DEPOMED INC
Form 10-Q
May 06, 2016
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

FORM 10-Q

x QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE QUARTERLY PERIOD ENDED March 31, 2016

OR

o 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 001-13111

DEPOMED, INC.

(EXACT NAME OF REGISTRANT AS SPECIFIED IN ITS CHARTER)

CALIFORNIA	**94-3229046**
(STATE OR OTHER JURISDICTION OF INCORPORATION OR ORGANIZATION)	(I.R.S. EMPLOYER IDENTIFICATION NUMBER)

7999 Gateway Boulevard, Suite 300

Newark, California 94560

(ADDRESS OF PRINCIPAL EXECUTIVE OFFICES, INCLUDING ZIP CODE)

(510) 744-8000

(REGISTRANT S TELEPHONE NUMBER, INCLUDING AREA CODE)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act 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 x No o

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes x No o

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

Large accelerated filer x	Accelerated filer o
Non-accelerated filer o	Smaller reporting company o

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

The number of issued and outstanding shares of the Registrant s Common Stock, no par value, as of May 4, 2016 was 61,097,929.

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PART I FINANCIAL INFORMATION

ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

DEPOMED, INC.

CONDENSED CONSOLIDATED BALANCE SHEETS

(in thousands)

	March 31, 2016 (Unaudited)	December 31, 2015 (1)
ASSETS		
Current assets:		
Cash and cash equivalents	$ 181,973	$ 101,084
Short-term investments	10,351	108,684
Accounts receivable, net	69,899	71,125
Receivables from collaborative partners	851	562
Inventories	10,854	10,494
Income taxes receivable	6,362	6,358
Prepaid and other current assets	12,349	10,665
Total current assets	292,639	308,972
Marketable securities, long-term	2,010	
Property and equipment, net	15,075	14,794
Intangible assets, net	981,957	1,008,994
Deferred tax assets	42,584	22,995
Other assets	1,367	1,494
	$ 1,335,632	$ 1,357,249
LIABILITIES AND SHAREHOLDERS EQUITY		
Current liabilities:		
Accounts payable	$ 7,371	$ 12,805
Accrued rebates, returns and discounts	122,033	121,058
Accrued liabilities	46,111	62,931
Income taxes payable	12,996	
Current portion of Senior notes	100,000	
Contingent consideration liability	3,406	3,318
Interest payable	16,344	18,672
Other current liabilities	860	848
Total current liabilities	309,121	219,632
Contingent consideration liability	11,458	11,653
Senior notes	463,530	563,012
Convertible notes	241,032	237,313
Other long-term liabilities	10,752	10,584
Commitments		
Shareholders equity:		
Preferred Stock		
Common Stock	269,864	264,511
Additional paid-in capital	78,834	78,622

Accumulated deficit		(48,941)		(28,024)
Accumulated other comprehensive loss, net of tax		(18)		(54)
Total shareholders equity		299,739		315,055
Total liabilities and shareholders equity	$	1,335,632	$	1,357,249

(1) Derived from the audited consolidated financial statements included in the Company s Annual Report on Form 10-K for the year ended December 31, 2015.

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

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DEPOMED, INC.

CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS

(in thousands, except share and per share amounts)

(unaudited)

	Three Months Ended March 31,	
	2016	**2015**
Revenues:		
Product sales, net	$ 104,571	$ 31,670
Royalties	209	533
Total revenues	104,780	32,203
Costs and expenses:		
Cost of sales (excluding amortization of intangible assets)	23,549	3,112
Research and development expense	5,949	1,858
Selling, general and administrative expense	52,559	34,542
Amortization of intangible assets	27,037	2,540
Total costs and expenses	109,094	42,052
Loss from operations	(4,314)	(9,849)
Other (expense) income:		
Interest and other income	130	57
Interest expense	(22,727)	(6,022)
Total other (expense) income	(22,597)	(5,965)
Net loss before income taxes	(26,911)	(15,814)
Benefit from income taxes	5,994	4,181
Net loss	$ (20,917)	$ (11,633)
Basic net income (loss) per share	$ (0.34)	$ (0.20)
Diluted net income (loss) per share	$ (0.34)	$ (0.20)
Shares used in computing basic net income (loss) per share	60,898,186	59,560,873
Shares used in computing diluted net income (loss) per share	60,898,186	59,560,873

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

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DEPOMED, INC.

CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE (LOSS) INCOME

(in thousands)

(Unaudited)

	Three Months Ended March 31,	
	2016	**2015**
Net loss	$ (20,917)	$ (11,633)
Unrealized gains (losses) on available-for-sale securities, net of tax	36	22
Comprehensive loss	$ (20,881)	$ (11,611)

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

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DEPOMED, INC.

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(in thousands)

(Unaudited)

	Three Months Ended March, 31	
	2016	**2015**
Operating Activities		
Net loss	$ (20,917)	$ (11,633)
Adjustments for non-cash items:		
Depreciation and amortization	27,668	2,960
Provision for inventory obsolescence	401	424
Stock-based compensation	3,910	2,813
Change in fair value of contingent consideration and unfavorable contract	(107)	(1,099)
Accretion of debt discount	4,235	3,421
Deferred income taxes	(6,384)	(5,505)
Excess tax benefit from stock-based compensation	(201)	(1,159)
Other	470	272
Changes in assets and liabilities:		
Accounts receivable	1,225	3,560
Receivables from collaborative partners	(289)	21
Inventories	(761)	1,577
Prepaid and other assets	(1,497)	(379)
Income taxes receivable		606
Accounts payable and other accrued liabilities	(17,450)	3,404
Accrued rebates, returns and discounts	975	459
Interest payable	(2,328)	(1,965)
Accrued compensation	(5,488)	(1,551)
Income taxes payable		1,281
Net cash used in operating activities	(16,538)	(2,493)
Investing Activities		
Purchases of property and equipment	(45)	(342)
Acquisition of business		(500,000)
Purchases of marketable securities	(5,988)	(2,572)
Maturities of marketable securities	101,876	65,109
Net cash provided by (used in) investing activities	95,843	(437,805)
Financing Activities		
Proceeds from issuance of common stock	1,383	3,254
Excess tax benefit from stock-based compensation	201	1,159
Net cash provided by financing activities	1,584	4,413
Net increase (decrease) in cash and cash equivalents	80,889	(435,885)
Cash and cash equivalents at beginning of year	101,084	488,668
Cash and cash equivalents at end of period	$ 181,973	$ 52,783
Supplemental Disclosure of Cash Flow Information		
Net cash received for income taxes	$	$ (600)
Cash paid for interest	$ 20,109	$ 4,121
Capital expenditures incurred but not yet paid	$ 865	$

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

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DEPOMED, INC.

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

(Unaudited)

NOTE 1. ORGANIZATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Organization

Depomed, Inc. (Depomed or the Company) is a specialty pharmaceutical company focused on pain and other central nervous system (CNS) conditions. The products that comprise the Company s current specialty pharmaceutical business are (i) NUCYNTA® ER (tapentadol extended release tablets), a product for the management of pain severe enough to require daily, around-the-clock, long term opioid treatment, including neuropathic pain associated with diabetic peripheral neuropathy (DPN) in adults, and for which alternative treatment options are inadequate, and NUCYNTA® (tapentadol), a product for the management of moderate to severe acute pain in adults, each of which the Company acquired the U.S. rights to in April 2015, (ii) Gralise® (gabapentin), a once-daily product for the management of postherpetic neuralgia (PHN) that the Company launched in October 2011, (iii) CAMBIA® (diclofenac potassium for oral solution), a product for the acute treatment of migraine attacks that the Company acquired in December 2013, (iv) Zipsor® (diclofenac potassium) liquid filled capsules, a product for the treatment of mild to moderate acute pain that the Company acquired in June 2012, and (v) Lazanda® (fentanyl) nasal spray, a product for the management of breakthrough pain in cancer patients 18 years of age and older who are already receiving and who are tolerant to opioid therapy for their underlying persistent cancer pain that the Company acquired in July 2013.

As of March 31, 2016, the Company has one product candidate under clinical development, cebranopadol for chronic nociceptive and neuropathic pain.

Basis of Presentation

The unaudited condensed consolidated financial statements and the related footnote information of the Company have been prepared pursuant to the requirements of the Securities and Exchange Commission (SEC) for interim reporting. As permitted under those rules and regulations, certain footnotes or other financial information that are normally required by U.S. generally accepted accounting principles (GAAP) have been condensed or omitted pursuant to such rules and regulations. In the opinion of the Company s management, the accompanying interim unaudited condensed consolidated financial statements include all adjustments (consisting only of normal recurring adjustments) necessary for a fair presentation of the information for the periods presented. The results for the three months ended March 31, 2016 are not necessarily indicative of results to be expected for the entire year ending December 31, 2016 or future operating periods.

The accompanying unaudited condensed consolidated financial statements and related financial information should be read in conjunction with the audited financial statements and the related notes thereto for the year ended December 31, 2015 included in the Company s Annual Report on Form 10-K filed with the SEC (the 2015 Form 10-K). The balance sheet as of December 31, 2015 has been derived from the audited financial statements at that date, as filed with the 2015 Form 10-K.

Principles of Consolidation

The condensed consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries, Depomed Bermuda Ltd. (Depo Bermuda), Depo NF Sub, LLC (Depo NF Sub) and Depo DR Sub, LLC (Depo DR Sub). All intercompany accounts and transactions have been eliminated on consolidation.

On November 17, 2015, the Company entered into a definitive agreement to acquire the U.S. and Canadian rights to cebranopadol and its related follow-on compound from Grünenthal GmbH (Grünenthal). The acquisition of these rights closed on December 30, 2015 at which point the Company assigned its rights under the agreement to Depo Bermuda, a Company which was formed in Bermuda on December 22, 2015.

Depo NF Sub was formed on March 26, 2015, in connection with a Note Purchase Agreement dated March 12, 2015 (Note Purchase Agreement) governing the Company s issuance of $575.0 million aggregate principal amount of Senior Notes on April 2, 2015, for aggregate gross proceeds of approximately $562.0 million. On April 2, 2015, the Company and Depo NF Sub entered into a Pledge and Security Agreement with the Collateral Agent pursuant to which the Company and Depo NF Sub each granted the Collateral Agent (on behalf of the Purchasers) a security interest in substantially all of their assets, other than specifically excluded assets.

Depo DR Sub was formed in October 2013 for the sole purpose of facilitating the license of certain rights to PDL Biopharma (the PDL Transaction). The Company contributed to Depo DR Sub all of its rights, title and interests in certain license agreements to receive royalty and milestone payments. Immediately following the transaction, Depo DR Sub sold to PDL, among other things, such rights to receive royalty and milestone payments, for an upfront cash purchase price of $240.5 million.

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The Company and Depo DR Sub continue to retain certain administrative duties and obligations under the specified license agreements. These include the collection of the royalty and milestone amounts due and enforcement of related provisions under the specified license agreements, among others. In addition, the Company and Depo DR Sub must prepare a quarterly distribution report relating to the specified license agreements, containing, among other items, the amount of royalty payments received by the Company and reimbursable expenses. The Company and Depo DR Sub must also provide PDL with notice of certain communications, events or actions with respect to the specified license agreements and infringement of any underlying intellectual property.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Estimates are used when accounting for amounts recorded in connection with acquisitions, including initial fair value determinations of assets and liabilities as well as subsequent fair value measurements. Additionally, estimates are used in determining items such as sales discounts and returns, depreciable and amortizable lives, share-based compensation assumptions and taxes on income. Although management believes these estimates are based upon reasonable assumptions within the bounds of its knowledge of the Company s business and operations, actual results could differ materially from these estimates.

Recognizing and Measuring Assets Acquired and Liabilities Assumed in Business Combinations at Fair Value

The Company accounts for acquired businesses using the acquisition method of accounting, which requires that assets acquired and liabilities assumed be recorded at the date of acquisition at their respective fair values. The fair value of the consideration paid, including contingent consideration, is assigned to the underlying net assets of the acquired business based on their respective fair values. Any excess of the purchase price over the estimated fair values of the net assets acquired is recorded as goodwill or bargain purchase, as applicable.

Significant judgments are used in determining the estimated fair values assigned to the assets acquired and liabilities assumed and in determining estimates of useful lives of long-lived assets. Fair value determinations and useful life estimates are based on, among other factors, estimates of expected future net cash flows, estimates of appropriate discount rates used to calculate present value of expected future net cash flows, the assessment of each asset s life cycle, the impact of competitive trends on each asset s life cycle and other factors. These judgments can materially impact the estimates used to allocate acquisition date fair values to assets acquired and liabilities assumed and the resulting timing and amounts charged to, or recognized in, current and future operating results. For these and other reasons, actual results may vary significantly from estimated results.

Any changes in the fair value of contingent consideration resulting from a change in the underlying inputs are recognized in operating expenses until the contingent consideration arrangement is settled. Changes in the fair value of contingent consideration resulting from the passage of time are recorded within interest expense until the contingent consideration is settled.

Revenue Recognition

The Company recognizes revenue from the sale of its products, royalties earned, and payments received and services performed under its contractual arrangements.

Revenue is recognized when there is persuasive evidence that an arrangement exists, delivery has occurred and title has passed, the price is fixed or determinable and the Company is reasonably assured of collecting the resulting receivable. Revenue arrangements with multiple elements are evaluated to determine whether the multiple elements meet certain criteria for dividing the arrangement into separate units of accounting, including whether the delivered element(s) have stand-alone value to the Company s customer or licensee. Where there are multiple deliverables combined as a single unit of accounting, revenues are deferred and recognized over the period that the Company remains obligated to perform services.

- Product Sales The Company sells commercial products to wholesale distributors and retail pharmacies. Products sales revenue is recognized when title has transferred to the customer and the customer has assumed the risks and rewards of ownership, which typically occurs on delivery to the customer.

- Product Sales Allowances The Company recognizes product sales allowances as a reduction of product sales in the same period the related revenue is recognized. Product sales allowances are based on amounts owed or to be claimed on the related sales. These estimates take into consideration the terms of the Company s agreements with customers, historical product returns, rebates or discounts taken, estimated levels of inventory in the distribution channel, the shelf life of the product and specific known market events, such as competitive pricing and new product introductions. If actual future results vary from the Company s estimates, the Company may need to adjust these estimates, which could have an effect on product sales and earnings in the period of adjustment. The Company s sales allowances include:

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- Product Returns The Company allows customers to return product for credit with respect to product that is within six months before and up to 12 months after its product expiration date. The Company estimates product returns on NUCYNTA® ER and NUCYNTA®, Gralise®, CAMBIA®, Zipsor® and Lazanda®. The Company also estimates returns on sales of Glumetza made by the Company through August 2011, as the Company is financially responsible for return credits on Glumetza product the Company shipped as part of its commercialization agreement with Salix in August 2011. Under the terms of the Zipsor® *a*sset purchase agreement, the Company assumed financial responsibility for returns of Zipsor® product previously sold by Xanodyne Pharmaceuticals, Inc. (Xanodyne). Under the terms of the CAMBIA® asset purchase agreement, the Company also assumed financial responsibility for returns of CAMBIA® product previously sold by Nautilus. The Company did not assume financial responsibility for returns of NUCYNTA® ER and NUCYNTA® previously sold by Janssen Pharma or Lazanda® product previously sold by Archimedes Pharma US Inc. See Note 13 for further information on the acquisition of NUCYNTA® ER and NUCYNTA® , CAMBIA® Lazanda® and Zipsor®.

The shelf life of NUCYNTA® ER and NUCYNTA® is 24 months and 36 months from the date of tablet manufacture, respectively. The shelf life of Gralise® is 24 to 36 months from the date of tablet manufacture. The shelf life of CAMBIA® is 24 to 48 months from the manufacture date. The shelf life of Zipsor® is 36 months from the date of tablet manufacture. The shelf life of Lazanda® is 24 to 36 months from the manufacture date. The shelf life of the 500mg Glumetza is 48 months from the date of tablet manufacture and the shelf life of the 1000mg Glumetza is 24 to 36 months from the date of tablet manufacture. Estimates for returns are based on historical return trends by product or by return trends of similar products, taking into consideration the shelf life of product at the time of shipment, shipment and prescription trends, estimated distribution channel inventory levels and consideration of the introduction of competitive products.

Because of the shelf life of the Company s products and its return policy of issuing credits with respect to product that is returned within six months before and up to 12 months after its product expiration date, there may be a significant period of time between when the product is shipped and when the Company issues credit on a returned product. Accordingly, the Company may have to adjust these estimates, which could have an effect on product sales and earnings in the period of adjustments.

- Wholesaler and Retail Pharmacy Discounts The Company offers contractually determined discounts to certain wholesale distributors and retail pharmacies that purchase directly from it. These discounts are either taken off-invoice at the time of shipment or paid to the customer on a quarterly basis one to two months after the quarter in which product was shipped to the customer.

- Prompt Pay Discounts The Company offers cash discounts to its customers (generally 2% of the sales price) as an incentive for prompt payment. Based on the Company s experience, the Company expects its customers to comply with the payment terms to earn the cash discount.

- Patient Discount Programs The Company offers patient discount co-pay assistance programs in which patients receive certain discounts off their prescriptions at participating retail pharmacies. The discounts are reimbursed by the Company approximately one month after the prescriptions subject to the discount are filled.

- Medicaid Rebates The Company participates in Medicaid rebate programs, which provide assistance to certain low-income patients based on each individual state s guidelines regarding eligibility and services. Under the Medicaid rebate programs, the Company pays a rebate to each participating state, generally two to three months after the quarter in which prescriptions subject to the rebate are filled.

