepsy. Narcolepsy is a chronic neurologic disorder caused by the brain's inability to regulate sleep-wake cycles. According to the National Institutes of Health, 150,000 or more individuals in the United States are affected by narcolepsy. We promote Xyrem in the United States to neurologists, psychiatrists, pulmonologists and sleep specialists through our approximately 200 person specialty sales force. We have significantly increased U.S. sales of Xyrem since acquiring rights to Xyrem in June 2005. We have licensed the rights to commercialize Xyrem in 54 countries outside of the United States to UCB Pharma Limited, or UCB, and in Canada to Valeant Canada Limited, or Valeant. UCB markets Xyrem in 14 countries. In 2007, Xyrem net sales were $39.0 million.

- *Luvox® CR (fluvoxamine maleate extended release capsules)*. Once-daily Luvox CR was approved by the FDA for the treatment of both obsessive compulsive disorder and social anxiety disorder on February 28, 2008. We recently shipped initial quantities of Luvox CR to wholesalers. We will promote the product through our recently expanded specialty sales force of approximately 200. Luvox CR is a once-daily extended release formulation of fluvoxamine, a selective serotonin reuptake inhibitor. Selective serotonin reuptake inhibitors are used in the treatment of depression, anxiety disorders and some personality disorders. According to the National Institute of Mental Health, obsessive compulsive disorder and social anxiety disorder affect approximately 2.2 million and 15 million adults in the United States, respectively. Luvox CR was developed by Solvay Pharmaceuticals, Inc., or Solvay, in collaboration with Elan Pharma International Limited, or Elan. We obtained the exclusive rights to market and distribute Luvox CR in the United States from Solvay in January 2007. Solvay retains the rights to market and distribute Luvox CR outside of the United States. During 2007 we made, and during 2008 we expect to make, significant expenditures relating to the commercial launch of Luvox CR.

- *Antizol® (fomepizole)*. Antizol is an FDA-approved antidote for suspected or confirmed ethylene glycol or methanol poisonings in humans. We market Antizol primarily to hospitals and emergency rooms. Antizol is distributed to wholesalers in the United States, and we retain the services of a third party to promote the product. Antizol is marketed by our distributors in Canada and Israel. We also market Antizol-Vet, an injectable formulation of fomepizole approved as an antidote for suspected or confirmed ethylene glycol poisonings in dogs. In 2007, Antizol and Antizol-Vet net sales were $14.2 million. In December 2007, a generic fomepizole was approved and is now available in the United States, and in early 2008, a second generic fomepizole product was approved by the FDA. As a result, we expect that sales of Antizol will decrease substantially during 2008.

Our clinical development pipeline consists of the following product candidates:

- *JZP-6 (sodium oxybate)*. We are developing sodium oxybate, the active pharmaceutical ingredient in Xyrem, for the treatment of fibromyalgia. According to the American College of Rheumatology, between two and four percent of the U.S. population suffers from fibromyalgia. We have successfully completed a Phase II clinical trial of this product candidate for the treatment of fibromyalgia. We are currently conducting two Phase III pivotal clinical trials, and we expect preliminary data from the first Phase III pivotal clinical trial in the fourth quarter of 2008. In Phase II clinical trials, JZP-6 achieved a statistically significant improvement compared to placebo in pain based on the pain visual analog scale, which the FDA and the European Agency for the Evaluation of Medicinal Products have indicated is the appropriate primary endpoint for our Phase III pivotal clinical trials. Subject to successful completion of the Phase III clinical trials, we plan to submit a new drug application, or NDA, for JZP-6 in the fourth quarter of 2009. If our NDA is approved by the FDA, we expect to market JZP-6 in the United States to specialists who treat fibromyalgia patients, through an expanded specialty sales force or in partnerships with third parties. We have granted UCB the commercialization rights to JZP-6 in 54 countries outside of the United States.
- *JZP-4 (sodium channel antagonist)*. JZP-4, a controlled release formulation of an anticonvulsant that is believed to work both through a similar mechanism of action as Lamictal® (lamotrigine), an antiepileptic drug marketed by GlaxoSmithKline for the treatment of epilepsy and bipolar disorder. According to the Epilepsy Foundation, approximately 2.7 million people in the United States suffer from epilepsy, and according to the National Institute of Mental Health, approximately 5.7 million people in the United States are affected by bipolar disorder.
- *JZP-8 (intranasal clonazepam)*. JZP-8, an intranasal formulation of clonazepam, is being developed for the treatment of recurrent acute repetitive seizures in epilepsy patients who continue to have seizures while on stable anti-epileptic regimens. Recurrent acute repetitive seizures are bouts of multiple seizures occurring over a short period of time. According to an article published in the *New England Journal of Medicine*, approximately 30% of epilepsy patients are unresponsive, or refractory, to treatment despite

being on an effective dose of an antiepilepsy regimen, and a subset of these refractory patients experience recurrent acute repetitive seizures. We have received orphan drug designation from the FDA for this product candidate for the treatment of recurrent acute repetitive seizures.

- *JZP-7 (ropinirole gel).* JZP-7, a transdermal gel formulation of ropinirole, is being developed for the treatment of restless legs syndrome. Dopamine is naturally produced by the human body, and in the brain, dopamine functions to help nerve cells communicate. A dopamine agonist is a drug compound that mimics the effects of dopamine. According to the Restless Legs Syndrome Foundation, up to 10% of the U.S. population suffers from restless legs syndrome.

We have an ongoing program for generating, identifying and conducting feasibility studies for new product candidates. Our JZP-7 and JZP-8 product candidates resulted from this program. Several other product candidates identified through this program are in various stages of early development, including the use of sodium oxybate for the treatment of movement disorders. Other such early stage projects include a structural analog of valproic acid for the treatment of epilepsy and bipolar disorder licensed from Yissum, the technology transfer company of the Hebrew University of Jerusalem, and a triple reuptake inhibitor for the treatment of depression licensed from Faes Pharma S.A. We are working on ways to expand our Xyrem franchise by developing improvements to Xyrem, such as an oral tablet form, that could be more convenient for patients. These activities are in the early stages of development.

Products and Product Candidates in Clinical Development

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

Marketed and Approved Products

Xyrem (sodium oxybate) oral solution

Xyrem is a sodium oxybate oral solution approved in the United States for the treatment of cataplexy and excessive daytime sleepiness in patients with narcolepsy. Sodium oxybate, the active pharmaceutical ingredient in Xyrem, is a formulation of the sodium salt of g-hydroxybutyrate, an endogenous neurotransmitter and metabolite of g-aminobutyric acid. Xyrem is currently the only FDA-approved treatment for both cataplexy and excessive daytime sleepiness in patients with narcolepsy. In 2007, our net product sales of Xyrem were $39.0 million.

Market Opportunity

Narcolepsy is a chronic neurologic disorder caused by the brain's inability to regulate sleep-wake cycles normally. According to the National Institutes of Health, 150,000 or more individuals in the United States are affected by narcolepsy. The primary symptoms of narcolepsy include excessive daytime sleepiness, cataplexy, sleep paralysis, hallucinations and fragmented nighttime sleep. These symptoms can lead to a variety of complications, such as limitations on education and employment opportunities, driving or machine accidents, difficulties at work resulting in disability, forced retirement or job dismissal, and depression.

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

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

Attributes of Xyrem

Xyrem is the only product approved by the FDA to treat both cataplexy and excessive daytime sleepiness in patients with narcolepsy. Xyrem is administered at night and quickly metabolized so that during the daytime, very little of the active drug is present in the patient. Xyrem has a well established safety profile. In the Journal *SLEEP* in December 2007, the American Academy of Sleep Medicine recommended Xyrem as the only generally accepted patient-care strategy for the treatment of both cataplexy and excessive daytime sleepiness associated with narcolepsy.

Product Development

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

Commercialization

We promote Xyrem in the United States through our approximately 200 person specialty sales force. Pursuant to an agreement originally executed in 2003 and subsequently amended, we have licensed to UCB the exclusive right to register and market Xyrem for the treatment of narcolepsy in 54 countries throughout Europe, South America, the Middle East and Asia in exchange for milestone and royalty payments to us. Pursuant to the original agreement, UCB and its predecessor made upfront and milestone payments totaling $9.5 million in 2007. UCB currently markets the product in 14 countries. We are entitled to additional commercial milestone payments of up to $6.0 million specifically associated with Xyrem and royalties on all commercial sales of Xyrem by UCB. In October 2005, the European Agency for the Evaluation of Medical Products, or EMEA, approved the product for the treatment of cataplexy in adult patients with narcolepsy, and in March 2007, the EMEA approved the product for the treatment of narcolepsy with cataplexy in adult patients. In December 2006, we licensed to Valeant the Canadian marketing rights to Xyrem for the treatment of narcolepsy, subject to our right to later reacquire these rights.

The term of our agreement with UCB, as it applies to Xyrem, extends to the later of the expiration of our associated patent rights in the territories covered by the agreement or ten years from the date of EMEA approval to commercially promote and distribute the product for the treatment of narcolepsy, subject to automatic extension unless and until UCB terminates the agreement upon not less than 12 months' notice. UCB may

terminate our agreement for any reason upon 18 months' notice. We are responsible for supplying Xyrem to UCB in exchange for supply price payments. If we are materially unable to comply with our obligations to supply Xyrem to UCB, UCB has the right under certain circumstances to terminate our agreement upon nine months' notice.

The FDA has granted Xyrem orphan drug exclusivity in the United States for both cataplexy and excessive daytime sleepiness in patients with narcolepsy. This provides marketing exclusivity in the United States until July 2009 for the cataplexy indication and November 2012 for the excessive daytime sleepiness indication. In addition to orphan drug exclusivity, Xyrem is covered by two formulation patents that are listed in the FDA's approved drug products with therapeutic equivalence evaluation document, or Orange Book. The patents will expire in 2020. An additional process patent that covers the product is not listed in the Orange Book and expires in 2019. The Orange Book, among other things, lists drug products approved by the FDA and identifies applicable patent and non-patent marketing exclusivities. The listing of our formulation patent in the Orange Book may require potential competitors to certify as to non-infringement or invalidity of the patent prior to FDA approval of their product candidates. A patent application covering Xyrem's distribution system is currently pending, and the patent, if issued, would expire in 2022. In addition, we believe that the strict manufacturing and distribution controls on sodium oxybate and Xyrem, and the complicated risk management procedures required to market and sell the product, may make it difficult for other companies to manufacture and market generic formulations of Xyrem.

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

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

We have contracted separately with third parties to supply the sodium oxybate used to produce Xyrem and to manufacture the product. We rely on a single source for our supply of sodium oxybate. Quotas from the United States Drug Enforcement Administration, or DEA, are required in order to manufacture and package sodium oxybate. Since the DEA typically grants quota on an annual basis and requires a detailed submission and justification for the request, obtaining a DEA quota is a difficult and time consuming process. We must negotiate with the DEA any time we need additional quota, and these negotiations may be protracted and may not provide us with as much quota as we believe is needed.

Competition

As an alternative to Xyrem, cataplexy is treated with tricyclic antidepressants and selective serotonin or norepinephrine reuptake inhibitors, although none of these compounds has been approved by the FDA for the treatment of cataplexy. Tricyclic antidepressants are a class of antidepressant drugs first used in the 1950s. The use of these drugs can often result in somnolence, which exacerbates excessive daytime sleepiness already experienced

by all patients with narcolepsy. Other treatments for excessive daytime sleepiness in patients with narcolepsy consist primarily of stimulants and wakefulness promoting agents, including Provigil® (modafinil). Xyrem and Provigil are both approved for the treatment of excessive daytime sleepiness in patients with narcolepsy, but Xyrem is also approved for the treatment of cataplexy. Provigil is also approved for the treatment of excessive daytime sleepiness in patients with obstructive sleep apnea/hypopnea syndrome and shift work sleep disorder.

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

Luvox CR (fluvoxamine maleate) Extended Release Capsules

Luvox CR is a once-a-day product approved by the FDA solely for the treatment of both obsessive compulsive disorder and social anxiety disorder. Luvox CR received FDA approval on February 28, 2008. We recently shipped initial quantities of Luvox CR to wholesalers. In January 2007, we licensed from Solvay the exclusive rights to market and distribute Luvox CR in the United States. Solvay retains the rights to market and distribute Luvox CR outside of the United States. Luvox CR is a once-daily extended release formulation of fluvoxamine maleate developed by Solvay in collaboration with Elan. Luvox, an immediate release formulation of fluvoxamine maleate, was previously approved by the FDA and marketed by Solvay for the treatment of obsessive compulsive disorder, and generic fluvoxamine remains one of the leading treatments for the disorder. Luvox CR incorporates Elan's SODAS™ drug delivery technology which is designed to minimize peak-to-trough plasma fluctuations over a 24-hour period and enable once-a-day dosing.

Market Opportunity

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

Social Anxiety Disorder. Social anxiety disorder is characterized by the fear and avoidance of everyday social or performance situations where patients feel that others may scrutinize them and they may embarrass themselves. According to the National Institute of Mental Health, social anxiety disorder affects approximately 15 million adults in the United States. Despite the prevalence of the disorder, social anxiety disorder remains underdiagnosed and undertreated by clinicians. Social anxiety disorder patients have anticipatory anxiety about these situations, and this anxiety can become so pronounced that patients cannot function normally in their daily

lives. Social anxieties can be limited to a particular situation or apply to a variety of situations. In addition to anxiety, patients experience physical symptoms including blushing, sweating, trembling and nausea. Symptoms of social anxiety disorder typically appear in childhood or adolescence with a mean age of onset of approximately 13 years, and the symptoms are often preceded by a history of social inhibition or shyness. According to an article published in the *Journal of Clinical Psychiatry*, mood and other anxiety disorders are prevalent among social anxiety disorder patients.

Attributes of Luvox CR

We believe that there is a significant market opportunity for Luvox CR for the treatment of obsessive compulsive disorder and social anxiety disorder, and that Luvox CR offers a compelling opportunity to improve upon the immediate-release formulation of fluvoxamine, the active pharmaceutical ingredient in Luvox CR, in treating these disorders. Fluvoxamine, in its immediate-release form, is already a broadly prescribed therapy for the treatment of obsessive compulsive disorder. The market potential for Luvox CR is demonstrated in part by the significant ongoing prescription rates for the generic formulations of fluvoxamine despite the absence of active marketing and sales activity.

In a Phase III clinical trial in obsessive compulsive disorder, patients taking Luvox CR demonstrated a statistically significant improvement compared to patients receiving placebo as assessed by the Yale-Brown Obsessive Compulsive Scale at week 12. In two Phase III clinical trials in social anxiety disorder, patients receiving Luvox CR demonstrated statistically significant improvement compared to patients receiving placebo as assessed by the Liebowitz Social Anxiety Scale total score at week 12.

We believe the once-a-day dosing regimen afforded by the extended release formulation of Luvox CR could significantly improve compliance and patient acceptability. Furthermore, we believe that Luvox CR offers a strong combination of proven efficacy in treating obsessive compulsive disorder and social anxiety disorder and favorable tolerability with a weight neutral profile and a low incidence of sexual adverse events seen in the 12-week clinical trials.

Product Development

In January 2007, we licensed from Solvay the exclusive rights to market and distribute Luvox CR in the United States. FDA approval for Luvox CR as a treatment for obsessive compulsive disorder and for social anxiety disorder was received on February 28, 2008. The approval of Luvox CR includes a post marketing commitment to conduct a safety and efficacy study in adolescent patients with social anxiety disorder and a long-term safety and efficacy study in patients with social anxiety disorder.

Commercialization Strategy

We recently shipped initial quantities of Luvox CR to wholesalers in the United States. To effectively market Luvox CR, we significantly expanded our specialty sales force during the fourth quarter of 2007. A substantial majority of prescriptions for the treatment of obsessive compulsive disorder and social anxiety disorder are written by psychiatrists. We believe that this concentration provides an attractive, focused market opportunity for us. Our comprehensive launch strategy includes sampling, journal advertisements, speaker programs and other activities.

Through our license agreement with Solvay, we have the exclusive rights to market and distribute Luvox CR in the United States, and Solvay retained the rights to market and distribute Luvox CR outside of the United States. Solvay assigned to us its rights and obligations under its license and supply agreement with Elan, and we have sublicensed back to Solvay the rights under that agreement outside of the United States. If Solvay decides not to market Luvox CR in any countries to which it has rights, we have a right of first offer with respect to any license of rights to market and distribute Luvox CR in those countries. Under a supply agreement with Solvay,

we are responsible for purchasing, and Solvay is responsible for providing us with, the active pharmaceutical ingredient necessary to manufacture Luvox CR. We are responsible for providing the active pharmaceutical ingredient free of charge to Elan under the license and supply agreement with Elan. Elan has the right and obligation to manufacture the worldwide commercial requirements of Luvox CR. We will be responsible for satisfying Solvay's commercial requirements of Luvox CR outside of the United States in exchange for supply price payments to us. We paid Solvay $2.0 million upon signing of the license agreement. A total of $10.0 million is due on March 28, 2008 and an additional $10.0 million is due April 7, 2008. In addition, $10.5 million is due on September 30, 2008 and $10.5 million is due on December 31, 2008. We are obligated to pay Solvay up to $95.0 million in commercial milestone payments associated with Luvox CR, as well as royalties on net product sales. We are obligated to pay Elan royalties on net product sales and supply price payments for the supply of Luvox CR.

Our license and supply agreements with Solvay will remain in force until terminated by either us or Solvay as a result of an uncured breach by the other party. We may also terminate the agreements with Solvay upon 180 days' notice to Solvay.

The license and supply agreement with Elan that was assigned to us by Solvay will expire upon the later of (i) 10 years after commercial launch of Luvox CR or (ii) the last to expire patent licensed under the agreement with Elan. In addition, either we or Elan may terminate the license agreement in the event of an uncured material breach or in the event of a change of ownership of the other party in excess of 40% or an acquisition of 20% or more of the equity of the other party by a third party offering competing products. Elan may also terminate our license if we fail to meet specified commercialization milestones within specified time periods.

Luvox CR's FDA approval included a commitment for two Phase IV clinical trials, one in adolescent patients with social anxiety disorder and one a long-term duration of effect study in patients with social anxiety disorder. We have begun planning these studies and expect to provide the FDA with our proposed protocols in mid-2008. Failure to promptly conduct these Phase IV clinical trials could result in the FDA's withdrawal of approval for Luvox CR.

Luvox CR has three years of marketing exclusivity beginning on February 28, 2008, the date Luvox CR was approved by the FDA. In addition, Elan has filed a patent application covering the orally administered formulation of extended-release fluvoxamine that requires the release of fluvoxamine over a period of not less than 12 hours. If this patent issues in the United States, it could provide patent protection for this formulation until 2020. The patent has issued in Europe, Australia and Russia and is pending in four other countries.

Competition

Selective serotonin reuptake inhibitors, or SSRIs, have become the standard treatment for anxiety disorders, including obsessive compulsive disorder and social anxiety disorder. According to the Pharmaceutical Audit Suite published by Wolters Kluwer Health, more than 152 million total prescriptions were written for SSRIs and serotonin-norepinephrine reuptake inhibitors, or SNRIs, in the United States in 2007, accounting for approximately $17.6 billion in sales. Serotonin-norepinephrine reuptake inhibitors are a class of antidepressants used in the treatment of clinical depression and sometimes used to treat anxiety disorders, including obsessive compulsive disorder and other conditions. Since the approval of Prozac® (fluoxetine) in the United States in 1987, the use of SSRIs and SNRIs has increased dramatically due to their efficacy and reduced side effect profile relative to previously approved antidepressants. Based on available market data, we estimate that the majority of SSRI and SNRI prescriptions are for the treatment of depression and that obsessive compulsive disorder and social anxiety disorder constitute approximately three percent of total SSRI and SNRI prescriptions.

Five branded products, in addition to Luvox CR, are currently approved by the FDA for the treatment of obsessive compulsive disorder, including four SSRIs: Paxil® (paroxetine HCl), which is marketed by GlaxoSmithKline, Zoloft® (sertraline HCl), which is marketed by Pfizer, Prozac, which is marketed by Eli Lilly, and

Luvox® which is not currently marketed. The fifth branded product is Anafranil® (clomipramine hydrochloride), a tricyclic antidepressant marketed by Mallinckrodt in the United States. The relative use of each of these products for the treatment of obsessive compulsive disorder has varied over the past ten years, and each currently has generic equivalents and is not actively promoted. Generic products are generally sold at significantly lower prices than branded products, tending both to take market share away from branded products and to put downward pricing pressure on branded products.

Based on data from the 2007 Physicians Drug and Diagnosis Audit, we estimate that total fluvoxamine use represented approximately 12% of total drug usage for the treatment of obsessive compulsive disorder in 2007. Prior to the introduction of generic fluvoxamine in 2000, Luvox was considered one of the preferred treatments of obsessive compulsive disorder. Based on data from the 2007 Physicians Drug and Diagnosis Audit, we estimate that Luvox accounted for 21% of total drug usage for the treatment of obsessive compulsive disorder in 1999.

The market for drugs to treat obsessive compulsive disorder is extremely fragmented. Based on data from the 2007 Physicians Drug and Diagnosis Audit, we estimate that Paxil, Zoloft, Prozac and Anafranil (and their generic equivalents) and fluvoxamine accounted for 53% of the total drug usage for the treatment of obsessive compulsive disorder in 2007. Although they are not FDA-approved for the treatment of obsessive compulsive disorder, based on data from the 2007 Physicians Drug and Diagnosis Audit, we estimate that the currently marketed branded products, Lexapro, Celexa, Effexor XR and Cymbalta, accounted for approximately an additional 21% of total drug usage for the treatment of obsessive compulsive disorder in 2007, with more than 40 other drugs making up the remaining 26%. Given the prevalence of generic products, in order to gain significant market acceptance, we will need to demonstrate that the benefits of Luvox CR to patients justify its price.

Four branded products in addition to Luvox CR are currently approved by the FDA for the treatment of social anxiety disorder, including three SSRIs: Zoloft, Paxil and Paxil CR, an extended release version of Paxil, and one SNRI, Effexor XR® (venlafaxine HCl). Effexor XR, which was developed and is sold by Wyeth, does not have a generic equivalent, whereas Paxil, Paxil CR and Zoloft have generic equivalents. Effexor XR was approved for the treatment of social anxiety disorder in 2003 and generic equivalents may be launched as early as June 2008.

As is the case with obsessive compulsive disorder, the market for drugs to treat social anxiety disorder is extremely fragmented. Based on data from the 2007 Physicians Drug and Diagnosis Audit, we estimate that Zoloft, Paxil, Paxil CR and their generic equivalents, and Effexor XR, in the aggregate accounted for only approximately 29% of the total drug usage for the treatment of social anxiety disorder in 2007. Although they are not approved for the treatment of social anxiety disorder, based on data from the 2007 Physicians Drug and Diagnosis Audit, we estimate that the currently marketed products Lexapro, Celexa and Cymbalta accounted for 26% of total drug usage for the treatment of social anxiety disorder in 2007, with fourteen other drugs making up the remaining 45%. As with obsessive compulsive disorder, in order to gain significant market acceptance, we will need to demonstrate that the benefits of Luvox CR to patients justify its price.

The presence in a particular patient of more than one psychiatric condition is an important consideration by physicians in the selection of drugs to treat social anxiety disorder. Zoloft, Paxil, Paxil CR and Effexor XR are approved for additional psychiatric disorders such as major depressive disorder, in addition to social anxiety disorder, which may give them broader recognition and use by physicians and patients. These products therefore may be more likely to be prescribed than Luvox CR.

Although SSRIs have a favorable side-effect profile compared to other classes of agents, the current SSRI products used to treat obsessive compulsive disorder and social anxiety disorder, particularly those formulated for immediate release, all have significant adverse side effects. Adverse side effects associated with SSRIs include nausea, sleep abnormalities, sexual dysfunction, weight gain, adverse drug interactions, risk of hypertension and, in adolescents, increased suicidal tendencies. SSRIs are known to have little effect on patients' disease condition during the initial six to eight weeks of therapy. As a result, multiple psychotropic drugs are

often prescribed during this time period to provide patients with more immediate relief. Additional adverse effects associated with immediate release formulations of SSRIs include significant incidence of nausea and reduced compliance as a result of multiple daily dosing.

Antizol (fomepizole)

Antizol, an injectable formulation of fomepizole, is an FDA approved antidote for suspected or confirmed ethylene glycol or methanol poisonings in humans. According to the 2006 annual report of the American Association of Poison Control Centers, more than 6,000 exposures to ethylene glycol were reported in the United States in 2006, resulting in 34 fatalities. More than 2,000 exposures to methanol were reported in the United States in 2006, resulting in eight fatalities. If ingested, ethylene glycol, commonly found in antifreeze, and methanol, commonly found in windshield wiper fluid, can lead to death or permanent, serious physical damage. When administered promptly after ingestion of either of these poisons, Antizol inhibits the formation of toxic metabolites and helps prevent renal damage or death. Guidelines issued by the American Academy of Clinical Toxicologists have established Antizol as the standard of care for such poisonings.

In 2007, our net product sales of Antizol were $13.9 million. In December 2007, a generic fomepizole product was launched in the United States, and in early 2008, a second generic fomepizole product was approved by the FDA. As a result of the availability of generic competition, we expect Antizol sales to decline significantly during 2008. It is also possible that additional generic competitors will be introduced, which could lead to a more rapid decline in sales of Antizol. We obtained the rights to Antizol in connection with our acquisition of Orphan Medical. Orphan Medical had obtained the worldwide rights to develop and market Antizol through a sublicense agreement with Mericon Investment Group. The license expires in July 2013, subject to a five-year renewal option that may be exercised by either party. Under the agreement Mericon receives quarterly royalties on sales of Antizol through the duration of the sublicense.

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

We also market Antizol-Vet, an injectable formulation of fomepizole approved as an antidote for suspected or confirmed ethylene glycol poisonings in dogs. In 2007, our net product sales of Antizol-Vet were $251,000.

Product Candidates

JZP-6 (sodium oxybate)

We are developing sodium oxybate, the active pharmaceutical ingredient in Xyrem, for the treatment of fibromyalgia. We are currently conducting two Phase III pivotal clinical trials for JZP-6 in fibromyalgia. We have completed a Phase II clinical trial for JZP-6 in which fibromyalgia patients taking sodium oxybate achieved a statistically significant improvement compared to placebo in pain based on the pain visual analog scale, which the FDA and the European Agency for the Evaluation of Medicinal Products have indicated is the appropriate primary endpoint for our Phase III pivotal clinical trials.

Market Opportunity

Fibromyalgia is a chronic pain syndrome defined by widespread pain lasting at least three months. According to the American College of Rheumatology, between two and four percent of the U.S. population suffers from fibromyalgia. Fibromyalgia is believed to be a central nervous system condition. In addition to pain, fibromyalgia patients often suffer from a combination of muscle stiffness, fatigue, disturbed sleep, restless legs syndrome and impaired memory and concentration. Although physicians do not understand the cause of fibromyalgia, it may be triggered by physical trauma, emotional stress or infection. The criteria established by

the American College of Rheumatology for the classification of fibromyalgia require the application of pressure at 18 different points on the body and measurement of pain induced by such pressure. If at least 11 of the 18 points are painful and have been painful for three months, the patient is diagnosed with fibromyalgia.

Competition

Lyrica® (pregabalin) is the only product currently approved by the FDA for the treatment of fibromyalgia. In clinical practice, a variety of drugs are often prescribed to address individual symptoms of fibromyalgia, including antidepressants, pain medications, muscle relaxants, hypnotics and anticonvulsants. Based on available market data, we estimate that more than 8.7 million total prescriptions were written to treat fibromyalgia symptoms in 2007. Of these, approximately 28% were for antidepressants, 16% for anti-epileptics (gabapentin and pregabalin), 19% for muscle relaxants, 10% for non-steroidal anti-inflammatory drugs, 12% for opioids and 6% for other therapeutics. Physicians generally prescribe one or more drug therapies based on the dominant symptom or symptoms of fibromyalgia in a particular patient. This “polypharmacy” approach has significant limitations as none of the current therapies used to treat fibromyalgia is designed to comprehensively address the syndrome and many of its related symptoms.

Two products in addition to Lyrica have completed Phase III clinical development for the treatment of fibromyalgia. Eli Lilly submitted a sNDA for Cymbalta® (duloxetine) in August 2007 seeking FDA approval for the treatment of fibromyalgia. Forest Laboratories and Cypress Bioscience jointly filed an NDA for milnacipran in December 2007 seeking FDA approval for the treatment of fibromyalgia.

Attributes of JZP-6

We are developing JZP-6 to provide an effective treatment for fibromyalgia. While the primary symptom of fibromyalgia is widespread pain, fatigue and mood disturbances are also recognized as common symptoms. We believe that JZP-6 will provide significant advantages over current treatments by offering improvements in three important fibromyalgia symptoms: pain, fatigue and physical functioning.

The primary endpoint for our pivotal trials measuring the efficacy of JZP-6 is the change from baseline in pain based on the pain visual analog scale. An efficacious response by a patient in the trial is defined as a greater than or equal to 30% reduction in the pain visual analog scale. The FDA has communicated verbally that the pain visual analog scale is an acceptable primary endpoint to obtain an indication for the treatment of fibromyalgia. The European Agency for the Evaluation of Medicinal Products has stated that a pain reduction of at least 30% should be targeted, as well as a positive result in either the Fibromyalgia Impact Questionnaire or the Patient Global Impression of Change.

Product Development

Phase II Clinical Trial Results. In August 2005, we completed a Phase II clinical trial of 195 patients with fibromyalgia in a randomized, double blind placebo-controlled safety and efficacy study. Patients received a fixed dose of 4.5 grams of sodium oxybate divided into two nightly doses, 6 grams of sodium oxybate divided into two nightly doses, or placebo twice nightly for an eight-week period. The primary endpoint for this trial was a composite of change from baseline in three co-primary measures of patients’ pain: the pain visual analog scale, the fibromyalgia impact questionnaire and patient global impression of change. Secondary endpoints included measurement of a tender point count, tender point index, Epworth sleepiness scale, Jenkins scale for sleep, global score on the functional outcome of sleep questionnaire, severity of fatigue and clinical global impression of change. The Phase II clinical trial demonstrated significant improvement in the composite endpoint results in both dosage strengths. In addition, the study demonstrated significant improvements in secondary measures of fatigue, sleepiness and sleep quality. There were no unexpected adverse events in the study.

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

Ongoing Phase III Clinical Trials. We are currently conducting two Phase III pivotal clinical trials, each in approximately 525 patients, to confirm the results or our Phase II clinical trial. We are also conducting an open-label continuation trial to provide long-term safety data; this trial is open to patients who complete one of the two pivotal Phase III trials. Based on communications from the FDA after completion of our Phase II clinical trial, the primary endpoint in both of our ongoing Phase III pivotal clinical trials is the improvement on a pain visual analog scale. Each of our Phase III pivotal clinical trials is a randomized, double blind, placebo controlled study. The first of the trials commenced in September 2006 and as of March 13, 2008 was ongoing in approximately 66 sites located in the United States. As of March 13, 2008, more than 400 patients had been enrolled in the first trial. The second trial commenced in February 2007 and as of March 13, 2008 was ongoing in approximately 45 United States and European sites. As of March 13, 2008, more than 150 patients were enrolled in the second trial. Approximately 30% of the subjects for the second trial are expected to reside outside of the United States. The dosages being studied in the ongoing Phase III pivotal trials are consistent with those in our Phase II clinical trial.

We expect preliminary data from the first Phase III pivotal clinical trial in the fourth quarter of 2008. We currently anticipate submission of an NDA for this product candidate in the fourth quarter of 2009.

Commercialization Strategy

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

In 2006, we amended our agreement with UCB to grant UCB the right to market JZP-6 for the treatment of fibromyalgia in 54 countries throughout Europe, South America, the Middle East and Asia. Under the terms of the amended agreement, UCB has paid us $22.5 million. We are entitled to up to $32.5 million in additional development milestone payments associated with JZP-6, and additional commercial milestone payments of up to $100.0 million related primarily to JZP-6 for the treatment of fibromyalgia as well as Xyrem for the treatment of narcolepsy. The term of our agreement with UCB, as it applies to JZP-6, extends to the later of the expiration of our associated patent rights in the territories covered by the agreement or ten years from the date of European Agency for the Evaluation of Medical Products approval to commercially promote and distribute the product for the treatment of fibromyalgia, subject to automatic extension unless UCB provides 12 months' notice. UCB may terminate our agreement for any reason upon 18 months' notice. We are responsible for supplying commercial quantities of JZP-6 to UCB in exchange for supply price payments. If we are unable to comply with our obligations to supply JZP-6 to UCB, UCB has the right under certain circumstances to terminate our agreement upon nine months' notice.

We have contracted with our active pharmaceutical ingredient supplier of sodium oxybate for the manufacture of Xyrem, and with our manufacturer of Xyrem, for the production of JZP-6 to conduct our clinical trials. We rely on a single source for our supply of sodium oxybate. Quotas from the DEA are required in order to manufacture and package sodium oxybate. Since the DEA typically grants quota on an annual basis and requires a detailed submission and justification for the request, obtaining a DEA quota is a difficult and time consuming process. We must negotiate with the DEA any time we need additional quota, and these negotiations may be protracted and may not provide us with as much quota as we believe is needed to complete our clinical trials and, if it is approved, to commercialize JZP-6. We expect that the manufacture and distribution of JZP-6 will be subject to restrictions and risk management policies similar to the restrictions and risk management processes in place for Xyrem. These restrictions and risk management policies may present a meaningful obstacle to introduction of generic versions of JZP-6.

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

JZP-4 (sodium channel antagonist)

We are developing JZP-4, a controlled release formulation of an anticonvulsant that is believed to work through a similar mechanism of action as Lamictal® (lamotrigine). We have completed a number of preclinical animal models related to antiepileptic activity that suggest that JZP-4 may be effective in treating epilepsy. We have successfully completed two proof of concept clinical trials, a long-term toxicology study and a formulation study. We began activities in connection with a Phase II clinical trial for the treatment of epilepsy in December 2007, and we plan to dose the first patient with JZP-4 in the third quarter of 2008.

Market Opportunity

Epilepsy. Epilepsy, a seizure disorder, is a serious neurological illness affecting people of all ages. A seizure is a sudden surge of electrical activity in the brain that affects how a person feels or acts for a short time. According to the Epilepsy Foundation, approximately 2.7 million people in the United States suffer from epilepsy. In 2007, over $10 billion of seizure disorder drugs were sold in the United States as measured by the Pharmaceutical Audit Suite. Based on available market data, we estimate that approximately $3.3 billion of these drugs were prescribed for the treatment of epilepsy. Epileptic seizures are classified as either partial or generalized depending upon how the abnormal brain activity begins. Partial seizures begin with abnormal activity in part of the brain. Generalized seizures have abnormal activity in most or all of the brain. Seizure symptoms may be hardly noticeable, such as confusion and staring, or totally disabling, such as convulsions, shaking and falling down.

Bipolar disorder. Bipolar disorder is a serious, chronic psychiatric disorder that causes shifts in mood, energy and ability to function. According to National Institute of Mental Health, approximately 5.7 million people in the United States are affected by bipolar disorder. Based on available market data, we estimate that approximately $2 billion of antiepileptic drugs were sold for the treatment of bipolar disorder in 2007. People suffering from the condition experience dramatic mood swings from an overly “high” mania state to an overly “low” or depressive state, often with periods of normal mood in between.

Competition

Epilepsy. Seizures in epileptic patients are typically controlled by treatment with one or more antiepileptic drugs. According to the Pharmaceutical Audit Suite, in 2007 there were approximately 7.4 million prescriptions written for Lamictal. While up to 70% of epilepsy patients respond to therapy and become seizure-free with chronic treatment with antiepileptic drugs, the remaining patients fail treatment either because the drugs do not stop their seizures or because they cannot tolerate the side effects. These patients usually take more than one

antiepileptic drug at a time and are therefore more susceptible to adverse effects associated with drug interactions. Selection of the appropriate medication for an individual patient is typically based on the type of epilepsy from which a patient suffers, the genesis of the disease, and the patient's age and gender. Side effects and tolerability are significant concerns with currently available antiepileptic drugs. Side effects for most antiepileptic drugs include sleepiness, cognitive impairment, weight gain, mood changes, dizziness and potentially life-threatening immune system reactions. Physicians generally start their patients on a low dose of antiepileptic drugs, and titration may take up to 12 weeks. During this period, patients often continue to suffer from epileptic seizures of various severities.

Bipolar Disorder. Bipolar disorder is typically managed with drugs from a variety of different drug classes. While treatment duration varies for each patient, treatment of an acute phase of the disease generally lasts for up to two months, followed by a continuation phase of between one and six months, and a maintenance phase of up to 24 months. Generally, the treatment is chosen based on the mood episode a patient is experiencing at a particular time. Treatment for patients in the acute mania phase includes a mood stabilizer, such as lithium or an antiepileptic drug, in addition to an atypical antipsychotic. Patients in the acute depression phase are initially treated with Lamictal, Symbyax® (olanzapine and fluoxetine HCl capsules), a combination antidepressant and antipsychotic, or Seroquel® (quetiapine), an antipsychotic. For long-term maintenance, the same medications that were effective for the acute episodes are typically continued at the same or lower doses. Many of the drugs currently used in the treatment of bipolar disorder have adverse drug interactions affecting each drug's efficacy and safety as well as adverse tolerability and other negative side effects such as sedation, weight gain, involuntary movements, tremors, stiffness, orthostatic hypotension and potentially life-threatening immune system reactions. These side effects discourage compliance and may pose serious health risks.

Attributes of JZP-4

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

Product Development

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

Our preclinical development has involved a range of preclinical studies to determine how the active pharmaceutical ingredient in JZP-4 works and its potential to treat epilepsy. The results of these studies indicate that the active pharmaceutical ingredient in JZP-4 is a broad spectrum antiepileptic drug with sodium and calcium channel blockade as the primary mechanisms of action. From the results of these preclinical studies, we infer that the active pharmaceutical ingredient has a broad spectrum of activity, which indicates that it may be effective in treating many different types of epileptic seizures. We have also completed preliminary toxicology

and clinical pharmacology tests that have provided early indications of safety and a low potential for certain adverse drug interactions. These tests involved exposure of more than 170 healthy individuals in eight single dose and multi-dose studies. We developed a prototype once-a-day formulation and tested it in the fourth quarter of 2007 in a pharmacokinetic study that showed the viability of once-a-day dosing.

We have conducted two proof-of-concept clinical trials that were designed to provide evidence of central nervous system activity for JZP-4. The first, a transcranial magnetic stimulation study in healthy human volunteers, used lamotrigine as a positive control. The results from these subjects indicate central nervous system activity of JZP-4. The second, a photic-induced paroxysmal electroencephalographic study in photosensitive epilepsy patients, used the active pharmaceutical ingredient in JZP-4 and a higher dose of baseline antiepileptic drug as a positive control. This study was completed in the fourth quarter of 2007, providing information on the effective dose range in epilepsy patients and possible adverse drug interactions with other antiepileptic drugs.

Our completed long-term toxicology studies support use of the active pharmaceutical ingredient in JZP-4 in humans for up to 13 weeks. Based on the results we received from these long-term toxicology studies, formulation studies, two proof-of-concept studies and certain drug-drug interaction studies, we began our Phase II activities in the fourth quarter of 2007, and we expect to dose the first patient in this Phase II clinical trial of JZP-4 for the treatment of epilepsy beginning in the third quarter of 2008. We expect preliminary information from this trial in late 2008.

Commercialization Strategy

Our strategy to market any approved formulation of JZP-4 will depend on the outcome of our clinical trials, the specific indications it is approved to treat and the specialties of the physicians most likely to prescribe the product based on the approved indications. Any such sales efforts may involve the utilization of our internal sales force, collaborations with partners, or a combination of both. Pursuant to our agreement with GlaxoSmithKline, we have paid upfront and development milestone payments of $5.0 million, and will pay $5.0 million upon first dosing of a patient in a Phase II clinical trial, which is currently expected in the third quarter of 2008. The agreement with GlaxoSmithKline provides for $108.5 million in additional development and commercial milestone payments, and royalties on commercial sales. Under the agreement, we are obligated to use diligent efforts to develop and commercialize JZP-4 in accordance with a specified timeline. If we fail to use such efforts, then GlaxoSmithKline may elect, following notice and opportunity to cure, to terminate the agreement and reclaim all product rights. In addition, if we elect to discontinue development of JZP-4, GlaxoSmithKline has a right to re-acquire the product upon payment of specified amounts. We have contracted for the supply of clinical trial materials for our clinical trials of JZP-4, and we will need to arrange for commercial supply.

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

JZP-8 (intranasal clonazepam)

We are developing JZP-8, an intranasal formulation of clonazepam, for the treatment of recurrent acute repetitive seizures in epilepsy patients who continue to have seizures while on stable anti-epileptic regimens. Our initial development work suggests that JZP-8 has the potential to provide fast-acting efficacy associated with currently available therapies while addressing problems associated with administration that make such therapies largely impractical to employ. We have received orphan drug designation from the FDA for this product candidate for the treatment of recurrent acute repetitive seizures.

Market Opportunity

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

Competition

Quick identification and treatment of the first seizure in a series of recurrent acute repetitive seizures can often interrupt the ongoing seizure, reduce its severity, and prevent subsequent seizures. Interrupting a seizure cluster may also lessen the severity of post-seizure symptoms. In the United States, Diastat® (diazepam rectal gel), marketed by Valeant Pharmaceuticals, is the only FDA-approved, acute, outpatient treatment for patients on stable antiepileptic drugs who experience bouts of increased seizure activity. In 2007, sales of Diastat totaled approximately $80.0 million in the United States as measured by the Pharmaceutical Audit Suite. Although generally considered safe and effective for patients of all ages, because it is a rectally administered gel, Diastat is primarily prescribed for children under the age of ten and is administered to them by caregivers or parents. Diastat's rectal administration has made it impractical for most of the adolescent, adult and elderly population. Patients with seizure clusters who do not use Diastat have no other outpatient treatment option and thus, typically, are treated through the emergency medical system.

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

Attributes of JZP-8

JZP-8 is being developed as an intranasal formulation of clonazepam which has been shown to enter the bloodstream faster than a dose from a conventional tablet form. Clonazepam has been approved for chronic treatment of some forms of epilepsy. Like other benzodiazepines, JZP-8 will likely be regulated as a controlled substance by the DEA if approved for marketing by the FDA. We believe JZP-8 will provide a far easier means of administration while patients are actively seizing and a delivery form that will be accepted for use by adolescent and adult patients as well as caregivers. In addition, we believe that JZP-8 will have sufficient duration of action to prevent recurrence of subsequent seizures in the following 24 hours.

Product Development

We completed development activities to select clonazepam as the active pharmaceutical ingredient for this product candidate, and we have conducted further development activities related to formulation, safety and tolerance of the product candidate. We have completed a pharmacokinetics and pharmacodynamics study in healthy volunteers. Pharmacokinetics deals with the absorption, distribution, biotransformation and excretion of drugs, which, coupled with dosage, determines the concentration of a drug in the body and hence, the intensity of its effects as a function of time. Pharmacodynamics is the study of the biochemical and physiological effects of drugs and their mechanisms of action. These pharmacokinetic and pharmacodynamic results demonstrate that JZP-8 has an acceptable plasma profile. In December 2007, we dosed the first patient in a Phase II clinical trial of

JZP-8 to evaluate the effectiveness and safety of several dosage strengths for the treatment of recurrent acute repetitive seizures in patients with epilepsy who continue to have seizures while on stable anti-epileptic regimens. Subject to satisfactory results of the Phase II clinical trial, we plan to begin Phase III clinical trial activities for JZP-8 in the first half of 2009.

Commercialization Strategy

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

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

We have contracted for the supply of the active pharmaceutical ingredient in JZP-8 in sufficient quantities to complete clinical trials. We intend to begin to seek a contract manufacturer for commercial quantities of JZP-8 in late 2008.

In December 2007, we received orphan drug designation from the FDA for JZP-8. The FDA's orphan drug designation is intended to encourage research and development of new therapies for diseases that affect fewer than 200,000 persons in the United States. Because JZP-8 is a designated orphan drug, we will be eligible for tax credits based upon JZP-8's clinical development costs, exemption from the Prescription Drug User Fee Act application fee and waiver of annual product and establishment fees. After receiving marketing approval from the FDA, designated orphan drug products are entitled to seven years of exclusive marketing rights in the United States.

JZP-7 (ropinirole gel)

We are developing JZP-7, a transdermal gel formulation of ropinirole, for the treatment of restless legs syndrome. Based on our development activities, we believe that JZP-7 offers the potential for effective treatment of restless legs syndrome while reducing adverse effects associated with existing treatments.

Market Opportunity

Restless legs syndrome is a common, underdiagnosed neurological disorder that frequently manifests itself as a sleep disorder. According to the Restless Legs Syndrome Foundation, up to ten percent of the U.S. population suffers from restless legs syndrome. An article reviewing the results of several studies which was published in the March 2004 issue of Sleep Medicine indicated that between five and ten percent of the general population experience restless legs syndrome symptoms. Patients who suffer from restless legs syndrome experience an irresistible urge to move their legs. This urge is usually accompanied by unpleasant sensations of burning, creeping, tugging or tingling inside the patients' legs, ranging in severity from uncomfortable to painful. These restless legs syndrome-related symptoms typically begin or worsen during periods of rest or inactivity, particularly when lying down or sitting, and may be temporarily relieved by movement such as walking or massaging the legs. Symptoms often worsen at night and disturbed sleep is a common result of restless legs syndrome. Left untreated, restless legs syndrome may cause exhaustion, daytime fatigue, inability to concentrate and impaired memory.

Competition

Requip® (ropinirole), marketed by GlaxoSmithKline, was the first product approved by the FDA for the treatment of restless legs syndrome. In 2006, Mirapex® (pramipexole), marketed by Boehringer Ingelheim, was

approved by the FDA for the treatment of moderate to severe restless legs syndrome. UCB is developing a rotigotine transdermal patch for restless legs syndrome under the trade name Neupro®, for which UCB filed a supplemental NDA, or sNDA, with the FDA in December 2007. The symptoms of restless legs syndrome are also currently treated by dopamine agonists, opioids, benzodiazepines and anticonvulsants. While Requip and Mirapex have been shown to be effective in treating restless legs syndrome, they have been associated with adverse side effects including nausea, vomiting, orthostatic hypotension and sudden onset of sleep. In a study of patients on dopamine agonist treatments reported in the *Archives of Neurology*, approximately 48% of patients who had continued treatment for longer than six months developed augmentation, with approximately 22% of these patients having severe augmentation. Augmentation refers to the earlier onset of symptoms, increase in symptoms, and spread of symptoms to involve other extremities. For these patients, physicians often add an additional, earlier dose of the existing treatment, increase dosage, or switch to an alternative therapy.

Attributes of JZP-7

We are developing JZP-7 as a transdermal gel formulation of ropinirole to provide the effective treatment of restless legs syndrome while addressing adverse events associated with current therapies. We are seeking to develop JZP-7 as a once-daily formulation. We believe this formulation has the potential to significantly reduce the titration schedule associated with Requip and adverse events associated with products that are often used to treat restless legs syndrome, including nausea, vomiting, orthostatic hypotension and sudden onset of sleep. JZP-7 may also have the potential to provide extended relief of restless legs syndrome for those patients needing longer symptom relief than may be provided by existing oral therapies.

Product Development

We have conducted two pharmacokinetic studies in healthy volunteers. The results demonstrated that our JZP-7 product has a pharmacokinetic profile consistent with our development target. We are planning to initiate Phase III clinical trials for the treatment of restless legs syndrome in the fourth quarter of 2008.

Commercialization Strategy

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

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

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

New Product Candidate Identification and Development

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

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

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

Our JZP-7 and JZP-8 product candidates resulted from this program. We currently have several other product candidates identified through this program in various stages of early development, including the use of sodium oxybate for the treatment of movement disorders. Other such early stage projects include a structural analog of valproic acid for the treatment of epilepsy and bipolar disorder licensed from Yissum, the technology transfer company of the Hebrew University of Jerusalem, and a triple reuptake inhibitor for the treatment of depression licensed from Faes Pharma S.A. We are also developing an oral tablet form of sodium oxybate.

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

Sales and Marketing

As of March 21, 2008, we had a specialty sales force consisting of approximately 200 full-time sales professionals which include our Specialty Sales Consultants, Regional Sales Managers, and Area Business Directors, who currently promote Xyrem and will promote Luvox CR beginning in April 2008. Our Specialty Sales Consultants are experienced, with an average of eight years of specialty pharmaceutical selling experience. Our Regional Sales Management team has an average of eight years of specialty sales management experience and 16 years of industry experience. Our sales force calls primarily on psychiatrists, neurologists, pulmonologists and sleep specialists. If JZP-6 is approved by the FDA, we may further expand our specialty sales force to include additional sales professionals who would focus on specialists treating fibromyalgia. As other product candidates are approved by the FDA, we will assess the specific market needs and adjust our sales force deployment and size as appropriate.

We have established marketing and commercial operations departments to support our sales efforts. Our marketing and commercial operations departments consist of marketing professionals who are responsible for brand management and market research, and commercial operations professionals who are responsible for business analytics and commercial technology, sales administration, training and development, pharmacy relations and patient affairs. Our marketing team develops and implements brand strategies to maximize product uptake and adoption with our target physician audiences in accordance with our approval labeling. We significantly expanded our commercial operations in 2007 to accommodate promotional and marketing activities necessary to prepare for the commercial launch of Luvox CR. We also employ third party vendors, such as advertising agencies, market research firms and suppliers of marketing and other sales support related services to assist with our commercial activities.

Medical Affairs Department

We have a Medical Affairs Department consisting of approximately 18 professionals as of March 21, 2008 that provides medical information regarding our products to health care providers and handles related medical issues. Our Medical Affairs Department answers medical questions from health care professionals and provides them with publications on request. The medical education activities of our Medical Affairs Department focus on grants for continuing medical education activities and the creation of enduring educational materials. Our ten Medical Affairs scientists, who are based around the U.S, foster relationships with thought leaders and work with investigators who are interested in exploring novel uses of our products.

Customers and Financial Information about Geographic Areas

In the United States, Xyrem is sold to a specialty pharmacy which ships Xyrem directly to patients. Our other products in the United States are sold primarily to distributors who distribute our product to pharmacies. During the year ended December 31, 2007, the specialty pharmacy for Xyrem was Express Scripts, and the principal distributors for our other products were Cardinal Health and AmerisourceBergen, and outside the U.S., UCB Pharma.

Information on total revenues attributed to domestic and foreign sources is included in Note 18 to our consolidated financial statements.

Manufacturing

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

Pursuant to an agreement with Lonza which was originally executed in November 1996 and subsequently amended, we must purchase our worldwide supply of sodium oxybate from Lonza. Our purchase price for this supply is volume-based. Our agreement with Lonza will continue until August 1, 2008 and will automatically extend for three-year terms thereafter until either party gives notice of its intent to terminate the agreement at least 18 months prior to the end of any such term. We may terminate the agreement upon 30 days' notice if Lonza is unable to meet our minimum requirements or timeframes for supply. We have an agreement with Patheon Pharmaceuticals, or Patheon, which became effective in January 2008, under which we have agreed to purchase, and Patheon has agreed to supply, our worldwide supply of Xyrem. Under the agreement with Patheon, our price for the manufacture, supply and packaging of Xyrem is volume-based. The initial term of the agreement with Patheon will extend until December 2012 and may be extended, at our option, for additional two-year terms.

Quotas from the DEA are required in order to manufacture and package sodium oxybate. Lonza and Patheon each require quota from the DEA to supply us with sodium oxybate, Xyrem and JZP-6. Since the DEA typically grants quota on an annual basis and requires a detailed submission and justification for the request, obtaining a DEA quota is a difficult and time consuming process which may provide a meaningful obstacle for the introduction of generic formulations of Xyrem and the eventual introduction of generic versions of JZP-6. The quotas issued by the DEA for 2008 were greater than initially issued for 2007; however, we believe that the quota for 2008 may not be sufficient to satisfy all of our commercial and clinical needs. In the future, in cooperation with our procurement and manufacturing partners, we will continue to seek increased quotas to satisfy our clinical and commercial needs. However, we may not be successful in obtaining increased quotas from the DEA, and without sufficient DEA quotas, there could be shortages of Xyrem for the marketplace or JZP-6 for use in our clinical studies, or both.

Pursuant to a supply agreement with Solvay, we are responsible for purchasing, and Solvay is responsible for providing us with, the active pharmaceutical ingredient necessary to manufacture Luvox CR. Solvay assigned to us its rights and obligations under its license and supply agreement with Elan. Pursuant to the license and supply agreement with Elan, we are responsible for providing the active pharmaceutical ingredient free of charge to Elan, and Elan has the right and obligation to manufacture the worldwide commercial requirements of Luvox CR. We will be responsible for satisfying Solvay's commercial requirements of Luvox CR outside of the United States in exchange for supply price payments to us.

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

We are also seeking, have identified or have entered into manufacturing and supply arrangements for our product candidates. We have contracted with our contract manufacturers of Xyrem for the active pharmaceutical ingredient and drug product for our clinical requirements of JZP-6. As with Xyrem, we will be responsible for supplying JZP-6 to UCB. We are also seeking or have identified qualified suppliers and contract manufacturers for JZP-4, JZP-8 and JZP-7.

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

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

Government Regulation

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

Drug Approval Process

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

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

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

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

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

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

- *Phase I.* Phase I clinical trials involve the initial introduction of the drug into human subjects, frequently healthy volunteers. These studies are designed to determine the metabolism and pharmacologic actions of the drug in humans, the adverse effects associated with increasing doses, and, if possible, to gain early evidence of effectiveness. In Phase I, the drug is usually tested for safety, including adverse effects, dosage tolerance, absorption, distribution, metabolism, excretion and pharmacodynamic properties.

- *Phase II.* Phase II clinical trials usually involve studies in a limited patient population to evaluate the efficacy of the drug for specific, targeted indications, to determine dosage tolerance and optimal dosage, and to identify possible adverse effects and safety risks. Although there are no statutory or regulatory definitions for Phase IIa and Phase IIb, Phase IIa is commonly used to describe a Phase II clinical trial evaluating efficacy, adverse effects, and safety risks and Phase IIb is commonly used to describe a subsequent Phase II clinical trial that also evaluates dosage tolerance and optimal dosage. Some of our product candidates, particularly those using the same active pharmaceutical ingredient as products already on the market, may be able to skip or have abbreviated Phase II studies.
- *Phase III.* If a compound is found to be potentially effective and to have an acceptable safety profile in Phase II (or sometimes Phase I) studies, the clinical trial program will be expanded to further demonstrate clinical efficacy, optimal dosage and safety within an expanded patient population at geographically dispersed clinical trial sites. Phase III studies usually include several hundred to several thousand patients. Generally, two adequate and well-controlled Phase III clinical trials are required by the FDA for approval of an NDA, but for some product candidates, particularly those using the same active pharmaceutical ingredient as products already on the market, only one Phase III trial may be required.
- *Phase IV.* Phase IV clinical trials are studies required of or agreed to by a sponsor that are conducted after the FDA has approved a product for marketing. These studies are used to gain additional experience from the treatment of patients in the intended therapeutic indication and to document a clinical benefit in the case of drugs approved under accelerated approval regulations. If the FDA approves a product while a company has ongoing clinical trials that were not necessary for approval, a company may be able to use the data from these clinical trials to meet all or part of any Phase IV clinical trial requirement. These clinical trials are often referred to as Phase III/IV post approval clinical trials. Failure to promptly conduct Phase IV clinical trials could result in withdrawal of approval for products approved under accelerated approval regulations.

The applicant must submit to the FDA the results of the preclinical and clinical trials, together with, among other things, detailed information on the manufacture and composition of the product candidate and proposed labeling, in the form of an NDA, including payment of a user fee. The FDA reviews all NDAs submitted before it accepts them for filing and may request additional information rather than accepting an NDA for filing. Once the submission is accepted for filing, the FDA begins an in-depth review of the NDA. Under the goals and policies agreed to by the FDA under the Prescription Drug User Fee Act, or PDUFA, the FDA has ten months in which to complete its initial review of a standard NDA and respond to the applicant, and six months for a priority NDA. The FDA does not always meet its PDUFA goal dates for standard and priority NDAs. The review process and the PDUFA goal date may be extended by three months if the FDA requests or the NDA sponsor otherwise provides additional information or clarification regarding information already provided in the submission within the last three months before the PDUFA goal date. In addition, the FDA recently announced that, in light of staffing issues, it has given its managers discretion to miss PDUFA deadlines for completing reviews of NDAs.

If the FDA's evaluations of the NDA and the clinical and manufacturing procedures and facilities are favorable, the FDA may issue either an approval letter or an approvable letter, which contains the conditions that must be met in order to secure final approval of the NDA. If and when those conditions have been met to the FDA's satisfaction, the FDA will issue an approval letter, authorizing commercial marketing of the drug for certain indications. If the FDA's evaluation of the NDA submission and the clinical and manufacturing procedures and facilities is not favorable, the FDA may refuse to approve the NDA and issue a not approvable letter. Sponsors that receive either an approvable letter or a not approvable letter may submit to the FDA information that represents a complete response to the issues identified by the FDA. Such resubmissions are classified under PDUFA as either Class 1 or Class 2. The classification of a resubmission is based on the information submitted by an applicant in response to an action letter. Under the goals and policies agreed to by the FDA under PDUFA, the FDA has two months to review a Class 1 resubmission, and six months to review a Class 2 resubmission. The FDA may also refer an application to the appropriate advisory committee, typically a panel of clinicians, for review, evaluation and a recommendation as to whether the application should be approved. The FDA is not bound by the recommendations of the advisory committee.

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

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

Often times, even after a drug has been approved by the FDA for sale, the FDA may require that certain post-approval requirements be satisfied, including the conduct of additional clinical studies. If such post-approval conditions are not satisfied, the FDA may withdraw its approval of the drug. In addition, holders of an approved NDA are required to:

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

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

Section 505(b)(1) New Drug Applications

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

Section 505(b)(2) New Drug Applications

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

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

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

A certification that the new product will not infringe the already approved product's Orange Book-listed patents or that such patents are invalid is called a paragraph IV certification. If the applicant does not challenge the listed patents, the Section 505(b)(2) application will not be approved until all the listed patents claiming the referenced product have expired, as well as any additional period of exclusivity that might be obtained for completing pediatric studies pursuant to the FDA's written request. The Section 505(b)(2) application may also not be approved until any applicable non-patent exclusivity, such as exclusivity for obtaining approval of a new chemical entity, listed in the Orange Book for the referenced product has expired.

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

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

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

The Hatch-Waxman Act

Under the Hatch-Waxman Act, newly-approved drugs and indications may benefit from a statutory period of non-patent marketing exclusivity. The Hatch-Waxman Act provides five-year marketing exclusivity to the first applicant to gain approval of an NDA for a new chemical entity, meaning that the FDA has not previously approved any other new drug containing the same active moiety. The Hatch-Waxman Act prohibits the submission of an abbreviated new drug application, or ANDA, or a Section 505(b)(2) NDA for another version of such drug during the five-year exclusive period; however, as explained above, submission of an ANDA or Section 505(b)(2) NDA containing a paragraph IV certification is permitted after four years, which may trigger a 30-month stay of approval of the ANDA or Section 505(b)(2) NDA. Protection under the Hatch-Waxman Act will not prevent the submission or approval of another "full" NDA; however, the applicant would be required to

conduct its own preclinical and adequate and well-controlled clinical trials to demonstrate safety and effectiveness. The Hatch-Waxman Act also provides three years of marketing exclusivity for the approval of new and supplemental NDAs, including Section 505(b)(2) NDAs, for, among other things, new indications, dosages, or strengths of an existing drug, if new clinical investigations that were conducted or sponsored by the applicant are determined by the FDA to be essential to the approval of the application. On February 28, 2008, we received three years of marketing exclusivity for Luvox CR in connection with its approval by the FDA.

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

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

Orphan Drug Designation and Exclusivity

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

The FDA designated and approved Xyrem as an orphan drug for each of cataplexy and excessive daytime sleepiness in patients with narcolepsy. The periods of orphan drug exclusivity expire in July 2009 and November 2012, respectively, for cataplexy and excessive daytime sleepiness in patients with narcolepsy. In December of 2007, we received orphan drug designation from the FDA for JZP-8.

Pediatric Exclusivity

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

Fast Track Designation

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

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

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

Other Regulatory Requirements

In addition to regulation by the FDA and certain state regulatory agencies, the DEA imposes various registration, recordkeeping and reporting requirements, procurement and manufacturing quotas, labeling and packaging requirements, security controls and a restriction on prescription refills on certain pharmaceutical products under the Controlled Substances Act. A principal factor in determining the particular requirements, if any, applicable to a product is the actual or potential abuse profile. The DEA regulates drug substances as Schedule I, II, III, IV or V substances, with Schedule I substances considered to present the highest risk of substance abuse and Schedule V substances the lowest risk. Sodium oxybate in its base form is regulated by the DEA as a Schedule I controlled substance, but when contained in Xyrem it is regulated as a Schedule III controlled substance. Xyrem is a Schedule III controlled substance. JZP-6, along with certain of our early-stage product candidates, contains sodium oxybate. These product candidates, if approved for marketing by FDA, will also likely be Schedule III controlled substances. JZP-8 and certain of our early-stage product candidates will

likely be regulated as controlled substances if approved for marketing by the FDA. Controlled substances are subject to DEA regulations relating to manufacturing, storage, distribution and physician prescription procedures, and the DEA regulates the amount of certain of the scheduled substance that would be available for clinical trials and commercial distribution. Sodium oxybate, as a Schedule I substance, is subject to additional controls, including quotas that limit the amount of product that can be manufactured. As a Schedule III drug, Xyrem is subject to limitations on prescription refills. The third parties who perform our clinical and commercial manufacturing for Xyrem and JZP-6 are required to maintain necessary registrations from the DEA. The DEA periodically inspects facilities for compliance with its rules and regulations. Failure to comply with current and future regulations of the DEA could lead to a variety of sanctions, including revocation or denial of renewal of DEA registrations, fines, injunctions, or civil or criminal penalties, and could harm our business and financial condition.

We are also subject to a variety of foreign regulations governing clinical trials and the marketing of other products. Outside of the United States, our ability to market a product depends upon receiving a marketing authorization from the appropriate regulatory authorities. The requirements governing the conduct of clinical trials, marketing authorization, pricing and reimbursement vary widely from country to country. In any country, however, we will only be permitted to commercialize our products if the appropriate regulatory authority is satisfied that we have presented adequate evidence of safety, quality and efficacy. Whether or not FDA approval has been obtained, approval of a product by the comparable regulatory authorities of foreign countries must be obtained prior to the commencement of marketing of the product in those countries. The time needed to secure approval may be longer or shorter than that required for FDA approval. The regulatory approval and oversight process in other countries includes all of the risks associated with regulation by the FDA and certain state regulatory agencies as described above. A World Health Organization (WHO) subcommittee plans to begin the process of evaluating the scheduling of sodium oxybate in 2009, which could result in Xyrem being placed in a more restrictive schedule in Europe than its current Schedule IV controlled substance status. The WHO review process is often long and complicated and the outcome of the review process is uncertain.

Pharmaceutical Pricing and Reimbursement

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

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

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

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

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

Patents and Proprietary Rights

We actively seek to patent, or to obtain licenses to or to acquire third party patents, to protect our products, inventions and improvements that we consider important to the development of our business. We own eight issued U.S. patents and have rights to three other U.S. issued patents. In addition to the issued U.S. patents, we own or have rights to 17 pending U.S. patent applications and more than 100 issued and pending foreign patents and patent applications. Our owned and licensed patents and patent applications cover formulations of our products and product candidates, uses of our products and product candidates to treat particular conditions, drug delivery technologies and delivery profiles relating to our products and product candidates and methods for producing our products and product candidates. However, patent protection is not available for the active pharmaceutical ingredients in most of our products and product candidates, including Xyrem, Luvox CR and JZP-6. Patents extend for varying periods according to the date of the patent filing or grant and the legal term of patents in the various countries where patent protection is obtained. The actual protection afforded by a patent, which can vary from country to country, depends on the type of patent, the scope of its coverage and the availability of legal remedies in the country. The patents and patent applications that relate to our products and product candidates include the following:

- *Xyrem*. Xyrem is covered by two U.S. formulation patents that are listed in the Orange Book, both having an expiration date of July 4, 2020. Our Xyrem formulation patent has issued in 18 other countries and will expire on December 22, 2019. It is currently pending in two additional countries. Xyrem is also covered by a U.S. patent that covers a process for preparing the formulation that expires on December 22, 2019. We also have filed a U.S. patent application with claims covering the method for distributing sodium oxybate using a centralized distribution system that, if issued, would expire on December 17, 2022.
- *Luvox CR*. Luvox CR is covered by a U.S. patent application filed by Elan with claims covering the orally administered formulation of extended release fluvoxamine that requires the release of fluvoxamine over a period of not less than 12 hours. If a patent issues for this application, it would expire on May 10, 2020. We obtained a license to this patent application and any resulting patent that issues as a result of Solvay's assignment of its license and supply agreement with Elan to us in connection with our exclusive license of the rights to market and distribute Luvox CR in the U.S.
- *JZP-6.* We expect that our current patents associated with Xyrem will be applicable to JZP-6. We also own patents with claims covering the use of sodium oxybate for the treatment of fibromyalgia that will expire in the United States on August 29, 2017 and in 29 other countries on August 27, 2018.
- *JZP-4.* JZP-4 is covered by a U.S. composition of matter patent that we acquired from GlaxoSmithKline that will expire on February 26, 2018. The JZP-4 composition of matter is covered by patents in 52 other countries that expire in 2018. In addition, we hold a U.S. patent that covers the use of JZP-4 for the treatment of bipolar disorder, pain or functional bowel disorder that will expire on

February 26, 2018, and a U.S. patent that covers the preparation of the active pharmaceutical ingredient in JZP-4 that will expire on May 2, 2021. We have filed a U.S. patent application with claims covering a sustained release composition for delivering JZP-4 that, if issued, would expire on February 14, 2026.

- *JZP-8.* We have filed U.S. and foreign patent applications with claims covering JZP-8. These applications would, if issued, expire in 2027. The claims do not cover the JZP-8 composition of matter.
- *JZP-7.* We have filed U.S. and foreign patent applications with claims covering JZP-7. These applications would, if issued, expire in 2027. The claims do not cover the JZP-7 composition of matter.

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

We have also applied for a number of trademarks and service marks to further protect the proprietary position of our products. We own 46 registered trademarks and service marks in the United States and 29 registered trademarks and service marks in other countries. We also have 30 pending trademark and service mark applications in the United States and seven pending trademark and service mark applications in other countries. We also rely on our trade secrets and those of our licensors, as well as other unpatented proprietary information, to protect our products. To the extent that our products have a competitive edge as a result of our reliance on trade secrets and unpatented know-how, our competitive position may be compromised if others independently develop products using the same or similar technologies or trade secrets. We seek to protect our trade secrets and proprietary knowledge in part through confidentiality agreements with our employees, consultants, advisors and collaboration partners. Nevertheless, these agreements may not effectively prevent disclosure of our confidential information and may not provide us with an adequate remedy in the event of unauthorized disclosure of our confidential information. If our employees, consultants, advisors or collaboration partners develop inventions or processes independently or jointly with us that may be applicable to our products under development, disputes may arise about ownership or proprietary rights to those inventions and processes. Such inventions and processes will not necessarily become our property, but may remain the property of those third parties or their employers. Protracted and costly litigation could be necessary to enforce and determine the scope of our proprietary rights. Failure to obtain or maintain patent and trade secret protection, for any reason, could have a material adverse effect on our business.

Competition

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

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

- *Xyrem*. We believe that the primary competition for Xyrem is Provigil, a wakefulness promoting agent and the only other FDA-approved product for the treatment of excessive daytime sleepiness in patients with narcolepsy.
- *Luvox CR*. We believe that the primary competitors for Luvox CR in the treatment of obsessive compulsive disorder are Prozac, Zoloft and Paxil, and their generic equivalents. In the treatment of social anxiety disorder, we believe that Luvox CR's primary competitors are Paxil CR and Effexor XR.
- *JZP-6*. We believe the primary competition for JZP-6 is Lyrica, an anticonvulsant marketed by Pfizer. In addition, Eli Lilly filed a sNDA for Cymbalta® (duloxetine) in August 2007, seeking FDA approval for the treatment of fibromyalgia, and Forest Laboratories and Cypress Bioscience jointly filed an NDA for milnacipran in December 2007, seeking FDA approval for the treatment of fibromyalgia.

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

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

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

Employees

As of March 21, 2008, we had 409 full-time employees. Of the full-time employees, 228 were engaged in sales and marketing, 98 were engaged in manufacturing, product development and clinical activities, and 83 were engaged in general and administrative activities. We plan to continue to expand our product development programs and product commercialization activities. To support this growth, we will need to expand managerial, operations, development, manufacturing, regulatory, sales, marketing, financial and other functions. In particular,

our potential future commercial products, including JZP-6, may require an expanded sales force and sales support organization. None of our employees is represented by a labor union, and we consider our employee relations to be good. We currently utilize TriNet Employer Group, Inc., an employer services company, to provide human resource services. TriNet is the employer of record for payroll, benefits, employee relations and other employment-related administration.

Executive Officers of the Registrant

The following table sets forth certain information concerning our executive officers as of March 28, 2008:

Name	Age	Position
Bruce C. Cozadd	44	Executive Chairman and Director
Samuel R. Saks, M.D.	53	Chief Executive Officer and Director
Robert M. Myers	44	President
Matthew K. Fust	43	Executive Vice President and Chief Financial Officer
Carol A. Gamble	55	Senior Vice President, General Counsel and Corporate Secretary
Janne L.T. Wissel	52	Senior Vice President, Chief Regulatory Officer

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

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

Robert M. Myers is a co-founder and was appointed as our President in March 2007. From 2003 until 2007, he served as our Executive Vice President and Chief Business Officer. From 2002 until 2003, he served as Executive Vice President, Pharmaceuticals at Exelixis, a biotechnology company. He previously held various positions with ALZA Corporation from 1992 to 2001, most recently as its Senior Vice President, Commercial Development. In this role, he was responsible for ALZA Corporation’s corporate development, mergers and acquisitions, new product planning and corporate planning. He serves on the board of Cogentus Pharmaceuticals, a private company. He received B.S. and M.S. degrees from Stanford University and an M.B.A. from the Stanford Graduate School of Business.

Matthew K. Fust was appointed as Executive Vice President in March of 2008 and has served as our Chief Financial Officer since 2003. From 2002 to 2003, he served as Chief Financial Officer at Perlegen Sciences, a biopharmaceutical company. He previously held various positions with ALZA Corporation from 1996 to 2002, most recently as its Chief Financial Officer. He serves on the board of Sunesis Pharmaceuticals, a biopharmaceutical company. He received a B.A. from the University of Minnesota and an M.B.A. from the Stanford Graduate School of Business.

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

Janne L. T. Wissel has served as Senior Vice President and Chief Regulatory Officer since October 2007. Prior to that she served as our Senior Vice President of Development from 2004 to 2007, and previously she served as our Vice President of Development. From 1981 to 2003, she held various positions at ALZA Corporation, most recently as its Senior Vice President, Operations, with responsibility for ALZA Corporation's global regulatory, quality, general operations and manufacturing activities. She has led the development, registration and launch of more than 20 pharmaceutical products in the neurology, pediatric psychiatry, endocrinology, urology and oncology areas. She received a B.S. from the University of California, Davis and an M.B.A. from the University of Phoenix.

Recent Financings

On March 17, 2008, we expanded our secured indebtedness from $80 million to $120 million at face value. For a more detailed description of the expansion of our debt, please see "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources."

About Jazz Pharmaceuticals

We were incorporated in California in March 2003 and reincorporated in Delaware in January 2004. Our principal offices are located at 3180 Porter Drive, Palo Alto, California, 94304, and our telephone number is 650-496-3777. Our website address is *www.jazzpharmaceuticals.com*. Information found on, or accessible through, our website is not a part of, and is not incorporated into, this Annual Report on Form 10-K. Service marks, trademarks and trade names appearing in this Annual Report on Form 10-K are the property of their respective owners.

Available Information

We file electronically with the U.S. Securities and Exchange Commission our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934. We make available on our website at *www.jazzpharmaceuticals.com*, free of charge, copies of these reports as soon as reasonably practicable after we electronically file such material with, or furnish it to the SEC. Further copies of these reports are located at the SEC's Public Reference Room at 100 F Street, NE, Washington, D.C. 20549. Information on the operation of the Public Reference Room can be obtained by calling the SEC at 1-800-SEC-0330. The SEC maintains a website that contains reports, proxy and information statements, and other information regarding our filings, at www.sec.gov.

Item 1A. Risk Factors

We have identified the following risks and uncertainties that may have a material adverse effect on our business, financial condition or results of operations. The risks described below are not the only ones we face. Additional risks not presently known to us or that we currently believe are immaterial may also significantly impair our business operations. Our business could be harmed by any of these risks. The trading price of our common stock could decline due to any of these risks, and you may lose all or part of their investment.

Risks Related to Our Business

We may not be able to successfully market or supply Luvox CR in the United States, which could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

On February 28, 2008, the FDA approved Luvox CR for the treatment of obsessive compulsive disorder and social anxiety disorder. Under the terms of our license agreement with Solvay, we made an initial payment of $2.0 million and will pay Solvay $10.0 million on March 28, 2008, $10.0 million on April 7, 2008, $10.5 million on September 30, 2008 and $10.5 million on December 31, 2008. Elan is manufacturing commercial launch quantities of Luvox CR for us. In anticipation of the commercial launch of Luvox CR, we significantly expanded our sales force, marketing and commercial operations departments and administrative staff in the fourth quarter of 2007. In addition, we have engaged numerous third party vendors, such as advertising agencies, market research firms and other service providers, to assist in the launch of Luvox CR. These expenses are significant and have been incurred prior to the commercial launch of Luvox CR in order for us to be prepared to launch the product as soon as possible following approval. Most of the costs cannot be recouped or applied to other products. If our efforts to market Luvox CR are not as successful as we currently anticipate, the time at which we could potentially become profitable would be postponed, or we might never become profitable, and our ability to raise additional funds could be impaired.

For quantities of Luvox CR that may be used for commercial launch, and for product that was used in clinical studies, Solvay manufactured the active pharmaceutical ingredient, fluvoxamine maleate. Solvay no longer manufactures the active pharmaceutical ingredient, and manufacturing has been transferred to Lonza which we expect will, in the future, be our sole source of fluvoxamine maleate. We cannot assure you that Lonza can or will supply, in the time we need, sufficient quantities of active pharmaceutical ingredient to enable Elan to manufacture the quantities of Luvox CR that we need.

Elan has the right and obligation to manufacture the worldwide commercial requirements of Luvox CR. In June 2001, Solvay's NDA for Luvox CR was withdrawn due to manufacturing difficulties. We cannot assure you that Elan will be able to supply in a timely manner or at all our ongoing commercial needs of Luvox CR. Any failure of Elan to supply necessary quantities of Luvox CR could have a material adverse effect on our business, financial condition, results of operations and growth prospects.

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

We are currently conducting two Phase III pivotal clinical trials for the use of JZP-6 to treat fibromyalgia, both of which must have statistically significant positive results before we can submit an NDA to the FDA seeking approval of JZP-6 for the treatment of fibromyalgia. Our Phase III clinical program for JZP-6 is costly, and we do not expect to have preliminary results from our first Phase III study until the fourth quarter of 2008. We do not know if our ongoing Phase III pivotal clinical trials will show JZP-6 to be safe and effective for the treatment of fibromyalgia, or if the FDA or other regulatory authorities will approve JZP-6 for the treatment of fibromyalgia. Favorable results from our prior Phase II clinical trials with JZP-6 for the treatment of fibromyalgia may not be indicative of the clinical results from our Phase III pivotal clinical trials. Further,

although JZP-6 has the same active pharmaceutical ingredient as Xyrem, which has been approved by the FDA for the treatment of cataplexy and excessive daytime sleepiness in patients with narcolepsy, this does not assure approval by the FDA, or any other regulatory authorities, of this active pharmaceutical ingredient for the treatment of fibromyalgia. Unsuccessful Phase III pivotal clinical trials or a failure to obtain FDA or other regulatory approval of JZP-6 for fibromyalgia could have a material adverse effect on our business, financial condition, results of operations and growth prospects, and our ability to raise funds could be impaired.

Lyrica (pregabalin), a product marketed by Pfizer, was approved by the FDA in June 2007 for the treatment of fibromyalgia. In addition to Lyrica, Eli Lilly submitted a sNDA for Cymbalta (duloxetine) in August 2007, and Forest Laboratories and Cypress Bioscience jointly filed an NDA for milnacipran in December 2007 seeking FDA approval for the treatment of fibromyalgia. With a treatment for fibromyalgia already approved and others that may be approved before JZP-6 and which the FDA may believe have a less risky profile to the general public if marketed, the FDA may be less willing to approve JZP-6 for the treatment of fibromyalgia.

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

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

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

Significant additional research and development, financial resources and additional personnel will be required to obtain necessary regulatory approvals for our product candidates and to develop them into commercially viable products. As a condition to regulatory approval, each product candidate must undergo extensive clinical trials to demonstrate to a statistically significant degree that the product candidate is safe and effective. The clinical trials for a product candidate can cost between $40 million and $100 million, and potentially even more. If a product candidate fails at any stage of development, we will not have the anticipated revenues from that product candidate to fund our operations, and we will not receive any return on our investment in that product candidate.

Clinical testing can take many years to complete, and failure can occur any time during the clinical trial process. In addition, the results from early clinical trials may not be predictive of results obtained in later and larger clinical trials, and product candidates in later clinical trials may fail to show the desired safety and efficacy

despite having progressed successfully through initial clinical testing. A number of companies in the pharmaceutical industry, including us, have suffered significant setbacks in clinical trials, even in advanced clinical trials after showing positive results in earlier clinical trials. The completion of clinical trials for our product candidates may be delayed or halted for many reasons, including:

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

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

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

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

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

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

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

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

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

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

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

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

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

offset our development costs of JZP-6. UCB has the right to terminate our collaboration on 18 months' notice (or less in certain circumstances). If UCB terminates our collaboration, we would need to find another party or parties to commercialize JZP-6 in UCB's territories and may need to execute alternative financing plans to help fund our development of JZP-6. We may be unable to do either of these on acceptable terms, or at all.

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

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

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

The DEA limits the quantity of certain Schedule I and II controlled substances that may be produced in the United States in any given calendar year through a quota system. Because the active pharmaceutical ingredient of Xyrem and JZP-6, sodium oxybate, is a Schedule I controlled substance, our supplier of the active pharmaceutical ingredient and our product manufacturers must obtain DEA quotas in order to supply us with sodium oxybate, Xyrem and JZP-6. Since the DEA typically grants quotas on an annual basis and requires a detailed submission and justification for each request, obtaining a DEA quota is a difficult and time consuming process. If our commercial or clinical requirements for sodium oxybate, Xyrem or JZP-6 exceed our supplier's and contract manufacturer's DEA quotas, our supplier and contract manufacturer would need quota increases from the DEA, which could be difficult and time consuming to obtain and might not ultimately be obtained on a timely basis, or at all. In cooperation with our manufacturing partners, we sought and received significant increases in their 2007 quotas from the DEA for sodium oxybate, Xyrem and JZP-6 to satisfy the forecasted demand for Xyrem and to conduct our clinical studies of JZP-6. We did not succeed in obtaining the entire quota we requested for 2007. The quotas issued by the DEA for 2008 were greater than initially issued for 2007; however, we believe that the quota for 2008 may not be sufficient to satisfy all of our commercial and clinical needs. In the future and in cooperation with our procurement and manufacturing partners, we will continue to seek increased quotas to satisfy our clinical and commercial needs. However, we may not be successful in obtaining increased quotas from the DEA, and without sufficient DEA quotas, there could be shortages of Xyrem for the marketplace or JZP-6 for use in our clinical studies, or both.

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

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

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

The availability of our products for commercial sale is dependent upon our ability to procure the ingredients, packaging materials and finished products we need. If one of our suppliers or product manufacturers fails or refuses to supply us for any reason, it would take a significant amount of time and expense to qualify a new supplier or manufacturer. The loss of one of our suppliers or product manufacturers could require us to obtain regulatory clearance in the form of a "prior approval supplement" and to incur validation and other costs associated with the transfer of the active pharmaceutical ingredient or product manufacturing process. We believe that it could take as long as two years to qualify a new supplier or manufacturer, and we may not be able to obtain active pharmaceutical ingredients, packaging materials or finished products from new suppliers or manufacturers on acceptable terms and at reasonable prices, or at all. Should we lose either an active pharmaceutical ingredient supplier or a product manufacturer, we could run out of salable product to meet market demands or investigational product for use in clinical trials while we wait for FDA approval of a new active pharmaceutical ingredient supplier or product manufacturer.

For Xyrem, JZP-6 or sodium oxybate, the new supplier or manufacturer would also need to be registered with the DEA and obtain a DEA quota. In addition, the FDA must approve suppliers of the active and inactive pharmaceutical ingredients and certain packaging materials used in our products, as well as suppliers of finished products. The qualification of new suppliers and manufacturers could potentially delay the manufacture of our products and product candidates and result in shortages in the marketplace or for our clinical trials, or both, particularly since we do not have secondary sources of supply of the active pharmaceutical ingredient or backup manufacturers for our products and product candidates. If there are delays in qualifying the new manufacturer or the new manufacturer is unable to obtain a sufficient quota from the DEA, there could be a shortage of Xyrem for the marketplace.

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

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

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

Our product candidates have never been manufactured on a commercial scale and there are risks associated with scaling up manufacturing to commercial scale. Luvox CR has only recently been manufactured on a commercial scale and the NDA for Luvox CR was previously withdrawn as a result of difficulties encountered during the scale-up of manufacturing.

Our product candidates have never been manufactured on a commercial scale and there are risks associated with scaling up manufacturing to commercial scale including, among others, cost overruns, potential problems with process scale-up, process reproducibility, stability issues, lot consistency and timely availability of raw materials. If our manufacturers are unable to produce sufficient quantities of our products for commercialization or at a cost that we expect, our commercialization efforts would be impaired, which would have an adverse effect on our business, financial condition, results of operations and growth prospects.

Luvox CR, for which we have obtained the exclusive rights to market and distribute in the United States from Solvay and which was recently approved for commercial sale, is being manufactured for us by Elan in exchange for royalty and milestone payments and supply price payments. Luvox CR has never previously been produced on a commercial scale, and the NDA for Luvox CR was withdrawn in June 2001 by Solvay and Elan as a result of difficulties encountered during the scale-up of manufacturing of Luvox CR. Although the FDA has approved Luvox CR, there is no assurance that Elan will be able to manufacture Luvox CR without a higher batch failure rate than we expect or in sufficient quantities to meet potential future demand.

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

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

The investigation by the U.S. Attorney's Office for the Eastern District of New York concerning the sales and marketing of Xyrem creates additional compliance-related operating costs and could result in additional fines, penalties or other adverse consequences.

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

We and Orphan Medical have settled this matter with the United States, acting through the Department of Justice, the U.S. Attorney's Office for the Eastern District of New York and other federal agencies, including the Office of Inspector General, U.S. Department of Health and Human Services. Orphan Medical pled guilty to one felony count of introducing a misbranded drug into interstate commerce. A total of approximately $20.0 million in civil and criminal payments will be paid in connection with this matter. Of which $1.0 million was paid in July 2007 and $2.0 million was paid in January 2008; the remaining will be paid over the next four years. We agreed to guarantee payment of amounts payable by Orphan Medical.

While we were not prosecuted, as part of the settlement we entered into a corporate integrity agreement with the Office of Inspector General, U.S. Department of Health and Human Services. That agreement requires us to maintain a comprehensive compliance program, and we will have additional ongoing compliance-related operating costs related to this compliance program and the corporate integrity agreement. In the event of an uncured material breach or deliberate violation, as the case may be, of the corporate integrity agreement or the other definitive settlement agreements we entered into, we could be excluded from participation in Federal healthcare programs and/or subject to prosecution.

Even though we have executed definitive settlement agreements, we might still be subject to regulatory and/or enforcement action by federal agencies that are not parties to the settlement, private insurers and states' attorneys general with respect to the activities covered by the settlement. We cannot predict whether this additional action will occur, nor can we reasonably estimate the amount of any fines or penalties that might result from an adverse outcome.

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

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

The FDA has required that Xyrem's label include a box warning regarding the risk of abuse. A box warning is the strongest type of warning that the FDA can require for a drug product and warns prescribers that the drug carries a significant risk of serious or even life-threatening adverse effects. A box warning also means, among other things, that the product cannot be advertised directly to consumers. Provigil, the only other product approved by the FDA specifically for the treatment of excessive daytime sleepiness in patients with narcolepsy,

does not have a box warning and can be advertised directly to consumers. In addition, Xyrem's type of FDA approval under the FDA's Subpart H regulations requires that all of the promotional materials for Xyrem be provided to the FDA for review at least 30 days prior to the intended time of first use. Unlike Xyrem, Provigil was not approved under the FDA's Subpart H regulations and is not subject to the pre-review requirements. Accordingly, promotional materials for Provigil are not subject to the same delays that we experience with respect to new promotional materials for Xyrem.

Since JZP-6 contains the same active pharmaceutical ingredient as Xyrem, we anticipate that the label for JZP-6, if approved by the FDA, will also include a box warning. The FDA recently approved a product for the treatment of fibromyalgia. This product is not, and future competing products may not be, subject to this restriction, and the box warning may negatively affect potential JZP-6 sales if competing products can be advertised directly to consumers.

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

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

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

We are developing JZP-6 for the treatment of fibromyalgia. In June 2007, the FDA approved Lyrica, an anticonvulsant marketed by Pfizer for the treatment of partial seizures, post herpetic neuralgia and diabetic peripheral neuropathy, for the treatment of fibromyalgia. There are currently no other products approved by the FDA for the treatment of fibromyalgia. In clinical practice, a variety of drugs are often prescribed to address individual symptoms of fibromyalgia, including antidepressants, pain medications, muscle relaxants, hypnotics and anticonvulsants. Eli Lilly submitted a sNDA for Cymbalta in August, 2007 seeking FDA approval for the treatment of fibromyalgia, and Forest Laboratories and Cypress Bioscience jointly filed an NDA for milnacipran in December, 2007 seeking FDA approval for the treatment of fibromyalgia. These are large pharmaceutical companies with far greater resources than we have.

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

Our competitors may obtain FDA or other regulatory approvals for their product candidates more rapidly than we may. For example, other major pharmaceutical companies are conducting, or have completed, Phase III clinical trials of product candidates for the treatment of fibromyalgia. These product candidates may reach the market before JZP-6, or may be better accepted by physicians and patients. Thus, even if we successfully complete our Phase III clinical trials for JZP-6 for the treatment of fibromyalgia and achieve FDA approval, JZP-6 may not result in significant commercial revenues for us.

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

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

Our products are or may become subject to competition from generic equivalents because there is no proprietary protection for some of our products or because our protection has expired or is not sufficiently broad. The FDA has granted orphan drug exclusivity for Xyrem until July 2009 for cataplexy in patients with narcolepsy, and until November 2012 for excessive daytime sleepiness in patients with narcolepsy. Once our orphan drug exclusivity periods for Xyrem expire, other companies could introduce generic equivalents of Xyrem if the generic equivalents do not infringe our existing patents covering Xyrem. Once our orphan drug exclusivity period for Xyrem for the treatment of cataplexy expires in July 2009, prescriptions for Xyrem, or if approved by the FDA, JZP-6, could possibly be filled with generic equivalents that have been approved for the treatment of cataplexy in patients with narcolepsy, even if the patient is diagnosed with excessive daytime sleepiness or fibromyalgia.

Orphan exclusivity for Antizol for ethylene glycol poisoning expired in 2004 and the orphan exclusivity for Antizol for methanol poisoning expired in December 2007. A generic form of fomepizole was introduced into the market in December 2007 and a second generic form of fomepizole was approved by the FDA in January 2008. We expect sales of Antizol to decline significantly in 2008 and thereafter as a result of this competition. We have filed a patent application covering Antizol, but no patent has yet issued and we cannot know when, or if, a patent will issue or if issued, if it would prevent or inhibit generic competition. Patent protection is not available for the active pharmaceutical ingredient in most of our products and product candidates, including Xyrem, Luvox CR and JZP-6. Although Xyrem is covered by patents expiring in 2019 with claims covering the formula and process for manufacturing our commercial formulation of Xyrem, it is possible that other companies could manufacture generic equivalents of Xyrem in ways that are not covered by the claims of these patents.

Part of our business strategy includes the ongoing development of proprietary product improvements to Xyrem, including new and enhanced dosage forms. However, we may not be successful in developing or obtaining FDA and other regulatory approvals of these improvements. Although the active pharmaceutical ingredient in Xyrem and JZP-6 is a DEA scheduled compound for which a quota is required and the FDA has required a risk management program for its distribution, and therefore generic competition may be more difficult and expensive than it might be for other products not requiring a risk management program for distribution, our competitors will not be prevented from introducing a generic equivalent. We have filed a patent application with claims covering the method for distributing sodium oxybate using a centralized distribution system, but we cannot assure you that this patent will issue or, if issued, whether it will provide any significant protection of Xyrem from generic competition.

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

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

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

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

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

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

We currently have a relatively small sales organization compared with most other pharmaceutical companies with marketed products. If we are unable to appropriately expand our specialty sales force and sales organization in the United States to adequately promote our current and potential future products, the commercial opportunity for our products may be diminished.

We recently expanded our sales force significantly in anticipation of the launch of Luvox CR. We cannot be sure that we will retain these new sales representatives, or that they will be effective at promoting our commercial products. Our potential future commercial products, including JZP-6, may require further expansion of our sales force and sales support organization, and we will need to commit significant additional management and other resources to the growth of our sales organization before the commercial launch of those product

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

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

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

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

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

We are a small company, with 409 regular full-time employees as of March 21, 2008, approximately 55% of whom joined us in the previous 12 months. To continue our commercialization and development activities, we will need to retain our existing employees and expand our employee base for managerial, operations, development, regulatory, sales, marketing, financial and other functions. It is particularly difficult to recruit new employees to the San Francisco Bay Area, where our offices are located, in large part due to high housing costs. If we cannot recruit qualified employees when we need them, our key activities could be delayed. Growth will impose significant added responsibilities on members of management, including the need to identify, recruit, maintain and integrate additional employees, particularly with respect to our expanded sales and marketing organization and related functions for the commercialization of Luvox CR and potential commercialization of our product candidates. Our future financial performance and our ability to commercialize our products and to compete effectively will depend, in part, on our ability to manage any growth effectively, and our failure to do so could adversely affect our business, financial condition, results of operations and growth prospects.

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

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

Risks Related to Our Intellectual Property

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

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

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

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

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

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

is using any of our inventions or trade secrets is expensive and time consuming, and the outcome is unpredictable. In addition, courts outside of the United States are sometimes less willing to protect trade secrets. Moreover, our competitors may independently develop equivalent knowledge, methods and know-how.

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

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

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

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

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

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

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

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

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

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

Risks Related to Our Industry

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

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

The FDA recently announced that, in light of staffing issues, it has given its managers discretion to miss PDUFA deadlines for completing reviews of NDAs. If the FDA were to miss a PDUFA deadline for one of our products, delaying the approval and launch, the delay could have a material adverse effect on our business.

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

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

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

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

Federal false claims laws prohibit any person from knowingly presenting, or causing to be presented, a false claim for payment to the federal government, or knowingly making, or causing to be made, a false statement to get a false claim paid. Recently, several pharmaceutical and other health care companies have been prosecuted under these laws for allegedly providing free product to customers with the expectation that the customers would

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

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

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

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

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

Federal law requires that any company that participates in the Medicaid rebate program extend comparable discounts to qualified purchasers under the Public Health Services' pharmaceutical pricing program requiring us to sell our products at prices lower than we otherwise might be able to charge. The Public Health Services pricing

program extends discounts comparable to the Medicaid rebates to a variety of community health clinics and other entities that receive health services grants from the Public Health Services, as well as hospitals that serve a disproportionate share of poor patients and children.

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

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

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

We expect to experience pricing pressures in connection with the sale of our products due to the trend toward managed health care, the increasing influence of health maintenance organizations and additional legislative proposals. If we fail to successfully secure and maintain reimbursement coverage for our products or are significantly delayed in doing so, we will have difficulty achieving market acceptance of our products and our business will be harmed. During the presidential primary campaign, various candidates have been discussing healthcare reform proposals which, if enacted, could adversely affect the pharmaceutical industry as a whole, and therefore could have a material adverse effect on our business.

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

The market participants to whom we sell Antizol, which accounted for $13.9 million and $12.5 million in net product sales in 2007 and in 2006, respectively, and the market participants to whom we expect to sell most of our future products, including Luvox CR, have undergone significant consolidation, marked by mergers and acquisitions among wholesale distributors and the growth of large retail drugstore chains. As a result, a small number of large wholesale distributors control a significant share of the market, and the number of independent drug stores and small drugstore chains has decreased. In addition, excess inventory levels held by large distributors can lead to periodic and unanticipated reductions in our revenues and cash flows. Consolidation of drug wholesalers and retailers, as well as any increased pricing pressure that those entities face from their customers, including the U.S. government, may increase pricing pressure and place other competitive pressures on drug manufacturers, including us.

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

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

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

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

Product liability and product recalls could harm our business.

The development, manufacture, testing, marketing and sale of pharmaceutical products entail significant risk of product liability claims or recalls. Our products and product candidates are designed to affect important bodily functions and processes. Side effects of, or manufacturing defects in, the products sold by us could result in exacerbation of a patient's condition, further deterioration of a patient's condition or even death. This could result in

product liability claims and/or recalls of one or more of our products. For example, studies and publications suggest that selective serotonin reuptake inhibitors, including the active pharmaceutical ingredient in Luvox CR and its immediate release formulation Luvox, may increase the risk of suicidal behavior in adults and adolescents. In addition, the current selective serotonin reuptake inhibitor products used to treat obsessive compulsive disorder and social anxiety disorder, particularly those formulated for immediate release, all have significant adverse side effects. Side effects associated with selective serotonin reuptake inhibitors include sexual dysfunction, adverse drug interaction and risk of hypertension. Claims may be brought by individuals seeking relief for themselves or by groups seeking to represent a class. While we have not had to defend against any product liability claims to date, as sales of our products increase, we believe it is likely product liability claims will be made against us. We cannot predict the frequency, outcome or cost to defend any such claims.

Product liability insurance coverage is expensive, can be difficult to obtain and may not be available in the future on acceptable terms, if at all. Partly as a result of product liability lawsuits related to pharmaceutical products, product liability and other types of insurance have become more difficult and costly for pharmaceutical companies to obtain. Our product liability insurance may not cover all of the future liabilities we might incur in connection with the development, manufacture or sale of our products. In addition, we may not continue to be able to obtain insurance on satisfactory terms or in adequate amounts.

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

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

Risks Relating to Our Financial Condition

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

We have a limited operating history and have incurred significant net losses since our inception in 2003, and we expect to continue to incur net losses for the next several years. Our net loss for the year ended December 31, 2007 was $138.8 million and we had an accumulated deficit of $316.5 million at December 31, 2007. We expect our operating expenses to increase over the next several years as we launch Luvox CR, develop, acquire or in-license additional products or product candidates, expand clinical trials for our product candidates currently in clinical development, expand our research and development activities, seek regulatory approvals and engage in commercialization preparation activities in anticipation of potential FDA approval of our product candidates. We will need to expand our commercial organization to launch additional products. It is very expensive to launch a product, and many expenses are incurred before revenues are received. We are unable to predict the extent of any future losses or when we will become profitable, if at all.

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

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

As of December 31, 2007, we had approximately $102.9 million in cash and cash equivalents. Our net cash used in operations for the year ended December 31, 2007 was approximately $81.1 million. Substantially all of our $53.5 million in net product sales during the year ended December 31, 2007 resulted from sales of Xyrem and Antizol. Sales of Antizol are likely to decrease substantially in 2008 due to generic competition, and sales of Xyrem could decrease due to adverse market conditions, negative publicity or other events outside our control. We must commit substantial resources to costly and time-consuming research, preclinical testing and clinical trials of our product candidates and significant funds to our commercial operations. We believe that our current cash and cash equivalents and interest earned thereon, together with future financings and anticipated revenues from product sales and royalties will be sufficient to satisfy our current operations for at least the next 12 months. We have based this estimate on assumptions that may prove to be wrong, and we could exhaust our available financial resources sooner than we currently expect. Our future capital requirements will depend on many factors, including:

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

Although we generate product revenues, since our inception in 2003 we have financed our operations primarily through the sale of preferred stock, the issuance of senior secured notes and warrants, a line of credit, development financing related to one of our previous product candidates, our collaboration with UCB related to Xyrem and JZP-6 and the sale of common stock in our initial public offering.

We will need to raise additional funds to support our operations, and such funding may not be available to us on acceptable terms, or at all. If we are unable to raise additional funds when needed, we may not be able to continue development of our product candidates or we could be required to delay, scale back or eliminate some or all of our development programs and commercial operations. We may also be required to license to third parties products and product candidates that we would prefer to develop and commercialize ourselves or to sell the rights to one or more commercial products to third parties. We may seek to raise additional funds through development financings, collaborations, or public or private debt or equity financings. If we raise funds through

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

We are launching Luvox CR and, as is the case with new product launches, we cannot predict with certainty the timing or level of Luvox CR sales. If sales of Luvox CR do not reach the levels we expect and if we do not generate additional cash resources from financings or partnering activities, we may be unable to meet our cash requirements under our current operating plan. If product sales do not meet our expectations and we do not raise additional funds, we will need to reduce our planned expenditures, perhaps significantly, to preserve our cash. If necessary, we would implement, beginning as early as the third quarter of 2008, appropriate plans and measures to quickly reduce discretionary spending and capital expenditures, terminate or slow one or more of our product development programs, reduce headcount, license or sell some of our product candidates or products, or implement a combination of these and other cost cutting measures.

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

On March 17, 2008, we incurred $40 million of additional secured indebtedness in connection with the expansion of our senior debt to $120 million at face value, of which $80 million had been incurred previously. Our substantial debt combined with our other financial obligations and contractual commitments could have other important consequences. For example, it could:

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

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

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

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

- generally not borrow additional amounts without the approval of our lenders;
- dispose of certain assets only in accordance with the terms of our existing senior secured debt;
- not impair our lenders' security interests in our assets;
- repay a portion of the debt early under certain circumstances; and
- maintain restricted cash balances under certain circumstances.

Risks Relating to Ownership of Our Common Stock

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

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

- the success of Luvox CR in the United States;
- the success of our development efforts and clinical trials;
- negative publicity concerning one of our products or product candidates;
- announcement of FDA approval or non-approval of our product candidates, or specific label indications for their use, or delays in the FDA review process;
- the failure or delay by the DEA in providing sufficient quotas for sodium oxybate, Xyrem or JZP-6;
- actual or expected fluctuations in our operating results, including as a result of fluctuating demand for our commercial products as a result of purchases by wholesalers in connection with product launches, stockpiling or inventory drawdowns by our customers, or otherwise;
- changes in the market prices for our products;
- the success of our efforts to acquire or in-license additional products or product candidates;
- introductions and announcements of new products by us, our commercialization partners, or our competitors, and the timing of these introductions or announcements;
- announcements by us or our competitors of significant acquisitions, strategic partnerships, joint ventures or capital commitments;
- announcements of product innovations by us, our partners or our competitors;
- changes in laws or regulations applicable to our products, including but not limited to clinical trial requirements;
- actions taken by regulatory agencies with respect to our products, clinical trials, manufacturing process or sales and marketing terms;
- developments concerning our collaborations, including but not limited to those with our sources of manufacturing supply and our commercialization partners;

- disputes or other developments relating to proprietary rights, including patents, litigation matters and our ability to obtain patent protection for our products;
- our ability or inability to raise additional capital and the terms on which we raise it;
- actual or anticipated changes in earnings estimates or changes in stock market analyst recommendations regarding our common stock, other comparable companies or our industry generally;
- conditions or trends in the pharmaceutical industry, the financial markets or the economy in general;
- actual or expected changes in our growth rates or our competitors' growth rates;
- changes in the market valuation of similar companies;
- trading volume of our common stock; and
- sales of our common stock by us or our stockholders.

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

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

Sales of a substantial number of shares of our common stock in the public market, or the perception that these sales might occur, could depress the market price of our common stock and could impair our ability to raise capital through the sale of additional equity securities. As of December 31, 2007, we had 24,620,829 shares of common stock outstanding. The 6,000,000 shares of common stock sold in our initial public offering are freely tradable without restrictions or further registration under the Securities Act of 1933, as amended. The remaining 18,620,829 shares of common stock outstanding as of December 31, 2007, less shares subject to a repurchase option in our favor tied to the holders' continued service to us (which will be eligible for sale upon lapse of the repurchase option), are now eligible for sale in the public market, subject in some cases to the volume limitations and manner of sale requirements under Rule 144.

As of December 31, 2007, the holders of up to approximately 19,306,128 shares of common stock, based on shares outstanding as of that date, including 785,728 shares underlying outstanding warrants, were entitled to certain rights with respect to the registration of such shares under the Securities Act of 1933, as amended, under an amended and restated investor rights agreement that we entered into with these holders. In addition, upon exercise of outstanding options by our executive officers, our executive officers will be entitled to rights under the amended and restated investor rights agreement with respect to registration of the shares of common stock acquired on exercise. If such holders, by exercising their registration rights, sell a large number of shares, they could adversely affect the market price for our common stock. If we file a registration statement and include shares held by these holders pursuant to the exercise of their registration rights, these sales may impair our ability to raise capital. On March 17, 2008, we entered into a registration rights agreement pursuant to which we agreed to file, on or before June 6, 2008, a registration statement covering the resale of the 562,192 shares underlying the warrants that we issued in connection with the expansion of our senior secured debt in March 2008, and the shares underlying the warrants we may issue in a further expansion of that debt. In addition, we have filed a registration statement on Form S-8 under the Securities Act of 1933, as amended, to register up to 4,957,794 shares of our common stock for issuance under our stock option and employee stock purchase plans, and intend to file additional registration statements on Form S-8 to register the shares automatically added each year to the share reserves under these plans.

Our executive officers and directors, together with their respective affiliates, own a significant percentage of our stock and will be able to exercise significant influence over matters subject to stockholder approval.

As of March 25, 2008, our executive officers and directors, together with their respective affiliates, beneficially owned 58.3% of our capital stock, of which 7.9% is beneficially owned by our executive officers. Accordingly, our executive officers and directors are able to determine the composition of our board of directors, retain the voting power to approve all matters requiring stockholder approval, including mergers and other business combinations, and continue to have significant influence over our operations. This concentration of ownership could have the effect of delaying or preventing a change in our control or otherwise discouraging a potential acquirer from attempting to obtain control of us, which in turn could have a material adverse effect on the market value of our common stock, and may prevent attempts by our stockholders to replace or remove our board of directors or management.

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

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

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

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

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

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

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

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

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

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

Item 1B. Unresolved Staff Comments

Not applicable.

Item 2. Properties

Our corporate headquarters are located in Palo Alto, California, where we occupy approximately 44,000 square feet of office space. The annual lease payments for our corporate headquarters building through August 2009 are approximately $798,000. In February 2008, we exercised our option to extend the lease on the building for one year beginning August 31, 2008. We may extend the term for up to an additional nine years to August 2017. We lease a second facility of approximately 13,000 square feet of office space in Palo Alto, California. The annual lease payments for this space are approximately $317,000. The fixed lease term expires in August 2008 and cannot be extended. In August 2007, we signed a 24 month lease for approximately 11,000 square feet of space in Palo Alto, California with annual lease payments of approximately $419,000 per year.

We may need to lease additional space in or near our current facilities to accommodate future growth.

Item 3. Legal Proceedings

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

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

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

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

The settlement is neither an admission of liability by us nor a concession by the United States that its claims are not well founded. Participation in Federal healthcare programs by Jazz Pharmaceuticals, which was not prosecuted, will not be affected by the settlement. In the event of an uncured material breach or deliberate

violation, as the case may be, of the Civil Settlement Agreement, the Corporate Integrity Agreement or the Non-prosecution Agreement, we could be excluded from participation in Federal healthcare programs and/or subject to prosecution.

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

While we have reached a settlement agreement with the United States Attorney's Office, and the other government agencies described above, we might still be subject to regulatory and/or enforcement action by federal agencies that are not parties to the settlement, private insurers and states' attorneys general with respect to activities covered by the settlement. We cannot predict whether these actions are likely to occur, nor can we reasonably estimate the amount of any fines or penalties that might result from an adverse outcome.

On April 10, 2006, Little Gem Life Sciences LLC, individually and purportedly on behalf of a class of persons similarly situated, filed a complaint against Orphan Medical and former officers of Orphan Medical in the Untied States District Court for the District of Minnesota. The complaint alleges that the defendants made false and misleading statements in the proxy statement prepared by Orphan Medical in connection with the solicitation of proxies to be voted at the special meeting of Orphan Medical stockholders held on June 22, 2005. The purpose of the special meeting was to consider and vote upon a proposal to adopt the definitive merger agreement pursuant to which we acquired Orphan Medical. The plaintiff seeks damages for itself and the putative class, in an unspecified amount, together with interest, litigation costs and expenses, and its attorneys' fees and other disbursements, as well as unspecified other and further relief. On October 25, 2006, the defendants filed a motion to dismiss the complaint and oral argument on the motion was heard by the United States District Court for the District of Minnesota. On February 16, 2007, the United States District Court for the District of Minnesota granted the defendants' motion to dismiss the complaint, with leave to amend. On March 14, 2007, the plaintiff filed an amended complaint, and the defendants responded with a motion to dismiss on March 16, 2007. Oral argument on the motion was heard on June 8, 2007. On September 13, 2007, the United States District Court for the District of Minnesota granted the defendants' motion to dismiss the complaint with prejudice. On September 28, 2007, the plaintiff filed a Notice of Appeal to the United States Court of Appeals for the Eighth Circuit. On November 21, 2007 the plaintiff filed its brief with the United States Court of Appeals for the Eighth Circuit. On December 21, 2007 the defendants filed their brief with the United States Court of Appeals for the Eighth Circuit. On January 8, 2008 the plaintiff filed a reply brief. Oral arguments have not yet been scheduled. We cannot predict or determine the outcome of this matter or reasonably estimate the amount of any judgments or payments that might result from an adverse outcome.

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

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

None

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Market Information

The following table sets forth the high and low sales prices of our common stock, par value $.0001, on the Nasdaq Global Market under the symbol "JAZZ" from June 1, 2007 through December 31, 2007 for the periods indicated.

	High	Low
Calendar Quarter—2007		
Second Quarter (beginning June 1, 2007)	$18.00	$15.50
Third Quarter	$17.11	$11.20
Fourth Quarter	$17.14	$11.30

On March 25, 2008, the last reported sales price per share of our common stock was $10.03 per share.

Holders of Common Stock

As of March 25, 2008, there were 57 holders of record of our common stock.

Recent Sales of Unregistered Securities

From January 1, 2007 to December 31, 2007, we issued and sold the following unregistered securities (as adjusted to give effect to the 1-for-11.06701 reverse split of our common stock and preferred stock effected on May 15, 2007):

(1) From January 1, 2007 to March 6, 2007, we sold an aggregate of 5,017 shares of our common stock for cash consideration in the aggregate amount of $75,975.31 upon the exercise of stock options granted under our 2003 Equity Incentive Plan.

(2) On February 13, 2007, we granted stock options under our 2003 Equity Incentive Plan covering an aggregate of 100,259 shares of common stock, at an exercise price of $19.37 per share.

(3) On February 27, 2007, we granted stock options under our 2003 Equity Incentive Plan covering an aggregate of 180,719 shares of common stock, at an exercise price of $19.37 per share.

(4) On May 31, 2007, we granted stock options under our 2007 Equity Incentive Plan covering an aggregate of 84,096 shares of common stock, at an exercise price of $18.00 per share.

The offers, sales and issuances of the securities described in paragraphs (1), (2) and (3) were deemed exempt from registration under the Securities Act under in reliance on either (1) Rule 701 promulgated under the Securities Act as offers and sales of securities pursuant to certain compensatory benefit plans and contracts relating to compensation in compliance with Rule 701 or (2) Section 4(2) of the Securities Act as transactions by an issuer not involving any public offering. The recipients of such securities were our employees or directors and received the securities under our 2003 Equity Incentive Plan or 2007 Equity Incentive Plan, as applicable. The recipients of securities in each of these transactions represented their intention to acquire the securities for investment only and not with view to or for sale in connection with any distribution thereof and appropriate legends were affixed to the securities issued in these transactions. Each of the recipients of securities in these transactions had adequate access, through employment or business relationships, to information about us.

Use of Proceeds from the Sale of Registered Securities

On May 31, 2007, our registration statement on Form S-1/A (Registration No. 333-141164) was declared effective by the SEC for our initial public offering, pursuant to which we registered 6,000,000 shares of common stock to be sold by us. The stock was offered at a public offering price of $18.00 per share. Our common stock commenced trading on June 1, 2007. The offering closed on June 6, 2007 after the sale of all securities registered, and we received net proceeds of approximately $97.5 million after underwriters' discounts of approximately $7.6 million and other expenses of $2.9 million.

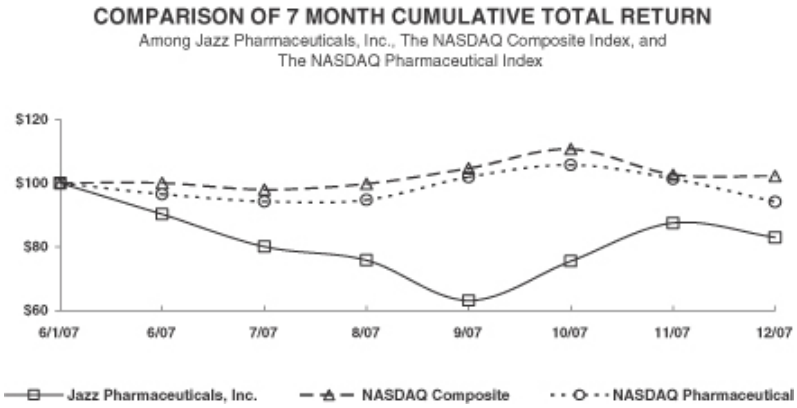
As of December 31, 2007, we had used approximately $36.8 million of the net proceeds from our initial public offering to fund the planned U.S. launch and commercialization of Luvox CR, to fund our Phase III pivotal clinical trials of JZP-6 and to fund continued development of and feasibility activities for our portfolio of clinical and early-stage product candidates. We intend to use the remaining net proceeds to fund the planned U.S. launch and commercialization of Luvox CR, including for milestone payments to Solvay in connection with the acquisition of our U.S. rights to Luvox CR, to fund our Phase III pivotal clinical trials of JZP-6 and to fund continued development of and feasibility activities for our portfolio of clinical and early-stage product candidates. No payments were made to directors, officers or persons owning ten percent or more of our common stock or to their associates, or to our affiliates, other than payments in the ordinary course of business to officers and to non-employee directors as compensation for their services. We continually assess the specific uses and allocations for these funds. Pending use of the remaining net proceeds of this offering, we have invested the funds in short-term, interest bearing, investment grade securities.

Dividends

Under the terms of our senior secured note and warrant purchase agreement, we are not permitted to pay any dividends, either in cash or property, on any shares of our capital stock. Subject to preferences that may be applicable to any then outstanding preferred stock, holders of common stock are entitled to receive dividends, if any, as may be declared from time to time by our board of directors out of legally available funds. We have never declared or paid any cash dividends and we do not presently plan to pay cash dividends in the foreseeable future.

Performance Measurement Comparison(1)

The following graph shows the total stockholder return of an investment of $100 in cash on June 1, 2007 for (i) our common stock; (ii) the Nasdaq Composite Index; and (iii) the Nasdaq Pharmaceutical Index as of December 31, 2007. We are included in the Nasdaq Pharmaceutical Index. Pursuant to applicable SEC rules, all values assume reinvestment of the full amount of all dividends, however no dividends have been declared on our common stock to date. The stockholder return shown on the graph below is not necessarily indicative of future performance, and we do not make or endorse any predictions as to future stockholder returns.



(1) This section is not “soliciting material”, is not deemed “filed” with the SEC and is not to be incorporated by reference into any filing of Jazz Pharmaceuticals, Inc., under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date hereof and irrespective of any general incorporation language in any such filing.

Item 6. Selected Financial Data

The following selected consolidated financial data should be read together with our consolidated financial statements and accompanying notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations" appearing elsewhere in this Annual Report on Form 10-K. The selected consolidated financial data in this section is not intended to replace our consolidated financial statements and the accompanying notes. Our historical results are not necessarily indicative of our future results.

The selected consolidated statements of operations data for the period from March 20, 2003 (date of inception) through December 31, 2003 and the selected consolidated balance sheet data as of December 31, 2003, 2004 and 2005 are derived from our audited consolidated financial statements not included in this Annual Report on Form 10-K. We derived the consolidated statements of operations data for the years ended December 31, 2007, 2006 and 2005 and the consolidated balance sheet data as of December 31, 2007 and 2006 from our audited consolidated financial statements appearing elsewhere in this Annual Report on Form 10-K.

	Year Ended December 31,				Period from March 20, 2003 (Inception) to December 31, 2003
	2007	2006(1)	2005(2)	2004	
	(In thousands, except per share amounts)				
Consolidated Statements of Operations Data:					
Revenues:					
Product sales, net	$ 53,536	$ 43,299	$ 18,796	$ —	$ —
Royalties, net	1,156	594	146	—	—
Contract revenues	10,611	963	2,500	—	—
Total revenues	65,303	44,856	21,442	—	—
Operating expenses:					
Cost of product sales (excluding amortization and impairment of acquired developed technology)	8,903	6,968	4,292	—	—
Research and development	69,792	54,956	45,783	17,988	—
Selling, general and administrative	78,540	51,384	23,551	7,459	2,538
Intangible asset amortization	9,217	9,600	4,960	—	—
Intangible asset impairment	20,160	—	—	—	—
Provision for government settlement	17,469	—	—	—	—
Purchased in-process research and development	—	—	21,300	—	—
Total operating expenses	204,081	122,908	99,886	25,447	2,538
Loss from operations	(138,778)	(78,052)	(78,444)	(25,447)	(2,538)
Interest income	5,942	2,307	1,318	643	10
Interest expense (including $9,193, $9,024 and $4,595 for the years ended December 31, 2007, 2006 and 2005, respectively, pertaining to related parties)	(13,647)	(14,129)	(7,129)	—	—
Other income (expense)	1,797	(1,109)	(901)	—	—
Gain on extinguishment of development financing obligation	—	31,592	—	—	—
Gain on sale of product rights	5,860	—	—	—	—
Net loss	(138,826)	(59,391)	(85,156)	(24,804)	(2,528)
Beneficial conversion feature	—	(21,920)	—	—	—
Loss attributable to common stockholders	$(138,826)	$ (81,311)	$ (85,156)	$ (24,804)	$ (2,528)
Loss per share attributable to common stockholders, basic and diluted	$ (10.04)	$(6,254.69)	$(14,192.67)	$(1,550.25)	$ (81.55)
Weighted-average common shares used in computing loss per share attributable to common stockholders, basic and diluted	13,829	13	6	16	31

(1) In the year we adopted SFAS No. 123(R), Share-Based Payment, operating expenses included stock-based compensation expense of $3.5 million of which $8,000, $661,000 and $2.8 million were charged to cost of product sales, research and development and selling, general and administrative expense, respectively.

(2) We acquired Orphan Medical, Inc. on June 24, 2005, and the results of Orphan Medical are included in the consolidated financial statements from that date. In connection with the acquisition, we recorded a charge of $21.3 million for acquired in-process research and development.

	As of December 31,				
	2007	2006	2005	2004	2003
			(In thousands)		
Balance Sheet Data:					
Cash and cash equivalents	$ 102,945	$ 78,948	$ 20,614	$ 33,678	$ 4,460
Working capital	79,235	61,043	8,048	36,663	4,488
Total assets	207,554	214,571	164,781	42,850	4,900
Liability under government settlement	14,881	—	—	—	—
Senior secured notes (including $52,581, $51,998 and $50,620 as of December 31, 2007, 2006 and 2005, respectively, held by related parties)	75,116	74,283	73,629	—	—
Convertible preferred stock	—	263,852	163,862	64,009	7,076
Common stock subject to repurchase	13,241	8,183	5,924	3,665	—
Accumulated deficit	(316,469)	(177,643)	(118,252)	(27,332)	(2,528)
Total stockholders' equity (deficit)	54,992	(176,296)	(118,248)	(30,923)	(2,512)

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion of our financial condition and the results of operations should be read in conjunction with the consolidated financial statements and notes to consolidated financial statements included elsewhere in this Annual Report on Form 10-K. This discussion contains forward-looking statements that involve risks and uncertainties. When reviewing the discussion below, you should keep in mind the substantial risks and uncertainties that characterize our business. In particular, we encourage you to review the risks and uncertainties described in Part I Item 1A. "Risk Factors" included elsewhere in this report. These risks and uncertainties could cause actual results to differ materially from those projected in forward-looking statements contained in this report or implied by past results and trends.

Overview

We are a specialty pharmaceutical company focused on identifying, developing and commercializing innovative products to meet unmet medical needs in neurology and psychiatry. Our goal is to build a broad portfolio of products through a combination of internal development and acquisition and in-licensing activities, and to utilize our specialty sales force to promote our products in our target markets. We apply novel formulations and drug delivery technologies to known drug compounds, and to compounds with the same mechanism of action or similar chemical structure as marketed products, to improve patient care by, among other things, improving efficacy, reducing adverse side effects or increasing patient compliance relative to existing therapies. By working with these drug compounds, we believe that we can substantially mitigate the risks and reduce the costs and time associated with product development and commercialization of new therapies with significant market opportunities. Through the application of novel formulations and drug delivery technologies, we also explore potential new indications for known drug compounds. Since our inception in 2003, we have built a commercial operation and assembled a portfolio of products and product candidates that currently includes two marketed products that generated net product sales of $53.2 million in 2007, one product approved by the U.S. Food and Drug Administration, or FDA, on February 28, 2008 which we are currently launching, and four product candidates in various stages of clinical development. We also have additional product candidates in earlier stages of development.

Our marketed and approved products are:

- *Xyrem® (sodium oxybate) oral solution*. Xyrem is the only product approved by the FDA for the treatment of both cataplexy and excessive daytime sleepiness in patients with narcolepsy. Narcolepsy is a chronic neurologic disorder caused by the brain's inability to regulate sleep-wake cycles. According to the National Institutes of Health, 150,000 or more individuals in the United States are affected by narcolepsy. We promote Xyrem in the United States to neurologists, psychiatrists, pulmonologists and sleep specialists through our approximately 200 person specialty sales force. We have significantly increased U.S. sales of Xyrem since acquiring rights to Xyrem in June 2005. We have licensed the rights to commercialize Xyrem in 54 countries outside of the United States to UCB Pharma Limited, or UCB, and in Canada to Valeant Canada Limited, or Valeant. UCB markets Xyrem in 14 countries. In 2007, Xyrem net sales were $39.0 million.
- *Luvox® CR (fluvoxamine maleate extended release capsules).* Once-daily Luvox CR was approved by the FDA for the treatment of both obsessive compulsive disorder and social anxiety disorder on February 28, 2008. We recently shipped initial quantities of Luvox CR to wholesalers. We will promote the product through our recently expanded specialty sales force of approximately 200. Luvox CR is a once-daily extended release formulation of fluvoxamine, a selective serotonin reuptake inhibitor. Selective serotonin reuptake inhibitors are used in the treatment of depression, anxiety disorders and some personality disorders. According to the National Institute of Mental Health, obsessive compulsive disorder and social anxiety disorder affect approximately 2.2 million and 15 million adults in the United States, respectively. Luvox CR was developed by Solvay Pharmaceuticals, Inc., or Solvay, in collaboration with Elan Pharma International Limited, or Elan. We

obtained the exclusive rights to market and distribute Luvox CR in the United States from Solvay in January 2007. Solvay retains the rights to market and distribute Luvox CR outside of the United States. During 2007 we made, and during 2008 we expect to make, significant expenditures relating to the commercial launch of Luvox CR.

- *Antizol® (fomepizole)*. Antizol is an FDA-approved antidote for suspected or confirmed ethylene glycol or methanol poisonings in humans. We market Antizol primarily to hospitals and emergency rooms. Antizol is distributed to wholesalers in the United States, and we retain the services of a third party to promote the product. Antizol is marketed by our distributors in Canada and Israel. We also market Antizol-Vet, an injectable formulation of fomepizole approved as an antidote for suspected or confirmed ethylene glycol poisonings in dogs. In 2007, Antizol and Antizol-Vet net sales were $14.2 million. In December 2007, a generic fomepizole was approved and is now available in the United States, and in early 2008, a second generic fomepizole product was approved by the FDA. As a result, we expect that sales of Antizol will decrease substantially during 2008.

Our clinical development pipeline consists of the following product candidates:

- *JZP-6 (sodium oxybate)*. We are developing sodium oxybate, the active pharmaceutical ingredient in Xyrem, for the treatment of fibromyalgia. According to the American College of Rheumatology, between two and four percent of the U.S. population suffers from fibromyalgia. We have successfully completed a Phase II clinical trial of this product candidate for the treatment of fibromyalgia. We are currently conducting two Phase III pivotal clinical trials, and we expect preliminary data from the first Phase III pivotal clinical trial in the fourth quarter of 2008. In Phase II clinical trials, JZP-6 achieved a statistically significant improvement compared to placebo in pain based on the pain visual analog scale, which the FDA and the European Agency for the Evaluation of Medicinal Products have indicated is the appropriate primary endpoint for our Phase III pivotal clinical trials. Subject to successful completion of the Phase III clinical trials, we plan to submit a new drug application, or NDA, for JZP-6 in the fourth quarter of 2009. If our NDA is approved by the FDA, we expect to market JZP-6 in the United States to specialists who treat fibromyalgia patients, through an expanded specialty sales force or in partnerships with third parties. We have granted UCB the commercialization rights to JZP-6 in 54 countries outside of the United States.
- *JZP-4 (sodium channel antagonist)*. JZP-4, a controlled release formulation of an anticonvulsant that is believed to work both through a similar mechanism of action as Lamictal® (lamotrigine), an antiepileptic drug marketed by GlaxoSmithKline for the treatment of epilepsy and bipolar disorder. According to the Epilepsy Foundation, approximately 2.7 million people in the United States suffer from epilepsy, and according to the National Institute of Mental Health, approximately 5.7 million people in the United States are affected by bipolar disorder.
- *JZP-8 (intranasal clonazepam)*. JZP-8, an intranasal formulation of clonazepam, is being developed for the treatment of recurrent acute repetitive seizures in epilepsy patients who continue to have seizures while on stable anti-epileptic regimens. Recurrent acute repetitive seizures are bouts of multiple seizures occurring over a short period of time. According to an article published in the *New England Journal of Medicine*, approximately 30% of epilepsy patients are unresponsive, or refractory, to treatment despite being on an effective dose of an antiepilepsy regimen, and a subset of these refractory patients experience recurrent acute repetitive seizures. We have received orphan drug designation from the FDA for this product candidate for the treatment of recurrent acute repetitive seizures.
- *JZP-7 (ropinirole gel)*. JZP-7, a transdermal gel formulation of ropinirole, is being developed for the treatment of restless legs syndrome. Dopamine is naturally produced by the human body, and in the brain, dopamine functions to help nerve cells communicate. A dopamine agonist is a drug compound that mimics the effects of dopamine. According to the Restless Legs Syndrome Foundation, up to 10% of the U.S. population suffers from restless legs syndrome.

We have an ongoing program for generating, identifying and conducting feasibility studies for new product candidates. Our JZP-7 and JZP-8 product candidates resulted from this program. Several other product candidates identified through this program are in various stages of early development, including the use of sodium oxybate for the treatment of movement disorders. Other such early stage projects include a structural analog of valproic acid for the treatment of epilepsy and bipolar disorder licensed from Yissum, the technology transfer company of the Hebrew University of Jerusalem, and a triple reuptake inhibitor for the treatment of depression licensed from Faes Pharma S.A. We are working on ways to expand our Xyrem franchise by developing improvements to Xyrem, such as an oral tablet form, that could be more convenient for patients. These activities are in the early stages of development.

On June 6, 2007, we completed our initial public offering of 6,000,000 shares of our common stock at a public offering price of $18.00 per share. Net cash proceeds from the initial public offering were approximately $97.5 million, after deducting underwriting discounts and commissions and offering expenses.

In July 2007, we and our wholly-owned subsidiary, Orphan Medical, Inc., settled a matter relating to an investigation by the United States, acting through the Department of Justice, the United States Attorney's Office for the Eastern District of New York and other federal agencies, including the Office of Inspector General of the United States Department of Health and Human Services or HHS-OIG. Orphan Medical pled guilty to one felony count of introducing a misbranded drug into interstate commerce. A total of approximately $20.0 million in civil and criminal payments is required to be paid over the next several years in connection with this matter, of which $1.0 million and $2.0 million were paid in July 2007 and January 2008, respectively. We have agreed to guarantee payment of amounts payable by Orphan Medical. We were not prosecuted; however, as part of the settlement we entered into a corporate integrity agreement with the HHS-OIG. That agreement requires us to maintain a comprehensive compliance program, which we have in place, and we will have additional ongoing compliance-related operating costs related to our compliance program and the corporate integrity agreement. See Note 8 to our consolidated financial statements for additional details regarding this settlement.

In December 2007, after orphan drug exclusivity for Antizol (fomepizole) for methanol poisoning expired, a generic fomepizole product was introduced. Prior to this, we had believed that Antizol would not be of interest to generic drug manufacturers due to the small market size, the long expiry dating of our product and other factors. As a result of this competition, we performed an impairment test on the intangible asset associated with Antizol using revised, lower sales forecasts, and we recorded an impairment charge of $20.2 million. Prior to the impairment, the remaining useful life of this intangible asset was approximately 7 years. As a result of the impairment, the remaining useful life was reduced to two years and the net book value of this intangible asset associated with Antizol was $2.7 million as of December 31, 2007. In addition we wrote down the value of Antizol inventory held in excess of our estimated requirements and recorded a charge of $485,000. We expect revenues from sales of Antizol to decrease significantly in 2008 and in subsequent years.

Since our inception, we have incurred significant net losses, and we expect to continue to incur net losses for the next several years as we develop, acquire or in-license additional products or product candidates, expand clinical trials for our product candidates currently in clinical development, expand our research and development activities, seek regulatory approvals and engage in commercialization preparation activities in anticipation of potential FDA approval of our product candidates. We have expanded our commercial organization significantly in anticipation of the launch of Luvox CR. It is very expensive to launch a product, and many expenses are incurred before revenues are received. We are unable to predict the extent of any future losses or when we will become profitable, if at all. In addition, we will need to raise additional funds to support our operations, and such funding may not be available to us on acceptable terms, or at all. If we are unable to raise additional funds when needed, we may not be able to continue development of our product candidates or we could be required to delay, scale back or eliminate some or all of our development programs and other operations.

Revenues

Product Sales, Net

The following is a summary of our product sales, net for the last three fiscal years (in thousands):

	Year Ended December 31,		
	2007	2006	2005(3)
Xyrem	$39,018	$29,049	$11,200
Antizol(1)	14,153	12,813	6,782
Cystadane(2)	365	1,437	814
Total	$53,536	$43,299	$18,796

(1) Includes sales of Antizol-Vet, which were $251,000, $313,000 and $99,000 in 2007, 2006 and 2005, respectively.
(2) We sold our rights to Cystadane to a third party in March 2007.
(3) Includes only approximately six months of product sales, subsequent to our acquisition of Orphan Medical in June 2005.

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

Antizol (fomepizole). Revenues from sales of Antizol in the United States represented primarily sales to pharmaceutical wholesalers. Antizol is stocked by hospitals for use in emergency rooms and sales are typically uneven from quarter to quarter. Our sales of Antizol to distributors outside of the United States have not been material. As a result of generic competition, we believe that revenues from sales of Antizol will decrease significantly in 2008 and in subsequent years.

Cystadane (betaine anhydrous). We sold our rights to Cystadane in March 2007 for $9.0 million and recorded a gain of $5.1 million. Accordingly, we will not receive future revenues from the sale of this product.

Royalties, Net

We receive royalties primarily from international distributors of our products, typically based on their net sales of our products. Royalty income was $1.2 million, $594,000 and $146,000 in the years ended December 31, 2007, 2006 and 2005, respectively. Although we do not expect royalty revenues to comprise a substantial portion of our revenues in the near future, we expect royalty revenues to increase as sales of Xyrem by UCB increase which will offset a decrease in income due to a license we sold in 2007.

Contract Revenues

Almost all of our contract revenues relate to upfront or milestone payments received from UCB. UCB made nonrefundable milestone payments to us of $2.5 million in November 2005, $500,000 in June 2006, $2.0 million in March 2007 and $7.5 million in September 2007. These payments were all recognized as revenue when the respective milestone was achieved.

In connection with the expansion of our agreement with UCB in 2006, UCB made an upfront payment of $5.0 million and subsequently an additional payment of $10.0 million upon exercise of its rights to develop and commercialize JZP-6 for the treatment of fibromyalgia. These payments are being recognized as revenue through 2019, the estimated performance period of the contract. This amortization resulted in $1.1 million and $463,000 of contract revenues during the years ended December 31, 2007 and 2006, respectively.

Significant Customers

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

	Year Ended December 31,		
	2007	2006	2005
Express Scripts	59%	65%	51%
UCB Pharma Limited	18%	*	12%
Cardinal Health	*	12%	*
AmerisourceBergen	*	*	15%

* Less than 10% of our total revenues.

Research and Development Expenses

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

Conducting a significant amount of research and development is central to our business model. During 2007, we incurred approximately $69.8 million in research and development expenses, and we plan to continue to make significant investments in research and development for the foreseeable future in order to realize the potential of our portfolio of product candidates and earlier-stage research and development projects. Product candidates in later-stage clinical development generally have higher development costs than those in earlier stages of development, primarily due to the significantly increased size and length of the clinical trials.

We designate development projects to which we have allocated significant research and development resources with the term "JZP" and a unique number. Earlier-stage development and product lifecycle extension projects are included in "Other projects" in the following table. Early product concept feasibility studies and other research activities are included in "R&D support" in the following table. The expenditures summarized in the following table reflect costs directly attributable to each development candidate and to our "Other projects." We do not allocate salaries, benefits or other indirect costs to our development candidates or "Other projects," but include these costs in "R&D support" in the following table. The following table summarizes our research and development expenses for JZP and other projects currently under development for the years ended December 31, 2007, 2006 and 2005, and, for ongoing JZP projects, from project inception through December 31, 2007 (in thousands):

	Year Ended December 31,			Project Inception to December 31, 2007
	2007	2006	2005	
JZP-6	$24,457	$14,209	$ —	$ 38,666
JZP-4	9,040	6,699	2,141	17,880
Luvox CR	8,434	—	—	8,434
JZP-7	1,955	1,328	150	3,433
JZP-8	1,399	1,403	313	3,115
Terminated projects	(217)(1)	15,728(2)	34,753(2)	
Other projects	2,566	1,834	97	
R&D support	22,158	13,755	8,329	
Total	$69,792	$54,956	$45,783	

(1) Benefit resulted from a $1.3 million partial refund of a milestone payment we made to a third party related to a project terminated in 2005.
(2) Primarily includes costs associated with a product candidate in development which was cancelled in 2006.

During the year ended December 31, 2007, our research and development expenses for Luvox CR consisted primarily of a $2.0 million payment upon execution of a product license agreement and $6.4 million of expenses in connection with the scale-up for commercial manufacturing of Luvox CR, which includes $3.0 million for pre-launch inventory manufactured for, but in advance of, launch.

The process of developing and obtaining FDA approval of products is costly and time consuming. Development activities and clinical trials can take years to complete, and failure can occur any time during the clinical trial process. Although our program for identifying and developing new product candidates is designed to mitigate risk, the successful development of our product candidates is highly uncertain. Development timelines, probability of success and development costs vary widely among product candidates. As a result, we are unable to determine the time and completion costs related to the development of our product candidates or estimate when, or to what extent, we will generate revenues from the commercialization and sale of any of our product candidates.

Critical Accounting Policies and Significant Estimates

Revenue Recognition

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

Product Sales, Net

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

Revenues from sales of products within the United States are recorded net of estimated allowances for specialty distributor and wholesaler fees, prompt payment discounts, Medicaid rebates, government chargebacks and customer rebates. Calculating these items involves estimates and judgments based primarily on sales or

invoice data and historical experience. Due to the nature of our current products, product returns have been infrequent and immaterial. Our allowances and adjustments to estimates for allowances have not historically been material.

There are a significant number of uncertainties involved in estimating net product sales for recently launched products. As a result it may be difficult for us to obtain sufficient data upon launch to estimate provisions for chargebacks, rebates, sales incentives and allowances, royalties, distribution service fees, returns and losses. As a result it is possible that we may not record any revenues from sales of Luvox CR for a significant period after the product is launched. When we do recognize revenue from sales of Luvox CR, it may be subject to greater period to period fluctuations than products with a long established history.

Specialty Distributor and Wholesaler Fees. Express Scripts, our sole Xyrem distributor in the United States, provides services such as collecting patient registry information, providing reimbursement support, providing nursing assistance, distributing educational materials and administering a patient co-payment rebate program. The fees we pay to Express Scripts for these services and the cost of the patient rebate program, for which we reimburse Express Scripts, are recorded as a reduction of Xyrem product sales and are based on actual invoices for services and rebates earned rather than estimates. Since most of the fee is based primarily on product shipments, our allowance related to these fees would generally increase in proportion to increases in sales. We paid fees to Express Scripts of $1.5 million, $1.4 million and $546,000 for the years ended December 31, 2007, 2006 and 2005, respectively.

Our service agreements with certain U.S. wholesaler customers require us to pay them fees. Wholesaler fees totaled $147,000, $203,000 and $64,000 for the years ended December 31, 2007, 2006 and 2005, respectively. These fees are likely to increase substantially as a result of the sales of Luvox CR, and they may also increase if we modify our existing agreements with wholesalers or enter into agreements with additional wholesalers.

Prompt Payment Discounts. We offer Express Scripts and our U.S. wholesaler customers a 2% prompt payment discount as an incentive to remit payment within the first 30 days after the date of our invoice. In addition, we have extended our prompt payment discount term to 90 days and offered an additional 5% discount on initial orders of Luvox CR placed in March 2008. Because Express Scripts and our U.S. wholesaler customers typically take the prompt payment discount, we accrue 100% of the prompt payment discounts, based on the gross amount of each invoice, at the time of our original sale to them, and we apply earned discounts at the time of payment. We adjust the allowance to reflect actual experience as necessary and, as a result, the actual amount recognized in any period may be slightly different from our allowance amount. Adjustments have not been material and we do not anticipate that changes to estimates will have a material impact on product sales, net for Xyrem and Antizol. Until we have accumulated sufficient sales data, we are not able to determine what changes, if any, in estimates we will experience related to Luvox CR. We recorded prompt payment discounts of $1.1 million, $880,000 and $381,000 for the years ended December 31, 2007, 2006 and 2005, respectively.

Medicaid Rebates. Our products are subject to state government-managed Medicaid programs under which rebates are provided to participating state governments. We record rebates to be provided through the Medicaid drug rebate program as a reduction of product sales when the product is sold. We pay rebates to states for all eligible units purchased under the Medicaid program based on a rebate per unit calculation, which is derived from our average manufacturer price. We determine our estimate of the Medicaid rebate accrual primarily based on historical experience regarding Medicaid rebates, as well as current and historical prescription activity and our current sales prices. We also examine the historical rebate trends and any expected changes to these trends. We adjust the accrual throughout each period to reflect actual experience, expected changes in future prescription volumes and any changes in business circumstances or trends. Rebate amounts are generally invoiced quarterly in arrears and paid 30 days after they are invoiced. Based on our history of estimating Medicaid rebates, we do not anticipate that changes to our estimated allowance for Medicaid rebates for Xyrem and Antizol will have a material impact on their product sales, net. Until we have accumulated sufficient sales data, we are not able to determine what changes, if any, in estimates we will experience related to Luvox CR. We recorded Medicaid rebates of $263,000, $229,000 and $135,000 for the years ended December 31, 2007, 2006 and 2005, respectively.

Chargebacks. Our products are subject to certain programs with federal government entities under which pricing on our products is extended below U.S. wholesaler list price to participating entities. For Xyrem product sales, the lower vendor price is identified prior to our billing of Express Scripts. For Antizol product sales, these entities purchase our products through U.S. wholesalers at the lower vendor price, and the U.S. wholesalers charge the difference between their acquisition cost and the lower vendor price back to us. We account for chargebacks by establishing an accrual in an amount equal to our estimate of chargeback claims. We determine our estimate of the chargebacks primarily based on historical experience regarding chargebacks and current contract prices under the vendor programs. We consider vendor payments and our claim processing time lag and adjust the accrual throughout each period to reflect actual experience and any changes in business circumstances or trends. Due to estimates and assumptions inherent in determining the amount of chargebacks, the actual amount of claims for chargebacks may be slightly different from our estimates. Based on our experience with chargebacks, we do not believe that a material change to our estimated allowance for chargebacks is reasonably likely or will have a material impact on Xyrem and Antizol product sales, net. Until we have accumulated sufficient sales data, we are not able to determine what changes, if any, in estimates we will make related to Luvox CR. Chargebacks from U.S. wholesalers were $285,000, $212,000 and $57,000 for the years ended December 31, 2007, 2006 and 2005, respectively.

Customer Rebate. Under our agreement with our Antizol distributor in Canada, we pay a rebate, either in cash or as a credit against future purchases, based upon year-over-year unit sales increases. We account for the rebate by establishing an accrual equal to our estimate of the rebate amount. We determine our estimate of the rebate primarily based on historical experience regarding rebate payments and our Antizol distributor's current year sales forecast. The rebate was $14,000 and $44,000 for the years ended December 31, 2007 and 2006. There was no rebate for the year ended December 31, 2005.

Royalties, Net

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

Contract Revenues

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

UCB Agreement

In June 2006, we entered into an agreement with UCB that amended and restated a prior agreement between Orphan Medical and UCB. Under the terms of the amended agreement, UCB has the right to market Xyrem for the treatment of narcolepsy and JZP-6 for the treatment of fibromyalgia in 54 countries outside of the United States. UCB made nonrefundable milestone payments to us of $2.5 million in November 2005, $500,000 in June 2006, $2.0 million in March 2007 and $7.5 million in September 2007. UCB also made an upfront payment of $5.0 million upon execution of the amended agreement in June 2006 and an additional payment of $10.0 million in August 2006 upon exercise of its rights to develop and commercialize JZP-6 for the treatment of fibromyalgia.

We recognized contract revenues of $1.1 million and $463,000 related to these upfront payments during the years ended December 31, 2007 and 2006, respectively. The remaining $13.4 million was recorded as deferred revenues as of December 31, 2007 and is being recognized ratably through 2019, the expected performance period under the agreement. There has been no change in the expected performance period since its establishment in 2006 at the time of the initial upfront payment. The amended agreement requires UCB to make additional milestone payments of up to $138.5 million, of which up to $6.0 million relate specifically to Xyrem for the treatment of narcolepsy, up to $32.5 million relate to the development and approval of JZP-6 for the treatment of fibromyalgia and up to $100.0 million relate primarily to the commercialization of JZP-6 for the treatment of fibromyalgia as well as additional sales of Xyrem for the treatment of narcolepsy.

Goodwill and Intangible and Long-Lived Assets

Goodwill represents the excess of the purchase price over the fair value of assets acquired and liabilities assumed. We have determined that we operate in a single segment and have a single reporting unit associated with the development and commercialization of pharmaceutical products. The annual test for goodwill impairment is a two-step process. The first step is a comparison of the fair value of the reporting unit with its carrying amount, including goodwill. If this step indicates impairment, then in the second step, the loss is measured as the excess of recorded goodwill over its implied fair value. Implied fair value is the excess of the fair value of the reporting unit over the fair value of all identified assets and liabilities. We test goodwill for impairment annually in October and concluded that no impairment existed as of October 1, 2007. We will also test for impairment whenever events or changes in circumstances indicate that the carrying value may not be recoverable.

Intangible assets consist primarily of developed technology, agreements not to compete and trademarks. Intangible assets are amortized on a straight-line basis over their estimated useful lives, which range from three to ten years. The estimated useful lives associated with other intangible assets are consistent with underlying agreements, or the estimated lives of the products. Once an intangible asset is fully amortized, the gross costs and accumulated amortization are removed from the consolidated balance sheet. We evaluate purchased intangibles and other long-lived assets, other than goodwill, for impairment whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. An impairment loss would be recognized when estimated undiscounted future cash flows expected to result from the use of the asset and its eventual disposition are less than its carrying amount. The impairment loss, if recognized, would be based on the excess of the carrying value of the impaired asset over its fair value.

In December 2007, a generic fomepizole product was introduced and, as a result, we evaluated the intangible asset associated with Antizol for impairment and reduced the gross carrying amount and accumulated amortization of this intangible asset by $28.4 million and $8.2 million, respectively, which resulted in a $20.2 million intangible asset impairment charge. The fair value of this intangible asset was based on the discounted cash flows related to this intangible asset. The discounted cash flows were determined using the following key assumptions: (a) revised cash flow estimates and (b) a discount rate of 14%. The discount rate reflects our expectations of future cash flows related to Antizol and an appropriate risk premium.

Since a generic competitor entered the market immediately after orphan drug exclusivity for the second indication for Antizol expired, we determined that we should review our assumptions regarding the recoverability of the intangible assets associated with Xyrem. Orphan drug exclusivity in the United States for Xyrem for the treatment of cataplexy and Xyrem for the treatment of excessive daytime sleepiness, in patients with narcolepsy, expires in July 2009 and November 2012, respectively. The value of the intangible assets associated with Xyrem for cataplexy as recorded on our consolidated balance sheet at December 31, 2007 was $29.2 million and the remaining estimated useful life was 7.0 years. Based on the Xyrem risk management system, additional patent protection and the DEA quota system, we believe the intangible assets associated with Xyrem are recoverable and the remaining estimated useful life is appropriate. The estimates and assumptions used in these analyses are very subjective. Changes in our estimates and assumptions could have a material adverse effect on our results of operations.

As of December 31, 2007 we had recorded goodwill of $38.2 million and intangible assets as follows:

	Gross Carrying Amount	Accumulated Amortization	Net Book Value	Weighted Average Remaining Useful Life
		(In thousands)		(In years)
Developed technology—Xyrem	$39,700	$ 10,499	$29,201	7.0
Developed technology—Antizol	2,715	—	2,715	2.0
Agreements not to compete	5,600	3,389	2,211	2.2
Trademarks	2,600	687	1,913	7.0
Amortizable intangible assets	$50,615	$ 14,575	$36,040	

Stock-Based Compensation

Stock-Based Compensation Under SFAS 123

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

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

Effective January 1, 2006, we adopted SFAS No. 123(R), *Share-Based Payment* ("SFAS 123R"), which requires compensation expense related to share-based transactions, including employee stock options, to be measured and recognized in the financial statements based on fair value. SFAS 123R revises SFAS 123, as amended, and supersedes APB 25. We adopted SFAS 123R using the modified prospective approach. Under the modified prospective approach, SFAS 123R applies to new awards and to awards modified, repurchased, or cancelled after the required effective date. Additionally, compensation cost for the portion of awards for which the requisite service has not been rendered that are outstanding as of the required effective date are recognized as the requisite service is rendered on or after the required effective date. The compensation expense for that portion of awards is based on the grant date fair value of those awards. The compensation expense for awards with grant dates prior to January 1, 2006, are attributed to periods beginning on or after the effective date using the attribution method that was used under SFAS 123, except that the method of recognizing forfeitures only as they occur is not continued. The following table shows unrecognized stock-based compensation costs and expected weighted-average amortization periods for each type of award as of December 31, 2007:

	Unrecognized Stock-Based Compensation Cost	Expected Weighted-Average Amortization Period
	(In thousands)	(In years)
Options	$ 13,710	3.3
Employee stock purchase plan	2,281	1.3
Restricted stock units	1,229	3.6
Total	$ 17,220	

Under both SFAS 123 and SFAS 123R we elected to use the Black-Scholes valuation model to calculate the fair value of stock options and we are using the straight-line method to allocate compensation cost to reporting periods. During the years ended December 31, 2007, 2006 and 2005, the fair value of stock options granted was estimated using the Black-Scholes valuation model with the following assumptions:

	Year Ended December 31,		
	2007	2006	2005
Weighted-average volatility	56%	61%	60%
Weighted-average expected term (years)	6.1	6.0	5.0
Range of risk-free rates	3.4-4.9%	4.6-5.1%	3.9-4.4%
Expected dividend yield	0.0%	0.0%	0.0%

We have limited historical information to develop reasonable expectations about future exercise patterns and post-vesting employment termination behavior for our stock option grants. As a result, for stock option grants made during the year ended December 31, 2007, the expected term was estimated using the short-cut method allowed under Securities and Exchange Commission Staff Accounting Bulletin No. 107 Share-Based Payment.

As we have limited trading history for our common stock, the expected stock price volatility for our common stock was estimated primarily by taking the median historic stock price volatility for industry peers based on daily price observations over a period equivalent to the expected term of the stock option grants. Industry peers consist of several public companies in the specialty pharmaceutical industry similar in size, stage of life cycle and financial leverage. We placed some reliance on the volatility of our own stock based on its trading history since June 1, 2007. We did not rely on the implied volatilities of traded options in our industry peers' common stock, because either the term of those traded options was much shorter than the expected term of our stock option grants, or the volume of activity was relatively low.

We will continue to analyze the historical stock price volatility and expected term assumptions as more historical data becomes available. The risk-free interest rate assumption was based on zero coupon U.S. Treasury instruments whose term was consistent with the expected term of our stock option grants. The expected dividend assumption was based on our history and expectation of dividend payouts.

Prior to our initial public offering in June 2007, the fair value of our common stock, which is also an input to the Black-Scholes model, was determined by our board of directors with assistance from management. At two points in the year prior to our initial public offering the board of directors directed management to perform in-depth contemporaneous valuations of our common stock. Determining the fair value of the common stock of a private company involves a high degree of judgment and a number of different estimates.

The assumptions we used to estimate the fair value of grants under our employee stock purchase plan were similar to those used for stock options grants.

Beneficial Conversion Feature

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

Accrued Expenses

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

In-Process Research and Development

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

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

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

Results of Operations

Comparison of Years Ended December 31, 2007 and 2006

	2007	2006	Increase/ (Decrease)	Increase/ (Decrease)
		(In thousands)		
Product sales, net	$ 53,536	$ 43,299	$ 10,237	24%
Royalties, net	1,156	594	562	95%
Contract revenues	10,611	963	9,648	1002%
Cost of product sales	8,903	6,968	1,935	28%
Research and development	69,792	54,956	14,836	27%
Selling, general and administrative	78,540	51,384	27,156	53%
Intangible asset amortization	9,217	9,600	(383)	(4)%
Intangible asset impairment	20,160	—	20,160	N/A(1)
Provision for government settlement	17,469	—	17,469	N/A(1)
Interest income	5,942	2,307	3,635	158%
Interest expense	(13,647)	(14,129)	482	(3)%
Other income (expense)	1,797	(1,109)	2,906	N/A(1)
Gain on extinguishment of development financing obligation	—	31,592	(31,592)	N/A(1)
Gain on sale of product rights	5,860	—	5,860	N/A(1)

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

Product Sales, Net

The increase in product sales, net in 2007 as compared to 2006 was primarily due to increases in Xyrem and Antizol sales, which increased by $10.0 million and $1.3 million, respectively, offset by a decrease in Cystadane sales of $1.1 million. We believe the underlying reasons for the increase in product sales, net were:

- investments in Xyrem marketing programs;
- increases in the price we charged our central pharmacy for Xyrem of 9.0% and 7.4% in May 2007 and August 2006, respectively; and
- increases in the price we charged our wholesale customers for Antizol of 9.0% and 5.0% in August 2007 and November 2006, respectively.

These increases were partly offset by the sale of our rights to Cystadane in March 2007. As a result of generic competition, we believe that revenues from sales of Antizol will decrease significantly in 2008 and in subsequent years.

Royalties, Net

The increase in royalties, net in 2007 compared to 2006 was largely due to an increase in royalties on sales of Xyrem by UCB.

Contract Revenues

The increase in contract revenue in 2007 compared to 2006 was primarily due to a $7.5 million milestone payment from UCB triggered by achievement of a development milestone in the clinical trials of JZP-6 in August 2007 and a $2.0 million milestone payment from UCB, triggered by regulatory approval of Xyrem in Europe for the treatment of narcolepsy with cataplexy in March 2007.

Cost of Product Sales

The increase in cost of product sales in 2007 as compared to 2006 was primarily due to the 24% increase in product sales, net, a charge of $485,000 recorded in December 2007 to write down Antizol inventory in excess of estimated requirements and an expense of $133,000 related to a failed production run of Antizol in 2007.

Research and Development Expenses

Higher research and development expenses in 2007 as compared to 2006 resulted from increased spending on development projects and increased headcount and related expenses. During 2007, a substantial portion of our research and development expenses were attributable to JZP-6, Luvox CR and JZP-4. Research and development expenses for Luvox CR included a $2.0 million payment to Solvay in January 2007 for the exclusive right to market and distribute Luvox CR and Luvox in the United States under the terms of a product license agreement and $6.4 million of expenses in connection with the scale-up for commercial manufacturing, which includes $3.0 million for pre-launch inventory manufactured for, but in advance of, launch. Research and development expenses in 2007 were partially offset by a benefit of $1.3 million as a result of a partial refund of a milestone payment we made to a third party related to a project that was terminated in 2005. During 2006, a substantial portion of our research and development expenses were attributable to a product candidate program that was terminated in 2006 and to JZP-6. We do not expect significant changes in our research and development spending in 2008 compared to our research and development expenses in 2007.

Selling, General and Administrative Expenses

The increase in selling, general and administrative expenses in 2007 as compared to 2006 was attributable to a number of factors, including:

- an increase in headcount and related salaries and benefits, primarily due to the expansion of our specialty sales force from 55 to 195;
- an increase in product marketing spending, primarily in preparation for the launch of Luvox CR;
- an increase in spending on activities related to supporting the sales force; and
- an increase in medical affairs expenses primarily related to investigator initiated trials.

These factors were partially offset by a decrease in legal fees associated with our response to the U.S. Attorney's investigation of activities by Orphan Medical related to the promotion of Xyrem.

We expect selling, general and administrative expenses to increase during 2008 primarily due to a full year of marketing and selling expenses related to the launch of Luvox CR, including a full year of costs related to our expanded sales force, and an increase in expenses associated with being a public company.

Intangible Asset Amortization

Our intangible assets consist primarily of developed technology, agreements not to compete and trademarks, all of which were recorded as a result of the acquisition of Orphan Medical in June 2005, and are amortized on a straight-line basis over their estimated useful lives. Amortization costs in 2007 were lower, as compared to 2006, as a result of the sale of our rights to Cystadane in March 2007. We expect amortization expense to increase in 2008 due to amortization of Luvox CR intangible assets. The remaining value of the Antizol intangible asset will be amortized over the next two years.

Intangible Asset Impairment

The intangible asset impairment charge recorded in 2007 resulted from the introduction of generic competition for Antizol.

Provision for Government Settlement

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

Interest Income

The increase in interest income in 2007 as compared to 2006 was primarily due to higher average cash balances as a result of our initial public offering in June 2007.

Interest Expense

Interest expense in 2007 and 2006 primarily related to interest on our $80.0 million principal amount of senior secured notes issued in June 2005. Interest on the notes is comprised of the accretion of a discount related to warrants that were issued in conjunction with the notes, amortization of debt issuance costs and quarterly cash payments for interest and was calculated using the effective interest method. In 2006, interest expense also included $1.1 million related to the financing of a product candidate in development. In June 2006, following the analysis of the results of a Phase III clinical trial, we decided to discontinue development of the product candidate and therefore did not accrue interest related to this financing subsequent to May 31, 2006.

Other Income (Expense)

In connection with the issuance of senior secured notes in June 2005, we issued warrants to purchase 785,728 shares of Series BB preferred stock at an exercise price of $20.36 per share. The warrants are exercisable, at the option of the holders, at any time until June 24, 2012, and were recorded as preferred stock warrant liability. Prior to our initial public offering the preferred stock warrant liability was revalued at the end of each reporting period to fair value using the Black-Scholes option pricing model. On June 6, 2007, upon completion of our initial public offering, the warrants became exercisable for common stock and the liability was reclassified to stockholders' equity at its then fair value.

We recorded a benefit of $1.8 million in 2007 and a charge of $1.1 million in 2006, in other income (expense), net, to reflect changes in the fair value of the preferred stock warrant liability.

Gain on Extinguishment of Development Financing Obligation

In August 2005, we entered into an agreement with a third party under which the third party agreed to provide $30.0 million to fund a Phase III clinical trial of a product candidate then in development. We were obligated to repay the third party $37.5 million subject to, and conditioned upon, approval by the FDA to market the product in the United States. In addition, we agreed to pay royalties at specified rates based on sales of the product within the United States. Under that agreement, we received $15.0 million in 2005 and $15.0 million in 2006. In June 2006, following analysis of the results of the Phase III clinical trial, we notified the third party of our intention to discontinue development and not to seek product marketing approval from the FDA. As of the date we notified the third party of our intention to discontinue development, we had recorded $31.6 million for future possible payments as a liability on our balance sheet, of which $30.0 million related to principal and $1.6 million related to interest accrued using the effective interest method. As a result of our notification, and the subsequent formal termination of the contract in July 2006, we were not obligated to make any payments to the third party that otherwise would have been made upon regulatory approval, launch and commercialization, and we recorded a gain of $31.6 million in 2006 resulting from the extinguishment of liabilities related to this development financing.

Gain on Sale of Product Rights

In March 2007, we entered into an agreement under which an unrelated third party purchased our rights to Cystadane, along with the associated product registrations, commercial inventory and trademarks, for $9.0 million in cash. In connection with this transaction, we recorded a gain of $5.1 million in 2007. In December 2007, we sold our rights our rights to receive royalties on another product for $1.2 million in cash and recorded a gain of $715,000.

Comparison of Years Ended December 31, 2006 and 2005

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

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

Product Sales, Net

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

- expansion of the Xyrem sales force from 36 to 55 employees in the fourth quarter of 2005;
- receipt from the FDA in November 2005 of expanded marketing approval for Xyrem for the treatment of excessive daytime sleepiness in patients with narcolepsy and a corresponding launch of the new indication in early 2006;
- increases in the price that we charge our central pharmacy for Xyrem of 6.4% and 7.4% in December 2005 and August 2006, respectively; and
- increases in the price that we charge our wholesale customers for Antizol of 4.2% and 5.0% in December 2005 and November 2006, respectively.

Royalties, Net

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

Contract Revenues

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

Cost of Product Sales

The increase in the cost of product sales in 2006 compared to 2005 was primarily due to the inclusion of a full year of product sales in 2006 compared to approximately six months of product sales in 2005, subsequent to our acquisition of Orphan Medical in June 2005. Our gross margin increased from 77% in 2005 to 84% in 2006. The primary reason for this increase was a lower fair value adjustment to inventory acquired as part of the acquisition of Orphan Medical in 2006 compared to 2005. Our cost of product sales reflected a fair value adjustment of $1.6 million and $775,000 during 2005 and 2006, respectively.

Research and Development Expenses

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

Selling, General and Administrative Expenses

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

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

Intangible Asset Amortization

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

Purchased In-process Research and Development

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

Interest Income

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

Interest Expense

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

Other Expense

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

Gain on Extinguishment of Development Financing Obligation

As discussed more fully in the comparison of the years ended December 31, 2007 and 2006, we recorded a gain of $31.6 million resulting from the extinguishment of liabilities related to a development financing during 2006.

Liquidity and Capital Resources

Since our inception, we have incurred significant net losses and, as of December 31, 2007, we had an accumulated deficit of $316.5 million. We have not achieved profitability, and we anticipate that we will continue to incur net losses for the next several years.