- Chargebacks The Company provides discounts to authorized users of the Federal Supply Schedule (FSS) of the General Services Administration under an FSS contract with the Department of Veterans Affairs. These federal entities purchase products from the wholesale distributors at a discounted price, and the wholesale distributors then charge back to the Company the difference between the current retail price and the price the federal entity paid for the product.

- Managed Care Rebates The Company offers discounts under contracts with certain managed care providers. The Company generally pays managed care rebates one to three months after the quarter in which prescriptions subject to the rebate are filled.

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- Medicare Part D Coverage Gap Rebates The Company participates in the Medicare Part D Coverage Gap Discount Program under which it provides rebates on prescriptions that fall within the donut hole coverage gap. The Company generally pays Medicare Part D Coverage Gap rebates two to three months after the quarter in which prescriptions subject to the rebate are filled.

- Royalties Royalties are recognized as earned in accordance with the contract terms when royalties from licensees can be reliably measured and collectability is reasonably assured.

- License and Collaborative Arrangements Revenue from license and collaborative arrangements is recognized when the Company has substantially completed its obligations under the terms of the arrangement and the Company s remaining involvement is inconsequential and perfunctory. If the Company has significant continuing involvement under such an arrangement, license and collaborative fees are recognized over the estimated performance period. The Company recognizes milestone payments for its research and development collaborations upon the achievement of specified milestones if (1) the milestone is substantive in nature, and the achievement of the milestone was not reasonably assured at the inception of the agreement, (2) consideration earned relates to past performance and (3) the milestone payment is nonrefundable. A milestone is considered substantive if the consideration earned from the achievement of the milestone is consistent with the Company s performance required to achieve the milestone or consistent with the increase in value to the collaboration resulting from the Company s performance; the consideration earned relates solely to past performance; and the consideration earned is reasonable relative to all of the other deliverables and payments within the arrangement. License, milestones and collaborative fee payments received in excess of amounts earned are classified as deferred revenue until earned.

Recently Issued Accounting Standards

In May 2014, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU or Update) No. 2014-09, *Revenue from Contracts with Customers* . This guidance outlines a new, single comprehensive model for entities to use in accounting for revenue arising from contracts with customers and supersedes most current revenue recognition guidance, including industry-specific guidance. This new revenue recognition model provides a five-step analysis in determining when and how revenue is recognized. The new model will require revenue recognition to depict the transfer of promised goods or services to customers in an amount that reflects the consideration a company expects to receive in exchange for those goods or services. On July 9, 2015, the FASB deferred the effective date of this standards update to fiscal years beginning after December 15, 2017, with early adoption permitted on the original effective date of fiscal years beginning after December 15, 2016. This guidance can be adopted on a full retrospective basis or on a modified retrospective basis. The Company is currently assessing its approach to the adoption of this standard and the impact that adopting this new accounting guidance will have on its condensed consolidated financial statements and footnote disclosures. The Company plans to adopt this guidance on January 1, 2018, which is the date the guidance becomes effective.

In April 2015, the FASB issued ASU No. 2015-03, *Interest - Imputation of Interest Simplifying the Presentation of Debt Issuance Costs* . This guidance requires that debt issuance costs be presented in the balance sheet as a direct deduction from the carrying value of the associated debt liability, consistent with the presentation of a debt discount. The recognition and

measurement guidance for debt issuance costs are not affected by the amendments in this Update. The guidance is effective for annual periods beginning after December 15, 2015, and interim periods thereafter, but requires retrospective adjustment with early adoption permitted. The Company adopted the provisions of this guidance in the three months ended March 31, 2016 and, consequently, $5.7 million and $0.5 million of debt issuance costs presented within long term other assets in the company s consolidated balance sheet as of December 31, 2015 have been reclassified against the long term liability for the Convertible Notes and the Senior Notes, respectively.

In February 2016, the FASB issued ASU No. 2016-02, *Leases* . This guidance requires lessees to apply a dual approach, classifying leases as either finance or operating leases based on the principle of whether or not the lease is effectively a financed purchase by the lessee. This classification will determine whether lease expense is recognized based on an effective interest method or on a straight-line basis over the term of the lease, respectively. A lessee is also required to record a right-of-use asset and a lease liability for all leases with a term of greater than twelve months regardless of classification. If the available accounting election is made, leases with a term of twelve months or less can be accounted for similar to existing guidance for operating leases. For a public entity, the amendments in this guidance are effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. Early application of the amendments in this Update is permitted for all entities. The Company is currently evaluating and has not yet determined the impact implementation will have on the Company s consolidated financial statements.

In March 2016, the FASB issued ASU No 2016-09 *Improvements to Employee Share-Based Payment Accounting* . This guidance simplifies the accounting for the taxes related to stock based compensation, including adjustments to how excess tax benefits and a company s payments for tax withholdings should be classified. The guidance is effective for fiscal years beginning after December 15, 2016, and interim periods within those fiscal years. Early adoption is permitted in any annual or interim period for which financial statements haven t been issued or made available for issuance, but all of the guidance must be adopted in the same period. If an entity early adopts the guidance in an interim period, any adjustments must be reflected as of the beginning of the fiscal year that includes that interim period. The Company is currently evaluating and has not yet determined the impact implementation will have on the Company s consolidated financial statements.

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NOTE 2. CASH, CASH EQUIVALENTS, SHORT-TERM INVESTMENTS AND MARKETABLE SECURITIES, LONG-TERM

Securities classified as cash and cash equivalents, short-term investments and marketable securities long-term as of March 31, 2016 and December 31, 2015 are summarized below (in thousands). Estimated fair value is based on quoted market prices for these investments.

March 31, 2016	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value Fair Value
Cash and cash equivalents:				
Cash	$ 152,003	$	$	$ 152,003
Money market funds	4,778			4,778
Corporate securities and commercial paper	25,192			25,192
Total cash and cash equivalents	$ 181,973	$	$	$ 181,973
Short-term investments				
Corporate debt securities with maturities less than 1 year	$ 10,350	$ 2	$ (1)	$ 10,351
Marketable securities, long-term				
Corporate debt securities with maturities between 1 and 2 years	2,008	2		2,010
Total available-for-sale securities	$ 12,358	$ 4	$ (1)	$ 12,361
Total cash, cash equivalents, short-term investments and marketable securities	$ 194,331	$ 4	$ (1)	$ 194,334

December 31, 2015	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Fair Value
Cash and cash equivalents:				
Cash	$ 65,600	$	$	$ 65,600
Money market funds	64			64
Corporate securities and commercial paper	35,420			35,420
Total cash and cash equivalents	$ 101,084	$	$	$ 101,084
Short-term investments				
Corporate debt securities	$ 108,717	$ 1	$ (34)	$ 108,684
Total available-for-sale securities	$ 108,717	$ 1	$ (34)	$ 108,684
Total cash, cash equivalents and short-term investments	$ 209,801	$ 1	$ (34)	$ 209,768

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The Company considers all highly liquid investments with a maturity at the date of purchase of three months or less to be cash equivalents. Cash and cash equivalents consist of cash on deposit with banks, money market instruments and corporate debt securities. All available-for-sale marketable securities with original maturities at the date of purchase greater than approximately three months and remaining maturities of less than one year are classified as short-term investments. All available-for-sale marketable securities with original maturities at the date of purchase greater than one year are classified as marketable securities, long term. The Company invests its cash in marketable securities with U.S. Treasury and government agency securities, and high quality securities of financial and commercial institutions. To date, the Company has not experienced material losses on any of its balances. These securities are carried at fair value, which is based on readily available market information, with unrealized gains and losses included in accumulated other comprehensive loss within shareholders equity on the Condensed Consolidated Balance Sheets. The Company uses the specific identification method to determine the amount of realized gains or losses on sales of marketable securities. Realized gains or losses have been insignificant and are included in interest and other income in the Condensed Consolidated Statements of Operations.

At March 31, 2016, the Company had four securities in an unrealized loss position. The following table shows the gross unrealized losses and fair value of the Company s investments with unrealized losses that are not deemed to be other-than-temporarily impaired, aggregated by investment category and length of time that individual securities have been in a continuous unrealized loss position, at March 31, 2016 (in thousands):

	Less than 12 months		12 months or greater		Total	
	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses	Fair Value	Gross Unrealized Losses
Corporate debt securities	$ 2,010	$ (1)	$	$	$ 2,010	$ (1)

The gross unrealized losses above were caused by interest rate increases. No significant facts or circumstances have arisen to indicate that there has been any deterioration in the creditworthiness of the issuers of the securities held by the Company. Based on the Company s review of these securities, including the assessment of the duration and severity of the unrealized losses and the Company s ability and intent to hold the investments until maturity, there were no material other-than-temporary impairments for these securities at March 31, 2016. For debt securities, the Company does not intend to sell the investments and it is not more likely than not that the Company will be required to sell the investments before recovery of the amortized cost.

Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs.

The Company utilizes the following fair value hierarchy based on three levels of inputs:

- Level 1: Quoted prices in active markets for identical assets or liabilities.

- Level 2: Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.

- Level 3: Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

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The following tables represent the Company s fair value hierarchy for its financial assets and liabilities measured at fair value on a recurring basis as of March 31, 2016 and December 31, 2015 (in thousands):

March 31, 2016	**Level 1**	**Level 2**	**Level 3**	**Total**
Assets:				
Money market funds	$ 4,778	$	$	$ 4,778
Commercial paper		29,173		29,173
Corporate debt securities	8,380			8,380
US Treasury securities				
Total	$ 13,158	$ 29,173	$	$ 42,331
Liabilities:				
Contingent consideration- Zipsor	$	$	$ 1,529	$ 1,529
Contingent consideration- Lazanda			11,813	11,813
Contingent consideration- CAMBIA			1,522	1,522
	$	$	$ 14,864	$ 14,864

December 31, 2015	**Level 1**	**Level 2**	**Level 3**	**Total**
Assets:				
Money market funds	$ 64	$	$	$ 64
Commercial Paper		56,383		56,383
Corporate debt securities	44,956			44,956
US Treasury securities	42,765			42,765
Total	$ 87,785	$ 56,383	$	$ 144,168
Liabilities:				
Contingent consideration- Zipsor	$	$	$ 1,504	$ 1,504
Contingent consideration- Lazanda			12,002	12,002
Contingent consideration- CAMBIA			1,465	1,465
	$	$	$ 14,971	$ 14,971

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The fair value measurement of the contingent consideration obligations arises from the Zipsor®, CAMBIA® and Lazanda® acquisitions and relates to fair value of the potential future milestone payments and royalties payable under the respective agreements which are determined using Level 3 inputs. The key assumptions in determining the fair value are the discount rate and the probability assigned to the potential milestones and royalties being achieved. At each reporting date, the Company re-measures the contingent consideration obligation arising from the above acquisitions to their estimated fair values. Any changes in the fair value of contingent consideration resulting from a change in the underlying inputs are recognized in operating expenses until the contingent consideration arrangement is settled. Changes in the fair value of contingent consideration resulting from the passage of time are recorded within interest expense until the contingent consideration is settled. The table below provides a summary of the changes in fair value recorded in interest expense and selling, general and administrative expense for the three months ended March 31, 2016:

	Balance at December 31, 2015	Changes in fair value recorded in interest expense	Changes in fair value recorded in selling, general and administrative expense	Royalties paid	Balance at March 31, 2016
Liabilities:					
Contingent consideration obligations- Zipsor®	$ 1,504	$ 33	$ (8)	$	$ 1,529
Contingent consideration obligations- Lazanda®	12,002	504	(169)	(524)	11,813
Contingent consideration obligations- CAMBIA®	1,465	57			1,522
Total	$ 14,971	$ 594	$ (177)	$ (524)	$ 14,864

The estimated fair value of the 2.50% Convertible Senior Notes Due 2021, which the Company issued on September 9, 2014 is based on a market approach. The estimated fair value, based on quoted market prices of the Company s debt, was approximately $320 million and $395 million (par value $345.0 million) as of March 31, 2016 and December 31, 2015, respectively, and represents a Level 2 valuation.

NOTE 3. NET LOSS PER SHARE

Basic net (loss) income per share is calculated by dividing the net (loss) income by the weighted-average number of shares of common stock outstanding during the period. Diluted net (loss) income per share is calculated by dividing the net (loss) income by the weighted-average number of shares of common stock outstanding during the period, plus potentially dilutive common shares, consisting of unexercised stock options, unvested restricted stock awards, outstanding shares under the employee stock purchase plan and convertible debt. The Company uses the treasury-stock method to compute diluted earnings per share with respect to its stock options and equivalents. The Company uses the if-converted method to compute diluted earnings per share with respect to its convertible debt. For purposes of this calculation, options to purchase stock are considered to be potential common shares and are only included in the calculation of diluted net (loss) income per share when their effect is dilutive. Basic and diluted earnings per common share are calculated as follows:

Three Months Ended March 31,

(in thousands, except for per share amounts)	2016	2015
Basic loss per share		
Net loss	$ (20,917)	$ (11,633)
Denominator	60,898	59,561
Basic net loss per share	$ (0.34)	$ (0.20)
Diluted net loss per share		
Numerator:		
Net loss	$ (20,917)	$ (11,633)
Denominator:		
Denominator for diluted net loss per share:	60,898	59,561
Diluted net loss per share	$ (0.34)	$ (0.20)

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The following table sets forth outstanding potentially dilutive common shares that are not included in the computation of diluted net (loss) income per share because to do so would be anti-dilutive:

(in thousands)	Three Months Ended March 31, 2016	2015
Convertible debt	17,931	17,931
Stock options and equivalents	3,870	4,026
Total potentially dilutive shares	21,801	21,957

NOTE 4. LICENSE AND COLLABORATIVE ARRANGEMENTS

Janssen Pharmaceuticals, Inc.

In August 2012, the Company entered into a license agreement with Janssen Pharma that granted Janssen Pharma a non-exclusive license to certain patents and other intellectual property rights to its Acuform® drug delivery technology for the development and commercialization of tapentadol extended release products, including NUCYNTA® ER (tapentadol extended-release tablets). The Company received a $10.0 million upfront license fee, which was recognized as revenue in 2012, and receives low single digit royalties on net sales of NUCYNTA® ER in Canada and Japan from and after July 2, 2012 through December 31, 2021.

The Company was also previously receiving royalties on sales of NUCYNTA® ER in the U.S. until its acquisition of the U.S. rights to NUCYNTA® ER from Janssen Pharma on April 2, 2015.

NOTE 5. STOCK-BASED COMPENSATION

The following table presents stock-based compensation expense recognized for stock options, stock awards, restricted stock units and the Company s employee stock purchase program (ESPP) in the Company s Condensed Consolidated Statements of Operations (in thousands):

	Three Months Ended March 31, 2016	2015
Cost of sales	$ 8	$ 1
Research and development expense	77	137
Selling, general and administrative expense	3,825	2,675
Total	$ 3,910	$ 2,813

At March 31, 2016, the Company had $30.7 million of total unrecognized compensation expense, net of estimated forfeitures, related to stock option grants and restricted stock units that will be recognized over an average vesting period of 2.37 years.

NOTE 6. INVENTORIES

Inventories consist of finished goods, raw materials and work in process and are stated at the lower of cost or market and consist of the following (in thousands):

	March 31, 2016	December 31, 2015
Raw materials	$ 2,624	$ 2,944
Work-in-process	995	1,211
Finished goods	7,235	6,339
Total	$ 10,854	$ 10,494

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NOTE 7. ACCOUNTS PAYABLE AND ACCRUED LIABILITIES

Accounts payable and accrued liabilities consist of the following (in thousands):

	March 31, 2016	December 31, 2015
Accrued compensation	$ 7,708	$ 13,196
Royalties payable	12,213	20,555
Milestone payable	3,000	
Other accrued liabilities	23,190	29,180
Total accrued liabilities	$ 46,111	$ 62,931

NOTE 8. DEBT

Senior Notes

On April 2, 2015, the Company issued $575.0 million aggregate principal amount of senior secured notes (the Senior Notes) for aggregate gross proceeds of approximately $562.0 million pursuant to a Note Purchase Agreement dated March 12, 2015 (Note Purchase Agreement) between the Company and Deerfield Private Design Fund III, L.P., Deerfield Partners, L.P., Deerfield International Master Fund, L.P., Deerfield Special Situations Fund, L.P., Deerfield Private Design Fund II, L.P., Deerfield Private Design International II, L.P., BioPharma Secured Investments III Holdings Cayman LP, Inteligo Bank Ltd. and Phemus Corporation (collectively, the Purchasers) and Deerfield Private Design Fund III, L.P., as collateral agent. The Company used $550.0 million of the net proceeds received upon the sale of the Senior Notes to fund a portion of the Purchase Price paid to Janssen Pharma in connection with the NUCYNTA® acquisition. The Company incurred debt issuance costs of $0.5 million during 2015.

The Senior Notes will mature on April 2, 2022 (unless earlier prepaid or repurchased), are secured by substantially all of the assets of the Company and any subsidiary guarantors, and bear interest at the rate equal to the lesser of (i) 9.75% over the three month London Inter-Bank Offer Rate (LIBOR), subject to a floor of 1.0% and (ii) 11.95% (through the third anniversary of the purchase date) and 12.95% (thereafter). The interest rate is determined at the first business day of each fiscal quarter, commencing with the first such date following April 2, 2015.