From inception through December 31, 2007, in order to fund our operations, we have raised a total of $469.4 million, net of issuance costs, to fund our operations, including $263.9 million from the sale of convertible preferred stock prior to our initial public offering, $97.5 million from the sale of common stock in our initial public offering, $78.0 million from the sale of senior secured notes and warrants in 2005 and $30.0 million in project development financing. This funding does not include short-term borrowings under a line of credit or milestone payments received from our collaboration with UCB.

As of December 31, 2007, we had $102.9 million in cash and cash equivalents, held primarily in obligations of United States government agencies, money market funds and corporate debt securities. In December 2007, we extended our line of credit through November 2008, under which we could borrow up to 80% of eligible accounts receivable up to a maximum of $5.0 million in borrowings. In connection with a debt expansion on March 17, 2008, we terminated the $5.0 million line of credit. On March 28, 2008, the $5.0 million line of credit was reinstated. In addition, $12.0 million of cash, which had been previously restricted under the terms of our senior secured notes, became available to us as a result of our debt expansion on March 17, 2008.

On March 17, 2008, JPI Commercial, LLC, or JPIC, our wholly-owned subsidiary, sold $40.0 million aggregate principal amount of senior secured notes. As part of the transaction, we issued to the purchasers of these notes warrants to purchase a total of 562,192 shares of our common stock exercisable at an exercise price of $14.23 per share at any time until March 17, 2013. We paid an $0.8 million arrangement fee and incurred other expenses in connection with the transaction. We will use the net proceeds to fund milestone payments due under our license agreement with Solvay Pharmaceuticals, Inc., to fund Luvox CR launch expenses and for general corporate purposes. The notes bear interest at 15% per annum, payable quarterly in arrears, and are due on June 24, 2011. In addition, on March 17, 2008, a total of $80.0 million aggregate principal amount of senior

secured notes of Orphan Medical were exchanged for the same principal amount of new senior secured notes issued by JPIC. In these transactions, we guaranteed the repayment obligations of JPIC and granted the note holders a security interest in all of our assets and those of our wholly-owned subsidiaries. JPIC is not required to maintain a restricted cash balance under the new arrangement; however, if at any time after the quarter ending on March 31, 2009, our product sales do not reach certain specified levels, JPIC would be required to maintain a minimum cash balance equal to 15% of the then outstanding principal amount of notes. We have also agreed to restrictions on working capital borrowings, dividends and certain other payments. Under the agreement, we may borrow up to $15.0 million secured by our accounts receivable and inventory. JPIC may be required, upon the occurrence of certain events and if our annualized net product sales fall below a certain specified level, to redeem a portion of the notes, and may be required to repurchase or redeem a portion or all of the notes upon the occurrence of certain customary events.

Subject to satisfying conditions related to our net product sales and certain closing conditions, prior to January 31, 2009, we have the option to sell to certain of the note holders up to an additional $30.0 million aggregate principal amount of senior secured notes and warrants to purchase shares of our common stock at an exercise price based upon the closing stock price prior to the sale of the notes and warrants.

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

	Year Ended December 31,		
	2007	2006	2005
		(In thousands)	
Net cash used in operating activities	$(81,091)	$(57,350)	$ (52,162)
Net cash provided by (used in) investing activities	5,337	(1,507)	(153,754)
Net cash provided by financing activities	99,751	117,191	192,852
Net increase (decrease) in cash and cash equivalents	$ 23,997	$ 58,334	$ (13,064)

Net cash used in operating activities in 2007 primarily reflected our net loss, offset in part by changes in working capital, the impairment loss related to the intangible asset associated with Antizol, depreciation and amortization, the liability for future payments under the government settlement, the change in the preferred stock warrant liability and the gain on sale of product rights. Net cash used in operating activities in 2006 primarily reflected our net loss, less the gain on extinguishment of development financing, offset in part by depreciation and amortization and changes in working capital. Net cash used in operating activities in 2005 primarily reflected the net loss offset in part by depreciation and amortization, in-process research and development and changes in working capital.

Net cash provided by investing activities in 2007 primarily included proceeds of $9.0 million from the sale of our rights to Cystadane, partially offset by purchases of property and equipment of $3.1 million and a net increase in the purchase, sale and maturity of short-term investments of $1.7 million. Net cash used in investing activities in 2006 related primarily to purchases of property and equipment. Net cash used in investing activities in 2005 related primarily to the acquisition of Orphan Medical, net of cash acquired, for $146.1 million and a net increase in the purchase, sale and maturity of investments.

Net cash provided by financing activities in 2007 related largely to the issuance of common stock in our initial public offering for net proceeds of $97.5 million. Net cash provided by financing activities in 2006 related primarily to issuances of preferred stock for net proceeds of $100.0 million and $15.0 million of funding under a development financing agreement. Net cash provided by financing activities in 2005 related primarily to issuances of preferred stock for net proceeds of $99.9 million, net proceeds from the sale of senior secured notes and warrants of $78.0 million and $15.0 million of funding under a development financing agreement.

We believe that our current cash and cash equivalents and interest earned thereon, together with future financings and anticipated revenues from product sales and royalties will be sufficient to satisfy our current

operations for at least the next 12 months. We have based this estimate on assumptions that may prove to be wrong, and we could exhaust our available financial resources sooner than we currently expect. We are launching Luvox CR and, as is the case with new product launches, we cannot predict with certainty the timing or level of Luvox CR sales. If sales of Luvox CR do not reach the levels we expect and if we do not generate additional cash resources from financings or partnering activities, we may be unable to meet our cash requirements under our current operating plan. If product sales do not meet our expectations and we do not raise additional funds, we will need to reduce our planned expenditures, perhaps significantly, to preserve our cash. If necessary, we would implement, beginning as early as the third quarter of 2008, appropriate plans and measures to quickly reduce discretionary spending and capital expenditures, terminate or slow one or more of our product development programs, reduce headcount, license or sell some of our product candidates or products, or implement a combination of these and other cost cutting measures. See Part I Item 1A—Risk Factors—"Our operations have generated negative cash flows, and if we are unable to secure additional funding when we need it, we may be required to reduce operations" and other risk factors included in Part I Item 1A for a discussion of the factors that will influence our future capital requirements.

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

Contractual Obligations

The following table reflects a summary of our contractual obligations as of December 31, 2007:

	Payments due by period			
Contractual Obligations(1)	Total	Less than 1 Year	1-3 Years	3-5 Years
		(In thousands)		
Senior secured notes(2)	$ 121,800	$ 12,000	$ 24,000	$ 85,800
Liability under government settlement(3)	19,000	2,000	8,500	8,500
Line of credit	3,459	3,459	—	—
Operating lease obligations(4)	3,500	2,082	1,347	71
Purchase obligations(5)	7,022	7,022	—	—
Total	$ 154,781	$ 26,563	$ 33,847	$ 94,371

(1) Milestone payments and royalty payments under our license and collaboration agreements that we cannot, as of December 31, 2007, determine when or if the related milestones will be achieved or the events triggering the commencement of payment obligations will occur are not included in the table above.

(2) On June 24, 2005, to partially finance the acquisition of Orphan Medical, we issued $80.0 million of senior secured notes. The notes bear interest at a rate of 15% per annum, payable quarterly in arrears. The amounts in the table above include interest and principal repayments on these notes. See Note 7 to our consolidated financial statements appearing elsewhere in this prospectus for additional information. The table above does not include our obligations to make quarterly interest payments at a rate of 15% on $40.0 million aggregate principal amount of new notes issued on March 17, 2008 which are due in full on June 24, 2011.

(3) Under the terms of the settlement of the government investigation, if we are acquired, or, in the event of an uncured default resulting from the failure to make payments when due, $3.6 million plus interest payable under the civil settlement agreement described in Part I Item 3 “Legal Proceedings”, could become due immediately, to the extent then unpaid. In addition, if, in any calendar year, our audited financial statements show net income, we would have to pay 50% of the net income shown in those financial statements within 30 days of their issuance, up to the remainder of the then remaining unpaid amount under the civil settlement agreement. These additional payments would be applied to the payment schedule under the civil settlement agreement in reverse chronological order so that the amounts otherwise payable in 2012 would be paid first, then the amounts otherwise payable in 2011 and continuing in reverse order. Payments due under the civil settlement agreement that could be accelerated under these provisions are as follows: $430,000 paid in January 2008, $537,000 otherwise payable in January 2009, $645,000 otherwise payable in January 2010, $645,000 otherwise payable in January 2011, and $1.8 million otherwise payable in January 2012.

(4) Includes the minimum rental payments for our corporate office building and two other office spaces in Palo Alto, California and automobile lease payments for the sales force. In February 2008, we exercised our option to extend the lease on our corporate office building for one year beginning August 2008. The obligation related to this one year extension is approximately $816,000, which is not included in the table above. In addition to these lease payments we are obligated to pay for operating expenses for the lease property.

(5) Consists of commitments to third party manufacturers of Antizol, Xyrem and Luvox CR. Does not include obligations under contracts with a contract research organization that are not cancellable without the payment of liquidated damages of $6.6 million.

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

- In January 2007, we entered into a product license agreement with Solvay for the right to market and distribute Luvox and Luvox CR in the United States. Under the terms of the agreement, we made a $2.0 million payment upon execution of the agreement and we are required to make additional payments based on the achievement of certain milestones. No milestones were achieved as of December 31, 2007 therefore no amounts are included in the table above. In March 2008, the license agreement was amended to provide that the milestone payments that were due as a result of approval and launch of Luvox CR will be paid as follows: $10.0 million on March 28, 2008; $10.0 million on April 7, 2008; $10.5 million on September 30, 2008; and $10.5 million on December 31, 2008. Additional payments of up to $95.0 million are due upon the achievement of certain commercial milestones. We are required to pay royalties on commercial sales at specified rates.
- In October 2004, we entered into an agreement with GlaxoSmithKline to acquire worldwide rights to the active pharmaceutical ingredient in JZP-4. We paid $2.0 million upon execution of the agreement and $3.0 million in July 2006 upon achievement of a development milestone. We also agreed to pay up to $113.5 million upon the achievement of future development and commercial milestones and royalties at specified rates based on net product sales. These future payments include a $5.0 milestone payment due upon the enrollment of the first patient in a JZP-4 Phase II clinical trial, which we expect to occur in the third quarter of 2008.

- The FDA approval of Luvox CR includes a post-marketing commitment to conduct a safety and efficacy study in adolescent patients with social anxiety disorder and a long-term safety and efficacy study in patients with social anxiety disorder. We have not yet developed the protocols or cost estimates for these studies.

Related Parties

Prior to the issuance of the new notes on March 17, 2008, as described in Liquidity and Capital Resources above, LB I Group, an entity affiliated with Lehman Brothers Holdings Inc., purchased certain senior notes and warrants then outstanding, including certain senior notes and warrants held by an affiliate of Kohlberg Kravis Roberts & Co. L.P., a significant stockholder. Subsequent to the issuance of the new notes, LB I Group held notes with an aggregate principal amount of $89.5 million, warrants to purchase 479,853 shares of common stock excisable at $20.36 per share and warrants to purchase 470,836 shares of common stock exercisable at $14.23 per share. We paid LB I Group an arrangement fee of $0.8 million in connection with the issuance of the new notes. Subject to certain conditions, LB I Group is obligated to purchase from JPIC additional notes with an aggregate principal amount of up to $27.0 million. Subsequent to the issuance of the new notes, entities affiliated with Kohlberg Kravis Roberts & Co. L.P. held notes with an aggregate principal amount of $7.1 million and warrants to purchase 70,156 shares of common stock exercisable at $20.36 per share.

Recent Accounting Pronouncements

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

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

In June 2007, the FASB ratified Emerging Issues Task Force, or EITF, 07-3, Accounting for NonRefundable Advance Payments for Goods or Services Received for Use in Future Research and Development Activities, or EITF 07-3. EITF 07-3 requires that nonrefundable advance payments for goods or services that will be used or rendered for future research and development activities be deferred and capitalized and recognized as an expense as the goods are delivered or the related services are performed. EITF 07-3 is effective, on a prospective basis, for fiscal years beginning after December 15, 2007 and was adopted by us effective January 1, 2008. We are currently evaluating the effect that the adoption of EITF 07-3 will have on our consolidated results of operations and financial position.

In December 2007, the FASB issued SFAS No. 141(R), *Business Combinations*, or SFAS 141(R), and SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements, an amendment of ARB No. 51*, or

SFAS 160. SFAS No. 141(R) requires an acquirer to measure the identifiable assets acquired, the liabilities assumed and any noncontrolling interest in the acquiree at their fair values on the acquisition date, with goodwill being the excess value over the net identifiable assets acquired. SFAS No. 160 clarifies that a noncontrolling interest in a subsidiary should be reported as equity in the consolidated financial statements. The calculation of earnings per share will continue to be based on income amounts attributable to the parent. SFAS No. 141(R) and SFAS No. 160 are effective for financial statements issued for fiscal years beginning after December 15, 2008. Early adoption is prohibited. We will evaluate the effect on our consolidated financial statements, if any, upon adoption of SFAS No. 141(R) or SFAS No. 160.

Off-Balance Sheet Arrangements

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

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Our exposure to market risk is confined to our cash equivalents, marketable securities and restricted cash and investments, all of which have maturities of less than one year and bear interest rates at fixed rates and are denominated in, and pay interest in, U.S. dollars. The fair value of items exposed to market risk was $114.9 million and $91.0 million as of December 31, 2007 and 2006, respectively. The goals of our investment policy are liquidity and capital preservation. We limit our credit and liquidity risks through our investment policy and through regular reviews of our portfolio against our policy. Our investment policy allows us to maintain a portfolio of cash equivalents and short-term investments in a variety of securities, including United States government agencies, corporate bonds, commercial paper and money market funds. Our cash equivalents, marketable securities and restricted cash as of December 31, 2007 and 2006 consisted primarily of obligations of United States government agencies, commercial paper and money market funds. The effect of a hypothetical change of ten percent in the average yield earned on our cash equivalents and short-term investments would have resulted in a change in our interest income of approximately $594,000 for the year ended December 31, 2007, largely driven by the excess cash invested from our initial public offering in June 2007. Since we typically invest in highly liquid, relatively low yield investments, we do not believe interest rate changes of greater than 10% would have a significant impact on us.

Our senior secured notes have fixed interest payments, and, therefore, our interest payments will not change if market interest rates change.

We have no operations outside the United States, and almost all of our operating expenses and capital expenditures are denominated in United States dollars. Operating expense denominated in foreign currencies typically expose us to fluctuations in the rates between the U.S. dollar and the Canadian dollar, the Euro and Pounds Sterling. We receive royalties on certain net product sales that are denominated in other currencies, primarily in Euros, but these royalties comprise a small portion of our revenues. The effect of a hypothetical ten percent change in the U.S. dollar exchange rate against all other currencies would have resulted in a change in our operating expenses of approximately $225,000 for the year ended December 31, 2007.

Item 8. Financial Statements and Supplementary Data

Our consolidated financial statements and financial statement schedule as listed below are attached to this Annual Report on Form 10-K as pages F-1 through F-38.

Item 9. Changes in and Disagreements With Accountants on Accounting and Financial Disclosure

Not applicable.

Item 9A(T). Controls and Procedures

Evaluation of Disclosure Controls and Procedures

We have carried out an evaluation, under the supervision, and with the participation of, management including our principal executive officer and principal financial officer, of our disclosure controls and procedures (as defined in Exchange Act Rule 13a—15(e)) of the Securities Exchange Act of 1934, as amended) as of the end of the period covered by this annual report on Form 10–K. Based on their evaluation, our principal executive officer and principal financial officer concluded that, subject to the limitations described below, our disclosure controls and procedures were effective as of December 31, 2007.

Limitations on the Effectiveness of Controls. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues, if any, within an organization have been detected. Accordingly, our disclosure controls and procedures are designed to provide reasonable, not absolute, assurance that the objectives of our disclosure control system are met and, as set forth above, our principal executive officer and principal financial officer have concluded, based on their evaluation as of the end of the period covered by this report, that our disclosure controls and procedures were sufficiently effective to provide reasonable assurance that the objectives of our disclosure control system were met. We continue to implement, improve and refine our disclosure controls and procedures and our internal control over financial reporting.

Changes in Internal Control over Financial Reporting

No changes in our internal control over financial reporting occurred during our fiscal quarter ended December 31, 2007 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Management's Report on Internal control over Financial Reporting

This Annual Report on Form 10-K does not include a report of management's assessment regarding internal control over financial reporting or an attestation report of our registered public accounting firm due to a transition period established by rules of the Securities and Exchange Commission for newly public companies.

Item 9B. Other Information

On February 26, 2008 we exercised our option to extend the lease on our corporate office building located in Palo Alto California for one year beginning August 31, 2008. In connection with this extension, we will pay an additional approximately $816,000 in lease payments during the one year extension. In addition to these lease payments, we are obligated to pay for operating expenses for the leased property.

In December 2007, a generic fomepizole product was introduced and, as a result, we evaluated the intangible asset associated with Antizol for impairment and reduced the gross carrying amount and accumulated amortization of this intangible asset by $28.4 million and $8.2 million, respectively, which resulted in a $20.2 million intangible asset impairment charge. As a result of the impairment, the remaining useful life was reduced to two years and the net book value of the intangible asset associated with Antizol was $2.7 million as of December 31, 2007. The fair value of this intangible asset was based on the discounted cash flows related to this intangible asset. The discounted cash flows were determined using the following key assumptions: (a) revised cash flow estimates and (b) a discount rate of 14%. The discount rate reflects our expectations of future cash flows related to Antizol and an appropriate risk premium.

PART III

Certain information required by Part III is omitted from this Annual Report on Form 10-K since we intend to file our definitive proxy statement for our 2008 annual meeting of stockholders, pursuant to Regulation 14A of the Securities Exchange Act of 1934, as amended, not later than 120 days after the end of the fiscal year covered by this Annual Report on Form 10-K, and certain information to be included in the proxy statement is incorporated herein by reference.

Item 10. Directors, Executive Officers and Corporate Governance

The information required by this item with respect to our executive officers may be found under the caption, "Executive Officers of the Registrant" in Item 1 of this Annual Report on Form 10-K. The information required by this item relating to our directors and nominees for director may be found under the section entitled "Proposal 1—Election of Directors" appearing in the proxy statement for our 2008 annual meeting of stockholders. The information required by this item relating to our audit committee, audit committee financial expert and procedures by which stockholders may recommend nominees to our board of directors, may be found under the section entitled "Corporate Governance and Board Matters" appearing in the proxy statement for our 2008 annual meeting of stockholders. Such information is incorporated herein by reference. Information regarding compliance with Section 16(a) of the Securities Exchange Act of 1934, as amended, may be found under the section entitled "Section 16(a) Beneficial Ownership Reporting Compliance" appearing in our proxy statement for our 2008 annual meeting of stockholders. Such information is incorporated herein by reference.

We adopted the Jazz Pharmaceuticals Code of Conduct that applies to all officers, directors and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. The Code of Conduct is available on our website at *www.jazzpharmaceuticals.com* under the section entitled "Investors" at "Corporate Governance". Stockholders may request a free copy of the Code of Conduct by submitting a written request to Jazz Pharmaceuticals, Inc., Attention: Investor Relations, 3180 Porter Drive, Palo Alto, California 94304. If we make any substantive amendments to the Code of Conduct or grant any waiver from a provision of the Code of Conduct to any executive officer or director, we will promptly disclose the nature of the amendment or waiver on our website.

Item 11. Executive Compensation

The information required by this item is included in our proxy statement for our 2008 annual meeting of stockholders under the sections entitled "Executive Compensation," "Director Compensation," "Corporate Governance and Board Matters—Compensation Committee Interlocks and Insider Participation" and "Corporate Governance and Board Matters—Compensation Committee Report" and is incorporated herein by reference.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters

The information required by this item relating to security ownership of certain beneficial ownership and management is include in our proxy statement for our 2008 annual meeting of stockholders under the section entitled "Security Ownership of Certain Beneficial Owners and Management" and is incorporated herein by reference.

The following table provides certain information with respect to all of our equity compensation plans in effect as of December 31, 2007.

Equity Compensation Plan Information

Plan Category	Number of securities to be issued upon exercise of outstanding options, warrants and rights (a)	Weighted-average exercise price of outstanding options, warrants and rights (b)	Number of securities remaining available for issuance under equity compensation plans (excluding securities reflected in column (a)) (c)
Equity compensation plans approved by security holders:			
2007 Equity Incentive Plan	3,448,981	$ 17.36(1)	958,213(2)
2007 Employee Stock Purchase Plan	—	—	280,325(3)
2007 Non-Employee Directors Stock Option Plan	50,000	$ 12.75	133,417(4)
Equity compensation plans not approved by security holders:			
Directors Deferred Compensation Plan	16,583(5)	—	— (6)
Total	3,515,564		1,371,955

(1) The weighted average exercise price of outstanding options, warrants and rights under our 2007 Equity Incentive Plan, or the 2007 Plan, includes the effect of our grant of restricted stock units under the 2007 Plan, which restricted stock units were granted in consideration of services rendered to us and do not carry an exercise price. The weighted average exercise price of outstanding options, warrants and rights under the 2007 Plan was $17.99 after excluding the grant of the restricted stock units.

(2) As of December 31, 2007, an aggregate of 4,407,194 shares of common stock were reserved for issuance under the 2007 Plan, of which 958,213 remained available for future issuance. The number of shares reserved for issuance under the 2007 Plan includes shares subject to options originally granted our 2003 Equity Incentive Plan. The number of shares reserved for issuance under the 2007 Plan automatically increases on each January 1, from January 1, 2008 through January 1, 2017, by the lesser of (a) 4.5% of the total number of shares of our common stock outstanding on December 31 of the proceeding year or (b) 3,000,000 shares (or such lesser amount as may be approved by our Board of Directors). On January 1, 2008, the number of shares reserved for issuance under the 2007 Plan increased by 1,107,937 shares pursuant to this automatic share increase provision.

(3) As of December 31, 2007, an aggregate of 350,000 shares of common stock were reserved for issuance under our 2007 Employee Stock Purchase Plan, or the 2007 ESPP, of which 280,325 remained available for future issuance under the 2007 ESPP with up to a maximum of 150,000 shares that could be purchased in the current purchase period. It is expected that the actual shares purchased in the current purchase period will be substantially less. The number of shares reserved for issuance under the 2007 ESPP automatically increases on each January 1, from January 1, 2008 through January 1, 2017, by the lesser of (a) 1.5% of the total number of shares of our common stock outstanding on December 31st of the preceding calendar year or (b) 350,000 shares (or such lesser amount as may be approved by our Board of Directors). On January 1, 2008, the number of shares reserved for issuance under the 2007 ESPP increased by 350,000 shares pursuant to this automatic share increase provision.

(4) As of December 31, 2007, an aggregate of 200,000 shares of common stock were reserved for issuance under our 2007 Non-Employee Directors Stock Option Plan, or the 2007 Directors Plan, of which 133,417 remained available for future issuance. The number of shares remaining available for issuance under the 2007 Directors Plan as shown in the table above is reduced by the number of shares credited to our non-employee directors' stock accounts under our Director Deferred Compensation Plan, or the Directors Deferred Plan. The number of shares reserved for issuance under the 2007 Directors Plan automatically

increases on each January 1, from January 1, 2008 through January 1, 2017, by the sum of (a) the excess of (i) the number of shares of common stock subject to options granted during the preceding calendar year under the 2007 Directors Plan, over (ii) the number of shares added back to the share reserve under the 2007 Directors Plan during the preceding calendar year and (b) the aggregate number of shares credited to our non-employee directors' stock accounts under the Directors Deferred Plan (or such lesser amount as may be approved by our Board of Directors). In no event may the amount of any such annual increase exceed 200,000 shares. On January 1, 2008, the number of shares reserved for issuance under the 2007 Directors Plan increased by 66,583 shares pursuant to this automatic share increase provision.

(5) Represents shares credited to individual non-employee director stock accounts as of December 31, 2007 under the Directors Deferred Plan. Amounts creditable to individual non-employee director stock accounts under the Directors Deferred Plan are dependent on elections made by plan participants thereunder. There is no exercise price for these shares.

(6) Distributions in shares of our common stock under the Directors Deferred Plan are funded with the shares reserved under the 2007 Directors Plan. Accordingly, no shares are shown remaining available for issuance under the Directors Deferred Plan in the above table. The aggregate number of shares credited to our non-employee directors' stock accounts during a calendar year are automatically added to the share reserve under the 2007 Directors Plan on January 1 of the following year as set forth in note (4) above.

Item 13. Certain Relationships and Related Transactions, and Director Independence

The information required by this item is included in our proxy statement for our 2008 annual meeting of stockholders under the sections entitled "Certain Relationships and Related Transactions" and "Corporate Governance and Board Matters—Independence of Jazz Pharmaceuticals' Board of Directors" and is incorporated herein by reference.

Item 14. Principal Accounting Fees and Services

The information required by this item is incorporated herein by reference to the information included in our proxy statement for our 2008 annual meeting of stockholders under the section entitled "Proposal 2—Ratification of Selection of Independent Registered Public Accounting Firm."

PART IV

Item 15. Exhibits, Financial Statement Schedules

(a) The following documents are filed as part of this Annual Report on Form 10-K

1. Index to Financial Statements:

See Index to Consolidated Financial Statements in Item 8 of this Annual Report on Form 10-K.

2. Index to Financial Statement Schedules:

See Index to Consolidated Financial Statements in Item 8 of this Annual Report on Form 10-K. All other schedules are omitted because they are inapplicable or the requested information is shown in the consolidated financial statements of the registrant or related notes thereto.

3. Exhibits—The following exhibits are included herein or incorporated herein by reference:

Exhibit Number	Description of Document
2.1	Agreement and Plan of Merger dated as of April 18, 2005, by and among the Registrant, Twist Merger Sub, Inc. and Orphan Medical, Inc.(8)
3.1	Fourth Amended and Restated Certificate of Incorporation of the Registrant.(1)
3.2	Amended and Restated Bylaws.(2)
4.1	Reference is made to Exhibits 3.1 and 3.2.
4.2	Specimen Common Stock Certificate.(3)
4.3A	Third Amended and Restated Investor Rights Agreement, made effective as of June 6, 2007, by and between the Registrant and the other parties named therein.(4)
4.3B	Waiver and Amendment Agreement, dated as of March 12, 2008, by and between the Registrant and the other parties named therein.
4.4A	Form of Series BB Preferred Stock Warrant of the Registrant.(7)
4.4B	Form of Series BB Preferred Stock Warrant of the Registrant, as amended.
4.5A#	Senior Secured Note and Warrant Purchase Agreement, dated as of March 14, 2008, by and among the Registrant, JPI Commercial, LLC and the Purchasers named therein.
4.5B	Form of Senior Secured Tranche A Note of JPI Commercial, LLC.
4.5C	Form of Senior Secured Tranche B Note of JPI Commercial, LLC.
4.5D	Form of Common Stock Warrant of the Registrant.
4.5E#	Registration Rights Agreement, dated as of March 17, 2008, by and between the Registrant and the other parties named therein.
10.1+	Form of Indemnification Agreement between the Registrant and its officers and directors.(3)
10.2+	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Bruce C Cozadd.(8)
10.3+	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Samuel R Saks.(8)

Exhibit Number	Description of Document
10.4+	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Robert M Myers.(8)
10.5+	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Matthew K Fust.(8)
10.6+	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Carol A Gamble.(8)
10.7+	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Janne L T Wissel.(8)
10.8+	Stock Purchase Agreement, dated as of September 24, 2004, by and between the Registrant and Alan Sebulsky.(8)
10.9+	Common Stock Purchase Agreement, dated as of March 20, 2003, by and between the Registrant and Bruce C Cozadd.(8)
10.10+	Stock Restriction Agreement, dated as of April 30, 2003, by and between the Registrant and Bruce C Cozadd.(8)
10.11+	Amendment to Stock Restriction Agreement, dated as of October 30, 2003, by and between the Registrant and Bruce C Cozadd.(8)
10.12+	Common Stock Purchase Agreement, dated as of October 30, 2003, by and between the Registrant and Bruce C Cozadd.(8)
10.13+	Common Stock Purchase Agreement, dated as of March 20, 2003, by and between the Registrant and Samuel R Saks.(8)
10.14+	Stock Restriction Agreement, dated as of April 30, 2003, by and between the Registrant and Samuel R Saks.(8)
10.15+	Amendment to Stock Restriction Agreement, dated as of October 30, 2003, by and between the Registrant and Samuel R Saks.(8)
10.16+	Amended and Restated Stock Purchase Agreement, dated as of April 30, 2003, by and between the Registrant and Robert M Myers.(8)
10.17+	Amendment No. 1 to Amended and Restated Stock Purchase Agreement, dated as of December 18, 2003, by and between the Registrant and Robert M Myers.(8)
10.18+	Common Stock Purchase Agreement, dated as of January 9, 2004, by and between the Registrant and Robert M Myers.(8)
10.19+	Amended and Restated Stock Purchase Agreement, dated as of April 30, 2003, by and between the Registrant and Matthew K Fust.(8)
10.20+	Amended and Restated Stock Purchase Agreement, dated as of April 30, 2003, by and between the Registrant and Carol A Gamble.(8)
10.21+	2003 Equity Incentive Plan, as amended.(3)
10.22+	Form of Option Exercise and Stock Purchase Agreement and Forms of Grant Notices under the 2003 Equity Incentive Plan.(3)
10.23+	2007 Equity Incentive Plan.(3)
10.24+	Form of Option Agreement and Form of Option Grant Notice under the 2007 Equity Incentive Plan.(9)

Exhibit Number	Description of Document
10.25+	2007 Non-Employee Directors Stock Option Plan.(3)
10.26+	Form of Stock Option Agreement and Form of Option Grant Notice under the 2007 Non-Employee Directors Stock Option Plan.(3)
10.27+	2007 Employee Stock Purchase Plan.(3)
10.28+	Form of 2007 Employee Stock Purchase Plan Offering Document.(3)
10.29+	Jazz Pharmaceuticals, Inc. Cash Bonus Plan.(8)
10.30†	Asset Purchase Agreement, dated as of October 4, 2004, by and among the Registrant, Glaxo Group Limited and SmithKline Beecham Corporation dba GlaxoSmithKline.(10)
10.31	Sodium Gamma Hydroxybutyrate Development and Supply Agreement, dated as of November 6, 1996, by and between Orphan Medical, Inc. and Lonza, Inc.(9)
10.32	Amendment No. 1 to Sodium Gamma Hydroxybutyrate Development and Supply Agreement, dated as of February 7, 2005, by and between Orphan Medical, Inc. and Lonza, Inc.(9)
10.33†	Amended and Restated Services Agreement, dated as of May 31, 2005, by and between Orphan Medical, Inc. and Express Scripts Specialty Distribution Services, Inc.(11)
10.34†	Consent and Addendum to Amended and Restated Master Services Agreement, dated as of June 1, 2006, by and between the Registrant and Express Scripts Specialty Distribution Services, Inc.(11)
10.35†	Addendum No. 2 to Amended and Restated Master Services Agreement, dated as of June 22, 2006, by and between the Registrant and Express Scripts Specialty Distribution Services, Inc.(11)
10.36†	Addendum No. 3 to Amended and Restated Master Services Agreement, dated as of August 17, 2006, by and between the Registrant and Express Scripts Specialty Distribution Services, Inc.(11)
10.41†	Amended and Restated Xyrem License and Distribution Agreement, dated as of June 30, 2006, by and between the Registrant and UCB Pharma Limited.(10)
10.42†	License Agreement, dated as of January 31, 2007, by and between the Registrant and Solvay Pharmaceuticals, Inc.(10)
10.43	Supply Agreement, dated as of January 31, 2007, by and between the Registrant and Solvay Pharmaceuticals, Inc.(9)
10.44	Trademark License Agreement, dated as of January 31, 2007, by and between the Registrant and Solvay Pharmaceuticals, Inc.(9)
10.45	Assignment, Assumption and Consent, dated as of January 31, 2007, by and among the Registrant, Solvay Pharmaceuticals, Inc. and Elan Pharma International Limited.(11)
10.46†	License Agreement, dated as of December 22, 1997, by and between Solvay Pharmaceuticals, Inc. and Elan Corporation, plc.(10)
10.47†	Amendment to License Agreement, dated as of March 1, 1999, by and between Solvay Pharmaceuticals, Inc. and Elan Corporation, plc.(11)
10.48†	Letter Amendment No. 2 to License Agreement, dated April 13, 2000, by and between Solvay Pharmaceuticals, Inc and Elan Pharmaceutical Technologies.(11)
10.49†	Amendment Agreement No. 3 to License Agreement, dated as of November 7, 2006, by and between Solvay Pharmaceuticals, Inc. and Elan Corporation plc.(10)
10.50†	Xyrem Manufacturing Services and Supply Agreement, dated as of March 13, 2007, by and between the Registrant and Patheon Pharmaceuticals, Inc.(10)

Exhibit Number	Description of Document
10.51†	Quality Agreement, dated as of March 13, 2007, by and between the Registrant and Patheon Pharmaceuticals, Inc. (11)
10.52	Commercial Lease, dated as of June 2, 2004, by and between the Registrant and The Board of Trustees of the Leland Stanford Junior University. (11)
10.53	Sublease Agreement, dated as of February 25, 2007, by and between Xerox Corporation and the Registrant. (11)
10.54	Amendment No. 2 to Sodium Gamma Hydroxybutyrate Development and Supply Agreement, dated as of March 30, 2007, by and between Registrant and Lonza, Inc. (9)
10.55+	Directors Deferred Compensation Plan. (3)
10.56+	Non-Employee Director Compensation Arrangements. (3)
10.57A	Civil Settlement Agreement, dated July 13, 2007, among the United States of America acting through the entities named therein, the Registrant and Orphan Medical, Inc. (12)
10.57B	Non-Prosecution Agreement, dated July 13, 2007, between the United States Attorney's Office for the Eastern District of New York and the Registrant. (12)
10.57C	Plea Agreement, dated July 13, 2007, between the United States Attorney for the Eastern District of New York and Orphan Medical, Inc. (12)
10.57D	Corporate Integrity Agreement, dated July 13, 2007, between the Office of Inspector General of the Department of Health and Human Services and the Registrant. (12)
10.58+	Amended Executive Change in Control and Severance Benefit Plan. (1)
10.59+	Form of Amendment to Employment Agreement, by and between the Registrant and each of Bruce Cozadd, Samuel Saks, M.D., Robert Myers, Matthew Fust, Carol Gamble and Janne Wissel. (1)
10.60+	Form of Letter, amending outstanding options granted under the Registrant's 2003 Equity Incentive Plan. (1)
10.61+	Non-Employee Director Compensation Arrangements, as modified on July 18, 2007. (1)
10.62+	Amendment No. 2 to Employment Agreement, effective on September 1, 2007, by and between the Registrant and Bruce C. Cozadd. (13)
10.63†	Addendum No. 4 to Amended and Restated Master Services Agreement, dated as of July 6, 2007, by and between the Registrant and Express Scripts Specialty Distribution Services, Inc. (13)
10.64+	Form of Restricted Stock Unit Award under the Registrant's 2007 Equity Incentive Plan. (13)
10.65+	Non-Employee Director Compensation Arrangements, as modified on December 18, 2007.
10.66#	Amendment Number 4 to Development, License and Supply Agreement, dated as of October 26, 2007, by and between the Registrant and Elan Pharma International, Inc.
10.67#	Addendum No. 5 to Amended and Restated Master Services Agreement, dated as of October 5, 2007, by and among the Registrant, Express Scripts Specialty Distribution Services, Inc. and Orphan Medical, Inc.
10.68	Amendment No. 1 to Amended and Restated Xyrem License and Distribution Agreement, dated as of December 21, 2007, by and between the Registrant and UCB Pharma Limited.
10.69#	Amendment No. 1 to License Agreement, dated as of March 12, 2008, by and between the Registrant and Solvay Pharmaceuticals, Inc.

Exhibit Number	Description of Document
21.1	Subsidiaries of the Registrant.
23.1	Consent of Independent Registered Public Accounting Firm.
24.1	Power of Attorney (included in the signature page hereto).
31.1	Certification of Chief Executive Officer pursuant to Rules 13a-14(a) and 15d-14(a) promulgated under the Securities Exchange Act of 1934, as amended.
31.2	Certification of Chief Financial Officer pursuant to Rules 13a-14(a) and 15d-14(a) promulgated under the Securities Exchange Act of 1934, as amended.
32.1	Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.*

+ Indicates management contract or compensatory plan.

Confidential treatment has been requested with respect to certain portions of this exhibit. Omitted portions have been filed separately with the Securities and Exchange Commission.

† Confidential treatment has been granted for portions of this exhibit. Omitted portions have been filed separately with the Securities and Exchange Commission.

(1) Incorporated herein by reference to the same numbered exhibit to the Registrant's quarterly report on Form 10-Q (File No. 333-33500) for the period ended June 30, 2007, as filed with the SEC on August 10, 2007.

(2) Incorporated herein by reference to Exhibit 3.4 to the Registrant's registration statement on Form S-1, as amended (File No. 333- 141164), as filed with the SEC on May 17, 2007.

(3) Incorporated herein by reference to the same numbered exhibit to the Registrant's registration statement on Form S-1, as amended (File No. 333-141164), as filed with the SEC on May 17, 2007.

(4) Incorporated herein by reference to Exhibit 4.3 to the Registrant's quarterly report on Form 10-Q (File No. 333-33500) for the period ended June 30, 2007, as filed with the SEC on August 10, 2007.

(5) Incorporated by reference to Exhibit 4.4 to the Registrant's registration statement on Form S-1 (File No. 333-141164), as filed with the SEC on March 9, 2007.

(6) Incorporated by reference to Exhibit 4.5 to the Registrant's registration statement on Form S-1 (File No. 333-141164), as filed with the SEC on March 9, 2007.

(7) Incorporated by reference to Exhibit 4.6 to the Registrant's registration statement on Form S-1 (File No. 333-141164), as filed with the SEC on March 9, 2007.

(8) Incorporated by reference to the same numbered exhibit to the Registrant's registration statement on Form S-1 (File No. 333-141164), as filed with the SEC on March 9, 2007.

(9) Incorporated herein by reference to the same numbered exhibit to the Registrant's registration statement on Form S-1, as amended (File No. 333-141164), as filed with the SEC on May 24, 2007.

(10) Incorporated herein by reference to the same numbered exhibit to the Registrant's registration statement on Form S-1, as amended (File No. 333-141164), as filed with the SEC on May 31, 2007.

(11) Incorporated herein by reference to the same numbered exhibit to the Registrant's registration statement on Form S-1, as amended (File No. 333-141164), as filed with the SEC on March 27, 2007.

(12) Incorporated herein by reference to the same numbered exhibit to the Registrant's current report on Form 8-K, filed with the SEC on July 18, 2007.

(13) Incorporated herein by reference to the same numbered exhibit to the Registrant's quarterly report on Form 10-Q (File No. 000-33500) for the period ended September 30, 2007, as filed with the SEC on November 9, 2007.

* The certifications attached as Exhibit 32.1 accompany this Annual Report on Form 10-K pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, and shall not be deemed "filed" by the Registrant for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

Jazz Pharmaceuticals, Inc.
(Registrant)

Date: March 28, 2008

/s/ MATTHEW K. FUST

Matthew K. Fust
(Duly Authorized and Principal Accounting and Financial Officer)

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Samuel R. Saks, M.D., Matthew K. Fust and Carol A. Gamble, and each of them, as his true and lawful attorneys-in-fact and agents, with full power of substitution for him, and in his name in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, and any of them, his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, the following persons on behalf of the registrant and in the capacities and on the dates indicated have signed this report below:

Signature	Title	Date
/s/ SAMUEL R. SAKS, M.D. **Samuel R. Saks, M.D.**	Chief Executive Officer and Director (*Principal Executive Officer*)	March 28, 2008
/s/ MATTHEW K. FUST **Matthew K. Fust**	Executive Vice President and Chief Financial Officer (*Principal Accounting and Financial Officer*)	March 28, 2008
/s/ SAMUEL D. COLELLA **Samuel D. Colella**	Director	March 28, 2008
/s/ BRUCE C. COZADD **Bruce C. Cozadd**	Director	March 28, 2008
/s/ BRYAN C. CRESSEY **Bryan C. Cressey**	Director	March 28, 2008
/s/ MICHAEL W. MICHELSON **Michael W. Michelson**	Director	March 28, 2008
/s/ JAMES C. MOMTAZEE **James C. Momtazee**	Director	March 28, 2008
/s/ KENNETH W. O'KEEFE **Kenneth W. O'Keefe**	Director	March 28, 2008
/s/ JAIMIN R. PATEL **Jaimin R. Patel**	Director	March 28, 2008
/s/ ALAN M. SEBULSKY **Alan M. Sebulsky**	Director	March 28, 2008
/s/ JAMES B. TANANBAUM, M.D. **James B. Tananbaum, M.D.**	Director	March 28, 2008
/s/ NATHANIEL M. ZILKHA **Nathaniel M. Zilkha**	Director	March 28, 2008

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
Jazz Pharmaceuticals, Inc.

We have audited the accompanying consolidated balance sheets of Jazz Pharmaceuticals, Inc. as of December 31, 2007 and 2006, and the related consolidated statements of operations, convertible preferred stock and stockholders' equity (deficit), and cash flows for each of the three years in the period ended December 31, 2007. Our audits also included the financial statement schedule listed in the Index at Item 15(a). These financial statements and schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audits included consideration of the internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Jazz Pharmaceuticals, Inc. at December 31, 2007 and 2006, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2007, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedule, when considered in relation to the basic financial statements taken as a whole, presents fairly in all material respects the information set forth therein.

As discussed in Note 2 to the consolidated financial statements, Jazz Pharmaceuticals, Inc. changed its method of accounting for stock-based compensation in accordance with guidance provided in Statement of Financial Accounting Standards No. 123(R), "Share-Based Payment", on January 1, 2006.

/s/ Ernst & Young LLP

Palo Alto, California
March 28, 2008

JAZZ PHARMACEUTICALS, INC.

CONSOLIDATED BALANCE SHEETS
(In thousands, except share and per share amounts)

	December 31, 2007	December 31, 2006
ASSETS		
Current assets:		
Cash and cash equivalents	$ 102,945	$ 78,948
Restricted cash	1,939	275
Accounts receivable, net of allowances of $218 and $198 at December 31, 2007 and 2006, respectively	5,389	5,380
Inventories	2,213	3,026
Prepaid expenses	3,224	3,447
Other current assets	381	487
Total current assets	116,091	91,563
Property and equipment, net	3,941	2,107
Intangible assets, net	36,040	69,140
Goodwill	38,213	38,213
Long-term restricted cash and investments	12,000	12,000
Other long-term assets	1,269	1,548
Total assets	$ 207,554	$ 214,571
LIABILITIES, CONVERTIBLE PREFERRED STOCK, AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities:		
Line of credit	$ 3,459	$ 2,191
Accounts payable	2,856	5,443
Accrued liabilities	29,047	12,943
Deferred revenue	1,494	1,422
Preferred stock warrant liability (including $5,965 held by related parties as of December 31, 2006)	—	8,521
Total current liabilities	36,856	30,520
Liability for early exercise of options and unvested restricted common stock	—	98
Deferred rent	—	436
Non-current portion of deferred revenue	12,468	13,495
Liability under government settlement	14,881	—
Senior secured notes (including $52,581 and $51,998 as of December 31, 2007 and December 31, 2006, respectively, held by related parties)	75,116	74,283
Commitments and contingencies (Note 8)		
Convertible preferred stock, $0.0001 par value; none and 27,851,839 shares authorized at December 31, 2007 and 2006, respectively; none and 17,921,551 shares issued and outstanding at December 31, 2007 and 2006, respectively; aggregate liquidation preference of $0 and $265,000 at December 31, 2007 and 2006, respectively	—	263,852
Common stock subject to repurchase	13,241	8,183
Stockholders' equity (deficit):		
Preferred stock, $0.0001 par value; 20,000,000 and no shares authorized at December 31, 2007 and 2006, respectively; no shares issued and outstanding at December 31, 2007 and 2006, respectively	—	—
Common stock, $0.0001 par value; 150,000,000 and 22,835,080 shares authorized at December 31, 2007 and 2006, respectively; 24,620,829 and 623,986 shares issued and outstanding at December 31, 2007 and 2006, respectively	2	—
Additional paid-in capital	371,440	1,335
Accumulated other comprehensive income	19	12
Accumulated deficit	(316,469)	(177,643)
Total stockholders' equity (deficit)	54,992	(176,296)
Total liabilities, convertible preferred stock and stockholders' equity (deficit)	$ 207,554	$ 214,571

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

JAZZ PHARMACEUTICALS, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except per share amounts)

	Year Ended December 31,		
	2007	2006	2005
Revenues:			
Product sales, net	$ 53,536	$ 43,299	$ 18,796
Royalties, net	1,156	594	146
Contract revenues	10,611	963	2,500
Total revenues	65,303	44,856	21,442
Operating expenses:			
Cost of product sales (excluding amortization and impairment of acquired developed technology)	8,903	6,968	4,292
Research and development	69,792	54,956	45,783
Selling, general and administrative	78,540	51,384	23,551
Intangible asset amortization	9,217	9,600	4,960
Intangible asset impairment	20,160	—	—
Provision for government settlement	17,469	—	—
Purchased in-process research and development	—	—	21,300
Total operating expenses	204,081	122,908	99,886
Loss from operations	(138,778)	(78,052)	(78,444)
Interest income	5,942	2,307	1,318
Interest expense (including $9,193, $9,024 and $4,595 for the years ended December 31, 2007, 2006 and 2005, respectively, pertaining to related parties)	(13,647)	(14,129)	(7,129)
Other income (expense)	1,797	(1,109)	(901)
Gain on extinguishment of development financing obligation	—	31,592	—
Gain on sale of product rights	5,860	—	—
Net loss	(138,826)	(59,391)	(85,156)
Beneficial conversion feature	—	(21,920)	—
Loss attributable to common stockholders	$ (138,826)	$ (81,311)	$ (85,156)
Loss per share attributable to common stockholders, basic and diluted	$ (10.04)	$ (6,254.69)	$ (14,192.67)
Weighted-average common shares used in computing loss per share attributable to common stockholders, basic and diluted	13,829	13	6

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

JAZZ PHARMACEUTICALS, INC.

CONSOLIDATED STATEMENTS OF CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT)
(In thousands, except share amounts)

	Convertible Preferred Stock		Common Stock Subject to Repurchase	Stockholders' Equity (Deficit)					
				Common Stock		Additional Paid-in Capital	Accumulated Other Compre-hensive Income	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Amount	Shares	Amount				
Balance at January 1, 2005	4,668,594	$ 64,009	$ 3,665	617,974	$ —	$ —	$ —	$ (30,923)	$ (30,923)
Lapse of repurchase rights to shares issued under restricted stock purchase agreements	—	—	—	—	—	53	—	—	53
Vesting of common stock subject to repurchase	—	—	2,259	—	—	(53)	—	(2,173)	(2,226)
Issuance of Series B convertible preferred stock for cash, net of issuance costs of $11	3,180,714	47,989	—	—	—	—	—	—	—
Issuance of Series B Prime convertible preferred stock for cash, net of issuance costs of $136	3,445,768	51,864	—	—	—	—	—	—	—
Comprehensive loss:									
Net loss	—	—	—	—	—	—	—	(85,156)	(85,156)
Unrealized gain on available-for-sale securities	—	—	—	—	—	—	4	—	4
Comprehensive loss									(85,152)
Balance at December 31, 2005	11,295,076	163,862	5,924	617,974	—	—	4	(118,252)	(118,248)
Lapse of repurchase rights to shares issued under restricted stock purchase agreements	—	—	—	—	—	53	—	—	53
Vesting of common stock subject to repurchase	—	—	2,259	—	—	(2,226)	—		(2,226)
Issuance of Series B convertible preferred stock for cash, net of issuance costs of $5	3,180,707	47,995	—	—	—	—	—	—	—
Issuance of Series B Prime convertible preferred stock for cash, net of issuance costs of $5	3,445,768	51,995	—	—	—	—	—	—	—
Issuance of common stock for cash upon exercise of stock options	—	—	—	6,012	—	10	—	—	10
Stock-based compensation	—	—	—	—	—	3,498	—	—	3,498
Beneficial conversion feature—deemed dividend on issuance of Series B preferred stock	—	—	—	—	—	21,920	—	—	21,920
Beneficial conversion feature	—	—	—	—	—	(21,920)	—	—	(21,920)
Comprehensive loss:									
Net loss	—	—	—	—	—	—	—	(59,391)	(59,391)
Unrealized gain on available-for-sale securities	—	—	—	—	—	—	8	—	8
Comprehensive loss									(59,383)
Balance at December 31, 2006	17,921,551	$263,852	$ 8,183	623,986	$ —	$ 1,335	$ 12	$ (177,643)	$ (176,296)

JAZZ PHARMACEUTICALS, INC.

CONSOLIDATED STATEMENTS OF CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT)—(Continued)

(In thousands, except share amounts)

	Convertible Preferred Stock		Common Stock Subject to Repurchase	Stockholders' Equity (Deficit)					
				Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount	Amount	Shares	Amount				
Balance at December 31, 2006	17,921,551	$ 263,852	$ 8,183	623,986	$ —	$ 1,335	$ 12	$ (177,643)	$ (176,296)
Lapse of repurchase rights to shares issued under restricted stock purchase agreements	—	—	—	—	—	50	—	—	50
Vesting of common stock subject to repurchase	—	—	854	—	—	(834)	—	—	(834)
Conversion of convertible preferred stock to common stock and common stock subject to repurchase upon initial public offering	(17,921,551)	(263,852)	4,204	17,921,551	2	259,646	—	—	259,648
Conversion of preferred stock warrant liability to equity upon initial public offering	—	—	—	—	—	6,675	—	—	6,675
Issuance of common stock for cash upon initial public offering, net of issuance costs of $10,512	—	—	—	6,000,000	—	97,488	—	—	97,488
Stock issuable under directors deferred compensation plan	—	—	—	—	—	211	—	—	211
Issuance of common stock for cash upon exercise of stock options	—	—	—	5,617	—	77	—	—	77
Issuance of common stock for cash under employee stock purchase plan	—	—	—	69,675	—	918	—	—	918
Stock-based compensation	—	—	—	—	—	5,874	—	—	5,874
Comprehensive loss:									
Net loss	—	—	—	—	—	—	—	(138,826)	(138,826)
Unrealized gain on available-for-sale securities	—	—	—	—	—	—	7	—	7
Comprehensive loss									(138,819)
Balance at December 31, 2007	—	$ —	$ 13,241	24,620,829	$ 2	$371,440	$ 19	$ (316,469)	$ 54,992

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

JAZZ PHARMACEUTICALS, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Year Ended December 31,		
	2007	2006	2005
Operating activities			
Net loss	$(138,826)	$ (59,391)	$ (85,156)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation	1,309	710	479
Amortization of intangible assets	9,217	9,600	4,960
Intangible asset impairment	20,160	—	—
Loss on disposal of property and equipment	6	481	—
Fair value adjustment to acquired finished goods	54	775	1,584
Purchased in-process research and development	—	—	21,300
Non-cash interest expense	1,132	949	476
Revaluation of preferred stock warrant liability	(1,846)	1,092	901
Stock-based compensation expense	6,060	3,480	—
Interest on development financing	—	1,147	445
Gain on extinguishment of development financing	—	(31,592)	—
Gain on sale of product rights	(5,860)	—	—
Changes in assets and liabilities:			
Accounts receivable	(250)	(1,783)	(249)
Inventories	459	(521)	(219)
Prepaid expenses and other current assets	329	(473)	1,158
Other assets	(14)	323	—
Accounts payable	(2,587)	657	2,408
Accrued liabilities	15,843	2,492	(210)
Deferred revenue	(955)	14,917	—
Deferred rent	(203)	(213)	(39)
Provision for government settlement	14,881	—	—
Net cash used in operating activities	(81,091)	(57,350)	(52,162)
Investing activities			
Purchases of property and equipment	(3,149)	(1,682)	(1,413)
Proceeds from sale of property and equipment	—	150	—
Purchases of available-for-sale securities	(10,848)	(1,705)	—
Proceeds from sales of available-for-sale securities	—	—	3,450
Proceeds from maturities of available-for-sale securities	10,848	—	2,500
Cash paid for shares of Orphan Medical, Inc., net of cash acquired	—	—	(146,116)
Proceeds from maturites of long term restricted cash equivalents	—	1,705	—
Decrease (increase) in restricted cash and investments	(1,664)	25	(12,175)
Proceeds from sale of product rights	10,150	—	—
Net cash provided by (used in) investing activities	5,337	(1,507)	(153,754)
Financing activities			
Proceeds from issuances of Convertible Preferred Stock, net of issuance costs	—	99,990	99,853
Proceeds from employee stock purchases and exercise of stock options	995	10	—
Proceeds from initial public offering	97,488	—	—
Proceeds from line of credit	20,373	3,283	—
Repayments under line of credit	(19,105)	(1,092)	—
Proceeds from sale of senior secured notes, net of issuance costs (including $53,624 from related parties)	—	—	77,999
Proceeds from development financing	—	15,000	15,000
Net cash provided by financing activities	99,751	117,191	192,852
Net increase (decrease) in cash and cash equivalents	23,997	58,334	(13,064)
Cash and cash equivalents, at beginning of period	78,948	20,614	33,678
Cash and cash equivalents, at end of period	$ 102,945	$ 78,948	$ 20,614
Supplemental disclosure of cash flow information:			
Cash paid for interest (including $8,400, $8,363 and $4,263 for the years ended December 31, 2007, 2006 and 2005, respectively, paid to related parties)	$ 12,000	$ 12,000	$ 6,200
Supplemental disclosure of non-cash financing activities:			
Warrants to purchase Series BB Convertible Preferred Stock issued in conjuction with senior secured notes	$ —	$ —	$ 6,696
Beneficial conversion feature—deemed dividend attributable to preferred stockholders	$ —	$ 21,920	$ —

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

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Organization and Description of Business

Jazz Pharmaceuticals, Inc. ("the Company") was incorporated in California in March 2003 and reincorporated in Delaware in January 2004. The Company is a specialty pharmaceutical company focused on identifying, developing and commercializing innovative products to meet unmet medical needs in neurology and psychiatry. The Company's goal is to build a broad portfolio of products through a combination of internal development, acquisition and in-licensing opportunities and utilization of its specialty sales force to promote its products in its target markets.

Since its inception, the Company has built a commercial operation and assembled a portfolio that currently includes two marketed products, one product approved by the U.S. Food and Drug Administration ("FDA") that is currently being launched and four product candidates in various stages of clinical development.

2. Summary of Significant Accounting Policies

Basis of Presentation

The consolidated financial statements include the accounts of Jazz Pharmaceuticals, Inc. and its wholly-owned subsidiary, Orphan Medical, Inc. ("Orphan Medical"), after elimination of intercompany transactions and balances.

Significant Risks and Uncertainties

The Company has incurred significant losses from operations since its inception and expects losses to continue for the next several years. To achieve profitable operations, the Company must successfully identify, develop and commercialize its products. Products developed by the Company will require approval of the FDA or a foreign regulatory authority prior to commercial sales. The regulatory approval process is expensive, time consuming and uncertain, and any denial or delay of approval could have a material adverse effect on the Company. Even if approved, the Company's products may not achieve market acceptance and will face competition from both generic and branded pharmaceutical products. The Company will need to raise additional funds to support its operations, and such funding may not be available to it on acceptable terms, or at all. The Company may seek additional sources of financing through development financings, collaborations or public or private debt or equity financings, and may also seek to reduce expenses related to its operations.

The Company is currently launching Luvox CR, and cannot predict with certainty the timing or level of Luvox CR sales. If sales of Luvox CR do not reach the levels the Company expects, and if the Company does not generate additional cash resources from financings or partnering activities, the Company may be unable to meet its cash requirements under its current operating plan. If product sales do not meet the Company's expectations and the Company does not raise additional funds, the Company will need to reduce its planned expenditures, perhaps significantly, to preserve cash. If necessary, the Company would implement, beginning as early as the third quarter of 2008, appropriate plans and measures to quickly reduce discretionary spending and capital expenditures, terminate or slow one or more product development programs, reduce headcount, license or sell some of its product candidates or products, or implement a combination of these and other cost cutting measures.

Use of Estimates

The preparation of financial statements in conformity with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts and disclosures reported in the

consolidated financial statements and accompanying notes. Management bases its estimates on historical experience and on assumptions believed to be reasonable under the circumstances. Actual results could differ materially from those estimates.

Concentration of Credit Risks and Fair Value of Financial Instruments

Financial instruments that potentially subject the Company to concentrations of credit risk consist of cash equivalents, restricted cash, marketable securities and accounts receivable. The Company's investment policy limits investments to certain types of debt securities issued by the U.S. government, its agencies and institutions with investment-grade credit ratings and places restrictions on maturities and concentration by type and issuer. The Company is exposed to credit risk in the event of a default by the financial institutions holding its cash, cash equivalents and marketable securities and issuers of investments to the extent recorded on the balance sheet.

The Company monitors its exposure within accounts receivable and records a reserve against uncollectible accounts receivable as necessary. The Company extends credit to pharmaceutical companies, pharmaceutical wholesale distributors and a specialty pharmaceutical distribution company primarily in the U.S. in the normal course of business. Customer creditworthiness is monitored and collateral is not normally required. Historically, the Company has not experienced significant credit losses on its accounts receivable. The Company's five largest customers accounted for an aggregate of approximately 93%, 90% and 88% of gross accounts receivable as of December 31, 2007, 2006 and 2005, respectively.

The fair value of financial instruments, including cash, cash equivalents, marketable investments, accounts receivable, accounts payable, accrued liabilities and senior secured notes approximate their carrying value.

Cash Equivalents, Restricted Cash and Available-for-Sale Securities

The Company considers all highly liquid investments, readily convertible to cash, that mature within three months or less from date of purchase to be cash equivalents. Restricted cash consists of cash equivalents and available-for-sale securities, the use of which is restricted either by contract or agreement. At December 31, 2007, the Company held a certificate of deposit in the amount of $1.1 million as a single entry import bond, held a money market account and a certificate of deposit in the amounts of $775,000 and $85,000, respectively, as collateral securing two letters of credit and had a $12.0 million investment account which was restricted under the agreement governing the Company's senior secured notes. See Note 20 for information related to the expansion of our senior debt.

Available-for-sale securities are investments in debt securities with maturities of less than one year from the balance sheet date, or securities with maturities of greater than one year that are specifically identified to fund current operations. Collectively, cash equivalents, restricted cash and available-for-sale securities are classified as available-for-sale and are recorded at fair value, based on quoted market prices. Unrealized gains and losses, net of tax, are recorded in other comprehensive income and included as a separate component of stockholders' equity (deficit). The Company uses the specific-identification method for calculating realized gains and losses on securities sold. Realized gains and losses and declines in value judged to be other than temporary on available-for-sale securities are included in interest income in the statement of operations. Realized gains and losses on sales of available-for-sale securities have not been material.

Inventories

Inventories are valued at the lower of cost or market. Cost is determined using the first-in, first-out method for all inventories. The Company's policy is to write down inventory that has become obsolete, inventory that has

a cost basis in excess of its expected net realizable value and inventory in excess of expected requirements. For products that have not been approved by the FDA, inventory used in clinical trials is expensed at the time of production and recorded as research and development expense. For products that have been approved by the FDA, inventory used in clinical trials is expensed at the time the inventory is packaged for the clinical trial. Prior to receiving FDA approval of Luvox CR, all costs related to purchases of the active pharmaceutical ingredient and the manufacturing of the product were recorded as research and development expense, since the Company could not reasonably estimate the probability that the Company would obtain a future benefit from these costs. All direct manufacturing costs incurred after approval have been capitalized into inventory.

Property and Equipment

Property and equipment are stated at cost, less accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the assets, generally three to five years. Leasehold improvements are amortized over the shorter of the noncancelable term of the Company's operating lease or their economic useful lives. Maintenance and repairs are charged to operations as incurred.

Goodwill and Intangible and Long-Lived Assets

Goodwill represents the excess of the purchase price over the fair value of assets acquired and liabilities assumed. The Company has determined that it operates in a single segment and has a single reporting unit associated with the development and commercialization of pharmaceutical products. The annual test for goodwill impairment is a two-step process. The first step is a comparison of the fair value of the reporting unit with its carrying amount, including goodwill. If this step indicates an impairment, then in the second step, the loss is measured as the excess of recorded goodwill over its implied fair value. Implied fair value is the excess of the fair value of the reporting unit over the fair value of all identified assets and liabilities. Management tests goodwill for impairment annually in October and concluded that no impairment existed as of October 1, 2007. Management will also test for impairment whenever events or changes in circumstances indicate that the carrying value may not be recoverable. There have been no changes since October 1, 2007 that would cause management to reevaluate its conclusion.

Intangible assets consist primarily of purchased developed technology, agreements not to compete and trademarks. Intangible assets are amortized on a straight-line basis over their estimated useful lives, which range from three to ten years. The estimated useful lives associated with intangible assets are consistent with underlying agreements, or the estimated lives of the products. Once an intangible asset is fully amortized, the gross costs and accumulated amortization are removed from the consolidated balance sheet. The Company evaluates purchased intangibles and other long-lived assets, other than goodwill, for impairment whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. An impairment loss would be recognized when estimated undiscounted future cash flows expected to result from the use of the asset and its eventual disposition are less than its carrying amount. The amount of any impairment is measured as the difference between the carrying value and the fair value of the impaired asset. As more fully disclosed in Note 6, in December 2007 the Company recorded a charge of $20.2 million to reflect an impairment in the fair value of the intangible asset associated with Antizol.

Preferred Stock Warrant Liability

Effective July 1, 2005, the Company adopted the provisions of Financial Accounting Standards Board ("FASB") Staff Position ("FSP") No. 150-5, *Issuer's Accounting under Statement No. 150 for Freestanding Warrants and Other Similar Instruments on Shares that are Redeemable* ("FSP 150-5"), an interpretation of

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

FASB Statement No. 150, *Accounting for Certain Financial Instruments with Characteristics of Both Liabilities and Equity*. Pursuant to FSP 150-5, freestanding warrants for shares that are puttable, or warrants for shares that are redeemable are classified as liabilities on the consolidated balance sheet at fair value. At the end of each reporting period, changes in fair value during the period are recorded as other expense.

Upon adoption of FSP 150-5, the Company reclassified the fair value of its warrants to purchase shares of convertible preferred stock from equity to a liability. There was no cumulative effect on adoption. The Company recorded a benefit of $1.8 million and charges of $1.1 million and $901,000 in other income (expense), net, during the years ended December 31, 2007, 2006 and 2005, respectively, to reflect changes in the fair value of the warrants. On June 6, 2007, upon completion of the Company's initial public offering, the warrants became exercisable for common stock and the liability was reclassified to stockholders' equity at its then fair value.

Deferred Rent

The Company recognizes rent expense on a straight-line basis over the noncancelable term of its operating lease and, accordingly, records the difference between cash rent payments and the recognition of rent expense as a deferred rent liability. The Company also records landlord-funded lease incentives, such as reimbursable leasehold improvements, as a deferred rent liability which is amortized as a reduction of rent expense over the noncancelable terms of its operating lease.

Revenue Recognition

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

Product Sales, Net

Revenues from sales of Xyrem within the U.S. are recognized upon transfer of title, which occurs when the Company's specialty pharmaceutical distributor removes product from the Company's consigned inventory location at its facility for shipment to a patient. Antizol is, and prior to the Company's sale of the Company's rights Cystadane was, shipped to the Company's wholesaler customers in the U.S. with free on board destination shipping terms, and the Company recognizes revenues when delivery occurs. The Company's international sales often have customer acceptance clauses and therefore the Company recognizes revenues when it is notified of acceptance or when the time to inspect and reject the shipment has lapsed. When sales to international customers do not have acceptance clauses, the Company recognizes revenues when title transfers, which is generally when the product leaves the Company's logistics provider's facilities.

Revenues from sales of products within the U.S. are recorded net of estimated allowances for specialty distributor and wholesaler fees, prompt payment discounts, Medicaid rebates, government chargebacks and a customer rebate. Calculating these items involves estimates and judgments based on sales or invoice data and historical experience. The Company's product returns have been infrequent and immaterial.

Royalties, Net

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

Contract Revenues

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

Cost of Product Sales and Concentrations of Supply Risk

Cost of product sales includes third party manufacturing and distribution costs, the cost of drug substance, royalties due to third parties on product sales, product liability insurance, FDA user fees, freight, shipping, handling and storage costs, and salaries and related costs of employees involved with production. The Company's product exchange policy for Antizol allows and, prior to the Company's sale of the Company's rights to Cystadane, the Company's product exchange policy for Cystadane allowed, customers to return expired product for exchange up to six months before or one year after the product's expiration date. These expiration date returns are exchanged for replacement product, and the estimated cost of such exchanges is included in cost of product sales. Amounts accrued for replacement product have not been material to date. In addition, as part of the acquisition of Orphan Medical, the Company recorded finished goods on-hand at the acquisition date at fair value, which is defined as inventory valued at estimated selling prices less the sum of (a) costs of disposal and (b) reasonable profit allowance for the selling effort of the acquiring entity. The fair value of inventory acquired is recorded as cost of product sales when the related product revenues are recorded. Excluded from cost of product sales as shown on the consolidated statements of operations is amortization of developed technology of $7.5 million, $7.9 million and $4.1 million for the years ended December 31, 2007, 2006 and 2005, respectively. Also excluded from cost of product sales is a charge of $20.2 million related to the impairment of the intangible asset associated with Antizol which is described in more detail in Note 6.

The Company relies on certain sole suppliers for drug substance and certain sole manufacturing partners for each of its marketed products and certain of its product candidates. The Company attempts to mitigate this risk by establishing contractual relationships where appropriate.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Research and Development

The Company's research and development expenses consist of expenses incurred in identifying, developing and testing its product candidates. These expenses consist primarily of fees paid to contract research organizations and other third parties to assist the Company in managing, monitoring and analyzing the Company's clinical trials, clinical trial costs paid to sites and investigators' salaries, costs of non-clinical studies, including toxicity studies in animals, costs of contract manufacturing services, costs of materials used in clinical trials and non-clinical studies, fees paid to third parties for development candidates or drug delivery or formulation technologies that the Company has licensed, allocated expenses, such as facilities and information technology that support the Company's research and development activities, and related personnel expenses, including stock-based compensation. Research and development costs are expensed as incurred, including payments made under the Company's license agreements. For products that have not been approved by the FDA, inventory used in clinical trials is expensed at the time of production and recorded as research and development expense. For products that have been approved by the FDA, inventory used in clinical trials is expensed at the time the inventory is packaged for the trial and therefore is not included in inventory. Prior to receiving FDA approval of Luvox CR, all costs related to purchases of the active pharmaceutical ingredient and manufacturing of capsules were recorded as research and development expense, since the Company could not reasonably estimate the probability that the Company will obtain a future benefit from these costs. All direct manufacturing costs incurred after approval have been capitalized into inventory.

In-Process Research and Development

In connection with the acquisition of Orphan Medical, the Company recorded a charge of $21.3 million for acquired in-process research and development during the year ended December 31, 2005. This amount represented the estimated fair value related to three incomplete product candidate development projects for which, at the time of the acquisition, technological feasibility had not been established and there was no alternative future use.

Advertising Expenses

The Company expenses the costs of advertising, including promotional expenses, as incurred. Advertising expenses for the years ended December 31, 2007, 2006 and 2005 were $7.3 million, $2.3 million and $551,000, respectively.

Income Taxes

The Company utilizes the liability method of accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on differences between financial reporting and the tax bases of assets and liabilities and are measured using enacted tax rates and laws that will be in effect when the differences are expected to reverse. A valuation allowance is provided when it is more likely than not that some portion or all of a deferred tax asset will not be realized.

Comprehensive Loss

Comprehensive loss includes net loss and all changes in stockholders' equity (deficit) during a period, except for those changes resulting from investments by stockholders or distributions to stockholders. For each of the years ended December 31, 2007, 2006 and 2005, the difference between comprehensive loss and net loss represented unrealized gains on available-for-sale securities.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Loss Per Common Share

Basic and diluted loss per common share is computed using the weighted-average number of shares of common stock outstanding during the period. Potentially dilutive securities consisting of convertible preferred stock, stock options, common stock subject to repurchase and warrants were not included in the diluted loss per share attributable to common stockholders for all periods presented because the inclusion of such shares would have had an antidilutive effect.

	Year Ended December 31,		
	2007	2006	2005
	(In thousands, except per share data)		
Numerator:			
Loss attributable to common stockholders	$ (138,826)	$ (81,311)	$ (85,156)
Denominator:			
Weighted-average common shares outstanding	14,594	620	618
Less: weighted-average common shares outstanding subject to repurchase	(765)	(607)	(612)
Weighted-average common shares used in computing loss per share attributable to common stockholders, basic and diluted	13,829	13	6
Loss per share attributable to common stockholders, basic and diluted	$ (10.04)	$ (6,254.69)	$ (14,192.67)

The following convertible preferred stock, stock options, restricted stock units, common stock subject to repurchase and warrants were excluded from the computation of diluted loss per share attributable to common stockholders for the periods presented because including them would have an antidilutive effect (in thousands):

	Year Ended December 31,		
	2007	2006	2005
Series A convertible preferred stock (as if converted)	—	1,355	1,355
Series B convertible preferred stock (as if converted)	—	7,952	4,771
Series B Prime convertible preferred stock (as if converted)	—	8,614	5,169
Warrants to purchase Series BB convertible preferred stock (as if exercised and converted)	—	786	786
Warrants to purchase common stock (as if exercised and converted)	786	—	—
Options to purchase common stock	3,380	1,597	1,457
Common stock subject to repurchase	879	604	610
Restricted stock units	119	—	—

Stock-Based Compensation

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

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

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

The Company is using the straight-line method to allocate compensation cost to reporting periods under SFAS 123 and SFAS 123R. Compensation cost under the Company's employee stock purchase program was recorded using the ratable method.

Beneficial Conversion Feature—Series B Preferred Stock and Series B Prime Preferred Stock

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

Recent Accounting Pronouncements

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

In February 2007, the FASB issued SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities—Including an amendment of FASB Statement No. 115*, or SFAS 159. SFAS 159 provides companies with an option to report selected financial assets and liabilities at fair value. The objective of SFAS 159 is to reduce both complexity in accounting for financial instruments and the volatility in earnings caused by measuring related assets and liabilities differently. Most of the provisions in SFAS 159 are elective; however, the amendment to FASB Statement No. 115, Accounting for Certain Investments in Debt and Equity Securities,

applies to all entities with available-for-sale and trading securities. SFAS 159 is effective as of the beginning of an entity's first fiscal year beginning after November 15, 2007. The Company is currently evaluating the effect that the adoption of SFAS 159 will have on its results of operations and financial position.

In June 2007, the FASB ratified Emerging Issues Task Force, or EITF, 07-3, Accounting for NonRefundable Advance Payments for Goods or Services Received for Use in Future Research and Development Activities, or EITF 07-3. EITF 07-3 requires that nonrefundable advance payments for goods or services that will be used or rendered for future research and development activities be deferred and capitalized and recognized as an expense as the goods are delivered or the related services are performed. EITF 07-3 is effective, on a prospective basis, for fiscal years beginning after December 15, 2007 and was adopted by the Company effective January 1, 2008. The Company is currently evaluating the effect that the adoption of EITF 07-3 will have on its consolidated results of operations and financial position.

In December 2007, the FASB issued SFAS No. 141(R), *Business Combinations*, or SFAS 141(R), and SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements, an amendment of ARB No. 51*, or SFAS 160. SFAS No. 141(R) requires an acquirer to measure the identifiable assets acquired, the liabilities assumed and any noncontrolling interest in the acquiree at their fair values on the acquisition date, with goodwill being the excess value over the net identifiable assets acquired. SFAS No. 160 clarifies that a noncontrolling interest in a subsidiary should be reported as equity in the consolidated financial statements. The calculation of earnings per share will continue to be based on income amounts attributable to the parent. SFAS No. 141(R) and SFAS No. 160 are effective for financial statements issued for fiscal years beginning after December 15, 2008. Early adoption is prohibited. The Company will evaluate the effect on its consolidated financial statements, if any, upon adoption of SFAS 141(R) and SFAS 160.

3. Cash, Cash Equivalents, Restricted Cash and Available-For-Sale Securities

Cash, cash equivalents, restricted cash and available-for-sale securities, all of which are considered as available-for-sale securities, consisted of the following as of December 31, 2007 and 2006 (in thousands):

	December 31, 2007			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Cash	$ 1,993	$ —	$ —	$ 1,993
Obligations of U.S. government agencies	81,419	21	(1)	81,439
Corporate debt securities	9,572	—	(1)	9,571
Other debt securities, primarily money market funds	23,881	—	—	23,881
Total available-for-sale securities	$116,865	$ 21	$ (2)	116,884
Amounts classified as cash and cash equivalents				102,945
Amounts classified as restricted cash				1,939
Amounts classified as long-term restricted cash				12,000
Total				$116,884

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

	December 31, 2006			
	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Cash	$ 251	$ —	$ —	$ 251
Obligations of U.S. government agencies	35,107	10	—	35,117
Corporate debt securities	17,180	2	—	17,182
Other debt securities, primarily money market funds	38,673	—	—	38,673
Total available-for-sale securities	$ 91,211	$ 12	$ —	91,223
Amounts classified as cash and cash equivalents				78,948
Amounts classified as restricted cash				275
Amounts classified as long-term restricted cash				12,000
Total				$ 91,223

All available-for-sale securities held as of December 31, 2007 and 2006 had contractual maturities of less than one year.

Since inception, there have been no material realized gains or losses on available-for-sale securities. No available-for-sale securities held as of December 31, 2007 or 2006 had been in a continuous unrealized loss position for more than 12 months. The aggregate fair value of available-for-sale securities held at December 31, 2007 and 2006 which had unrealized losses was $10.4 million and $1.6 million, respectively. The amount of the unrealized loss at December 31, 2007 and 2006 was immaterial and the Company does not believe that the impairment is other than temporary. The fair value of available-for-sale securities is determined using quoted prices in active markets.

4. Certain Balance Sheet Items

Inventories consist of the following (in thousands):

	December 31,	
	2007	2006
Raw materials	$ 500	$ 541
Finished goods	1,713	2,485
Total inventories	$ 2,213	$ 3,026

Property and equipment consist of the following (in thousands):

	December 31,	
	2007	2006
Leasehold improvements	$ 977	$ 700
Computer equipment	1,504	873
Computer software	2,517	1,271
Furniture and fixtures	208	182
Construction-in-progress	1,257	316
Total	6,463	3,342
Less accumulated depreciation and amortization	(2,522)	(1,235)
Property and equipment, net	$ 3,941	$ 2,107

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Accrued liabilities consist of the following (in thousands):

	December 31,	
	2007	2006
Accrued research and development expense	$12,663	$ 5,119
Accrued personnel expense	6,480	4,322
Accrued sales and marketing expense	3,905	783
Accrued general and administrative expense	1,663	1,440
Liability under government settlement	1,969	—
Other	2,367	1,279
Total accrued liabilities	$29,047	$12,943

5. Acquisition and Sale of Product Rights

Acquisition of Orphan Medical

On June 24, 2005, the Company acquired Orphan Medical, a developer and marketer of orphan drug products, primarily to establish a commercial presence through a specialty pharmaceutical sales organization focused on neurologists and psychiatrists. Orphan Medical marketed and sold three products and was conducting clinical trials in order to expand the potential use of one of those products to additional indications. The acquisition was accounted for as a business combination using the purchase method of accounting. Accordingly, the results of Orphan Medical are included in the Company's consolidated financial statements since the date of acquisition.

The purchase price was comprised of cash consideration (net of cash acquired) of $145.4 million plus direct acquisition costs of $750,000 and was allocated to the assets purchased and liabilities assumed based upon their respective fair values as follows (in thousands):

Accounts receivable	$ 3,348
Inventories	4,717
Other current assets	2,714
Noncurrent assets	112
Liabilities	(7,988)
Intangible assets	83,700
Goodwill	38,213
In-process research and development	21,300
Total fair value of assets acquired, net of liabilities assumed	$146,116

Liabilities of $8.0 million as shown above included $4.0 million of restructuring charges related primarily to employee severance payments and the closure of facilities, of which no amounts remained unpaid as of December 31, 2007.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Management performed a valuation of identifiable intangible assets acquired in the transaction. The estimated fair value of intangible assets identified and the useful lives assigned at the time of acquisition are as follows (in thousands):

	Gross Carrying Amount	Weighted-Average Estimated Useful Life (Years)
Developed technology—Xyrem	$39,700	9.5
Developed technology—Antizol	31,100	9.5
Developed technology—Cystadane	4,300	9.5
Agreements not to compete	5,600	4.4
Trademarks	2,600	9.5
Other	400	4.5
Amortizable intangible assets	$83,700	9.1

During the year ended December 31, 2005, the Company recorded a charge of $21.3 million for acquired in-process research and development. This amount represented the estimated fair value related to three incomplete product candidate development projects for which technological feasibility had not been established and that had no alternative future use at the time of acquisition. This charge is not deductible for federal tax purposes. The fair value of the in-process research and development was determined using the “income approach.” This method requires a forecast of all the expected future net cash flows associated with the in-process technology discounted to present value by applying an appropriate discount rate. The discount rate used reflects the weighted-average cost of capital for companies in the Company’s industry, as well as specific risks associated with the cash flows being discounted.

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

The excess of the purchase price over the fair value of the net tangible and identifiable intangible assets was recorded as goodwill. The primary factors contributing to the existence of goodwill relate to Orphan Medical’s sales force and commercial infrastructure. During the year ended December 31, 2006 the Company finalized its estimates of the assets acquired and liabilities assumed and recorded a decrease in goodwill of $670,000. The total amount of goodwill recorded in connection with the acquisition was $38.2 million, none of which will be deductible for federal tax purposes.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Sale of Product Rights

In March 2007, the Company agreed to sell its rights to Cystadane, associated product registrations, commercial inventory and trademarks for cash consideration of $9.0 million and recorded a gain of $5.1 million.

In December 2007, the Company sold its rights to receive royalties on another product for $1.2 million in cash and recorded a gain of $715,000.

6. Goodwill and Intangible Assets

The gross carrying amount of goodwill was $38.2 million for the years ended December 31, 2007 and 2006. The gross carrying amounts and net book values of the intangible assets are as follows (in thousands):

	December 31, 2007			December 31, 2006		
	Gross Carrying Amount	Accumulated Amortization	Net Book Value	Gross Carrying Amount	Accumulated Amortization	Net Book Value
Developed technology	$ 42,415	$ 10,499	$ 31,916	$ 75,100	$ 11,970	$ 63,130
Agreements not to compete	5,600	3,389	2,211	5,600	2,042	3,558
Trademarks	2,600	687	1,913	2,600	414	2,186
Other	—	—	—	400	134	266
Total	$ 50,615	$ 14,575	$ 36,040	$ 83,700	$ 14,560	$ 69,140

Future amortization costs per year for the Company's existing intangible assets other than goodwill as of December 31, 2007 are estimated as follows (in thousands):

Year Ended December 31,	Estimated Amortization Expense
2008	$ 6,856
2009	6,582
2010	4,822
2011	4,445
2012	4,445

In March 2007, as discussed in Note 5, the Company sold its rights to the Cystadane product and as a result reduced the gross carrying amount and accumulated amortization of this intangible asset by $4.3 million and $761,000, respectively. In December 2007, the Company sold its rights to receive royalties on another product and as a result reduced the gross carrying amount and accumulated amortization of this intangible asset by $400,000 and $215,000, respectively.

In December 2007, a generic fomepizole product was introduced and, as a result, the Company evaluated the intangible asset associated with Antizol for impairment and reduced the gross carrying amount and accumulated amortization of this intangible asset by $28.4 million and $8.2 million, respectively, which resulted in a $20.2 million intangible asset impairment charge for the year ended December 31, 2007. Prior to the impairment, the remaining useful life of the Antizol intangible asset was approximately 7 years. As a result of the impairment, the remaining useful life was reduced to two years and the net book value of the intangible asset associated with Antizol was $2.7 million as of December 31, 2007. The fair value of the intangible asset was calculated using the income approach. The key assumptions used to determine the fair value of the intangible asset associated with Antizol included: (a) revised estimates of future cash flows and (b) a discount rate of 14%. The discount rate reflects the Company's expectations of future cash flows related to Antizol and an appropriate risk premium.

7. Debt and Financing Obligations

Line of Credit

In September 2006, the Company entered into a one year line of credit agreement with a financial institution which was extended and then renewed through November 2008. Under the line of credit, the Company could borrow up to 80% of eligible receivables up to a maximum borrowing limit of $5.0 million. Borrowings under the line of credit bore interest at the lender's prime rate, which was 7.25% and 8.25% at December 31, 2007 and 2006, respectively. The Company was subject to certain financial and operating covenants under the credit agreement. The lender had a security interest in all of the Company's assets, with the exception of intellectual property. As of December 31, 2007 and 2006, $3.5 million and $2.2 million, respectively, were outstanding under the line of credit. In connection with the expansion of our senior debt on March 17, 2008, the Company terminated the $5.0 million line of credit. See Note 20 for information related to the expansion of our senior debt. On March 28, 2008, the $5.0 million line of credit was reinstated.

Senior Secured Notes

In June 2005, in order to partially finance the acquisition of Orphan Medical, a wholly-owned subsidiary of the Company issued $80.0 million aggregate principal amount of senior secured notes (the "notes") and warrants (the "warrants") to certain third parties, some of whom were affiliated with investors in the Company. As a result of the reverse stock split and the conversion of preferred stock into common stock in connection with the Company's initial public offering in June 2007, the warrants are exercisable for 785,728 shares of common stock at an exercise price of $20.36 per share. The notes accrued interest at a rate of 15% per annum, payable quarterly in arrears. The principal on the notes was due in full on June 24, 2011 and could be repaid by the Company at any time, at certain premiums over the principal amount.

The Company estimated the fair value of the warrants to be $6.7 million using the Black-Scholes option pricing model with the following assumptions at the time of issuance: risk free interest rate of 3.96%, volatility of 60%, dividend yield of 0%, and an expected life of seven years. For additional information on the determination of fair value for the warrants as of June 6, 2007 and December 31, 2006, see Note 11. The discount to the note was scheduled to accrete to zero over the life of the notes using the effective interest method and was included as a component of interest expense. Total issuance costs of $2.0 million were allocated to the notes and the warrants based on their relative fair values. Of the total issuance costs, $1.8 million was allocated to the notes and included in other assets and amortized to interest expense using the effective interest method.

The Company and all existing and future domestic subsidiaries fully and unconditionally guaranteed repayment of the notes. The notes and each guarantee were secured by a lien and security interest in substantially all of the Company's and each subsidiary's assets. The subsidiary of the Company that issued the notes was required to maintain a minimum cash balance equal to 15% of the outstanding principal amount on the notes. This amount was $12.0 million at December 31, 2007 and 2006 and is reflected as long-term restricted cash and investments on the Company's consolidated balance sheet. The notes contain customary covenants including limitations on the Company's ability to pay dividends, make investments or other restricted payments, incur debt, grant liens, sell assets and enter into sale-leaseback transactions. Upon the occurrence of certain events of default under the notes, including a default by the Company in payment of principal or interest on the notes, a bankruptcy filing by the Company, or a change in control of the Company, the Company could be required to repay the notes at a premium. The repayment premium was 23% and 30% of the principal amount of the notes as of December 31, 2007 and 2006, respectively, and was scheduled to reduce to zero ratably over the term of the notes.

On March 17, 2008, the Company expanded its senior debt arrangement. See Note 20 for information related to the expansion of our senior debt.

Development Financing Obligation

In August 2005, the Company entered into an agreement pursuant to which a third party agreed to provide $30.0 million to partially fund a Phase III clinical trial of a product candidate in development in exchange for the Company's agreement to repay the third party $37.5 million subject to, and conditional upon, approval by the FDA to market the product in the U.S. In addition, the Company agreed to pay royalties at specified rates based on sales of the product within the U.S. The Company received $15.0 million in 2005 and $15.0 million in 2006 under the agreement. In June 2006, following analysis of the results of the Phase III clinical trial, the Company notified the third party of its intention to discontinue development of the product candidate. As a result, the Company recorded a gain of $31.6 million in 2006 resulting from the extinguishment of liabilities related to this transaction, which represented principal and interest accrued as of the date notice that development would be discontinued was provided to the third party. Prior to this extinguishment of liabilities in 2006, the Company had recorded interest of $1.1 million and $445,000 during the years ended December 31, 2006 and 2005, respectively, using the effective interest method.

8. Commitments and Contingencies

Indemnification

In the normal course of business, the Company enters into contracts and agreements that contain a variety of representations and warranties and provide for general indemnification, including indemnification associated with product liability or infringement of intellectual property rights. The Company's exposure under these agreements is unknown because it involves future claims that may be made but have not yet been made against the Company. To date, the Company has not paid any claims or been required to defend any action related to these indemnification obligations except as set forth in the description of legal proceedings below.

The Company has agreed to indemnify its officers and directors and the officers and directors of Orphan Medical for losses and costs incurred in connection with certain events or occurrences, including advancing money to cover certain costs, subject to certain limitations. The maximum potential amount of future payments the Company could be required to make under this indemnification is unlimited; however, the Company maintains insurance policies that may limit its exposure and may enable it to recover a portion of any future amounts paid. Assuming the applicability of coverage, the willingness of the insurer to assume coverage, and subject to certain retention, loss limits and other policy provisions, the Company believes the fair value of these indemnification obligations is not material. Accordingly, the Company has not recognized any liabilities relating to these obligations as of December 31, 2007 and 2006. No assurances can be given that the covering insurers will not attempt to dispute the validity, applicability, or amount of coverage without expensive litigation against these insurers, in which case the Company may incur substantial liabilities as a result of these indemnification obligations.

Lease and Other Commitments

In June 2004, the Company entered into a noncancelable operating lease for an office facility in Palo Alto, California which expires in August 2008. The lease is renewable through 2017 at the Company's option. In addition to these lease payments, the Company is obligated to pay for operating expenses for the leased property. In March 2007, the Company entered into a lease agreement for approximately 13,000 square feet of office space in Palo Alto, California. The term expires in August 2008. In August 2007, the Company entered into a lease agreement for approximately 11,000 square feet of office space in Palo Alto, California, which expires in August

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

2009. The Company is also obligated to make payments under noncancelable operating leases for automobiles used by its sales force. Rent expense under all operating leases was $2.0 million, $1.3 million and $930,000 for the years ended December 31, 2007, 2006 and 2005, respectively. Future minimum lease payments under the Company's noncancelable operating leases at December 31, 2007, are as follows (in thousands):

Year ended December 31,	Lease Payments
2008	$ 2,082
2009	960
2010	387
2011	71
Total	$ 3,500

The Company uses third party contract manufacturers to manufacture products. As of December 31, 2007 and 2006, the Company had $7.0 million and $1.5 million, respectively, of noncancelable purchase commitments under agreements with contract manufacturers due in 2008.

Legal Proceedings

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

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

Pursuant to the Civil Settlement Agreement and the Plea Agreement, payments totaling approximately $20.0 million are required to be made over the period from July 20, 2007 through January 15, 2012. The total includes payments to Federal healthcare programs and Medicaid participating states, as well as restitution and fines. In

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

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

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

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

While the Company has reached a settlement agreement with the United States Attorney’s Office, and the other government agencies described above, the Company might still be subject to regulatory and/or enforcement action by federal agencies that are not parties to the settlement, private insurers and states’ attorneys general with respect to activities covered by the settlement. The Company cannot predict whether these actions are likely to occur, nor can the Company reasonably estimate the amount of any fines or penalties that might result from an adverse outcome.

The Company recorded a charge of $17.5 million during the year ended December 31, 2007, which represents the present value of the settlement payments discounted at an interest rate of 4.6%. The non-current portion of this provision as of December 31, 2007 was $14.9 million and the current portion, which is included in accrued liabilities, was $2.0 million.

On April 10, 2006, Little Gem Life Sciences LLC, individually and purportedly on behalf of a class of persons similarly situated, filed a complaint against Orphan Medical and former officers of Orphan Medical in the Untied States District Court for the District of Minnesota. The complaint alleges that the defendants made false and misleading statements in the proxy statement prepared by Orphan Medical in connection with the solicitation of proxies to be voted at the special meeting of Orphan Medical stockholders held on June 22, 2005. The purpose of the special meeting was to consider and vote upon a proposal to adopt the definitive merger agreement pursuant to which the Company acquired Orphan Medical. The plaintiff seeks damages for itself and the putative class, in an unspecified amount, together with interest, litigation costs and expenses, and its attorneys’ fees and other disbursements, as well as unspecified other and further relief. On October 25, 2006, the

defendants filed a motion to dismiss the complaint and oral argument on the motion was heard by the United States District Court for the District of Minnesota. On February 16, 2007, the United States District Court for the District of Minnesota granted the defendants' motion to dismiss the complaint, with leave to amend. On March 14, 2007, the plaintiff filed an amended complaint, and the defendants responded with a motion to dismiss on March 16, 2007. Oral argument on the motion was heard on June 8, 2007. On September 13, 2007, the United States District Court for the District of Minnesota granted the defendants' motion to dismiss the complaint with prejudice. On September 28, 2007, the plaintiff filed a Notice of Appeal to the United States Court of Appeals for the Eighth Circuit. On November 21, 2007 the plaintiff filed its brief with the United States Court of Appeals for the Eighth Circuit. On December 21, 2007 the defendants filed their brief with the United States Court of Appeals for the Eighth Circuit. On January 8, 2008 the plaintiff filed a reply brief. Oral arguments have not yet been scheduled. The Company cannot predict or determine the outcome of this matter or reasonably estimate the amount of any judgments or payments that might result from an adverse outcome.

From time to time the Company is involved in legal proceedings arising in the ordinary course of business. The Company believes there is no other litigation pending that could have, individually or in the aggregate, a material adverse effect on the Company's results of operations or financial condition.

9. Collaboration and License Agreements

In January 2007, the Company entered into a product license agreement with Solvay Pharmaceuticals, Inc. ("Solvay") for the rights to market Luvox CR and Luvox in the United States. The Company made a $2.0 million payment upon execution of the agreement, and agreed to make additional payments of up to $136.0 million upon achievement of development and commercial milestones. Upon approval by the FDA and the commercial launch of Luvox CR, the Company is obligated to make payments under this agreement of $41.0 million in 2008. In addition, the Company is required to pay Solvay royalties on commercial sales at specified rates. See Note 20 for information regarding the timing of expected payments.

In October 2004, the Company entered into an agreement with GlaxoSmithKline to purchase worldwide rights to the active pharmaceutical ingredient in JZP-4. The Company paid and recorded research and development expense of $2.0 million upon execution of the agreement and $3.0 million in July 2006 upon achievement of a development milestone. The Company also agreed to pay up to $113.5 million upon the achievement of future development and commercial milestones and royalties at specified rates based on net sales. The Company will owe a $5.0 million milestone payment to GlaxoSmithKline upon the enrollment of the first patient in a JZP-4 Phase II clinical trial, which the Company expects to occur in the third quarter of 2008.

The Company paid and expensed as research and development $10.4 million during the year ended December 31, 2005 upon achievement of development milestones under the terms of three agreements which have since been terminated and under which no future obligations existed at December 31, 2006. In August 2007, $1.3 million was returned to the Company from a third party under a contract which had previously been terminated. In connection with its product development activities, the Company may enter into agreements with third party technology providers, patent holders and others. Patent licenses may require upfront payments, patent prosecution and maintenance fees and royalties on sales of products covered by the patents. Agreements with technology providers often provide for upfront payments and milestone payments based upon the achievement of specified development and commercial milestones and royalties based on sales of the products the Company develops with the technology provider. The Company currently has two such agreements pursuant to which it has agreed to pay up to $7.9 million upon achievement of development and commercial milestones.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

10. Product License

In June 2006, the Company entered into an agreement with UCB that amended and restated a prior agreement between Orphan Medical and a predecessor of UCB. Under the terms of the amended agreement, UCB has the right to market Xyrem for the treatment of narcolepsy and JZP-6 for the treatment of fibromyalgia in 54 countries outside of the United States. UCB made nonrefundable milestone payments to the Company of $2.5 million in November 2005, $0.5 million in June 2006, $2.0 million in March 2007 and $7.5 million in September 2007. UCB also made an upfront payment of $5.0 million upon execution of the amended agreement in June 2006 and an additional payment of $10.0 million in August 2006 upon exercise of its rights to develop and commercialize JZP-6 for the treatment of fibromyalgia. The Company recognized contract revenues of $1.1 million and $463,000 related to these upfront payments during the years ended December 31, 2007 and 2006, respectively. The remaining $13.4 million was recorded as deferred revenues as of December 31, 2007 and is being recognized ratably through 2019, the expected performance period under the agreement. There has been no change in the expected performance period since its establishment in 2006 at the time of the initial upfront payment. The amended agreement requires UCB to make additional milestone payments of up to $138.5 million, of which up to $6.0 million relate specifically to Xyrem for the treatment of narcolepsy, up to $32.5 million relate to the development and approval of JZP-6 for the treatment of fibromyalgia and up to $100.0 million relate primarily to the commercialization of JZP-6 for the treatment of fibromyalgia as well as additional sales of Xyrem for the treatment of narcolepsy.

11. Preferred Stock Warrant Liability

In June 2005, in connection with the issuance of the Company's $80.0 million aggregate principal amount senior secured notes, the Company issued warrants to purchase 785,728 shares of convertible preferred stock at an exercise price of $20.36 per share. The warrants are exercisable, at the option of the holders, at any time until June 24, 2012, and were recorded as a preferred stock warrant liability. Prior to the Company's initial public offering, the preferred stock warrant liability was revalued at the end of each reporting period to fair value using the Black—Scholes option pricing model. On June 6, 2007, upon completion of the Company's initial public offering, the warrants became exercisable for common stock and the liability was reclassified to stockholders' equity at its then fair value.

The Company recorded a benefit of $1.8 million in other income during the year ended December 31, 2007 and other expense of $1.1 million and $901,000 during the years ended December 31, 2006 and 2005 to reflect changes the fair value of the preferred stock warrant liability.

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

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

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

12. Convertible Preferred Stock and Preferred Stock

In connection with the Company's initial public offering in June 2007 all shares of convertible preferred stock were converted to common stock.

At December 31, 2007 the Company had 20,000,000 shares, $0.0001 par value, of authorized preferred stock none of which was issued or outstanding. The Company's board of directors has the authority, without further action by the stockholders, to issue from time to time preferred stock in one or more series, to fix the number of shares of any such series and the designation thereof and to fix the rights, preferences, privileges and restrictions granted to or imposed upon such preferred stock, including dividend rights, dividend rate, conversion rights, voting rights, rights and terms of redemption, redemption prices, liquidation preference and sinking fund terms.

13. Common Stock

Reverse Stock Split

On May 15, 2007, the Company filed a third amended and restated certificate of incorporation with the Delaware Secretary of State effecting a 1-for-11.06701 reverse split of the Company's preferred and common stock. All share and per share amounts have been retroactively restated in these financial statements and notes for all periods presented.

Initial Public Offering

On June 6, 2007, the Company completed its initial public offering of 6,000,000 shares of its common stock at a public offering price of $18.00 per share. Net cash proceeds from the initial public offering were $97.5 million, after deducting underwriting discounts and commissions and offering expenses. In connection with the closing of the initial public offering, all of the Company's shares of preferred stock outstanding at the time of the offering were converted into 17,921,551 shares of common stock, and all of the Company's warrants to purchase Series BB preferred stock outstanding at the time of the offering were converted into warrants to purchase 785,728 shares of common stock.

Common Stock

On June 6, 2007, the Company filed a fourth amended and restated certificate of incorporation which authorizes the Company to issue 150,000,000 shares of common stock. The Company has issued certain shares of its common stock under restricted stock purchase agreements with its executives and a non-employee director and upon the early exercise of stock options. Under the terms of these restricted stock purchase agreements and exercised stock options, the Company has the option to repurchase unvested shares of common stock at the initial purchase price upon the termination of a holder's services to the Company. The number of shares subject to repurchase is reduced ratably over 48 months from the date of purchase or, in the case of stock options early exercised, the date of grant of the stock option. Unvested shares are subject to a right of repurchase at cost upon termination of employment unless the Company terminates the holder without cause, the holder terminates employment under certain conditions or under specific circumstances related to a change in control. The original purchase price paid for these shares are recorded as a liability. As of December 31, 2007 and 2006, the Company had recorded a liability of $29,000 and $98,000, respectively, associated with 1,932 and 62,127 unvested shares, respectively.

In February 2004, each of the Company's executive officers entered into an employment agreement which permits the executive officer or the officer's estate to require the Company to repurchase vested shares at fair market

value upon termination of the executive officer's employment due to death or disability. The fair value of vested shares held by the Company's executive officers as of the date of such agreements (the "Agreement Date Fair Value") was recorded as common stock subject to repurchase and following the date of such agreements, the Agreement Date Fair Value of shares held by the Company's executive officers is recorded as common stock subject to repurchase as such shares vest. The excess of the Agreement Date Fair Value over the original purchase price paid for such shares is charged against additional paid-in capital or, to the extent additional paid-in capital is insufficient, as an increase to stockholders' deficit as such shares vest. In addition, upon completion of the company's initial public offering, 278,609 shares of preferred stock held by the Company's executive officers, which are also subject to their employment agreements, were reclassified from preferred stock to common stock subject to repurchase. As of December 31, 2007 and 2006, the Company had recorded $13.2 million and $8.2 million as common stock subject to repurchase, respectively, associated with 877,458 and 542,337 vested shares held by executive officers, respectively.

The Company has reserved the following shares of authorized but unissued common stock:

	As of December 31, 2007
2007 Equity Incentive Plan	4,407,194
2007 Employee Stock Purchase Plan	280,325
2007 Non-Employee Directors Stock Option Plan	200,000
Conversion of warrants	785,728
Total reserved shares of common stock	5,673,247

14. Stock-Based Compensation

2007 Equity Incentive Plan

The board of directors adopted the 2007 Equity Incentive Plan (the "2007 Plan") in May 2007, and the Company's stockholders approved the 2007 Plan in May 2007. The 2007 Plan will terminate on April 30, 2017, unless sooner terminated by the board of directors. The 2007 Plan provides for the grant of incentive stock options, nonstatutory stock options, restricted stock awards, restricted stock unit awards, stock appreciation rights, performance stock awards and other forms of equity compensation, which may be granted to employees, including officers, non-employee directors and consultants.

Prior to the 2007 Plan, the Company's board of directors had adopted and the stockholders had approved the 2003 Equity Incentive Plan (the "2003 Plan") in March 2003. The only activity under the 2003 Plan prior to the adoption of the 2007 Plan was related to the grant of stock options to employees and a non-employee director, all of which will expire ten years from the date of grant if not exercised. The 2003 Plan was terminated in 2007. All the outstanding awards continue to be governed by their existing terms.

Share Reserve. The aggregate number of shares of the Company's common stock that may be issued pursuant to stock awards under the 2007 Plan is 4,407,794 shares. The share reserve consists of 2,125,042 shares reserved for issuance under the 2003 Plan less 217,248 shares expired under the 2003 Plan, plus an additional 2,500,000 shares reserved for issuance under the 2007 Plan. The number of shares of the Company's common stock reserved for issuance will automatically increase on January 1, from January 1, 2008 through January 1, 2017, by the lesser of (a) 4.5% of the total number of shares of the Company's common stock outstanding on December 31 of the preceding calendar year or (b) 3,000,000 shares. On January 1, 2008, the number of shares reserved for issuance under the 2007 Plan increased by 1,107,937 shares pursuant to this automatic share increase provision. The maximum number of shares that may be issued pursuant to the exercise of incentive stock options

under the 2007 Plan is equal to the total share reserve, as increased from time to time pursuant to annual increases and shares subject to options granted under the 2003 Plan that expire without being exercised in full. Options granted to employees vest ratably over service periods of four to five years and expire no more than ten years after the date of grant.

2007 Employee Stock Purchase Plan

Effective upon the Company's initial public offering in June 2007, employees became eligible to participate in the 2007 Employee Stock Purchase Plan ("ESPP"). A total of 350,000 shares of the Company's common stock were initially authorized for issuance under the ESPP. The ESPP allows eligible employee participants to purchase shares of the Company's common stock at a discount through payroll deductions. The ESPP consists of a fixed offering period, generally 24 months with four purchase periods within each offering period. Purchases are generally made on the last trading day of each November and May. The fair value of awards under the ESPP was estimated at the grant date using the Black—Scholes option valuation model with assumptions similar to those used for stock option grants, except that the expected term used ranged from 0.5 to 2.0 years, with a weighted-average expected term of 1.3 years. As of December 31, 2007, total compensation cost related to awards under the ESPP not yet recognized was $2.3 million, which is expected to be allocated to expense and production costs over a weighted-average period of 1.3 years. As of December 31, 2007, the aggregate number of shares of the Company's common stock that may be issued pursuant to stock awards under the 2007 ESPP is 280,325 shares.

Share Reserve. The number of shares reserved for issuance under the 2007 ESPP automatically increases on each January 1, from January 1, 2008 through January 1, 2017, by the lesser of (a) 1.5% of the total number of shares of the Company's common stock outstanding on December 31 of the preceding calendar year or (b) 350,000 shares (or such lesser amount as may be approved by the Company's Board of Directors). On January 1, 2008, the number of shares reserved for issuance under the 2007 ESPP increased by 350,000 shares pursuant to this automatic share increase provision.

2007 Non-Employee Directors Stock Option Plan

The Company's board of directors adopted, and the Company's shareholders approved, the 2007 Non-Employee Directors Stock Option Plan (the "2007 Directors Option Plan") in May 2007. The 2007 Directors Option Plan provides for the automatic grant of nonstatutory stock options to purchase shares of common stock to the Company's non-employee directors over their period of service on the board of directors. The aggregate number of shares of common stock that may be issued initially under the 2007 Directors Option Plan is 200,000 shares. The number of shares of common stock reserved for issuance will automatically increase on January 1, from January 1, 2008 through January 1, 2017. On January 1, 2008, the number of shares reserved for issuance under the 2007 Directors Plan increased by 66,583 shares pursuant to this automatic share increase provision. In addition, the 2007 Directors Option Plan provides the source of shares to fund distributions under the Directors Deferred Compensation Plan described below.

Directors Deferred Compensation Plan

The Company's board of directors adopted the Directors Deferred Compensation Plan (the "Directors Plan") in May 2007. The Directors Plan allows each non-employee director to elect to defer receipt of all or a portion of his or her annual retainer fees to a future date or dates. Any amounts deferred under the Directors Plan are credited to a phantom stock account. The number of phantom shares of the Company's common stock credited to each director's phantom stock account are based on the amount of the compensation deferred, divided by the fair market value of the Company's common stock on the date the retainer fees are deemed earned. Any distributions

in shares of the Company's common stock will be paid with shares reserved under the 2007 Directors Option Plan. In August 2007, certain directors elected to defer receipt of their annual retainer fees to be paid in stock and the Company recorded phantom shares equivalent to 16,585 shares of the Company's common stock with a fair value per share of $12.75. For the year ended December 31, 2007, total compensation cost related to phantom shares of common stock granted under the Directors Plan was approximately $211,000.

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

Effective January 1, 2006, the Company adopted SFAS 123R, which requires compensation costs related to share-based transactions, including employee stock options, to be recognized in the financial statements based on fair value.

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

	Year Ended December 31,		
	2007	2006	2005
Weighted-average volatility	56%	61%	60%
Weighted-average expected term (years)	6.1	6.0	5.0
Range of risk-free rates	3.4-4.9%	4.6-5.1%	3.9-4.4%
Expected dividend yield	0.0%	0.0%	0.0%

The weighted-average grant date fair value per share of employee stock options granted during the years ended December 31, 2007, 2006 and 2005 was $8.42, $10.68 and $8.66, respectively.

The Company has limited historical information to develop reasonable expectations about future exercise patterns and post-vesting employment termination behavior for the Company's stock option grants. As a result, for stock option grants made during the year ended December 31, 2007, the expected term was estimated using the short-cut method allowed under Securities and Exchange Commission Staff Accounting Bulletin No. 107, Share-Based Payment.

As the Company has limited trading history for the Company's common stock, the expected stock price volatility for the Company's common stock was estimated primarily by taking the median historic stock price volatility for industry peers based on daily price observations over a period equivalent to the expected term of the stock option grants. Industry peers consist of several public companies in the specialty pharmaceutical industry similar in size, stage of life cycle and financial leverage. The Company placed some reliance on the volatility of the Company's stock based on its trading history since June 1, 2007. The Company did not rely on the implied volatilities of traded options in the Company's industry peers' common stock, because either the term of those traded options was much shorter than the expected term of the Company's stock option grants, or the volume of activity was relatively low.

The Company will continue to analyze the historical stock price volatility and expected term assumptions as more historical data becomes available. The risk-free interest rate assumption was based on zero coupon U.S. Treasury instruments whose term was consistent with the expected term of the Company's stock option grants. The expected dividend assumption was based on the Company's history and expectation of dividend payouts.

Prior to the Company's initial public offering in June 2007, the fair value of the Company's common stock, which is also an input to the Black-Scholes model, was determined by the Company's board of directors with

assistance from management. At two points in the year prior to the Company's initial public offering the board of directors directed management to perform in-depth contemporaneous valuations of the Company's common stock. Determining the fair value of the common stock of a private company involves a high degree of judgment and a number of different estimates.

The assumptions the Company used to estimate the fair value of grants under the Company's employee stock purchase plan were similar to those used for stock options grants.

Stock-based compensation expense recognized under SFAS 123R related to stock options, RSUs, phantom shares of common stock granted under the Directors Plan and awards under the Company's ESPP was as follows (in thousands):

	Year ended December 31,	
	2007	2006
Cost of product sales	$ 41	$ 8
Research and development	1,419	661
Selling, general and administrative	4,600	2,811
Total stock-based compensation expense	$6,060	$3,480

No income tax benefit was recognized in the statement of operations for the years ended December 31, 2007 and 2006. Employee stock-based compensation costs of $43,000 and $18,000 as of December 31, 2007 and 2006, respectively, were capitalized as a component of inventory and included in the consolidated balance sheets.

The total compensation cost related to unvested stock option grants not yet recognized as of December 31, 2007 was $13.7 million and the weighted-average period over which these grants are expected to vest is 3.3 years.

The following table summarizes activity under all of the Company's stock option plans as of December 31, 2007, and changes during the year then ended:

	Shares Subject to Outstanding Options	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value ($000)
Outstanding at January 1, 2007	1,597,334	$ 21.62		
Options granted	1,869,485	14.59		
Options exercised	(5,617)	13.64		
Options forfeited	(63,037)	14.64		
Options expired	(18,225)	15.67		
Outstanding at December 31, 2007	3,379,940	17.91	8.1	2,045
Vested and expected to vest at December 31, 2007	3,081,817	18.18	8.0	1,796
Exercisable at December 31, 2007	1,354,688	22.29	6.3	236

Aggregate intrinsic value shown is equal to the difference between the exercise price of the underlying stock options and the fair value of the Company's common stock for stock options that were in the money.

The aggregate intrinsic value of stock options exercised during 2007 and 2006 were $16,000 and $90,000, respectively. No stock options were exercised during 2005.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

The following table summarizes information about stock options outstanding as of December 31, 2007:

	Options Outstanding		Options Exercisable
Exercise Prices	Number of Shares	Weighted-Average Remaining Contractual Life (Years)	Number of Shares
$1.11	14,986	4.9	14,986
$12.75 - $14.20	1,327,493	9.6	16,665
$15.09	852,990	6.3	784,161
$15.44 - $19.37	730,925	8.9	104,218
$30.18	226,773	6.1	217,329
$45.27	226,773	6.1	217,329
	3,379,940	8.1	1,354,688

The Company has issued new shares of common stock upon all exercises of stock options to date and does not currently expect to repurchase shares of common stock in future years to reserve for issuance upon exercise of stock options.

Restricted Stock Units

In August 2007, under the 2007 Plan, the Company granted restricted stock units ("RSUs"), equivalent to approximately 124,000 shares of common stock, to employees. The fair value of RSUs is determined on the date of grant based on the market price of the Company's common stock. The fair value of RSUs is recognized as expense ratably over the vesting period, generally four years. The weighted-average grant date fair value of RSUs granted during the year ended December 31, 2007 was $13.25. No RSUs were granted prior to 2007.

As of December 31, 2007, the total remaining unrecognized compensation cost related to non-vested RSUs was $1.2 million which is expected to be recognized over a weighted-average period of 3.6 years.

A summary of RSU activity as of December 31, 2007, and changes during the year then ended is presented below:

	Number of Restricted Stock Units	Weighted-Average Grant-Date Fair Value	Weighted-Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value ($000)
Outstanding at January 1, 2007	—	$ —		
RSUs granted	123,991	13.25		
RSUs exercised	—	—		
RSUs forfeited	(4,950)	13.25		
RSUs expired	—	—		
Outstanding at December 31, 2007	119,041	13.25	2.1	1,750
Vested and expected to vest at December 31, 2007	99,635	13.25	2.0	1,465
Exercisable at December 31, 2007	—	—	—	—

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Accounting and Disclosures Under APB 25 and SFAS 123

Prior to January 1, 2006, the Company accounted for stock-based employee compensation arrangements using the intrinsic value method of APB 25 and related interpretations in accounting for its employee stock options and complied with the disclosure-only provisions of SFAS 123, as amended by SFAS 148. No stock-based compensation expense was recorded under APB 25 during the year ended December 31, 2005.

The pro forma information required to be disclosed under SFAS 123 for the year ended December 31, 2005 is as follows (in thousands, except per share data):

	Year Ended December 31, 2005
Loss attributable to common stockholders, as reported	$ (85,156)
Add: Employee stock-based compensation using the intrinsic value method	—
Less: Total employee stock compensation calculated using the fair-value method	(2,934)
Pro forma loss attributable to common stockholders	$ (88,090)
Loss per share attributable to common stockholders, basic and diluted	
As reported	$ (14,192.67)
Pro forma	$ (14,681.67)

15. Income Taxes

The Company has a history of losses and therefore has made no provision for income taxes. All of the Company's losses result from domestic operations.

Deferred income taxes reflect the tax effects of net operating loss and tax credit carryforwards and the net temporary differences between the carrying amounts of assets and liabilities for financial reporting and the amounts used for income tax purposes.

Significant components of the Company's deferred tax assets and liabilities are as follows (in thousands):

	December 31, 2007	December 31, 2006
Deferred tax assets:		
Federal and state net operating loss carryforwards	$ 90,859	$ 58,474
Federal and state tax credit carryforwards	11,299	9,876
Deferred contract revenues	5,405	5,453
Acquired capitalized research and development	3,409	3,889
Other	8,660	2,631
Total deferred tax assets	119,632	80,323
Deferred tax liabilities:		
Acquired intangible assets	(13,953)	(24,328)
Other	—	(457)
Total deferred tax liabilities	(13,953)	(24,785)
Valuation allowance	(105,679)	(55,538)
Net deferred tax assets	$ —	$ —

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Realization of the deferred tax assets is dependent upon the generation of future taxable income, if any, the amount and timing of which are uncertain. Based on available objective evidence, management believes it more likely than not that the Company's deferred tax assets are not recognizable. Accordingly, the net deferred tax assets have been fully offset by a valuation allowance. The valuation allowance increased by $50.1 million, $19.9 million and $24.6 million for the years ended December 31, 2007, 2006 and 2005, respectively.

At December 31, 2007, the Company had net operating loss carryforwards for federal income tax purposes of approximately $240.7 million which expire in the period from 2008 to 2027, and federal tax credits of approximately $11.7 million which expire in the period from 2008 to 2027. Approximately $3.9 million of federal net operating losses and $0.2 million of federal tax credits expire in the next five years. The Company also has state net operating loss carryforwards of approximately $177.9 million which expire beginning in 2013 and state tax credits of approximately $2.6 million which have no expiration date. Utilization of the Company's net operating loss carryforwards and tax credit carryforwards are subject to annual limitation due to the ownership change limitations provided by the Internal Revenue Code and similar state provisions. Such an annual limitation may result in the expiration of the net operating loss before utilization. Because the Company's acquisition of Orphan Medical triggered an ownership change, approximately $37.0 million of the net operating loss carryforward is only available ratably through 2018 based upon the annual limitation under Section 382 of the Internal Revenue Code. Similarly, approximately $5.0 million of tax credits are only available from 2019 to 2024.

The Company adopted Financial Accounting Standards Board Interpretation No. 48 *Accounting for Uncertainties in Income Taxes—an interpretation of FASB Statement No. 109 ("FIN 48")* effective January 1, 2007. FIN 48 requires that the Company recognize the financial statement effects of a tax position when it is more likely than not, based on the technical merits, that the position will be sustained upon examination. Upon adoption of FIN 48, the Company recognized a $1.5 million reduction in gross deferred tax assets, offset by an equal reduction in the deferred tax asset valuation allowance. As a result, no cumulative adjustment to the Company's accumulated deficit was required upon the Company's adoption of FIN 48. A reconciliation of the unrecognized tax benefits recorded for 2007 follows (in thousands):

Balance at January 1, 2007	$1,500
Additions based on tax positions related to the current year	560
Additions (reductions) for tax positions of prior years	—
Settlements	—
Lapse of applicable statute of limitations	—
Balance at December 31, 2007	$2,060

There were no interest or penalties related to unrecognized tax benefits. Substantially all of the unrecognized tax benefit, if recognized, would affect the Company's tax expense. The Company does not anticipate that the amount of existing unrecognized tax benefits will significantly increase or decrease within the next 12 months. Because of net operating loss carryforwards, substantially all of the Company's tax years remain open to tax federal examination. The Company files income tax returns in the United States and various states, which typically have three tax years open at any point in time.

16. Related Party Transactions

In June 2005, the Company issued senior secured notes in the aggregate principal amount of $80.0 million with interest payable on the notes at the rate of 15% per year, payable quarterly in arrears. The notes are due and payable on June 24, 2011. As of December 31, 2006, KKR TRS Holdings, Inc., an entity affiliated with Kohlberg Kravis Roberts & Co. L.P., ("KKR"), a significant stockholder, and LB I Group, an entity affiliated with Lehman Brothers Holdings Inc., held $25.0 million and $31.0 million, respectively, in principal amount of these senior secured notes.

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NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

During 2007, KKR TRS Holdings, Inc. transferred its interest in the notes to another entity affiliated with KKR, KKR Financial Holdings, III, LLC. As of December 31, 2007, KKR Financial Holdings, III, LLC and LB I Group held $25.0 million and $31.0 million, respectively, in principal amount of these senior secured notes. The interest expense recognized with respect to notes held by entities affiliated with KKR during the years ended December 31, 2007, 2006 and 2005 was $4.1 million, $4.0 million and $2.1 million, respectively. The interest expense recognized with respect to notes held by LB I Group during the years ended December 31, 2007, 2006 and 2005 was $5.1 million, $5.0 million and $2.5 million, respectively. No payments of principal were made in either of these periods. As of December 31, 2007, entities affiliated with KKR and LB I Group owned warrants to purchase 245,540 and 304,469 shares of the Company's common stock, respectively. See Note 20 for information related to the expansion of our senior debt.

17. 401(k) Plan

The Company provides a qualified 401(k) savings plan for its employees. All employees are eligible to participate, provided they meet the requirements of the plan. While the Company may elect to match employee contributions, no such matching contributions have been made through December 31, 2007.

18. Segment and Other Information

Management has determined that the Company operates in one business segment which is the development and commercialization of pharmaceutical products.

The following is a summary of the Company's product sales, net for the last three fiscal years (in thousands):

	Year Ended December 31,		
	2007	2006	2005(3)
Xyrem	$39,018	$29,049	$ 11,200
Antizol(1)	14,153	12,813	6,782
Cystadane(2)	365	1,437	814
Total	$53,536	$43,299	$ 18,796

(1) Includes sales of Antizol-Vet, which were $251,000, $313,000 and $99,000 in 2007, 2006 and 2005, respectively.
(2) The Company sold its rights to Cystadane to a third party in March 2007.
(3) Includes only approximately six months of product sales since prior to the acquisition of Orphan Medical in June 2005 the Company had no product sales.

The Company had no product sales or other revenues prior to the acquisition of Orphan Medical in June 2005.

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

	Year Ended December 31,		
	2007	2006	2005
United States	$ 53,132	$ 42,326	$ 18,305
Europe	11,856	1,757	3,020
All other	315	773	117
Total	$ 65,303	$ 44,856	$ 21,442

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

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

	Year Ended December 31,		
	2007	2006	2005
Express Scripts	59%	65%	51%
UCB Pharma Limited	18%	*	12%
Cardinal Health	*	12%	*
AmerisourceBergen	*	*	15%

* Less than 10% of the Company's total revenues.

19. Quarterly Financial Data (Unaudited)

The following interim financial information presents the 2007 and 2006 results of operations on a quarterly basis (in thousands, except per share amounts):

	2007			
	March 31	June 30	September 30	December 31
Revenues	$ 14,088	$ 14,264	$ 21,474	$ 15,477
Operating loss	(19,483)	(42,753)	(17,798)	(58,744)
Net loss	(19,584)	(39,863)	(19,359)	(60,020)
Loss attributable to common stockholders	(19,584)	(39,863)	(19,359)	(60,020)
Basic and diluted income (loss) per share attributable to common stockholders	(851.48)	(5.27)	(0.82)	(2.53)

	2006			
	March 31	June 30	September 30	December 31
Revenues	$ 9,837	$ 11,074	$ 11,496	$ 12,449
Operating loss	(19,245)	(21,076)	(20,600)	(17,131)
Net income (loss)	(22,379)	(24,134)	7,657	(20,535)
Net income (loss) attributable to common stockholders	(25,880)	(24,134)	7,657	(38,954)
Basic income (loss) per share attributable to common stockholders	(2,875.56)	(2,194.00)	638.08	(2,043.15)
Diluted income (loss) per share attributable to common stockholders	(2,875.56)	(2,194.00)	0.57	(2,043.15)

The tables above include the following unusual or infrequently occurring items:

- Charges of $3.5 million in the three months ended March 31, 2006 and $18.4 million in the three months ended December 31, 2006 related to a beneficial conversion feature;
- A gain of $31.6 million in the three months ended September 30, 2006 resulting from the extinguishment of liabilities related to a development financing;
- A gain of $5.1 million on the sale of the rights to Cystadane recorded in the three months ended March 31, 2007;
- A charge of $17.5 million related to future payments under the government settlement recorded in the three months ended June 30, 2007;

- Contract revenues of $7.5 million related to the achievement of a development milestone recorded in the three months ended September 30, 2007, and
- A charge of $20.2 million related to the impairment of the intangible asset associated with Antizol recorded in the three months ended December 31, 2007.

20. Subsequent Events

FDA Approval of Luvox CR

On February 28, 2008, the U.S. Food and Drug Administration ("FDA") approved once-daily Luvox CR (fluvoxamine maleate) Extended Release Capsules for the treatment of obsessive compulsive disorder and social anxiety disorder ("SAD") in adults. In January 2007, Jazz Pharmaceuticals licensed the right to market Luvox CR in the U.S. from Solvay Pharmaceuticals. In March 2008, the license agreement was amended to provide for Jazz Pharmaceuticals to pay Solvay Pharmaceuticals $10.0 million on March 28, 2008; $10.0 million on April 7, 2008; $10.5 million on September 30, 2008; and $10.5 million on December 31, 2008. Luvox CR's FDA approval included a commitment for two Phase IV clinical trials, one in adolescent patients with SAD and the other a duration of effect study in patients with SAD.

Debt Expansion

On March 17, 2008, JPI Commercial, LLC, or JPIC, a wholly-owned subsidiary of the Company, sold $40.0 million aggregate principal amount of senior secured notes. As part of the transaction, the Company issued to the purchasers of these notes warrants to purchase a total of 562,192 shares of its common stock exercisable at an exercise price of $14.23 per share at any time until March 17, 2013. We paid an $0.8 million arrangement fee and incurred other expenses in connection with the transaction. The Company will use the net proceeds to fund milestone payments due under a license agreement with Solvay Pharmaceuticals, to fund Luvox CR launch expenses and for general corporate purposes. The notes bear interest at 15% per annum, payable quarterly in arrears, and are due on June 24, 2011. In addition, on March 17, 2008, a total of $80.0 million aggregate principal amount of senior secured notes of Orphan Medical were exchanged for the same principal amount of new senior secured notes issued by JPIC. In the transactions, the Company guaranteed the repayment obligations of JPIC and granted the note holders a security interest in all of the Company's assets and those of the Company's wholly-owned subsidiaries. The Company is not required to maintain a restricted cash balance under the new arrangement; however, if at any time after the quarter ending on March 31, 2009, the Company's product sales do not reach certain specified levels, JPIC would be required to maintain a restricted cash balance equal to 15% of the then outstanding principal amount of notes. The Company has also agreed to restrictions on working capital borrowings, dividends and certain other payments. Under the agreement, the Company may borrow up to $15.0 million secured by its accounts receivable and inventory. JPIC may be required, upon the occurrence of certain events and if the Company's annualized net product sales fall below a certain specified level, to redeem a portion of the notes, and may be required to repurchase or redeem a portion or all of the notes upon the occurrence of certain customary events.

Subject to satisfying conditions related to the Company's net product sales and certain closing conditions, prior to January 31, 2009 the Company has the option to sell up to $30.0 million aggregate principal amount of senior secured notes and warrants to purchase shares of the Company's common stock at an exercise price based upon the closing stock price prior to the sale of the notes and warrants.

In connection with the expansion of the senior debt, the Company terminated a $5.0 million line of credit. The line of credit was reinstated on March 28, 2008.

JAZZ PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)

Prior to the issuance of the new notes on March 17, 2008, LB I Group, an entity affiliated with Lehman Brothers Holdings Inc., purchased certain senior notes and warrants then outstanding, including certain senior notes and warrants held by an affiliate of Kohlberg Kravis Roberts & Co. L.P., a significant stockholder. Subsequent to the issuance of the new notes on March 17, 2008, LB I Group held notes with an aggregate principal amount of $89.5 million, warrants to purchase 479,853 shares of common stock excisable at $20.36 per share and warrants to purchase 470,836 shares of common stock exercisable at $14.23 per share. Subject to certain conditions and if the Company exercises its option, LB I Group is also obligated to purchase notes with an aggregate principal amount of up to $27.0 million. The Company paid LB I Group Inc. an arrangement fee of $0.8 million in connection with the issuance of the new notes. Subsequent to the issuance of the new notes, entities affiliated with Kohlberg Kravis Roberts & Co. L.P. held notes with an aggregate principal amount of $7.1 million and warrants to purchase 70,156 shares of common stock exercisable at $20.36 per share.

Lease Extension

On February 26, 2008 the Company exercised its option to extend the lease on its corporate office building located in Palo Alto California for one year beginning August 31, 2008. In connection with this extension, the Company will pay an additional approximately $816,000 in lease payments during the one year extension. In addition to these lease payments, the Company is obligated to pay for operating expenses for the leased property.

Schedule II

Valuation and Qualifying Accounts
(In thousands)

	Balance at beginning of period	Additions(3)	Additions charged to costs and expenses(4)	Deductions	Balance at end of period
For the year ended December 31, 2007					
Allowance for doubtful accounts(1)	$ 50	$ —	$ 15	$ (15)	$ 50
Allowance for sales discounts(1)	94	—	1,111	(1,104)	101
Allowance for chargebacks(1)	5	—	285	(277)	13
Allowance for customer rebates(1)	18	—	14	(20)	12
Allowance for wholesaler fees(1)	31	—	147	(135)	43
Allowance for government rebates(2)	63	—	263	(262)	64
For the year ended December 31, 2006					
Allowance for doubtful accounts(1)	$ 25	$ —	$ 28	$ (3)	$ 50
Allowance for sales discounts(1)	71	—	880	(857)	94
Allowance for chargebacks(1)	26	—	212	(233)	5
Allowance for customer rebates(1)	—	—	44	(26)	18
Allowance for wholesaler fees(1)	153	—	203	(325)	31
Allowance for government rebates(2)	88	—	229	(254)	63
For the year ended December 31, 2005					
Allowance for doubtful accounts(1)	$ —	$ 25	$ 14	$ (14)	$ 25
Allowance for sales discounts(1)	—	62	381	(372)	71
Allowance for chargebacks(1)	—	25	57	(56)	26
Allowance for customer rebates(1)	—	—	—	—	—
Allowance for wholesaler fees(2)	—	134	64	(45)	153
Allowance for government rebates(2)	—	115	135	(162)	88

Notes

(1) shown as a reduction of accounts receivable

(2) included in accrued liabilities

(3) amounts represent the liabilities assumed as a result of the acquisition of Orphan Medical, Inc. on June 24, 2005

(4) all charges except doubtful accounts are reflected as a reduction of revenue

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EXHIBIT INDEX

Exhibit Number	Description of Document
2.1	Agreement and Plan of Merger dated as of April 18, 2005, by and among the Registrant, Twist Merger Sub, Inc. and Orphan Medical, Inc.(8)
3.1	Fourth Amended and Restated Certificate of Incorporation of the Registrant.(1)
3.2	Amended and Restated Bylaws.(2)
4.1	Reference is made to Exhibits 3.1 and 3.2.
4.2	Specimen Common Stock Certificate.(3)
4.3A	Third Amended and Restated Investor Rights Agreement, made effective as of June 6, 2007, by and between the Registrant and the other parties named therein.(4)
4.3B	Waiver and Amendment Agreement, dated as of March 12, 2008, by and between the Registrant and the other parties named therein.
4.4A	Form of Series BB Preferred Stock Warrant of the Registrant.(7)
4.4B	Form of Series BB Preferred Stock Warrant of the Registrant, as amended.
4.5A#	Senior Secured Note and Warrant Purchase Agreement, dated as of March 14, 2008, by and among the Registrant, JPI Commercial, LLC and the Purchasers named therein.
4.5B	Form of Senior Secured Tranche A Note of JPI Commercial, LLC.
4.5C	Form of Senior Secured Tranche B Note of JPI Commercial, LLC.
4.5D	Form of Common Stock Warrant of the Registrant.
4.5E#	Registration Rights Agreement, dated as of March 17, 2008, by and between the Registrant and the other parties named therein.
10.1+	Form of Indemnification Agreement between the Registrant and its officers and directors.(3)
10.2+	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Bruce C Cozadd.(8)
10.3+	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Samuel R Saks.(8)
10.4+	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Robert M Myers.(8)
10.5+	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Matthew K Fust.(8)
10.6+	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Carol A Gamble.(8)
10.7+	Employment Agreement, dated as of February 18, 2004, by and between the Registrant and Janne L T Wissel.(8)
10.8+	Stock Purchase Agreement, dated as of September 24, 2004, by and between the Registrant and Alan Sebulsky.(8)
10.9+	Common Stock Purchase Agreement, dated as of March 20, 2003, by and between the Registrant and Bruce C Cozadd.(8)
10.10+	Stock Restriction Agreement, dated as of April 30, 2003, by and between the Registrant and Bruce C Cozadd.(8)

Exhibit Number	Description of Document
10.11+	Amendment to Stock Restriction Agreement, dated as of October 30, 2003, by and between the Registrant and Bruce C Cozadd.(8)
10.12+	Common Stock Purchase Agreement, dated as of October 30, 2003, by and between the Registrant and Bruce C Cozadd.(8)
10.13+	Common Stock Purchase Agreement, dated as of March 20, 2003, by and between the Registrant and Samuel R Saks.(8)
10.14+	Stock Restriction Agreement, dated as of April 30, 2003, by and between the Registrant and Samuel R Saks.(8)
10.15+	Amendment to Stock Restriction Agreement, dated as of October 30, 2003, by and between the Registrant and Samuel R Saks.(8)
10.16+	Amended and Restated Stock Purchase Agreement, dated as of April 30, 2003, by and between the Registrant and Robert M Myers.(8)
10.17+	Amendment No. 1 to Amended and Restated Stock Purchase Agreement, dated as of December 18, 2003, by and between the Registrant and Robert M Myers.(8)
10.18+	Common Stock Purchase Agreement, dated as of January 9, 2004, by and between the Registrant and Robert M Myers.(8)
10.19+	Amended and Restated Stock Purchase Agreement, dated as of April 30, 2003, by and between the Registrant and Matthew K Fust.(8)
10.20+	Amended and Restated Stock Purchase Agreement, dated as of April 30, 2003, by and between the Registrant and Carol A Gamble.(8)
10.21+	2003 Equity Incentive Plan, as amended.(3)
10.22+	Form of Option Exercise and Stock Purchase Agreement and Forms of Grant Notices under the 2003 Equity Incentive Plan.(3)
10.23+	2007 Equity Incentive Plan.(3)
10.24+	Form of Option Agreement and Form of Option Grant Notice under the 2007 Equity Incentive Plan.(9)
10.25+	2007 Non-Employee Directors Stock Option Plan.(3)
10.26+	Form of Stock Option Agreement and Form of Option Grant Notice under the 2007 Non-Employee Directors Stock Option Plan.(3)
10.27+	2007 Employee Stock Purchase Plan.(3)
10.28+	Form of 2007 Employee Stock Purchase Plan Offering Document.(3)
10.29+	Jazz Pharmaceuticals, Inc. Cash Bonus Plan.(8)
10.30†	Asset Purchase Agreement, dated as of October 4, 2004, by and among the Registrant, Glaxo Group Limited and SmithKline Beecham Corporation dba GlaxoSmithKline.(10)
10.31	Sodium Gamma Hydroxybutyrate Development and Supply Agreement, dated as of November 6, 1996, by and between Orphan Medical, Inc. and Lonza, Inc.(9)
10.32	Amendment No. 1 to Sodium Gamma Hydroxybutyrate Development and Supply Agreement, dated as of February 7, 2005, by and between Orphan Medical, Inc. and Lonza, Inc.(9)
10.33†	Amended and Restated Services Agreement, dated as of May 31, 2005, by and between Orphan Medical, Inc. and Express Scripts Specialty Distribution Services, Inc.(11)

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Exhibit Number	Description of Document
10.34†	Consent and Addendum to Amended and Restated Master Services Agreement, dated as of June 1, 2006, by and between the Registrant and Express Scripts Specialty Distribution Services, Inc.(11)
10.35†	Addendum No. 2 to Amended and Restated Master Services Agreement, dated as of June 22, 2006, by and between the Registrant and Express Scripts Specialty Distribution Services, Inc.(11)
10.36†	Addendum No. 3 to Amended and Restated Master Services Agreement, dated as of August 17, 2006, by and between the Registrant and Express Scripts Specialty Distribution Services, Inc.(11)
10.41†	Amended and Restated Xyrem License and Distribution Agreement, dated as of June 30, 2006, by and between the Registrant and UCB Pharma Limited.(10)
10.42†	License Agreement, dated as of January 31, 2007, by and between the Registrant and Solvay Pharmaceuticals, Inc.(10)
10.43	Supply Agreement, dated as of January 31, 2007, by and between the Registrant and Solvay Pharmaceuticals, Inc.(9)
10.44	Trademark License Agreement, dated as of January 31, 2007, by and between the Registrant and Solvay Pharmaceuticals, Inc.(9)
10.45	Assignment, Assumption and Consent, dated as of January 31, 2007, by and among the Registrant, Solvay Pharmaceuticals, Inc. and Elan Pharma International Limited.(11)
10.46†	License Agreement, dated as of December 22, 1997, by and between Solvay Pharmaceuticals, Inc. and Elan Corporation, plc.(10)
10.47†	Amendment to License Agreement, dated as of March 1, 1999, by and between Solvay Pharmaceuticals, Inc. and Elan Corporation, plc.(11)
10.48†	Letter Amendment No. 2 to License Agreement, dated April 13, 2000, by and between Solvay Pharmaceuticals, Inc and Elan Pharmaceutical Technologies.(11)
10.49†	Amendment Agreement No. 3 to License Agreement, dated as of November 7, 2006, by and between Solvay Pharmaceuticals, Inc. and Elan Corporation plc.(10)
10.50†	Xyrem Manufacturing Services and Supply Agreement, dated as of March 13, 2007, by and between the Registrant and Patheon Pharmaceuticals, Inc.(10)
10.51†	Quality Agreement, dated as of March 13, 2007, by and between the Registrant and Patheon Pharmaceuticals, Inc.(11)
10.52	Commercial Lease, dated as of June 2, 2004, by and between the Registrant and The Board of Trustees of the Leland Stanford Junior University.(11)
10.53	Sublease Agreement, dated as of February 25, 2007, by and between Xerox Corporation and the Registrant.(11)
10.54	Amendment No. 2 to Sodium Gamma Hydroxybutyrate Development and Supply Agreement, dated as of March 30, 2007, by and between Registrant and Lonza, Inc.(9)
10.55+	Directors Deferred Compensation Plan.(3)
10.56+	Non-Employee Director Compensation Arrangements.(3)
10.57A	Civil Settlement Agreement, dated July 13, 2007, among the United States of America acting through the entities named therein, the Registrant and Orphan Medical, Inc.(12)
10.57B	Non-Prosecution Agreement, dated July 13, 2007, between the United States Attorney's Office for the Eastern District of New York and the Registrant.(12)
10.57C	Plea Agreement, dated July 13, 2007, between the United States Attorney for the Eastern District of New York and Orphan Medical, Inc.(12)

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Exhibit Number	Description of Document
10.57D	Corporate Integrity Agreement, dated July 13, 2007, between the Office of Inspector General of the Department of Health and Human Services and the Registrant.(12)
10.58+	Amended Executive Change in Control and Severance Benefit Plan.(1)
10.59+	Form of Amendment to Employment Agreement, by and between the Registrant and each of Bruce Cozadd, Samuel Saks, M.D., Robert Myers, Matthew Fust, Carol Gamble and Janne Wissel.(1)
10.60+	Form of Letter, amending outstanding options granted under the Registrant's 2003 Equity Incentive Plan.(1)
10.61+	Non-Employee Director Compensation Arrangements, as modified on July 18, 2007.(1)
10.62+	Amendment No. 2 to Employment Agreement, effective on September 1, 2007, by and between the Registrant and Bruce C. Cozadd.(13)
10.63†	Addendum No. 4 to Amended and Restated Master Services Agreement, dated as of July 6, 2007, by and between the Registrant and Express Scripts Specialty Distribution Services, Inc.(13)
10.64+	Form of Restricted Stock Unit Award under the Registrant's 2007 Equity Incentive Plan.(13)
10.65+	Non-Employee Director Compensation Arrangements, as modified on December 18, 2007.
10.66#	Amendment Number 4 to Development, License and Supply Agreement, dated as of October 26, 2007, by and between the Registrant and Elan Pharma International, Inc.
10.67#	Addendum No. 5 to Amended and Restated Master Services Agreement, dated as of October 5, 2007, by and among the Registrant, Express Scripts Specialty Distribution Services, Inc. and Orphan Medical, Inc.
10.68	Amendment No. 1 to Amended and Restated Xyrem License and Distribution Agreement, dated as of December 21, 2007, by and between the Registrant and UCB Pharma Limited.
10.69#	Amendment No. 1 to License Agreement, dated as of March 12, 2008, by and between the Registrant and Solvay Pharmaceuticals, Inc.
21.1	Subsidiaries of the Registrant.
23.1	Consent of Independent Registered Public Accounting Firm.
24.1	Power of Attorney (included in the signature page hereto).
31.1	Certification of Chief Executive Officer pursuant to Rules 13a-14(a) and 15d-14(a) promulgated under the Securities Exchange Act of 1934, as amended.
31.2	Certification of Chief Financial Officer pursuant to Rules 13a-14(a) and 15d-14(a) promulgated under the Securities Exchange Act of 1934, as amended.
32.1	Certifications of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.*

+ Indicates management contract or compensatory plan.

Confidential treatment has been requested with respect to certain portions of this exhibit. Omitted portions have been filed separately with the Securities and Exchange Commission.

† Confidential treatment has been granted for portions of this exhibit. Omitted portions have been filed separately with the Securities and Exchange Commission.

(1) Incorporated herein by reference to the same numbered exhibit to the Registrant's quarterly report on Form 10-Q (File No. 333-33500) for the period ended June 30, 2007, as filed with the SEC on August 10, 2007.

(2) Incorporated herein by reference to Exhibit 3.4 to the Registrant's registration statement on Form S-1, as amended (File No. 333- 141164), as filed with the SEC on May 17, 2007.

(3) Incorporated herein by reference to the same numbered exhibit to the Registrant's registration statement on Form S-1, as amended (File No. 333-141164), as filed with the SEC on May 17, 2007.

(4) Incorporated herein by reference to Exhibit 4.3 to the Registrant's quarterly report on Form 10-Q (File No. 333-33500) for the period ended June 30, 2007, as filed with the SEC on August 10, 2007.
(5) Incorporated by reference to Exhibit 4.4 to the Registrant's registration statement on Form S-1 (File No. 333-141164), as filed with the SEC on March 9, 2007.
(6) Incorporated by reference to Exhibit 4.5 to the Registrant's registration statement on Form S-1 (File No. 333-141164), as filed with the SEC on March 9, 2007.
(7) Incorporated by reference to Exhibit 4.6 to the Registrant's registration statement on Form S-1 (File No. 333-141164), as filed with the SEC on March 9, 2007.
(8) Incorporated by reference to the same numbered exhibit to the Registrant's registration statement on Form S-1 (File No. 333-141164), as filed with the SEC on March 9, 2007.
(9) Incorporated herein by reference to the same numbered exhibit to the Registrant's registration statement on Form S-1, as amended (File No. 333-141164), as filed with the SEC on May 24, 2007.
(10) Incorporated herein by reference to the same numbered exhibit to the Registrant's registration statement on Form S-1, as amended (File No. 333-141164), as filed with the SEC on May 31, 2007.
(11) Incorporated herein by reference to the same numbered exhibit to the Registrant's registration statement on Form S-1, as amended (File No. 333-141164), as filed with the SEC on March 27, 2007.
(12) Incorporated herein by reference to the same numbered exhibit to the Registrant's current report on Form 8-K, filed with the SEC on July 18, 2007.
(13) Incorporated herein by reference to the same numbered exhibit to the Registrant's quarterly report on Form 10-Q (File No. 000-33500) for the period ended September 30, 2007, as filed with the SEC on November 9, 2007.
* The certifications attached as Exhibit 32.1 accompany this Annual Report on Form 10-K pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, and shall not be deemed "filed" by the Registrant for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.

JAZZ PHARMACEUTICALS, INC.

WAIVER AND AMENDMENT AGREEMENT

THIS WAIVER AND AMENDMENT AGREEMENT (the "***Agreement***") is made effective as of March 12, 2008 (the "***Effective Date***"), by and among **JAZZ PHARMACEUTICALS, INC.,** a Delaware corporation (the "***Company***"), and the undersigned Holders (the "***Consenting Holders***").

RECITALS

WHEREAS, the Company and the Investors are parties to that certain Third Amended and Restated Investor Rights Agreement made effective as of June 6, 2007 (the "***Investor Rights Agreement***").

WHEREAS, the Consenting Holders acknowledge that the Company expects to enter into a Registration Rights Agreement in substantially the form attached hereto as **Exhibit A** (the "***Registration Rights Agreement***") with certain purchasers (the "***Purchasers***") of senior secured notes and warrants to purchase shares of the Company's Common Stock (the "***Warrant Shares***") pursuant to the terms of a Senior Secured Note and Warrant Purchase Agreement by and among the Company, JPI Commercial, LLC and the Purchasers (the "***Note and Warrant Purchase Agreement***").

WHEREAS, the Consenting Holders acknowledge that pursuant to the terms of the Registration Rights Agreement, the Company will be obligated to prepare and file a registration statement (the "***Resale Registration Statement***") under the Securities Act of 1933, as amended (the "***Securities Act***"), registering the resale of the Warrant Shares from time to time by the Purchasers (or any subsequent transferees or assignees thereof). As used in this Agreement, (i) the term "***Warrant Shares***" also includes any shares of the Company's Common Stock issued as (or issuable upon the conversion or exercise of any warrant, right or other security that is issued as) a dividend or other distribution with respect to, or in exchange for, or in replacement of, the Warrant Shares; and (ii) the term "***Resale Registration Statement***" also includes (A) any registration statement filed by the Company under the Securities Act pursuant to the terms of the Registration Rights Agreement and (B) any amendments or supplements to any of such registration statements.

WHEREAS, pursuant to Section 4 of the Investor Rights Agreement, the Holders have under certain circumstances the right to be notified if the Company decides to Register any of its Common Stock and to include certain Registrable Securities held by such Holders in such Registration (and any related qualification under Blue Sky laws or other compliance), and in any underwriting involved therein (the "***Piggyback Registration Rights***").

WHEREAS, pursuant to Section 15.5 of the Investor Rights Agreement, the Company and the Consenting Holders (for and on behalf of all Holders and all Investors) wish to (i) amend the Investor Rights Agreement as set forth below; and (ii) waive each of (A) the Piggyback Registration Rights in connection with the filing of the Resale Registration Statement and any offerings made pursuant thereto and (B) the provisions of Section 10 of the Investor Rights Agreement with respect to the entering into of the Registration Rights Agreement by the Company and the grant to the Purchasers of Registration rights pursuant thereto.

WHEREAS, the Consenting Holders are holders of at least 60% of the Registrable Securities held by all Holders and, together with the Company, have the right, pursuant to Section 15.5 of the Investor Rights Agreement, to amend the Investor Rights Agreement and to waive certain provisions thereof.

NOW, THEREFORE, in consideration of the mutual agreements, covenants and considerations contained herein, the Company and the Consenting Holders agree as follows:

AGREEMENT

1. WAIVERS.

1.1 The Consenting Holders hereby waive, for and on behalf of all Holders and all Investors, the provisions of Section 10 of the Investor Rights Agreement with respect to the entering into of the Registration Rights Agreement by the Company and the grant to the Purchasers of Registration rights pursuant thereto. In furtherance of the foregoing, the Consenting Holders hereby provide, for and on behalf of all Holders and all Investors, express written consent to the entering into by the Company of the Registration Rights Agreement and to the consummation by the Company of the transactions contemplated thereby, including but not limited to the grant of Registration rights to the Purchasers and the filing of the Resale Registration Statement pursuant thereto.

1.2 The Consenting Holders hereby further waive, for and on behalf of all Holders and all Investors, (i) any and all Piggyback Registration Rights in connection with the filing of, and any offerings made pursuant to, the Resale Registration Statement and (ii) any rights to any notices with respect to the foregoing under the Investor Rights Agreement.

1.3 The foregoing waivers in Sections 1.1 and 1.2 are irrevocable and shall be effective with respect to each Holder and each Investor, as well as all affiliates, successors, heirs, executors, administrators and assigns of each such Holder and Investor.

2. AMENDMENTS TO INVESTOR RIGHTS AGREEMENT.

2.1 Section 1.1. Section 1.1 of the Investor Rights Agreement is hereby amended and restated to read in full as follows:

"1.1 "***Affiliate***" shall mean, with respect to any Person, a Person directly or indirectly controlling, controlled by, or under common control with, such Person; provided, however, that, except for purposes of Section 11.2, no Series BB Holder shall be considered an Affiliate of any other Person except to the extent, and only to the extent, that such Series BB Holder holds shares of Common Stock issued upon conversion of the Convertible Securities other than shares of Common Stock issued upon exercise of the Series BB Warrants."

2.2 Section 1.19. Section 1.19 of the Investor Rights Agreement is hereby amended and restated to read in full as follows:

"1.19 "***Registrable Securities***" shall mean (i) any Common Stock now owned or hereafter acquired by a Manager, (ii) any Common Stock issued upon conversion of the Convertible Securities, (iii) any Common Stock issued upon exercise of the Series BB Warrants, and (iv) any Common Stock issued (or issuable upon conversion or exercise of any warrant, right or other security which is issued) upon stock dividends, subdivisions, stock splits, recapitalization, merger or other distributions with respect to, or in exchange for, or in replacement of, such securities identified in clauses (i), (ii) and (iii) and this clause (iv), provided, however, that no shares of Common Stock shall be deemed Registrable Securities for purposes of this Agreement to the extent that such shares of Common Stock (A) have been sold to the public through a Registration Statement or

pursuant to Rule 144; (B) have been sold, transferred or otherwise disposed by a person in a transaction in which its rights under this Agreement were not assigned; or (C) are held by a Holder or Investors whose rights to cause the Company to register securities pursuant to this Agreement have terminated in accordance with Section 6 of this Agreement."

2.3 Section 1.23. Section 1.23 of the Investor Rights Agreement is hereby amended and restated to read in full as follows:

"1.23 "***Series BB Holder***" means a holder of (i) warrants originally exercisable for shares of the Company's Series BB Preferred Stock, which such warrants (A) were originally issued pursuant to a Senior Secured Note and Warrant Purchase Agreement, dated June 24, 2005, by and among the Company and certain of the Investors and (B) automatically became exercisable for shares of Common Stock in connection with the Initial Public Offering (the "***Series BB Warrants***"); or (ii) shares of Common Stock issued upon exercise of the Series BB Warrants."

2.4 Section 1.24. Section 1.24 of the Investor Rights Agreement is hereby amended and restated to read in full as follows:

"1.24 "***Special Registration Statement***" shall mean (i) any registration statement relating to any employee benefit plan; (ii) with respect to any corporate reorganization or transaction under Rule 145 of the Securities Act, any registration statement related to the issuance or resale of securities issued in such a transaction; (iii) any registration statement related to stock issued upon conversion of debt securities; (iv) any Registration effected pursuant to the terms of the Registration Rights Agreement; or (v) any WKSI Shelf Registration Statement that the Company's Board of Directors shall, in its sole discretion, designate as a "Special Registration Statement" for purposes of this Agreement."

2.5 Section 1.26. Section 1.26 is hereby added to the Investor Rights Agreement and shall read in full as follows:

"1.26 "***Purchase Agreement***" means that certain Stock Purchase Agreement, dated as of January 27, 2004, by and among the Company and certain of the Investors, as amended from time to time in accordance with the terms thereof."

2.6 Section 1.27. Section 1.27 is hereby added to the Investor Rights Agreement and shall read in full as follows:

"1.27 "***Registration Rights Agreement***" means that certain Registration Rights Agreement, dated as of March 17, 2008, by and among the Company and the purchasers listed on Schedule A thereto, as the same may be amended from time to time in accordance with the terms thereof."

2.7 Section 12. Section 12 of the Investor Rights Agreement is hereby amended and restated to read in full as follows:

"12. ***Market Standoff***. Each Holder hereby agrees that, if so requested by the Company and the Underwriter's Representative (if any), such Holder shall not sell, make any short sale of, loan, grant any option for the purchase of, or otherwise transfer or dispose of any Registrable Securities or other securities (except for the Warrant Shares and the warrants

issued pursuant to the Note and Warrant Purchase Agreement) of the Company ("Market Standoff") without the prior written consent of the Company and the Underwriter's Representative for such period of time commencing with the date the Company provides notice to the Holders of a proposed follow-on offering pursuant to Section 4.1 or otherwise (including Registrations initiated pursuant to Section 3) and ending 90 days after the effective date of the Registration Statement with respect to the follow-on offering or, in the event of a shelf registration, the date of the prospectus supplement for such follow-on offering, as may be requested by the Underwriter's Representative; provided, however, that a Holder shall not be required to agree to a Market Standoff for a period of time that commences less than 30 days after the expiration of another period of time during which the Holder has agreed to a Market Standoff. The obligations of the Holders under this Section 12 shall be conditioned upon similar agreements being in effect with each other stockholder who is an officer or director. In order to enforce the covenants set forth in this Section 12, the Company may impose stop-transfer instructions with respect to the securities of the Holder (and the securities of every other Person subject to the restrictions in this Section 12)."

3. MISCELLANEOUS.

3.1 Defined Terms. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Investor Rights Agreement.

3.2 Full Power and Authority. Each Consenting Holder represents and warrants to the Company that (i) such Consenting Holder has the full right, power and authority to execute and deliver this Agreement, and (ii) this Agreement has been duly executed and delivered by such Consenting Holder and constitutes the legal, valid and binding obligation of such Consenting Holder enforceable in accordance with its terms, except (A) as such enforcement is limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally and (B) for limitations imposed by general principles of equity.

3.3 Effect of Agreement. Except as modified by the terms of this Agreement, the terms and provisions of the Investor Rights Agreement shall remain in full force and effect. Other than as stated in this Agreement, this Agreement shall not operate as a waiver of any condition or obligation imposed on the parties under the Investor Rights Agreement. In the event of any conflict, inconsistency, or incongruity between any provision of this Agreement and any provision of the Investor Rights Agreement, the provisions of this Agreement shall govern and control. This Agreement shall not be changed or modified orally, but only by an instrument in writing signed by the parties hereto.

3.4 Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California excluding those laws that direct the application of the laws of another jurisdiction.

3.5 Successors and Assigns. The provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto and each Holder and Investor, and shall be enforceable by the Company or any Holder or Investor.

3.6 Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one instrument.

3.7 Certain Confidential Information. Certain of the information contained in this Agreement is confidential and has not been publicly disclosed by the Company, including the transactions contemplated by the Note and Warrant Purchase Agreement and the contemplated filing of the Resale Registration Statement pursuant to the terms of the Registration Rights Agreement (the "***Confidential Information***"). Accordingly, each of the undersigned Holders agrees to maintain the Confidential Information in confidence until such time as the Confidential Information has been publicly disclosed by the Company.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have executed this **AGREEMENT** effective as of the Effective Date.

COMPANY:

JAZZ PHARMACEUTICALS, INC.

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

IN WITNESS WHEREOF, the undersigned have executed this **AGREEMENT** effective as of the Effective Date.

INVESTORS:

KKR JP LLC

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

KKR JP III LLC

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

IN WITNESS WHEREOF, the undersigned have executed this **AGREEMENT** effective as of the Effective Date.

INVESTORS:

PROSPECT VENTURE PARTNERS II, L.P.

By: Prospect Management Co. II, LLC,
its General Partner

Signature: /s/ James Tananbaum
Print Name: James Tananbaum
Title: Managing Director

PROSPECT ASSOCIATES II, L.P.

By: Prospect Management Co. II, LLC,
its General Partner

Signature: /s/ James Tananbaum
Print Name: James Tananbaum
Title: Managing Director

IN WITNESS WHEREOF, the undersigned have executed this **AGREEMENT** effective as of the Effective Date.

INVESTORS:

VERSANT VENTURE CAPITAL II, L.P.

By: Versant Ventures II, L.L.C.,
its General Partner

Signature: /s/ Samuel D. Colella
Print Name: Samuel D. Colella
Title: Managing Director

VERSANT SIDE FUND II, L.P.

By: Versant Ventures II, L.L.C.,
its General Partner

Signature: /s/ Samuel D. Colella
Print Name: Samuel D. Colella
Title: Managing Director

VERSANT AFFILIATES FUND II-A, L.P.

By: Versant Ventures II, L.L.C.,
its General Partner

Signature: /s/ Samuel D. Colella
Print Name: Samuel D. Colella
Title: Managing Director

IN WITNESS WHEREOF, the undersigned have executed this **AGREEMENT** effective as of the Effective Date.

INVESTORS:

THOMA CRESSEY FUND VII, L.P.

By: TC Partners VII, L.P.
Its: General Partner

By: Thoma Cressey Bravo Inc.
Its: General Partner

Signature: /s/ Bryan Cressey
Print Name: Bryan Cressey
Title: Partner

THOMA CRESSEY FRIENDS FUND VII, L.P.

By: TC Partners VII, L.P.
Its: General Partner

By: Thoma Cressey Bravo Inc.
Its: General Partner

Signature: /s/ Bryan Cressey
Print Name: Bryan Cressey
Title: Partner

SIGNATURE PAGE TO
WAIVER AND AMENDMENT AGREEMENT

IN WITNESS WHEREOF, the undersigned have executed this **AGREEMENT** effective as of the Effective Date.

INVESTORS:

JAZZ INVESTORS, L.L.C.

By: Beecken Petty & Company, L.L.C.,
its Manager

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

IN WITNESS WHEREOF, the undersigned have executed this **AGREEMENT** effective as of the Effective Date.

INVESTORS:

/s/ Samuel R. Saks
SAMUEL R. SAKS

/s/ Bruce C. Cozadd
BRUCE C. COZADD

/s/ Robert M. Myers
ROBERT M. MYERS

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

/s/ Matthew K. Fust
MATTHEW K. FUST

/s/ Carol A. Gamble
CAROL A. GAMBLE

SIGNATURE PAGE TO
WAIVER AND AMENDMENT AGREEMENT

FORM OF COMMON STOCK WARRANT

THE SECURITIES REPRESENTED BY THIS WARRANT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH SALE OR DISTRIBUTION MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933, AS AMENDED.

Warrant No.: BB-_____ Number of Shares: _____
Date of Issuance: March 12, 2008 (subject to adjustment)

JAZZ PHARMACEUTICALS, INC. WARRANT NO. BB-__

Common Stock Warrant

This Warrant No. BB-_____ (this "Warrant") of Jazz Pharmaceuticals, Inc., a Delaware corporation (the "Company"), for value received, hereby certifies that _____, the holder of this Warrant, or its registered assigns (the "Registered Holder"), is entitled, subject to the terms set forth below, to purchase from the Company, at any time after the date hereof and on or before the Expiration Date (as defined in Section 6 below), up to _____ shares of Common Stock of the Company ("Common Stock"), at a purchase price of $20.36 per share. The shares purchasable upon exercise of this Warrant and the purchase price per share, as adjusted from time to time pursuant to the provisions of this Warrant, are hereinafter referred to as the "Warrant Stock" and the "Purchase Price," respectively.

This Warrant was part of a series of warrants to purchase in the aggregate 8,695,652 shares of the Company's Series BB Preferred Stock (the Warrant together such other warrants collectively referred to herein as the "Series BB Warrants") originally issued pursuant to that certain Senior Secured Note and Warrant Purchase Agreement, dated June 24, 2005, by and among the Company and the initial holders of the Series BB Warrants (the "Purchase Agreement"). On June 6, 2007, the Company completed an initial public offering of shares of Common Stock (the "IPO"). In connection with the IPO, (a) the Company completed a 1-for-11.06701 reverse stock split of its Common Stock and Preferred Stock and (b) all shares of the Company's Preferred Stock were converted into shares of Common Stock immediately prior to the closing of the IPO (the "Adjustment Events"). As a result of the Adjustment Events, the Series BB Warrants became exercisable for an aggregate of 785,728 shares of Common Stock at a purchase price of $20.36 per share (the Series BB Warrants, as so adjusted, collectively referred to herein as the "Common Stock Warrants"). In connection with the issuance of this Warrant to the Registered Holder, this Warrant has been appropriately modified from the form of the original Series BB Warrants to give effect to the Adjustment Events.

1. **Exercise**.

(a) **Manner of Exercise.** This Warrant may be exercised by the Registered Holder, in whole or in part, by surrendering this Warrant, with the exercise form appended hereto as Exhibit A duly executed by such Registered Holder, at the principal office of the Company, or at such other office or agency as the Company may designate, accompanied by payment in full of the Purchase Price payable in respect of the number of shares of Warrant Stock purchased upon such exercise unless exercised pursuant to the Net Issue Exercise provisions of Section 1(c) below. The Purchase Price may be paid by cash, check, or wire transfer.

(b) **Effective Time of Exercise.** Each exercise of this Warrant shall be deemed to have been effected immediately prior to the close of business on the day on which this Warrant shall have been surrendered to the Company as provided in Section 1(a) above. At such time, the person or persons in whose name or names any certificates for Warrant Stock shall be issuable upon such exercise as provided in Section 1(d) below shall be deemed to have become the holder or holders of record of the Warrant Stock represented by such certificates.

(c) **Net Issue Exercise.**

(i) In lieu of exercising this Warrant in the manner provided above in Section 1(a), the Registered Holder may elect to receive shares equal to the value of this Warrant (or the portion of this Warrant being canceled) by surrender of this Warrant at the principal office of the Company together with notice of such election on the exercise form appended hereto as Exhibit A duly executed by such Registered Holder, in which event the Company shall issue to such Registered Holder a number of shares of Warrant Stock computed using the following formula:

$$X = \frac{Y\,(A-B)}{A}$$

Where X = The number of shares of Warrant Stock to be issued to the Registered Holder.