The principal amount of the Senior Notes is repayable as follows (amounts in thousands):

April 2, 2018	$ 57,500
April 2, 2019	115,000
April 2, 2020	115,000
April 2, 2021	143,750
April 2, 2022	143,750

$	575,000

The Senior Notes can be prepaid, at the Company s option, (i) after the first anniversary of the purchase date but prior to the second anniversary, up to $100.0 million, (ii) before the second anniversary, under certain conditions and (iii) after the second anniversary, at the Company s discretion. The Company is required to repay the outstanding Senior Notes in full if the principal amount outstanding on its existing 2.50% Convertible Senior Notes due 2021 as of March 31, 2021, is greater than $100.0 million. In addition, if the successor entity in a Major Transaction, as defined in the Note Purchase Agreement, does not satisfy specified qualification criteria, the Purchasers may require the Company to prepay the Senior Notes upon consummation of the Major Transaction in an amount equal to the principal amount of outstanding Senior Notes, accrued and unpaid interest and a prepayment premium in an amount equal to what the Company would have otherwise paid in an optional prepayment described in the preceding paragraph. The Company is required to make mandatory prepayments on the Senior Notes in an amount equal to the proceeds it receives in connection with asset dispositions in excess of $10.0 million, together with accrued and unpaid interest on the principal amount prepaid.

In March 2016, the Company delivered an irrevocable notice to the Purchasers of its intent to prepay in April 2016 $100 million of the $575 million indebtedness. Consequently, $100 million of the Senior Notes have been classified as short-term liabilities in the accompanying consolidated balance sheets as of March 31, 2016. The prepayment was made on April 4, 2016.

The Senior Notes and related indentures contain customary covenants, including, among other things, and subject to certain qualifications and exceptions, covenants that restrict the Company s ability and the ability of its subsidiaries to: incur or guarantee additional indebtedness; create or permit liens on assets; pay dividends on capital stock or redeem, repurchase or retire capital stock or subordinated indebtedness; make certain investments and other restricted payments; engage in mergers, acquisitions, consolidations and amalgamations; transfer and sell certain assets; and engage in transactions with affiliates.

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Pursuant to the Note Purchase Agreement, upon the consummation of the sale of the Senior Notes on April 2, 2015, the Company and Depo NF Sub, LLC entered into a Pledge and Security Agreement with the Deerfield Private Design Fund lll, L.P. (the Collateral Agent), pursuant to which the Company and Depo NF Sub each granted the Collateral Agent (on behalf of the Purchasers) a security interest in substantially all of their assets, other than specifically excluded assets.

The following is a summary of the carrying value of the Senior Notes as of March 31, 2016 and December 31, 2015 (in thousands):

	March 31, 2016	December 31, 2015
Principal amount of the Senior Notes	$ 575,000	$ 575,000
Unamortized debt discount balance	(11,029)	(11,527)
Unamortized debt issuance costs	(441)	(461)
Less: classified as short-term	(100,000)	
Prinicipal amount of the Senior Notes - long-term	$ 463,530	$ 563,012

The debt discount and debt issuance costs will be amortized as interest expense through April 2022. The following is a summary of interest expense for the three months ended March 31, 2016 and March 31, 2015 (in thousands):

	Three Months Ended March 31, 2016	2015
Contractual interest expense	$ 15,625	$
Amortization of debt discount and debt issuance costs	518	
Total interest expense	$ 16,143	$

Convertible Debt

On September 9, 2014, the Company issued $345 million aggregate principal amount of convertible notes due 2021 (the Convertible Notes) resulting in net proceeds to the Company of $334.2 million after deducting the underwriting discount and offering expenses of $10.4 million and $0.4 million, respectively.

The Convertible Notes were issued pursuant to an indenture, as supplemented by a supplemental indenture between the Company and The Bank of New York Mellon Trust Company, N.A., as trustee (the Trustee), and mature on September 1, 2021, unless earlier converted, redeemed or repurchased. The Convertible Notes bear interest at the rate of 2.50% per annum, payable semi-annually in arrears on March 1 and September 1 of each year, beginning March 1, 2015.

Upon the occurrence of certain events, holders may convert their Convertible Notes prior to the close of business on the business day immediately preceding March 1, 2021. On or after March 1, 2021, until the close of business on the second trading day immediately preceding the maturity date, holders may surrender their Convertible Notes for conversion at any time. Upon conversion, the Company will pay or deliver,

at its option, cash, shares of its common stock or a combination of cash and shares of its common stock. The initial conversion rate of 51.9852 shares of common stock per $1,000 principal amount of Convertible Notes is equivalent to a conversion price of approximately $19.24 per share of common stock. The conversion rate is subject to adjustment upon the occurrence of certain events.

In addition, upon the occurrence of certain events defined in the indenture as a fundamental change, holders of the Convertible Notes may require the Company to purchase for cash all or any portion of their Convertible Notes at a purchase price equal to 100% of the principal amount of the Convertible Notes to be purchased plus accrued and unpaid interest, if any, to, but excluding, the fundamental change purchase date.

The Convertible Notes were accounted for in accordance with ASC Subtopic 470-20, *Debt with Conversion and Other Options.* Pursuant to ASC Subtopic 470-20, since the Convertible Notes can be settled in cash, shares of common stock or a combination of cash and shares of common stock at the Company s option, the Company is required to separately account for the liability (debt) and equity (conversion option) components of the instrument. The carrying amount of the liability component of any outstanding debt instrument is computed by estimating the fair value of a similar liability without the conversion option. The amount of the equity component is then calculated by deducting the fair value of the liability component from the principal amount of the convertible debt instrument. The effective interest rate used in determining the liability component of the Convertible Notes was 9.34%. This resulted in the recognition of $226 million as the liability component net of a $119 million debt discount with a corresponding increase to paid-in capital representing the equity component of the Convertible Notes. The underwriting discount of $10.4 million and offering expenses of $0.4 million were allocated between debt issuance costs and equity issuance costs in proportion to the allocation of the proceeds.

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The following is a summary of the liability component of the Convertible Notes as of March 31, 2016 (in thousands):

	March 31, 2016	December 31, 2015
Principal amount of the Convertible Notes	$ 345,000	$ 345,000
Unamortized discount of the liability component	(98,501)	(101,965)
Unamortized debt issuance costs	(5,467)	(5,722)
Principal amount of the Convertible Notes - long-term	$ 241,032	$ 237,313

The debt discount and debt issuance costs will be amortized as interest expense through September 2021. The following is a summary of interest expense for the three months ended March 31, 2016 (in thousands):

	Three Months Ended March 31, 2016	2015
Stated coupon interest	$ 2,156	$ 2,156
Amortization of debt discount and debt issuance costs	3,718	3,421
Total interest expense	$ 5,874	$ 5,577

NOTE 9. SHAREHOLDERS EQUITY

Option Exercises

For the three months ended March 31, 2016, employees exercised options to purchase 211,005 shares of the Company s common stock with net proceeds to the Company of approximately $1.4 million. For the three months ended March 31, 2015, employees exercised options to purchase 430,472 shares of the Company s common stock with net proceeds to the Company of approximately $3.3 million.

NOTE 10. INCOME TAXES

The income tax provision includes federal, state and local income taxes and is based on the application of a forecasted annual income tax rate applied to the current quarter s year-to-date pre-tax (loss) income. In determining the estimated annual effective income tax rate, the Company estimates the annual impact of certain factors, including projections of the Company s annual earnings, taxing jurisdictions in which the earnings will be generated, the Company s ability to use tax credits and net operating loss carryforwards and available tax planning alternatives. Discrete items, including the effect of changes in tax laws, tax rates and certain circumstances with respect to valuation allowances or other unusual or non-recurring tax adjustments, are reflected in the period in which they occur as an addition to, or reduction from, the income tax provision, rather than being included in the estimated annual effective income tax rate.

For the three months ended March 31, 2016 and March 31, 2015, the difference between the recorded benefit for income taxes and the tax benefit based on the federal statutory rate of 35%, was primarily attributable to the impact of net non-deductible expenses and minor discrete adjustments.

As of March 31, 2016 and December 31, 2015, the Company had $5.9 million and $5.7 million of unrecognized tax benefits, respectively. All tax years since inception remain open to examination by the Internal Revenue Service and the state taxing jurisdictions in which the Company operates until such time as the Company s net operating losses and credits are either utilized or expire. Interest and penalties, if any, related to unrecognized tax benefits, would be recognized as income tax expense by the Company. The Company has approximately $0.7 million of accrued interest and penalties associated with unrecognized tax benefits.

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NOTE 11. COMMITMENTS AND CONTINGENCIES

Leases

We have non-cancelable operating leases for our office buildings and we are obligated to make payments under non-cancelable operating leases for automobiles used by our sales force. Future minimum lease payments under our non-cancelable operating leases at March 31, 2016 were as follows (in thousands):

Year Ending December 31,	Lease Payments
2016 (remainder)	$ 3,290
2017	3,352
2018	2,359
2019	1,727
2020	1,621
Thereafter	3,245
Total	$ 15,594

In April 2012, the Company entered into an office and laboratory lease agreement to lease approximately 52,500 rentable square feet in Newark, California commencing on December 1, 2012. The Company occupied approximately 8,000 additional rentable square feet commencing in July 2015. The lease will expire on November 30, 2022. However, the Company has the right to renew the lease for one additional five year term, provided that written notice is made to the landlord no later than 12 months prior to the lease expiration. The Company will have the one-time right to terminate the lease in its entirety effective as of November 30, 2017 by delivering written notice to the landlord on or before December 1, 2016. In the event of such termination, the Company will pay the landlord the unamortized portion of the tenant improvement allowance, specified additional allowances made by the landlord, waived base rent and leasing commissions, in each case amortized at 8% interest.

The Company was allowed to control physical access to the premises upon signing the lease. Therefore, in accordance with the applicable accounting guidance, the lease term was deemed to have commenced in April 2012. Accordingly, the rent free periods and the escalating rent payments contained within the lease are being recognized on a straight-line basis from April 2012. The Company will pay approximately $10.5 million in aggregate rent over the remaining term of the lease for the above premises. Deferred rent was approximately $1.7 million as of March 31, 2016 and $1.7 million as of December 31, 2015. Rent expense relating to the office and laboratory lease agreement for the three months ended March 31, 2016 and March 31, 2015, was $0.2 million.

In December 2013, the Company entered into an operating lease agreement with Enterprise FM Trust (Enterprise) for the lease of vehicles to be used by the Company s sales force. The Company began receiving vehicles in the second quarter of 2014, with the lease terms ranging from 18 to 36 months. During the three months ended June 30, 2015, the Company entered into an additional lease with Enterprise, under the existing lease terms, for use by the additional sales force hired in the three months ended June 30, 2015. The Company received the additional vehicles in the second half of 2015. The Company will pay approximately $4.9 million in aggregate rent over the remaining term of the lease for the vehicles. Rent expense relating to the lease of cars for the three months ended March 31, 2016 and 2015 was $0.8 million and $0.5 million, respectively,

Legal Matters

Depomed v. NUCYNTA® and NUCYNTA® ER ANDA Filers

Actavis & Alkem: In July 2013, Janssen Pharma filed patent infringement lawsuits in the U.S. District Court for the District of New Jersey (D.N.J.) against Actavis Elizabeth LLC, Actavis Inc. and Actavis LLC (collectively, Actavis), as well as Alkem Laboratories Limited and Ascend Laboratories, LLC (collectively, Alkem). The patent infringement claims against Actavis and Alkem relate to their respective ANDAs seeking approval to market a generic versions of NUCYNTA® and NUCYNTA® ER before the expiration of U.S. Reissue Patent No. 39,593 (the 593 Patent), U.S. Patent No. 7,994,364 (the 364 Patent) and, as to Actavis only, U.S. Patent No. 8,309,060 (the 060 Patent). In December 2013, Janssen Pharma filed an additional complaint in the D.N.J. against Alkem asserting that U.S. Patent No. 8,536,130 (the 130 Patent) relates to Alkem s ANDA seeking approval to market a generic version of NUCYNTA® ER. In August 2014, Janssen Pharma amended the complaint against Alkem to add additional dosage strengths.

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Sandoz & Roxane: In October 2013, Janssen Pharma received a Paragraph IV Notice from Sandoz, Inc. (Sandoz) with respect to NUCYNTA® related to the 364 Patent, and a Paragraph IV Notice from Roxane Laboratories, Inc. (Roxane) with respect to NUCYNTA® related to the 364 and 593 Patents. In response to those notices, Janssen Pharma filed an additional complaint in the D.N.J. against Roxane and Sandoz asserting the 364 Patent against Sandoz and the 364 and 593 Patents against Roxane. In April 2014, Janssen Pharma and Sandoz entered into a joint stipulation of dismissal of the case against Sandoz, based on Sandoz s agreement not to market a generic version of NUCYNTA® products prior to the expiration of the asserted patents. In June 2014, in response to a Paragraph IV Notice from Roxane with respect to NUCYNTA® ER, Janssen Pharma filed an additional complaint in the U.S. District Court for the District of New Jersey asserting the 364, 593, and 130 Patents against Roxane.

Watson: In July 2014, in response to a Paragraph IV Notice from Watson Laboratories, Inc. (Watson) with respect to the NUCYNTA® oral solution product and the 364 and 593 Patents, Janssen Pharma filed a lawsuit in the D.N.J. asserting the 364 and 593 Patents against Watson.

In each of the foregoing actions, the ANDA filers counterclaimed for declaratory relief of noninfringement and patent invalidity. At the time that the actions were commenced, Janssen Pharma was the exclusive U.S. licensee of the patents referred to above. On April 2, 2015, the Company acquired the U.S. rights to the NUCYNTA® ER and NUCYNTA® from Janssen Pharma. As part of the acquisition, the Company became the exclusive U.S. licensee of the patents referred to above. The Company has since been added as a plaintiff to the pending cases and is actively litigating them.

In September 2015, the Company filed an additional complaint in the D.N.J. asserting the 130 Patent against Actavis. The 130 Patent issued in September 2013 and was timely listed in the Orange Book for NUCYNTA® ER, but Actavis did not file a Paragraph IV Notice with respect to this patent. In its new lawsuit, the Company claims that Actavis will infringe or induce infringement of the 130 Patent if its proposed generic products are approved. In response, Actavis counterclaimed for declaratory relief of noninfringement and patent invalidity, as well as an order requiring the Company to change the corrected use code listed in the Orange Book for the 130 Patent.

A two-week bench trial was held beginning on March 9, 2016. Closing arguments took place on April 27, 2016. The Court will hold a separate hearing regarding Actavis s use code counterclaim on May 10, 2016.

364 Patent Inter Partes Review Petition

On January 15, 2016, Rosellini Scientific, LLC (with nXn Partners, LLC as an additional real party in interest) filed with the PTAB a petition to request an Inter Partes review (the IPR Petition) of the 364 Patent. The PTAB is expected to make a decision regarding institution of an Inter Partes review within approximately six months after the filing date.

Depomed v. Purdue

The Company has sued Purdue Pharma L.P (Purdue) for patent infringement in a lawsuit filed in January 2013 in the U.S. District Court for the District of New Jersey. The lawsuit arises from Purdue s commercialization of reformulated OxyContin® (oxycodone hydrochloride controlled-release) in the U.S. and alleges infringement of U.S. Patent Nos. 6,340,475 (the 475 Patent) and 6,635,280 (the 280 Patent), which expire in September 2016.

On September 28, 2015, the district court stayed the Purdue lawsuit pending the decision of the U.S. Court of Appeals for the Federal Circuit (CAFC) in Purdue s appeal of the U.S. Patent Trial and Appeal Board s (PTAB) Final Written Decisions described below. On March 30, 2016, the district court lifted the stay based on the CAFC s opinion and judgment affirming the PTAB s Final Written Decisions confirming the patentability of the patent claims of the 475 and 280 Patents Purdue had challenged.

In response to petitions filed by Purdue, the PTAB instituted inter partes reviews (each, an IPR) of certain of the patent claims asserted in the Company s lawsuit against Purdue. An IPR is a proceeding that became available in September 2012 in accordance with the America Invents Act (the AIA). In an IPR, a petitioner may request that the PTAB reconsider the validity of issued patent claims on the basis of prior art in the form of printed publications and other patents. Any patent claim the PTAB determines to be unpatentable is stricken from the challenged patent. Any party may appeal final written decisions of the PTAB to the CAFC, but the PTAB s decisions denying institution of an IPR are non-appealable. Accordingly, if the PTAB finds a challenged claim patentable, or declines to institute an IPR as to a challenged claim, the IPR petitioner is estopped from asserting in a patent infringement lawsuit that these claims are invalid on any ground the petitioner raised or reasonably could have raised in the IPR.

In the IPRs initiated by Purdue, in July 2014, the PTAB declined to institute an IPR as to two claims of the 475 patent and two claims of the 280 Patent. The PTAB instituted an IPR as to the other 15 claims of the 475 Patent and as to the other ten claims of the 280 Patent asserted against Purdue. In July 2015, the PTAB issued Final Written Decisions confirming the patentability of all claims at issue. In March 2016, following Purdue s appeal of the PTAB s decisions, the CAFC affirmed the PTAB s Final Written Decisions.

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Depomed v. Horizon Pharma plc and Horizon Pharma, Inc.

In August 2015, Horizon Pharma plc and Horizon Pharma, Inc. (together, Horizon) filed suit in the Superior Court for the State of California against the Company and the members of the Company s Board of Directors, alleging that bylaw amendments and a Rights Agreement the Company adopted in July 2015 violate the California Corporations Code and are unenforceable, and that the Board s actions in adopting them constituted a breach of fiduciary duty. Horizon moved for a preliminary injunction to invalidate the bylaw amendments and Rights Agreement. The court denied the motion on November 19, 2015.