Y = The number of shares of Warrant Stock purchasable under this Warrant (at the date of such calculation).

A = The fair market value of one share of Warrant Stock (at the date of such calculation).

B = The Purchase Price (as adjusted through the date of such calculation).

(ii) For purposes of this Section 1(c), the fair market value of Warrant Stock on the date of calculation shall mean with respect to each share of Warrant Stock:

(A) if the Common Stock is traded on a securities exchange, including The NASDAQ Stock Market, the fair market value shall be deemed to be the closing price on the date of calculation (or, if there are no sales for such date, then on the last date on which there were sales); or

(B) if the Common Stock is actively traded over the counter, the fair market value shall be deemed to be the closing bid or sales price (whichever is applicable) on the date of calculation (or, if the date of calculation is not a trading day, the last trading day prior to the date of calculation); or

(C) if neither (A) nor (B) is applicable, the fair market value of Warrant Stock shall be determined in good faith by the Company's Board of Directors.

(d) **Delivery to Registered Holder.** As soon as practicable after the exercise of this Warrant in whole or in part, and in any event within ten (10) days thereafter, the Company at its expense will cause to be issued in the name of, and delivered to, the Registered Holder, or as such Registered Holder (upon payment by such Registered Holder of any applicable transfer taxes) may direct:

(i) a certificate or certificates for the number of shares of Warrant Stock to which such Registered Holder shall be entitled, and

(ii) in case such exercise is in part only, a new warrant or warrants (dated the date hereof) of like tenor, calling in the aggregate on the face or faces thereof for the number of shares of Warrant Stock equal (without giving effect to any adjustment therein) to the number of such shares called for on the face of this Warrant minus the number of such shares purchased by the Registered Holder upon such exercise as provided in Section 1(a) or 1(c) above.

2. **Adjustments.**

(a) **Stock Splits and Dividends.** If the outstanding shares of Warrant Stock shall be subdivided into a greater number of shares or a dividend in Warrant Stock shall be paid in respect of Warrant Stock, the Purchase Price in effect immediately prior to such subdivision or at the record date of such dividend shall simultaneously with the effectiveness of such subdivision or immediately after the record date of such dividend be proportionately reduced. If outstanding shares of Warrant Stock shall be combined into a smaller number of shares, the Purchase Price in effect immediately prior to such combination shall, simultaneously with the effectiveness of such combination, be proportionately increased. When any adjustment is required to be made in the Purchase Price, the number of shares of Warrant Stock purchasable upon the exercise of this Warrant shall be changed to the number determined by dividing (i) an amount equal to the number of shares issuable upon the exercise of this Warrant immediately prior to such adjustment, multiplied by the Purchase Price in effect immediately prior to such adjustment, by (ii) the Purchase Price in effect immediately after such adjustment.

(b) **Reclassification, Etc.** In case there occurs any reclassification or change of the outstanding securities of the Company or of any reorganization of the Company (or any other corporation the stock or securities of which are at the time receivable upon the exercise of this Warrant) or any similar corporate reorganization on or after the date hereof, then and in each such case the Registered Holder, upon the exercise hereof at any time after the consummation of

such reclassification, change, or reorganization, shall be entitled to receive, in lieu of the stock or other securities and property receivable upon the exercise hereof prior to such consummation, the stock or other securities or property to which such Registered Holder would have been entitled upon such consummation if such Registered Holder had exercised this Warrant immediately prior thereto, all subject to further adjustment pursuant to the provisions of this Section 2.

(c) **Adjustment Certificate.** When any adjustment is required to be made in the Warrant Stock or the Purchase Price pursuant to this Section 2, the Company shall promptly mail to the Registered Holder a certificate setting forth (i) a brief statement of the facts requiring such adjustment, (ii) the Purchase Price after such adjustment and (iii) the kind and amount of stock or other securities or property into which this Warrant shall be exercisable after such adjustment.

3. **Transfers.**

(a) **Unregistered Security.** Each holder of this Warrant acknowledges that this Warrant and the Warrant Stock have not been registered under the Securities Act of 1933, as amended (the "Securities Act"), and agrees that in no event will it dispose of all or any portion of this Warrant or the Warrant Stock unless and until (a) it has complied with the provisions of Section 3(b) below, and (b) if reasonably requested by the Company, the Registered Holder shall have furnished the Company with an opinion of counsel reasonably satisfactory in form and substance to the Company and the Company's counsel to the effect that (x) such disposition will not require registration under the Securities Act and (y) appropriate action necessary for compliance with the Securities Act and any applicable state, local, or foreign law has been taken. Without limiting the foregoing, the Registered Holder, by accepting this Warrant, agrees that it may transfer this Warrant (or any portion hereof) only to one of its Affiliates (as defined in the Purchase Agreement) or to any other person or entity that is acceptable to the Company, provided that, in the case of any transfer, the applicable transferee must agree in writing to be subject to the terms of this Warrant and the Investor Rights Agreement (as such terms are defined below); provided, however, that, except with respect to transfers to its Affiliates, the Registered Holder hereby covenants not to effect such transfer if such transfer either would invalidate the securities laws exemptions pursuant to which this Warrant was originally offered and sold or would itself require registration and/or qualification under the Securities Act or applicable state securities laws. Each certificate evidencing this Warrant transferred as provided above shall bear an appropriate restrictive legend substantially to the foregoing effect.

For purposes of this Warrant, "Investor Rights Agreement" means that certain Third Amended and Restated Investor Rights Agreement, dated as of June 6, 2007, by and among the Company, the investors in the Company's Series A Preferred Stock, Series B Preferred Stock and Series B Prime Preferred Stock, the holders of the Common Stock Warrants (and any shares issued upon exercise of such warrants) and certain other holders of Common Stock.

(b) **Transferability.** Subject to the provisions of this Section 3 and the provisions of Section 5, this Warrant and all rights hereunder are transferable, in whole or in part, upon surrender of the Warrant with a properly executed assignment in the form of Exhibit B hereto at the principal office of the Company. Any purported transfer of all or any portion of this Warrant in violation of the provisions of this Warrant shall be null and void.

(c) **Warrant Register.** The Company will maintain a register containing the names and addresses of the Registered Holders of this Warrant and all other Common Stock Warrants. Until any transfer of this Warrant is made in the warrant register, the Company may treat the Registered Holder of this Warrant as the absolute owner hereof for all purposes; provided, however, that if this Warrant is properly assigned in blank, the Company may (but shall not be required to) treat the bearer hereof as the absolute owner hereof for all purposes, notwithstanding any notice to the contrary. Any Registered Holder may change such Registered Holder's address as shown on the warrant register by written notice to the Company requesting such change.

4. **Representations and Warranties of the Registered Holder.** The Registered Holder hereby represents and warrants to the Company that:

(a) **Authorization.** The Registered Holder has full power and authority to enter into, and perform its obligations under, this Warrant. This Warrant, when executed and delivered by the Registered Holder, will constitute a valid and legally binding obligation of the Registered Holder, enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, and any other laws of general application affecting enforcement of creditors' rights generally, and as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

(b) **Purchase Entirely for Own Account.** This Warrant is issued to the Registered Holder in reliance upon the Registered Holder's representation to the Company, which by the Registered Holder's acceptance of this Warrant, the Registered Holder hereby confirms, that the Warrant to be acquired by the Registered Holder and the Warrant Stock (collectively, the "Securities") will be acquired for investment for the Registered Holder's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that the Registered Holder has no present intention of selling, granting any participation in, or otherwise distributing the same. By accepting this Warrant, the Registered Holder further represents that the Registered Holder does not presently have any contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participations to such person or to any third person, with respect to any of the Securities. The Registered Holder has not been formed for the specific purpose of acquiring the Securities.

(c) **Disclosure of Information.** The Registered Holder has had an opportunity to discuss the Company's business, management, financial affairs and the terms and conditions of the offering of the Securities with the Company's management and has had an opportunity to review the Company's facilities. The Registered Holder understands that such discussions, as well as any written information delivered by the Company to the Registered Holder, were intended to describe the aspects of the Company's business which it believes to be material.

(d) **Restricted Securities.** The Registered Holder understands that the Securities have not been, and will not be, registered under the Securities Act, by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of the Registered Holder's representations as expressed herein. The Registered Holder understands that

the Securities are "restricted securities" under applicable U.S. federal and state securities laws and that, pursuant to these laws, the Registered Holder must hold the Securities indefinitely unless they are registered with the Securities and Exchange Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available. The Registered Holder acknowledges that the Company has no obligation to register or qualify the Securities for resale. The Registered Holder further acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including, but not limited to, the time and manner of sale, the holding period for the Securities, and on requirements relating to the Company which are outside of the Registered Holder's control, and which the Company is under no obligation and may not be able to satisfy.

(e) **Accredited Investor.** The Registered Holder is an "accredited investor" as defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

5. **Market Standoff.**

(a) **Market Standoff.** The Registered Holder hereby agrees that, if so requested by the Company and the Underwriter's Representative (as defined below), if any, the Registered Holder shall not sell, make any short sale of, loan, grant any option for the purchase of, or otherwise transfer or dispose of this Warrant or other securities of the Company ("Market Standoff") without the prior written consent of the Company and the Underwriter's Representative for such period of time (a) not to exceed one hundred eighty (180) days following the effective date of a Registration Statement of the Company filed under the Securities Act in the case of the IPO or (b) commencing with the date the Company provides notice to the Registered Holder of a proposed follow-on offering and ending 90 days after the effective date of the Registration Statement or, in the event of a shelf registration, the date of the prospectus for such follow-on offering, as may be requested by the Underwriter's Representative; provided, however, that the Registered Holder shall not be required to agree to a Market Standoff for a period of time that commences less than thirty (30) days after the expiration of another period of time during which the Registered Holder has agreed to a Market Standoff. The obligations of the Registered Holder under this Section 5 shall be conditioned upon similar agreements being in effect with each other stockholder of the Company who is an officer, or director or, with respect only to the Company's initial public offering, greater than 1% stockholder of the Company prior to such initial public offering. For purposes of this Warrant, the "Underwriter's Representative" is the representative the underwriter or underwriters selected for the underwriting of a public offering of the Company's securities.

(b) **Stop-Transfer Instructions.** In order to enforce the covenants set forth in Section 3 and Section 5(a), the Company may impose stop-transfer instructions with respect to the securities of the Registered Holder (and the securities of every other person subject to the restrictions in Section 3 and Section 5(a)).

6. **Termination.** This Warrant (and the right to purchase securities upon exercise hereof) shall terminate on June 24, 2012 (the "Expiration Date").

7. **Notices of Certain Transactions.** In the event that the Company shall propose at any time to:

(a) declare any dividend or distribution upon the Common Stock, whether in cash, property, stock, or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(b) offer for subscription pro rata to the holders of any class or series of its stock any additional shares of stock of any class or series or other rights;

(c) effect any reclassification or recapitalization of the Common Stock or Preferred Stock outstanding involving a change in the Common Stock or Preferred Stock;

(d) merge or consolidate with or into any other partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature; or

(e) sell, lease, or convey all or substantially all its assets, property or business, or to liquidate, dissolve, or wind up the Company; then, in connection with each such event, the Company shall send to the Registered Holder (in accordance with the provisions of Section 23):

(i) at least twenty (20) days' prior written notice of the date on which a record shall be taken for such dividend, distribution or subscription rights (and specifying the date on which the holders of Common Stock shall be entitled thereto) or for determining rights to vote in respect of the matters referred to in (c), (d) and (e) above; and

(ii) in the case of the matters referred to in (c), (d) and (e) above, at least 20 days' prior written notice of the date when the same shall take place (and specifying the date on which the holders of Common Stock shall be entitled to exchange their Common Stock for securities or other property deliverable upon the occurrence of such event or the record date for the determination of such holders if such record date is earlier).

8. **Reservation of Stock.** The Company will at all times reserve and keep available, solely for the issuance and delivery upon the exercise of this Warrant, such shares of Warrant Stock and other stock, securities and property, as from time to time shall be issuable upon the exercise of this Warrant.

9. **Exchange of Warrants.** Upon the surrender by the Registered Holder of any Warrant or Warrants, properly endorsed, to the Company at the principal office of the Company, the Company will, subject to the provisions of Section 3 hereof, issue and deliver to or upon the order of such Registered Holder, at the Company's expense, a new Warrant or Warrants of like tenor, in the name of such Registered Holder, calling in the aggregate on the face or faces thereof for the number of shares of Common Stock called for on the face or faces of the Warrant or Warrants so surrendered.

10. **Replacement of Warrants.** Upon receipt of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of this Warrant and (in the case of loss, theft or destruction) upon delivery of an indemnity agreement (with surety if reasonably required) in an amount reasonably satisfactory to the Company, or (in the case of mutilation) upon surrender and cancellation of this Warrant, the Company will issue, in lieu thereof, a new Warrant of like tenor.

11. **No Rights as Stockholder.** Until the exercise of this Warrant, the Registered Holder of this Warrant shall not have or exercise any rights by virtue hereof as a stockholder of the Company.

12. **Additional Rights.** Upon exercise of this Warrant, the Registered Holder shall have and be entitled to exercise the rights granted to the signatories who are holders of the Common Stock issued upon conversion of the Company's Series BB Preferred Stock under the Investor Rights Agreement. By its receipt of this Warrant, the Registered Holder agrees to be bound by the Investor Rights Agreement.

13. **No Fractional Shares.** No fractional shares of Common Stock will be issued in connection with any exercise hereunder. In lieu of any fractional shares which would otherwise be issuable, the Company shall pay cash equal to the product of such fraction multiplied by the fair market value of one share of Common Stock on the date of exercise, as determined in good faith by the Company's Board of Directors.

14. **Amendment or Waiver.** Any term of the Common Stock Warrants may be amended or waived only by an instrument in writing signed by the Company and the holders of Common Stock Warrants covering at least sixty-five percent (65%) of the number of shares of Common Stock subject to Common Stock Warrants outstanding at the time of such amendment or waiver.

15. **Headings.** The headings in this Warrant are for purposes of reference only and shall not limit or otherwise affect the meaning of any provision of this Warrant.

16. **Governing Law.** This Warrant shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.

17. **Survival of Representations.** Unless otherwise set forth in this Warrant, the warranties, representations and covenants of the Company and the Purchasers contained in or made pursuant to this Warrant shall survive the execution and delivery of this Warrant.

18. **Transfer; Successors and Assigns.** The terms and conditions of this Warrant shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties provided that they have complied with the terms and conditions herein. Nothing in this Warrant, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Warrant, except as expressly provided in this Warrant.

19. **Counterparts.** This Warrant may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

20. **Attorney's Fees.** If any action at law or in equity (including arbitration) is necessary to enforce or interpret the terms of any of this Warrant, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

21. **Severability.** If one or more provisions of this Warrant are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Warrant, (b) the balance of this Warrant shall be interpreted as if such provision were so excluded and (c) the balance of this Warrant shall be enforceable in accordance with its terms.

22. **Delays or Omissions.** No delay or omission to exercise any right, power or remedy accruing to any party under this Warrant, upon any breach or default of any other party under this Warrant, shall impair any such right, power or remedy of such non-breaching or non-defaulting party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Warrant, or any waiver on the part of any party of any provisions or conditions of this Warrant, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Warrant or by law or otherwise afforded to any party, shall be cumulative and not alternative.

23. **Notices.** All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed facsimile if sent during normal business hours of the recipient, or if not, then on the next business day; (iii) one day after deposit with a nationally (or internationally) recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices to the Company shall be sent to the Company's principal place of business. All notices to the Registered Holder shall be sent to the address as set forth on the signature page of this Warrant or at such other address as the Registered Holder may designate pursuant to Section 3(c) by ten (10) days' advance notice to the Company.

24. **Entire Agreement.** This Warrant and the documents and agreements referred to herein (including the Investor Rights Agreement) constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and any and all other written or oral agreements relating to the subject matter hereof existing between the parties hereto are expressly canceled.

JAZZ PHARMACEUTICALS, INC.

By: _____
Name: _____
Title: _____
Address: 3180 Porter Drive
Palo Alto, CA 94304

Fax Number: (650) 496-3781

Accepted and Agreed:

REGISTERED HOLDER

_____

By: _____
Name:
Title
Address:

[Signature Page to Common Stock Warrant]

EXHIBIT A

EXERCISE FORM

To: Jazz Pharmaceuticals, Inc. Dated: _____

The undersigned, pursuant to the provisions set forth in the attached Warrant No. BB-16, hereby irrevocably elects to (a) purchase _____ shares of Common Stock covered by such Warrant and herewith makes payment of $_____, representing the full purchase price for such shares at the price per share provided for in such Warrant, or (b) exercise such Warrant for _____ shares purchasable under the Warrant pursuant to the Net Issue Exercise provisions of Section 1(c) of the Warrant.

The undersigned acknowledges that it has reviewed the representations and warranties contained in Section 4 of the Warrant and by its signature below hereby makes such representations and warranties to the Company as of the date hereof.

By: _____

Name: _____

Title: _____

Name of Entity: _____

EXHIBIT B

ASSIGNMENT FORM

FOR VALUE RECEIVED, _____ hereby sells, assigns and transfers all of the rights of the undersigned transferor under the attached Warrant with respect to the number of shares of Common Stock covered thereby set forth below, unto:

Name of Assignee	Address/Fax Number	No. of Shares

The undersigned transferor represents that it has complied with all of the provisions of the attached Warrant governing the transfer of such Warrant, including without limitation the provisions of Section 3 thereof, and acknowledges that any purported transfer of all or any part of such Warrant in violation of the terms of the attached Warrant shall be null and void.

Dated: _____

By: _____

Name: _____

Title: _____

The undersigned transferee of the attached Warrant acknowledges the limitations on transfer of the attached Warrant, including without limitation those contained in Section 3 thereof, agrees to be bound by the terms of the attached Warrant and the Investor Rights Agreement (as defined in the attached Warrant) to the same extent as if the undersigned transferee were the initial holder of the attached Warrant, and shall deliver to the Company together with this assignment form a counterpart signature page to the Investor Rights Agreement.

Dated: _____

By: _____

Name: _____

Title: _____

Exhibit 4.5A

EXECUTION COPY

JPI COMMERCIAL, LLC

$150,000,000

15% Senior Secured Notes due June 24, 2011

GUARANTEED AND ACCOMPANIED WITH WARRANTS ISSUED BY
JAZZ PHARMACEUTICALS, INC.

SENIOR SECURED NOTE AND WARRANT PURCHASE AGREEMENT

Dated as of March 14, 2008

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

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Dated as of March 14, 2008

TO EACH PURCHASER LISTED ON THE ATTACHED
SCHEDULE A WHO IS A SIGNATORY HERETO (COLLECTIVELY WITH THEIR RESPECTIVE SUCCESSORS AND ASSIGNS, THE "*PURCHASERS*"):

Ladies and Gentlemen:

THIS SENIOR SECURED NOTE AND WARRANT PURCHASE AGREEMENT (this "*Agreement*") is hereby entered into by and among the Purchasers, JAZZ PHARMACEUTICALS, INC., a Delaware corporation (the "*Company*"), and JPI COMMERCIAL, LLC, a Delaware limited liability company (the "*Borrower*"), with reference to the following:

A. The Company has organized the Borrower, a wholly owned Subsidiary of Company, to acquire the Transferred Orphan Assets from Orphan Medical, LLC ("*Orphan*"), a wholly owned Subsidiary of the Company, and to acquire and hold the LUVOX® CR Intellectual Property.

B. The Purchasers have agreed, subject to the terms and conditions hereof, to furnish debt financing to the Borrower by way of the purchase of the Borrower's senior secured notes in order to provide the Company with funds (1) for the acquisition of the LUVOX® CR Assets and the marketing and distribution of LUVOX® CR in the United States, (2) to enable the Company to refinance certain Indebtedness of Orphan owing to the holders of the Orphan Notes, which Indebtedness is guaranteed by the Company and secured by, among other things, certain of the Transferred Orphan Assets, and (3) for general corporate purposes.

D. Certain capitalized terms used in this Agreement are defined in **Schedule B**; references to a "Schedule" or an "Exhibit" are, unless otherwise specified, to a Schedule or an Exhibit attached to this Agreement.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

NOW THEREFORE, the Purchasers, the Company and the Borrower hereby agree as follows:

SECTION 1. AUTHORIZATION, SALE AND ISSUANCE OF NOTES AND WARRANTS.

Section 1.1 Authorization.

(a) The Borrower has authorized the issue and sale of up to $150,000,000 aggregate principal amount of its 15% Senior Secured Notes (the "*Notes*", such term to include any such notes issued in substitution therefor pursuant to **Section 13** of this Agreement) due June 24, 2011, which shall be comprised of up to $70,000,000 of Tranche A Notes (the "*Tranche A Notes*") and $80,000,000 of Tranche B Notes (the "*Tranche B Notes*" and, together with the Tranche A Notes, the "*Notes*"). The Tranche A Notes shall be substantially in the form set forth on **Exhibit A-1** and the Tranche B Notes shall be substantially in the form set forth in **Exhibit A-2**.

(b) The Company has further authorized the issuance and sale to each Purchaser of Warrants (the "*Warrants*", such term to include any such warrants issued in substitution therefor pursuant to the terms thereof) to purchase common stock, par value $0.0001 per share, of the Company ("*Common Stock*"), each substantially in the form set forth in **Exhibit B**.

Section 1.2 Sale and Purchase of the Notes and Warrants. Subject to the terms and conditions of this Agreement:

(a) (i) The Borrower hereby agrees to issue and sell to each Purchaser signatory hereto at the Initial Closing, and each such Purchaser agrees to purchase from the Borrower, at the Initial Closing, a Tranche A Note in the aggregate principal amount of Tranche A Notes to be purchased set forth opposite such Purchaser's name on **Schedule A** attached hereto under the heading "INFORMATION RELATING TO PURCHASERS AT INITIAL CLOSING", in each case at a purchase price of 100% of the aggregate principal amount of such Tranche A Note. The Borrower further hereby agrees to issue to each such Purchaser a Tranche B Note, and each such Purchaser agrees to acquire from the Borrower, at the Initial Closing, a Tranche B Note in the aggregate principal amount of Tranche B Notes to be exchanged set forth opposite such Purchaser's name on **Schedule A** attached hereto under the heading "Purchasers at Initial Closing", in each case in exchange for an identical aggregate principal amount of Orphan Notes, which shall be all of the Orphan Notes held by such Purchaser. The aggregate principal amount of all Tranche A Notes issued and sold at the Initial Closing shall not exceed $40,000,000.

(ii) The Borrower shall have the right, but not the obligation, to issue and sell, and the Purchasers set forth on **Schedule A** under the heading "INFORMATION RELATING TO PURCHASERS AT SUBSEQUENT CLOSING", or Affiliate(s) of such Purchasers designated thereby and reasonably acceptable to the Borrower, agree to purchase from the Borrower, at the Subsequent Closing, Tranche A Notes in an aggregate principal amount (determined by the Borrower) not to exceed $30,000,000, at a purchase price of 100% of the aggregate principal amount of such Tranche A Notes.

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(iii) Each Purchaser's obligation hereunder is several and not joint with the other Purchasers' obligations such that no Purchaser shall have any obligation or liability to any Person for the performance or nonperformance by any other Purchaser hereunder.

(b) As further consideration for the purchase of the Tranche A Notes by the Purchasers pursuant to **Section 1.2(a)**, and with the Company's express acknowledgement of its direct and indirect benefit received in connection with such financial accommodations, the Company agrees to issue and deliver at the applicable Closing to each Purchaser then purchasing a Tranche A Note, a Warrant to purchase the number of shares of the Common Stock as determined as follows:

(i) with respect to the Initial Closing, that number of shares of the Common Stock set forth opposite such Purchaser's name on **Schedule A** attached hereto under the heading "INFORMATION RELATING TO PURCHASERS AT INITIAL CLOSING"; and

(ii) with respect to the Subsequent Closing, that number of shares of the Common Stock as shall equal the quotient obtained by dividing (a) 20% of the principal amount of the Tranche A Note purchased by such Purchaser at the Subsequent Closing by (b) the Subsequent Closing Exercise Price (as defined below), and rounding down the resulting quotient to the nearest whole share of Common Stock.

In the case of the Warrants issued at the Initial Closing, the exercise price per share of such Warrants shall be $14.23. In the case of the Warrants issued at the Subsequent Closing, the exercise price per share shall be the greater of (i) $2.00 or (ii) the product of 1.2 times the volume weighted average closing price (as based on price quotations published by a nationally recognized stock quotation service reasonably agreed upon by the Borrower, the Company and the applicable Purchaser) of the Company's Common Stock for the period of 30 consecutive days ending on the date notice of the Subsequent Closing is given pursuant to Section 1.3(a) (the "Subsequent Closing Exercise Price").

(c) The Borrower, the Company and each Purchaser hereby acknowledge and agree that the Tranche A Notes and Warrants issued in accordance with this Agreement constitute an "investment unit" for the purposes of Section 1273(c)(2)(A) of the Code. In accordance with Sections 1273(c)(2)(A) and 1273(b)(2) of the Code, the issue price of the investment unit is 100% of the aggregate principal amount of the Tranche A Note set forth opposite each such Purchaser's name on **Schedule A**. Allocating that issue price between the Tranche A Note and Warrant issued at the Initial Closing based on their relative fair market values, as required by Section 1273(c)(2)(B) of the Code and Treasury Regulation Section 1.1273-2(h)(1), results in (i) the Tranche A Note having an

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issue price of 95.06% of the aggregate principal amount of such Note and (ii) the Warrant having a purchase price of 4.94% of the aggregate principal amount of such Tranche A Note. The allocation of the issue price for Tranche A Notes and Warrants issued at the Subsequent Closing shall be as reasonably agreed by the Borrower, the Company and the applicable Purchaser at the time of the Subsequent Closing. The Borrower, the Company and each Purchaser agree to prepare their respective federal income tax returns in a manner consistent with the foregoing agreement.

Section 1.3 Closings. (a) The issuance and sale of the Tranche A Notes and the exchange of the Tranche B Notes, in each case pursuant to **Section 1.2(a)(i)**, and the issuance and delivery of the accompanying Warrants, shall occur at a closing (the "*Initial Closing*") to be held at the offices of the Company, 3180 Porter Drive, Palo Alto, California 94304, at 10:00 a.m. local time, on March 17, 2008. The issuance and sale of the Tranche A Notes pursuant to **Section 1.2(a)(ii)** (if any), and the issuance and delivery of the accompanying Warrants, shall occur at a closing (the "*Subsequent Closing*" and, together with the Initial Closing, the "*Closings*") to be held at the such offices of the Company, at 10:00 a.m. local time, on a Business Day determined by the Borrower and the Company and specified in a notice from the Borrower and the Company to the Purchaser of such Tranche A Notes that the Borrower intends to issue and sell such Tranche A Notes and Warrants on such date, which in any case shall be not less than three Business Day after the date of delivery of such notice. Notwithstanding the foregoing, the Initial Closing or the Subsequent Closing may be held at such other place and time as may be agreed upon by the Borrower, the Company, and all of the applicable Purchasers, except that the Subsequent Closing shall in no event occur after January 31, 2009. For the avoidance of doubt, the Closings described in this **Section 1.3** shall be subject in all cases to satisfaction of the conditions set forth in **Section 4** hereof.

(b) At the Initial Closing, the Borrower will deliver to, or at the direction of, each Purchaser purchasing a Tranche A Note and/or exchanging Tranche B Note at the Initial Closing a Tranche A Note in the form of a single Tranche A Note and/or a Tranche B Note in the form of a single Tranche B Note, as applicable, in each case dated the date of the Initial Closing and registered in such Purchaser's name, against (i) in the case of Tranche A Notes, delivery by such Purchaser to the Borrower of immediately available funds in the amount of the purchase price therefor by wire transfer to the account of the Borrower, identified in writing by the Borrower prior to such Initial Closing, and (ii) in the case of Tranche B Notes, delivery of Orphan Notes in the aggregate principal amount of the Tranche B Notes to be exchanged therefor; provided that the Borrower and any holder of Orphan Notes that is unable to deliver such Orphan Notes at the Initial Closing agree that, pending subsequent delivery of such Orphan Notes, such exchange shall for all purposes of this Agreement be deemed to have occurred at the Initial Closing and the Borrower shall hold the Tranche B Notes to which such holder is entitled in trust for, and deliver the same to, such holder upon receipt of such Orphan Notes. It is expressly acknowledged and agreed by all of the parties to this Agreement that (y) upon consummation of the issuance and sale of the Tranche A Notes and accompanying Warrants and the exchange (or deemed exchange) of the Tranche B Notes for Orphan Notes at the Initial Closing, all outstanding Orphan Notes shall be continued as Tranche

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B Notes hereunder and the Lien of the Collateral Agent on behalf of the holders of Orphan Notes shall be continued as security for the obligations of the Credit Parties under this Agreement, the Notes, and the other Related Documents, and (z) all Orphan Notes (including any such Orphan Notes to be subsequently delivered as agreed pursuant to this paragraph (b)) shall be cancelled and no longer be outstanding and the Orphan Note Purchase Agreement and the Related Documents (as defined in the Orphan Note Purchase Agreement) (other than the Warrants (as defined in the Orphan Note Purchase Agreement)) shall terminate and have no further force or effect, except those provisions that are expressly stated to survive such termination or the payment of the Orphan Notes or expressly continued under the Related Documents (as defined herein).

(c) At the Subsequent Closing, the Borrower will deliver to or at the direction of the Purchaser purchasing a Tranche A Note at the Subsequent Closing a Tranche A Note in the form of a single Tranche A Note, dated the date of the Subsequent Closing and registered in such Purchaser's name, against delivery by such Purchaser to the Borrower of immediately available funds in the amount of the purchase price therefor by wire transfer to the account of the Borrower, identified in writing by the Borrower prior to such Closing.

(d) At each Closing, the Company will deliver to or at the direction of each Purchaser purchasing a Tranche A Note at such Closing a Warrant dated the date of such Closing and registered in the name of such Purchaser, and evidencing the right of such Purchaser to purchase that number of shares of the Company's Common Stock as determined in accordance with the provisions of **Section 1.2(b)**.

Section 1.4 Payment Terms of the Notes. The Notes shall bear interest, in the amounts and payable at the times set forth therein, and shall be due and payable in full on the maturity date set forth therein or as otherwise provided for under this Agreement without defense, set off or counterclaim of any sort. All payments required to be made under the Notes shall be made in the manner and to the account of each Purchaser as set forth in the Notes.

SECTION 2. COMPANY GUARANTY.

Section 2.1 Background. The Company hereby acknowledges and affirms that, as the sole beneficial owner of all of the membership interests of the Borrower, it will directly or indirectly receive certain benefits from the credit accommodations provided for under this Agreement and is therefore willing to guaranty the prompt payment and performance of the Obligations of the Borrower, on the terms set forth in this **Section 2**.

Section 2.2 Company Guaranty. For value received and in consideration for the Purchasers' execution of this Agreement and the purchase of the Notes, the Company unconditionally guarantees (a) the full and prompt payment when due, whether at maturity or earlier, by reason of acceleration or otherwise, and at all times thereafter, of all of the indebtedness and obligations of every kind and nature of the Borrower to each Purchaser, or any permitted assignee of any Purchaser, pursuant to the terms of this Agreement and the other Related Documents, howsoever created, arising or evidenced, whether direct or indirect, absolute

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or contingent, joint or several, now or hereafter existing, or due or to become due, and howsoever owned, held or acquired by such Purchaser, whether through discount, premium, purchase, direct loan or as collateral or otherwise, and whether principal, interest, fees, costs, expenses or otherwise (including without limitation any interest, Make-Whole Amount, fees or expenses accruing following the commencement of any insolvency, receivership, reorganization or bankruptcy case or proceeding relating to the Borrower, whether or not a claim for post-petition interest, Make-Whole Amount, fees or expenses is allowed in such case or proceeding); and (b) the prompt, full and faithful discharge by the Borrower of each and every term, condition, agreement, representation and warranty now or hereafter made by the Borrower to the Purchasers under this Agreement and the other Related Documents (all such indebtedness and obligations listed in (a) and (b) of this sentence being hereinafter referred to as the "*Obligations*"). The Company further agrees to pay all reasonable out-of-pocket costs and expenses, including, without limitation, all court costs and reasonable attorneys' fees paid or incurred by any Purchaser in collecting all or any part of the Obligations from, or in prosecuting or defending any action against, the Company. All amounts payable by the Company under this **Section 2** shall be payable upon demand and shall be made in lawful money of the United States, in immediately available funds.

Section 2.3 No Fraudulent Conveyance. It is intended that the Company's guaranty under this **Section 2** (the "*Company Guaranty*"), and any Liens granted by the Company to secure the Company Guaranty, do not constitute a "Fraudulent Conveyance" (as hereinafter defined). Consequently, the Company agrees that if the Company Guaranty, or any Liens securing the Company Guaranty, would, but for the application of this sentence, constitute a Fraudulent Conveyance, the Company Guaranty and each such Lien shall be valid and enforceable only to the maximum extent that would not cause the Company Guaranty or such Lien to constitute a Fraudulent Conveyance, and the Company Guaranty or the other Related Documents providing for such Lien shall automatically be deemed to have been amended accordingly at all relevant times. For purposes hereof, "*Fraudulent Conveyance*" means a fraudulent conveyance under Section 548 of the Bankruptcy Code or a fraudulent conveyance or fraudulent transfer under the provisions of any applicable fraudulent conveyance or fraudulent transfer law or similar law of any state, nation or other governmental unit, as in effect from time to time.

Section 2.4 Unconditional Guaranty. The Company hereby agrees that its obligations under the Company Guaranty shall be unconditional, irrespective of (i) the validity or enforceability of the Obligations or any part thereof, or of any Notes, Related Documents or other document evidencing all or any part of the Obligations, (ii) the absence of any attempt to collect from the Borrower or any other guarantor of all or any part of the Obligations or other action to enforce the same, (iii) the waiver or consent by any Purchaser with respect to any provision of any instrument evidencing the Obligations, or any part thereof, or any other agreement heretofore, now or hereafter executed by the Borrower or any other guarantor of all or any part of the Obligations, and delivered to such Purchaser, (iv) failure by any Purchaser or the Collateral Agent to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the Obligations or any guaranty, (v) the existence or nonexistence of any defenses which may be available to the Borrower or any other guarantor of

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all or any part of the Obligations, (vi) the institution of any proceeding under Chapter 11 of Title 11 of the United States Code (11 U.S.C. § 101 et seq.), as amended (the "*Bankruptcy Code*"), or any similar proceeding, by or against the Borrower or any other guarantor, or any Purchaser's election in any such proceeding of the application of Section 1111(b)(2) of the Bankruptcy Code, (vii) any borrowing or grant of a security interest by the Borrower, as debtor-in-possession, under Section 364 of the Bankruptcy Code (or use of cash collateral under Section 363 of the Bankruptcy Code), (viii) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of the Purchasers' claim(s) for repayment of the Obligations, or (ix) any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor other than the indefeasible payment in full of all Obligations.

Section 2.5 Waiver. The Company hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of receivership or bankruptcy of the Borrower or other guarantors, protest or notice with respect to the Obligations and all demands whatsoever, and covenants that the Company Guaranty will not be discharged, except by complete and indefeasible payment and performance of the Obligations. The Company further waives notice of (i) acceptance of the Company Guaranty, (ii) the existence or incurring from time to time of any Obligations guarantied hereunder, and (iii) the existence of any Default or Event of Default, the making of demand, nonpayment, or the taking of any action by any Purchaser or the Collateral Agent, under this Agreement or any of the other Related Documents. At any time that the Notes become due and payable, whether by maturity or acceleration, any holder of a Note may, in its sole election (regardless of whether the liability of Borrower or any other guarantor of all or any part of the Obligations has matured or may then be enforced), proceed directly and at once, without notice, against the Company to collect and recover the full amount or any portion of the Obligations, without first proceeding against the Borrower or any other guarantor, or against any security or collateral for the Obligations. The Company agrees that the Company Guaranty constitutes a guarantee of payment when due and not of collection.

Section 2.6 Authorization. The Purchasers and the Collateral Agent are hereby authorized, without notice or demand and without affecting the liability of the Company hereunder, at any time and from time to time to (i) renew, extend, accelerate or otherwise change the time for payment of, or other terms relating to, the Obligations or otherwise modify, amend or change the terms of this Agreement, any Note or any other Related Document (subject to the terms hereof and thereof), now or hereafter executed by the Borrower, the Company or any other guarantor and delivered to any of the Purchasers; (ii) accept partial payments on the Obligations; (iii) take and hold security or collateral for the payment of the Obligations guaranteed hereby, or for the payment of the Company Guaranty, or for the payment of any other guaranties of the Obligations, and exchange, enforce, waive and release any such security or collateral; (iv) apply such security or collateral and direct the order or manner of sale or other disposition thereof as in its discretion it may determine; and (v) settle, release, compromise, collect or otherwise liquidate the Obligations and any security or collateral therefor in any manner, without affecting or impairing the obligations of the Company hereunder.

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Section 2.7 Responsibility. The Company hereby assumes responsibility for keeping itself informed of the financial condition of the Borrower and any and all endorsers and/or other guarantors of any instrument or document evidencing all or any part of the Obligations and of all other circumstances bearing upon the risk of nonpayment of the Obligations or any part thereof, and the Company hereby agrees that neither the Purchasers nor the Collateral Agent shall have any duty to advise the Company of information known to any Purchaser or the Collateral Agent regarding such condition or any such circumstances or to undertake any investigation. If any of the Purchasers or the Collateral Agent, each in their respective discretion, undertakes at any time or from time to time to provide any such information to the Company, such Purchaser or the Collateral Agent, as applicable, shall be under no obligation to update any such information or to provide any such information to the Company on any subsequent occasion. The Company further acknowledges that the Company has examined or had the opportunity to examine this Agreement and the other Related Documents, and waives any defense which may exist resulting from the Company's failure to receive or examine at any time this Agreement or the other Related Documents.

Section 2.8 Consent. The Company consents and agrees that none of the Purchasers or the Collateral Agent shall be under any obligation to marshal any assets in favor of the Company or against or in payment of any or all of the Obligations. The Company further agrees that, to the extent that the Borrower, the Company or any other Person makes a payment or payments to the Purchasers, or any Purchaser receives any proceeds of collateral, which payment or payments or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to the Borrower, its estates, trustees, receivers or any other Person, including, without limitation, the Company, under any bankruptcy law, state or federal law, common law or equitable theory, then to the extent of such payment or repayment, the Obligations or the part thereof which has been paid, reduced or satisfied by such amount, and the Company's obligations hereunder with respect to such portion of the Obligations, shall be reinstated and continued in full force and effect as of the date such initial payment, reduction or satisfaction occurred.

Section 2.9 Transfer. Subject to the provisions of **Section 13**, any Purchaser may sell or assign the Obligations or any part thereof, or grant participations therein, pursuant to the terms of this Agreement and in any such event, each and every immediate or remote assignee or holder of, or participant in, all or any of the Obligations shall have the right to enforce the Company Guaranty, by suit or otherwise, for the benefit of such assignee, holder or participant, as fully as if herein by name specifically given such right, but each Purchaser shall have an unimpaired right, prior and superior to that of any such assignee, holder or participant, to enforce the Company Guaranty for the benefit of such Purchaser, as to any part of the Obligations retained by such Purchaser.

Section 2.10 Continuation. The Company Guaranty shall continue in full force and effect (and may not be revoked or terminated), and the Purchasers shall be entitled to purchase the Notes on the faith hereof, until such time as all of the Obligations have been indefeasibly paid and satisfied in full.

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Section 2.11 Subrogation. Any and all rights of any nature of the Company to subrogation, contribution, reimbursement or indemnity and any right of the Company to recourse to any assets or property of, or payment from, the Borrower or any other guarantor of all or any part of the Obligations as a result of any payments made or to be made hereunder for any reason, are hereby unconditionally waived by the Company, and the Company shall not at any time exercise any of such rights unless and until all of the Obligations have been indefeasibly paid and satisfied in full. Any payments received by the Company in violation of this **Section 2.11** shall be held in trust for, and immediately remitted to, the Purchasers.

Section 2.12 Subordination. The payment of any and all of indebtedness, liabilities and obligations of Borrower to the Company of every kind or nature, whether joint or several, due or to become due, absolute or contingent, now existing or hereafter arising, and whether principal, interest, fees, costs, expenses or otherwise (collectively, the "*Subordinated Debt*"), is expressly subordinated to the Obligations. So long as an Event of Default exists, no payment of any kind (by voluntary payment, prepayment, acceleration, setoff or otherwise) of any portion of the Subordinated Debt may be made by Borrower or received or accepted by the Company at any time. Until such time as the Obligations have been indefeasibly paid and satisfied in full, the Company will not (i) obtain any Lien on any property of the Borrower to secure the Subordinated Debt, or (ii) commence any lawsuit, action or proceeding of any kind against the Borrower to recover all or any part of the Subordinated Debt. Any payments received by the Company in violation of this **Section 2.12** shall be held in trust for and immediately remitted to the Purchasers.

SECTION 3. SECURITY INTERESTS.

Section 3.1 Grant of Security Interests. To secure the full and prompt payment and performance of the Obligations and the Company Guaranty, including all renewals, extensions, restructurings and refinancings of any or all of the foregoing, each of the Borrower and the Company hereby grants to the Collateral Agent, for the benefit of the holders of the Notes, a continuing Lien in and to all right, title and interest of Borrower and the Company in the following property, respectively, of the Borrower and the Company, whether now owned or existing or hereafter acquired thereby or arising and regardless of where located, including the products and proceeds thereof (all being collectively referred to as the "*Collateral*"):

i) Accounts;

ii) Deposit Accounts (as defined in the UCC);

iii) Documents of Title;

iv) Equipment;

v) General Intangibles;

vi) Inventory;

vii) Investment Property; and

viii) Other Collateral;

provided, *however*, that notwithstanding any of the other provisions set forth in this **Section 3**, this Agreement shall not constitute a grant of a security interest in (a) any ownership interests of any Foreign Subsidiary or (b) any property to the extent that such grant of a security interest is prohibited by any requirements of law of a Governmental Authority, requires a consent not obtained of any Governmental Authority pursuant to such requirement of law or is prohibited by, or constitutes a breach or default under or results in the termination of or requires any consent

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not obtained under, any contract, license, agreement, instrument or other document evidencing or giving rise to such property or any applicable shareholder or similar agreement, except to the extent that such requirement of law or the term in such contract, license, agreement, instrument or other document or shareholder or similar agreement providing for such prohibition, breach, default or termination or requiring such consent is ineffective under applicable law.

Section 3.2 Perfection of Security Interests. Each of the Borrower and the Company hereby authorizes the Collateral Agent to prepare and file such financing statements or amendments thereof (including financing statements and amendments thereof describing the Collateral as "all assets" or "all personal property" or words to that effect) as the Collateral Agent or the Purchasers may from time to time deem necessary or appropriate in order to perfect and maintain the security interests granted hereunder in accordance with the UCC or the Uniform Commercial Code of any applicable jurisdiction. Each of the Borrower and the Company shall, at the Collateral Agent's request, at any time and from time to time, execute and deliver to the Collateral Agent within ten (10) Business Days of such request, such documents and other agreements and instruments (and pay the cost of filing or recording the same in all public offices deemed reasonably necessary or desirable by the Collateral Agent or the Purchasers) and do such other acts and things as the Collateral Agent may deem necessary or desirable in order to establish and maintain a valid, attached and perfected security interest in the Collateral in favor of the Collateral Agent for the benefit of the Purchasers (free and clear of all other liens, claims and rights of third parties whatsoever, whether voluntarily or involuntarily created, except as otherwise permitted by **Section 10.3**) to secure payment of the Obligations, and in order to facilitate the collection of the Collateral. Each of the Borrower and the Company irrevocably hereby makes, constitutes and appoints the Collateral Agent (and all Persons designated by the Collateral Agent for that purpose) as the Borrower's and the Company's respective true and lawful attorney and agent-in-fact to file such financing statements and other similar documents, agreements and instruments as may be necessary to preserve and perfect the Collateral Agent's security interest in the Collateral. Each of the Borrower and the Company acknowledges and agrees that the Collateral is intended to encompass all assets and property of Borrower and the Company (subject to the terms and conditions of this Agreement) and if at any time Borrower or the Company acquires any interest in any assets or property a security interest in which cannot be perfected by the filing of a financing statement in the appropriate jurisdiction or any assets or property a security interest in which can be perfected by the filing of a financing statement in the appropriate jurisdiction but that are not covered by the security interest grant set forth above (e.g., commercial tort claims, it being certified by Borrower or the Company that it has no interest in any commercial tort claims as of the Initial Closing), then the Borrower or the Company, as appropriate, will, if reasonably requested by the Collateral Agent, cause such assets or property to become part of the Collateral and take such reasonable steps as the Collateral Agent or the Purchasers may require in accordance with this **Section 3.2**. Each of the Borrower and the Company hereby agree to give the Collateral Agent prompt notice of any commercial tort claim filed by the Company or any of its subsidiaries.

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Section 3.3 Possession of Collateral and Related Matters. Until an Event of Default has occurred and is continuing, both of the Borrower and the Company shall have the right, except as otherwise provided in this Agreement, to (a) sell or lease any of their Inventory normally held thereby for any such purpose, (b) use and consume any raw materials, work in process or other materials normally held thereby for such purpose and (c) dispose of any assets to the extent permitted under **Section 10.2**. If any Inventory is in the possession or control of any warehouseman or the Company's or the Borrower's, as applicable, agents or processors, then the Borrower or the Company, as applicable, shall, upon the Collateral Agent's request, notify such warehouseman, agent or processor of the Collateral Agent's security interest in such Inventory and, upon the Collateral Agent's request, instruct them to hold all such Inventory for the Collateral Agent's account and subject to the Collateral Agent's instructions.

Section 3.4 Continuing Security Interest; Termination.

(a) This **Section 3** creates a continuing security interest in the Collateral and shall (i) remain in full force and effect until the payment or satisfaction in full of the Obligations (other than any contingent indemnity obligations), (ii) be binding upon the Borrower and the Company, and their respective successors and assigns and (iii) except to the extent that the rights of any transferor or assignor are limited by the terms of this Agreement, inure, together with the rights and remedies of the Collateral Agent, to the benefit of the Collateral Agent and the holders of Notes. The Borrower's and the Company's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in possession thereof or therefor.

(b) Upon the payment in full in cash of the Obligations (other than any contingent indemnity obligations), the security interests granted pursuant to this **Section 3** shall terminate and all rights to the Collateral shall revert to the Borrower and the Company, as applicable. Upon any such termination of the security interests hereunder, the Borrower and the Company shall each be entitled to the return, upon its request and at its expense, of such of the Collateral held by the Collateral Agent as shall not have been sold or otherwise applied pursuant to the terms hereof and the Collateral Agent will, at the Borrower's and the Company's expense, execute and deliver to the Borrower or the Company, as applicable such other documents as they shall reasonably request to evidence such termination. In connection with any transfers, sales or other dispositions of assets permitted under this Agreement or any other release of Collateral that may be required in connection with any other action which is permitted by this Agreement, the Collateral Agent will release and terminate the Liens granted under this Agreement with respect to such assets.

SECTION 4. CONDITIONS TO CLOSING.

Section 4.1 Conditions to Initial Closing. Each Purchaser's obligation to purchase, pay for, and exchange the Notes to be purchased and/or exchanged at the Initial Closing is subject to the fulfillment to such Purchaser's reasonable satisfaction, prior to or at the Initial Closing, of the following conditions:

(a) Closing Deliveries. Such Purchaser shall have received, in form and substance reasonably satisfactory to it, all documents, instruments, agreements, opinions and certificates identified on **Exhibit 4.1(a)**.

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(b) Consummation of the Orphan Merger and Orphan Asset Transfer. The Orphan Merger shall have been consummated in accordance with the terms of the Orphan Merger Agreement, without any amendment, modification, or waiver that has not been agreed to by the Purchasers. All conditions necessary to consummate the Orphan Asset Transfer under the Orphan Asset Transfer Agreement shall have been satisfied or waived (in a manner approved by the Purchasers), the parties to the Orphan Asset Transfer Agreement shall be prepared to and, simultaneously with the purchase and exchange of such Notes shall, consummate the Orphan Asset Transfer and such Purchaser shall have received evidence of the foregoing reasonably satisfactory to it.

(c) Security Interests; Waivers and Consents. (i) Such Purchaser shall have received the results of recent lien, tax lien, judgment and litigation searches in each relevant jurisdiction with respect to the Company, the Borrower, and Orphan and their respective Subsidiaries, and such searches shall reveal no Liens other than Permitted Liens or Liens that are being discharged on or prior to the consummation of the Initial Closing pursuant to documentation reasonably satisfactory to such Purchaser.

(ii) All waivers, approvals or consents of Governmental Authorities or other third parties as may be required by law or under contract to consummate the Orphan Asset Transfer and the transactions contemplated by this Agreement (including any necessary stockholder agreements, consents or waivers required in connection with the issuance of the Warrants) shall have been obtained and shall be in full force and effect on such Closing Date, and such Purchaser shall have received evidence of the foregoing reasonably satisfactory to it.

(d) Fees and Expenses. The Company or the Borrower shall have paid (i) all invoiced fees and expenses of Pillsbury Winthrop Shaw Pitman LLP, legal counsel to LB I Group Inc. in connection with the execution and delivery of this Agreement and the Closings, and (ii) to LB I Group Inc. all fees due and payable thereto under the Fee Letter.

Section 4.2 Conditions to the Subsequent Closing. The applicable Purchaser's obligation to purchase and pay for the Notes to be sold thereto at the Subsequent Closing is subject to the fulfillment to such Purchaser's reasonable satisfaction, prior to or at the Subsequent Closing, of the following conditions:

(a) Consummation of the Initial Closing. The Initial Closing shall have occurred.

(b) Closing Deliveries. Such Purchaser shall have received, in form and substance reasonably satisfactory to it, all documents, instruments, agreements, opinions and certificates identified on **Exhibit 4.2(a)**.

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(c) Net Product Sales. The Company shall have certified to such Purchaser, in a manner satisfactory to such Purchaser and with such supporting financial statements or other information as such Purchaser may reasonably request, that the year-to-date Net Product Sales for the 2008 fiscal year-to-date are greater than or equal to $[*], and the year-to-date Net Product Sales for LUVOX® CR for the 2008 fiscal year-to-date are greater than or equal to $[*].

(d) Reservation of Additional Shares. The Company shall have reserved for issuance upon the exercise of the Warrants to be issued at the Subsequent Closing the number of shares of its Common Stock which are purchasable upon such exercise.

Section 4.3 Conditions to Each Closing. In addition to the conditions set forth in **Section 4.1** or **Section 4.2**, whichever is applicable, each Purchaser's obligation to purchase and pay for the Notes to be sold thereto at any Closing is subject to the fulfillment to such Purchaser's reasonable satisfaction, prior to or at such Closing, of the following conditions:

(a) Representations and Warranties. The representations and warranties of the Company and the Borrower in this Agreement and the Related Agreements, which are qualified by their terms as to Materiality, shall be correct, and all other representations and warranties of the Company and the Borrower in this Agreement and the Related Agreements shall be correct in all material respects, on and as of the date of such Closing (in the case of the Initial Closing both before and after taking into account the effect of the Orphan Asset Transfer), except to the extent that such representations and warranties relate to an earlier date, in which case such representations and warranties shall be correct, or correct in all material respects, as the case may be, as of such earlier date.

(b) Performance; No Default. Each of the Company and the Borrower shall have performed and complied with all agreements and conditions contained in this Agreement required to be performed or complied with by it prior to or at the Closing, and after giving effect to the issue and sale of the Notes (and the application of the proceeds thereof as contemplated by **Schedule 5.14**), the issue of the Warrants and the consummation of the Orphan Asset Transfer, no Default or Event of Default shall have occurred and be continuing.

(c) No Material Adverse Effect. Except as set forth on **Schedule C** (it being understood and agreed that the identification of an event on said schedule shall not be an admission or agreement that such event has in fact had, or could reasonably be expected to have, a Material Adverse Effect), nothing has occurred since December 31, 2006, which could reasonably be expected to have a Material Adverse Effect.

SECTION 5. REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE BORROWER.

Each of the Company and the Borrower represents and warrants, jointly and severally, to the Purchasers that, as of the date hereof and at the Closing, both before and after giving effect to the Orphan Asset Transfer:

Section 5.1 Organization; Power and Authority. Each Credit Party is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation, as applicable, and is duly qualified as a foreign corporation or limited liability company, as applicable, and is in good standing in each jurisdiction in which such qualification is required by law, other than those jurisdictions as to which the failure to be so qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each Credit Party has the corporate or limited liability company power and authority, as the case may be, to own or hold under lease the properties it purports to own or hold under lease, to transact the business it transacts and proposes to transact, to execute and deliver this Agreement and/or the other Related Documents to which it is a party, and to perform the provisions hereof and thereof.

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Section 5.2 Authorization, Etc. This Agreement and the other Related Documents, and in the case of the Borrower, the borrowing under the Notes, have been duly authorized by all necessary corporate or limited liability company action, as the case may be, on the part of each Credit Party signatory thereto, and this Agreement and such other Related Documents each constitutes, and upon execution and delivery thereof, will constitute, a legal, valid and binding obligation of the each such Credit Party, as applicable, enforceable against such Credit Party, respectively, in accordance with its terms, except as such enforceability may be limited by (a) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

Section 5.3 Disclosure. This Agreement, the documents, certificates or other writings delivered to the Purchasers by or on behalf of the Company and the Borrower in connection with the transactions contemplated hereby and the financial statements listed in **Schedule 5.5**, taken as a whole, do not contain any untrue statement of a material fact or omit to state any fact necessary to make the statements therein not materially misleading in light of the circumstances under which they were made. Except as disclosed herein or therein, since December 31, 2006, there has been no change in the financial condition, operations, business or properties of the Company, the Borrower and any of their respective Subsidiaries, taken as a whole, except changes that individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect. There is no fact known to the Company or the Borrower that would reasonably be expected to have a Material Adverse Effect that has not been set forth herein or in the other documents, certificates and other writings delivered to the Purchasers by or on behalf of the Company or the Borrower specifically for use in connection with the transactions contemplated hereby.

Section 5.4 Capitalization; Subsidiaries.

(a) On the date of the Initial Closing, the authorized capital stock of the Company consists of:

(i) 20,000,000 shares of Preferred Stock, with a par value of $0.0001, none of which is issued or outstanding.

(ii) 150,000,000 shares of Common Stock, of which 24,620,829 shares have been duly and validly issued and are fully paid and nonassessable.

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(iii) The Company has reserved: (A) 562,192 shares of its Common Stock for issuance upon the exercise of the Warrants issued at the Initial Closing; (B) 785,728 shares of its Common Stock for issuance upon the exercise of the Warrants (as defined in the Orphan Note Purchase Agreement); (C) 5,513,324 shares of Common Stock for issuance under the Company's 2003 Equity Incentive Plan and 2007 Equity Incentive Plan, of which 49,127 shares have been issued upon the exercise of options; (D) 630,325 shares of Common Stock for issuance under the Company's 2007 Employee Stock Purchase Plan; and (E) 197,835 shares of Common Stock for issuance under the Company's 2007 Non-Employee Directors' Stock Option Plan. Options to purchase 3,405,633 shares of Common Stock have been granted under the Company's 2003 Equity Incentive Plan, 2007 Equity Incentive Plan, and 2007 Non-Employee Directors' Stock Option Plan, and 115,898 shares of Restricted Units have been granted under such plans. Except as provided for under the Registration Rights Agreement and that certain Third Amended and Restated Investor Rights Agreement dated as of June 6, 2007 by and among the Company, the investors party thereto, there are no outstanding rights of first refusal, preemptive rights, phantom stock, stock appreciation rights or other rights, warrants, options, conversion privileges, subscriptions, or other rights or agreements, either directly or indirectly, to purchase or otherwise acquire or issue any equity securities of the Company.

(b) On the date of the Initial Closing, the Company has no direct Subsidiaries other than the Borrower and Orphan. The Company is the sole member of the Borrower and Orphan, and all of the outstanding membership interests of the Company in each of the Borrower and Orphan are owned by the Company free and clear of all Liens other than Permitted Liens. There are no outstanding commitments or other obligations of the Borrower or Orphan to issue, and no options, warrants or other rights of any Person to acquire, any equity interests of the Borrower or Orphan.

Section 5.5 Financial Statements. The Company has delivered to each Purchaser copies of the financial statements of the Company and its Subsidiaries listed on **Schedule 5.5**. All of said financial statements (including in each case the related schedules and notes) fairly present in all material respects the consolidated financial position of the Company and its Subsidiaries as of the respective dates specified in such financial statements and the consolidated results of their operations and cash flows for the respective periods so specified and have been prepared in accordance with GAAP consistently applied throughout the periods involved except as set forth in the notes thereto (subject, in the case of any interim financial statements, to normal year-end adjustments).

Section 5.6 Compliance with Laws, Other Instruments, Etc. The execution, delivery and performance by each Credit Party of the Related Documents to which each such Credit Party is a party, including the Notes, in the case of the Borrower, and the Warrants, in the case of the Company, will not violate, contravene, result in any breach of, or constitute a default under, or result in the creation of any Lien (other than Liens permitted by **Section 10.3**) in respect of any

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property of such Credit Party under, (a) any indenture, mortgage, deed of trust, loan, purchase or credit agreement, lease, corporate charter or by-laws or other organizational documents or constituent agreements, or any other agreement or instrument to which any Credit Party is bound or by which any Credit Party or any of their respective properties may be bound or affected, (b) any of the terms, conditions or provisions of any order, judgment, decree, or ruling of any court, arbitrator or Governmental Authority applicable to any Credit Party or (c) any statute or other rule or regulation of any Governmental Authority applicable to any Credit Party, in each case, except to the extent as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 5.7 Governmental Authorizations, Etc. Except as disclosed in **Schedule 5.7**, no consent, approval or authorization of, or registration, filing or declaration with, or notice to any Governmental Authority is required in connection with the execution, delivery or performance by each Credit Party of the Related Documents to which each such Credit Party is a party, including the Notes, in the case of the Borrower, and the Warrants, in the case of the Company.

Section 5.8 Litigation; Observance of Agreements, Statutes and Orders.

(a) Except as disclosed in **Schedule 5.8**, there are no actions, suits or proceedings pending or, to the knowledge of the Company or the Borrower, threatened against or affecting any Credit Party or the property of any Credit Party in any court or before any arbitrator of any kind or before or by any Governmental Authority that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(b) No Credit Party is in default under any term of any agreement or instrument to which it is a party or by which it is bound, or any order, judgment, decree or ruling of any court, arbitrator or Governmental Authority or is in violation of any applicable law, ordinance, rule or regulation (including without limitation Environmental Laws) of any Governmental Authority, which default or violation, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

Section 5.9 Taxes. Each Credit Party has filed all tax returns that are required to have been filed by it in any jurisdiction, and has paid all taxes shown to be due and payable on such returns and all other taxes and assessments levied upon it or its properties, assets, income or franchises, to the extent such taxes and assessments have become due and payable and before they have become delinquent, except for any taxes and assessments (a) the amount of which is not individually or in the aggregate Material or (b) the amount, applicability or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which such Credit Party has established adequate reserves in accordance with GAAP. The charges, accruals and reserves on the books of the Borrower and the Company and their Subsidiaries in respect of Federal, state or other taxes for all fiscal periods are adequate. Except as disclosed in **Schedule 5.9**, the Federal income tax liabilities of the Borrower, the Company and their respective Subsidiaries have been determined and paid for all fiscal years up to and including the fiscal year ended December 31, 2006.

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Section 5.10 Title to Property; Leases. The Credit Parties have good and sufficient title to their respective properties that individually or in the aggregate are Material, including all such properties reflected in the most recent audited balance sheets referred to in **Section 5.5** or purported to have been acquired by the Credit Parties after said date (except as sold or otherwise disposed of in the ordinary course of business), in each case free and clear of Liens prohibited by this Agreement. All leases entered into by a Credit Party that individually or in the aggregate are Material are valid and subsisting and are in full force and effect in all material respects.

Section 5.11 Intellectual Property, Licenses, Permits, Etc.

(a) **Schedule 5.11** sets forth, as of the date of the Initial Closing:

(i) all of the Credit Parties' patents and patent applications, in-bound patent licenses, trademarks and trademark applications, in-bound trademark licenses, copyrights and copyright applications and in-bound copyright licenses, including the description thereof, the name of the registered owner, the jurisdiction of such registration and the registration number; and

(ii) with respect to the Antizol Assets, Xyrem Assets, LUVOX® CR Assets, Antizol Contracts, Xyrem Contracts and LUVOX® CR Contracts, all of the patents and patent applications, in-bound patent licenses, trademarks and trademark applications, in-bound trademark licenses, copyrights and copyright applications and in-bound copyright licenses, including the description thereof, the name of the registered owner, the jurisdiction of such registration and the registration number

(collectively, the "*IP Rights*").

(b) Except as disclosed in **Schedule 5.11**, to the Knowledge of the Company:

(i) the Company and its Subsidiaries own or possess the IP Rights, without known conflict with the rights of others;

(ii) no Product of the Company or its Subsidiaries infringes in any Material respect any license, patent, copyright, service mark, trademark, trade name or other intellectual property right owned by any other Person; and

(iii) there is no Material violation by any Person of any right of the Company or any of its Subsidiaries with respect to any IP Rights.

Section 5.12 Compliance with ERISA.

(a) The Company and each ERISA Affiliate have operated and administered each Plan in compliance with all applicable laws except for such instances of noncompliance as have not resulted in and could not reasonably be expected to result in a Material Adverse Effect. Neither the Company nor any ERISA Affiliate has incurred any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the

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Code relating to employee benefit plans (as defined in Section 3 of ERISA), and no event, transaction or condition has occurred or exists that could reasonably be expected to result in the incurrence of any such liability by the Company or any ERISA Affiliate, or in the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate, in either case pursuant to Title I or IV of ERISA or to such penalty or excise tax provisions or to Section 401(a)(29) or 412 of the Code, other than such liabilities or Liens as would not reasonably be expected to be, individually or in the aggregate, Material.

(b) The present value of the aggregate benefit liabilities under each of the Plans (other than Multiemployer Plans), determined as of the end of such Plan's most recently ended plan year on the basis of the actuarial assumptions specified for funding purposes in such Plan's most recent actuarial valuation report, did not exceed the aggregate current value of the assets of such Plan allocable to such benefit liabilities. The term "benefit liabilities" has the meaning specified in Section 4001 of ERISA and the terms "current value" and "present value" have the meaning specified in Section 3 of ERISA.

(c) The Company and its ERISA Affiliates have not incurred withdrawal liabilities (and are not subject to contingent withdrawal liabilities) under Section 4201 or 4204 of ERISA in respect of Multiemployer Plans that remain unsatisfied or that, individually or in the aggregate, would reasonably be expected to be Material.

(d) The expected post-retirement benefit obligation (determined as of the last day of the Company's most recently ended fiscal year in accordance with Financial Accounting Standards Board Statement No. 106, without regard to liabilities attributable to continuation coverage mandated by Section 4980B of the Code) of the Company and its Subsidiaries is not Material.

(e) Assuming that the representations and warranties of the Purchasers set forth in **Section 6.1(e)** are true and correct, the execution and delivery of this Agreement and the issuance and sale of the Notes hereunder will not involve any transaction that is subject to the prohibitions of Section 406 of ERISA or in connection with which a tax could be imposed pursuant to Section 4975(c)(l)(A)-(D) of the Code.

Section 5.13 Private Offering by the Company. Assuming that the representations and warranties of the Purchasers set forth in **Section 6** are true and correct, the offering, issuance and delivery of the Notes, the Warrants and the shares of capital stock issuable upon the exercise of the Warrants (collectively, the "*Securities*") are exempt from the registration requirements of the Securities Act and the rules and regulations thereunder, and, except for the federal and state filings set forth in **Schedule 5.7**, it is not necessary to make or obtain any filings, registrations, qualifications, notifications or consents or approvals of or with any Governmental Authority in connection therewith.

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Section 5.14 Use of Proceeds. The Borrower will apply the proceeds of the sale of the Notes to consummate the Orphan Asset Transfer, to make certain payments owing to Solvay Pharmaceuticals, Inc. ("Solvay") under that certain License Agreement by and between Solvay and the Company relating to LUVOX® CR dated January 31, 2007, to market and distribute LUVOX® CR and for general corporate purposes. No Credit Party is engaged principally or as one of its activities, in the business of extending credit for the purpose of "purchasing" or "carrying" any "margin stock" as such terms are defined in Regulation U of the Federal Reserve Board as now and from time to time hereafter in effect. None of the proceeds of the Notes will be used, directly or indirectly, for the purpose of purchasing or carrying any margin stock or for any other purpose which might cause any of the Notes under this Agreement to be considered a "Purpose credit" within the meaning of Regulations T, U, or X of the Board of Governors of the Federal Reserve Board.

Section 5.15 Existing Indebtedness; Future Liens.

(a) Except as described therein, **Schedule 5.15** sets forth a complete and correct list of all outstanding Indebtedness of each Credit Party as of the date of the Initial Closing. No Credit Party is in default and no waiver of default is currently in effect, in the payment of any principal or interest on any Indebtedness of such Credit Party and no event or condition exists with respect to any Indebtedness of such Credit Party that would permit (or that with notice or the lapse of time, or both, would permit) one or more Persons to cause such Indebtedness to become due and payable before its stated maturity or before its regularly scheduled dates of payment.

(b) Except as disclosed in **Schedule 5.15**, no Credit Party has agreed or consented to cause or permit in the future (upon the happening of a contingency or otherwise) any of its property, whether now owned or hereafter acquired, to be subject to a Lien other than Permitted Liens.

Section 5.16 Foreign Assets Control Regulations, Etc. Neither the sale of the Notes by the Borrower hereunder nor its use of the proceeds thereof will violate the Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto. Without limiting the foregoing, neither the Company nor any of its Subsidiaries (a) is or will become a blocked person described in Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49049 (2001)) or (b) engages or will engage in any dealings or transactions, or be otherwise associated, with any such person.

Section 5.17 Status under Certain Statutes. No Credit Party is an "investment company" registered or required to be registered subject to regulation under the Investment Company Act of 1940, as amended, or is subject to regulation under the Public Utility Holding Company Act of 1935, as amended, or the Federal Power Act, as amended.

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Section 5.18 Environmental Matters. Except as otherwise disclosed in **Schedule 5.18**:

(a) the Company has no Knowledge of any claim, has received no notice of any claim, and no proceeding has been instituted raising any claim against any Credit Party or any real properties now or formerly owned, leased or operated thereby, alleging any damage to the environment or violation of any Environmental Laws, except, in each case, such as would not reasonably be expected to result in a Material Adverse Effect;

(b) the Company has no knowledge of any facts which would give rise to any claim, public or private, of violation of Environmental Laws or damage to the environment emanating from, occurring on or in any way related to real properties now or formerly owned, leased or operated by any Credit Party or to other assets or their use, except, in each case, such as would not reasonably be expected to result in a Material Adverse Effect;

(c) no Credit Party has stored any Hazardous Materials on real properties now or formerly owned, leased or operated by any of them or has disposed of any Hazardous Materials in a manner contrary to any Environmental Laws in each case in any manner that would reasonably be expected to result in a Material Adverse Effect; and

(d) all buildings on all real properties now owned, leased or operated by any Credit Party are in compliance with applicable Environmental Laws, except where failure to comply could not reasonably be expected to result in a Material Adverse Effect.

Section 5.19 Names. **Schedule 5.19** sets forth, as of the date of the Initial Closing, all names, trade names, fictitious names and business names under which each Credit Party currently conducts its business or has at any time during the past five years conducted business.

Section 5.20 Locations; FEIN. **Schedule 5.20** sets forth, as of the date of the Initial Closing, the state of organization of each Credit Party, location of each Credit Party's chief executive office and principal place of business, the location of all other offices of the Credit Parties, and all Collateral locations other than (a) locations of Inventory which has been delivered to clinical research organizations in connection with such Credit Party's clinical research or to physicians as a sample, in each case, in the ordinary course of such Credit Party's business, or (b) locations of Equipment being used by employees and consultants of any Credit Party in the ordinary course of business. Each Credit Party's federal employer identification number and entity identification number in its respective state of incorporation, as of the date of the Initial Closing, is set forth on **Schedule 5.20**.

Section 5.21 Solvency. At each Closing, both before and after giving effect to the Orphan Asset Transfer and the transactions contemplated by this Agreement and the other Related Documents, and, as of the date of this Agreement, each Credit Party: (a) owns assets the fair saleable value of which are (i) greater than the total amount of its liabilities (including contingent liabilities) and (ii) greater than the amount that will be required to pay its probable liabilities as they mature; (b) has capital that is not unreasonably small in relation to its businesses as presently conducted or any contemplated or undertaken transaction; and (c) does not intend to incur and does not believe that it will incur debts beyond its ability to pay such debts as they become due.

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Section 5.22 Status of Security Interest. This Agreement creates in favor of the Collateral Agent a legal, valid and enforceable security interest in the Collateral. When financing statements setting forth the Collateral and naming the Collateral Agent as the secured party and the Borrower and the Company, as the debtor, respectively, have been filed with the Secretary of State of the State of Delaware against each of the Borrower and the Company, the Collateral Agent will have a fully perfected first priority Lien on, and security interest in, the Collateral in which a security interest may be perfected by such filing, subject only to Permitted Liens.

Section 5.23 Compliance with Settlement Agreements. As of the Initial Closing and the Subsequent Closing, both before and after giving effect to the Orphan Asset Transfer and the transactions contemplated by this Agreement and the other Related Documents, and, as of the date of this Agreement, each of the Credit Parties and Orphan (a) is not, and at no previous time has been, in breach or default of any of its obligations under the (i) the Civil Settlement Agreement among the United States of America, Company and Orphan dated July 13, 2007 (the "*Civil Settlement Agreement*"), (ii) the Non-prosecution Agreement between the United States Attorney's Office for the Eastern District of New York and Company dated July 13, 2007 (the "*Non-prosecution Agreement*"), or (iii) the Plea Agreement between the United States Attorney's Office for the Eastern District of New York and Orphan dated July 13, 2007 (the "*Plea Agreement*"), and (b) is not, and at no previous time has been, in Material Breach or Default of any of its material obligations under the Corporate Integrity Agreement between the Office of Inspector General of the Department of Health and Human Services and Company dated July 13, 2007 (the "*Corporate Integrity Agreement*" and, collectively with the Civil Settlement Agreement, the Non-prosecution Agreement and the Plea Agreement, the "*Settlement Agreements*"); (c) has not received any notice of alleged breach, default, or non-compliance with respect to any provision of any of the Settlement Agreements; and (d) to the Company's knowledge, has committed no act and has omitted to take no action which would form, in whole or in part, a good faith basis for alleging that such Credit Party or Orphan is in breach or default (in the case of the Corporate Integrity Agreement, Material Breach or Default) of any of its obligations under the Settlement Agreements.

SECTION 6. REPRESENTATIONS OF THE PURCHASERS.

Section 6.1 Representations to the Borrower and the Company. Each Purchaser represents and warrants to the Borrower and the Company, severally and not jointly, with respect to its purchase of the Notes and, to the extent applicable, Warrants as follows:

(a) Purchaser is purchasing the Note and Warrant for investment for Purchaser's own account only and not with a view to, or for resale in connection with, any "distribution" thereof within the meaning of the Securities Act. Purchaser is an "accredited investor" as such term is defined in Rule 501(a) of Regulation D under the Securities Act, and, in any case, has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of investing in the Securities. Purchaser has not been formed for the purpose of investing in the Securities.

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(b) Purchaser understands that the Note and Warrant that Purchaser is purchasing have not been registered under the Securities Act by reason of a specific exemption therefrom, which exemption depends upon, among other things, the bona fide nature of Purchaser's investment intent as expressed herein.

(c) Purchaser further acknowledges and understands that the Securities must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available and the Securities may be imprinted with a legend indicating such restrictions on the transferability thereof.

(d) Purchaser understands that the Securities are presently characterized as "restricted securities" under the federal securities laws inasmuch as they are being acquired from the Company and the Borrower in a transaction not involving a public offering and that under such laws and applicable regulations, such securities may be resold without registration under the Securities Act only in certain limited circumstances. In this connection, Purchaser represents that it is familiar with SEC Rule 144, as presently in effect, and understands the resale limitations imposed thereby and by the Securities Act.

(e) Purchaser represents that at least one of the following statements is an accurate representation as to each source of funds (a "*Source*") to be used by such Purchaser to pay the purchase price of the Notes to be purchased by such Purchaser hereunder:

(i) if such Purchaser is an insurance company, the Source does not include assets allocated to any separate account maintained by you in which any employee benefit plan (or its related trust) has any interest, other than a separate account that is maintained solely in connection with your fixed contractual obligations under which the amounts payable, or credited, to such plan and to any participant or beneficiary of such plan (including any annuitant) are not affected in any manner by the investment performance of the separate account; or

(ii) the Source is either (i) an insurance company pooled separate account, within the meaning of Prohibited Transaction Exemption ("*PTE*") 90-1 (issued January 29, 1990), or (ii) a bank collective investment fund, within the meaning of the PTE 91-38 (issued July 12, 1991) and, except as Purchaser has disclosed to the Company in writing pursuant to this paragraph (b), no employee benefit plan or group of plans maintained by the same employer or employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund; or

(iii) the Source constitutes assets of an "investment fund" (within the meaning of Part V of the QPAM Exemption) managed by a "qualified professional asset manager" or "QPAM" (within the meaning of Part V of the QPAM Exemption), no employee benefit plan's assets that are included in such investment fund, when combined with the assets of all other employee benefit

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plans established or maintained by the same employer or by an affiliate (within the meaning of Section V(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, exceed 20% of the total client assets managed by such QPAM, the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, neither the QPAM nor a person controlling or controlled by the QPAM (applying the definition of "control" in Section V(e) of the QPAM Exemption) owns a 5% or more interest in the Company and (x) the identity of such QPAM and (y) the names of all employee benefit plans whose assets are included in such investment fund have been disclosed to the Company in writing pursuant to this paragraph (iii); or

(iv) the Source is a governmental plan; or

(v) the Source is one or more employee benefit plans, or a separate account or trust fund comprised of one or more employee benefit plans, each of which has been identified to the Company in writing pursuant to this paragraph (v); or

(vi) the Source does not include assets of any employee benefit plan, other than a plan exempt from the coverage of ERISA.

As used in this **Section 6.1**, the terms "*employee benefit plan*," "*governmental plan*," "*party in interest*" and "*separate account*" shall have the respective meanings assigned to such terms in Section 3 of ERISA.

Section 6.2 Exculpation of the Purchasers. Each Purchaser acknowledges that it is not relying upon any Person (including the Collateral Agent or any other Purchaser), other than the Company and its officers (acting in their respective capacities as representatives of the Company), in deciding to invest and in making its investment in the purchase of the Notes and Warrants. Each Purchaser agrees that none of the Collateral Agent, the other Purchaser or any of their respective controlling Persons, officers, directors, partners, agents or employees shall be liable to such Purchaser for any losses incurred by such Purchaser in connection with its purchase of the Notes and Warrants.

SECTION 7. INFORMATION AS TO THE COMPANY.

Section 7.1 Financial and Business Information. The Borrower and the Company, jointly and severally, agree to deliver to each holder of Notes:

(a) *Quarterly Statements*. Within 45 days after the end of each quarterly fiscal period in each fiscal year of the Company (other than the last quarterly fiscal period of each such fiscal year), copies of:

(i) a consolidated and, if requested by the Majority Holders, consolidating balance sheet of the Company and its Subsidiaries as at the end of such quarter; and

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(ii) consolidated and, if requested by the Majority Holders, consolidating statements of income, changes in stockholders' equity and cash flows of the Company and its Subsidiaries for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter;

setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP applicable to quarterly financial statements generally, and certified by a Senior Financial Officer as fairly presenting, in all material respects, the financial position of the companies being reported on and their results of operations and cash flows, subject to changes resulting from year-end adjustments. Filing of the Company's quarterly reports on Form 10-Q under and in satisfaction of the Exchange Act shall, for purposes of this **Section 7.1(a)** constitute delivery.

(b) *Annual Statements.* Within 90 days after the end of each fiscal year of the Company, copies of,

(i) a consolidated and, if requested by the Majority Holders, consolidating balance sheet of the Company and its Subsidiaries, as at the end of such year, and

(ii) consolidated and, if requested by the Majority Holders, consolidating statements of income, changes in stockholders' equity and cash flows of the Company and its Subsidiaries, for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail, prepared in accordance with GAAP, and accompanied by an opinion thereon of independent certified public accountants of recognized national standing, which opinion shall state that such financial statements present fairly, in all material respects, the financial position of the companies being reported upon and their results of operations and cash flows and have been prepared in conformity with GAAP, and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and that such audit provides a reasonable basis for such opinion in the circumstances. Filing of the Company's annual reports on Form 10-K under and in satisfaction of the Exchange Act shall, for purposes of this **Section 7.1(b)**, constitute delivery. If requested by the Majority Holders, the reports in this **clause (b)** shall be accompanied by any management letter prepared by the above-referenced accountants.

(c) *Notice of Default or Event of Default*. Promptly, and in any event within five Business Days after a Responsible Officer becomes aware of the existence of any Default or Event of Default or that any Person has given any notice or taken any action with respect to a claimed default hereunder or that any Person has given any notice or taken any action with respect to a claimed default of the type referred to in **Section 11(f)**, a written notice specifying the nature and period of existence thereof and what action the Company is taking or proposes to take with respect thereto;

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(d) *ERISA Matters*. Promptly, and in any event within five Business Days after a Responsible Officer becomes aware of any of the following, a written notice setting forth the nature thereof and the action, if any, that the Company or an ERISA Affiliate proposes to take with respect thereto:

(i) with respect to any Plan (other than any Multiemployer Plan), any reportable event, as defined in Section 4043(b) of ERISA and the regulations thereunder, for which notice thereof has not been waived pursuant to such regulations as in effect on the date hereof; or

(ii) the taking by the PBGC of steps to institute, or the threatening by the PBGC of the institution of, proceedings under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Plan (other than any Multiemployer Plan), or the receipt by the Company or any ERISA Affiliate of a notice from a Multiemployer Plan that such action has been taken by the PBGC with respect to such Multiemployer Plan; or

(iii) any event, transaction or condition that could result in the incurrence of any liability by the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, or in the imposition of any Lien on any of the rights, properties or assets of the Company or any ERISA Affiliate pursuant to Title I or IV of ERISA or such penalty or excise tax provisions, if such liability or Lien, taken together with any other such liabilities or Liens thereof then existing, could reasonably be expected to have a Material Adverse Effect;

(e) *Notices of Certain Adverse Events*. Promptly, and in any event within five Business Days after a Responsible Officer becomes aware of any of the following, a written notice regarding: (i) the occurrence of any event or circumstance which has had or will likely have a Material Adverse Effect, (ii) the occurrence of any event or circumstance which is a matured and un-waived material default under any third party agreement entered into by the Company or any of its Subsidiaries that is Material, (iii) the institution of any action, suit, proceeding, governmental investigation or arbitration which exposes the Company or any of its Subsidiaries to a liability that is Material, and (iv) the receipt of any communications regarding potential or actual material defaults (whether waived or not) on any Indebtedness that is Material; and

(f) *Requested Information*. With reasonable promptness, such other materials, data and information relating to the business, operations, affairs, financial condition, properties or prospects of the Company or any of its Subsidiaries as from time to time may be reasonably requested by any such holder of Notes in order to enable such holder to monitor the Borrower's and the Company's progress in key areas; *provided, however,* that neither the Borrower nor the Company shall be obligated to provide such information as is comprised of privileged attorney client communications or that is particularly sensitive confidential business material.

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(g) *Operating Plan and Budget*. If requested by the Majority Holders, as soon as available, and in any event within 30 days after the end of each fiscal year of the Company, a copy of the Company's consolidated and, if so requested, consolidating budget for the such fiscal year, such budget to show the Company's projected consolidated and, if so requested by the Majority Holders, consolidating revenues, expenses, and balance sheet on a quarterly basis.

Section 7.2 Officer's Certificate. Each set of financial statements delivered to a holder of Notes pursuant to **Section 7.1(a)** or **Section 7.1(b)** hereof shall be accompanied by a certificate of a Senior Financial Officer setting forth a statement that such officer has reviewed the relevant terms hereof and has made, or caused to be made, under his or her supervision, a review of the transactions and conditions of the Company and its Subsidiaries from the beginning of the quarterly or annual period covered by the statements then being furnished to the date of the certificate and that such review shall not have disclosed the existence of a Default or an Event of Default or, if any such condition or event exists, specifying the nature and period of existence thereof and what action the Company shall have taken or proposes to take with respect thereto.

Section 7.3 Inspection. The Company shall, and shall cause each Subsidiary to, permit the representatives of each holder of Notes to visit and inspect any of the properties, books and financial records of the Company and each Subsidiary, to examine and make copies (in reasonable quantities) of the books of accounts and other financial records of the Company and each Subsidiary thereof, and, with the consent of the Company if no Default or Event of Default exists (such consent to not be unreasonably withheld), to discuss the affairs, finances and accounts of the Company and each Subsidiary with, and to be advised as to the same by the Company's employees and independent public accountants (and by this provision the Company authorizes such accountants to discuss with the Purchasers the finances and affairs of the Company and its Subsidiaries so long as consent has been given thereby when required by this **Section 7.3**), in each case, at such reasonable times and reasonable intervals during normal business hours upon reasonable prior notice.

Section 7.4 Executive Management Access. The Company shall cause the Executive Chairman, the Chief Executive Officer and/or the Chief Financial Officer of the Company to meet with the Purchasers promptly upon the Purchasers' reasonable request therefor no less frequently than once per quarter.

SECTION 8. PREPAYMENT OF THE NOTES.

Section 8.1 Required Prepayments. In addition to paying the remaining outstanding principal amount and the interest due on the Notes on the maturity date thereof or upon acceleration of the Notes pursuant to **Section 12**, all as guaranteed by the Company Guaranty, if a Mandatory Prepayment Event occurs, the Borrower and the Company each agree as follows:

(a) Promptly upon the consummation of such Mandatory Prepayment Event, the Borrower shall give the holders of the Notes written notice of such Mandatory Prepayment Event with a description in reasonable detail of such Mandatory Prepayment Event including, the calculation of the Net Proceeds received in connection therewith and, for each holder of a Note, the amount of such holder's Pro Rata Portion of such Net Proceeds.

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(b) The Net Proceeds received by the Company or any of its Subsidiaries in connection with such Mandatory Prepayment Event shall be placed upon receipt thereof directly into a deposit or investment account pledged to the Collateral Agent for the benefit of the holders of the Notes as collateral security for the prompt and full payment of the Notes and shall be applied to the outstanding principal balance of the Notes or released to the Company or its Subsidiaries as follows:

(i) Each holder of a Note shall have the option, exercised by written notice to the Borrower, prior the end of business on the date that is 21 days after receiving notice of the Mandatory Prepayment Event (the "*End Release Date*"), to require that all or any portion of such holder's Pro Rata Portion of the Net Proceeds, in such holder's discretion, be applied as a prepayment in reduction of the outstanding principal balance of the then outstanding Notes then held by such Holder.

(ii) If and to the extent that any holder of a Note declines to require a mandatory prepayment or otherwise waives the provisions of this **Section 8.1** in connection with any Mandatory Prepayment Event, in either case in a writing signed by such holder, or, if such holder fails to give notice prior to the End Release Date requiring a full or partial prepayment of such holder's Note or Notes pursuant to clause (i) above, then an amount equal to such holder's Pro Rata Portion of the Net Proceeds shall be released from the collateral account and freely available to the Company and its Subsidiaries for all legal purposes permitted by this Agreement.

Section 8.2 Optional Prepayments with Make-Whole Amount. The Borrower may, at its option, upon notice as provided below, prepay at any time all, or from time to time any part of the Notes, in a minimum amount not less than $5,000,000 and in increments of at least $1,000,000 in excess of such minimum, in the case of a partial prepayment, at 100% of the principal amount so prepaid, together with interest accrued thereon to the date of such prepayment, plus the Make-Whole Amount, if any, determined for the prepayment date with respect to such principal amount. The Borrower will give each holder of Notes written notice of each optional prepayment under this **Section 8.2** not less than **5** days prior to the date fixed for such prepayment. Each such notice shall specify such date, the aggregate principal amount of the Notes to be prepaid on such date, the principal amount of each Note held by such holder to be prepaid, and the interest and Make-Whole Amount, if any, to be paid on the prepayment date with respect to such principal amount being prepaid, and shall be accompanied by a certificate of Senior Financial Officer specifying the computation of the Make-Whole Amount due in connection with such prepayment, setting forth the details of such computation. In the case of

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each partial prepayment of the Notes made pursuant to this **Section 8.2**, the principal amount of the Notes to be prepaid shall be allocated among all of the Notes at the time outstanding in proportion, as nearly as practicable, to the respective unpaid principal amounts thereof not theretofore called for prepayment.

Section 8.3 Contingent Required Redemption. If, at any time after end of the calendar quarter in which [*], the Annualized Aggregate Net Product Sales of the Company are less than $[*], then the Majority Holders may, by notice to the Company and the Borrower, require the Borrower to redeem up to $30,000,000 outstanding principal amount of the Notes at a redemption price equal to par plus all accrued and unpaid interest on the Notes to be redeemed. Such redemption shall occur on a date fixed by the Borrower by notice to the Note holders not less than 30 and not more than 90 days after receipt of notice from the Majority Holders under this Section, and shall be effected *pro rata* among all holders of Notes according to the aggregate principal amount of Notes held by each such holder.

Section 8.4 Maturity, Surrender, Etc. In the case of each prepayment or redemption of Notes pursuant to this **Section 8**, the principal amount of each Note to be prepaid shall mature and become due and payable on the date fixed for such prepayment, together with interest on such principal amount accrued to such date and the applicable Make-Whole Amount, if any. From and after such date, unless the Borrower shall fail to pay such principal amount when so due and payable, together with the interest and Make-Whole Amount, if any, as aforesaid, interest on such principal amount shall cease to accrue. Any Note paid or prepaid in full shall be surrendered to the Company and cancelled and shall not be reissued, and no Note shall be issued in lieu of any prepaid principal amount of any Note. All such prepayments and redemptions shall be pro rata as among the Tranche A Notes and Tranche B Notes.

SECTION 9. AFFIRMATIVE COVENANTS.

Each of the Borrower and the Company covenants, jointly and severally, that so long as any of the Notes are outstanding:

Section 9.1 Compliance with Law. The Borrower will, and will cause each of its Subsidiaries to, and the Company will, and will cause each Subsidiary to, comply with all laws, ordinances or governmental rules or regulations to which each of them is subject, including, without limitation, Environmental Laws, and to obtain and maintain in effect all licenses, certificates, permits, franchises and other governmental authorizations necessary to the ownership of their respective properties or to the conduct of their respective businesses, in each case to the extent necessary to ensure that non-compliance with such laws, ordinances or governmental rules or regulations or failures to obtain or maintain in effect such licenses, certificates, permits, franchises and other governmental authorizations could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 9.2 Insurance. The Borrower will, and will cause each of its Subsidiaries to, and the Company will, and will cause each Subsidiary to, maintain, with financially sound and reputable insurers, insurance with respect to their respective properties and businesses against such casualties and contingencies, of such types, on such terms and in such amounts (including

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deductibles, co-insurance and self insurance, if adequate reserves are maintained with respect thereto) as is customary in the case of entities of established reputations engaged in the same or a similar business and similarly situated. The Collateral Agent shall be named as "lender's loss payee" on all insurance policies relating to any Collateral and as "additional insured" under all liability policies (except Directors' and Officers' Insurance, automobile insurance, workers' compensation, fiduciary liability and employment practices), in each case pursuant to appropriate endorsements in form and substance reasonably satisfactory to the Collateral Agent.

Section 9.3 Maintenance of Properties. The Borrower will, and will cause each of its Subsidiaries to, and the Company will, and will cause each Subsidiary to, maintain and keep, or cause to be maintained and kept, their respective properties in good repair, working order and condition (other than ordinary wear and tear), so that the business carried on in connection therewith may be properly conducted at all times; provided that this **Section** shall not prevent the Company or any Subsidiary from discontinuing the operation and the maintenance of any of its properties if such discontinuance is desirable in the conduct of its business and the Company has concluded that such discontinuance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 9.4 Payment of Taxes and Claims. The Borrower will, and will cause each of its Subsidiaries to, and the Company will, and will cause each Subsidiary to, file all tax returns required to be filed in any jurisdiction and to pay and discharge all taxes shown to be due and payable on such returns and all other taxes, assessments, governmental charges, or levies imposed on them or any of their properties, assets, income or franchises, to the extent such taxes and assessments have become due and payable and before they have become delinquent and all claims for which sums have become due and payable that have or might become a Lien (other than Liens permitted by **Section 10.3**) on properties or assets of the Company or any Subsidiary; *provided* that neither the Company nor any Subsidiary need pay any such tax or assessment or charge or claim if (a) the amount, applicability or validity thereof is contested by the Company or such Subsidiary on a timely basis in good faith and in appropriate proceedings, and the Company or a Subsidiary has established adequate reserves therefor in accordance with GAAP on the books of the Company or such Subsidiary or (b) the nonpayment of all such taxes, assessments, charges and claims in the aggregate could not reasonably be expected to have a Material Adverse Effect.

Section 9.5 Corporate or Limited Liability Company Existence, Etc. Subject to **Section 10.2**, the Borrower will, and will cause each of its Subsidiaries to, and the Company will, and will cause each Subsidiary to, at all times preserve and keep in full force and effect its existence as a corporation or limited liability company, as the case may be, and the existence as a corporation or limited liability company, as the case may be, of each of such Subsidiary and all rights and franchises of the Borrower, the Company and such Subsidiaries; *provided*, that this **Section 9.5** shall neither apply to nor operate to prevent the Borrower or the Company from failing to preserve the existence as a corporation or limited liability company, as the case may be, right or franchise of any Subsidiary if such failure would not impair the Collateral Agent's rights in any assets of such Subsidiary pledged as collateral for the payment of the Obligations and, in the good faith judgment of the Company, such failure would not be reasonably expected to have a Material Adverse Effect.

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Section 9.6 Minimum Cash Balance. If at any time on or after the date on which financial statements of the Company for the fiscal quarter ended March 31, 2009 are required to be delivered pursuant to **Section 7.1**, and for so long as, the Annualized Aggregate Net Product Sales of the Company are less than $[*] (on or after such date), the Borrower shall maintain a minimum cash balance equal to 15% of the then outstanding principal amount on the Notes in a deposit or other similar demand investment account that is pledged to the Collateral Agent for the benefit of the Purchasers as collateral security for the prompt and full payment of the Notes and which such account is subject to a control account agreement, in form and substance reasonably satisfactory to the Collateral Agent, between the applicable financial intermediary where such account is held and the Collateral Agent.

Section 9.7 Subsidiary Documentation. In connection with and within five Business Days of the creation, acquisition and/or capitalization by the Company or any Subsidiary of the Company of a new Subsidiary (a "*New Subsidiary*") on or after the date hereof, the Borrower will, and will cause each of its Subsidiaries to, and the Company will, and will cause each Subsidiary to, satisfy the following requirements:

(a) In the case of a New Subsidiary which is a Domestic Subsidiary, deliver to the Collateral Agent, the following documentation, instruments and agreements, in each case, evidencing a first priority perfected security interest and in form and substance reasonably satisfactory to the Collateral Agent:

(i) a pledge agreement (substantially in the form of the Pledge Agreement) executed by the Company or the Subsidiary which is the parent of such New Subsidiary together with the related stock certificates or certificates evidencing membership or equivalent equity interests, as the case may be, stock powers or membership or equivalent equity interest powers and similar documentation reasonably required by the Collateral Agent to attach and perfect a security interest in 100% of the capital stock or similar ownership interests of the New Subsidiary as collateral security for the prompt and full payment and performance of the Obligations;

(ii) a Guaranty executed by the New Subsidiary guaranteeing the prompt and full payment of the Obligations;

(iii) a security agreement, mortgage, deed of trust and/or intellectual property security agreement executed by the New Subsidiary as reasonably required by the Collateral Agent in order to properly attach and perfect (as applicable) a security interest in all of the property of the New Subsidiary (other than property constituting ownership interests of a Foreign Subsidiary, which shall be subject to the provisions of **Section 9.7(b)** below) as collateral security for the prompt and full payment of the Obligations; and

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(iv) authorization from the new Subsidiary to file any necessary UCC financing statements and other similar documents or instruments required to perfect any security interests granted pursuant to the clause (iii) above.

(b) In the case of a New Subsidiary which is a Foreign Subsidiary, deliver to the Collateral Agent a pledge agreement or similar instrument or agreement executed by the parent of such New Subsidiary pursuant to which 65% of the outstanding ownership interests of such New Subsidiary is pledged as collateral security for the prompt and full payment of the Obligations.

Section 9.8 Perfection and Maintenance of Security Interests The Borrower will, and will cause each of its Subsidiaries to, and the Company will, and will cause each Subsidiary to, perform any and all steps reasonably requested by the Collateral Agent to perfect, maintain and protect the Collateral Agent's security interests in and against the Collateral granted or purported to be granted under this Agreement or any other Related Agreement, including, without limitation, (a) authorizing the Collateral Agent to file financing or continuation statements, or amendments thereof, (b) delivering to the Collateral Agent all certificates, notes and other instruments representing or evidencing Collateral, which certificates, notes and other instruments have been duly endorsed or are accompanied by duly executed instruments of transfer or assignment, all in form and substance reasonably satisfactory to the Collateral Agent, (c) at the reasonable direction of the Collateral Agent, delivering to the Collateral Agent warehouse receipts covering that portion of the Collateral, if any, located in warehouses and for which warehouse receipts are issued, (d) after the occurrence and during the continuance of an Event of Default, and only to the extent permitted by law, transferring Inventory and Equipment to warehouses designated by the Collateral Agent or taking such other steps as are deemed necessary by the Collateral Agent to maintain its control of the Inventory and Equipment, and (e) executing and delivering all further instruments and documents, and taking all further action as the Collateral Agent may reasonably request.

Section 9.9 Collateral Locations. The Borrower will, and will cause each of its Subsidiaries to, and the Company will, and will cause each Subsidiary to, keep the Collateral (other than (a) Inventory delivered, in the ordinary course of any Credit Party's business, to clinical research organizations used in clinical research or to physicians as a sample and (b) Equipment being used by employees and consultants of any Credit Party in the ordinary course of its business) at the locations specified on **Schedule 5.20**; *provided*, *however*, that the Borrower or the Company may amend **Schedule 5.20** so long as such amendment occurs by written notice to the Collateral Agent not less than thirty (30) days prior to the date on which such Collateral is moved. With respect to any new location (which in any event shall be within the continental United States), Borrower and the Company will execute such documents and take such actions as the Collateral Agent deems reasonably requests to perfect and protect the security interests of the Collateral Agent in the Collateral prior to the transfer or removal of any Collateral to such new location.

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Section 9.10 Compliance with Settlement Agreements. The Borrower will, and will cause each of its Subsidiaries to, and the Company will, and will cause each Subsidiary (including without limitation Orphan) to, (a) comply in a timely fashion with all of its respective obligations under the Settlement Agreements including without limitation (i) making all payments required thereunder, (ii) providing all information, disclosures and certifications required thereunder, and (iii) making its reasonable best efforts to ensure that all Covered Persons comply with the Code of Conduct and Policies and Procedures as set forth in the Settlement Agreements; and (b) provide immediate (*i.e.*, within one (1) Business Day) notice to Collateral Agent in the event that it receives a notice of breach or default with respect to any of the Settlement Agreements.

SECTION 10. NEGATIVE COVENANTS.

Each of the Borrower and the Company, jointly and severally, covenants that so long as any of the Notes are outstanding:

Section 10.1 Limitations on Indebtedness.

(a) The Borrower will not, and will not permit its Subsidiaries to, and the Company will not, and will not permit its Subsidiaries to, create, issue, assume, guarantee or otherwise incur or in any manner be or become liable in respect of any Indebtedness, except:

(i) Indebtedness evidenced by the Notes;

(ii) unsecured Indebtedness incurred by the Company or any Domestic Subsidiary of the Company other than the Borrower (or any of the Borrower's Subsidiaries) so long as no principal of such Indebtedness is scheduled to mature prior to the stated maturity of the Notes;

(iii) (a) secured or unsecured purchase money Indebtedness (including Capital Leases) (such Indebtedness being referred to herein as "*Permitted Purchase Money Indebtedness*") incurred by the Company or any Domestic Subsidiary of the Company other than the Borrower (or any of the Borrower's Subsidiaries) and (b) secured Indebtedness (such Indebtedness being referred to herein as "*Permitted Receivables/Inventory Indebtedness*") incurred by the Company or any Domestic Subsidiary of the Company other than the Borrower (or any of the Borrower's direct Subsidiaries) secured by Accounts and Inventory, if all such Permitted Purchase Money Indebtedness and Permitted Receivables/Inventory Indebtedness does not exceed, in the aggregate at any time outstanding, the lesser of (1) $15,000,000 and (2) 75% of Inventories and Receivables, as determined at such time using the consolidated balance sheet of the Company and its consolidated Subsidiaries for the most recently completed fiscal quarter of the Company;

(iv) secured Indebtedness (hereinafter referred to as the "*Permitted Other Secured Indebtedness*") created, issued, assumed, guaranteed or otherwise incurred by the Company or any Domestic Subsidiary of the Company other than the Borrower (or any of the Borrower's Subsidiaries) so long as no principal of

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such Indebtedness is scheduled to mature prior to the stated maturity of the Notes; *provided* that at the time of creation, issuance, assumption, guarantee or incurrence thereof and after giving effect thereto and to the application of the proceeds thereof, the ratio of (i) Consolidated Secured Indebtedness at such time to (ii) Consolidated EBITDA, as measured for the then trailing four most recently completed fiscal quarters of the Company, shall not be in excess of 3.0 to 1.0;

(v) Indebtedness (hereinafter referred to as the "*Permitted Acquisition Indebtedness*") created, issued, assumed, guaranteed or otherwise incurred by the Company or any Subsidiary of the Company other than the Borrower (or any of the Borrower's Subsidiaries) used to finance (or assumed in connection with) the acquisition of a pharmaceutical or biotechnology product (including by way of the acquisition of stock or other similar ownership interests of the Person owning the target product); *provided* that at the time of creation, issuance, assumption, guarantee or incurrence thereof and after giving effect thereto and to the application of the proceeds thereof, the aggregate outstanding principal amount of such Indebtedness permitted by this clause (v) shall not exceed three times the lower of:

a. the annualized EBITDA of the Person or product being acquired as measured for the then most recent 12 months ended; and

b. the lowest projected annualized EBITDA for the Person or product being acquired, as the case may be, for any of the three years following the acquisition as determined by the Company in good faith on a pro forma basis and presented to the Company's board of directors in connection with the approval of such acquisition;

(vi) Indebtedness represented by currency swaps or letters of credit entered into or issued, as the case may be, in the ordinary course of business of a Credit Party; and

(vii) Any amounts owing under the Settlement Agreements.

(b) The renewal, extension, increase or refunding of any Indebtedness originally permitted to be issued, incurred or outstanding pursuant to **Section 10.1(a)** shall constitute the issuance of additional Indebtedness which is, in turn, subject to the limitations of the applicable provisions of this **Section 10.1**.

(c) Any Person that becomes a Subsidiary after the date hereof shall for all purposes of this **Section 10.1** be deemed to have created, assumed or incurred at the time it becomes a Subsidiary all Indebtedness of such Person existing immediately after it becomes a Subsidiary which Indebtedness, in turn, shall be subject to the limitations of this **Section 10.1** including, for the avoidance of doubt, any exceptions set forth herein.

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(d) Each Credit Party, the Collateral Agent and each Purchaser acknowledges and agrees that, notwithstanding the incurrence or assumption of any of the Indebtedness permitted to be incurred or assumed pursuant to **Section 10.1(a)**, the Liens granted to the Collateral Agent for the benefit of the holders of Notes as collateral security for the payment of the Obligations (including, without limitation, the Liens on the Collateral provided for in **Section 3** hereof) shall remain in place as valid and enforceable Liens; *provided*, *however*, that the Purchasers and the Collateral Agent hereby agree that, in the case of the incurrence or assumption of any Permitted Purchase Money Indebtedness, any Permitted Receivables/Inventory Indebtedness or any Permitted Acquisition Indebtedness, if requested by the Company, the Collateral Agent shall agree, in a writing that is in form and substance reasonably acceptable thereto, with the applicable creditor or creditors holding such Permitted Purchase Money Indebtedness, such Permitted Receivables/Inventory Indebtedness or such Permitted Acquisition Indebtedness, as the case may be, to subordinate any Liens which the Collateral Agent has or holds on the assets being acquired or financed in favor of the Liens expressly permitted to be incurred under **Sections 10.3(a)(i), 10.3(a)(ii)** and **10.3(c)**, respectively, in connection with such acquisition.

Section 10.2 Mergers, Consolidations and Dispositions.

The Borrower will not be a party to any merger or consolidation, unless the Borrower is the surviving entity in such merger or consolidation. The Borrower will not permit its Subsidiaries to, and the Company will not, and will not permit its Subsidiaries to, be a party to any merger or consolidation in which more than 50% of the voting power of the Company or Subsidiary is disposed of, provided that the Company shall at all times own 100% of the voting power of the Borrower. The Borrower will not, and will not permit its Subsidiaries to, and the Company will not, and will not permit its Subsidiaries to, sell, transfer, lease or otherwise dispose of any part of its property, including a disposition of property as part of a sale and leaseback transaction. Notwithstanding the foregoing, this **Section** shall neither apply to nor operate to prevent the Company from being a party to any merger or consolidation so long as such merger or consolidation is not deemed to be a Change in Control, and shall not apply to or prevent the Borrower, the Company or any of its Subsidiaries from:

(a) selling Inventory in the ordinary course of its business;

(b) selling, transferring or otherwise disposing of worn-out, obsolete or surplus property or property no longer useful or necessary to the operation of the business of the Company or its Subsidiaries;

(c) transferring or licensing rights to property of the Company or any of its Subsidiaries as part of a co-marketing, co-promotion, out-bound licensing or similar partnering arrangement (which may include product specific financing by such co-marketer, co-promoter, licensor or partner so long as the Indebtedness represented thereby is otherwise permitted by **Section 10.1**) of (i) any Product of the Company or any of its Subsidiaries other than Xyrem®, Antizol, or LUVOX® CR, or (ii) Xyrem®, solely in connection with the licensing of rights in Xyrem® outside the United States in exchange

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for ongoing payment of royalties and milestones (but, for the avoidance of doubt, not sales or divestitures of rights in Xyrem® or monetizations of royalty streams therein) so long as, at the time of such sale, transfer or disposition and after giving effect thereto, no Default or Event of Default shall exist (a "*Permitted Product Transfer*");

(d) selling, transferring or otherwise disposing of any Product of the Borrower other than Xyrem®, Antizol, or LUVOX® CR so long as, at the time of such sale, transfer or disposition and after giving effect thereto, no Default or Event of Default shall exist (a "*Permitted Product Disposition*");

(e) selling, transferring or otherwise disposing of any property from the Company or any Subsidiary of the Company (other than the Borrower) to the Company or any Wholly-owned Subsidiary of the Company (other than the Borrower) that is a Domestic Subsidiary;

(f) selling, transferring or otherwise disposing of any property from the Company or any Subsidiary of the Company (other than the Borrower or a Subsidiary of the Borrower) to a Foreign Subsidiary of the Company as part of a Permitted Foreign Subsidiary Transfer;

(g) engaging in a transaction whereby any Subsidiary of the Company (other than the Borrower or a direct Subsidiary of the Borrower) merges or consolidates with or into the Company or any Subsidiary that is a Domestic Subsidiary; *provided* that in any merger or consolidation involving the Company, the Company shall be the surviving or continuing corporation; and,

(h) (i) engaging in licensing agreements between and among the Borrower, the Company and the Collateral Agent according to the terms of, and in the form set forth in, **Exhibit C** hereto ("*Xyrem License Agreement*"), **Exhibit D** hereto ("*Antizol License Agreement*"), and **Exhibit E** hereto ("*LUVOX® CR License Agreement*", and together with the Xyrem License Agreement and the Antizol License Agreement, the "*JPI Commercial License Agreements*"), (ii) selling, transferring or otherwise disposing of any property of the Borrower or any of its Subsidiaries to the Company or any of its Domestic Subsidiaries as set forth in the License Agreements; *provided, however,* that the provisions of Section 10.2 (c), (e) and (f) shall not apply to the rights and property permitted to be transferred to the Company pursuant to this Section 10.2(h).

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Section 10.3 Limitation on Liens. The Borrower will not, and will not permit its Subsidiaries to, and the Company will not, and will not permit its Subsidiaries to, create or incur, or suffer to be incurred or to exist, any Lien (except Permitted Liens) on its or their property, whether now owned or hereafter acquired, or upon any income or profits therefrom; *provided, however,* that the foregoing shall neither restrict nor operate to prevent:

(a) Liens on property of the Company or any Subsidiary of the Company other than the Borrower (or any of the Borrower's direct Subsidiaries) created solely for the purpose of securing (i) Permitted Purchase Money Indebtedness so long as (x) such Liens shall not extend to or cover property of the Company or such Subsidiary other than the property so acquired in respect of such Permitted Purchase Money Indebtedness, and (y) the principal amount of the Indebtedness secured by any such Liens shall at no time exceed the original purchase price of such fixed assets and (ii) Permitted Receivables/Inventory Indebtedness;

(b) Liens on property of the Company or any Subsidiary of the Company other than the Borrower (or any of the Borrower's direct Subsidiaries) created solely for the purpose of securing Permitted Other Secured Indebtedness so long as such Liens do not have priority over the Liens granted in favor of the Collateral Agent for the benefit of the Purchasers under this Agreement or any other Related Documents;

(c) Liens on property of the Company or any Subsidiary of the Company other than the Borrower (or any of the Borrower's direct Subsidiaries) created solely for the purpose of securing (or assumed in connection with) Permitted Acquisition Indebtedness, so long as such Liens shall not extend to or cover property of the Company or such Subsidiary other than the property being acquired in connection with such Permitted Acquisition Indebtedness; or

(d) Liens on property of the Company or any Subsidiary of the Company created solely for the purpose of consummating a Permitted Product Transfer permitted by **Section 10.2(b)**, so long as such Liens shall not extend to or cover property of the Company or such Subsidiary other than the property which is the subject of such Permitted Product Transfer.

Section 10.4 Restricted Payments. The Borrower will not, and will not permit its Subsidiaries to, and the Company will not, and will not permit its Subsidiaries to, except as hereinafter provided: declare or pay any dividends (other than, solely in the case of the Company, dividends payable solely in capital stock of the Company), either in cash or property, on any shares of its capital stock of any class; directly or indirectly, or through any Subsidiary or through any Affiliate of the Company, purchase, redeem or retire any shares of its capital stock of any class or any warrants, rights or options to purchase or acquire any shares of its capital stock (other than in connection with the repurchase of common stock by the Company from current or former employees, directors or consultants of the Company upon the termination of their status as such); voluntarily prepay any unsecured Indebtedness permitted pursuant to **Section 10.1(a)(ii)** or Permitted Other Secured Indebtedness; or make any other payment or distribution, either directly or indirectly or through any Subsidiary, in respect of its capital stock; *provided*, *however*, that the foregoing shall neither apply to nor operate to prevent any Subsidiary of the Borrower or the Company from making a dividend or similar distribution to the Borrower, the Company or any Domestic Subsidiary thereof.

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Section 10.5 Subsidiaries, Acquisitions and Investments. The Borrower will not, and will not permit its Subsidiaries to, and the Company will not, and will not permit its Subsidiaries to, create or capitalize any Subsidiary after the date hereof, enter into any transaction or series of related transactions in which it acquires all or any significant portion of the assets or capital stock (or other similar equity interests) of another Person or make any other Investments other than Permitted Investments; *provided*, *however*, that this **Section** shall neither apply to nor operate to prevent the Company or any of its Subsidiaries from:

(a) creating and capitalizing a Subsidiary that is a Domestic Subsidiary, acquiring all or a significant portion of the assets of any Person or acquiring all or a significant portion of the capital stock (or other similar equity interests) of another Person if (i) the Company and its Subsidiaries comply with the requirements set forth in **Section 9.7(a)** in respect of any New Subsidiary created, (ii) any such assets or stock (or other similar equity interests) directly acquired is subject to the continuing security interests set forth in **Section 3** subject to any Liens permitted by **Section 10.3**, and (iii) no Default or Event of Default otherwise exists as of the time of the creation or capitalization of any such New Subsidiary; or

(b) creating and capitalizing a Subsidiary that is a Foreign Subsidiary if the Company and its Subsidiaries comply with the requirements set forth in **Section 9.7(b)** in respect of any New Subsidiary created and no Default or Event of Default otherwise exists as of the time of the creation or capitalization of such New Subsidiary.

For purposes of this **Section 10.5**, at any time when a Person becomes a Subsidiary, all Investments of such Person at such time shall be deemed to have been made by such Person, as a Subsidiary, at such time, which Investments, in turn, shall be subject to the limitations of this **Section 10.5**, including, for the avoidance of doubt, any exceptions set forth herein.

Section 10.6 Transactions with Affiliates. The Borrower will not, and will not permit its Subsidiaries to, and the Company will not, and will not permit its Subsidiaries to, (i) enter into any transaction with Orphan, except to the extent reasonably necessary to comply with the Settlement Agreements, or (ii) enter into or be a party to any Material transaction or arrangement not described in the immediately preceding clause (i) with any Affiliate other than the Company or any Domestic Subsidiary of the Company (including, without limitation, the purchase from, sale to or exchange of property with, or the rendering of any service by or for, any Affiliate), except in each case described in this clause (ii) upon fair and reasonable terms not materially less favorable to the Company or such Subsidiary than would obtain in a comparable arm's-length transaction with a Person other than an Affiliate.

Section 10.7 JPI Commercial License Agreements. Except for the Orphan Asset Transfer, the Company will not, and will not permit its Subsidiaries to, and the Borrower will not, and will not permit its Subsidiaries to, enter into, or persist in, any arrangement wherein (i) any Xyrem Contract, Antizol Contract or LUVOX® CR Contract is assigned or otherwise transferred by the Company, or any Subsidiary thereof, to any third party, (ii) any Xyrem Contract, Antizol Contract or LUVOX® CR Contract does not permit the transfer or assignment of such contract to the Borrower irrespective of the consent, or absence thereof, of any party to such contract, (iii) any right, title, or interest in any Xyrem Assets is transferred to any entity except as expressly permitted by the terms of the Xyrem License Agreement, or (iv) any right, title, or interest in any Antizol Assets is transferred to any entity except as expressly permitted by the terms of the Antizol License Agreement, (v) any right, title, or interest in any LUVOX® CR Assets is transferred to any entity except as expressly permitted by the terms of the LUVOX® CR License Agreement, or (vi) any term of any of the JPI Commercial License Agreements is materially breached by the Company or the Borrower.

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Section 10.8 Corporate Documents. Neither the Company nor the Borrower nor any other Credit Party shall amend, supplement or otherwise modify its respective certificate of incorporation, bylaws, certificate of formation, or other constituent agreements, as applicable, as in effect on the date hereof in any manner that is materially adverse to the interests of the holders of the Notes or the Warrants.

Section 10.9 Settlement Agreements. Neither the Borrower nor the Company nor any Subsidiary thereof (including, without limitation, Orphan) shall take any action which would adversely affect the ability of such party or that of any other of the Borrower, the Company or any Subsidiary thereof to comply in all respects with, perform, or not breach or default with respect to, any of its obligations in respect of each of the Settlement Agreements, except, solely in the case of the Corporate Integrity Agreement, for such failures to comply or perform, and such breaches and defaults, as would not individually or collectively constitute a Material Breach or Default.

Section 10.10 Orphan. The Company shall cause Orphan to engage only in such activities as are reasonably necessary to comply with the Settlement Agreements.

SECTION 11. EVENTS OF DEFAULT.

An "*Event of Default*" shall exist if any of the following conditions or events shall occur and be continuing:

(a) the Borrower defaults in the payment of any principal on any Note when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise; or

(b) the Borrower defaults in the payment of any interest or Make-Whole Amount, if any, on any Note for more than one Business Day after the same becomes due and payable; or

(c) any of the Company, Orphan or any Credit Party or any Affiliate of any of the foregoing entities defaults in the performance of or compliance with any provision of the Settlement Agreements (except, solely in the case of the Corporate Integrity Agreement, for such defaults as would not individually or collectively constitute a Material Breach or Default) or any Credit Party defaults in the performance of or compliance with any term contained in **Sections 2, 7.1(a), (b)** and **(c), 7.2 or 10**; or

(d) any Credit Party defaults in the performance of or compliance with any term contained this Agreement (other than those referred to in paragraphs (a), (b) and (c) of this **Section 11**) or any other Related Document and such default is not remedied within 15 days after the earlier of (i) the Company giving timely written notice of such default to the holders of Notes pursuant to **Section 7.1(e)** or (ii) if the Company fails to give such timely notice, upon a Responsible Officer obtaining actual knowledge of such default; or

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(e) any representation or warranty made in writing by or on behalf of any Credit Party or by any officer of a Credit Party in this Agreement, any other Related Documents or in any writing furnished in connection with the transactions contemplated hereby proves to have been false or incorrect on the date as of which made or, in the case of any representation or warranty which is not by its terms already qualified by materiality, proves to have been materially false on the date as of which made; or

(f) (i) the Company or any of its Subsidiaries is in default (as principal or as guarantor or other surety) in the payment of any principal of or premium or make-whole amount or interest on any Indebtedness that is outstanding in an aggregate principal amount of at least $2,000,000 beyond any period of grace provided with respect thereto, or (ii) the Company or any Subsidiary is in default in the performance of or compliance with any term of any evidence of any Indebtedness in an aggregate outstanding principal amount of at least $2,000,000 or of any mortgage, indenture or other agreement relating thereto or any other condition exists, and as a consequence of such default or condition such Indebtedness has become, or has been declared (or one or more Persons are entitled to declare such Indebtedness to be), due and payable before its stated maturity or before its regularly scheduled dates of payment, or (iii) as a consequence of the occurrence or continuation of any event or condition (other than the passage of time or the right of the holder of Indebtedness to convert such Indebtedness into equity interests), (1) the Company or any Subsidiary has become obligated to purchase or repay Indebtedness before its regular maturity or before its regularly scheduled dates of payment in an aggregate outstanding principal amount of at least $2,000,000, or (2) one or more Persons have the right to require the Company or any Subsidiary so to purchase or repay such Indebtedness; or

(g) the Company or any Domestic Subsidiary (i) is generally not paying, or admits in writing its inability to pay, its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (v) is adjudicated as insolvent or to be liquidated, or (vi) takes corporate or limited liability company action, as the case may be, for the purpose of any of the foregoing; or

(h) a court or governmental authority of competent jurisdiction enters an order appointing, without consent by the Company or any of its Domestic Subsidiaries, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief or reorganization or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding-up or liquidation of the Company or any of its Domestic Subsidiaries, or any such petition shall be filed against the Company or any of its Domestic Subsidiaries and such petition shall not be dismissed within 60 days; or

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(i) a final judgment or judgments for the payment of money aggregating in excess of $4,000,000 are rendered against one or more of the Company and its Subsidiaries and which judgments are not, within 60 days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within 60 days after the expiration of such stay, it being understood and agreed that neither the Settlement Agreements, nor the performance of the obligations of the Company or Orphan thereunder, shall be deemed to be a Default or Event of Default under this paragraph; or

(j) a Change in Control shall have occurred; or

(k) except as permitted under any Related Document, (i) any material provisions of this Agreement or any other Related Document shall for any reason cease to be valid, binding and enforceable against the Company or any of its Subsidiaries subject to such agreements for any reason or the Company or any of its Subsidiaries shall so assert, or (ii) due to any action or inaction of the Company or its Subsidiaries any Lien created by this Agreement or other Related Document on any asset or property having a value, individually or in the aggregate, greater than $500,000 shall at any time fail to constitute a valid and perfected first priority Lien subject to no prior or equal Lien on any portion of the Collateral purported to be the subject of such Lien; or

(l) if (i) any Plan shall fail to satisfy the minimum funding standards of ERISA or the Code for any plan year or part thereof or a waiver of such standards or extension of any amortization period is sought or granted under Section 412 of the Code, (ii) a notice of intent to terminate any Plan shall have been or is reasonably expected to be filed with the PBGC or the PBGC shall have instituted proceedings under ERISA Section 4042 to terminate or appoint a trustee to administer any Plan or the PBGC shall have notified the Company or any ERISA Affiliate that a Plan may become a subject of any such proceedings, (iii) the aggregate "amount of unfunded benefit liabilities" (within the meaning of Section 400l(a)(18) of ERISA) under all Plans, determined in accordance with Title IV of ERISA, shall exceed $500,000, (iv) the Company or any ERISA Affiliate shall have incurred or is reasonably expected to incur any liability pursuant to Title I or IV of ERISA or the penalty or excise tax provisions of the Code relating to employee benefit plans, (v) the Company or any ERISA Affiliate withdraws from any Multiemployer Plan, or (vi) the Company or any Subsidiary establishes or amends any employee welfare benefit plan that provides post-employment welfare benefits in a manner that would increase the liability of the Company or any Subsidiary thereunder; and any such event or events described in clauses (i) through (vi) above, either individually or together with any other such event or events, could reasonably be expected to have a Material Adverse Effect.

As used in **Section 11(l)**, the terms "employee benefit plan" and "employee welfare benefit plan" shall have the respective meanings assigned to such terms in Section 3 of ERISA.

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SECTION 12. REMEDIES ON DEFAULT, ETC.

Section 12.1 Acceleration.

(a) If an Event of Default with respect to the Company described in paragraph (g) or (h) of **Section 11** (other than an Event of Default described in clause (i) of paragraph (g) or described in clause (vi) of paragraph (g) by virtue of the fact that such clause encompasses clause (i) of paragraph (g)) has occurred, all the Notes then outstanding shall automatically become immediately due and payable.

(b) If any Event of Default other than those set forth in **Section 12.1(a)** has occurred and is continuing, the Majority Holders may at any time at its or their option, by notice or notices to the Company, declare all the Notes then outstanding to be immediately due and payable.

(c) At any time that the Notes become due and payable under this **Section 12.1**, whether automatically or by declaration, each Note will forthwith mature and the entire unpaid principal amount of such Note, plus (i) all accrued and unpaid interest thereon and (ii) in the event that the Notes have become due by reason of an Event of Default described in Sections 11(a), (b), (g), (h) or (j), the Make-Whole Amount determined in respect of such principal amount (to the full extent permitted by applicable law), shall all be immediately due and payable, in each and every case without presentment, demand, protest or further notice, all of which are hereby waived. Each of the Company and the Borrower acknowledges, and the parties hereto agree, that each holder of a Note has the right to maintain its investment in the Notes free from repayment by the Company (except as herein specifically provided for), and that the provision for payment of a Make-Whole Amount by the Company in the event that the Notes are prepaid or are accelerated as a result of an Event of Default described in Sections 11(a), (b), (g), (h) or (j), is intended to provide compensation for the deprivation of such right under such circumstances.

Section 12.2 Other Remedies. If any Default or Event of Default has occurred and is continuing, and irrespective of whether any Notes have become or have been declared immediately due and payable under **Section 12.1**, the holder of any Note at the time outstanding may proceed to protect and enforce the rights of such holder by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or in any Note, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise.

Section 12.3 Certain Remedies as to Collateral. If any Event of Default shall have occurred and be continuing, in addition to and not in limitation of any rights or remedies available to the holders of Notes at law or in equity, the Collateral Agent may (and shall, if so directed by the Majority Holders) exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Collateral) and may also (a) notify any or all obligors on the Accounts to make all payments

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directly to the Collateral Agent; (b) require the Borrower and the Company to, and the Borrower and the Company hereby agree that they will, at their expense and upon request of the Collateral Agent forthwith, assemble all or part of the Collateral as directed by the Collateral Agent and make it available to the Collateral Agent at a place to be designated by the Collateral Agent which is reasonably convenient to both parties; (c) without notice or demand or legal process, enter upon any premises of the Borrower and the Company and take possession of the Collateral; and (d) without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Collateral Agent's offices or elsewhere, at such time or times, for cash, on credit or for future delivery, and at such price or prices and upon such other terms as the Collateral Agent may deem commercially reasonable. The Borrower and the Company agree that, to the extent notice of sale shall be required by law, at least ten (10) days notice to the Borrower and the Company of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. At any sale of the Collateral, if permitted by law, the Collateral Agent may bid (which bid may be, in whole or in part, in the form of cancellation of indebtedness) for the purchase of the Collateral or any portion thereof for the account of the Collateral Agent and/or disclaim all warranties. The Collateral Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Borrower and the Company shall remain liable for any deficiency. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed thereof, and such sale may, without further notice, be made at the time and place to which it was so adjourned. To the extent permitted by law, the Borrower and the Company hereby specifically waive all rights of redemption, stay or appraisal which they have or may have under any law now existing or hereafter enacted. The Collateral Agent shall not be required to proceed against any Collateral but may proceed against the Borrower and the Company directly.

Section 12.4 Appointment of Attorney-in-Fact. Effective upon the occurrence and during the continuation of an Event of Default, the Borrower and the Company hereby constitute and appoint the Collateral Agent as their attorney-in-fact with full authority in the place and stead of the Borrower and the Company and in their name, the Collateral Agent or otherwise, from time to time in the Collateral Agent's discretion to take any action and to execute any instrument that the Collateral Agent may deem necessary or advisable to accomplish the purposes of this Agreement, including: (a) to ask, demand, collect, sue for, recover, compound, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral; (b) to adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any customer or obligor thereunder or allow any credit or discount thereon; (c) to receive, endorse, and collect any drafts or other instruments, documents and chattel paper, in connection with clause (a) above; (d) to file any claims or take any action or institute any proceedings that the Collateral Agent may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Collateral Agent with respect to any of the Collateral; (e) to sign and endorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, assignments, verifications and notices in connection with Accounts and other documents relating to the Collateral; and (f) to execute on behalf of the Company the assignment of the Antizol Contracts, LUVOX® CR Contracts, and Xyrem Contracts pursuant to **Section 12.9**. The appointment of the Collateral Agent as the Borrower's and the Company's attorney and the Collateral Agent's rights and powers are coupled with an interest and are irrevocable until no Event of Default shall exist or payment in full and complete performance of all of the Obligations.

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Section 12.5 Limitation on Duty of the Collateral Agent with Respect to Collateral. Beyond the safe custody thereof, the Collateral Agent shall have no duty with respect to any Collateral in its possession or control (or in the possession or control of any agent or bailee) or with respect to any income thereon or the preservation of rights against prior parties or any other rights pertaining thereto. The Collateral Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment substantially equal to that which the Collateral Agent accords its own property. The Collateral Agent shall not be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in the value thereof, by reason of the act or omission of any warehouseman, carrier, forwarding agency, consignee or other agent or bailee selected by the Collateral Agent in good faith.

Section 12.6 Application of Proceeds. Upon the occurrence and during the continuance of an Event of Default, (a) the Borrower and the Company irrevocably waive the right to direct the application of any and all payments at any time or times thereafter received by the Collateral Agent from or on behalf of the Borrower and the Company, and the Borrower and the Company hereby irrevocably agree that the Collateral Agent shall have the continuing exclusive right to apply and to reapply any and all payments received at any time or times after the occurrence and during the continuance of an Event of Default against the Obligations in such manner as the Collateral Agent may deem advisable notwithstanding any previous entry by the Collateral Agent upon any books and records and (b) the proceeds of any sale of, or other realization upon, all or any part of the Collateral shall be applied: *first*, to all fees, costs and expenses incurred by the Collateral Agent or the Purchasers with respect to this Agreement, the other Related Documents or the Collateral; *second*, to accrued and unpaid interest and any Make-Whole Amount due on the Notes; and *third*, to the principal amounts of the Obligations outstanding.

Section 12.7 License of Intellectual Property. To the extent permitted under any relevant agreement entered into by the Company or the Borrower relating to its Intellectual Property, the Borrower and the Company hereby grant to the Collateral Agent for the benefit of the holders of Notes, effective only upon the occurrence and during the continuance of any Event of Default hereunder, the non-exclusive limited right and license to use all Intellectual Property owned, or licensed from a third-party by, the Borrower or the Company together with any goodwill associated therewith (to the extent owned by the Borrower or the Company), solely to the extent necessary to enable the Collateral Agent to realize on the Collateral and any successor or assign of the Collateral Agent to enjoy the benefits of the Collateral. This limited right and license shall inure to the benefit of all successors, assigns and transferees of the Collateral Agent and its successors, assigns and transferees, whether by voluntary conveyance, operation of law, assignment, transfer, foreclosure, deed in lieu of foreclosure or otherwise. Such right and license is granted free of charge, without requirement that any monetary payment whatsoever be made to the Borrower and the Company by the Collateral Agent.

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Section 12.8 No Waivers or Election of Remedies, Expenses, Etc. No course of dealing and no delay on the part of the Collateral Agent or any holder of any Note in exercising any right, power or remedy shall operate as a waiver thereof or otherwise prejudice the Collateral Agent's or such holder's rights, powers or remedies. No right, power or remedy conferred by this Agreement or by any Note upon the Collateral Agent or any holder of a Note shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise. Without limiting the obligations of the Borrower and the Company under **Section 15**, the Company will pay to the Collateral Agent and to the holder of each Note on demand such further amount as shall be sufficient to cover all reasonable costs and expenses of such holder incurred in any enforcement or collection under this **Section 12**, including, without limitation, reasonable attorneys' fees, expenses and disbursements.

Section 12.9 Revocation of Jazz Commercial License Agreements. Upon the occurrence of an Event of Default, in addition to any other rights or remedies the Collateral Agent may have, (i) the Collateral Agent may, in its discretion and upon written notice to the Company, revoke the Jazz Commercial License Agreements, and (ii) the Company shall assign all Antizol Contracts, LUVOX® CR Contracts, and Xyrem Contracts to the Borrower upon the Collateral Agent's written notice to the Company of its instructions to do so.

SECTION 13. REGISTRATION; TRANSFER; SUBSTITUTION OF NOTES.

Section 13.1 Registration of Notes. The Borrower shall keep at its principal executive office a register for the registration and registration of transfers of Notes. The name and address of each holder of one or more Notes, each transfer thereof and the name and address of each transferee of one or more Notes shall be registered in such register. Prior to due presentment for registration of transfer, the Person in whose name any Note shall be registered shall be deemed and treated as the owner and holder thereof for all purposes hereof, and the Borrower shall not be affected by any notice or knowledge to the contrary.

Section 13.2 Transfer of Notes. Each Purchaser and any transferee (as permitted hereby) of a Purchaser may transfer, assign or otherwise negotiate any Note (or any portion thereof) held thereby to (a) any Affiliate of such Purchaser (or permitted transferee) or (b) if such transfer is acceptable to the Borrower and the Majority Holders in their respective discretion, any other Person (each a "*Permitted Transfer*"). In order to effect a Permitted Transfer, the selling Purchaser (or any selling permitted transferee) shall surrender the applicable Note at the principal executive office of the Borrower, duly endorsed or accompanied by a written instrument of transfer duly executed by the registered holder of such Note or its attorney duly authorized in writing and accompanied by the address for notices of each transferee of such Note or part thereof, whereupon the Borrower shall execute and deliver, at the Borrower's expense, one or more new Notes (as requested by the holder thereof) in exchange therefor, in an aggregate principal amount equal to the unpaid principal amount of the surrendered Note. Each such new Note shall be payable to such Person as such holder may request and shall be substantially in the form of **Exhibit A**. Each such new Note shall be dated and bear interest from the date to which interest shall have been paid on the surrendered Note or dated the date of the surrendered Note if no interest shall have been paid thereon. Notes shall not be transferred in denominations of less

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than $5,000,000 (or, in the case of any transfer to an existing holder of a Note or an Affiliate thereof, $1,000,000); *provided* that if necessary to enable the registration of transfer by a holder of its entire holding of Notes, one Note may be in a denomination of less than $5,000,000. Any transferee, by its acceptance of a Note registered in its name (or the name of its nominee), shall be deemed to have made the representations set forth in **Section 6.6**.

Section 13.3 Replacement of Notes. Upon receipt by the Borrower of evidence reasonably satisfactory to it of the ownership of and the loss, theft, destruction or mutilation of any Note, and

(a) in the case of loss, theft or destruction, of indemnity reasonably satisfactory to it, or

(b) in the case of mutilation, upon surrender and cancellation thereof,

the Borrower at its own expense shall execute and deliver, in lieu thereof, a new Note, dated and bearing interest from the date to which interest shall have been paid on such lost, stolen, destroyed or mutilated Note or dated the date of such lost, stolen, destroyed or mutilated Note if no interest shall have been paid thereon.

Section 13.4 Securitization. The Borrower hereby acknowledges that the holders of Notes and their permitted transferees may sell or securitize the Obligations (a "*Securitization*") owing thereto through the pledge of the Obligations as collateral security for loans to such holders or their permitted transferees or through the sale of the right to payment on the Obligations or the issuance of direct or indirect undivided interests in the Obligations. The Borrower shall cooperate with the holders of Notes to effect any proposed Securitization including, without limitation, by providing such information as may be reasonably requested by the holders in connection with the rating of the Obligations by a nationally recognized ratings agency in connection with the Securitization.

SECTION 14. PAYMENTS ON NOTES.

Section 14.1 Place of Payment. Subject to **Section 14.2**, payments of principal, Make-Whole Amount, if any, and interest becoming due and payable on the Notes shall be made to the account or accounts designated in writing by each holder of a Note.

Section 14.2 Home Office Payment. So long as a Purchaser or its nominee shall be the holder of any Note, and notwithstanding anything contained in **Section 14.1** or in such Note to the contrary, the Borrower will pay all sums becoming due on such Note for principal, Make-Whole Amount, if any, and interest by the method and at the address specified for such purpose below the Purchaser's name on **Schedule A** hereto, or by such other method or at such other address as such Purchaser shall have from time to time specified to the Borrower in writing for such purpose, without the presentation or surrender of such Note or the making of any notation thereon, except that upon written request of the Borrower made concurrently with or reasonably promptly after payment or prepayment in full of any Note, any holder of the Note shall surrender such Note for cancellation, reasonably promptly after any such request, to the Borrower at its

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principal executive office or at the place of payment most recently designated by the Borrower pursuant to **Section 14.1**. Prior to any sale or other disposition of any Note held by a Purchaser or its nominee such Purchaser will, at its election, either endorse thereon the amount of principal paid thereon and the last date to which interest has been paid thereon or surrender such Note to the Borrower in exchange for a new Note or Notes pursuant to **Section 13.2**. The Borrower will afford the benefits of this **Section 14.2** to any Purchaser that is the direct or indirect transferee of any Note purchased by such Purchaser under this Agreement and that has made the same agreement relating to such Note as such Purchaser has made in this **Section 14.2**.

SECTION 15. EXPENSES, ETC.

Section 15.1 Fees; Transaction Expenses. The Borrower and the Company will pay (a) all reasonable attorneys' fees and disbursements of Pillsbury Winthrop Shaw Pittman LLP, special counsel to certain of the Purchasers (and to certain Purchasers under the Orphan Note Purchase Agreement) in connection with the negotiation, execution, and delivery of this Agreement and the other Related Documents, and any Closing, and all such fees and disbursements described in **Section 4.1(d)**; (b) all reasonable costs and expenses (including reasonable attorneys' fees of Pillsbury Winthrop Shaw Pittman LLP, special counsel to certain of the Purchasers) incurred by the Purchasers or holder of a Note in connection with the transactions contemplated hereby, (c) all reasonable costs and expenses (including reasonable attorneys' fees of a single law firm) incurred by the Collateral Agent or any holder of a Note in connection with any amendments, waivers or consents under or in respect of this Agreement, any other Related Document including the Notes (whether or not such amendment, waiver or consent becomes effective), (d) the reasonable costs and expenses incurred by the Collateral Agent or any holder of a Note in enforcing or defending (or determining whether or how to enforce or defend) any rights under this Agreement or the Notes or in responding to any subpoena or other legal process or informal investigative demand issued in connection with this Agreement or the Notes, or by reason of being a holder of any Note (including reasonable attorneys' fees for all such holders), and (e) the reasonable costs and expenses incurred by the Collateral Agent or any holder of a Note, including financial advisors' fees, incurred in connection with the insolvency or bankruptcy of the Company or any Subsidiary. The Borrower will pay, and will save each Purchaser and each other holder of a Note harmless from, all claims in respect of any fees, costs or expenses, if any, of brokers and finders (other than those retained by a Purchaser).

Section 15.2 Survival. The obligations of the Company and the Borrower under this **Section 15** will survive the payment or transfer of any Note, the enforcement, amendment or waiver of any provision of this Agreement or the Notes, and the termination of this Agreement.

SECTION 16. SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ENTIRE AGREEMENT.

All representations and warranties contained herein shall survive the execution and delivery of this Agreement and the other Related Documents, the purchase or transfer by a holder of any Note or Warrant of such Note or Warrant or portion thereof or interest therein and the payment of any Note or the exercise of any Warrant, and may be relied upon by any subsequent holder of a Note, regardless of any investigation made at any time by or on behalf of any holder of a Note. All statements contained in any certificate or other instrument delivered by or on

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behalf of the Borrower or the Company pursuant to this Agreement shall be deemed representations and warranties of the Borrower or the Company under this Agreement. Subject to the preceding sentence, this Agreement and the other Related Documents embody the entire agreement and understanding between the Purchasers and the Company and supersede all prior agreements and understandings relating to the subject matter hereof.

SECTION 17. AMENDMENT AND WAIVER.

Section 17.1 Requirements. This Agreement and the Notes may be amended, and the observance of any term hereof or of the Notes may be waived (either retroactively or prospectively), with (and only with) the written consent of the Company, the Borrower and the Majority Holders, except that no such amendment or waiver may, without the written consent of the holder of each Note at the time outstanding affected thereby, (a) change the amount or time of any prepayment or payment of principal of, or reduce the rate or change the time of payment or method of computation of interest or of the Make-Whole Amount on, the Notes, (b) change the percentage of the principal amount of the Notes the holders of which are required to consent to any such amendment or waiver, or (c) amend any of **Sections 8.1, 11(a), 12.1(a)** and **(b), 17.1** or **20** or the definition of Majority Holders set forth on **Schedule B**. The Warrants may be amended, and the observance of any term thereof may be waived (either retroactively or prospectively) as provided therein. Notwithstanding the foregoing, the provisions of **Section 4.2** and, solely with respect to the Subsequent Closing, **Section 4.3**, may be amended only with the written consent of the Borrower, the Company and all of the Purchasers obligated to purchase Notes to be issued and sold at the Subsequent Closing, and may be waived by any such Purchaser, but only to the extent applicable to such Purchaser. Notwithstanding the provisions of this Section 17.1 to the contrary, no amendment or modification to this Agreement or the Notes that materially and adversely affects the rights of any Purchaser in a manner disproportionate to other Purchasers shall be effective with respect to such Purchaser or the Notes held by such Purchaser unless such amendment or modification has been approved in writing by the Majority Holders and an additional Purchaser that is not an Affiliate of such approving Majority Holders.

Section 17.2 Solicitation of Holders of Notes.

(a) Solicitation. The Borrower will provide each holder of the Notes (irrespective of the amount of Notes then owned by it) with sufficient information, sufficiently far in advance of the date a decision is required, to enable such holder to make an informed and considered decision with respect to any proposed amendment, waiver or consent in respect of any of the provisions hereof or of the Notes. The Borrower and the Company will deliver executed or true and correct copies of each amendment, waiver or consent effected pursuant to the provisions of this **Section 17** to each holder of outstanding Notes promptly following the date on which it is executed and delivered by, or receives the consent or approval of, the requisite holders of Notes.

(b) Payment. Neither the Borrower nor the Company will directly or indirectly pay or cause to be paid any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant any security, to any holder of Notes as consideration for or as an inducement to the entering into by any holder of Notes of any waiver

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or amendment of any of the terms and provisions hereof unless such remuneration is concurrently paid, or security is concurrently granted, on the same terms, ratably to each holder of Notes then outstanding even if such holder did not consent to such waiver or amendment.

Section 17.3 Binding Effect, Etc. Any amendment or waiver consented to as provided in this **Section 17** applies equally to all holders of Notes and is binding upon them and upon each future holder of any Note and upon the Borrower without regard to whether such Note has been marked to indicate such amendment or waiver. No such amendment or waiver will extend to or affect any obligation, covenant, agreement, Default or Event of Default not expressly amended or waived or impair any right consequent thereon. No course of dealing between the Borrower and the holder of any Note nor any delay in exercising any rights hereunder or under any Note shall operate as a waiver of any rights of any holder of such Note. As used herein, the term "this Agreement" and references thereto shall mean this Agreement as it may from time to time be amended or supplemented.

Section 17.4 Notes Held by Company, Etc. Solely for the purpose of determining whether the holders of the requisite percentage of the aggregate principal amount of Notes then outstanding approved or consented to any amendment, waiver or consent to be given under this Agreement or the Notes, or have directed the taking of any action provided herein or in the Notes to be taken upon the direction of the holders of a specified percentage of the aggregate principal amount of Notes then outstanding, Notes directly or indirectly owned by the Company or any of its Subsidiaries shall be deemed not to be outstanding.

SECTION 18. NOTICES.

All notices and communications provided for hereunder shall be in writing and sent (a) by telefacsimile if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), or (b) by registered or certified mail with return receipt requested (postage prepaid), or (c) by a recognized overnight delivery service (with charges prepaid). Any such notice must be sent:

(i) if to a Purchaser or its nominee, to such Purchaser or its nominee at the address specified for such communications in **Schedule A** hereto or at such other address as any holder of a Note or it shall have specified to the Company in writing,

(ii) if to any other holder of any Note, to such holder at such address as such other holder shall have specified to the Company in writing, or

(iii) if to the Borrower or the Company, to the Company at 3180 Porter Drive, Palo Alto, CA 94304, to the attention of Matthew K. Fust, Chief Financial Officer, with a copy to General Counsel, fax: (650) 496-3781, or at such other address as the Company shall have specified to the holder of each Note in writing.

Notices under this **Section 18** will be deemed given only when actually received.

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SECTION 19. REPRODUCTION OF DOCUMENTS.

This Agreement and all documents relating hereto, including, without limitation, (a) consents, waivers and modifications that may hereafter be executed, (b) documents received by the Purchasers at the Closings (except the Notes and Warrants themselves), and (c) financial statements, certificates and other information previously or hereafter furnished to the Purchasers, may be reproduced by the Purchasers by any photographic, photostatic, microfilm, microcard, miniature photographic or other similar process and any holder of a Note may destroy any original document so reproduced. Each of the Company and the Borrower agrees and stipulates that, to the extent permitted by applicable law, any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by a holder of any Note in the regular course of business) and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence. This **Section 19** shall not prohibit the Company and the Borrower or any other holder of Notes from contesting any such reproduction to the same extent that it could contest the original, or from introducing evidence to demonstrate the inaccuracy of any such reproduction.

SECTION 20. CONFIDENTIAL INFORMATION.

For the purposes of this **Section 20**, "*Confidential Information*" means information delivered to a Purchaser by or on behalf of the Company or any Subsidiary in connection with the transactions contemplated by or otherwise pursuant to this Agreement that is related to the business or property of the Company or its Subsidiaries or to this Agreement or the other Related Documents; *provided* that such term does not include information that (a) was publicly known or otherwise known to such Purchaser without restriction prior to the time of such disclosure as evidenced by its written records, (b) subsequently becomes publicly known through no act or omission by such Purchaser or any Person acting on its behalf, (c) otherwise becomes known to such Purchaser other than through disclosure by the Company or any Subsidiary or (d) constitutes financial statements delivered to a holder of a Note under **Section 7.1(a)** or **(b)** that are otherwise publicly available, except in the case of clause (a), (b), or (c), to the extent such information came from a source known to such Purchaser to be bound by an obligation of confidentiality to the Company as any of its Subsidiaries. Each Purchaser agrees to maintain the confidentiality of such Confidential Information for a period of at least 7 years in accordance with procedures adopted by such Purchaser in good faith to protect confidential information of third parties delivered thereto, which procedures shall be at least as stringent as those used by such Purchaser with respect to its own important confidential information; *provided* that a Purchaser may deliver or disclose Confidential Information to (i) its directors, trustees, officers, employees, agents, attorneys and affiliates (to the extent such disclosure reasonably relates to the administration of the investment represented by such Purchaser's Notes) who are bound to the terms of this **Section 20** or are otherwise bound by a duty of confidentiality at least as restrictive as the terms of this **Section 20**, (ii) such Purchaser's financial advisors and other professional advisors who agree to hold confidential the Confidential Information substantially in accordance with the terms of this **Section 20**, (iii) any other holder of any Note, (iv) any Person who is permitted to purchase a Note or Warrant from such Purchaser pursuant to the terms hereof or of

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the Notes or Warrants, as the case may be (but only if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by the provisions of this **Section 20**), (v) any Person from which a Purchaser offers to purchase any Note or Warrant of the Company (if such Person has agreed in writing prior to its receipt of such Confidential Information to be bound by the provisions of this **Section 20**), (vi) any federal or state regulatory authority having jurisdiction over such Purchaser, (vii) any other Person to which such delivery or disclosure may be necessary or appropriate (w) to effect compliance with any law, rule, regulation or order applicable to a Purchaser, (x) in response to any subpoena or other legal process, (y) in connection with any litigation to which such Purchaser is a party or (z) if an Event of Default has occurred and is continuing, to the extent such Purchaser may reasonably determine such delivery and disclosure to be necessary or appropriate in the enforcement or for the protection of the rights and remedies under any Notes and this Agreement. Each holder of a Note, by its acceptance of a Note, will be deemed to have agreed to be bound by and to be entitled to the benefits of this **Section 20** as though it were a party to this Agreement. On reasonable request by the Company in connection with the delivery to any holder of a Note of information required to be delivered to such holder under this Agreement or requested by such holder (other than a holder that is a party to this Agreement or its nominee), such holder will enter into an agreement with the Company embodying the provisions of this **Section 20**.

SECTION 21. THE COLLATERAL AGENT.

Section 21.1 Appointment; Nature of Relationship. LB I Group Inc. is appointed by the Purchasers as the Collateral Agent hereunder and under each of the other Related Documents, and each of the Purchasers irrevocably authorizes the Collateral Agent (for so long as the Collateral Agent remains in such capacity under this Agreement) to act as the contractual representative of such Purchaser with only the rights and duties expressly set forth herein and in the other Related Documents. The Collateral Agent agrees to act as such contractual representative upon the express conditions contained in this **Section 21**. Notwithstanding the use of the defined term "Collateral Agent" it is expressly understood and agreed that the Collateral Agent shall not have any fiduciary responsibilities to any Purchaser by reason of this Agreement and that the Collateral Agent is merely acting as the representative of the Purchasers with only those duties as are expressly set forth in this Agreement and the other Related Documents. In its capacity as the Purchasers' contractual representative, the Collateral Agent (i) does not assume any fiduciary duties to any of the Purchasers, (ii) is a "representative" of the Purchasers within the meaning of Section 9-511 of the UCC and (iii) is acting as an independent contractor, the rights and duties of which are limited to those expressly set forth in this Agreement and the other Related Documents. Each of the Purchasers agrees to assert no claim against the Collateral Agent on any agency theory or any other theory of liability for breach of fiduciary duty, all of which claims each Purchaser waives.

Section 21.2 Powers. The Collateral Agent shall have and may exercise such powers under the Related Documents as are specifically delegated to the Collateral Agent by the terms of each thereof, together with such powers as are reasonably incidental thereto. The Collateral Agent shall have no implied duties or fiduciary duties to the Purchasers, or any obligation to the Purchasers to take any action hereunder or under any of the other Related Documents except any action specifically provided by the Related Documents required to be taken by the Collateral Agent.

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Section 21.3 General Immunity. Neither the Collateral Agent nor any of its directors, officers, agents or employees shall be liable to the Company, the Borrower, any Subsidiary or Affiliate of the Company or the Borrower, or any Purchaser for any action taken or omitted to be taken by it or them hereunder or under any other Related Documents or in connection herewith or therewith except to the extent such action or inaction is found in a final judgment by a court of competent jurisdiction to have arisen solely from (i) the gross negligence or willful misconduct of such Person or (ii) breach of contract by such Person with respect to the Related Documents.

Section 21.4 No Responsibility for Loans, Creditworthiness, Collateral, Recitals, Etc. Neither the Collateral Agent nor any of its directors, officers, Collateral Agents or employees shall be responsible for or have any duty to ascertain, inquire into, or verify (i) any statement, warranty or representation made in connection with any Related Document or any borrowing hereunder; (ii) the performance or observance of any of the covenants or agreements of any obligor under any Related Document; (iii) the satisfaction of any condition specified in **Section 4**, except receipt of items required to be delivered solely to the Collateral Agent; (iv) the existence or possible existence of any Default or Event of Default or (v) the validity, effectiveness or genuineness of any Related Document or any other instrument or writing furnished in connection therewith. The Collateral Agent shall not be responsible to any Purchaser for any recitals, statements, representations or warranties herein or in any of the other Related Documents, for the perfection or priority of any of the Liens on any of the Collateral, or for the execution, effectiveness, genuineness, validity, legality, enforceability, collectability, or sufficiency of this Agreement or any of the other Related Documents or the transactions contemplated thereby, or for the financial condition of any guarantor of any or all of the Obligations, the Company or any of its Subsidiaries.

Section 21.5 Action on Instructions of Purchasers. The Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder and under any other Related Document in accordance with written instructions signed by the Majority Holders (or any other percentage of Purchasers specified to be the applicable percentage in this Agreement or any other Related Document to act on specified matters), and such instructions and any action taken or failure to act pursuant thereto shall be binding on all of the Purchasers and on all holders of Notes. The Collateral Agent shall be fully justified in failing or refusing to take any action hereunder and under any other Related Document unless it shall first be indemnified to its satisfaction by the Purchasers pro rata against any and all liability, cost and expense that it may incur by reason of taking or continuing to take any such action.

Section 21.6 Employment of Collateral Agents and Counsel. The Collateral Agent may execute any of its duties as the Collateral Agent hereunder and under any other Related Document by or through employees, agents, and attorney-in-fact and shall not be answerable to the Purchasers, except as to money or securities received by it or its authorized agents. The Collateral Agent shall be entitled to advice of counsel concerning the contractual arrangement between the Collateral Agent and the Purchasers and all matters pertaining to the Collateral Agent’s duties hereunder and under any other Related Document.

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Section 21.7 Reliance on Documents; Counsel. The Collateral Agent shall be entitled to rely upon any Note, notice, consent, certificate, affidavit, letter, telegram, statement, paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, and, in respect to legal matters, upon the opinion of counsel selected by the Collateral Agent, which counsel may be employees of the Collateral Agent.

Section 21.8 The Collateral Agent's Reimbursement and Indemnification. The Purchasers agree to reimburse and indemnify the Collateral Agent ratably in proportion to the principal amount of their respective Notes outstanding from time to time (i) for any amounts not reimbursed by the Borrower or the Company for which the Collateral Agent is entitled to reimbursement under the Related Documents, (ii) for any other expenses incurred by the Collateral Agent on behalf of the Purchasers, in connection with the preparation, execution, delivery, administration and enforcement of the Related Documents and (iii) for any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Collateral Agent in any way relating to or arising out of the Related Documents or any other document delivered in connection therewith or the transactions contemplated thereby, or the enforcement of any of the terms thereof or of any such other documents, *provided* that no Purchaser shall be liable for any of the foregoing to the extent any of the foregoing is found in a final non-appealable judgment by a court of competent jurisdiction to have arisen solely from the gross negligence or willful misconduct of the Collateral Agent.

Section 21.9 Rights as a Purchaser. With respect to its Notes, the Collateral Agent shall have the same rights and powers hereunder and under any other Related Document as any Purchaser and may exercise the same as though it were not the Collateral Agent, and the term "Purchaser" or "Purchasers" shall, unless the context otherwise indicates, include the Collateral Agent in its individual capacity.

Section 21.10 Successor Collateral Agent. The Collateral Agent may resign at any time by written notice to the Purchasers and the Credit Parties, and the Collateral Agent may be removed at any time with or without cause by written notice received by the Collateral Agent from the Majority Holders. Upon any such resignation or removal, the Majority Holders shall have the right to appoint, on behalf of the Credit Parties and the Purchasers, a successor Collateral Agent. If no successor Collateral Agent shall have been so appointed by the Majority Holders and shall have accepted such appointment within thirty days after the retiring Collateral Agent's giving notice of resignation, then the retiring Collateral Agent may appoint, on behalf of the Credit Parties and the Purchasers, a successor Collateral Agent. Notwithstanding anything herein to the contrary, so long as no Default has occurred and is continuing, each such successor Collateral Agent shall be subject to approval by the Credit Parties, which approval shall not be unreasonably withheld. Upon the acceptance of any appointment as the Collateral Agent hereunder by a successor Collateral Agent, such successor Collateral Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent, and the retiring Collateral Agent shall be discharged from its duties and obligations hereunder and under the other Related Documents. After any retiring Collateral Agent's resignation hereunder as Collateral Agent, the provisions of this **Section 21** shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Collateral Agent hereunder and under the other Related Documents.

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Section 21.11 Collateral Documents.

(a) Each Purchaser authorizes the Collateral Agent to enter into the Collateral Documents to which it is a party and to take all action contemplated by such documents. Each Purchaser agrees that no holder of the Notes (other than the Collateral Agent) shall have the right individually to seek to realize upon the security granted by any Collateral Document, it being understood and agreed that such rights and remedies may be exercised solely by the Collateral Agent for the benefit of the holders of the Notes upon the terms of the Collateral Documents.

(b) In the event that any Collateral is hereafter pledged by any Person as collateral security for the Obligations, the Collateral Agent is hereby authorized to execute and deliver on behalf of the holders of the Notes any Related Documents necessary or appropriate to grant and perfect a Lien on such Collateral in favor of the Collateral Agent on behalf of the holders of the Notes.

(c) The Purchasers hereby authorize the Collateral Agent, at its option and in its discretion, to (y) release any Lien granted to or held by the Collateral Agent upon any Collateral and/or (z) release any guarantor from its obligations under any Guaranty (i) upon the satisfaction of all of the Obligations at any time arising under or in respect of this Agreement or the Related Documents or the transactions contemplated hereby or thereby; (ii) in connection with any transaction permitted by, but only in accordance with, the terms of the applicable Related Document; or (iii) in connection with any transaction approved, authorized or ratified in writing by the Majority Holders, unless such release is required to be approved by all of the Purchasers hereunder. Upon request by the Collateral Agent at any time, the Purchasers will confirm in writing the Collateral Agent's authority to release particular types or items of Collateral pursuant to this **Section 21.11**.

(d) Upon any sale or transfer of assets constituting Collateral which is permitted pursuant to the terms of any Related Document, or consented to in writing by the Majority Holders, the Collateral Agent shall (and is hereby irrevocably authorized by the Purchasers to) execute such documents as may be necessary to evidence the release of the Liens granted to the Collateral Agent for the benefit of the holders of the Notes herein or pursuant hereto upon the Collateral that was sold or transferred; *provided*, *however*, that (i) the Collateral Agent shall not be required to execute any such document on terms which, in the Collateral Agent's reasonable opinion, would expose the Collateral Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty, and (ii) such release shall not in any manner discharge, affect or impair the Obligations or any Liens upon (or obligations of the Company or any of its Subsidiaries in respect of) all interests retained by the Company or any of its Subsidiaries, including (without limitation) the proceeds of the sale, all of which shall continue to constitute part of the Collateral.

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SECTION 22. MISCELLANEOUS.

Section 22.1 Successors and Assigns. All covenants and other agreements contained in this Agreement by or on behalf of any of the parties hereto bind and inure to the benefit of their respective successors and assigns (including, without limitation, any subsequent holder of a Note) whether so expressed or not. Neither the Borrower nor the Company shall be entitled to assign its rights hereunder without the written consent of each Purchaser and the Collateral Agent.

Section 22.2 Payments Due on Non-Business Days. Anything in this Agreement or the Notes to the contrary notwithstanding, any payment of principal of or Make-Whole Amount or interest on any Note that is due on a date other than a Business Day shall be made on the next succeeding Business Day without including the additional days elapsed in the computation of the interest payable on such next succeeding Business Day.

Section 22.3 Headings. Section headings used in this Agreement are for convenience of reference only and are not a part of this Agreement for any other purpose.

Section 22.4 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall (to the full extent permitted by law) not invalidate or render unenforceable such provision in any other jurisdiction.

Section 22.5 Construction. Each covenant contained herein shall be construed (absent express provision to the contrary) as being independent of each other covenant contained herein, so that compliance with any one covenant shall not (absent such an express contrary provision) be deemed to excuse compliance with any other covenant. Where any provision herein refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

Section 22.6 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one instrument. Each counterpart may consist of a number of copies hereof, each signed by less than all, but together signed by all, of the parties hereto.

Section 22.7 Governing Law. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of New York, including Section 5-1401 of the General Obligations Law of said State.

Section 22.8 Waiver of Jury Trial. Each of the Borrower and the Company irrevocably waives, to the fullest extent permitted by law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or any other Related Document or the transactions contemplated thereby.

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Section 22.9 Indemnity. The Borrower and the Company further agree, jointly and severally, to defend, protect, indemnify, and hold harmless the Collateral Agent and each and all of the holders of Notes, each of their respective Affiliates and their respective officers, directors, employees, attorneys and agents (collectively, the "*Indemnitees*") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel for such Indemnitees in connection with any investigative, administrative or judicial proceeding, whether or not such Indemnitees shall be designated a party thereto), imposed on, incurred by, or asserted against such Indemnitees in any manner relating to or arising out of this Agreement, or any other Related Documents (collectively, the "*Indemnified Matters*"); *provided*, *however*, that neither the Borrower nor the Company shall have any obligation to an Indemnitee hereunder with respect to Indemnified Matters caused by or resulting from (a) a dispute among the Purchasers or a dispute between any Purchaser and the Collateral Agent, or (b) the willful misconduct or gross negligence of such Indemnitee. If the undertaking to indemnify, pay and hold harmless set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, the Borrower and the Company shall contribute the maximum portion which it is permitted to pay and satisfy under applicable law, to the payment and satisfaction of all Indemnified Matters incurred by the Indemnitees. This **Section 22.9** shall survive the full payment of the Obligations and the termination of this Agreement or any other Related Document.

*** * * * ***

If you are in agreement with the foregoing, please sign the form of agreement on the accompanying counterpart of this Agreement and return it to the Company, whereupon the foregoing shall become a binding agreement between you and the Company and the Borrower.

Very truly yours,

JPI COMMERCIAL, LLC

By: /s/ Carol A. Gamble
Name: Carol A. Gamble
Title: Authorized Person

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JAZZ PHARMACEUTICALS, INC.

By: /s/ Carol A. Gamble
Name: Carol A. Gamble
Title: Authorized Person

LB I GROUP INC.

By: /s/ Jeffrey A. Ferrell
Name: Jeffrey A. Ferrell
Title: Vice President

KKR FINANCIAL HOLDINGS III, LLC

By: /s/ Jamie M. Weinstein
Name: Jamie M. Weinstein
Title: Authorized Signatory

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LERNER ENTERPRISES, LLC
(FKA LERNER ENTERPRISES, LP)

By: Oak Hill Advisors, L.P.,
as advisor and attorney-in-fact
to Lerner Enterprises, LLC

By: /s/ Scott D. Krase
Name: Scott D. Krase
Title: Authorized Person

OHA CAPITAL SOLUTIONS FINANCING
(OFFSHORE), LTD.

By: /s/ Scott D. Krase
Name: Scott D. Krase
Title: Authorized Person

OHA CAPITAL SOLUTIONS FINANCING
(ONSHORE), LTD.