Also in August 2015, the Company filed suit in the Superior Court for the State of California against Horizon, alleging a breach of contract and other violations of California law by based on Horizon s alleged possession and misuse of confidential information it obtained from Janssen Pharma under a confidentiality agreement (the Confidentiality Agreement) that Horizon entered into in connection with its attempt to acquire the U.S. rights to NUCYNTA®, which we acquired from Janssen in April 2015.

On April 22, 2016, the Company and each of Horizon Pharma plc and Horizon Pharma, Inc. (together Horizon) mutually agreed to settle each party s respective claims. The primary terms of the settlement are confidential, and neither side has admitted any liability. As part of the settlement, Horizon has agreed to continue to maintain the confidentiality of any confidential information relating to NUCYNTA that it received from Janssen Pharmaceuticals, Inc. and it and its affiliates will not use any such confidential information. In addition, the parties agreed that through January 1, 2020, Horizon will not initiate another unsolicited takeover of the Company.

General

The Company cannot reasonably predict the outcome of the legal proceedings described above, nor can the Company estimate the amount of loss, range of loss or other adverse consequence, if any, that may result from these proceedings. As such, the Company is not currently able to estimate the impact of the above litigation on its financial position or results of operations.

The Company may from time to time become party to actions, claims, suits, investigations or proceedings arising from the ordinary course of its business, including actions with respect to intellectual property claims, breach of contract claims, labor and employment claims and other matters. Although actions, claims, suits, investigations and proceedings are inherently uncertain and their results cannot be predicted with certainty, other than the matters set forth above, the Company is not currently involved in any matters that it believes may have a material adverse effect on its business, results of operations or financial condition. However, regardless of the outcome, litigation can have an adverse impact on the Company because of associated cost and diversion of management time.

NOTE 12. ACQUISITIONS

The Cebranopadol Acquisition

On November 17, 2015, the Company entered into a definitive agreement to acquire the U.S. and Canadian rights to cebranopadol and its related follow-on compound from Grünenthal. Cebranopadol is a novel, first-in-class analgesic in development for the treatment of moderate to severe chronic nociceptive and neuropathic pain and is an important addition to Depomed s leading portfolio in pain and neurology. The Company anticipates advancing cebranopadol into Phase III development for chronic lower back pain (cLBP) and other pain indications by 2017. The acquisition was completed on December 30, 2015.

Under the terms of the acquisition agreement, Depomed entered into a settlement agreement with Endo Pharmaceuticals, Inc., a subsidiary of Endo International Plc (Endo) to resolve Depomed s ongoing patent litigation against Endo for alleged infringement of three of the Company s patents by Endo s OPANA® ER product (the Settlement). As the formulator of OPANA® ER, Grünenthal indemnified Endo for certain intellectual property matters, including the Company s ongoing patent infringement lawsuit against Endo. The settlement agreement granted Endo a non-exclusive patent license in the United States, and a covenant not to sue outside the United States, for the currently marketed form of OPANA® ER. In addition, the Company provided Grünenthal with a limited covenant not to sue under certain of the Company s Acuform® drug delivery patents with specific drug substances as well as $25 million in cash. The Company will also pay Grünenthal royalties on net sales and one-time net sales milestones. There are no clinical, regulatory or approval milestone payments.

The cebranopadol acquisition was treated as an asset acquisition under the applicable guidance contained with U.S. GAAP. The total purchase consideration of $54.9 million, consisting of $25 million paid in cash upon the closing of the acquisition and $29.9 million reflecting the non-cash fair value of each of the elements of the Settlement, was written off as in-process research and development expense in the fourth quarter of 2015. Significant judgments were used in determining the estimated fair values assigned to the elements of the Settlement, such as but not limited to, the probability of the Company succeeding in its litigation against Endo had the litigation not been resolved, estimates of royalty rates and any damages that may have been awarded by the court, the timing of such an award and estimates of appropriate discount rates used to present value these expected future net cash flows. An actual judgment awarded by the court may have differed materially from the amounts recorded.

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The NUCYNTA® Acquisition

On January 15, 2015, the Company, entered into an asset purchase agreement pursuant to which the Company acquired from Janssen and its affiliates the U.S. rights to the NUCYNTA® franchise of pharmaceutical products (the NUCYNTA® U.S. Product Rights) as well as certain related assets for $1.05 billion in cash (the Purchase Price).

The NUCYNTA® franchise includes NUCYNTA® ER (tapentadol) extended release tablets indicated for the management of pain, including neuropathic pain associated with diabetic peripheral neuropathy (DPN), severe enough to require daily, around-the-clock, long-term opioid treatment, NUCYNTA® (tapentadol), an immediate release version of tapentadol, for management of moderate to severe acute pain in adults, and NUCYNTA® (tapentadol) oral solution, an approved oral form of tapentadol that has not been commercialized (collectively, the Products).

Upon the consummation of the transaction on April 2, 2015, the Company acquired (i) rights to commercialize the Products in the United States, and (ii) certain other assets relating to the Products, including finished goods product inventory and certain manufacturing equipment. In addition, Janssen Pharma assigned to the Company all of its rights and obligations under the License Agreement (U.S.) (the License Agreement) by and among Janssen Pharma, Janssen Research & Development, LLC and Grünenthal GmbH (Grünenthal) pursuant to which Janssen has a royalty-bearing license to certain Grünenthal patents and other intellectual property rights covering the commercialization of the Products in the United States.

In connection with the transaction, the Company assumed responsibility for the ongoing legal proceedings relating to certain of the Grünenthal patents licensed under the License Agreement and Janssen Pharma s clinical obligations relating to the Products and will be responsible for the associated post acquisition costs. Other than as set forth in the Asset Purchase Agreement, Janssen Pharma retained all liabilities relating to the Products associated with Janssen Pharma s commercialization of the Products prior to the consummation of the transaction.

In connection with the Transaction, the Company, Janssen Pharma and certain affiliates of Janssen also entered into (i) supply agreements pursuant to which Janssen Pharma will manufacture and supply the Products to the Company until the Company, or its contract manufacturer, begins commercial production of the Products, following which the Company will manufacture and supply Janssen Pharma for its requirements for NUCYNTA® outside of the United States and (ii) a supply agreement pursuant to which an affiliate of Janssen will manufacture and supply the Company with the active pharmaceutical ingredient contained in the Products.

In connection with the consummation of the transaction, on April 2, 2015, the Company sold an aggregate of $575.0 million principal amount of the Senior Notes for gross proceeds of approximately $562.0 million. The Company used $550.0 million of the net proceeds received upon the sale of the Senior Notes to fund a portion of the Purchase Price paid to Janssen Pharma.

Pursuant to ASC Topic 805, Business Combinations, the Transaction was determined to be a business combination and was accounted for using the acquisition method of accounting. The following table presents a preliminary summary of the purchase price consideration for the Transaction:

(Amounts in thousands)		
Cash Paid	$	1,050,000
Rebates payable by Seller		(9,977)
Total Purchase Consideration	$	1,040,023

The rebates payable by Janssen Pharma represent a reduction to the total purchase consideration. The fair value of the rebates payable by Janssen Pharma was determined based on estimates that take into consideration the terms of agreements with customers, historical rebates taken, and the estimated amount of time it takes the product to flow through the distribution channel.

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Under the acquisition method of accounting, we have recognized net tangible and intangible assets acquired based upon their respective estimated fair values as of the acquisition date. The table below shows the preliminary fair values assigned to the assets acquired:

(Amounts in thousands)		
NUCYNTA U.S. Product Rights	$	1,019,978
Inventories		11,590
Manufacturing Equipment		8,455
	$	1,040,023

NUCYNTA® U.S. Product Rights

The valuation of the NUCYNTA® US Product Rights was based on management s estimates, information and reasonable and supportable assumptions. This estimated fair value was determined using the income approach under the discounted cash flow method. Significant assumptions used in valuing the NUCYNTA® US Product Rights included revenue projections based on assumptions relating to pricing and reimbursement rates, market size and market penetration rates, general and administrative expenses, sales and marketing expenses, research and development expenses for clinical and regulatory support and developing an appropriate discount rate. If the Company s assumptions are not correct, there could be an impairment loss or, in the case of a change in the estimated useful life of the asset, a change in amortization expense. The NUCYNTA® US Product Rights intangible asset is amortized using the straight-line method over an estimated useful life of approximately ten years. The estimated useful life was determined based on the period of time over which the NUCYNTA® US Product Rights are expected to contribute to the Company s future cash flows.

The CAMBIA® Acquisition

On December 17, 2013, the Company entered into an asset purchase agreement with Nautilus, pursuant to which the Company acquired from Nautilus all of the rights to CAMBIA® (diclofenac potassium for oral solution), including related product inventory, and assumed from Nautilus certain liabilities relating to CAMBIA®, for an initial payment of $48.7 million in cash and up to $10.0 million in contingent consideration payable upon the achievement of certain specified events. In accordance with the authoritative guidance for business combinations, the transaction with Nautilus was determined to be a business combination and was accounted for using the acquisition method of accounting.

Under the acquisition method of accounting, the Company recorded the assets acquired and liabilities assumed at their respective fair values as of the acquisition date in its condensed consolidated financial statements. The determination of estimated fair value required management to make significant estimates and assumptions. As of the acquisition date, the estimated fair value of the assets acquired was approximately $49.7 million. The Company estimated the fair value of the contingent consideration related to this transaction at $1.0 million, which was booked as a long-term liability on the Condensed Consolidated Balance Sheet. The Company determined this liability amount using a probability-weighted discounted cash flow model. The Company assesses the fair value of the contingent consideration quarterly, or whenever events or changes in circumstances indicate that the fair value may have changed, primarily as a result of significant changes in the Company s forecast of net sales for CAMBIA®. The fair values of the contingent consideration as of March 31, 2016 and December 31, 2015 were $1.5 million and $1.5 million, respectively.

The Lazanda® Acquisition

On July 29, 2013, the Company entered into an asset purchase agreement with each of Archimedes Pharma US Inc., a Delaware corporation, Archimedes Pharma Ltd., a corporation registered under the laws of England and Wales, and Archimedes Development Ltd., a company registered under the laws of England and Wales (collectively, Archimedes), pursuant to which the Company acquired all of the U.S. and Canadian rights to Archimedes product Lazanda® (fentanyl) nasal spray and related inventory for an initial payment of $4.0 million in cash and up to $15.0 million in contingent consideration payable upon the achievement of certain specified events. The Company also assumed certain liabilities related to Lazanda®. In accordance with the authoritative guidance for business combinations, the Lazanda® acquisition from Archimedes was determined to be a business combination and was accounted for using the acquisition method of accounting.

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Under the acquisition method of accounting, the Company recorded the assets acquired and liabilities assumed at their respective fair values as of the acquisition date in its condensed consolidated financial statements. The determination of estimated fair value required management to make significant estimates and assumptions. As of the acquisition date, the estimated fair value of the assets acquired was approximately $12.0 million. The Company estimated the fair value of the contingent consideration related to this transaction at $8.0 million, which was booked as a long-term liability on the Condensed Consolidated Balance Sheet. The Company determined this liability amount using a probability-weighted discounted cash flow model. The Company assesses the fair value of the contingent consideration quarterly, or whenever events or changes in circumstances indicate that the fair value may have changed, primarily as a result of significant changes in the Company s forecast of net sales for Lazanda®. The fair values of the contingent consideration as of March 31, 2016 and December 31, 2015 were $11.8 million and $12.0 million, respectively.

The Zipsor® Acquisition

On June 21, 2012, the Company entered into an asset purchase agreement with Xanodyne Pharmaceuticals, Inc., a Delaware corporation (Xanodyne), pursuant to which the Company acquired Xanodyne s product Zipsor® and related inventory for $26.4 million in cash and up to $5.0 million in contingent consideration payable upon the achievement of certain specified events and assumed certain product-related liabilities relating to Zipsor®. In accordance with the authoritative guidance for business combinations, the Zipsor® acquisition from Xanodyne was determined to be a business combination and was accounted for using the acquisition method of accounting.

Under the acquisition method of accounting, the Company recorded the assets acquired and liabilities assumed at their respective fair values as of the acquisition date in its condensed consolidated financial statements. The determination of estimated fair value required management to make significant estimates and assumptions. As of the acquisition date, the estimated fair value of the assets acquired was approximately $27.7 million. Zipsor® product rights of $27.2 million were recorded as intangible assets on the accompanying Condensed Consolidated Balance Sheet and were being amortized over the estimated useful life of the asset on a straight-line basis through July 2019. On June 3, 2015, the Company entered into a settlement agreement in its ongoing patent litigation related to an Abbreviated New Drug Application (ANDA) seeking approval to market a generic version of Zipsor® (diclofenac liquid filled capsules) 25mg tablets. The settlement permits defendant Watson Laboratories Inc. to begin selling generic Zipsor on March 24, 2022, or earlier under certain circumstances. The settlement concluded all ongoing ANDA litigation related to Zipsor. In light of this settlement agreement, the Company reviewed the useful life of the Zipsor product rights and, as of June 3, 2015, extended that from the previous estimate of July 2019 to March 2022. Consequently, the Company expects that the quarterly amortization charge will be reduced from $1.0 million to $0.6 million, beginning with the three months ending September 30, 2015.

The Company estimated the fair value of the contingent consideration related to this transaction at $1.3 million, which was booked as a long-term liability on the Condensed Consolidated Balance Sheet. The Company determined this liability amount using a probability-weighted discounted cash flow model. The Company assesses the fair value of the contingent consideration quarterly, or whenever events or changes in circumstances indicate that the fair value may have changed, primarily as a result of significant changes in the Company s forecast of net sales for Zipsor®. The fair values of the contingent consideration as of March 31, 2016 and December 31, 2015 were $1.5 million and $1.5 million, respectively.

NOTE 13. INTANGIBLE ASSETS

The gross carrying amounts and net book values of our intangible assets were as follows (in thousands):

		March 31, 2016			December 31, 2015		
Amounts in thousands	**Remaining Useful Life (In years)**	**Gross Carrying Amount**	**Accumulated Amortization**	**Net Book Value**	**Gross Carrying Amount**	**Accumulated Amortization**	**Net Book Value**
NUCYNTA product rights	9.3	$ 1,019,977	$ (98,957)	$ 921,020	$ 1,019,977	$ (74,080)	$ 945,897
CAMBIA product rights	7.7	51,360	(11,767)	39,593	51,360	(10,483)	40,877
Lazanda product rights	6.3	10,480	(3,105)	7,375	10,480	(2,814)	7,666
Zipsor product rights	6.0	27,250	(13,281)	13,969	27,250	(12,696)	14,554
		$ 1,109,067	$ (127,110)	$ 981,957	$ 1,109,067	$ (100,073)	$ 1,008,994

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Based on finite-lived intangible assets recorded as of March 31, 2016, and assuming the underlying assets will not be impaired and that we will not change the expected lives of the assets, future amortization expenses were estimated as follows (in thousands):

Year Ending December 31,	Estimated Amortization Expense
2016 (remainder)	$ 81,110
2017	108,147
2018	108,147
2019	108,147
2020	108,147
Thereafter	468,259
Total	$ 981,957

NOTE 14. SUBSEQUENT EVENTS

On April 4, 2016, the Company, in accordance with the terms of the secured debt facility with Deerfield and Pharmakon Advisors, LP, prepaid $100 million of principal amount of the $575 million secured indebtedness. In addition, the Company also paid a $5 million prepayment fee.

On April 7, 2016, Starboard Value LP, together with its affiliates, (Starboard) delivered documents to the Company requesting the Board of Directors to set a record date to allow Starboard to call a special meeting of shareholders for the purpose of removing and replacing the entire Board of Directors with designees identified by Starboard (the Special Meeting). On April 25, 2016, the Company sent a letter to Starboard indicating that the record date to determine shareholders entitled to call the Special Meeting would be April 26, 2016. As a result, the Special Meeting may take place between June 1 and July 25, 2016, depending on the timing of Starboard s delivery of a formal notice calling the Special Meeting and the meeting date selected by Starboard, which may be between 35-60 days from the date of delivery of such notice. Based on information provided in an SEC filing Starboard filed on April 15, 2016, Starboard beneficially owns approximately 9.9% of the Company s outstanding common stock.

On April 25, 2016, the Company entered into the First Amendment to Rights Agreement (the Amendment) between the Company and Continental Stock Transfer & Trust Company, as Rights Agent, that amends the Rights Agreement dated July 12, 2015 (the Rights Agreement) between the Company and the Rights Agent. The Amendment is intended to permit shareholders that beneficially own 5% or more of the Company s outstanding shares to obtain revocable proxies or consents from other shareholders for the sole purpose of requesting or demanding a special meeting of shareholders of the Company pursuant to Section 600(d) of the California Corporations Code without triggering the Rights Agreement (provided that such proxy or consent does not grant any right or power to vote the underlying securities at such special meeting or any other meeting of shareholders of the Company).

ITEM 2. MANAGEMENT S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

FORWARD-LOOKING INFORMATION

Statements made in this Management s Discussion and Analysis of Financial Condition and Results of Operations and elsewhere in this Quarterly Report on Form 10-Q that are not statements of historical fact are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the Securities Act), and Section 21E of the Securities Exchange Act of 1934, as amended (the Exchange Act). We have based these forward-looking statements on our current expectations and projections about future events. Our actual results could differ materially from those discussed in, or implied by, these forward-looking statements. Forward-looking statements are identified by words such as believe, anticipate, expect, intend, plan, will, may and other similar expressions. In addition, any statements that refer to expec projections or other characterizations of future events or circumstances are forward-looking statements. Forward-looking statements include, but are not necessarily limited to, those relating to:

- the commercial success and market acceptance of our products;

- the results of our ongoing litigation against the filers of Abbreviated New Drug Applications (each, an ANDA) to market generic versions of NUCYNTA® ER and NUCYNTA® in the United States (U.S.);

- any additional patent infringement or other litigation or proceeding that may be instituted related to any of our products, product candidates or products we may acquire;

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- our ability to generate sufficient cash flow from our business to make payments on our indebtedness and our compliance with the terms and conditions of the agreements governing our indebtedness;

- our and our collaborative partners compliance or non-compliance with legal and regulatory requirements related to the promotion of pharmaceutical products in the U.S.;

- our plans to acquire, in-license or co-promote other products;

- the results of our research and development efforts including clinical studies relating to our product candidates;

- submission, acceptance and approval of regulatory filings;

- our ability to raise additional capital, if necessary;

- the outcome and impact of the Starboard proxy contest;

- our collaborative partners compliance or non-compliance with obligations under our collaboration agreements; and

- the outcome of our ongoing patent infringement litigation against Purdue Pharma L.P. (Purdue).

Factors that could cause actual results or conditions to differ from those anticipated by these and other forward-looking statements include those more fully described in the **RISK FACTORS** section and elsewhere in this Quarterly Report on Form 10-Q. Except as required by law, we assume no obligation to update any forward-looking statement publicly, or to revise any forward-looking statement to reflect events or developments occurring after the date of this Quarterly Report on Form 10-Q, even if new information becomes available in the future. Thus, you should not assume that our silence over time means that actual events are bearing out as expressed or implied in any such forward-looking statement.

ABOUT DEPOMED

Depomed is a specialty pharmaceutical company focused on pain and other central nervous system (CNS) conditions. Our current specialty pharmaceutical business includes the following six products marketed in the United States for various pain states:

- The **NUCYNTA®** franchise of pain products we acquired in April 2015 (the Nucynta Acquisition), which includes two products currently marketed in the U.S.:

- **NUCYNTA® ER** (tapentadol extended release tablets), a product for the management of pain severe enough to require daily, around-the-clock, long term opioid treatment, including neuropathic pain associated with diabetic peripheral neuropathy (DPN) in adults, and for which alternate treatment options are inadequate; and

- **NUCYNTA®** (tapentadol), an immediate release version of tapentadol for the management of moderate to severe acute pain in adults.

- **Gralise®** (gabapentin), a once-daily product for the management of postherpetic neuralgia (PHN) we launched in October 2011.

- **CAMBIA®** (diclofenac potassium for oral solution), a non-steroidal anti-inflammatory drug for the acute treatment of migraine attacks that we acquired in December 2013.

- **Lazanda®** (fentanyl) nasal spray, a product for the management of breakthrough cancer pain in cancer patients 18 years of age and older who are already receiving and who are tolerant to opioid therapy for their underlying persistent cancer pain, that we acquired in July 2013.

- **Zipsor®** (diclofenac potassium) liquid filled capsules, a non-steroidal anti-inflammatory drug for the treatment of mild to moderate acute pain that we acquired in June 2012.

We actively seek to expand our product portfolio through acquiring or in-licensing commercially available products or late-stage product candidates that may be marketed and sold effectively with our existing products through our sales and marketing capability, which currently includes approximately 300 full-time sales representatives.

We currently have one product candidate in development, cebranopadol, a novel, first-in-class analgesic in development for the treatment of moderate to severe chronic nociceptive and neuropathic pain. We licensed the U.S. and Canadian rights to cebranopadol from Grünenthal GmbH (Grünenthal) in December 2015. We currently expect to initiate Phase 3 clinical trials for cebranopadol in 2017.

We also have royalty and milestone producing license arrangements based on our proprietary Acuform® gastroretentive drug delivery technology with Ironwood Pharmaceuticals, Inc. (Ironwood) and Janssen Pharmaceuticals, Inc. (Janssen pharma).

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Commercialized Products and Product Candidate Development Pipeline

The following table summarizes our products and product candidate development pipeline:

Depomed Commercialized Products and Development Pipline

Product	Indication	Status
NUCYNTA® ER	Pain severe enough to require daily, around-the-clock, long term opioid treatment, including neuropathic pain associated with DPN in adults, and for which alternate treatment options are inadequate	Currently sold in the U.S. *Acquired in April 2015*
NUCYNTA®	Moderate to severe acute pain in adults	Currently sold in the U.S. *Acquired in April 2015*
Gralise®	Management of PHN	Currently sold in the U.S. *Launched in October 2011*
CAMBIA®	Acute treatment of migraine attacks in adults 18 years of age or older	Currently sold in the U.S. *Acquired in December 2013*
Zipsor®	Mild to moderate acute pain	Currently sold in the U.S. *Acquired in June 2012*
Lazanda®	Breakthrough pain in cancer patients 18 years of age and older who are already receiving and who are tolerant to continuous opioid therapy for their underlying persistent cancer pain	Currently sold in the U.S. *Acquired in July 2013*
Cebranopadol	Chronic nociceptive and neuropathic pain	In development *Licensed in December 2015*

OUR BUSINESS OPERATIONS

As of March 31, 2016, our revenues are generated primarily from commercialized products.

Commercialized Products

NUCYNTA® ER (Tapentadol Extended Release Tablets)

NUCYNTA ER is an extended release version of tapentadol that is indicated for the management of pain severe enough to require daily, around-the-clock, long term opioid treatment, including neuropathic pain associated with DPN in adults, and for which alternate treatment options are inadequate. We acquired the U.S. rights to NUCYNTA® ER from Janssen Pharma and began shipping and recognizing product sales on NUCYNTA® ER in April 2015. We began commercial promotion of NUCYNTA® ER in June 2015.

NUCYNTA® (Tapentadol)

NUCYNTA® is an immediate release version of tapentadol that is indicated for the management of moderate to severe acute pain in adults. We acquired the U.S. rights to NUCYNTA from Janssen Pharma and began shipping and recognizing product sales on NUCYNTA in April 2015. We began commercial promotion of NUCYNTA® in June 2015. NUCYNTA® ER and NUCYNTA® product sales were $69.4 million for the three months ended March 31, 2016.

Gralise® ***(Gabapentin)***

Gralise is our proprietary, once-daily formulation of gabapentin indicated for management of PHN, a persistent pain condition caused by nerve damage during a shingles, or herpes zoster, viral infection. We made Gralise commercially available in October 2011, following its FDA approval in January 2011 and our reacquisition of the product in March 2011 from the former licensee of the product. The FDA has granted Orphan Drug exclusivity for PHN. Gralise® product sales were $19.0 million and $17.3 million for the three months ended March 31, 2016 and 2015, respectively.

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CAMBIA® (Diclofenac Potassium for Oral Solution)

CAMBIA® is a non-steroidal anti-inflammatory drug (NSAID) indicated for the acute treatment of migraine attacks with or without aura in adults 18 years of age or older. We acquired CAMBIA® in December 2013 from Nautilus Neurosciences, Inc. (Nautilus).

We began shipping and recognizing product sales on CAMBIA® in December 2013. CAMBIA® product sales were $6.2 million and $5.4 million for the three months ended March 31, 2016 and 2015, respectively.

Zipsor® (Diclofenac Potassium) Liquid-Filled Capsules

Zipsor® is an NSAID indicated for relief of mild to moderate acute pain in adults. Zipsor® uses proprietary ProSorb® delivery technology to deliver a finely dispersed, rapidly absorbed formulation of diclofenac. We acquired Zipsor® on June 21, 2012 from Xanodyne Pharmaceuticals, Inc. (Xanodyne). Zipsor® product sales were $5.5 million and $5.8 million for the three months ended March 31, 2016 and 2015, respectively.

Lazanda® (Fentanyl) Nasal Spray

Lazanda nasal spray is an intranasal fentanyl drug used to manage breakthrough pain in adults (18 years of age and older) who are already routinely taking other opioid pain medicines around-the-clock for cancer pain. We acquired Lazanda in July 2013 from Archimedes Pharma US Inc. and its affiliated companies (collectively, Archimedes). Lazanda product sales were $4.6 million and $3.2 million for the three months ended March 31, 2016 and 2015, respectively.

Segment and Customer Information

The Company operates in one operating segment and has operations solely in the United States. To date, all of the Company s revenues from product sales are related to sales in the United States. The Company has recognized license and royalty revenue from license agreements in the territories of the United States, Canada and Korea.

OUR DRUG DELIVERY TECHNOLOGY AND RELATED LICENSE AND DEVELOPMENT ARRANGEMENTS AND PATENT LITIGATION

Our Acuform drug delivery technology is based on our proprietary oral drug delivery technologies and is designed to include formulations of drug-containing polymeric tablets that allow multi-hour delivery of an incorporated drug when taken with a meal. Of our marketed products, Gralise and NUCYNTA ER utilize the technology.

We have also licensed our drug delivery technology to several other pharmaceutical companies, and have asserted the U.S. patents comprising our Acuform technology in patent infringement litigation.

Ironwood Pharmaceuticals, Inc. **IW-*3718 for Refractory GERD***

In July 2011, we entered into a collaboration and license agreement with Ironwood granting Ironwood a license for worldwide rights to certain patents and other intellectual property rights to our Acuform drug delivery technology for IW-3718, an Ironwood product candidate under evaluation for refractory GERD. We have received $3.4 million under the agreement, including a milestone payment of $1.0 million in March 2014 as a result of the initiation of clinical trials relating to IW-3718 by Ironwood.

Janssen Pharmaceuticals, Inc. **NUCYNTA® ER**

In August 2012, the Company entered into a license agreement with Janssen Pharma that grants Janssen Pharma a non-exclusive license to certain patents and other intellectual property rights to the Company s Acuform drug delivery technology for the development and commercialization of tapentadol extended release products, including NUCYNTA® ER (tapentadol extended-release tablets). The Company received a $10.0 million upfront license fee. The Company also received low single digit royalties on sales of NUCYNTA® ER in the U.S. for sales from July 2, 2012 until the Company s acquisition of the U.S. rights to NUCYNTA® ER from Janssen Pharma on April 2, 2015, and will continue to receive low single digit royalties on net sales of NUCYNTA® ER in Canada and Japan through December 31, 2021.

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CRITICAL ACCOUNTING POLICIES

Critical accounting policies are those that require significant judgment and/or estimates by management at the time that the financial statements are prepared such that materially different results might have been reported if other assumptions had been made. We consider certain accounting policies related to revenue recognition, accrued liabilities and use of estimates to be critical policies. These estimates form the basis for making judgments about the carrying value of assets and liabilities. There have been no changes to our critical accounting policies since we filed our Annual Report on Form 10-K filed with the SEC on February 26, 2016 (the 2015 Form 10-K). The description of our critical accounting policies is incorporated herein by reference to our 2015 Form 10-K.

RESULTS OF OPERATIONS

Three Months Ended March 31, 2016 and 2015.

Revenue

Total revenues by products and licensees are summarized in the following table (in thousands):

	Three Months Ended March 31,	
	2016	**2015**
Product sales, net:		
NUCYNTA products	$ 69,364	$
Gralise	19,023	17,274
CAMBIA	6,172	5,365
Lazanda	4,560	3,186
Zipsor	5,452	5,845
Total product sales	104,571	31,670
Royalties:		
Others	209	533
Total royalty revenue	209	533
Total revenues	$ 104,780	$ 32,203

Product Sales

Our product revenues have historically been lower in the first quarter of the year as compared to the fourth quarter of the preceding year. We believe this arises primarily as a result of annual changes in health insurance plans that occur at the beginning of the calendar year and the

reduction by our wholesalers of inventory of our products in the first quarter.

NUCYNTA®. We closed the acquisition of the NUCYNTA® franchise on April 2, 2015 and began shipments on April 6, 2015. From closing until June 2015, we retained the contract sales force that had been promoting NUCYNTA® for Janssen, and we re-launched NUCYNTA® with our increased sales force in mid-June 2015. We expect NUCYNTA® product sales and unit volume to increase from current levels for the remainder of 2016.

Gralise®. In October 2011, we announced the commercial availability of Gralise® and began distributing Gralise® to wholesalers and retail pharmacies. The increase in Gralise® product sales in the three months ended March 31, 2016 as compared to the same period in 2015 is primarily a result of price increases and to a lesser extent higher unit demand. We expect Gralise® product sales and unit volume to increase from current levels for the remainder of 2016.

CAMBIA®. We began shipping and recognizing product sales on CAMBIA® in December 2013. We began commercial promotion of *CAMBIA®* in February 2014. The increase in CAMBIA product sales in the three months ended March 31, 2016 as compared to the same period in 2015, is primarily a result of higher unit demand and to a lesser extent price increases. We expect CAMBIA® product sales and unit volume to increase from current levels for the remainder of 2016.

Lazanda®. We began shipping and recognizing product sales on Lazanda® in August 2013. We began commercial promotion of Lazanda® in October 2013. The increase in Lazanda product sales in the three months ended March 31, 2016 as compared to the same period in 2015, is primarily a result of higher unit demand and to a lesser extent price increases. We expect Lazanda® product sales and unit volume to increase from current levels for the remainder of 2016.

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Zipsor®. We began shipping and recognizing product sales on Zipsor® at the end of June 2012. We began commercial promotion of Zipsor® in July 2012. The decrease in Zipsor® product sales in the three months ended March 31, 2016 as compared to the same period in 2015, is a result of reduced unit demand offset by price increases. We expect Zipsor® product sales to increase from current levels for the remainder of 2016.

Royalties

Other Royalties. Other royalties for the three months ended March 31, 2016 are primarily comprised of royalties from Tribute Pharmaceuticals, Inc. on net sales of CAMBIA® in Canada. Other royalties for the three months ended March 31, 2015 primarily include royalties from Janssen Pharma on net sales of NUCYNTA® ER and royalties from Mallinckrodt plc (Mallinckrodt) on net sales of XARTEMIS™ XR, which was launched in March 2014. The Company no longer receives royalties from Janssen Pharma on sales of NUCYNTA® ER in the U.S. for any period after April 2, 2015, the date on which the Company acquired the U.S. rights to NUCYNTA® ER from Janssen. We will continue to receive royalties from Janssen Pharma on net sales of NUCYNTA® ER in Canada and Japan. Mallinckrodt ceased commercial promotion of XARTEMIS XR in 2015.

Cost of Sales

Cost of sales consists of costs of the active pharmaceutical ingredient, contract manufacturing and packaging costs, royalty payments, inventory write-downs, product quality testing, internal employee costs related to the manufacturing process, distribution costs and shipping costs related to our product sales. Cost of sales excludes the amortization of intangible assets described separately below under Amortization of Intangible Assets . Total cost of sales for the three months ended March 31, 2016, as compared to the corresponding periods in the prior year, was as follows (in thousands):

	Three Months Ended March 31,	
	2016	2015
Cost of sales	$ 23,549	$ 3,112
Dollar change from prior year	20,437	
Percentage change from prior year	656.7%	

The increase in cost of sales for the three months ended March 31, 2016, as compared to the same period in 2015 was primarily due to the NUCYNTA® Acquisition. We began selling NUCYNTA® in April 2015. In addition, cost of sales for NUCYNTA® includes a royalty on net sales payable to Grünenthal GmbH (Grunenthal). NUCYNTA® cost of sales for the three months ended March 31, 2016 was approximately 25%.

We acquired and began selling CAMBIA® in December 2013. In connection with the acquisition, the Company assumed a liability to make certain milestone payments to third parties that were unrelated to the Seller. The milestones are based on cumulative net sales of CAMBIA® in a consecutive twelve month period. A post-acquisition milestone of $3 million was triggered during the three months ended March 31, 2016 and is included in cost of sales.

We began selling Lazanda in August 2013. The fair value of inventories acquired included a step-up in the value of Lazanda® inventories of $0.6 million which was being amortized to cost of sales as the acquired inventories were sold. The cost of sales related to the step-up value of Lazanda was $0 and $0.1 million for the three months ended March 31, 2016 and March 31, 2015, respectively.

The cost of sales for Gralise®, CAMBIA®, Lazanda® and Zipsor®, combined was approximately 18% for the three months ended March 31, 2016. The cost of sales for Gralise®, CAMBIA®, Lazanda® and Zipsor®, combined less the $3 million CAMBIA® milestone was approximately 9% for the three months ended March 31, 2016.

We expect cost of sales to increase for the remainder of 2016, as we expect product sales to increase from current levels. We expect cost of sales for the remainder of 2016 for NUCYNTA® to be approximately 25% of net sales reflecting the manufacturing transfer price and a royalty on net sales payable to Grunenthal, the developer of the product. Cost of sales for our other products varies significantly, but we expect cost of sales for the remainder of 2016 will average approximately 10% for Gralise®, CAMBIA®, Lazanda® and Zipsor®, combined.

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Research and Development Expense

Our research and development expenses currently include salaries, clinical trial costs, and consultant fees, supplies, manufacturing costs for research and development programs and allocations of corporate costs. It is extremely difficult to predict the scope and magnitude of future research and development expenses for our product candidates in research and development, as it is extremely difficult to determine the nature, timing and extent of clinical trials and studies and the FDA s requirements for a particular drug. As potential products proceed through the development process, each step is typically more extensive, and therefore more expensive, than the previous step. Therefore, success in development generally results in increasing expenditures until actual product approval. Total research and development expense for the three months ended March 31, 2016 and 2015 was as follows (in thousands):

	Three Months Ended March 31,	
	2016	2015
Research and development expense	$ 5,949	$ 1,858
Dollar change from prior year	4,091	
Percentage change from prior year	220.2%	

Research and development expense for the three months ended March 31, 2016 increased substantially as compared to the same period in 2015 primarily as a result of our assumption of responsibility for certain pediatric studies relating to NUCYNTA®. We expect research and development expense for the remainder of 2016 to increase from current levels, primarily from on-going pediatric studies relating to NUCYNTA® and from expected research and development expense in 2016 with respect to the development of cebranopadol. We expect research and development expense relating to cebranopadol to substantially increase in 2017 as we commence expected Phase 3 clinical trials.