By: /s/ Scott D. Krase
Name: Scott D. Krase
Title: Authorized Person

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OAK HILL CREDIT ALPHA FINANCE I, LLC

By: Oak Hill Credit Alpha Fund, L.P.,
its Member

By: Oak Hill Credit Alpha Gen Par, L.P.,
its General Partner

By: Oak Hill Credit Alpha MGP, LLC,
its General Partner

By: /s/ Scott D. Krase
Name: Scott D. Krase
Title: Authorized Person

OAK HILL CREDIT ALPHA FINANCE I
(OFFSHORE), LTD.

By: /s/ Scott D. Krase
Name: Scott D. Krase
Title: Authorized Person

OAK HILL CREDIT OPPORTUNITIES FINANCING, LTD.

By: /s/ Scott D. Krase
Name: Scott D. Krase
Title: Authorized Person

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CARDINAL FUND I, L.P.

By: Cardinal Management I, L.P.,
its General Partner

By: Cardinal MGP, L.L.C.,
its General Partner

By: /s/ Thomas W. White
Name: Thomas W. White
Title: Vice President

FW JAZZ PHARMA INVESTORS, L.P.

By: Group VI, 31, L.L.C.,
General Partner

By: /s/ Thomas W. White
Name: Thomas W. White
Title: Vice President

DEEP COVE MEZZANINE, LLC

By: /s/ Reeve Waud
Name: Reeve Waud
Title: Authorized Person

GENERAL ELECTRIC PENSION TRUST

By: GE Asset Management Incorporated,
its Investment Manager

By: /s/ Daniel L. Furman
Name: Daniel L. Furman
Title: Vice President

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SCHEDULE A
(to Senior Secured Note and Warrant Purchase Agreement)

INFORMATION RELATING TO PURCHASERS AT INITIAL CLOSING

NAME AND ADDRESS OF PURCHASER	PRINCIPAL AMOUNT OF TRANCHE A NOTES TO BE PURCHASED	PRINCIPAL AMOUNT OF TRANCHE B NOTES TO BE EXCHANGED	NUMBER OF SHARES OF COMMON STOCK SUBJECT TO WARRANT
LB I Group Inc. c/o Lehman Brothers 399 Park Avenue, 9th Floor New York, NY 10022 Attn: Jeffrey A. Ferrell Wire Instruction: [*]	$ 33,500,000	$ 56,000,000	470,836
KKR Financial Holdings III, LLC c/o KKR Financial LLC 555 California Street 50th Floor San Francisco, CA 94104 Jamie Weinstein Fax: (415) 391-3330 Wire Instructions: [*]		$ 7,143,000	

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NAME AND ADDRESS OF PURCHASER	PRINCIPAL AMOUNT OF TRANCHE A NOTES TO BE PURCHASED	PRINCIPAL AMOUNT OF TRANCHE B NOTES TO BE EXCHANGED	NUMBER OF SHARES OF COMMON STOCK SUBJECT TO WARRANT
Lerner Enterprises, LLC **(FKA Lerner Enterprises, L.P.)** c/o Oak Hill Advisors, LP 1114 Avenue of the Americas 27th Floor New York, NY 10036 Attn: Shilpa Wani Wire Instructions: [*]		$ 231,000	
OHA Capital Solutions Financing (Offshore), Ltd. c/o Oak Hill Advisors, LP 1114 Avenue of the Americas 27th Floor New York, NY 10036 Attn: Shilpa Wani Wire Instructions: [*]		$ 931,000	
OHA Capital Solutions Financing (Onshore), Ltd. c/o Oak Hill Advisors, LP 1114 Avenue of the Americas 27th Floor New York, NY 10036 Attn: Shilpa Wani		$ 501,000	

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NAME AND ADDRESS OF PURCHASER	PRINCIPAL AMOUNT OF TRANCHE A NOTES TO BE PURCHASED	PRINCIPAL AMOUNT OF TRANCHE B NOTES TO BE EXCHANGED	NUMBER OF SHARES OF COMMON STOCK SUBJECT TO WARRANT
Wire Instructions: [*]			
Oak Hill Credit Alpha Finance I, LLC c/o Oak Hill Advisors, LP 1114 Avenue of the Americas 27th Floor New York, NY 10036 Attn: Shilpa Wani Wire Instructions: [*]		$201,000	
Oak Hill Credit Alpha Finance I (Offshore), Ltd. c/o Oak Hill Advisors, LP 1114 Avenue of the Americas 27th Floor New York, NY 10036 Attn: Shilpa Wani Wire Instructions: [*]		$623,000	

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NAME AND ADDRESS OF PURCHASER	PRINCIPAL AMOUNT OF TRANCHE A NOTES TO BE PURCHASED	PRINCIPAL AMOUNT OF TRANCHE B NOTES TO BE EXCHANGED	NUMBER OF SHARES OF COMMON STOCK SUBJECT TO WARRANT
Oak Hill Credit Opportunities Financing, Ltd. c/o Oak Hill Advisors, LP 1114 Avenue of the Americas 27th Floor New York, NY 10036 Attn: Shilpa Wani Wire Instructions: [*]		$ 950,000	
CARDINAL FUND I, L.P. 201 Main Street, Suite 1620 Fort Worth, TX 76102 Attn: Erin McDaniel Wire Instructions: [*]		$ 280,000	
FW JAZZ PHARMA INVESTORS, L.P. 201 Main Street, Suite 1620 Fort Worth, TX 76102 Attn: Erin McDaniel Wire Instructions: [*]		$ 140,000	

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NAME AND ADDRESS OF PURCHASER	PRINCIPAL AMOUNT OF TRANCHE A NOTES TO BE PURCHASED	PRINCIPAL AMOUNT OF TRANCHE B NOTES TO BE EXCHANGED	NUMBER OF SHARES OF COMMON STOCK SUBJECT TO WARRANT
Deep Cove Mezzanine, LLC 560 Oakwood Avenue, Suite 203 Lake Forest, IL 60045 Attn: Mark Flower Wire Instructions: [*]	$ 3,421,053	$ 5,000,000	48,082
General Electric Pension Trust c/o GE Asset Management Incorporated 3001 Summer Street Stamford, CT 06905 Attn: Daniel L. Furman Fax: (203) 326-4073 Wire Instructions: [*]	$ 3,078,947	$ 8,000,000	43,274

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

INFORMATION RELATING TO PURCHASERS AT SUBSEQUENT CLOSING

NAME AND ADDRESS OF PURCHASER	PRINCIPAL AMOUNT OF TRANCHE A NOTES TO BE PURCHASED	NUMBER OF SHARES OF COMMON STOCK SUBJECT TO WARRANT
LB I Group Inc. c/o Lehman Brothers 399 Park Avenue, 9th Floor New York, NY 10022 Attn: Jeffrey A. Ferrell Wire Instruction: [*]	Up to $27,000,000 (as determined by the Borrower)	
Deep Cove Mezzanine, LLC 560 Oakwood Avenue, Suite 203 Lake Forest, IL 60045 Attn: Mark Flower Wire Instructions: [*]	Up to $1,578,947 (as determined by the Borrower)	

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

NAME AND ADDRESS OF PURCHASER	PRINCIPAL AMOUNT OF TRANCHE A NOTES TO BE PURCHASED	NUMBER OF SHARES OF COMMON STOCK SUBJECT TO WARRANT
General Electric Pension Trust c/o GE Asset Management Incorporated 3001 Summer Street Stamford, CT 06905 Attn: Daniel L. Furman Fax: (203) 326-4073 Wire Instructions: [*]	Up to $1,421,053 (as determined by the Borrower)	

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

SCHEDULE B
(to Senior Secured Note and Warrant Purchase Agreement)

DEFINED TERMS

As used herein, the following terms have the respective meanings set forth below or set forth in the Section hereof following such term:

"*Accounts*" means, with respect to any Person, all of such Person's now existing and future: (a) accounts (as defined in the UCC), and any and all other receivables, including, without limitation, all accounts created by, or arising from, all of such Person's sales, leases, rentals of goods or renditions of services to its customers (whether or not they have been earned by performance), including but not limited to, those accounts arising under any of such Person's trade names, logos or styles, or through any of such Person's divisions; (b) any and all instruments, documents, chattel paper (including electronic chattel paper), contracts and contract rights (all as defined in the UCC); (c) unpaid seller's or lessor's rights (including rescission, replevin, reclamation, repossession and stoppage in transit) relating to the foregoing or arising therefrom; (d) rights to any goods represented by any of the foregoing, including rights to returned, reclaimed or repossessed goods; (e) reserves and credit balances arising in connection with or pursuant to any of the foregoing; (f) guaranties, supporting obligations, payment intangibles and letter of credit rights (all as defined in the UCC); (g) insurance policies or rights relating to any of the foregoing; (h) general intangibles pertaining to any and all of the foregoing (including all rights to payment, including those arising in connection with bank and non-bank credit cards), and including books and records and any electronic media and software thereto; (i) notes, deposits or property of account debtors securing the obligations of any such account debtors to such Person; and (j) cash and non-cash proceeds (as defined in the UCC) of any and all of the foregoing.

"*Affiliate*" means, at any time, and with respect to any Person, any other Person that at such time directly or indirectly through one or more intermediaries Controls, or is Controlled by, or is under common Control with, such first Person. As used in this definition, "*Control*" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. Unless the context otherwise clearly requires, any reference to an "*Affiliate*" is a reference to an Affiliate of the Company.

"*Annualized Aggregate Net Product Sales*" of the Company at any time shall be an amount equal to four times the Net Product Sales of the Company for the most recent fiscal quarter of the Company as to which financial statements have been provided pursuant to **Section 7.1**; *provided* that, if the Company shall have failed to provide financial statements no later than five (5) Business Days after the time required by **Section 7.01**, then until such financial statements shall have been provided, the Annualized Aggregate Net Product Sales of the Company shall be deemed to be $0.

"*Antizol*" means the fomepizole pharmaceutical products currently marketed under the trademarks Antizol and Antizol Vet.

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"*Antizol Assets*" means Antizol Intellectual Property and Antizol Regulatory Approvals.

"*Antizol Contracts*" means the contracts set forth on **Exhibit F** and all other contracts of any Credit Party or Orphan and all amendments thereto, whether now existing or subsequently executed, with third parties related to the formulation, manufacture, packaging, distribution, marketing and sale of Antizol as well as the acquisition of all components necessary for the manufacture and packaging of Antizol.

"*Antizol Intellectual Property*" means all patents, trademarks, trade dress, copyrights, all rights therein, and any other intellectual property possessed by Orphan and/or any Credit Party and related to the making, using, selling, marketing, or distribution of Antizol.

"*Antizol License Agreement*" is defined in Section 10.2(h).

"*Antizol Regulatory Approval*" means all grants of approval and marketing exclusivity for Antizol in any jurisdiction by the competent regulatory body for such jurisdiction.

"*Asset Disposition*" means any transaction, or series of related transactions, pursuant to which the Company or any of its Subsidiaries sells, assigns, transfers or otherwise disposes of any property (whether now owned or hereafter acquired) yielding proceeds to any Credit Party in excess of $1,000,000 for any such transaction or series of related transactions to any other Person (other than the Company or any Domestic Subsidiary), in each case, whether or not the consideration therefor consists of cash, securities or other assets, excluding any sales of Inventory in the ordinary course of business on ordinary business terms; *provided*, *however*, that, notwithstanding the foregoing, any sale, assignment, transfer or other disposal of any property by the Company or any Subsidiary of the Company permitted by **Section 10.2 (a), (b)** or **(c)** shall not be deemed to be an Asset Disposition.

"*Bankruptcy Code*" is defined in **Section 2.4.**

"*Business Day*" means any day other than a Saturday, a Sunday or a day on which commercial banks in New York City are required or authorized to be closed.

"*Capital Lease*" means, at any time, a lease with respect to which the lessee is required concurrently to recognize the acquisition of an asset and the incurrence of a liability in accordance with GAAP.

"*Capitalized Rentals*" of any Person means as of the date of any determination thereof the amount at which the aggregate Rentals due and to become due under all Capital Leases under which such Person is a lessee would be reflected as a liability on a consolidated balance sheet of such Person.

"*Closing*" is defined in **Section 1.3**.

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"*Change in Control*" means (i) a sale of all or substantially all of the assets of the Company to any Person or to two or more Persons acting together as a partnership, limited partnership, syndicate or other group for the purpose of acquiring, holding or disposing of or voting securities of the Company, or a sale of all or substantially all of the assets of the Company to any Person or Persons in which the stockholders of the Company immediately prior to such transaction do not control more than 50% of the voting power immediately following the transaction; (ii) a transaction or series of related transactions by the Company (other than transaction(s) determined by the Board of Directors to be primarily for cash financing purposes) or by any stockholder or stockholders of the Company resulting in more than 50% of the voting power of the Company being held by a Person or Persons other than stockholders of the Company who, immediately prior to such transaction, controlled more than 50% of the voting power of the Company; (iii) a merger or consolidation of the Company with or into any Person or Persons, if and only if, after such merger or consolidation, directors of the Company immediately prior to such merger or consolidation do not constitute a majority of the directors of the surviving entity or its parent.

"*Code*" means the Internal Revenue Code of 1986, as amended from time to time, and the rules and regulations promulgated thereunder from time to time.

"*Collateral*" is defined in **Section 3.1.**

"*Collateral Agent*" means LB I Group Inc. in its capacity as contractual representative for itself and the Purchasers pursuant to **Section 21** hereof and any successor Collateral Agent appointed pursuant **Section 21**.

"*Collateral Document*s" means the Pledge Agreement and all other mortgages, deeds of trust, security agreements, assignments, control account agreements, financing statements and other documents or instruments as shall from time to time secure the Obligations.

"*Company Guaranty*" is defined in **Section 2.3**.

"*Confidential Information*" is defined in **Section 20**.

"*Consolidated EBITDA*" means, with reference to any period, the EBITDA of the Company and its Subsidiaries determined on a consolidated basis for such period.

"*Consolidated Secured Indebtedness*" means as of the date of any determination thereof all secured Indebtedness of the Company and its Subsidiaries determined on a consolidated basis (and without duplication but after eliminating intercompany items) in accordance with GAAP.

"*Corporate Integrity Agreement*" is defined in Section 5.23.

"*Credit Party*" means the Borrower, the Company and any Domestic Subsidiary.

"*Default*" means an event or condition the occurrence or existence of which would, with the lapse of time or the giving of notice or both, become an Event of Default.

"*Documents of Title*" shall mean all present and future documents (as defined in the UCC), and any and all warehouse receipts, bills of lading, shipping documents, chattel paper, instruments and similar documents, all whether negotiable or not.

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"*Domestic Subsidiary*" means a Subsidiary of the Company formed under the laws of any state of the United States or the District of Columbia other than Orphan.

"*Environmental Laws*" means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including but not limited to those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

"*Equipment*" means all equipment (as defined in the UCC), including, without limitation (whether or not included in the UCC definition of "equipment"), all furniture, furnishings, fixtures and machinery, and all parts thereof and all additions and accessions thereto and replacements therefor and all cash and non-cash proceeds (as defined in the UCC) of any and all of the foregoing.

"*EBITDA*" for any Person during any period means Net Income of such Person for such period plus all amounts deducted in arriving at such Net Income amount in respect of (a) Interest Expense for such period, *plus* (b) Federal, state and local income taxes for such period, *plus* (c) all amounts charged for depreciation of fixed assets and amortization of intangible assets during such period, *plus* (d) all non-cash, non-recurring or extraordinary charges, expenses or losses for such period, *minus* (e) non-cash gains, non-recurring gains, and extraordinary gains, all determined in accordance with GAAP.

"*ERISA*" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

"*ERISA Affiliate*" means any trade or business (whether or not incorporated) that is treated as a single employer together with the Company under Section 414 of the Code.

"*Event of Default*" is defined in **Section 11**.

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

"*Fee Letter*" means the Fee Letter, dated of even date herewith, among the Company, the Borrower, and LB I Group Inc., providing for the payment by the Borrower of an arrangement fee to LB I Group Inc. in connection with the arrangement of the transactions contemplated by this Agreement.

"*Foreign Subsidiary*" means each Subsidiary of the Company, other than Orphan, that is not a Domestic Subsidiary.

"*Fraudulent Conveyance*" is defined in **Section 2.3**.

"*GAAP*" means generally accepted accounting principles as in effect from time to time in the United States of America.

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"*General Intangibles*" means, as to any Person, all "general intangibles" as defined in the UCC, now owned or hereafter acquired, including, without limitation (whether or not included in the UCC definition of "general intangibles"), all of such Person's then owned or existing and future acquired or arising general intangibles, causes in action and causes of action and all other intangible personal property of such Person of every kind and nature, including, without limitation, Intellectual Property, grants by any Governmental Authority of approval or marketing exclusivity for any pharmaceutical product, franchises, tax refund claims, reversions or any rights thereto and any other amounts payable to such Person from any rights and claims against carriers and shippers, rights to indemnification, and business interruption, property, casualty or any similar type of insurance and any proceeds thereof, and all cash and non-cash proceeds (as defined in the UCC) of any and all of the foregoing.

"*Governmental Authority*" means

(a) the government of

(i) the United States of America or any State or other political subdivision thereof, or

(ii) any jurisdiction in which the Company or any Subsidiary conducts all or any part of its business, or which asserts jurisdiction over any properties of the Company or any Subsidiary, or

(b) any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, any such government.

"*Guaranty*" means, with respect to any Person, any obligation (except the endorsement in the ordinary course of business of negotiable instruments for deposit or collection) of such Person guaranteeing or in effect guaranteeing any Indebtedness, dividend or other obligation of any other Person in any manner, whether directly or indirectly, including (without limitation) obligations incurred through an agreement, contingent or otherwise, by such Person:

(a) to purchase such Indebtedness or obligation or any property constituting security therefor;

(b) to advance or supply funds (i) for the purchase or payment of such Indebtedness or obligation, or (ii) to maintain any working capital or other balance sheet condition or any income statement condition of any other Person or otherwise to advance or make available funds for the purchase or payment of such Indebtedness or obligation;

(c) to lease properties or to purchase properties or services primarily for the purpose of assuring the owner of such Indebtedness or obligation of the ability of any other Person to make payment of the Indebtedness or obligation; or

(d) otherwise to assure the owner of such Indebtedness or obligation against loss in respect thereof.

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In any computation of the Indebtedness or other liabilities of the obligor under any Guaranty, the Indebtedness or other obligations that are the subject of such Guaranty shall be assumed to be direct obligations of such obligor.

"*Hazardous Material*" means any and all pollutants, toxic or hazardous wastes or any other substances that pose a hazard to health or safety, the removal of which may be required or the generation, manufacture, refining, production, processing, treatment, storage, handling, transportation, transfer, use, disposal, release, discharge, spillage, seepage, or filtration of which is restricted, prohibited or penalized by any applicable Environmental Law (including, without limitation, asbestos, urea formaldehyde foam insulation and polychlorinated biphenyls).

"*holder*" means, with respect to any Note, the Person in whose name such Note is registered in the register maintained by the Company pursuant to **Section 13.1**.

"*Indebtedness*" with respect to any Person means, at any time, without duplication,

(a) its liabilities for borrowed money and its redemption obligations in respect of mandatorily redeemable preferred stock;

(b) its liabilities for the deferred purchase price of property acquired by such Person (excluding accounts payable arising in the ordinary course of business but including all liabilities created or arising under any conditional sale or other title retention agreement with respect to any such property);

(c) all liabilities appearing on its balance sheet in accordance with GAAP in respect of Capital Leases;

(d) all liabilities for borrowed money secured by any Lien with respect to any property owned by such Person (whether or not it has assumed or otherwise become liable for such liabilities);

(e) all its liabilities in respect of letters of credit or instruments serving a similar function issued or accepted for its account by banks and other financial institutions (whether or not representing obligations for borrowed money);

(f) all payment obligations of such Person with respect to interest rate swaps, currency swaps and similar obligations; and

(g) any Guaranty of such Person with respect to liabilities of a type described in any of clauses (a) through (f) hereof.

Indebtedness of any Person shall include all obligations of such Person of the character described in clauses (a) through (g) to the extent such Person remains legally liable in respect thereof notwithstanding that any such obligation is deemed to be extinguished under GAAP.

"*Initial Closing*" is defined in **Section 1.3**.

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"*Intellectual Property*" means all present and future designs, patents, patent rights and applications therefor, trademarks and registrations or applications therefor, trade names, inventions, copyrights and all applications and registrations therefor, software or computer programs, in-bound licensed rights, trade secrets, methods, processes, know-how, drawings, specifications, descriptions, and all memoranda, notes and records with respect to any research and development, whether now owned or hereafter acquired, and all goodwill associated with any of the foregoing.

"*Interest Expense*" of the Company and its Subsidiaries for any period means all interest (including the interest component of Rentals on Capital Leases) and all amortization of debt discount and expense on any particular Indebtedness (including, without limitation, payment-in-kind, zero coupon and other like securities) for which such calculations are being made. Computations of Interest Expense on a *pro forma* basis for Indebtedness having a variable interest rate shall be calculated at the rate in effect on the date of any determination.

"*Inventory*" means, as to any Person, all "inventory" of such Person as defined in the UCC including, without limitation (whether or not included in the UCC definition of "inventory"), all of such Person's then owned or existing and future acquired or arising: (a) inventory, merchandise, goods and other personal property intended for sale or lease or for display or demonstration; (b) work in process; (c) raw materials and other materials and supplies of every nature and description used or which might be used in connection with the manufacture, packing, shipping, advertising, selling, leasing or furnishing of the foregoing or otherwise used or consumed in the conduct of business; (d) documents evidencing, and General Intangibles relating to, any of the foregoing; and (e) all cash and non-cash proceeds (as defined in the UCC) of any and all of the foregoing.

"*Inventories and Receivables*" means, of the Company and its consolidated Subsidiaries, as of any date of determination, an amount equal to the sum of the amount of "Inventories" of the Company and its consolidated Subsidiaries as of such date and the amount of "Accounts Receivable, net" of the Company and its consolidated Subsidiaries as of such date, in each case as determined on a consolidated basis in accordance with GAAP.

"*Investment Property*" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract or commodity account.

"*Investments*" means all investments, in cash or by delivery of property, made directly or indirectly in any property or assets of any Person or in any Person, whether by acquisition of shares of capital stock, Indebtedness or other obligations or Securities or by loan, advance, capital contribution or otherwise.

"*JPI Commercial License Agreements*" is defined in **Section 10.2(h)**.

"*Knowledge*" means, as to the Company, the actual knowledge of any officer, director or employee of the Company or any Subsidiary of the Company after reasonable investigation.

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"*Lien*" means, with respect to any Person, any mortgage, lien, pledge, charge, security interest or other encumbrance, or any interest or title of any vendor, lessor, lender or other secured party to or of such Person under any conditional sale or other title retention agreement or Capital Lease, upon or with respect to any property or asset of such Person (including in the case of stock or membership or equivalent equity interests, stockholder or member or equivalent agreements, voting trust agreements and all similar arrangements).

"*LUVOX® CR*" means the controlled release fluvoxamine pharmaceutical product currently intended to be marketed under the trademark LUVOX® CR and the immediate release fluvoxamine pharmaceutical product previously marketed under the trademark LUVOX®.

"*LUVOX® CR Assets*" means the LUVOX® CR Intellectual Property and LUVOX® CR Regulatory Approval.

"*LUVOX® CR Contracts*" means the contracts set forth on **Exhibit G** and all other contracts of any Credit Party and all amendments thereto, whether now existing or subsequently executed, with third parties related to the formulation, manufacture, packaging, distribution, marketing and sale of LUVOX® CR as well as the acquisition of all components necessary for the manufacture and packaging of LUVOX® CR.

"*LUVOX® CR Intellectual Property*" means all patents, trademarks, trade dress, copyrights, all rights therein, and any other intellectual property possessed by any Credit Party and related to the making, using, selling, marketing, or distribution of LUVOX® CR.

"*LUVOX® CR License Agreement*" is defined in Section 10.2(h).

"*LUVOX® CR Regulatory Approval*" means all grants of approval and marketing exclusivity for LUVOX® CR in the United States.

"*Majority Holders*" means, at any time, the holders of more than 50% in principal amount of the Notes at the time outstanding (exclusive of Notes then owned by the Company).

"*Make-Whole Amount*" means, with respect to any principal prepayment for which the Make-Whole Amount is applicable, an amount determined with reference to the following formula:

Make-Whole Amount = *pmt* x (.40 – (*qtr* x .0167))

where:

pmt	=	the amount of the applicable principal prepayment; and
qtr	=	the number which is the quotient of: (x) the fewer of the number of months elapsed subsequent to June 24, 2005 and the date upon which (i) an Event of Default occurs and continues for more than 30 days notwithstanding the fact that such Event of Default is cured thereafter, or (ii) the applicable prepayment is made; divided by (y) three.

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Notwithstanding the foregoing to the contrary, so long as no Event of Default shall have occurred and be continuing, the Make-Whole Amount for any voluntary principal prepayment on the Notes of up to an amount equal to $40,000,000 less the amount of any prepayments pursuant to **Section 8.3** in the aggregate shall be equal to 10% of such principal prepayment.

"*Mandatory Prepayment Event*" means, with respect to any Credit Party, the occurrence of an Asset Disposition in connection with such Credit Party, the receipt by such Credit Party of any cash insurance proceeds for damaged or destroyed property that yields gross proceeds to such Credit Party in excess of $1,000,000, or the receipt by such Credit Party of any cash proceeds from any judgment awards or settlements that yield gross proceeds to such Credit Party in excess of $1,000,000.

"*Material*" means material in relation to the business, operations, affairs, financial condition, assets or properties of the Company and its Subsidiaries taken as a whole.

"*Material Adverse Effect*" means a material adverse effect on (a) the business, operations, affairs, financial condition, assets or properties of the Company and its Subsidiaries taken as a whole, or (b) the ability of the Company or the Borrower to perform its obligations under this Agreement and the Notes and Warrants, or (c) the validity or enforceability of this Agreement or the Notes or the Warrants.

"*Material Breach or Default*" means, with respect to the Corporate Integrity Agreement, a "material breach" or "default" as such phrases are defined therein.

"*Minority Interests*" means, with respect to any Person, any shares of stock (or equivalent equity interests) of any class of a Subsidiary of such Person (other than directors' qualifying shares as required by law) that are not owned by such Person and/or one or more of its Subsidiaries. Minority Interests shall be valued by valuing Minority Interests constituting preferred stock (or equivalent equity interests) at the voluntary or involuntary liquidating value of such preferred stock (or equivalent equity interests), whichever is greater, and by valuing Minority Interests constituting common stock (or equivalent equity interests) at the book value of capital and surplus applicable thereto adjusted, if necessary, to reflect any changes from the book value of such common stock (or equivalent equity interests) required by the foregoing method of valuing Minority Interests in preferred stock.

"*Multiemployer Plan*" means any Plan that is a "multiemployer plan" (as such term is defined in Section 400 l(a)(3) of ERISA).

"*Net Income*" for any Person during any period means the gross revenues of such Person and its Subsidiaries for such period less all expenses and other proper charges (including taxes on income), determined on a consolidated basis after eliminating earnings or losses attributable to outstanding Minority Interests, but excluding in any event:

(a) any gains or losses on the sale or other disposition of Investments or fixed or capital assets, and any taxes on such excluded gains and any tax deductions or credits on account of any such excluded losses;

(b) the proceeds of any life insurance policy;

(c) net earnings and losses of any Subsidiary accrued prior to the date it became a Subsidiary;

(d) net earnings and losses of any corporation (other than a Subsidiary), substantially all the assets of which have been acquired in any manner by such Person or any Subsidiary thereof, realized by such corporation prior to the date of such acquisition;

(e) net earnings and losses of any corporation (other than a Subsidiary) with which such Person or any Subsidiary thereof shall have consolidated or which shall have merged into or with such Person or any Subsidiary thereof prior to the date of such consolidation or merger;

(f) net earnings of any business entity (other than a Subsidiary) in which such Person or any Subsidiary thereof has an ownership interest unless such net earnings shall have actually been received by such Person or any Subsidiary thereof in the form of cash distributions;

(g) any portion of the net earnings of any Subsidiary which for any reason is unavailable for payment of dividends to such Person or any Subsidiary thereof;

(h) earnings resulting from any reappraisal, revaluation or write-up of assets;

(i) any deferred or other credit representing any excess of the equity in any Subsidiary of such Person at the date of acquisition thereof over the amount invested in such Subsidiary;

(j) any gain arising from the acquisition of any securities of such Person or any Subsidiary thereof;

(k) any reversal of any contingency reserve, except to the extent that provision for such contingency reserve shall have been made from income arising during such period; and

(l) any other extraordinary gain.

"*Net Proceeds*" means:

(a) with respect to any Asset Disposition by any Person, the amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by or on behalf of such Person in connection therewith after deducting therefrom only (i) the amount of any Indebtedness secured by any Lien which is permitted by **Section 10.3** on any property (other than any Indebtedness assumed by the purchaser of such property and Indebtedness evidenced by the Notes) which is required to be, and is, repaid in connection with such Asset Disposition, (ii) reasonable expenses related thereto incurred by such Person in connection with the Asset Disposition, (iii) transfer taxes paid or due to be paid by such Person to any taxing authorities in connection with such Asset Disposition, and (iv) any amount of reserves properly taken on the balance sheet of the Person making the Asset Disposition, as reasonably determined by the Board of Directors of such Person in its good faith judgment; *provided* that such reserves shall be deemed part of Net Proceeds if and to the extent such reserves are not actually paid by the applicable Person and are removed from such Person's balance sheet;

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(b) with respect to any insurance proceeds received by any Person in connection with the damage or destruction of any property or asset, the amount of cash received (directly or indirectly) by or on behalf of such Person in connection therewith after deducting therefrom only (i) the amount of any Indebtedness secured by any Lien which is permitted by **Section 10.3** on the damaged or destroyed property or asset (other than any Indebtedness evidenced by the Notes) and (ii) reasonable expenses related thereto incurred by such Person in connection with the collection of such insurance proceeds;

(c) with respect to any judgment awards or settlements received by any Person, the amount of cash received (directly or indirectly) by or on behalf of such Person in connection therewith after deducting therefrom only reasonable expenses related thereto incurred by such Person in connection with the obtaining of such award or the negotiation of such settlement; and

(d) cash received by any Person from the conversion of any non-cash proceeds received in connection with an Asset Disposition, insurance awards or any judgments or settlements, subject to any applicable reductions noted in clauses (a), (b) and (c) above.

"*Net Product Sales*" means, for any Product for any fiscal period of the Company, an amount equal to *the excess of* the amount of the proceeds of sales or royalties on sales pursuant to licensing arrangements with respect to such Product, for such fiscal period *over* the amount of discounts, credits, refunds, and rebates of such Products during such fiscal period. If the term "Net Product Sales" is used in this Agreement without reference to a particular Product, then such Net Product Sales shall be determined with respect to Antizol, LUVOX® CR, Xyrem, and all other Products of the Company, if any.

"*New Subsidiary*" is defined in **Section 9.7**.

"*Notes*" is defined in **Section 1**.

"*Obligations*" is defined in **Section 2.2**.

"*Officer's Certificate*" means a certificate of a Senior Financial Officer or of any other officer of the Company whose responsibilities extend to the subject matter of such certificate.

"*Orphan*" is defined in the opening recitals of this Agreement.

"*Orphan Asset Transfer*" means (i) the assignment of all right title and interest of Orphan in the Antizol Assets and the Xyrem Assets to Borrower, (ii) the assignment of the rights and obligations of Orphan under each and every Antizol Contract and Xyrem Contract to Borrower, or to another Credit Party subject to the requirements of Section 10.7, and (iii) repayment of all Indebtedness owed pursuant to the Orphan Note Purchase Agreement and the Orphan Notes;

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(iv) the assignment of all right, title and interest of the Company in the LUVOX® CR Assets to the Borrower; and (v) the assignment of the rights and obligations of the Company under each and every LUVOX® CR Contract to the Borrower or to another Credit Party subject to the requirements of Section 10.7.

"*Orphan Asset Transfer Agreement*" means the agreement to effect the Orphan Asset Transfer in the form set forth in **Exhibit I**.

"*Orphan Merger*" means the merger of Orphan with and into the Borrower, with the Borrower being the surviving corporation, pursuant to the Orphan Merger Agreement.

"*Orphan Merger Agreement*" is the collective reference to the agreement and plan of merger, dated as of March 14, 2008, between Orphan and the Borrower and the certificate of merger in the form set forth in **Exhibit K**.

"*Orphan Note Purchase Agreement*" means the Senior Secured Note and Warrant Purchase Agreement, dated as of June 24, 2005, by and among the Purchasers (as defined therein), the Company, and Twist Merger Sub, Inc., as amended.

"*Orphan Notes*" means the "Notes", as defined in the Orphan Note Purchase Agreement

"*Other Collateral*" means:

(a) all other goods and property, whether or not delivered, including, without limitation, such other goods and property: (i) the sale or lease of which gives or purports to give rise to any Account or other Collateral, including, but not limited to, all Inventory and other merchandise returned or rejected by or repossessed from customers; (ii) securing any Account or other Collateral, including, without limitation, all rights as a consignor, a consignee, an unpaid vendor or lienor (including, without limitation, stoppage in transit, replevin and reclamation) with respect to such other goods and properties; or (iii) warranty claims relating to goods;

(b) all substitutes and replacements for, accessories, attachments, and other additions to, any of the above and any and all products or masses into which any goods are physically united such that their identity is lost;

(c) all policies and certificates of insurance relating to any of the foregoing, now owned or hereafter acquired, evidencing or pertaining to any and all items of Collateral;

(d) all files, correspondence, computer programs, tapes, discs and related data processing software which contain information identifying or pertaining to any of the Collateral or any account debtor, or showing the amounts thereof or payments thereon or otherwise necessary or helpful in the realization thereon or the collection thereof; and

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(e) any and all products and proceeds of the foregoing (including, but not limited to, any claim to any item of Collateral and any claim against any third party for loss of, damage to or destruction of any or all of, the Collateral or for proceeds payable under, or unearned premiums with respect to, policies of insurance) in whatever form, including, but not limited to, cash, instruments, chattel paper, security agreements and other documents.

"*PBGC*" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA or any successor thereto.

"*Permitted Acquisition Indebtedness*" is defined in **Section 10.1(a)(v)**.

"*Permitted Foreign Subsidiary Transfer*" means the transfer by the Company or a Subsidiary of the Company other than the Borrower (or a Subsidiary of the Borrower) of the international rights to a Product candidate to a Foreign Subsidiary, all pursuant to documentation and on terms reasonably acceptable to the Purchasers.

"*Permitted Investments*" means:

(a) Investments by the Company and its Subsidiaries in and to the Company or in or to:

(i) Any Domestic Subsidiary, including any Investment in a corporation which, after giving effect to such Investment, will become a Domestic Subsidiary as permitted by **Section 10.5(a)**; or

(ii) Any Foreign Subsidiary permitted to be created and capitalized by **Section 10.5(b)** so long as:

a. such Foreign Subsidiary is established solely to carry out the Company's or any of its Subsidiaries' business operations in a particular foreign jurisdictions where it is necessary or prudent, in the good faith determination of the Board of Directors of the Company, to establish a separate legal entity under local law;

b. such Investment is comprised of only that amount of capital and other property as is determined to be necessary from time to time, in the good faith discretion of the Board of Directors of the Company, to conduct the ordinary and intended business operations of such Foreign Subsidiary; and

c. such Investment would not be reasonably expected to have a Material Adverse Effect or otherwise materially adversely effect the value or priority of the Collateral, taken as a whole, for the prompt and full payment of the Obligations; or

(iii) Orphan, to the extent made prior to the date hereof.

(b) Investments representing loans or advances in the usual and ordinary course of business to officers, directors and employees for expenses (including moving expenses related to a transfer) incidental to carrying on the business of the Company or any Domestic Subsidiary;

(c) Investments in property or assets to be used in the ordinary course of the business of the Company and its Subsidiaries as described in **Section 9.6** of this Agreement;

(d) Investments representing travel advances in the usual and ordinary course of business to officers and employees of the Company and its Subsidiaries incidental to carrying-on the business of the Company or any Subsidiaries;

(e) receivables arising from the sale of goods and services in the ordinary course of business of the Company and its Subsidiaries;

(f) Investments in commercial paper or corporate debt obligation of corporations (not constituting Securitization Entities, as hereinafter defined) organized under the laws of the United States or any state thereof maturing in 270 days or less from the date of issuance which, at the time of acquisition by the Company or any Subsidiary, is accorded the highest rating by Standard & Poor's Ratings Group, a division of McGraw-Hill, Inc., a New York corporation, or by Moody's Investors Service, Inc.;

(g) Investments in direct obligations of the United States of America or any agency or instrumentality of the United States of America, the payment or guarantee of which constitutes a full faith and credit obligation of the United States of America, in either case, maturing within twelve months from the date of acquisition thereof;

(h) Investments in certificates of deposit and time deposits maturing within one year from the date of issuance thereof, issued by a bank or trust company organized under the laws of the United States or any State thereof; *provided* that at the time of acquisition thereof by the Company or a Subsidiary, (i) the senior unsecured long-term debt of such bank or trust company or of the holding company of such bank or trust company is rated AA or better by Standard & Poor's Ratings Group, a division of McGraw-Hill, Inc., a New York corporation, or "Aa2" or better by Moody's Investors Service, Inc. or (ii) such Investments are fully insured by the Federal Depository Insurance Corporation; and

(i) Investments in any money market fund which invests substantially all of its assets in obligations described in clauses (g) and (h) above.

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As used herein, "Securitization Entity" means any entity the primary business of which is to own accounts, notes or other debt instruments and related collateral, securities, or other financial assets or general intangibles.

"*Permitted Liens*" means:

(a) (i) Liens in favor of the Collateral Agent for the benefit of the Purchasers pursuant to this Agreement or any other Related Document and (ii) Liens in favor of the Collateral Agent for the benefit of the Purchasers (as defined in the Orphan Note Purchase Agreement) pursuant to the Related Documents (as defined in the Orphan Note Purchase Agreement), but only (in the case of this clause (ii)) until the Initial Closing;

(b) Liens for property taxes and assessments or governmental charges or levies and Liens securing claims or demands of mechanics and materialmen so long as the payment thereof is not at the time required by **Section 9.4**;

(c) Liens of or resulting from any judgment or award, the time for the appeal or petition for rehearing of which shall not have expired, or in respect of which the Company or a Subsidiary thereof shall at any time in good faith be prosecuting an appeal or proceeding for a review and in respect of which a stay of execution pending such appeal or proceeding for review shall have been secured;

(d) Liens incidental to the conduct of business or the ownership of properties and assets (including Liens in connection with worker's compensation, unemployment insurance and other like laws, warehousemen's and attorneys' liens and statutory landlords' liens); *provided* in each case, the obligation secured is not overdue or, if overdue, is being contested in good faith by appropriate actions or proceedings; and

(e) minor survey exceptions or minor encumbrances, easements or reservations, or rights of others for rights-of-way, utilities and other similar purposes, or zoning or other restrictions as to the use of real properties, which are necessary for the conduct of the activities of the Company and its Subsidiaries or which customarily exist on properties of corporations engaged in similar activities and similarly situated and which do not in any event materially impair their use in the operation of the business of the Company and its Subsidiaries.

"*Permitted Other Secured Indebtedness*" is defined in **Section 10.1(a)(iv)**.

"*Permitted Purchase Money Indebtedness*" is defined in **Section 10.1(a)(iii)**.

"*Permitted Receivables/Inventory Indebtedness*" is defined in **Section 10.1(a)(iii)**.

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"*Person*" means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government or agency or political subdivision thereof.

"*Plan*" means an "employee benefit plan" (as defined in Section 3(3) of ERISA) that is or, within the preceding five years, has been established or maintained, or to which contributions are or, within the preceding five years, have been made or required to be made, by the Company or any ERISA Affiliate or with respect to which the Company or any ERISA Affiliate may have any liability.

"*Pledge Agreement*" means the Stock Pledge Agreement, dated as of the date of the Closing, executed by the Company in favor of the Collateral Agent for the benefit of the Purchasers, pursuant to which the Company shall have pledged and collaterally assigned 100% of the capital stock of the Borrower as security for the prompt and full payment and performance of the Obligations, and each other pledge agreement executed and delivered by a Credit Party pursuant to **Section 9.7**.

"*Product*" means a pharmaceutical product, drug or medication.

"*property*" or "*properties*" means, unless otherwise specifically limited, real or personal property of any kind, tangible or intangible, choate or inchoate.

"*Pro Rata Portion*" means, with respect to any holder of a Note upon the occurrence of a Mandatory Prepayment Event, the amount determined by multiplying the Net Proceeds received in connection with such Mandatory Prepayment Event by a fraction the numerator of which is the aggregate outstanding principal amount of all Notes held by such holder at such time and the denominator of which is the aggregate outstanding principal amount of all outstanding Notes at such time.

"*QPAM Exemption*" means the Prohibited Transaction Class Exemption 84-14 issued by the United States Department of Labor.

"*Registration Rights Agreement*" means the Registration Rights Agreement, dated the date hereof, between the Company and each applicable Purchaser, in the form of **Exhibit J** hereto.

"*Related Documents*" means this Agreement, the Notes, the Warrants, the Registration Rights Agreement, the Collateral Documents, the Orphan Asset Transfer Agreement, and each other instrument or document to be delivered hereunder or thereunder or otherwise in connection therewith.

"*Rentals*" means and includes as of the date of any determination thereof all fixed payments (including as such all payments which the lessee is obligated to make to the lessor on termination of the lease or surrender of the property) payable by the Company or a Subsidiary, as lessee or sublessee under a lease of real or personal property, but shall be exclusive of any amounts required to be paid by the Company or a Subsidiary (whether or not designated as rents

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or additional rents) on account of maintenance, repairs, insurance, taxes and similar charges. Fixed rents under any so-called "percentage leases" shall be computed solely on the basis of the minimum rents, if any, required to be paid by the lessee regardless of sales volume or gross revenues.

"*Responsible Officer*" means any Senior Financial Officer and any other officer of the Company with responsibility for the administration of the relevant portion of this Agreement.

"*Securities*" is defined in **Section 5.13**.

"*Securities Act*" means the Securities Act of 1933, as amended from time to time.

"*Senior Financial Officer*" means the chief financial officer, principal accounting officer, treasurer or controller of the Company.

"*Settlement Agreements*" is defined in **Section 5.23**.

"*Subsequent Closing*" is defined in **Section 1.3**.

"*Subsequent Closing Exercise Price*" is defined in **Section 1.2(b)**.

"*Subsidiary*" means, as to any Person, any corporation, association or other business entity in which such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries owns sufficient equity or voting interests to enable it or them (as a group) ordinarily, in the absence of contingencies, to elect a majority of the directors (or Persons performing similar functions) of such entity, and any partnership or joint venture if more than a 50% interest in the profits or capital thereof is owned by such Person or one or more of its Subsidiaries or such Person and one or more of its Subsidiaries (unless such partnership can and does ordinarily take major business actions without the prior approval of such Person or one or more of its Subsidiaries). Unless the context otherwise clearly requires, any reference to a "Subsidiary" is a reference to a Subsidiary of the Company. For the avoidance of doubt, any reference to a Subsidiary of the Company in this Agreement shall mean and include the Borrower and each Subsidiary of the Borrower.

"*Tangible Assets*" means as of the date of any determination thereof for any Person, the total amount of all assets of such Person and its Subsidiaries (less depreciation, depletion and other properly deductible valuation reserves) after deducting, without duplication, good will, patents, trade names, trade marks, copyrights, franchises, experimental expense, organization expense, unamortized debt discount and expense, deferred assets other than prepaid insurance and prepaid taxes, the excess of cost of shares acquired over book value of related assets and such other assets as are properly classified as "intangible assets" in accordance with GAAP.

"*Tranche A Notes*" is defined in **Section 1.1(a)**.

"*Tranche B Notes*" is defined in **Section 1.1(a)**.

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"*Transferred Orphan Assets*" has the meaning set forth in the Orphan Asset Transfer Agreement.

"*UCC*" means the Uniform Commercial Code as in effect on the date hereof in the State of New York, as amended from time to time, and any successor statute.

"*Voting Stock*" means Securities of any class or classes, the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the corporate directors (or Persons performing similar functions).

"*Warrants*" is defined in Section 1.1(b).

"*Wholly-owned Subsidiary*" means, at any time, any Subsidiary one hundred percent (100%) of all of the equity interests (except directors' qualifying shares) and voting interests of which are owned by any one or more of the Company and the Company's other Wholly-owned Subsidiaries at such time.

"*Xyrem*" means the sodium oxybate pharmaceutical product currently marketed under the trademark Xyrem and the sodium oxybate pharmaceutical product under development for treatment of fibromyalgia.

"*Xyrem Assets*" means the Xyrem Intellectual Property and Xyrem Regulatory Approvals.

"*Xyrem Contracts*" means the contracts set forth on **Exhibit H** and all other contracts of any Credit Party or Orphan and all amendments thereto, whether now existing or subsequently executed, with third parties related to the formulation, manufacture, packaging, distribution, marketing and sale of Xyrem as well as the acquisition of all components necessary for the manufacture and packaging of Xyrem.

"*Xyrem Intellectual Property*" means all patents, trademarks, trade dress, copyrights, all rights therein, and any other intellectual property possessed by Orphan and/or any Credit Party and related to the making, using, selling, marketing, or distribution of Xyrem.

"*Xyrem License Agreement*" is defined in Section 10.2(h).

"*Xyrem Regulatory Approval*" means all grants of approval and marketing exclusivity for Xyrem in any jurisdiction by the competent regulatory body for such jurisdiction.

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Exhibit A-1
(to Senior Secured Note and Warrant Purchase Agreement)

FORM OF TRANCHE A NOTE

THIS TRANCHE A NOTE IS BEING ISSUED WITH ORIGINAL ISSUE DISCOUNT UNDER SECTIONS 1272 AND 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. THE ISSUE PRICE OF THIS TRANCHE A NOTE IS [_____]. FOR FURTHER INFORMATION REGARDING THE ISSUE PRICE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT, THE ISSUE DATE AND THE YIELD TO MATURITY OF THE NOTE, PLEASE CONTACT [NAME AND TITLE OF CONTACT PERSON] OF THE BORROWER AT [CONTACT PERSON'S PHONE NUMBER] OR [CONTACT PERSON'S ADDRESS].

THIS TRANCHE A NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND, ACCORDINGLY, MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER SAID ACT. COPIES OF THE AGREEMENT COVERING THE PURCHASE OF THIS TRANCHE A NOTE AND RESTRICTING ITS TRANSFER OR SALE MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD HEREOF TO THE SECRETARY OF THE BORROWER AT ITS PRINCIPAL EXECUTIVE OFFICES.

JPI COMMERCIAL, LLC

15% Senior Secured Tranche A Note due _____ ____, 2011

No. _____ Date
$_____

FOR VALUE RECEIVED, the undersigned, JPI COMMERCIAL, LLC (herein called the "*Borrower*"), a corporation organized and existing under the laws of the State of Delaware, hereby promises to pay to _____, or registered assigns, the principal sum of _____ DOLLARS on _____ __, 2011, with interest (computed on the basis of a 360-day year of twelve 30-day months) on the unpaid balance thereof at the rate of 15% per annum from the date hereof, payable quarterly in arrears, on the last day of March, June, September and December in each year, commencing with June 30, 2008, until the principal hereof shall have become due and payable; *provided*, *however*, interest on such unpaid balance shall accrue at the rate of 17% per annum during the continuance of any Event of Default.

Payments of principal of, interest on and any Make-Whole Amount with respect to this Tranche A Note are to be made in lawful money of the United States of America at such place as the holder of this Tranche A Note shall have designated by written notice to the Borrower as provided in the Note Purchase Agreement referred to below.

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This Tranche A Note is one of a series of Senior Notes (herein called the "*Notes*") issued pursuant to that certain Senior Secured Note and Warrant Purchase Agreement, dated as of March 14, 2008 (as from time to time amended, the "*Note Purchase Agreement*"), among the Borrower, Jazz Pharmaceuticals, Inc., LB I Group Inc., as Collateral Agent and a Purchaser, and the other Purchasers named therein and is entitled to the benefits thereof. This Tranche A Note is secured pursuant to the provisions of the Note Purchase Agreement and other Related Documents (defined in the Note Purchase Agreement) and is entitled to the benefit of the rights and security provided thereby. Each holder of this Tranche A Note will be deemed, by its acceptance hereof, (i) to have agreed to the confidentiality provisions set forth in **Section 20** of the Note Purchase Agreement and (ii) to have made the representations set forth in **Section 6** of the Note Purchase Agreement.

As provided in the Note Purchase Agreement, upon surrender of this Tranche A Note for registration of transfer, duly endorsed, or accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder's attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Borrower may treat the person in whose name this Tranche A Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Borrower will not be affected by any notice to the contrary.

The Borrower will make required prepayments of principal on the dates and in the amounts specified in the Note Purchase Agreement. This Tranche A Note is also subject to optional prepayment, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement, but not otherwise.

If an Event of Default, as defined in the Note Purchase Agreement, occurs and is continuing, the principal of this Tranche A Note may be declared or otherwise become due and payable in the manner, at the price (including any applicable Make-Whole Amount) and with the effect provided in the Note Purchase Agreement.

To the fullest extent permitted by applicable law, the Borrower waives: (a) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all of the obligations or liabilities under the Note Purchase Agreement or evidenced hereby, (b) all rights to notice and hearing prior to the taking of possession or control of any collateral (including by way of attachment or replevy), and (c) the benefit of all valuation, appraisal and exemption laws.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

This Tranche A Note shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of New York, including Section 5-1401 of the General Obligations Law of said State.

BORROWER ACKNOWLEDGES THAT THE BORROWER HAS WAIVED THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ON THIS TRANCHE A NOTE.

JPI COMMERCIAL, LLC

By _____
[Title]

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

Exhibit A-2
(to Senior Secured Note and Warrant Purchase Agreement)

FORM OF TRANCHE B NOTE

THIS TRANCHE B NOTE IS BEING ISSUED WITH ORIGINAL ISSUE DISCOUNT UNDER SECTIONS 1272 AND 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. FOR INFORMATION REGARDING THE ISSUE PRICE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT, THE ISSUE DATE AND THE YIELD TO MATURITY OF THE NOTE, PLEASE CONTACT [NAME AND TITLE OF CONTACT PERSON] OF THE BORROWER AT [CONTACT PERSON'S PHONE NUMBER] OR [CONTACT PERSON'S ADDRESS].

THIS TRANCHE B NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND, ACCORDINGLY, MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER SAID ACT. COPIES OF THE AGREEMENT COVERING THE PURCHASE OF THIS TRANCHE B NOTE AND RESTRICTING ITS TRANSFER OR SALE MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD HEREOF TO THE SECRETARY OF THE BORROWER AT ITS PRINCIPAL EXECUTIVE OFFICES.

JPI COMMERCIAL, LLC

15% Senior Secured Tranche B Note due _____ ____, 2011

No. _____ Date
$_____

FOR VALUE RECEIVED, the undersigned, JPI COMMERCIAL, LLC (herein called the "*Borrower*"), a corporation organized and existing under the laws of the State of Delaware, hereby promises to pay to _____, or registered assigns, the principal sum of _____ DOLLARS on _____ __, 2011, with interest (computed on the basis of a 360-day year of twelve 30-day months) on the unpaid balance thereof at the rate of 15% per annum from the date hereof, payable quarterly in arrears, on the last day of March, June, September and December in each year, commencing with June 30, 2008, until the principal hereof shall have become due and payable; *provided*, *however*, interest on such unpaid balance shall accrue at the rate of 17% per annum during the continuance of any Event of Default.

Payments of principal of, interest on and any Make-Whole Amount with respect to this Tranche B Note are to be made in lawful money of the United States of America at such place as the holder of this Tranche B Note shall have designated by written notice to the Borrower as provided in the Note Purchase Agreement referred to below.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

This Tranche B Note is one of a series of Senior Notes (herein called the "*Notes*") issued pursuant to that certain Senior Secured Note and Warrant Purchase Agreement, dated as of March 14, 2008 (as from time to time amended, the "*Note Purchase Agreement*"), among the Borrower, Jazz Pharmaceuticals, Inc., LB I Group Inc., as Collateral Agent and a Purchaser, and the other Purchasers named therein and is entitled to the benefits thereof. This Tranche B Note is secured pursuant to the provisions of the Note Purchase Agreement and other Related Documents (defined in the Note Purchase Agreement) and is entitled to the benefit of the rights and security provided thereby. Each holder of this Tranche B Note will be deemed, by its acceptance hereof, (i) to have agreed to the confidentiality provisions set forth in **Section 20** of the Note Purchase Agreement and (ii) to have made the representations set forth in **Section 6** of the Note Purchase Agreement.

As provided in the Note Purchase Agreement, upon surrender of this Tranche B Note for registration of transfer, duly endorsed, or accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder's attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Borrower may treat the person in whose name this Tranche B Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Borrower will not be affected by any notice to the contrary.

The Borrower will make required prepayments of principal on the dates and in the amounts specified in the Note Purchase Agreement. This Tranche B Note is also subject to optional prepayment, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement, but not otherwise.

If an Event of Default, as defined in the Note Purchase Agreement, occurs and is continuing, the principal of this Tranche B Note may be declared or otherwise become due and payable in the manner, at the price (including any applicable Make-Whole Amount) and with the effect provided in the Note Purchase Agreement.

To the fullest extent permitted by applicable law, the Borrower waives: (a) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all of the obligations or liabilities under the Note Purchase Agreement or evidenced hereby, (b) all rights to notice and hearing prior to the taking of possession or control of any collateral (including by way of attachment or replevy), and (c) the benefit of all valuation, appraisal and exemption laws.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

This Tranche B Note shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of New York, including Section 5-1401 of the General Obligations Law of said State.

BORROWER ACKNOWLEDGES THAT THE BORROWER HAS WAIVED THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ON THIS TRANCHE B NOTE.

JPI COMMERCIAL, LLC

By _____
[Title]

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

Exhibit 4.5B

FORM OF TRANCHE A NOTE

THIS TRANCHE A NOTE IS BEING ISSUED WITH ORIGINAL ISSUE DISCOUNT UNDER SECTIONS 1272 AND 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. THE ISSUE PRICE OF THIS TRANCHE A NOTE IS [_____]. FOR FURTHER INFORMATION REGARDING THE ISSUE PRICE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT, THE ISSUE DATE AND THE YIELD TO MATURITY OF THE NOTE, PLEASE CONTACT [NAME AND TITLE OF CONTACT PERSON] OF THE BORROWER AT [CONTACT PERSON'S PHONE NUMBER] OR [CONTACT PERSON'S ADDRESS].

THIS TRANCHE A NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND, ACCORDINGLY, MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER SAID ACT. COPIES OF THE AGREEMENT COVERING THE PURCHASE OF THIS TRANCHE A NOTE AND RESTRICTING ITS TRANSFER OR SALE MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD HEREOF TO THE SECRETARY OF THE BORROWER AT ITS PRINCIPAL EXECUTIVE OFFICES.

JPI COMMERCIAL, LLC

15% Senior Secured Tranche A Note due _____ __, 2011

No. _____ Date
$_____

FOR VALUE RECEIVED, the undersigned, JPI COMMERCIAL, LLC (herein called the "*Borrower*"), a corporation organized and existing under the laws of the State of Delaware, hereby promises to pay to _____, or registered assigns, the principal sum of _____ DOLLARS on _____ __, 2011, with interest (computed on the basis of a 360-day year of twelve 30-day months) on the unpaid balance thereof at the rate of 15% per annum from the date hereof, payable quarterly in arrears, on the last day of March, June, September and December in each year, commencing with June 30, 2008, until the principal hereof shall have become due and payable; *provided*, *however*, interest on such unpaid balance shall accrue at the rate of 17% per annum during the continuance of any Event of Default.

Payments of principal of, interest on and any Make-Whole Amount with respect to this Tranche A Note are to be made in lawful money of the United States of America at such place as the holder of this Tranche A Note shall have designated by written notice to the Borrower as provided in the Note Purchase Agreement referred to below.

This Tranche A Note is one of a series of Senior Notes (herein called the "*Notes*") issued pursuant to that certain Senior Secured Note and Warrant Purchase Agreement, dated as of March 14, 2008 (as from time to time amended, the "*Note Purchase Agreement*"), among the Borrower, Jazz Pharmaceuticals, Inc., LB I Group Inc., as Collateral Agent and a Purchaser, and the other Purchasers named therein and is entitled to the benefits thereof. This Tranche A Note is secured pursuant to the provisions of the Note Purchase Agreement and other Related Documents (defined in the Note Purchase Agreement) and is entitled to the benefit of the rights and security provided thereby. Each holder of this Tranche A Note will be deemed, by its acceptance hereof, (i) to have agreed to the confidentiality provisions set forth in **Section 20** of the Note Purchase Agreement and (ii) to have made the representations set forth in **Section 6** of the Note Purchase Agreement.

As provided in the Note Purchase Agreement, upon surrender of this Tranche A Note for registration of transfer, duly endorsed, or accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder's attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Borrower may treat the person in whose name this Tranche A Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Borrower will not be affected by any notice to the contrary.

The Borrower will make required prepayments of principal on the dates and in the amounts specified in the Note Purchase Agreement. This Tranche A Note is also subject to optional prepayment, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement, but not otherwise.

If an Event of Default, as defined in the Note Purchase Agreement, occurs and is continuing, the principal of this Tranche A Note may be declared or otherwise become due and payable in the manner, at the price (including any applicable Make-Whole Amount) and with the effect provided in the Note Purchase Agreement.

To the fullest extent permitted by applicable law, the Borrower waives: (a) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all of the obligations or liabilities under the Note Purchase Agreement or evidenced hereby, (b) all rights to notice and hearing prior to the taking of possession or control of any collateral (including by way of attachment or replevy), and (c) the benefit of all valuation, appraisal and exemption laws.

This Tranche A Note shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of New York, including Section 5-1401 of the General Obligations Law of said State.

BORROWER ACKNOWLEDGES THAT THE BORROWER HAS WAIVED THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ON THIS TRANCHE A NOTE.

JPI COMMERCIAL, LLC

By _____
[Title]

Exhibit 4.5C

FORM OF TRANCHE B NOTE

THIS TRANCHE B NOTE IS BEING ISSUED WITH ORIGINAL ISSUE DISCOUNT UNDER SECTIONS 1272 AND 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED. FOR INFORMATION REGARDING THE ISSUE PRICE, THE AMOUNT OF ORIGINAL ISSUE DISCOUNT, THE ISSUE DATE AND THE YIELD TO MATURITY OF THE NOTE, PLEASE CONTACT [NAME AND TITLE OF CONTACT PERSON] OF THE BORROWER AT [CONTACT PERSON'S PHONE NUMBER] OR [CONTACT PERSON'S ADDRESS].

THIS TRANCHE B NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND, ACCORDINGLY, MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN EXEMPTION THEREFROM UNDER SAID ACT. COPIES OF THE AGREEMENT COVERING THE PURCHASE OF THIS TRANCHE B NOTE AND RESTRICTING ITS TRANSFER OR SALE MAY BE OBTAINED AT NO COST BY WRITTEN REQUEST MADE BY THE HOLDER OF RECORD HEREOF TO THE SECRETARY OF THE BORROWER AT ITS PRINCIPAL EXECUTIVE OFFICES.

JPI COMMERCIAL, LLC

15% Senior Secured Tranche B Note due _____ __, 2011

No. _____ Date
$_____

FOR VALUE RECEIVED, the undersigned, JPI COMMERCIAL, LLC (herein called the "*Borrower*"), a corporation organized and existing under the laws of the State of Delaware, hereby promises to pay to _____, or registered assigns, the principal sum of _____ DOLLARS on _____ __, 2011, with interest (computed on the basis of a 360-day year of twelve 30-day months) on the unpaid balance thereof at the rate of 15% per annum from the date hereof, payable quarterly in arrears, on the last day of March, June, September and December in each year, commencing with June 30, 2008, until the principal hereof shall have become due and payable; *provided*, *however*, interest on such unpaid balance shall accrue at the rate of 17% per annum during the continuance of any Event of Default.

Payments of principal of, interest on and any Make-Whole Amount with respect to this Tranche B Note are to be made in lawful money of the United States of America at such place as the holder of this Tranche B Note shall have designated by written notice to the Borrower as provided in the Note Purchase Agreement referred to below.

This Tranche B Note is one of a series of Senior Notes (herein called the "*Notes*") issued pursuant to that certain Senior Secured Note and Warrant Purchase Agreement, dated as of March 14, 2008 (as from time to time amended, the "*Note Purchase Agreement*"), among the Borrower, Jazz Pharmaceuticals, Inc., LB I Group Inc., as Collateral Agent and a Purchaser, and the other Purchasers named therein and is entitled to the benefits thereof. This Tranche B Note is secured pursuant to the provisions of the Note Purchase Agreement and other Related Documents (defined in the Note Purchase Agreement) and is entitled to the benefit of the rights and security provided thereby. Each holder of this Tranche B Note will be deemed, by its acceptance hereof, (i) to have agreed to the confidentiality provisions set forth in **Section 20** of the Note Purchase Agreement and (ii) to have made the representations set forth in **Section 6** of the Note Purchase Agreement.

As provided in the Note Purchase Agreement, upon surrender of this Tranche B Note for registration of transfer, duly endorsed, or accompanied by a written instrument of transfer duly executed, by the registered holder hereof or such holder's attorney duly authorized in writing, a new Note for a like principal amount will be issued to, and registered in the name of, the transferee. Prior to due presentment for registration of transfer, the Borrower may treat the person in whose name this Tranche B Note is registered as the owner hereof for the purpose of receiving payment and for all other purposes, and the Borrower will not be affected by any notice to the contrary.

The Borrower will make required prepayments of principal on the dates and in the amounts specified in the Note Purchase Agreement. This Tranche B Note is also subject to optional prepayment, in whole or from time to time in part, at the times and on the terms specified in the Note Purchase Agreement, but not otherwise.

If an Event of Default, as defined in the Note Purchase Agreement, occurs and is continuing, the principal of this Tranche B Note may be declared or otherwise become due and payable in the manner, at the price (including any applicable Make-Whole Amount) and with the effect provided in the Note Purchase Agreement.

To the fullest extent permitted by applicable law, the Borrower waives: (a) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all of the obligations or liabilities under the Note Purchase Agreement or evidenced hereby, (b) all rights to notice and hearing prior to the taking of possession or control of any collateral (including by way of attachment or replevy), and (c) the benefit of all valuation, appraisal and exemption laws.

This Tranche B Note shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of New York, including Section 5-1401 of the General Obligations Law of said State.

BORROWER ACKNOWLEDGES THAT THE BORROWER HAS WAIVED THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ON THIS TRANCHE B NOTE.

JPI COMMERCIAL, LLC

By _____
[Title]

Exhibit 4.5D

FORM OF WARRANT

NEITHER THESE SECURITIES NOR THE SECURITIES FOR WHICH THESE SECURITIES ARE EXERCISABLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION OR THE SECURITIES COMMISSION OF ANY STATE IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND, ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND IN ACCORDANCE WITH APPLICABLE STATE SECURITIES LAWS. THESE SECURITIES AND THE SECURITIES ISSUABLE UPON EXERCISE OF THESE SECURITIES MAY BE PLEDGED IN CONNECTION WITH A BONA FIDE MARGIN ACCOUNT OR OTHER LOAN SECURED BY SUCH SECURITIES.

JAZZ PHARMACEUTICALS, INC.

WARRANT

Warrant No. C/S [ ] Dated: [____] [__], 2008

JAZZ PHARMACEUTICALS, INC., a Delaware corporation (the "**Company**"), hereby certifies that, for value received, _____ or its registered assigns (the "**Holder**"), is entitled to purchase from the Company up to a total of _____ shares of common stock, $0.0001 par value per share (the "**Common Stock**"), of the Company (each such share, a "**Warrant Share**" and all such shares, the "**Warrant Shares**") at an exercise price equal to $_____ per share (as adjusted from time to time as provided in Section 9 , the "**Exercise Price**"), at any time on or after the date hereof (the "**Initial Exercise Date**") and through and including the date that is five years from the date of issuance hereof (the "**Expiration Date**"), and subject to the following terms and conditions. This Warrant (this "**Warrant**") is one of a series of similar warrants issued pursuant to that certain Senior Secured Note and Warrant Purchase Agreement, dated as of March 14, 2008, by and among the Company and the Purchasers identified therein (the "**Purchase Agreement**"). All such warrants are referred to herein, collectively, as the "**Warrants**."

1. Definitions. In addition to the terms defined elsewhere in this Warrant, capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Purchase Agreement. Additional definitions are as follows:

"**Affiliate**" shall have the meaning ascribed to such term in Rule 405 under the Securities Act.

"**Closing Price**" means, for any date, the closing price per share of the Common Stock for such date (or the nearest preceding date) on the primary Eligible Market or exchange or quotation system on which the Common Stock is then listed or quoted.

"**Eligible Market**" means any of the New York Stock Exchange, the American Stock Exchange, The Nasdaq Global Market, The Nasdaq Global Select Market or The Nasdaq Capital Market.

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

"**Person**" means any individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, or joint stock company.

"**Registration Rights Agreement**" means that certain Registration Rights Agreement, dated as of March 17, 2008, by and among the Company and the Purchasers.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Trading Day**" means (a) any day on which the Common Stock is listed or quoted and traded on its primary Trading Market, (b) if the Common Stock is not then listed or quoted and traded on any Eligible Market, then a day on which trading occurs on the OTC Bulletin Board (or any successor thereto), or (c) if trading ceases to occur on the OTC Bulletin Board (or any successor thereto), any Business Day.

"**Trading Market**" means OTC Bulletin Board or any other Eligible Market, or any national securities exchange, market or trading or quotation facility on which the Common Stock is then listed or quoted.

2. Registration of Warrant. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "**Warrant Register**"), in the name of the Holder of record hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

3. Registration of Transfers. Subject to the provisions of Section 11 below, the Company shall register the transfer of any portion of this Warrant in the Warrant Register, upon surrender of this Warrant, with the Form of Assignment attached hereto duly completed and signed, to the Company at its address specified herein or to the designee of the Company at its address specified by the Company. Upon any such registration of transfer, a new warrant to purchase Common Stock, in substantially the form of this Warrant (any such new warrant, a "**New Warrant**"), evidencing the portion of this Warrant so transferred shall be issued to the transferee and a New Warrant evidencing the remaining portion of this Warrant not so transferred, if any, shall be issued to the transferring Holder. The acceptance of the New Warrant by the transferee thereof shall be deemed the acceptance by such transferee of all of the rights and obligations of a holder of a Warrant.

4. Exercise and Duration of Warrants.

(a) This Warrant shall be exercisable by the registered Holder at any time and from time to time on or after the Initial Exercise Date to and including the Expiration Date. At 6:30 P.M., New York City time on the Expiration Date, the portion of this Warrant not exercised prior thereto shall be and become void and of no value.

(b) A Holder may exercise this Warrant by delivering to the Company (i) an exercise notice, in the form attached hereto (the "**Exercise Notice**"), appropriately completed and duly signed, and (ii) payment of the Exercise Price for the number of Warrant Shares as to which this Warrant is being exercised (which may take the form of a "cashless exercise" if so indicated in the Exercise Notice), and the date such items are delivered to the Company (as determined in accordance with the notice provisions hereof) is an "**Exercise Date**." The Holder shall not be required to deliver the original Warrant in order to effect an exercise hereunder. Execution and delivery of the Exercise Notice in respect of less than all the Warrant Shares issuable upon exercise of this Warrant shall have the same effect as cancellation of the original Warrant and issuance of a New Warrant evidencing the right to purchase the remaining number of Warrant Shares.

5. Delivery of Warrant Shares. Upon exercise of this Warrant, the Company shall promptly (but in no event later than three Trading Days after the Exercise Date) issue or cause to be issued and cause to be delivered to or upon the written order of the Holder and in such name or names as the Holder may designate, a certificate for the Warrant Shares issuable upon such exercise, free of restrictive legends unless a registration statement covering the resale of the Warrant Shares and naming the Holder as a selling stockholder thereunder is not then effective or the Warrant Shares are not freely transferable without volume restrictions pursuant to Rule 144 under the Securities Act. The Holder, or any Person so designated by the Holder to receive Warrant Shares, shall be deemed to have become the holder of record of such Warrant Shares as of the Exercise Date. The Company shall, upon request of the Holder, use commercially reasonable efforts to deliver Warrant Shares hereunder electronically through The Depository Trust Company or another established clearing corporation performing similar functions if, at the time of delivery of such Warrant Shares, the Company is generally able to so deliver Common Stock electronically.

(a) This Warrant is exercisable, either in its entirety or, from time to time, for a portion of the number of Warrant Shares. Upon surrender of this Warrant following any partial exercise, the Company shall issue or cause to be issued, at its expense, a New Warrant evidencing the right to purchase the remaining number of Warrant Shares.

(b) In addition to any other rights available to a Holder, if the Company fails to deliver to the Holder a certificate representing Warrant Shares by the third Trading Day after the date on which delivery of such certificate is required by this Warrant, and if after such third Trading Day the Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by the Holder of the Warrant Shares that the Holder anticipated receiving from the Company (a "**Buy-In**"), then the Company shall, within five Trading Days after the Holder's request and in the Holder's discretion, either (i) pay cash to the Holder in an amount equal to the Holder's total purchase price (including reasonable brokerage commissions, if any) for the shares of Common Stock so purchased (the "**Buy-In Price**"), at which point the Company's obligation to deliver such certificate (and to issue such Common Stock) shall terminate, or (ii) promptly honor its obligation to deliver to the Holder a certificate or certificates representing such Common Stock and pay cash to the Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock, times (B) the Closing Price on the date of the event giving rise to the Company's obligation to deliver such certificate.

(c) The Company's obligations to issue and deliver Warrant Shares in accordance with the terms hereof are absolute and unconditional, irrespective of any action or inaction by the Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by the Holder or any other Person of any obligation to the Company or any violation or alleged violation of law by the Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Company to the Holder in connection with the issuance of Warrant Shares. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver certificates representing shares of Common Stock upon exercise of this Warrant as required pursuant to the terms hereof.

6. Charges, Taxes and Expenses. Issuance and delivery of certificates for shares of Common Stock upon exercise of this Warrant shall be made without charge to the Holder for any issue or transfer tax, withholding tax, transfer agent fee or other incidental tax or expense in respect of the issuance of such certificates, all of which taxes and expenses shall be paid by the Company; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance, delivery or registration of any certificates for Warrant Shares or Warrants in a name other than that of the Holder. The Holder shall be responsible for all other tax liability that may arise as a result of holding or transferring this Warrant or receiving Warrant Shares upon exercise hereof.

7. Replacement of Warrant. If this Warrant is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation hereof, or in lieu of and substitution for this Warrant, a New Warrant, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction and customary and reasonable bond or indemnity, if requested. Applicants for a New Warrant under such circumstances shall also comply with such other reasonable regulations and procedures and pay such other reasonable third-party costs as the Company may prescribe.

8. Reservation of Warrant Shares. The Company covenants that it will at all times reserve and keep available out of the aggregate of its authorized but unissued and otherwise unreserved Common Stock, solely for the purpose of enabling it to issue Warrant Shares upon exercise of this Warrant as herein provided, the number of Warrant Shares which are then issuable and deliverable upon the exercise of this entire Warrant, free from preemptive rights or any other contingent purchase rights of persons other than the Holder (after giving effect to the adjustments and restrictions of Section 9, if any). The Company covenants that all Warrant Shares so issuable and deliverable shall, upon issuance and the payment of the applicable Exercise Price in accordance with the terms hereof, be duly and validly authorized, issued and fully paid and nonassessable. The Company will use its reasonable best efforts to take all such action to assure that such shares of Common Stock may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of any securities exchange or automated quotation system upon which the Common Stock may be listed or quoted, in each case, applicable to the Company.

9. Certain Adjustments. The Exercise Price and number of Warrant Shares issuable upon exercise of this Warrant are subject to adjustment from time to time as set forth in this Section 9.

(a) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding, (i) pays a stock dividend on its Common Stock or otherwise makes a distribution on any class of capital stock that is payable in shares of Common Stock, (ii) subdivides outstanding shares of Common Stock into a larger number of shares, or (iii) combines outstanding shares of Common Stock into a smaller number of shares, then in each such case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of shares of Common Stock outstanding immediately before such event and of which the denominator shall be the number of shares of Common Stock outstanding immediately after such event. Any adjustment made pursuant to clause (i) of this paragraph shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution, and any adjustment pursuant to clause (ii) or (iii) of this paragraph shall become effective immediately after the effective date of such subdivision or combination.

(b) Pro Rata Distributions. If the Company, at any time while this Warrant is outstanding, distributes to holders of Common Stock (i) evidences of its indebtedness, (ii) any security (other than a distribution of Common Stock covered by the preceding paragraph), (iii) rights or warrants to subscribe for or purchase any security, or (iv) any other asset (in each case, "**Distributed Property**"), then in each such case the Holder shall be entitled upon exercise of this Warrant for the purchase of any or all of the Warrant Shares, to receive the amount of Distributed Property which would have been payable to the Holder had such Holder been the holder of such Warrant Shares on the record date for the determination of stockholders entitled to such Distributed Property. The Company will at all times set aside in escrow and keep available for distribution to such holder upon exercise of this Warrant a portion of the Distributed Property to satisfy the distribution to which such Holder is entitled pursuant to the preceding sentence.

(c) Fundamental Transactions. If any capital reorganization, reclassification of the capital stock of the Company, consolidation or merger of the Company with another entity in which the Company is not the survivor, or sale, transfer or other disposition of all or substantially all of the Company's assets to another entity shall be effected (any such transaction being hereinafter referred to as a "**Fundamental Transaction**"), then the Company shall use its best efforts to ensure that lawful and adequate provision shall be made whereby the Holder shall thereafter have the right to purchase and receive upon the basis and upon the terms and conditions herein specified and in lieu of the Warrant Shares immediately theretofore issuable upon exercise of this Warrant, such shares of stock, securities or assets as would have been issuable or payable with respect to or in exchange for a number of Warrant Shares equal to the number of Warrant Shares immediately theretofore issuable upon exercise of this Warrant, had such reorganization, reclassification, consolidation, merger, sale, transfer or other disposition not taken place, and in any such case appropriate provision shall be made with respect to the rights and interests of the Holder to the end that the provisions hereof (including, without limitation, provision for adjustment of the Exercise Price) shall thereafter be applicable, as nearly equivalent as may be practicable in relation to any share of stock, securities or assets thereafter deliverable upon the exercise thereof. The Company shall not effect any such consolidation, merger, sale, transfer or other disposition unless prior to or simultaneously with the consummation thereof the

successor entity (if other than the Company) resulting from such consolidation or merger, or the entity purchasing or otherwise acquiring such assets or other appropriate corporation or entity shall assume the obligation to deliver to the Holder, at the last address of the Holder appearing on the books of the Company, such shares of stock, securities or assets as, in accordance with the foregoing provisions, the Holder may be entitled to purchase, and the other obligations under this Warrant. The provisions of this Section 9(c) shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, sales, transfers or other dispositions, each of which transactions shall also constitute a Fundamental Transaction.

(d) Number of Warrant Shares. Simultaneously with any adjustment to the Exercise Price pursuant to paragraph (a) of this Section, the number of Warrant Shares that may be purchased upon exercise of this Warrant shall be increased or decreased (as the case may be), proportionately, so that after such adjustment the aggregate Exercise Price payable hereunder for the decreased or increased (as the case may be) number of Warrant Shares shall be the same as the aggregate Exercise Price in effect immediately prior to such adjustment.

(e) Calculations. All calculations under this Section 9 shall be made to the nearest cent or the nearest 1/100th of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares shall be considered an issue or sale of Common Stock.

(f) Notice of Adjustments. Upon the occurrence of each adjustment pursuant to this Section 9, the Company at its expense will promptly compute such adjustment in accordance with the terms of this Warrant and prepare a certificate setting forth such adjustment, including a statement of the adjusted Exercise Price and adjusted number or type of Warrant Shares or other securities issuable upon exercise of this Warrant (as applicable), describing the transactions giving rise to such adjustments and showing in detail the facts upon which such adjustment is based. Upon written request, the Company will promptly deliver a copy of each such certificate to the Holder and to the Transfer Agent.

(g) Notice of Corporate Events. If the Company (i) declares a dividend or any other distribution of cash, securities or other property in respect of its Common Stock, including without limitation any granting of rights or warrants to subscribe for or purchase any capital stock of the Company, (ii) enters into any agreement contemplating, or solicits stockholder approval for, any Fundamental Transaction or (iii) authorizes the voluntary dissolution, liquidation or winding up of the affairs of the Company, then the Company shall deliver to the Holder a notice describing the material terms and conditions of such transaction, at least fifteen calendar days prior to the applicable record or effective date on which a Person would need to hold Common Stock in order to participate in or vote with respect to such transaction, and the Company will take all steps reasonably necessary in order to ensure that the Holder is given the practical opportunity to exercise this Warrant prior to such time so as to participate in or vote with respect to such transaction; provided, however, that the failure to deliver such notice or any defect therein shall not affect the validity of the corporate action required to be described in such notice.

10. Payment of Exercise Price. The Holder may pay the Exercise Price either in immediately available funds or by means of a "cashless exercise," in which event the Company shall issue to the Holder the number of Warrant Shares determined as follows:

X = Y [(A-B)/A]

where:

X = the number of Warrant Shares to be issued to the Holder.

Y = the number of Warrant Shares with respect to which this Warrant is being exercised.

A = the average of the Closing Prices for the five Trading Days immediately prior to (but not including) the Exercise Date.

B = the Exercise Price.

For purposes of Rule 144 promulgated under the Securities Act, it is intended, understood and acknowledged that the Warrant Shares issued in a cashless exercise transaction shall be deemed to have been acquired by the Holder, and the holding period for the Warrant Shares shall be deemed to have commenced, on the date this Warrant was originally issued pursuant to the Purchase Agreement.