Selling, General and Administrative Expense

Selling, general and administrative expenses primarily consist of personnel, contract personnel, marketing and promotion expenses associated with our commercial products, personnel expenses to support our administrative and operating activities, facility costs and professional expenses, such as legal fees. Total selling, general and administrative expense for the three months ended March 31, 2016, as compared to the prior year, was as follows (in thousands):

	Three Months Ended March 31,	
	2016	2015
Selling, general and administrative expense	$ 52,559	$ 34,542
Dollar change from prior year	18,017	
Percentage change from prior year	52.2%	

The increase in selling, general and administrative expense for the three months ended March 31, 2016, as compared to the same period in 2015, was primarily due to sales and marketing expense associated with the NUCYNTA® franchise in first quarter 2016 and legal fees relating to our NUCYNTA® ANDA litigation. We closed the NUCYNTA® acquisition in April 2015.

We expect selling, general and administrative expense, excluding any expense related to the proxy contest initiated by Starboard Value LP and its affiliates, for the remainder of 2016 to be consistent with the three months ended March 31, 2016.

Amortization of Intangible Assets

(In thousands)	Three Months Ended March 31, 2016	2015
Amortization of intangible assets- NUCYNTA	$ 24,878	$
Amortization of intangible assets- Zipsor	584	965
Amortization of intangible assets- Lazanda	291	291
Amortization of intangible assets- CAMBIA	1,284	1,284
	$ 27,037	$ 2,540

The NUCYNTA® product rights of approximately, $1.0 billion that we acquired on April 2, 2015, have been recorded as intangible assets in the accompanying Condensed Consolidated Balance Sheets and are being amortized using the straight line method over the estimated useful life of approximately ten years. Amortization commenced on the acquisition date. The estimated amortization expense for the remainder of 2016 is expected to be $74.6 million.

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The Zipsor® product rights of $27.2 million have been recorded as intangible assets on the accompanying Condensed Consolidated Balance Sheets and were being amortized over the estimated useful life of the asset on a straight-line basis through July 2019. In June, 2015, the Company entered into a settlement agreement which permits Watson Laboratories Inc. to begin selling generic Zipsor on March 24, 2022, or earlier under certain circumstances. In light of this settlement agreement, the Company extended the useful life of Zipsor from the previous estimate of July 2019 to March 2022, the impact of which was to reduce the annual amortization charge. The estimated amortization expense for the remainder of 2016 is expected to be $1.8 million.

The CAMBIA® product rights of $51.4 million have been recorded as intangible assets on the accompanying Condensed Consolidated Balance Sheets and are being amortized over the estimated useful life of the asset on a straight-line basis through December 2023. Amortization commenced on December 17, 2013, the date on which we acquired CAMBIA®. The estimated amortization expense for the remainder of 2016 is expected to be $3.9 million.

The Lazanda® product rights of $10.5 million have been recorded as intangible assets on the accompanying Condensed Consolidated Balance Sheets and are being amortized over the estimated useful life of the asset on a straight-line basis through August 2022. Amortization commenced on July 29, 2013, the date on which we acquired Lazanda®. The estimated amortization expense for the remainder of 2016 is expected to be $0.9 million.

Interest Income and Expense

The increase in net interest expense for the three months ended March 31, 2016, as compared to the corresponding periods in the prior year, is primarily related to interest expense relating to the Company s issuance of $575.0 million aggregate principal amount of senior secured notes issued in April, 2015 (the Senior Notes) and the 2.5% Convertible Senior Notes Due 2021 that were issued on September 9, 2014 (the Convertible Notes). The net interest expense is comprised of:

(In thousands)	Three Months Ended March 31, 2016	2015
Interest and other income	$ 130	$ 57
Interest expense	(22,727)	(6,022)
Net interest expense	$ (22,597)	$ (5,965)

The interest expense is comprised of:

(In thousands)	Three Months Ended March 31, 2016	2015

Interest payable on Senior Notes	$	15,625	$	
Interest payable on Convertible Notes		2,156		2,156
Amortization of debt discounts and issuance costs relating to Senior Notes and Convertible Notes		4,236		3,421
Changes in fair value of contingent consideration		594		445
Other		116		
	$	22,727	$	6,022

The Senior Notes

On April 2, 2015, the Company issued $575.0 million aggregate principal amount of the Senior Notes for aggregate gross proceeds of approximately $562.0 million pursuant to a Note Purchase Agreement dated March 12, 2015 (Note Purchase Agreement) between the Company and Deerfield Private Design Fund III, L.P., Deerfield Partners, L.P., Deerfield International Master Fund, L.P., Deerfield Special Situations Fund, L.P., Deerfield Private Design Fund II, L.P., Deerfield Private Design International II, L.P., BioPharma Secured Investments III Holdings Cayman LP, Inteligo Bank Ltd. and Phemus Corporation (collectively, the Purchasers) and Deerfield Private Design Fund III, L.P., as collateral agent. The Company used $550.0 million of the net proceeds received upon the sale of the Senior Notes to fund a portion of the Purchase Price paid to Janssen Pharma.

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The Senior Notes will mature in seven years (unless earlier prepaid or repurchased), are secured by substantially all of the assets of the Company and any subsidiary guarantors, and bear interest at the rate equal to the lesser of (i) 9.75% over the three month London Inter-Bank Offer Rate (LIBOR), subject to a floor of 1.0% and (ii) 11.95% (through the third anniversary of the purchase date) and 12.95% (thereafter). The interest rate is determined at the first business day of each fiscal quarter, commencing with the first such date following April 2, 2015. The Senior Notes can be prepaid, at the Company s option, (i) after the first anniversary of the purchase date but prior to the second anniversary, up to $100.0 million, (ii) before the second anniversary, under certain conditions and (iii) after the second anniversary, at the Company s discretion.

In March 2016, the Company delivered an irrevocable notice to the Purchasers of its intent to prepay in April 2016 $100 million of the $575 million indebtedness. The prepayment was made on April 4, 2016 and the Company will record the $5 million prepayment fee and an accelerated charge for the amortization of the debt discount and debt issuance costs of approximately $0.8 million within interest expense in the Consolidated Statement of Operations during the three months ended June 30, 2016. The Company expects the interest expense relating to the Senior Notes to reduce for the remainder of 2016.

Convertible Notes

In September, 2014, the Company issued the Convertible Debt resulting in net proceeds of $334.2 million after deducting the underwriting discount and offering expenses of $10.4 million and $0.4 million, respectively. The interest rate for the Convertible Notes is fixed at 2.50% per annum and is payable semi-annually in arrears on March 1 and September 1 of each year, commencing on March 1, 2015.

In accordance with accounting guidance on embedded conversion features, we valued and bifurcated the conversion option associated with the Convertible Notes from the respective host debt instrument and recorded the conversion option of $111.9 million for the Convertible Notes in Shareholders Equity on our Condensed Consolidated Balance Sheets. The resulting debt discounts on the Convertible Notes are being amortized to interest expense at an effective interest rate of 9.34% over the contractual term of the Convertible Notes.

Income Tax (Benefit) Provision

We recorded a benefit from income taxes of $6.0 million compared to a benefit for income taxes of $4.2 million, for the three months ended March 31, 2016 and March 31 2015, respectively. The benefit from income taxes in the three months ended March 31, 2016 as compared to the benefit from income taxes for the same period in 2015 is primarily attributable to a decrease in net income. We did not pay income taxes in the three months ended March 31, 2016 or March 31, 2015.

Non-GAAP Financial Measures

To supplement our financial results presented on a U.S. generally accepted accounting principles, or GAAP basis, we have included non-GAAP financial measures. The Company includes information about non-GAAP adjusted earnings, non-GAAP adjusted earnings per share and non-GAAP adjusted EBITDA, all non-GAAP financial measures, as useful operating metrics for the three month periods ended March 31, 2016 and 2015. The Company believes that the presentation of these non-GAAP financial measures, when viewed with our results under GAAP and the accompanying reconciliations, provides supplementary information to investors. The Company uses these non-GAAP financial measures in connection with its own planning and forecasting purposes and for measuring the Company's performance. These non-GAAP financial measures should be considered in addition to, and not a substitute for, or superior to, net income or other financial measures calculated in accordance with GAAP. Non-GAAP adjusted earnings and non-GAAP adjusted earnings per share are not based on any standardized methodology prescribed by GAAP and represent GAAP net income (loss) and GAAP earnings (loss) per share adjusted to exclude (1) amortization and non-cash adjustments related to product acquisitions, (2) stock-based compensation expense, (3) non-cash interest expense related to debt, (4) costs associated with the Company's defense against the Horizon Pharma hostile takeover bid, and to adjust (5) the income tax provision to reflect the estimated amounts payable or receivable in cash. Non-GAAP adjusted EBITDA is not based on any standardized methodology prescribed by GAAP and represents GAAP net income (loss) adjusted to exclude (1) amortization and non-cash adjustments related to product acquisitions, (2) stock-based compensation expense, (3) depreciation, (4) taxes, (5) costs associated with the Company's defense against the Horizon Pharma hostile takeover bid, (6) interest income and expense, and (7) transaction costs associated with product acquisitions. Non-GAAP financial measures used by the Company may be calculated differently from, and therefore may not be comparable to, non-GAAP measures used by other companies.

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The following table reconciles the Company s GAAP net income to non-GAAP adjusted income for the three months ended March 31, 2016 and 2015, respectively (in thousands, except per share amount):

RECONCILIATION OF GAAP NET INCOME (LOSS) TO NON-GAAP ADJUSTED EARNINGS

(in thousands, except per share amounts)

	Three Months Ended March 31, (unaudited)	
	2016	**2015**
GAAP net income (loss)	$ (20,917)	$ (11,633)
Non-cash interest expense on debt	4,235	3,421
Intangible amortization related to product acquisitions	27,037	2,540
Inventory step-up related to product acquisitions	10	145
Contingent consideration related to product acquisitions	417	(1,099)
Stock based compensation	3,910	2,813
Non-cash income tax adjustment	(7,014)	(4,181)
Horizon defense costs	185	
Non-GAAP adjusted earnings	$ 7,863	$ (7,994)
Add interest expense of convertible debt, net of tax (1)	1,908	
Numerator	$ 9,771	$ (7,994)
Shares used in calculation (1)	80,693	59,561
Non-GAAP adjusted earnings per share (1)	$ 0.12	$ (0.13)

(1) The Company uses the if-converted method to compute diluted earnings per share with respect to its convertible debt. There was no add-back of interest expense or additional dilutive shares related to the convertible debt for the three months ended March 31, 2015, as the effect is anti-dilutive.

The following table reconciles the Company s GAAP net income (loss) to non-GAAP adjusted EBITDA for the three months ended March 31, 2016 and 2015 (in thousands):

RECONCILIATION OF GAAP NET INCOME (LOSS) TO NON-GAAP ADJUSTED EBITDA

(in thousands)

	Three Months Ended March 31, (unaudited)	
	2016	**2015**
GAAP net income (loss)	$ (20,917)	$ (11,633)

Intangible amortization related to product acquisitions		27,037		2,540
Inventory step-up related to product acquisitions		10		145
Contingent consideration related to product acquisitions		417		(1,099)
Stock based compensation		3,910		2,813
Interest income (other)		(130)		(57)
Interest expense		22,133		5,577
Depreciation		631		420
Provision (benefit) from income taxes		(5,994)		(4,181)
Horizon defense costs		185		
Transaction costs		43		2,459
Non-GAAP adjusted EBITDA	$	27,325	$	(3,016)

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LIQUIDITY AND CAPITAL RESOURCES

(In thousands)	March 31, 2016	December 31, 2015
Cash, cash equivalents and marketable securities	$ 194,334	$ 209,768

The decrease in cash, cash equivalents and marketable securities during the three months ended March 31, 2016 is primarily attributable to:

- the timing of payments of our sales rebates related to NUCYNTA®. In the period since acquisition, a portion of NUCYNTA® sales rebates continue to be billed to, and paid by, Janssen who is then reimbursed by the Company. During the three months ended March 31, 2016, we reimbursed Janssen $17.9 million for NUCYNTA sales rebates they paid on the Company s behalf during the three months ended December 31, 2015. We expect the timing of payment of these sales rebates to align with the rest of our product portfolio once the underlying contracts have been transferred into the Company s name and the related rebates are billed directly to the Company;

- our royalty payments to Grunenthal and our interest payments on our convertible debt, both of which are payable twice annually in the first and third quarter; and

- the payment of annual employee bonuses in the first quarter.

These payments were partially off-set by the cash generated from operations in those three months.

In March 2016, the Company delivered an irrevocable notice to the Purchasers of its intent to prepay $100 million of the $575 million indebtedness in April 2016. The $100 million was paid on April 4, 2016 and in addition, in accordance with the terms of the Note Purchase Agreement, the Company also paid a related prepayment fee of $5 million.

We may incur operating losses in future years. We believe that our existing cash balances and cash we expect to generate from operations will be sufficient to fund our operations, and to meet our existing obligations for the foreseeable future, including our obligations under the Convertible Notes and the Senior Notes. We based this expectation on our current operating plan and the anticipated impact of the NUCYNTA® Acquisition, which may change as a result of many factors.

Our cash needs may vary materially from our current expectations because of numerous factors, including:

- acquisitions or licenses of complementary businesses, products, technologies or companies;

- sales of our marketed products;
- expenditures related to our commercialization of NUCYNTA® ER, NUCYNTA®, Gralise®, CAMBIA®, Zipsor®, and Lazanda®;
- the timing of our Cebranopadol clinical trials;
- milestone and royalty revenue we receive under our collaborative development and commercialization arrangements;
- interest and principal payments on our current and future indebtedness;
- financial terms of definitive license agreements or other commercial agreements we may enter into;
- changes in the focus and direction of our business strategy and/or research and development programs; and
- results of clinical testing requirements of the FDA and comparable foreign regulatory agencies.

The following table summarizes our cash flow activities (in thousands):

(In thousands)	March 31, 2016	2015
Cash (used in) provided by operating activities	$ (16,538)	$ (2,493)
Cash provided by (used in) investing activities	95,843	(437,805)
Cash provided by financing activities	1,584	4,413

Cash Flows from Operating Activities

Cash used in operating activities during the three months ended March 31, 2016 reflects the timing of the payments discussed above and the fact that our product revenues have historically been lower in the first quarter of the year as compared to the fourth quarter of the preceding year. The cash used in operating activities for the three months ended March 31, 2015 was reflective of the fact that our product revenues have historically been lower in the first quarter of the year as compared to the fourth quarter of the preceding year.

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Cash Flows from Investing Activities

Cash provided by investing activities during the three months ended March 31, 2016 primarily relates to the timing of maturity of marketable securities in preparation for the prepayment of debt in April 2016. Cash used in investing activities during the three months ended March 31, 2015 was primarily due to the cash deposited in the escrow account for the acquisition of NUCYNTA® ER and NUCYNTA® of $500.0 million and purchases of marketable securities of $2.6 million, partially offset by maturities of marketable securities of $65.1 million.

Cash Flows from Financing Activities

Cash provided by financing activities during the three months ended March 31, 2016 and March 31, 2015 consisted of proceeds from employee option exercises and excess tax benefits from stock-based compensation.

Contractual Obligations

As of March 31, 2016, our aggregate contractual obligations as shown in the following table were as follows (in thousands):

	1 Year	2-3 Years	4-5 Years	More than 5 Years	Total
Senior Notes - principal	$	$ 172,500	$ 258,750	$ 143,750	$ 575,000
Senior Notes - interest	62,671	119,075	75,325	14,423	271,494
Convertible Debt - principal				345,000	345,000
Convertible Debt - interest	8,625	17,250	17,250	3,594	46,719
Operating leases(1)	4,397	5,147	3,222	2,828	15,594
Purchase commitments	19,216	2,200	2,200		23,616
	$ 94,909	$ 316,172	$ 356,747	$ 509,595	$ 1,277,423

(1) Amounts represent payments under a non-cancelable office and laboratory lease and under an operating lease for vehicles used by our sales force.

At March 31, 2016, we had non-cancelable purchase orders and minimum purchase obligations of approximately $19.2 million under our manufacturing agreements related to NUCYNTA® , Gralise®, Zipsor®, Lazanda® and CAMBIA®. The amounts disclosed only represent minimum purchase requirements. Actual purchases are expected to exceed these amounts.

In April 2012, we entered into an office and laboratory lease agreement to lease approximately 52,500 rentable square feet in Newark, California commencing on December 1, 2012. We leased an additional 8,000 rentable square feet commencing in July 2015. The Newark lease included free rent for the first five months of the lease. Lease payments began in May 2013. We have the one-time right to terminate the lease in its entirety effective as of November 30, 2017 by delivering written notice to the landlord on or before December 1, 2016. In the event of such termination, we will pay the landlord the unamortized portion of the tenant improvement allowance, specified additional allowances made by the landlord, waived base rent and leasing commissions, in each case amortized at 8% interest.

Off-Balance Sheet Arrangements

None.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

There have been no material changes in the sources and effects of our market risk compared to the disclosures in Item 7A of our Annual Report on the 2015 Form 10-K.

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Interest Rate Risk. We are subject to interest rate fluctuation exposure through our borrowings under the Senior Secured Credit Facility and our investments in money market funds which bear a variable interest rate. Borrowings under the Senior Secured Credit Facility bear interest at a rate equal to the three month LIBOR plus 9.75% per annum, subject to a 1.0% LIBOR floor and certain thresholds. Since current LIBOR rates are below the 1.0% LIBOR floor, the interest rate on our borrowings under the Senior Secured Credit Facility has been 10.75% per annum. An increase in the LIBOR of 100 basis points above the current three-month LIBOR rates would increase our interest expense by $3.6 million per year.

The goals of our investment policy are associated with the preservation of capital, fulfillment of liquidity needs and fiduciary control of cash. To achieve our goal of maximizing income without assuming significant market risk, we maintain our excess cash and cash equivalents in money market funds. Because of the short-term maturities of our cash equivalents, we do not believe that a decrease in interest rates would have any material negative impact on the fair value of our cash equivalents.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

An evaluation was performed under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of the end of the period covered by this quarterly report. Based on that evaluation, our management, including our Chief Executive Officer and Chief Financial Officer, concluded that our disclosure controls and procedures were effective.

We review and evaluate the design and effectiveness of our disclosure controls and procedures on an ongoing basis to improve our controls and procedures over time and to correct any deficiencies that we may discover in the future. Our goal is to ensure that our senior management has timely access to all material financial and non-financial information concerning our business. While we believe the present design of our disclosure controls and procedures is effective to achieve our goal, future events affecting our business may cause us to significantly modify our disclosure controls and procedures.

Changes in Internal Controls

There were no changes in our internal controls over financial reporting during the quarter ended March 31, 2016 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

Legal Matters

Depomed v. NUCYNTA® and NUCYNTA® ER ANDA Filers

Actavis & Alkem: In July 2013, Janssen Pharma filed patent infringement lawsuits in the U.S. District Court for the District of New Jersey (D.N.J.) against Actavis Elizabeth LLC, Actavis Inc. and Actavis LLC (collectively, Actavis), as well as Alkem Laboratories Limited and Ascend Laboratories, LLC (collectively, Alkem). The patent infringement claims against Actavis and Alkem relate to their respective ANDAs seeking approval to market a generic versions of NUCYNTA® and NUCYNTA® ER before the expiration of U.S. Reissue Patent No. 39,593 (the 593 Patent), U.S. Patent No. 7,994,364 (the 364 Patent) and, as to Actavis only, U.S. Patent No. 8,309,060 (the 060 Patent). In December 2013, Janssen Pharma filed an additional complaint in the D.N.J. against Alkem asserting that U.S. Patent No. 8,536,130 (the 130 Patent) relates to Alkem s ANDA seeking approval to market a generic version of NUCYNTA® ER. In August 2014, Janssen Pharma amended the complaint against Alkem to add additional dosage strengths.

Sandoz & Roxane: In October 2013, Janssen Pharma received a Paragraph IV Notice from Sandoz, Inc. (Sandoz) with respect to NUCYNTA® related to the 364 Patent, and a Paragraph IV Notice from Roxane Laboratories, Inc. (Roxane) with respect to NUCYNTA® related to the 364 and 593 Patents. In response to those notices, Janssen Pharma filed an additional complaint in the D.N.J. against Roxane and Sandoz asserting the 364 Patent against Sandoz and the 364 and 593 Patents against Roxane. In April 2014, Janssen Pharma and Sandoz entered into a joint stipulation of dismissal of the case against Sandoz, based on Sandoz s agreement not to market a generic version of NUCYNTA® products prior to the expiration of the asserted patents. In June 2014, in response to a Paragraph IV Notice from Roxane with respect to NUCYNTA® ER, Janssen Pharma filed an additional complaint in the U.S. District Court for the District of New Jersey asserting the 364, 593, and 130 Patents against Roxane.

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Watson: In July 2014, in response to a Paragraph IV Notice from Watson Laboratories, Inc. (Watson) with respect to the NUCYNTA® oral solution product and the 364 and 593 Patents, Janssen Pharma filed a lawsuit in the D.N.J. asserting the 364 and 593 Patents against Watson.

In each of the foregoing actions, the ANDA filers counterclaimed for declaratory relief of noninfringement and patent invalidity. At the time that the actions were commenced, Janssen Pharma was the exclusive U.S. licensee of the patents referred to above. On April 2, 2015, the Company acquired the U.S. rights to the NUCYNTA® ER and NUCYNTA® from Janssen Pharma. As part of the acquisition, the Company became the exclusive U.S. licensee of the patents referred to above. The Company has since been added as a plaintiff to the pending cases and is actively litigating them.

In September 2015, the Company filed an additional complaint in the D.N.J. asserting the 130 Patent against Actavis. The 130 Patent issued in September 2013 and was timely listed in the Orange Book for NUCYNTA® ER, but Actavis did not file a Paragraph IV Notice with respect to this patent. In its new lawsuit, the Company claims that Actavis will infringe or induce infringement of the 130 Patent if its proposed generic products are approved. In response, Actavis counterclaimed for declaratory relief of noninfringement and patent invalidity, as well as an order requiring the Company to change the corrected use code listed in the Orange Book for the 130 Patent.

A two-week bench trial was held beginning on March 9, 2016. Closing arguments took place on April 27, 2016. The Court will hold a separate hearing regarding Actavis s use code counterclaim on May 10, 2016.

364 Patent Inter Partes Review Petition

On January 15, 2016, Rosellini Scientific, LLC (with nXn Partners, LLC as an additional real party in interest) filed with the PTAB a petition to request an Inter Partes review (the IPR Petition) of the 364 Patent. The PTAB is expected to make a decision regarding institution of an Inter Partes review within approximately six months after the filing date.

Depomed v. Purdue

The Company has sued Purdue Pharma L.P (Purdue) for patent infringement in a lawsuit filed in January 2013 in the U.S. District Court for the District of New Jersey. The lawsuit arises from Purdue s commercialization of reformulated OxyContin® (oxycodone hydrochloride controlled-release) in the U.S. and alleges infringement of U.S. Patent Nos. 6,340,475 (the 475 Patent) and 6,635,280 (the 280 Patent), which expire in September 2016.

On September 28, 2015, the district court stayed the Purdue lawsuit pending the decision of the U.S. Court of Appeals for the Federal Circuit (CAFC) in Purdue s appeal of the U.S. Patent Trial and Appeal Board s (PTAB) Final Written Decisions described below. On March 30, 2016, the district court lifted the stay based on the CAFC s opinion and judgment affirming the PTAB s Final Written Decisions confirming the patentability of the patent claims of the 475 and 280 Patents Purdue had challenged.

In response to petitions filed by Purdue, the PTAB instituted inter partes reviews (each, an IPR) of certain of the patent claims asserted in the Company s lawsuit against Purdue. An IPR is a proceeding that became available in September 2012 in accordance with the America Invents Act (the AIA). In an IPR, a petitioner may request that the PTAB reconsider the validity of issued patent claims on the basis of prior art in the form of printed publications and other patents. Any patent claim the PTAB determines to be unpatentable is stricken from the challenged patent. Any party may appeal final written decisions of the PTAB to the CAFC, but the PTAB s decisions denying institution of an IPR are non-appealable. Accordingly, if the PTAB finds a challenged claim patentable, or declines to institute an IPR as to a challenged claim, the IPR petitioner is estopped from asserting in a patent infringement lawsuit that these claims are invalid on any ground the petitioner raised or reasonably could have raised in the IPR.

In the IPRs initiated by Purdue, in July 2014, the PTAB declined to institute an IPR as to two claims of the 475 patent and two claims of the 280 Patent. The PTAB instituted an IPR as to the other 15 claims of the 475 Patent and as to the other ten claims of the 280 Patent asserted against Purdue. In July 2015, the PTAB issued Final Written Decisions confirming the patentability of all claims at issue. In March 2016, following Purdue s appeal of the PTAB s decisions, the CAFC affirmed the PTAB s Final Written Decisions.

Depomed v. Horizon Pharma plc and Horizon Pharma, Inc.

In August 2015, Horizon Pharma plc and Horizon Pharma, Inc. (together, Horizon) filed suit in the Superior Court for the State of California against the Company and the members of the Company s Board of Directors, alleging that bylaw amendments and a Rights Agreement the Company adopted in July 2015 violate the California Corporations Code and are unenforceable, and that the Board s actions in adopting them constituted a breach of fiduciary duty. Horizon moved for a preliminary injunction to invalidate the bylaw amendments and Rights Agreement. The court denied the motion on November 19, 2015.

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Also in August 2015, the Company filed suit in the Superior Court for the State of California against Horizon, alleging a breach of contract and other violations of California law based on Horizon s alleged possession and misuse of confidential information it obtained from Janssen Pharma under a confidentiality agreement (the Confidentiality Agreement) that Horizon entered into in connection with its attempt to acquire the U.S. rights to NUCYNTA®, which we acquired from Janssen in April 2015.

On April 22, 2016, the Company and each of Horizon Pharma plc and Horizon Pharma, Inc. (together Horizon) mutually agreed to settle each party s respective claims. The primary terms of the settlement are confidential, and neither side has admitted any liability. As part of the settlement, Horizon has agreed to continue to maintain the confidentiality of any confidential information relating to NUCYNTA that it received from Janssen Pharmaceuticals, Inc. and it and its affiliates will not use any such confidential information. In addition, the parties agreed that through January 1, 2020, Horizon will not initiate another unsolicited takeover of the Company.

General

The Company cannot reasonably predict the outcome of the legal proceedings described above, nor can the Company estimate the amount of loss, range of loss or other adverse consequence, if any, that may result from these proceedings. As such, the Company is not currently able to estimate the impact of the above litigation on its financial position or results of operations.

The Company may from time to time become party to actions, claims, suits, investigations or proceedings arising from the ordinary course of its business, including actions with respect to intellectual property claims, breach of contract claims, labor and employment claims and other matters. Although actions, claims, suits, investigations and proceedings are inherently uncertain and their results cannot be predicted with certainty, other than the matters set forth above, the Company is not currently involved in any matters that it believes may have a material adverse effect on its business, results of operations or financial condition. However, regardless of the outcome, litigation can have an adverse impact on the Company because of associated cost and diversion of management time.

ITEM 1A. RISK FACTORS

The risk factors presented below amend and restate the risk factors previously disclosed in our 2015 Form 10-K.

The following factors, along with those described above under MANAGEMENT S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS LIQUIDITY AND CAPITAL RESOURCES should be reviewed carefully, in conjunction with the other information contained in this Form 10-Q and our financial statements. These factors, among others, could cause actual results to differ materially from those currently anticipated and contained in forward-looking statements made in this Form 10-Q and presented elsewhere by our management from time to time. See Part I, Item 2 Forward-Looking Information.

If we do not successfully commercialize NUCYNTA® ER and NUCYNTA®, our largest selling products, or Gralise®, CAMBIA®, Zipsor® and Lazanda®, our business, financial condition and results of operations will be materially

and adversely affected.

In April 2015, we acquired and began commercial promotion of NUCYNTA® ER and NUCYNTA®. In October 2011, we began commercial sales of Gralise®. In June 2012, we acquired Zipsor® and began commercial promotion of Zipsor® in July 2012. In July 2013, we acquired Lazanda® and began commercial promotion of Lazanda® in October 2013. In December 2013, we acquired CAMBIA® and began commercial promotion of CAMBIA® in February 2014. As a Company, we have a limited history of selling and marketing pharmaceutical products. In addition to the risks discussed elsewhere in this section, our ability to successfully commercialize and generate revenues from NUCYNTA® ER and NUCYNTA®, our largest selling products, or Gralise®, CAMBIA®, Zipsor® and Lazanda®, depends on a number of factors, including, but not limited to, our ability to:

- develop and execute our sales and marketing strategies for our products;
- achieve, maintain and grow market acceptance of, and demand for, our products;
- obtain and maintain adequate coverage, reimbursement and pricing from managed care, government and other third-party payers;
- maintain, manage or scale the necessary sales, marketing, manufacturing, managed markets, and other capabilities and infrastructure that are required to successfully integrate and commercialize our products;
- maintain and extend intellectual property protection for our products; and
- comply with applicable legal and regulatory requirements.

If we are unable to successfully achieve or perform these functions, we will not be able to maintain or increase our product revenues and our business, financial condition and results of operations will be materially and adversely affected. Further, if we are unable to maintain or increase our revenues from NUCYNTA® ER and NUCYNTA®, our largest selling products which generated approximately 56% of our total product revenues in 2015, and approximately 66% of our total product revenues in the first quarter of 2016, our business, financial condition and results of operations will be materially and adversely affected.

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If generic manufacturers use litigation and regulatory means to obtain approval for generic versions of our products, our business will be materially and adversely affected.

Under the Federal Food, Drug and Cosmetics Act (FDCA), the FDA can approve an ANDA for a generic version of a branded drug without the ANDA applicant undertaking the clinical testing necessary to obtain approval to market a new drug. In place of such clinical studies, an ANDA applicant usually needs only to submit data demonstrating that its product has the same active ingredient(s) and is bioequivalent to the branded product, in addition to any data necessary to establish that any difference in strength, dosage, form, inactive ingredients or delivery mechanism does not result in different safety or efficacy profiles, as compared to the reference drug.

The FDCA requires an applicant for a drug that relies, at least in part, on the patent of one of our branded drugs to notify us of their application and potential infringement of our patent rights. Upon receipt of this notice we have 45 days to bring a patent infringement suit in federal district court against the company seeking approval of a product covered by one of our patents. The discovery, trial and appeals process in such suits can take several years. If such a suit is commenced, the FDCA provides a 30-month stay on the FDA s approval of the competitor s application. Such litigation is often time-consuming and quite costly and may result in generic competition if the patents at issue are not upheld or if the generic competitor is found not to infringe such patents. If the litigation is resolved in favor of the applicant or the challenged patent expires during the 30-month stay period, the stay is lifted and the FDA may thereafter approve the application based on the standards for approval of ANDAs.

We are involved in patent litigation lawsuits against filers or ANDAs seeking to market generic versions of NUCYTNA and NUCYNTA ER before the expiration of the patents listed in the Patent and Exclusivity Information Addendum of FDA s publication, Approved Drug Products with Therapeutic Equivalence Evaluations (commonly known as the Orange Book) for the products (at least June 2025 for Nucynta and at least September 2028 for NUCYNTA ER). A two-week bench trial was held beginning on March 9, 2016. and closing arguments took place on April 27, 2016.

Any introduction of one or more products generic to NUCYNTA® ER, NUCYNTA® , Gralise®, CAMBIA®, Zipsor® or Lazanda®, whether as a result of an ANDA or otherwise, would harm our business, financial condition and results of operations. The filing of the ANDAs described above, or any other ANDA or similar application in respect to any of our products, could have an adverse impact on our stock price. Moreover, if the patents covering our products were not upheld in litigation or if a generic competitor is found not to infringe these patents, the resulting generic competition would have a material adverse effect on our business, financial condition and results of operations.

If we are unable to negotiate acceptable pricing or obtain adequate reimbursement for our products from third-party payers, our business will suffer.

Sales of our products depend significantly on the availability of acceptable pricing and adequate reimbursement from third-party payers such as:

- government health administration authorities;
- private health insurers;

- health maintenance organizations;
- managed care organizations;
- pharmacy benefit management companies; and
- other healthcare-related organizations.

If reimbursement is not available for our products or product candidates, demand for our products may be limited. Further, any delay in receiving approval for reimbursement from third-party payers could have an adverse effect on our future revenues.

Third-party payers frequently require that pharmaceutical companies negotiate agreements that provide discounts or rebates from list prices. We have agreed to provide such discounts and rebates to certain third-party payers. We expect increasing pressure to offer larger discounts or discounts to a greater number of third-party payers to maintain acceptable reimbursement levels for and access to our products for patients at co-pay levels that are reasonable and customary. In addition, if our competitors reduce the prices of their products, or otherwise demonstrate that they are better or more cost effective than our products, this may result in a greater level of reimbursement for their products relative to our products, which would reduce sales of our products and harm our results of operations. The process for determining whether a third-party payer will provide coverage for a product may be separate

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from the process for setting the price or reimbursement rate that such third-party payer will pay for the product once coverage is approved. Third-party payers may limit coverage to specific products on an approved list, or formulary, which might not include all of the approved products for a particular indication, including one or more of our products. Any third-party payer decision not to approve pricing for, or provide adequate coverage and reimbursement of, our products, including by limiting or denying reimbursement for new products or excluding products that were previously eligible for reimbursement, would limit the market acceptance and commercial prospects of our products and harm our business, financial condition and results of operations.

There have been, and there will continue to be, legislative and regulatory proposals to change the healthcare system in ways that could impact our ability to commercialize our products profitably. We anticipate that the federal and state legislatures and the private sector will continue to consider and may adopt and implement healthcare policies, such as the ACA, intended to curb rising healthcare costs. These cost containment measures include: controls on government-funded reimbursement for drugs; new or increased requirements to pay prescription drug rebates to government health care programs; controls on healthcare providers; challenges to the pricing of drugs , including pricing controls, or limits or prohibitions on reimbursement for specific products through other means; requirements to try less expensive products or generics before a more expensive branded product; and public funding for cost effectiveness research, which may be used by government and private third-party payers to make coverage and payment decisions. These and other cost containment measures could decrease the price that we receive for our products and any product that we may develop or acquire, which would harm our business, financial condition and results of operations.