11. Transfers.

(a) Unregistered Security. Each Holder of this Warrant acknowledges that this Warrant has not been registered under the Securities Act, and agrees that in no event will it dispose of all or any portion of this Warrant unless and until (a) it has complied with the provisions of Section 11(b) below, and (b) if reasonably requested by the Company, the registered Holder shall have furnished the Company with an opinion of counsel reasonably satisfactory in form and substance to the Company and the Company's counsel to the effect that (x) such disposition will not require registration under the Securities Act and (y) appropriate action necessary for compliance with the Securities Act and any applicable state, local, or foreign law has been taken, except that no such opinion of counsel shall be required in connection with any transfer of this Warrant to any subsidiary, parent, partner, limited partner, retired partner, stockholder or Affiliate of the Holder. Without limiting the foregoing, the registered Holder, by accepting this Warrant, agrees that it may transfer this Warrant (or any portion hereof) only to one of its Affiliates, provided that, in the case of any transfer, the applicable transferee must agree in writing to be subject to the terms of this Warrant and the Registration Rights Agreement (as such terms are defined below). Each certificate evidencing this Warrant transferred as provided above shall bear an appropriate restrictive legend substantially to the foregoing effect.

For purposes of this Warrant, "Registration Rights Agreement" means that certain Registration Rights Agreement, dated as of March 17, 2008, by and among the Company and the holders of the Warrants (and any shares issued upon exercise of such warrants).

(b) Transferability. Subject to the provisions of this Section 11, this Warrant and all rights hereunder are transferable, in whole or in part, upon surrender of the Warrant with a properly executed assignment in the form of assignment attached hereto at the principal office of the Company. Any purported transfer of all or any portion of this Warrant in violation of the provisions of this Warrant shall be null and void.

12. Fractional Shares. The Company shall not be required to issue or cause to be issued fractional Warrant Shares on the exercise of this Warrant. If any fraction of a Warrant Share would, except for the provisions of this Section, be issuable upon exercise of this Warrant, the number of Warrant Shares to be issued will be rounded down to the nearest whole share.

13. Notices. Any and all notices or other communications or deliveries hereunder (including without limitation any Exercise Notice) shall be in writing and shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via electronic mail or facsimile at the e-mail address or facsimile number specified in the Purchase Agreement prior to 6:30 p.m. (New York City time) on a Trading Day, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via electronic mail or facsimile at the e-mail address or facsimile number specified in the Purchase Agreement on a day that is not a Trading Day or later than 6:30 p.m. (New York City time) on any Trading Day, (iii) the Trading Day following the date of delivery to the courier service, if sent by nationally (or internationally) recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given. The address for such notices or communications shall be as set forth in the Purchase Agreement.

14. Warrant Agent. The Company shall serve as warrant agent under this Warrant. Upon 30 days' notice to the Holder, the Company may appoint a new warrant agent. Any entity into which the Company or any new warrant agent may be merged or any entity resulting from any consolidation to which the Company or any new warrant agent shall be a party or any entity to which the Company or any new warrant agent transfers substantially all of its corporate trust or stockholder services business shall be a successor warrant agent under this Warrant without any further act. Any such successor warrant agent shall promptly cause notice of its succession as warrant agent to be mailed (by first class mail, postage prepaid) to the Holder at the Holder's last address as shown on the Warrant Register.

15. Miscellaneous.

(a) This Warrant may not be assigned by the Company except to a successor in the event of a Fundamental Transaction. This Warrant shall be binding on and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Subject to the preceding sentence, nothing in this Warrant shall be construed to give to any Person other than the Company and the Holder any legal or equitable right, remedy or cause of action under this Warrant.

(b) Any term of the Warrants may be amended or waived only by an instrument in writing signed by the Company and the holders of Warrants covering more than fifty percent (50%) of the number of Warrant Shares subject to the Warrants outstanding at the time of such amendment or waiver; provided however that no such amendment or waiver may, without the written consent of the holder of each Warrant at the time outstanding affected thereby, change (a) the Exercise Price, (b) the Initial Exercise Date or Expiration Date, or (c) the

number of Warrant Shares; and further provided that no amendment or modification to this Warrant that materially and adversely affects the rights of the holder hereof in a manner disproportionate to the other holders of Warrants shall be effective with respect to such holder or this Warrant unless such amendment or modification has been approved in writing by (i) the holders of Warrants covering more than fifty percent (50%) of the number of Warrant Shares subject to the Warrants outstanding at the time of such amendment or waiver, and (ii) one additional holder of a Warrant, where such additional holder is not an Affiliate of the approving holders described in clause (i) above.

(c) The Company (i) will not increase the par value of any Warrant Shares above the amount payable therefor on such exercise and (ii) will not close its stockholder books or records in any manner which interferes with the timely exercise of this Warrant, other than in connection with a business combination transaction.

(d) GOVERNING LAW; VENUE; WAIVER OF JURY TRIAL. ALL QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS WARRANT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS SITTING IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION HEREWITH OR WITH ANY TRANSACTION CONTEMPLATED HEREBY OR DISCUSSED HEREIN (INCLUDING WITH RESPECT TO THE ENFORCEMENT OF ANY OF THE TRANSACTION DOCUMENTS), AND HEREBY IRREVOCABLY WAIVES, AND AGREES NOT TO ASSERT IN ANY SUIT, ACTION OR PROCEEDING, ANY CLAIM THAT IT IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF ANY SUCH COURT AND THAT SUCH SUIT, ACTION OR PROCEEDING IS IMPROPER. EACH PARTY HEREBY IRREVOCABLY WAIVES PERSONAL SERVICE OF PROCESS AND CONSENTS TO PROCESS BEING SERVED IN ANY SUCH SUIT, ACTION OR PROCEEDING BY MAILING A COPY THEREOF VIA REGISTERED OR CERTIFIED MAIL OR OVERNIGHT DELIVERY (WITH EVIDENCE OF DELIVERY) TO SUCH PARTY AT THE ADDRESS IN EFFECT FOR NOTICES TO IT UNDER THIS AGREEMENT AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE GOOD AND SUFFICIENT SERVICE OF PROCESS AND NOTICE THEREOF. NOTHING CONTAINED HEREIN SHALL BE DEEMED TO LIMIT IN ANY WAY ANY RIGHT TO SERVE PROCESS IN ANY MANNER PERMITTED BY LAW. EACH OF THE COMPANY AND THE HOLDER HEREBY WAIVES ALL RIGHTS TO A TRIAL BY JURY.

(e) The headings herein are for convenience only, do not constitute a part of this Warrant and shall not be deemed to limit or affect any of the provisions hereof.

(f) In case any one or more of the provisions of this Warrant shall be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this Warrant shall not in any way be affected or impaired thereby and the parties will attempt in good faith to agree upon a valid and enforceable provision which shall be a commercially reasonable substitute therefor, and upon so agreeing, shall incorporate such substitute provision in this Warrant.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK, SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Company has caused this Warrant to be duly executed by its authorized officer as of the date first indicated above.

JAZZ PHARMACEUTICALS, INC.

By: _____
Name: [Insert Name]
Title: [Insert Title]

FORM OF EXERCISE NOTICE

(To be executed by the Holder to exercise the right to purchase shares of Common Stock under the foregoing Warrant)

To: JAZZ PHARMACEUTICALS, INC.

The undersigned is the Holder of Warrant No. _____ (the "**Warrant**") issued by JAZZ PHARMACEUTICALS, INC., a Delaware corporation (the "**Company**"). Capitalized terms used herein and not otherwise defined have the respective meanings set forth in the Warrant.

1. The Warrant is currently exercisable to purchase a total of _____ Warrant Shares.
2. The undersigned Holder hereby exercises its right to purchase _____ Warrant Shares pursuant to the Warrant.
3. The Holder intends that payment of the Exercise Price shall be made as (check one):

   ☐ "Cash Exercise" under Section 10

   ☐ "Cashless Exercise" under Section 10
4. If the holder has elected a Cash Exercise, the holder shall pay the sum of $ _____ to the Company in accordance with the terms of the Warrant.
5. Pursuant to this exercise, the Company shall deliver to the holder _____ Warrant Shares in accordance with the terms of the Warrant.
6. Following this exercise, the Warrant shall be exercisable to purchase a total of _____ Warrant Shares.

Dated: _____ _____ , _____

Name of Holder:
(Print) _____

By: _____
Name: _____
Title: _____
(Signature must conform in all respects to name of holder as specified on the face of the Warrant)

FORM OF ASSIGNMENT

[To be completed and signed only upon transfer of Warrant]

FOR VALUE RECEIVED, _____ hereby sells, assigns and transfers all of the rights of the undersigned transferor under the attached Warrant with respect to the number of shares of Common Stock covered thereby set forth below, unto:

Name of Assignee	**Address/Fax Number**	**No. of Shares**

The undersigned transferor represents that it has complied with all of the provisions of the attached Warrant governing the transfer of such Warrant, including without limitation the provisions of Section 11 thereof, and acknowledges that any purported transfer of all or any part of such Warrant in violation of the terms of the attached Warrant shall be null and void.

Dated: _____ By: _____
Name: _____
Title: _____

The undersigned transferee of the attached Warrant acknowledges the limitations on transfer of the attached Warrant, including without limitation those contained in Section 11 thereof, agrees to be bound by the terms of the attached Warrant and the Registration Rights Agreement (as defined in the attached Warrant) to the same extent as if the undersigned transferee were the initial holder of the attached Warrant, and shall deliver to the Company together with this assignment form a counterpart signature page to the Registration Rights Agreement.

Dated: _____ By: _____
Name: _____
Title: _____

Exhibit 4.5E

EXECUTION COPY

JAZZ PHARMACEUTICALS, INC.

REGISTRATION RIGHTS AGREEMENT

MARCH 17, 2008

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

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REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (the "Agreement") is made as of March 17, 2008 by and among Jazz Pharmaceuticals, Inc., a Delaware corporation (the "Company"), and the purchasers (the "Purchasers") of Tranche A Notes (the "Notes") and related Warrants (the "Warrants") pursuant to the Senior Secured Note and Warrant Purchase Agreement of even date herewith (the "Purchase Agreement"), each of which Purchasers is listed on Schedule A hereto.

RECITALS

WHEREAS, the Company and the Purchasers are parties to the Purchase Agreement; and

WHEREAS, in order to induce the Company to enter into the Purchase Agreement and to induce the Purchasers to invest funds in the Company pursuant to the Purchase Agreement, the Purchasers and the Company hereby agree that this Agreement shall govern the rights of the Purchasers to cause the Company to register shares of Common Stock issuable to the Purchasers upon conversion or exercise of the Warrants and certain other matters as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

1 Registration Rights. The Company covenants and agrees as follows:

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Purchase Agreement. Additional definitions are as follows:

(a) The term "Act" means the Securities Act of 1933, as amended.

(b) The term "Affiliate" shall have the meaning ascribed to such term in Rule 405 under the Act.

(c) The term "Form S-3" means such form under the Act as in effect on the date hereof or any registration form under the Act subsequently adopted by the SEC that permits inclusion or incorporation of substantial information by reference to other documents filed by the Company with the SEC.

(d) The term "Holder" means any person owning or having the right to acquire Registrable Securities, but only if such holder is one of the Purchasers or any assignee thereof in accordance with Section 1.8 hereof.

(e) The term "1934 Act" means the Securities Exchange Act of 1934, as amended.

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(f) The term “Person” means any individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, or joint stock company.

(g) The terms “register,” “registered,” and “registration” refer to a registration effected by preparing and filing a registration statement or similar document in compliance with the Act, and the declaration or ordering of effectiveness of such registration statement or document.

(h) The term “Registrable Securities” means (i) the Common Stock of the Company issuable or issued upon conversion or exercise of the Warrants, and (ii) any Common Stock of the Company issued as (or issuable upon the conversion or exercise of any warrant, right or other security that is issued as) a dividend or other distribution with respect to, or in exchange for, or in replacement of, the shares referenced in (i) above; provided, however, that no shares of Common Stock of the Company shall be deemed Registrable Securities for purposes of this Agreement to the extent that such shares (A) have been sold to the public through a registration statement or pursuant to Rule 144; (B) have been sold, transferred or otherwise disposed of by a Person in a transaction in which its rights under this Agreement were not assigned or (C) are held by a Holder or Purchaser whose rights to cause the Company to register securities pursuant to this Agreement have terminated in accordance with Section 1.9 of this Agreement.

(i) The terms “Registration Expenses” means (a) all expenses incurred by the Company in complying with Sections 1.2 and 1.3 of this Agreement, including, without limitation, all federal and state registration, qualification and filing fees, printing expenses, fees and disbursements of counsel for the Company, blue sky fees and expenses and the expense of any regular or special audits incident to or required by any such registration and (b) the reasonable expenses of one special counsel for all selling Holders (if different from counsel to the Company).

(j) The term “Rule 144” shall mean Rule 144 under the Act.

(k) The term “Rule 145” shall mean Rule 145 under the Act.

(l) The term “SEC” shall mean the Securities and Exchange Commission and any other federal agency at the time administering the Act.

(m) The term “Selling Expenses” means all underwriting discounts and selling commissions applicable to the sale of Registrable Securities pursuant to this Agreement, and all fees and disbursements of counsel to the Holders that are not included in Registration Expenses.

1.2 Registration Statement for Registrable Securities. On or prior to June 6, 2008 (the “Filing Date”), the Company shall cause to be filed with the SEC a registration statement on Form S-3 or, to the extent that Form S-3 is not available, Form S-1 (the “Registration Statement”), which Registration Statement shall provide for the resale of the Registrable Securities. The Company shall use its reasonable best efforts to cause the Registration Statement to be declared effective by the SEC as promptly as possible after the filing thereof and shall continuously maintain the effectiveness of the Registration Statement until the earlier of (a) the

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date on which all Registrable Securities that could be issuable or issued upon conversion or exercise of the Warrants have been sold pursuant to the Registration Statement or (b) five years from the date hereof. Such Registration Statement will permit the Holders to resell the Registrable Securities pursuant to the Registration Statement.

1.3 Obligations of the Company. In addition to the other obligations of the Company set forth in this Agreement, the Company shall be required to as expeditiously as reasonably possible:

(a) subject to Section 1.3(e), prepare and file with the SEC such amendments and supplements to the Registration Statement and the prospectus used in connection with the Registration Statement as may be necessary to keep the Registration Statement current, effective and free from any material misstatement or omission to state a material fact for the period commencing on the Filing Date and ending on the date that is the earlier of (a) the date on which all Registrable Securities that could be issuable or issued upon conversion or exercise of the Warrants have been sold pursuant to the Registration Statement or (b) five years from the date hereof;

(b) furnish to any Holder with respect to the Registrable Securities registered under the Registration Statement such number of copies of the Registration Statement, prospectuses and preliminary prospectuses in conformity with the requirements of the Act and such other documents as the Holder may reasonably request, in order to facilitate the public sale or other disposition of all or any of the Registrable Securities by the Holder;

(c) use its reasonable best efforts to register and qualify the Registrable Securities covered by the Registration Statement under such other securities or Blue Sky laws of such jurisdictions as shall be reasonably requested by the Holders, provided that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any state or jurisdiction in which it is not now qualified or has not consented;

(d) in the event of any underwritten public offering (only if applicable), enter into and perform its obligations under an underwriting agreement, in usual and customary form, with the managing underwriter of such offering;

(e) notify each Holder of Registrable Securities covered by the Registration Statement at any time when a prospectus relating thereto is required to be delivered under the Act of the happening of any event as a result of which the prospectus included in such Registration Statement, as then in effect, includes an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing (a "Suspension Notice") and at the request of any such Holder, prepare and furnish to such Holder a reasonable number of copies of a supplement to or an amendment of such prospectus as may be necessary so that, as thereafter delivered to the purchasers of such shares, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading or incomplete in the light of the circumstances then existing; provided, however, that following the delivery of a Suspension Notice, the Company

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may defer furnishing to the Holders copies of the supplemented or amended prospectus for up to the lesser of 10 calendar days and the number of days which, when aggregated with all other suspensions under this Section 1.3(e), would result in the total number of suspended days in any twelve month period exceeding thirty (30) days;

(f) use its reasonable best efforts to cause all such Registrable Securities registered pursuant to this Section 1 to be listed on each securities exchange and trading system on which similar securities issued by the Company are then listed;

(g) notify each Holder after it receives notice of the time when the Registration Statement has been declared effective by the SEC, or when a supplement or amendment to the Registration Statement has been filed with the SEC;

(h) notify each Holder after it shall receive notice or obtain knowledge of the issuance of any stop order by the SEC delaying or suspending the effectiveness of the Registration Statement or of the initiation or threat of any proceeding for that purpose, and use its reasonable best efforts to prevent the issuance of any stop order or to obtain its withdrawal if such stop order should be issued;

(i) comply with all applicable rules and regulations of the SEC under the Act and the 1934 Act, including without limitation, Rule 172 under the Act, file any final prospectus, including any supplement or amendment thereof, with the SEC pursuant to Rule 424 under the Act, promptly inform the Holders in writing if, at any time during the period of effectiveness of the Registration Statement, the Company does not satisfy the conditions specified in Rule 172 and, as a result thereof, the Holders are required to make available a prospectus in connection with any disposition of the Registrable Securities and take such other actions as may be necessary to facilitate the registration of the Registrable Securities hereunder;

(j) use its reasonable best efforts to avoid the issuance of or, if issued, obtain the withdrawal of any suspension of the qualification (or exemption from qualification) of any of the Registrable Securities for sale in any jurisdiction; and

(k) cooperate with the Holders to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be delivered to a transferee pursuant to the Registration Statement, which certificates shall be free, to the extent permitted by this Agreement and under law, of all restrictive legends, and to enable such Registrable Securities to be in such denominations and registered in such names as any such Holders may reasonably request.

1.4 Information from and Obligations of Holder. It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 1 with respect to the Registrable Securities of any selling Holder that such Holder shall furnish to the Company such information regarding itself, the Registrable Securities held by it, and the intended method of disposition of such securities as shall be reasonably required to effect the registration of such Holder's Registrable Securities. Each seller of Registrable Securities participating in an underwriting described in Section 1.3(d) hereof shall also enter into and perform its obligations under the applicable underwriting agreement and related agreements. Upon receipt of any

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Suspension Notice, each Holder agrees not to sell any Registrable Securities pursuant to the Registration Statement until the Holder's receipt of copies of the supplemented or amended prospectus provided for in Section 1.3(e) above, or until it is advised in writing by the Company that the prospectus included in the Registration Statement, as then in effect, may be used.

1.5 Expenses of Registration. All Registration Expenses shall be borne by the Company. All Selling Expenses shall be borne by the holders of the securities registered or sold, as applicable, pro rata on the basis of the number of shares registered or sold, as applicable.

1.6 Indemnification. In the event any Registrable Securities are included in the Registration Statement under this Section 1:

(a) To the extent permitted by law, the Company will indemnify and hold harmless each Holder, the partners, officers, directors and stockholders of each Holder, legal counsel and accountants for each Holder, any underwriter (as defined in the Act) for such Holder and each person, if any, who controls such Holder or underwriter within the meaning of the Act or the 1934 Act, against any losses, claims, damages or liabilities (joint or several) to which they may become subject under the Act, the 1934 Act, any state securities laws or any rule or regulation promulgated under the Act, insofar as such losses, claims, damages, or liabilities (or actions in respect thereof) arise out of or are based upon any of the following statements, omissions or violations (collectively a "Violation"): (i) any untrue statement or alleged untrue statement of a material fact contained in such Registration Statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, (ii) the omission or alleged omission to state in such Registration Statement a material fact required to be stated therein, or necessary to make the statements therein not misleading or (iii) any violation or alleged violation by the Company of the Act, the 1934 Act, any state securities laws or any rule or regulation promulgated under the Act, the 1934 Act or any state securities laws, and the Company will reimburse each such Holder, underwriter, controlling person or other aforementioned person for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action as such expenses are incurred; provided, however, that the indemnity agreement contained in this subsection l.6(a) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld), nor shall the Company be liable in any such case for any such loss, claim, damage, liability or action to the extent that it arises out of or is based upon a Violation that (x) occurs in reliance upon and in conformity with written information furnished expressly for use in connection with such registration by any such Holder, underwriter, controlling person or other aforementioned person or (y) is contained in a preliminary prospectus and corrected in a final or amended prospectus, and the selling Holder failed to deliver a copy of the final or amended prospectus prior to the confirmation of the sale of the Registrable Securities to the Person asserting any such losses, claims, damages or liabilities in any case in which delivery is required by the Act; provided further, however, that the foregoing indemnity agreement with respect to any preliminary prospectus shall not inure to the benefit of any underwriter, or any person controlling such underwriter, from whom the person asserting any such losses, claims, damages or liabilities purchased shares in the offering, if a copy of the most current prospectus was not sent or given by or on behalf of such underwriter to such person, if required by law to have been so delivered, at or prior to the written confirmation of the sale of the shares to such person, and if the prospectus (as so amended or supplemented) would have cured the defect giving rise to such loss, claim, damage or liability.

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(b) To the extent permitted by law, each selling Holder will, severally and not jointly, indemnify and hold harmless the Company, each of its directors, each of its officers who has signed the Registration Statement, each person, if any, who controls the Company within the meaning of the Act, legal counsel and accountants for the Company, any underwriter, any other Holder selling securities in such Registration Statement and any controlling person of any such underwriter or other Holder, against any losses, claims, damages or liabilities (joint or several) to which any of the foregoing persons may become subject, under the Act, the 1934 Act, any state securities laws or any rule or regulation promulgated under the Act, the 1934 Act or any state securities laws, insofar as such losses, claims, damages or liabilities (or actions in respect thereto) arise out of or are based upon any Violation, in each case to the extent (and only to the extent) that such Violation occurs in reliance upon and in conformity with written information furnished by such Holder expressly for use in connection with such registration; and each such Holder will reimburse any person intended to be indemnified pursuant to this subsection l.6(b) for any legal or other expenses reasonably incurred by such person in connection with investigating or defending any such loss, claim, damage, liability or action as such expenses are incurred; provided, however, that the indemnity agreement contained in this subsection l.6(b) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Holder (which consent shall not be unreasonably withheld), and provided that in no event shall any indemnity under this subsection l.6(b) exceed the dollar amount of the net proceeds received by such Holder upon the sale of such Registrable Securities giving rise to such indemnification obligation.

(c) Promptly after receipt by an indemnified party under this Section 1.6 of notice of the commencement of any action (including any governmental action), such indemnified party will, if a claim in respect thereof is to be made against any indemnifying party under this Section 1.6, deliver to the indemnifying party a written notice of the commencement thereof and the indemnifying party shall have the right to participate in and, to the extent the indemnifying party so desires, jointly with any other indemnifying party similarly noticed, to assume the defense thereof with counsel mutually satisfactory to the parties; provided, however, that an indemnified party (together with all other indemnified parties that may be represented without conflict by one counsel) shall have the right to retain one separate counsel, with the fees and expenses to be paid by the indemnifying party, if representation of such indemnified party by the counsel retained by the indemnifying party would be inappropriate due to actual or potential differing interests between such indemnified party and any other party represented by such counsel in such proceeding. The failure to deliver written notice to the indemnifying party within a reasonable time of the commencement of any such action, if prejudicial to its ability to defend such action, shall relieve such indemnifying party of any liability to the indemnified party under this Section 1.6 to the extent of such prejudice, but the omission to so deliver written notice to the indemnifying party will not relieve it of any liability that it may have to any indemnified party otherwise than under this Section 1.6. Notwithstanding the foregoing, any indemnifying party shall not enter into any settlement of any such loss, claim, damage, liability or action without the full and complete release of all the indemnified parties.

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(d) If the indemnification provided for in this Section 1.6 is held by a court of competent jurisdiction to be unavailable to an indemnified party with respect to any loss, liability, claim, damage or expense referred to herein, then the indemnifying party, in lieu of indemnifying such indemnified party hereunder, shall contribute to the amount paid or payable by such indemnified party as a result of such loss, liability, claim, damage or expense in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and the indemnified party on the other hand in connection with the statements or omissions that resulted in such loss, liability, claim, damage or expense, as well as any other relevant equitable considerations; provided, however, that no contribution by any Holder, when combined with any amounts paid by such Holder pursuant to Section 1.6(b), shall exceed the dollar amount of the net proceeds received by such Holder upon the sale of such Registrable Securities giving rise to such indemnification obligation. The relative fault of the indemnifying party and the indemnified party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(e) Notwithstanding the foregoing, to the extent that the provisions on indemnification and contribution contained in an underwriting agreement entered into in connection with any underwritten public offering of Registrable Securities pursuant to Section 1.3(d) are in conflict with the foregoing provisions, the provisions in the underwriting agreement shall control.

(f) The obligations of the Company and Holders under this Section 1.6 shall survive the completion of any resales or dispositions of Registrable Securities pursuant to the Registration Statement under this Section 1 and otherwise.

1.7 Reports Under the 1934 Act. With a view to making available to the Holders the benefits of Rule 144 and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration or pursuant to a registration on Form S-3, the Company agrees, for so long as a Holder holds Registrable Securities to:

(a) make and keep public information available, as those terms are understood and defined in Rule 144, at all times on and after the date hereof;

(b) take such action as is necessary to enable the Holders to utilize Form S-3 for the sale of their Registrable Securities;

(c) file with the SEC in a timely manner all reports and other documents required of the Company under the Act and the 1934 Act; and

(d) furnish to any Holder, so long as the Holder owns any Registrable Securities, forthwith upon request (i) a written statement by the Company that it has complied with the reporting requirements of Rule 144, the Act and the 1934 Act, or that it qualifies as a registrant whose securities may be resold pursuant to Form S-3, (ii) a copy of the most recent

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annual or quarterly report of the Company and such other reports and documents so filed by the Company, and (iii) such other information as may be reasonably requested to avail any Holder of any rule or regulation of the SEC that permits the selling of any such securities without registration or pursuant to such form.

1.8 Assignment of Registration Rights. The rights to cause the Company to register Registrable Securities pursuant to this Section 1 may be assigned (but only with all related obligations) by a Holder to a transferee or assignee of such Registrable Securities that is a subsidiary, parent, partner, limited partner, retired partner or stockholder or Affiliate of a Holder (subject to appropriate adjustment for stock splits, stock dividends, combinations or the like), provided: (a) the Company is, within a reasonable time after such transfer, furnished with written notice of the name and address of such transferee or assignee and the securities with respect to which such registration rights are being assigned and (b) such transferee or assignee agrees in writing to be bound by and subject to the terms and conditions of this Agreement.

1.9 Termination of Registration Rights. The registration rights provided to the Holders hereunder shall terminate upon the earlier of (a) the date on which all Registrable Securities that could be issuable or issued upon conversion or exercise of the Warrants have been sold pursuant to the Registration Statement or (b) five years from the date hereof.

2 Miscellaneous.

2.1 Successors and Assigns. Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties (including permitted transferees of any shares of Registrable Securities). Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

2.2 Governing Law. This Agreement shall be governed by and construed under the laws of the State of New York as applied to agreements among New York residents entered into and to be performed entirely within New York.

2.3 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A telecopy or facsimile signature has the same effect as an original signature.

2.4 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

2.5 Notices. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent prior to 6:30 p.m. (New York City time) on a business day; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next

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day delivery, with written verification of receipt. All communications shall be sent to the respective parties at the addresses set forth on the signature pages attached hereto (or at such other addresses as shall be specified by notice given in accordance with this Section 2.5).

2.6 Expenses. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

2.7 Entire Agreement; Amendments and Waivers. This Agreement (including the Exhibits hereto, if any) constitutes the full and entire understanding and agreement among the parties with regard to the subjects hereof and thereof. Any term of this Agreement may be amended and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only with the written consent of the Company and the holders of more than fifty percent (50%) of the then outstanding Registrable Securities. Any amendment or waiver effected in accordance with this paragraph shall be binding upon each holder of any Registrable Securities, each future holder of all such Registrable Securities, and the Company.

2.8 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision(s) shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision(s) were so excluded and shall be enforceable in accordance with its terms.

2.9 Aggregation. All outstanding shares of capital stock of the Company held or acquired by an Affiliate of a Person shall be aggregated together with all other shares of capital stock held by such Person for the purpose of determining the availability of any rights under this Agreement.

2.10 Cumulative Remedies. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy

2.11 Specific Performance. The parties hereto hereby declare that it is impossible to measure in money the damages that will accrue to a party hereto or to their heirs, personal representatives or assigns by reason of a failure to perform any of the obligations under this Agreement and agree that the terms of this Agreement shall be specifically enforceable. If any party hereto or its heirs, personal representatives or assigns institutes any action or proceeding to specifically enforce the provisions hereof, any Person against whom such action or proceeding is brought hereby waives the claim or defense therein that such party or such personal representative has an adequate remedy at law, and such Person shall not offer in any such action or proceeding the claim or defense that such remedy at law exists.

[Remainder of page intentionally left blank]

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IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first above written.

JAZZ PHARMACEUTICALS, INC.

By: /s/ Carol A. Gamble
Name:
Title:

Address: 3180 Porter Drive
Palo Alto, CA 94304

Facsimile Number: _____

Email Address: _____

[Registration Rights Agreement]

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PURCHASERS:

LB I GROUP INC.

By: /s/ Jeffrey A. Ferrell
Name: Jeffrey A. Ferrell
Title: Vice President
Address: [*]
[*]
Facsimile Number: [*]
Email Address: [*]

[Registration Rights Agreement]

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DEEP COVE MEZZANINE, LLC

By: /s/ Reeve Waud
Name:
Title:
Address:

Facsimile Number:
Email Address:

[Registration Rights Agreement]

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GENERAL ELECTRIC PENSION TRUST

By: GE Asset Management Incorporated,
its Investment Manager

By: /s/ Daniel L. Furman
Name: Daniel L. Furman
Title: Vice President
Address: c/o GE Asset Management
[*]
[*]
Facsimile Number: [*]
Email Address: [*]

[Registration Rights Agreement]

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Schedule A

SCHEDULE OF PURCHASERS

LB I Group Inc.
Deep Cove Mezzanine, LLC
General Electric Pension Trust

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

On May 1, 2007, the Board of Directors (the "***Board***") of Jazz Pharmaceuticals, Inc. (the "***Company***") adopted the following compensation program for non-employee directors of the Board to be effective upon the closing of the initial public offering of the Company's common stock (the "***Offering***"). Pursuant to this program, each member of the Board who is not an employee or an officer of the Company will receive the following cash compensation for Board services ("***Board Retainers***"), as applicable:

- a $30,000 annual retainer for service as a Board member;
- a $15,000 supplemental annual retainer for service as chair of the audit committee;
- a $10,000 supplemental annual retainer for service as chair of the compensation committee; and
- a $5,000 supplemental annual retainer for service as chair of each other committee of the Board.

The Company will continue to reimburse its non-employee directors for their reasonable expenses incurred in attending meetings of the Board and committees of the Board.

Additionally, members of the Board who are not employees or officers of the Company will receive non-statutory stock options under the Company's 2007 Non-Employee Directors Stock Option Plan which will become effective immediately upon the signing of the underwriting agreement for the Offering. Each non-employee director joining the Board after the closing of the Offering will automatically be granted a non-statutory stock option to purchase 30,000 shares of common stock with an exercise price equal to the then fair market value of the Company's common stock. On the first trading day on or after August 15 of each year, commencing on August 15, 2007, each non-employee director will automatically be granted a non-statutory stock option to purchase 10,000 shares of common stock on that date with an exercise price equal to the then fair market value of the Company's common stock. The initial grants will vest with respect to one-third of the shares on the first anniversary of the date of grant, and the balance in a series of 24 successive equal monthly installments thereafter. The annual grants will vest in a series of 12 successive equal monthly installments measured from the date of grant. All stock options granted under the Company's 2007 Non-Employee Directors Stock Option Plan will have a maximum term of ten years.

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

On December 18, 2007, the Board determined that for purposes of non-employee directors that are appointed or elected other than on August 15 of any given year, a pro-rata portion of all Board Retainers for the period from such non-employee director's appointment or election to the next subsequent August 15 shall be deemed earned and payable on the date of the first regularly scheduled meeting of the Board that takes place not less than 31 days following the date of such non-employee' director's appointment or election provided such date is in a "window period" (as such term is defined in the Company's *Policy Regarding Stock Trading By Officers, Directors and other Designated Employees*), or in the event such date is not in a window period, the next subsequent date which is in a window period.

Exhibit 10.66

AMENDMENT NUMBER 4
TO DEVELOPMENT, LICENSE AND SUPPLY AGREEMENT

This Fourth Amendment ("**Amendment No. 4**") is made and entered into as of this 26 day of October 2007 ("**Amendment No. 4 Effective Date**")

BETWEEN:

(1) **Elan Pharma International Limited**, a company incorporated under the laws of Ireland, and having its registered office at Monksland, Athlone, County Westmeath, Ireland ("**EPIL**"); and

(2) **Jazz Pharmaceuticals, Inc.**, 3180 Porter Drive, Palo Alto CA 94304, USA ("**Jazz Pharma**").

RECITALS:

WHEREAS, Elan Corporation plc, an Irish company, and Solvay Pharmaceuticals, Inc., a Georgia corporation, entered into a development, license and supply agreement dated December 22, 1997, as amended by Amendment No. 1 dated March 1, 1999, Amendment No. 2 dated April 13, 2000 and Amendment No. 3 dated November 7, 2006 (collectively the "**Development, License and Supply Agreement**").

WHEREAS, on December 31, 2006, Elan Corporation, plc, assigned all of its rights and obligations in and to the Development, License and Supply Agreement to EPIL and EPIL has assumed said rights and obligations;

WHEREAS, on January 31, 2007, Solvay Pharmaceuticals, Inc. assigned all of its rights and interest in and to the Development, License and Supply Agreement to Jazz Pharma and Jazz Pharma assumed said rights and obligations.

WHEREAS, Jazz Pharma and EPIL now wish to amend the terms of the quality agreement set out in Appendix E of the Development, License and Supply Agreement as set forth below;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, EPIL and Jazz Pharma hereby agree as follows:

1. Appendix E of the Development, License and Supply Agreement is hereby deleted and replaced by the Appendix E which is set out in Schedule 1 hereto.

2. All other terms and conditions of the Development, License and Supply Agreement remain unchanged and continue to be in full force and effect.

3. Capitalized terms not defined in this Amendment No. 4 shall have the same meaning as set forth in the Development, License and Supply Agreement.

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4. This Amendment No. 4 may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this Amendment No. 4.

5. This Amendment No. 4 shall be governed by and construed solely in accordance with the laws of the State of Georgia, without regard to its conflict of laws principles that would require the application of any other law. Any dispute arising in relation to this Amendment No. 4 shall be resolved in the same manner as a dispute under the Development, License and Supply Agreement.

IN WITNESS WHEREOF EPIL AND Jazz Pharma have caused this Amendment No 4 to be executed by their duly authorized representatives as of the Amendment No. 4 Effective Date.

ELAN PHARMA INTERNATIONAL LIMITED

By: /s/ William Daniel

Title: Director

JAZZ PHARMACEUTICALS, INC.

By: /s/ Janne Wissel

Title: Sr. VP

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Technical Agreement: Jazz Pharmaceuticals, Inc. and Elan Pharma International Limited.

TECHNICAL AGREEMENT

This AGREEMENT is executed as of the 26 day of **October**, **2007**

between

Jazz Pharmaceuticals, Inc.
3180 Porter Drive
Palo Alto, CA 94304
USA

a corporation existing under the laws of the state of Delaware, USA
(hereinafter referred to as "**Jazz Pharmaceuticals**")

and

Elan Pharma International Limited
Monksland, Athlone
County Westmeath, Ireland

a corporation existing under the laws of Ireland
(hereinafter referred to as **"Elan**")

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Table of Contents

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1. Objective

1.1 The purpose of this Technical Agreement is to ensure a mutual understanding and agreement of key responsibilities between Jazz Pharmaceuticals and Elan with respect to the Luvox® CR (fluvoxamine maleate) 100 and 150 mg Capsules (the "Product"), for use and sale in the United States.

2. General

2.1 This Technical Agreement specifies the responsibilities of the parties hereto with respect to quality control matters related to the manufacture of the Product. If there is a conflict, between that certain license agreement dated December 22, 1997 as amended by Amendment No. 1 to the License Agreement dated March 1, 1999, Amendment No. 2 to the License Agreement dated April 13, 2000 and Amendment No. 3 to the License Agreement dated November 7, 2006 by and between Solvay Pharmaceuticals, Inc. ("Solvay") and Elan and assigned to Jazz Pharmaceuticals by Solvay on January 31, 2007 (as may be amended from time to time, the "Agreement"), the Agreement shall govern.

2.2 In the event that a dispute arises between Elan and Jazz Pharmaceuticals regarding the nonconformity of the Product or regarding other matters, the senior management of the quality departments from both companies shall in good faith promptly attempt to resolve disputed issues.

2.3 Elan will manufacture, package, test and store the Product in accordance with the cGMPs, approved SOPs, Specifications and all applicable governing regulations including:

- cGMPs
- U.S. Federal Food Drug and Cosmetic Act (FD&C Act)
- All applicable USP, NF and ICH requirements
- Environmental and occupational health and safety laws
- EU Regulations

3. Definitions

3.1. API: the Active Pharmaceutical Ingredient – (fluvoxamine maleate)

3.2. Batch: A specific quantity of a drug or other material that is intended to have uniform character and quality, within specified limits and is produced according to a manufacturing formula or a batch record by a continuous manufacturing process.

3.3. cGMPs: Current Good Manufacturing Practices as defined in the United States (U.S. 21 CFR parts 210 and 211) regulations

3.4. C of A: Certificate of Analysis

3.5. C of C: Certificate of Compliance

3.6. CDER: Center for Drug Evaluation and Research

3.7. CMC: Chemistry, manufacturing and controls

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3.8. DMF: Drug Master File submitted by Elan and all updates thereto, including amendments and annual reports filed with the regulatory authorities by Elan for the purposes of supporting and maintaining regulatory approval of the Product through Jazz Pharmaceuticals NDA in USA

3.9. FDA: United States Food and Drug Administration or any successor entity (CDER) charged with the approval and regulation of pharmaceutical products in the United States.

3.10. ICH: International Conference on Harmonisation

3.11. NDA: New Drug Application; Application in the United States to market a new drug for human use.

3.12. Non-Conformance: Any deviation from an approved written procedure, method or a Specification.

3.13. Product: Luvox® CR (fluvoxamine maleate) 100 mg and 150 mg capsules packaged in bulk containers.

3.14. Raw Material: Any ingredient intended for use in the manufacture of the Product.

3.15. Specifications: Parameters, test values as they relate to test methods, procedures, analytical specifications or equipment.

3.16. USP, NF: The United States Pharmacopoeia, National Formulary is the official public standards-setting authority for all prescription and over-the-counter medicines, dietary supplements, drug substance, excipient and other healthcare products manufactured and sold in the United States.

4. Regulatory

4.1. Elan agrees to allow regulatory authorities to inspect its facilities and records as required under the cGMPs in connection with the Product.

4.2. Elan will promptly notify Jazz Pharmaceuticals of any product specific regulatory inspection (local, state, federal from US, or other foreign government agency) or regulatory request for product samples, batch documentation or other information related to the Product.

4.3. Elan will notify Jazz Pharmaceuticals, within one (1) business day of receipt of any Form 483s or warning letters from any governing regulatory agencies relating to: (1) the Product and (2) the facilities specifically used in the manufacture, packaging, testing and storage of the Product.

4.4. Elan will provide copies to Jazz Pharmaceuticals of all written communication from any Health Authority (e.g. FDA 483) that are specifically related to the Product or to the facilities used in manufacture, packaging, testing and storage of the Product. Elan will promptly provide copies of the above documentation after such communications are available for distribution. Jazz Pharmaceuticals may participate in the development of corrective action plans that are directly related to the Product.

4.5. Elan is responsible for registering the facilities with the appropriate regulatory bodies and maintaining the registration forms such that it is readily available for any regulatory inspection. Elan is responsible for drug listing as the manufacturer of the Product for Jazz Pharmaceuticals, while Jazz Pharmaceuticals is responsible for drug listing as the distributor of the Product.

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4.6. Elan, as the holder of the DMF related to the CMC aspect of the Product is responsible to file the DMF and ensuring the DMF is current and maintained at FDA. Elan with notify Jazz Pharmaceuticals in writing of any revisions to the filed DMF.

4.7. Jazz Pharmaceuticals is responsible for maintenance of the NDA. Jazz Pharmaceuticals will notify Elan in writing of any changes to the NDA related to the CMC aspect of the Product.

4.8. Jazz Pharmaceuticals will provide Elan with copies of all relevant regulatory submissions and approvals relating to amendments or updates to the DMF as it relates to the CMC aspect of the Product.

4.9. Jazz Pharmaceuticals will initiate and control all NDA field alert reports and Product recalls for Product not meeting the regulatory requirements. Elan will provide documentation, data and assistance if the field alert or recall is related to the Product manufactured at Elan**.** Jazz Pharmaceuticals will provide Elan copies of any regulatory correspondence related to the field alert or Product recall. In the event that Elan has reason to believe that any Product should be recalled or withdrawn from distribution, Elan shall promptly inform Jazz Pharmaceuticals in writing. Elan and Jazz Pharmaceuticals agree to cooperate fully regarding any proposed recall, product withdrawal, or field correction; and the parties agree to keep each other advised, and to exchange copies of such documentation as may be required, to assure regulatory compliance.

4.10. Elan will allow Jazz Pharmaceuticals to audit all relevant facilities used in the manufacture, bulk packaging, testing (excepting contract laboratories) and storage of the Product, including the applicable procedures and documentation, at least once in each calendar year (and additional times, if the deficiencies are noted, to monitor correction thereof) at a mutually agreed upon date. Jazz Pharmaceuticals will provide a thirty (30) calendar days notification for all planned audits conducted by Jazz Pharmaceuticals.

4.11. Jazz Pharmaceuticals will provide a written report of all observations and Elan will provide a written response to all findings that require corrective action along with an expected period for implementation.

4.12. Jazz Pharmaceuticals shall provide Elan at least five (5) business days notice prior to requesting non-audit related visits.

5. GMP

5.1. Elan will not change suppliers as defined in the approved regulatory filing without obtaining prior written approval from Jazz Pharmaceuticals.

5.2. Elan will make available to Jazz Pharmaceuticals an annual product review (APR) for the Product.

5.3. Jazz Pharmaceuticals will be responsible for submitting the annual report for the Product to the agencies as required by applicable regulations, including 21 CFR 314.70 and 314.81. Jazz Pharmaceuticals will notify Elan as to the approval date of the regulatory license. At

least ninety (90) calendar days before the annual report due date, Jazz shall request in writing from Elan the chemistry, manufacturing, and controls data required for submission of the Annual Report. Elan will provide the requested information to Jazz Pharmaceuticals within sixty (60) calendar days.

5.4. Elan will retain reserve samples of the bulk drug Product for at least one (1) year after product expiration or longer as required by law.

5.5. Elan will maintain records and evidence on the testing of API and all Raw Materials until five (5) years after the materials were last used in the manufacture or packaging/labelling of the Product.

5.6. Elan will retain all Batch production and control records, laboratory testing and distribution records for at least seven (7) years or longer as required by the law.

6. Validation

6.1. Elan will establish and maintain a validation plan for the facility and the process used in the manufacture, packaging testing and storage of the Product.

6.2. Elan will utilize qualified facilities, utilities, processes and test equipment used in the manufacture, packaging and testing of the Product.

6.3. Elan will validate all manufacturing, packaging and testing activities for the Product in accordance with cGMPs and all other applicable governing regulations, including:

6.3.1. Process validation: All processes used in the manufacture and packaging of the Product

6.3.2. Methods validation: All test methods for the API testing and the Product testing

6.3.3. Facilities/Utilities: Facilities used in the manufacture, packaging, testing and storage of the Product, and all utility systems (e.g., HVAC, water, computer systems, etc.)

6.3.4. Cleaning validation: All cleaning procedures of production equipment

6.4. Elan will provide Jazz Pharmaceuticals access to process validation protocols and reports and those items referenced in sections 6.3.1 to 6.3.4 related to the Product for review prior to Elan approval.

7. API and Raw Materials

7.1. Elan will qualify and approve all Raw Material suppliers in accordance with Elan SOPs. Elan will provide Jazz with a GMP acceptance statement for each supplier.

7.2. Jazz Pharmaceuticals will qualify and approve the API supplier providing Elan with API testing specifications and a GMP statement for the supplier. Upon request, Jazz Pharmaceuticals will provide a redacted copy of the audit report or a summary report for each supplier qualified by Jazz Pharmaceuticals or its affiliate to reflect the following: audit date, quality systems inspected, compliance status and or acceptance rating and a statement that the supplier is qualified as per the Jazz Pharmaceuticals or its affiliate supplier management program or SOP.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

7.3. Jazz will notify Elan of any change notifications they receive which relate to the API supplier(s) and their corresponding chemistry, manufacturing or controls including methods of manufacture, analysis, specifications or facilities and related processes.

7.4. Elan will procure Raw materials only from Qualified Suppliers for use in the manufacture and packaging of the Product, in line with its internal practices ensuring that deliveries are accompanied by an appropriate certificate of analysis (C of A).

7.5. Elan will test, release and approve the API and all raw materials prior to use in production. Elan will only use approved API and raw materials for use in the manufacture and packaging of the Product. Reduced testing may be applied if the supplier meets the requirements of Elan procedures.

7.6. Elan will store the API and all Raw Materials in accordance with cGMPs, approved SOPs and the Specifications.

7.7. Elan will pull and retain a reserve sample for each batch of API, at least twice the quantity necessary to perform all test required as per Specification.

7.8. Elan will hold the API reserve samples for at least five (5) years or longer as required by the law.

7.9. Elan will retain reserve samples of inactive ingredients for a minimum of two (2) years as required by law.

7.10. Elan will provide Jazz Pharmaceuticals with a BSE/TSE certificate of compliance for each Raw Material confirming that any bovine, caprine, or ovine derived Raw Materials purchased/used in the manufacture of the Product are appropriate for use in human pharmaceuticals. Jazz Pharmaceuticals will be responsible for procuring the BSE/TSE certification from the API supplier and will supply it to Elan.

7.11. Upon request, Elan will provide access to copies of all Raw material C of A and test results related to the product for review on site.

7.12. Jazz Pharmaceuticals will be responsible for coordinating with the responsible parties managing the API supply to ensure that appropriate release documents (cGMP statement and the C of A) are supplied to Elan for receiving the API.

8. Manufacturing and Packaging

8.1. Elan will be responsible for preparing and maintaining production and quality control documentation as outlined in the DMF.

8.2. Elan will provide Jazz Pharmaceuticals access to the master Batch records for review on site.

8.3. Elan will notify Jazz Pharmaceuticals in writing of any changes to the Master batch record outside the validated process and parameters filed in the Elan DMF.

8.4. Elan will assign a unique identifier (Batch number) for each unit operation of the Product manufactured per Elan SOPs.

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8.5. Elan will calculate the expiration date for each Batch of Product per the approved NDA and assign the expiration date for each Batch.

8.6. Elan will pull and retain a reserve sample (twice the quantity required to perform all test per Specifications) that is representative of each batch of drug Product manufactured/bulk packaged and stored with accordance to cGMP's.

8.7. Elan will be responsible for the accuracy, completeness and maintenance of Batch records used in the manufacturing and bulk packaging processes.

8.8. Elan will make available for review on site fully executed batch production and control records, laboratory testing records and any other associated documentation related to the manufacturing, bulk packaging, testing and release of the Product. This includes Batch records associated with validation Batches manufactured at Elan.

9. Change Controls

9.1. Changes to the following (but not limited to) must be covered under a change control:

9.1.1. Revision to Master Batch Records, Test Methods, Specifications for the API, Raw materials and the Product.

9.1.2. Major facility and Equipment changes applicable to the Product.

9.2. Elan will notify Jazz Pharmaceuticals in writing of changes that have a regulatory impact at Elan that pertain to the manufacture, bulk packaging or testing of the Product for Jazz Pharmaceuticals.

10. Deviations

10.1. Elan will not deviate from approved procedures, methods or the Specifications used in the manufacture, bulk packaging, testing and storage of the API, Raw Materials or the Product. Deviations (if any) to approved procedures must be investigated and documented under the established change control or non-conformance procedures.

10.2. Elan will promptly notify Jazz Pharmaceuticals in writing of any significant deviations impacting the safety, identity, quality, purity and/or potency of the Product including any deviations from validated parameters.

10.3. Elan will promptly notify Jazz Pharmaceuticals of any confirmed out-of-Specification (OOS) results at lot release testing within three (3) working days.

10.4. Elan will investigate and close all deviations (procedural, equipment, OOS etc) in accordance with in-house SOP's.

10.5. Elan will make available for review on site all deviations including OOS investigations related to the Product.

11. Product Complaints

11.1. Jazz Pharmaceuticals will coordinate all customer-related contact and activities related to the Product complaints. Jazz Pharmaceuticals will maintain the Product complaint files.

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11.2. Jazz Pharmaceuticals is responsible for the Product complaints and will be responsible for agency notification for any adverse event complaints.

11.3. Any complaints received directly by Elan related to the Product will be forwarded to Jazz Pharmaceuticals within one (1) business day of receipt.

11.4. Jazz Pharmaceuticals will notify Elan of all Product complaints (medical and technical) that will require an investigation from Elan.

11.5. Elan will complete its investigation per Elan policies (no later than thirty (30) calendar days) or less as may be requested on a specific case basis.

11.6. Elan will maintain complete documentation of all complaint investigation conducted at Elan related to the Product and will provide Jazz Pharmaceuticals with a copy of all completed Product complaint investigations.

11.7. Jazz will provide Elan with a summary of all technical complaints relating to the Product on a six (6) monthly basis.

12. Product Release

12.1. The quality assurance unit of Elan is responsible for Batch record review and release of the Product to Jazz Pharmaceuticals in accordance with approved procedures, Specifications and all applicable regulations (cGMPs, US 21 CFR parts 210 and 211, regulations and all applicable USP, NF. requirements).

12.2. Elan will provide Jazz Pharmaceuticals a C of A and a compliance certifcation for each batch manufactured, bulk packaged, tested and released. The Certificate of Analysis at the minimum shall include the following:

12.2.1. A Product description with a unique identifier (item, batch number, product name and strength).

12.2.2. The quantity packaged for shipment and the manufacturing site.

12.2.3. The manufacture date for the Product with the expiration date.

12.2.4. Test results against Product Specifications as outlined in the NDA.

12.2.5. Batch disposition status

12.2.6. A statement that the Product was manufactured and bulk packaged in accordance with cGMPs and approved procedures and Specifications.

12.2.7. The C of A will be reviewed, signed and dated by a Qualified Person (QP) at Elan.

12.3. Elan has the sole responsibility for the final release of the bulk drug Product to Jazz Pharmaceuticals.

12.4. Upon Elan QP release, Elan will ship the Product to a site specified by the Jazz Pharmaceuticals for further processing or storage.

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13. Stability

13.1. Elan will conduct stability testing on the Product in accordance with the stability protocol set out in the stability protocol contained in the existing commercial stability testing services agreement between Elan and Jazz Pharmaceuticals.

14. Confidentiality

14.1 The parties agree that the rules governing secrecy and confidential information set out in the Agreement shall apply equally to this Technical Agreement.

15. Review of Technical Agreement

15.1. This Technical Agreement will be reviewed every two years.

15.2. Modifications may be made as required to ensure continued compliance with all applicable laws, regulations and procedures. Any such modifications must be in writing and approved by both Elan and Jazz Pharmaceuticals.

16. Quality Contacts

Jazz Pharmaceuticals, Inc.
3180 Porter Drive
Palo Alto, CA 94304
USA
650.496.3777 (main)

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[*]
Jazz Pharmaceuticals, Inc.
3180 Porter Drive
Palo Alto, CA 94304
USA
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[*]
Jazz Pharmaceuticals, Inc.
3180 Porter Drive
Palo Alto, CA 94304
USA
[*]
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[*]

Elan Pharma International Limited
Monksland, Athlone
County Westmeath,
Ireland
Phone number (main) 353906495000

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Elan Pharma International Limited
Monksland, Athlone
County Westmeath,
Ireland
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Elan Pharma International Limited
Monksland, Athlone
County Westmeath,
Ireland
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[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

17. Approvals

Jazz Pharmaceuticals, Inc.		**Elan Pharma International Limited**	
Name:	Janne Wissel	Name:	Phil Shanahan
Title:	Sr. VP	Title:	V.P. Quality EDT
Signature:	/s/ Janne Wissel	Signature:	/s/ Phil Shanahan
Date:	5 Nov 07	Date:	17 Oct 2007

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ADDENDUM No. 5 TO
AMENDED AND RESTATED MASTER SERVICES AGREEMENT

THIS ADDENDUM No. 5 (the "**Addendum**") to the **AMENDED AND RESTATED MASTER SERVICES AGREEMENT** dated as of May 31, 2005, as amended (collectively, the "Agreement"), by and between **EXPRESS SCRIPTS SPECIALTY DISTRIBUTION SERVICES, INC.** ("**ESSDS**") and **ORPHAN MEDICAL, INC**. ("**Orphan Medical**") and assigned to **JAZZ PHARMACEUTICALS, INC.** ("**Jazz Pharmaceuticals**"), is entered into as of September 24, 2007 by and between ESSDS and Jazz Pharmaceuticals. Capitalized terms not otherwise defined herein shall have the same meanings as in the Agreement.

RECITALS

WHEREAS, Jazz Pharmaceuticals desires ESSDS to administer a Jazz co-payment assistance pilot program for Xyrem® (the "Copayment Program"); and

WHEREAS, the parties desire to amend the Agreement to add the Copayment Program services as part of the Agreement.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein and in the Agreement, the parties hereto agree as follows:

AGREEMENT

1. Copayment Program Services. ESSDS shall perform the CoPayment Program services set forth in Exhibit A for Jazz Pharmaceuticals (the "Copayment Program Services").

2. Term and Termination. The term of the Copayment Program shall commence on [*] and shall continue through [*]. Jazz Pharmaceuticals may terminate this Addendum at any time upon thirty (30) days' prior written notice to ESSDS. In addition, if the Agreement is terminated pursuant to its termination provisions stated therein, then this Addendum shall also be terminated at such time. The Copayment Program Services will end upon the dispensing of the last Xyrem prescription for which Jazz Pharmaceuticals is providing copayment assistance, as described in Exhibit A (the period following termination/expiration of the Copayment Program and the aforementioned last date of dispense shall be referred to herein as the "Copayment Program Run-Out Period").

3. Fees. Jazz Pharmaceuticals shall pay ESSDS a non-refundable start-up fee of $[*] ("Start-Up Fee"). The Start-Up Fee is due and payable to ESSDS by Jazz Pharmaceuticals no later than December 7, 2007. In addition, Jazz Pharmaceuticals shall pay ESSDS a Copayment Program management fee for each month (including the months during the Copayment Program Run-Out Period) ESSDS performs Copayment Program Services (each a "Monthly Management Fee"), as follows: (i) $[*] for the

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period of [*] through [*]; (ii) [*] for the period of [*] through [*]; and (iii) $[*] for the period of [*], through [*]. Should the parties determine that [*] of Copayment Program [*] is [*] the Copayment Program, Jazz Pharmaceuticals shall pay ESSDS a $[*] Monthly Management Fee for that [*]. Each Monthly Management Fee shall be paid by Jazz Pharmaceuticals within thirty (30) days following receipt of ESSDS' invoice pertaining thereto. Late payments will be subject to interest at the rate specified in the Agreement. The Start-Up Fee and the Monthly Management Fee constitute full and complete payment for performance of the Copayment Program Services under this Addendum, other than the actual Jazz Copayment Amounts to be paid pursuant to Section 4 hereof. If Jazz Pharmaceuticals remains materially delinquent on any undisputed fees owed hereunder, including, but not limited to, payment of the Copayment Amounts, for a period of [*] following receipt of written notice of same, then ESSDS shall have the right to suspend services until full payment of such fees is made. Jazz Pharmaceuticals agrees that: (1) the Start-Up Fee and the Monthly Management Fee for the Copayment Program Services constitutes compensation for bona fide services; (2) the Copayment Program is not intended to diminish the objectivity or professional judgment of ESSDS; (3) the Copayment Program does not involve the counseling or promotion of any off-label use of Jazz Pharmaceutical products; (4) the Start-Up Fee and the Monthly Management Fee are not intended in any way as remuneration for referrals or for other business generated; and (5) the Start-Up Fee and the Monthly Management Fee represent fair market value for the Copayment Program Services based on arms-length negotiations. The parties acknowledge that the Start-Up Fee and the Monthly Management Fee are not intended in any way as a payment related to drug formulary or drug formulary activities and have not been negotiated or discussed between the parties in connection with any such drug formulary or formulary activities.

4. Copayment Amounts. In accordance with Exhibit A attached hereto, Jazz Pharmaceuticals shall be responsible for portions of the copayment or coinsurance obligations of patients properly enrolled in the Copayment Program (the "Jazz Copayment Amounts"). Jazz Pharmaceuticals shall pay ESSDS the Jazz Copayment Amounts due within thirty (30) days of Jazz Pharmaceuticals' receipt of ESSDS's invoice pertaining thereto. Delinquent payments shall be subject to interest at the rate specified in the Agreement.

5. Data. Subject to the limitations set forth in this Section 5, ESSDS shall provide monthly data reports to Jazz Pharmaceuticals relating to the Copayment Program in accordance with Exhibit B attached hereto. Such reports shall be delivered in accordance with a mutually agreed upon timeframe and format. The parties intend that all reports and other data provided by ESSDS to Jazz Pharmaceuticals pursuant to this Addendum will be in accordance with HIPAA and all other applicable federal or state laws pertaining to patient confidentiality (collectively, the "Privacy Laws"). Accordingly, notwithstanding anything to the contrary herein, except as otherwise permitted by applicable law or pursuant to a valid HIPAA authorization on file at ESSDS, ESSDS will not disclose or report any data fields that are prohibited under the HIPAA de-identification safe harbor as described in 45 C.F.R. 164.514(b)(2), and Jazz Pharmaceuticals agrees not to use, either directly or indirectly, any such information to

attempt to identify any patient who may be the subject of such information, unless such information was disclosed by ESSDS pursuant to a valid HIPAA authorization. To the extent ESSDS is providing dates in the data reports provided to Jazz Pharmaceuticals, Jazz Pharmaceuticals represents and warrants that such dates are necessary for payment purposes to ESSDS. ESSDS's failure to provide any of the requested data because of restrictions under the Privacy Laws, or any laws applicable to physician privacy, shall not be deemed a breach of this Addendum by ESSDS; however, should the data provided by ESSDS be insufficient to confirm Jazz Pharmaceuticals' payment obligations, these payment obligations will be excused without penalty until otherwise confirmed to Jazz Pharmaceuticals' reasonable satisfaction.

6. Audit Rights. Jazz Pharmaceuticals shall have the right to inspect ESSDS records related to the Copayment Program Services at reasonable times. Such records will be made available for copying during such inspection. Jazz Pharmaceuticals will provide reasonable notice to ESSDS of the date and time of any such inspection and ESSDS will reasonably cooperate with such inspection. ESSDS will not permit disclosure of Patient Identifiable Information to Jazz Pharmaceuticals' auditors.

7. Miscellaneous.

a. Jazz Pharmaceuticals is responsible for the structure and design of the Copayment Program, as set forth in Exhibit A, including any supplemental materials that may be prepared or approved by Jazz Pharmaceuticals for use in connection with the Copayment Program, and Jazz Pharmaceuticals represents and warrants that such structure and design complies with all applicable law.

b. ESSDS agrees to perform the Copayment Program Services with due care in accordance with the standards and practices which are generally accepted in the industry and exercised by other persons engaged in performing similar services in the local area and in accordance with all applicable federal and state laws and regulations.

c. To the extent there is a conflict between the terms and conditions of this Addendum and the terms and conditions of the Agreement, this Addendum shall control.

d. This Addendum may be executed in one or more counterpart copies, each of which shall be deemed an original, and all of which shall together be deemed to constitute one agreement. Facsimile execution and delivery of this Addendum is legal, valid and binding execution and delivery for all purposes.

e. Sections 1 (until expiration of the Copayment Program Run-Out Period), 3, 4, 6 and 7 shall survive termination of this Addendum.

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

IN WITNESS WHEREOF, the parties have executed or caused this Addendum to be executed effective as of the Addendum Effective Date.

EXPRESS SCRIPTS SPECIALTY DISTRIBUTION SERVICES, INC.	JAZZ PHARMACEUTICALS, INC.
By: /s/ Gerard A. Carino	By: /s/ Julie Anne Smith
Its: President	Its: Vice President Marketing and New Product Planning

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EXHIBIT A
COPAYMENT PROGRAM

Overview

The Copayment Program is designed to [*] the Xyrem Success Program. Under the Copayment Program, Jazz Pharmaceuticals will provide up to $[*] in copayment assistance to patients properly enrolled by ESSDS in the Copayment Program for each shipment of Xyrem that occurs during the [*] period following the initial shipment.

Eligibility

- Patients who are enrolled in a "federal health care program" (as defined in 42 U.S.C. 1320a-7b(f)) that provides coverage for Xyrem, either as primary coverage or secondary coverage, are ***NOT*** eligible for participation in the Copayment Program. In addition, patients who [*] are not eligible for the Copayment Program. During the initial enrollment process, and prior to each subsequent fill during participation in the Copayment Program, ESSDS shall confirm with the patient via a Q & A process that the patient has elected to participate in the Copayment Program and does not fall within one of these excluded categories. Conducting this Q & A process with each patient and creating a record of each patient's response shall be ESSDS' only obligation with respect to this eligibility requirement.
- Only patients who have not participated in the Xyrem Success Program during the [*] period prior to receipt by ESSDS of their initial prescription for Xyrem are eligible for the Copayment Program.
- Patients enrolled in Jazz Pharmaceuticals'[*] are [*] eligible to participate in the Copayment Program.
- The enrollment period for the Copayment Program will end on [*]. ESSDS will not enroll any patients after this time without the express written consent of Jazz Pharmaceuticals.
- Enrollment into the Copayment Program may only occur as a result of an initial live conversation that occurs on Thursday or Friday between a patient and an ESSDS Reimbursement Specialist. Patients who have their initial conversation with an ESSDS Reimbursement Specialist on Monday, Tuesday, or Wednesday will not be enrolled into the Copayment Program. Exceptions for enrollments on Monday, Tuesday or Wednesday must be approved in writing by either Jazz Pharmaceuticals' Executive Director, Marketing or Vice President, Marketing and Product Development.

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- Jazz Pharmaceuticals also may impose additional eligibility criteria for the Copayment Program, as communicated by Jazz Pharmaceuticals to ESSDS in writing.

Duration of Copayment Assistance

- Co-pay assistance is available to patients properly enrolled in the Copayment Program for each shipment of Xyrem made during the [*] period following that patient's initial shipment; however, for patients who participate in the [*], the [*] period of eligibility for copayment assistance starts with the first [*] shipment. No co-pay assistance will be provided under the Copayment Program for shipments made under the [*]. ESSDS will not charge Jazz Pharmaceuticals under the Copayment Program for services provided pursuant to the [*].
- If a patient is enrolled in the Copayment Program and subsequently becomes eligible for [*] payer specified in the [*], the patient shall become ineligible for continued participation in the Copayment Program upon ESSDS' discovery of this change in [*] coverage.

Amount of Copayment Assistance

- Each patient enrolled in the Copayment Program will be responsible for the first $[*] of his or her copayment/coinsurance obligation applicable to each shipment of Xyrem, with Jazz Pharmaceuticals responsible for the remaining amount up to a maximum of $[*] per month. If the patient's copayment/coinsurance obligation exceeds the maximum amount Jazz Pharmaceuticals will pay pursuant to the preceding sentence, then the patient will be responsible for such excess amount in addition to the first $[*].

Scripting

- Appropriate scripting will be developed jointly by the parties, with Jazz Pharmaceuticals having final approval of the script. The script must be finalized prior to commencement of the Copayment Program services.
- The script, and any patient materials subsequently developed for the Copayment Program, will clearly indicate that the Copayment Program is funded by Jazz Pharmaceuticals, and not ESSDS.

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EXHIBIT B
COPAYMENT PROGRAM DATA

Data to be provided monthly by ESSDS

	Pilot Patients	Non-Pilot Patients	Past Pilot Patients
Number of Patients Enrolled			
Number of Patients Currently Participating			
Percentage of Patients Currently Participating			
Number of Patients Shipped through mm/dd/yyyy			
Percentage of Patients Shipped			
Average Number of Fills per Patient			
Number of Pending Patients			
Percentage of Pending Patients			
Number of Approved Patients			
Percentage of Approved Patients			
Number of On Hold Patients			
Percentage of On Hold Patients			
Number of Discontinued Patients			
Percentage of Discontinued Patients			
Number of Disenrolled Patients			
Percentage of Disenrolled Patients			

Disenrolled Patients Breakout:	Count	%	Count	%	Count	%
Disenrolled – Declined co-pay assistance						
Disenrolled – Cost						
Disenrolled – Refused Shipment						
Disenrolled – MD Credential						
Disenrolled – Drug/Medical Concern						
Disenrolled – Insurance Denial						
Disenrolled – Pt. Expired						
Disenrolled – Dr. not responding						
Disenrolled – Physician Request						
Disenrolled – Voluntarily						
Disenrolled – Unknown Reason						
Disenrolled – Unable to Contact						
Disenrolled – Prefers Alternate Therapy						
Total	**0**		**0**		**0**	

Discontinued Patients Breakout:	Count	%	Count	%	Count	%
Discontinued – Cost						
Discontinued – Refused Shipment						
Discontinued – Insurance Denial						
Discontinued – MD Credential						
Discontinued – Pt. Expired						
Discontinued – Noncompliance						
Discontinued – Drug Not Effective						

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Discontinued - Diversion			
Discontinued – Physician Request			
Discontinued – Personal/Voluntary			
Discontinued – Unknown Reason			
Discontinued – Unable to Contact			
Discontinued – Side Effects			
Discontinued – Inactivity			
Total	**0**	**0**	**0**

Patient ID	de-identified
Intake Date	
Physician CHIP ID	
Physician JPI ID	
Physician First Name	
Physician Last Name	
Territory	
Current Case Status	
Total Fills	
Case Status at First Shipment	
First Patient Copay	
First Jazz Copay	
Case Status at Second Shipment	
Second Patient Copay	
Second Jazz Copay	
Case Status at Third Shipment	
Third Patient Copay	
Third Jazz Copay	

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Exhibit 10.68

Jazz Pharmaceuticals

Amendment No. 1 to
Amended and Restated Xyrem License and Distribution Agreement

This Amendment No. 1 (the "**Amendment**") to the Amended and Restated Xyrem License and Distribution Agreement dated as of June 30, 2006 (the "**Agreement**") by and between Jazz Pharmaceuticals, Inc., having its principal place of business at 3180 Porter Drive, Palo Alto, California 94304, USA (together with its Affiliates, "**Jazz Pharmaceuticals**") and UCB Pharma Limited, a company organized under the laws of England having its principal place of business at 208 Bath Road, Slough, Berkshire, SL1 3WE (together with its Affiliates, "**UCB**"), is entered into as of the 21 day of December, 2007 (the "**Execution Date**"). Capitalized terms not otherwise defined herein shall have the same meanings as in the Agreement.

RECITALS

WHEREAS, in accordance with Section 17.5 of the Agreement, the parties wish to amend the Agreement to revise certain terms and conditions governing the disposition of Product by UCB upon termination of the Agreement.

NOW THEREFORE, in consideration of the mutual agreements and covenants set forth hereinafter and in the Agreement and other good and valuable consideration, receipt of which is hereby acknowledged, Jazz Pharmaceuticals and UCB hereby agree as follows:

1. Amendment of Rights and Obligations on Termination. Jazz Pharmaceuticals and UCB hereby amend Section 14.5 to remove the last clause of Section 14.5(iii), so that Section 14.5(iii) will read as follows: "Jazz Pharmaceuticals may, if UCB elects not to pursue its sell-off rights under Section14.7, repurchase UCB's inventory of non-obsolete and non-expired Product at the price paid by UCB for such Product or direct UCB to sell them to the Third Party or parties selected by Jazz Pharmaceuticals at the price paid by UCB."

2. Amendment of Sell-Off Period. Jazz Pharmaceuticals and UCB hereby amend and restate Section 14.7 in its entirety to read as follows:

   "14.7 Sell-Off Period. Notwithstanding anything to the contrary in Section 14.4 hereto, upon expiration or termination of this Agreement, UCB shall have the right to continue to distribute its existing inventory of non-expired Product for a period of twelve (12) months after the effective date of expiration or the effective date of termination of this Agreement as the case may be. Any such continued distribution shall be in accordance with all applicable laws and regulations and the terms of this Agreement."

3. No Other Changes. Except as provided in this Amendment, the Agreement remains in full force and effect as originally executed.

4. Governing Law. This Amendment will be governed by and interpreted in accordance with the internal laws of the State of New York, without regard to its conflicts of laws rules.

5. Headings. Headings in this Amendment are for convenience of reference only and shall not be considered in construing this Amendment.

6. Severability. If any provision of this Amendment is held unenforceable by a court or tribunal of competent jurisdiction because it is invalid or conflicts with any law of any relevant jurisdiction, the validity of the remaining provisions shall not be affected. In such event, the parties shall negotiate a substitute provision that, to the extent possible, accomplishes the original business purpose.

7. Counterparts. This Agreement may be executed in two counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument. Signatures provided by facsimile transmission shall be deemed to be original signatures.

IN WITNESS WHEREOF, the parties have executed this Amendment by their duly authorized representatives as of the Execution Date.

UCB PHARMA LIMITED

By:	/s/ Tim Stow	/s/ Mark Hardy
Name:	Tim Stow	Mark Hardy
Title:	VP Legal Affairs	VP UK Corporate Services

By: _____
Name:
Title:

JAZZ PHARMACEUTICALS, INC.

By: /s/ Jason Levin
Name: Jason Levin
Title: Vice President, Licensing & Acquisitions

Exhibit 10.69

AMENDMENT NO. 1 TO LICENSE AGREEMENT

This Amendment No.1 to License Agreement (the "Amendment") is made and entered into as of the 12th day of March, 2008 ("Effective Date"), by and between SOLVAY PHARMACEUTICALS, INC., a Georgia corporation having its principal office at 901 Sawyer Road, Marietta, Georgia 30062 ("Solvay") and JAZZ PHARMACEUTICALS, INC., a Delaware corporation, having its principal offices at 3180 Porter Drive, Palo Alto, California 94304 ("Jazz Pharmaceuticals"). Solvay and Jazz Pharmaceuticals are referred to herein on occasion separately as a "Party" or together as the "Parties". Capitalized terms used herein shall have their respective meanings set forth in the License Agreement, unless otherwise defined herein.

WHEREAS, the Parties have entered into that certain License Agreement (the "Agreement") dated as of the 31st day of January, 2007; and

WHEREAS, the parties wish to amend Section 3 of the Agreement in accordance with Section 13.6 of the Agreement to change the times when certain payments are due from Jazz Pharmaceuticals to Solvay;

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Amendment, the Parties agree as follows:

1. Amendment of Definitions.

(a) The term "LUVOX-ER" in the Agreement is hereby changed to "LUVOX CR" and all applicable references are hereby changed.

(b) Section 1.11 of the Agreement is amended and replaced in its entirety with the following:

"1.11 Milestones" means the events identified in Sections 3.1 (b) through (j)."

(c) Section 1.12 of the Agreement is amended and replaced in its entirety with the following:

"1.12 "Milestone Payments" means the payments to be made by Jazz Pharmaceuticals to Solvay pursuant to Sections 3.1 (b) through (j)."

2. Amendment of Section 3.1. Section 3.1 of the Agreement is amended and replaced in its entirety with the following:

"3.1 Upfront Payment and Milestone Payments. As consideration for the license granted by Solvay to Jazz Pharmaceuticals hereunder, Jazz Pharmaceuticals will make the following upfront and milestone payments to Solvay:

(a) Two million ($2,000,000.00) dollars to be paid as a non-refundable payment at the Time of Closing (the "Upfront Payment");

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

(b) Two million ($2,000,000.00) dollars within fifteen (15) days of the First Commercial Sale of LUVOX-IR, supplied by or on behalf of Solvay, by Jazz Pharmaceuticals;

(c) Ten million dollars ($10,000,000.00) within thirty (30) days after receipt of FDA approval of the first indication for the LUVOX CR NDA;

(d) Ten million dollars ($10,000,000.00) within thirty-nine (39) days after receipt of FDA approval of the first indication for the LUVOX CR NDA;

(e) Ten million five hundred thousand dollars ($10,500,000.00) dollars on the later of (i) September 30, 2008 or (ii) the last day of the first calendar quarter following the calendar quarter in which the first commercial sale of LUVOX CR by Jazz Pharmaceuticals occurs;

(f) Ten million five hundred thousand dollars ($10,500,000.00) dollars on the later of (i) December 31, 2008 or (ii) the last day of the second calendar quarter following the calendar quarter in which the first commercial sale of LUVOX CR by Jazz Pharmaceuticals occurs;

(g) [*] dollars payable as set forth in Section 3.5 after twelve (12) months of uninterrupted supply of Jazz Pharmaceuticals' requirements of LUVOX CR by Elan to Jazz Pharmaceuticals in accordance with the terms and conditions of the Elan Agreement as measured from the date of the First Commercial Sale of LUVOX CR by Jazz Pharmaceuticals;

(h) [*] dollars payable as set forth in Section 3.5 when Net Sales of LUVOX CR first reach one hundred million ($100,000,000.00) dollars in a single twelve month period;

(i) [*] dollars payable as set forth in Section 3.5 when Net Sales of LUVOX CR first reach two hundred million ($200,000,000.00) dollars in a single twelve month period; and

(j) [*] dollars payable as set forth in Section 3.5 when Net Sales of LUVOX CR first reach four hundred million ($400,000,000.00) dollars in a single twelve month period.

Each Milestone Payment shall be made only once, regardless of how many times each related Milestone is achieved. No payment shall be owed for a Milestone which is not reached.

3. Amendment of Section 3.5. Section 3.5 of the Agreement is amended and replaced in its entirety with the following:

"3.5 Reports. Within forty-five (45) days after the end of each calendar quarter during the term of this Agreement, Jazz Pharmaceuticals shall provide Solvay with a written report of Net Sales of LUVOX CR during such quarter. Simultaneously with the

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

submission of such report, Jazz Pharmaceuticals shall pay to Solvay all royalty payments due to Solvay under Section 3.3 hereof and the milestone payments due under Sections 3.1(g), (h), (i) and (j), if applicable. Interest, at a rate of [*] percent ([*]%) per annum, or at the highest legal rate if less than [*]%, shall be payable for any late payments."

4. Amendment of Section 6.6. Section 6.6 of the Agreement is amended and replaced in its entirety with the following:

"6.6 Additional Regulatory Commitments. In the event that, in connection with or as a condition of the approval of either of the Current NDAs, the FDA requires the conduct of additional post-approval studies or activities, Solvay will reimburse Jazz Pharmaceuticals for fifty percent (50%) of all amounts expended by Jazz Pharmaceuticals and submitted to Solvay prior to the third anniversary of the date upon which such NDA approval or conditional approval is granted on the preparation for and conduct of such studies or other activities and related filings with regulatory authorities, up to a maximum aggregate amount of one million four hundred thousand ($1,400,000.00) dollars, four hundred thousand ($400,000) dollars of which has already been reimbursed by Solvay as of March 10,2008."

5. No Other Changes. Except as set forth above, the Agreement remains in full force and effect as originally executed.

IN WITNESS WHEREOF, the Parties have caused this Amendment No. 1 to License Agreement to be executed by their duly authorized representatives as of the Effective Date.

JAZZ PHARMACEUTICALS, INC.

By: /s/ Jason Levin
Print Name: Jason D. Levin
Title: VP Corporate Development
Date: March 12, 2008

SOLVAY PHARMACEUTICALS, INC.

By: /s/ Murray Kay
Print Name: Murray Kay
Title: VP Finance
Date: 3/11/08

[*] = Certain confidential information contained in this document, marked by brackets, has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 24B-2 of the Securities Exchange Act of 1934, as amended.

Exhibit 21.1

Subsidiaries of the Registrant

OrphanMedical, LLC
JPI Commercial, LLC

EXHIBIT 23.1

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statement (Form S-8 No. 333-143553) pertaining to the 2003 Equity Incentive Plan, 2007 Equity Incentive Plan, 2007 Employee Stock Purchase Plan and 2007 Non-Employee Directors Stock Option Plan of Jazz Pharmaceuticals, Inc. our report dated March 28, 2008, with respect to the consolidated financial statements and schedule of Jazz Pharmaceuticals, Inc. included in this Annual Report (Form 10-K) for the year ended December 31, 2007.

/s/ ERNST & YOUNG LLP

Palo Alto, California
March 28, 2008

EXHIBIT 31.1

CERTIFICATION

I, Samuel R. Saks, certify that:

1. I have reviewed this annual report on Form 10-K of Jazz Pharmaceuticals, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 28, 2008

By: /s/ SAMUEL R. SAKS

Samuel R. Saks, M.D.
Chief Executive Officer

EXHIBIT 31.2

CERTIFICATION

I, Matthew K. Fust, certify that:

1. I have reviewed this annual report on Form 10-K of Jazz Pharmaceuticals, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 28, 2008

By: /s/ MATTHEW K. FUST

Matthew K. Fust
Executive Vice President and Chief Financial Officer

EXHIBIT 32.1

CERTIFICATION[1]

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1034, as amended (the "Exchange Act'), and Section 1350 of Chapter 63 of Title 18 of the my knowledge, pursuant to 18 U.S.C. Section 1350), Samuel R. Saks, Chief Executive officer of Jazz Pharmaceuticals, Inc.(the "Company"), and Matthew K. Fust, Executive Vice President and Chief Financial Officer of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2007, to which this Certification is attached as Exhibit 32.1 (the "Periodic Report"), fully complies with the requirements of Section 13(a) or 159d) of the Securities Exchange Act of 1934, and
2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

In Witness Whereof, the undersigned have set their hands hereto as of the 28 of March 2008.

/s/ SAMUEL R. SAKS

Samuel R. Saks
Chief Executive Officer

/s/ MATTHEW K. FUST

Matthew K. Fust
Executive Vice President and Chief Financial Officer

(1) This certification accompanies the Annual Report on Form 10-K to which it relates, are not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Jazz Pharmaceuticals, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-K), irrespective of any general incorporation language contained in such filing. A signed original of this written statement required by section 906 of the Sarbanes-Oxley Act of 2002 has been provided to Jazz Pharmaceuticals, Inc. and will be retained by Jazz Pharmaceuticals, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.