We may be unable to compete successfully in the pharmaceutical industry.

Tapentadol, the active pharmaceutical ingredient in NUCYNTA® ER and NUCYNTA®, is a proprietary opioid analgesic that we market exclusively in the U.S. NUCYNTA® ER and NUCYNTA® compete with a number of branded and generic products that are widely used to treat moderate to severe pain, including neuropathic pain associated with DPN, and acute pain, respectively. These products include OxyContin® (oxycodone hydrochloride extended-release tables), which is marketed by Purdue Pharma L.P., and OPANA® ER (oxymorphone hydrochloride), which is marketed by Endo Pharmaceuticals, Inc., each of which is approved for marketing in the U.S. for the management of pain severe enough to require daily, around-the-clock, long-term opioid treatment and for which alternative treatment options are inadequate. Each of OxyContin® and OPANA® ER have achieved significant levels of market acceptance. There are also a number of branded and generic opioids, including oxymorphone, fentanyl, morphine, buprenorphine and hydromorphone, which have received approval and are marketed in the U.S. for the treatment of moderate to severe pain, including chronic and acute pain. Lyrica® (pregabalin), which is marketed by Pfizer, Inc. (Pfizer), has been approved for marketing in the U.S. for the treatment of neuropathic pain associated with DPN. Branded and generic versions of duloxetine and lidocaine have also been approved for marketing in the U.S. for the treatment of neuropathic pain associated with DPN. There are a number of other products and treatments prescribed for, or under development, for the management of chronic and acute pain, including neuropathic pain associated with DPN, which are now or may become competitive with NUCYNTA® ER and NUCYNTA®.

Gabapentin is currently sold by Pfizer as Neurontin® for adjunctive therapy for epileptic seizures and for PHN. Pfizer s basic U.S. patents relating to Neurontin® have expired, and numerous companies have received approval to market generic versions of the immediate release product. In addition to receiving approval for marketing to treat neuropathic pain associated with DPN, Lyrica® (pregabalin), has also been approved for marketing in the U.S. for the treatment of post herpetic pain, fibromyalgia, adjunctive therapy, epileptic seizures, and nerve pain associated with spinal cord injury and has captured a significant portion of the market. In December 2014, Pfizer announced positive Phase 3 clinical trial results for its controlled release formulation of Lyrica® as a treatment for PHN. In June 2012, GlaxoSmithKline and Xenoport, Inc. received approval to market Horizant (gabapentin enacarbil extended-release tablets) for the management of PHN. There are other products prescribed for or under development for PHN which are now or may become competitive with Gralise®.

Diclofenac, the active pharmaceutical ingredient in Zipsor®, is an NSAID that is approved in the U.S. for the treatment of mild to moderate pain in adults, including the symptoms of arthritis. Both branded and generic versions of diclofenac are marketed in the U.S. Zipsor® competes

against other drugs that are widely used to treat mild to moderate pain in the acute setting. In addition, a number of other companies are developing NSAIDs in a variety of dosage forms for the treatment of mild to moderate pain and related indications. Other drugs are in clinical development to treat acute pain.

An alternate formulation of diclofenac is the active ingredient in CAMBIA® that is approved in the U.S. for the acute treatment of migraine in adults. CAMBIA® competes with a number of triptans which are used to treat migraine and certain other headaches. Currently, seven triptans are available and sold in the U.S. (almotriptan, eletriptan, frovatriptan, naratriptan, rizatriptan, sumatriptan and zolmitriptan), as well as a fixed-dose combination product containing sumatriptan plus naproxen. There are other products prescribed for or under development for the treatment of migraines which are now or may become competitive with CAMBIA®.

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Fentanyl, an opioid analgesic, is currently sold by a number of companies for the treatment of breakthrough pain in opioid-tolerant cancer patients. Branded fentanyl products against which Lazanda® currently competes include Subsys®, which is sold by Insys Therapeutics, Inc., Fentora® and Actiq®, which are sold by Cephalon Inc., Abstral®, which is sold by Sentynl Therapeutics Inc., and Onsolis®, which is sold by BioDelivery Sciences International, Inc. (BDSI). Generic fentanyl products against which Lazanda® currently competes are sold by Mallinckrodt, Par and Actavis.

Competition in the pharmaceutical industry is intense and we expect competition to increase. Competing products currently under development or developed in the future may prove superior to our products and achieve greater commercial acceptance. Most of our principal competitors have substantially greater financial, sales, marketing, personnel and research and development resources than we do.

We may incur significant liability if it is determined that we are promoting or have in the past promoted the off-label use of drugs.

Companies may not promote drugs for off-label use that is, uses that are not described in the product s labeling and that differ from those approved by the FDA. Physicians may prescribe drug products for off-label uses, and such off-label uses are common across some medical specialties. Although the FDA and other regulatory agencies do not regulate a physician s choice of treatments, the FDCA and FDA regulations restrict communications on the subject of off-label uses of drug products by pharmaceutical companies. The Office of Inspector General of the Department of Health and Human Services (OIG), the FDA, and the Department of Justice (DOJ) all actively enforce laws and regulations prohibiting promotion of off-label use and the promotion of products for which marketing clearance has not been obtained. If the OIG or the FDA takes the position that we are or may be out of compliance with the requirements and restrictions described above, and we are investigated for or found to have improperly promoted off-label use, we may be subject to significant liability, including civil and administrative remedies as well as criminal sanctions. In addition, management s attention could be diverted from our business operations and our reputation could be damaged.

Pharmaceutical marketing is subject to substantial regulation in the U.S. and any failure by us or our collaborative partners to comply with applicable statutes or regulations could adversely affect our business.

All marketing activities associated with NUCYNTA® ER, NUCYNTA®, Gralise®, CAMBIA®, Zipsor® and Lazanda®, as well as marketing activities related to any other products which we may acquire, or for which we obtain regulatory approval, will be subject to numerous federal and state laws governing the marketing and promotion of pharmaceutical products. The FDA regulates post-approval promotional labeling and advertising to ensure that they conform to statutory and regulatory requirements. In addition to FDA restrictions, the marketing of prescription drugs is subject to laws and regulations prohibiting fraud and abuse under government healthcare programs. For example, the federal healthcare program anti-kickback statute prohibits giving things of value to induce the prescribing or purchase of products that are reimbursed by federal healthcare programs, such as Medicare and Medicaid. In addition, federal false claims laws prohibit any person from knowingly presenting, or causing to be presented, a false claim for payment to the federal government. Under this law, in recent years, the federal government has brought claims against drug manufacturers alleging that certain marketing activities caused false claims for prescription drugs to be submitted to federal programs. Many states have similar statutes or regulations that apply to items and services reimbursed under Medicaid and other state programs, and, in some states, such statutes or regulations apply regardless of the payer. If we, or our collaborative partners, fail to comply with applicable FDA regulations or other laws or regulations relating to the marketing of our products, we could be subject to criminal prosecution, civil penalties, seizure of products, injunctions, and exclusion of our products from reimbursement under government programs, as well as other regulatory actions against our product candidates, our collaborative partners or us.

Acquisition of new and complementary businesses, products, and technologies is a key element of our corporate strategy. If we are unable to successfully identify and acquire such businesses, products or technologies, our business and prospects will be limited.

Since June 2012, we have acquired NUCYNTA® ER, NUCYNTA®, CAMBIA®, Zipsor® and Lazanda® and exclusively in-licensed the right to develop and commercialize cebranopadol. An important element of our business strategy is to actively seek to acquire products or companies and to in-license or seek co-promotion rights to products that could be sold by our sales force. We cannot be certain that we will be able to successfully identify, pursue and complete any further acquisitions or whether we would be able to successfully integrate any acquired business, product or technology or retain any key employees. If we are unable to enhance and broaden our product offerings, our business and prospects will be limited.

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If we are unable to successfully integrate any business, product or technology we may acquire, our business, financial condition and operating results will suffer.

Integrating any business, product or technology we acquire, including NUCYNTA® ER and NUCYNTA®, is expensive, time consuming and can disrupt and adversely affect our ongoing business, including product sales, and distract our management. Our ability to successfully integrate any business, product or technology we acquire depends on a number of factors, including, but not limited to, our ability to:

- minimize the disruption and distraction of our management and other employees, including our sales force, in connection with the integration of any acquired business, product or technology;
- maintain and increase sales of our existing products;
- establish or manage the transition of the manufacture and supply of any acquired product, including the necessary active pharmaceutical ingredients, excipients and components;
- identify and add the necessary sales, marketing, manufacturing, regulatory and other related personnel, capabilities and infrastructure that are required to successfully integrate any acquired business, product or technology;
- manage the transition and migration of all commercial, financial, legal, clinical, regulatory and other pertinent information relating to any acquired business, product or technology;
- comply with legal, regulatory and contractual requirements applicable to any acquired business, product or technology;
- obtain and maintain adequate coverage, reimbursement and pricing from managed care, government and other third-party payers with respect to any acquired product; and
- maintain and extend intellectual property protection for any acquired product or technology.

If we are unable to perform the above functions or otherwise effectively integrate any acquired businesses, products or technologies, our business, financial condition and operating results will suffer.

If we engage in strategic transactions that fail to achieve the anticipated results and synergies, our business will suffer.

We may seek to engage in strategic transactions with third parties, such as product or company acquisitions, strategic partnerships, joint ventures, divestitures or business combinations. We may face significant competition in seeking potential strategic partners and transactions, and the negotiation process for acquiring any product or engaging in strategic transactions can be time-consuming and complex. Engaging in strategic transactions, such as our acquisition in 2015 of the U.S. rights to NUCYNTA® ER and NUCYNTA®, may require us to incur non-recurring and other charges, increase our near and long-term expenditures, pose integration challenges and fail to achieve the anticipated results or synergies or distract our management and business, which may harm our business.

As part of an effort to acquire a product or company or to enter into other strategic transactions, we conduct business, legal and financial due diligence with the goal of identifying, evaluating and assessing material risks involved in the transaction. Despite our efforts, we ultimately may be unsuccessful in ascertaining, evaluating and accurately assessing all such risks and, as a result, might not realize the intended advantages of the transaction. We may also assume liabilities and legal risks in connection with a transaction, including those relating to activities of the seller prior to the consummation of the transaction and contracts that we assume. Failure to realize the expected benefits from acquisitions or strategic transactions that we may consummate, or that we have completed, such the acquisition in 2015 of the U.S. rights to NUCYNTA® ER and NUCYNTA®, whether as a result of identified or unidentified risks, integration difficulties, regulatory setbacks, governmental investigations, litigation or other events, could adversely affect our business, results of operations and financial condition.

Our product revenues have historically been lower in the first quarter of the year as compared to the fourth quarter of the preceding year which may cause our stock price to decline.

Our product revenues have historically been lower in the first quarter of the year as compared to the fourth quarter of the preceding year. We believe this arises primarily as a result of the reduction by our wholesalers of inventory of our products in the first quarter and annual changes in health insurance plans that occur at the beginning of the calendar year.

In 2013, 2014 and 2015, our wholesalers ended the calendar year with higher levels of inventory of our products than at the end of the first quarter of the following year. As a result, in the first quarter of 2014, 2015 and 2016, net sales were lower than would otherwise have been the case as a result of the reduction of product inventory at our wholesalers. Any material reduction by our wholesalers of their inventory of our products in the first quarter of any calendar year as compared to the fourth quarter of the preceding calendar year, could adversely affect our operating results and may cause our stock price to decline.

Many health insurance plans and government programs reset annual limits on deductibles and out-of-pocket costs at the beginning of each calendar year and require participants to pay for substantially all of the costs of medical services and prescription drug products until such deductibles and annual out-of-pocket cost limits are met. In addition, enrollment in high-deductible health insurance plans has increased significantly in recent years. As a result of these factors, patients may delay filling or refilling prescriptions for our products or substitute less expensive generic products until such deductibles and annual out-of-pocket cost limits are met. Any reduction in the demand for our products, including as a result of the foregoing factors, could adversely affect our business, operating results and financial condition.

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We may be subject to disruptive unsolicited takeover attempts in the future.

We have in the past and may in the future be subject to unsolicited attempts to gain control of our company. Responding to any such attempt would distract management attention away from our business and would require us to incur significant costs. Moreover, any unsolicited takeover attempt may disrupt our business by causing uncertainty among current and potential employees, producers, suppliers, customers, and other constituencies important to our success, which could negatively impact our financial results and business initiatives. Other disruptions to our business include potential volatility in our stock price and potential adverse impacts on the timing of, and our ability to consummate, acquisitions of products and companies.

Our business could be negatively affected as a result of an expected proxy fight and the actions of activist shareholders.

Starboard Value LP, together with its affiliates (Starboard) has requested the Board of Directors to fix a record date to allow Starboard to call a special meeting of shareholders for the purpose of removing and replacing the entire Board of Directors with designees identified by Starboard (the Special Meeting). On April 25, 2016, the Company sent a letter to Starboard indicating that the record date to determine shareholders entitled to call the Special Meeting would be April 26, 2016. As a result, the Special Meeting may take place between June 1 and July 25, 2016, depending on the timing of Starboard s delivery of a formal notice calling the Special Meeting and the meeting date selected by Starboard, which may be between 35-60 days from the date of delivery of such notice. If Starboard submits a request calling the Special Meeting, we expect to conduct a contested proxy campaign, challenging any effort by Starboard to remove and replace our Board of Directors. Any proxy contest with Starboard, or other activist activities, could adversely affect our business for a number of reasons, including, but not limited to:

- responding to proxy contests and other actions by activist stockholders can be costly and time-consuming, disrupting our operations and diverting the attention of management and our employees;

- perceived uncertainties as to our future direction may result in the loss of potential business opportunities and may make it more difficult to attract and retain qualified personnel, business partners, customers and others important to our success, any of which could negatively affect our results of operations and financial condition; and

- if nominees advanced by Starboard or other activist investors are elected or appointed to our Board of Directors with a specific agenda, it may adversely affect our ability to effectively and timely implement our strategic plans or to realize long-term value from our assets, and this could in turn have an adverse effect on our business prospects and on our results of operations and financial condition.

A proxy contest could also cause our stock price to experience periods of volatility. Further, if a proxy contest results in a change in control of our Board of Directors, such an event could give third parties certain rights under existing contractual obligations, which could adversely affect our business.

We depend on third parties that are single source suppliers to manufacture our products. If these suppliers are unable to manufacture and supply our products, or there is insufficient availability of our products or the raw materials necessary to manufacture our products, our business will suffer.

An affiliate of Janssen Pharma is our sole supplier of NUCYNTA® ER and NUCYNTA® pursuant to a manufacturing supply agreement we entered into with such entity in April 2015. Patheon Puerto Rico Inc. (Patheon) is our sole supplier for Gralise® pursuant to a manufacturing and supply agreement we entered into with Patheon in September 2011. Accucaps Industries Limited is our sole supplier for Zipsor® pursuant to a manufacturing agreement we assumed in connection with our acquisition of Zipsor® in June 2012. DPT Lakewood Inc. is our sole supplier for Lazanda® pursuant to a manufacturing and supply agreement that we assumed in connection with our acquisition of Lazanda® in July 2013. MiPharm, S.p.A is our sole supplier for CAMBIA® pursuant to a manufacturing and supply agreement that we assumed in connection with our acquisition of CAMBIA® in December 2013. We have one qualified supplier for the active pharmaceutical ingredient in each of NUCYNTA® ER, NUCYNTA®, CAMBIA®, Zipsor® and Lazanda® and Gralise®. We do not have, and we do not intend to establish in the foreseeable future, internal commercial scale manufacturing capabilities. Rather, we intend to use the facilities of third parties to manufacture products for commercialization and clinical trials. Our dependence on third parties for the manufacture of our products and our product candidates may adversely affect our ability to obtain such products on a timely or competitive basis, if at all. Any stock out, or failure to obtain sufficient supplies of NUCYNTA® ER, NUCYNTA®, Gralise®, CAMBIA®, Zipsor® or Lazanda®, or the necessary active pharmaceutical ingredients, excipients or components from our suppliers would adversely affect our business, results of operations and financial condition.

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The manufacturing process for pharmaceutical products is highly regulated and regulators may shut down manufacturing facilities that they believe do not comply with regulations. We, our third-party manufacturers and our suppliers are subject to numerous regulations, including current FDA regulations governing manufacturing processes, stability testing, record keeping and quality standards. Similar regulations are in effect in other countries. Our third-party manufacturers and suppliers are independent entities who are subject to their own unique operational and financial risks which are out of our control. If we or any of these third-party manufacturers or suppliers fail to perform as required or fail to comply with the regulations of the FDA and other applicable governmental authorities, our ability to deliver adequate supplies of our products to our customers on a timely basis, or to continue our clinical trials could be adversely affected. The manufacturing processes of our third party manufacturers and suppliers may also be found to violate the proprietary rights of others. To the extent these risks materialize and adversely affect such third-party manufacturers performance obligations to us, and we are unable to contract for a sufficient supply of required products on acceptable terms, or if we encounter delays and difficulties in our relationships with manufacturers or suppliers, our business, results of operation and financial condition could be adversely affected.

We may be unable to protect our intellectual property and may be liable for infringing the intellectual property of others

Our success will depend in part on our ability to obtain and maintain patent protection for our products and technologies, and to preserve our trade secrets. Our policy is to seek to protect our proprietary rights, by, among other methods, filing patent applications in the U.S. and foreign jurisdictions to cover certain aspects of our technology. We hold issued U.S. patents and have patent applications pending in the U.S. In addition, we are pursuing patent applications relating to our technologies in the U.S. and abroad. We have also applied for patents in numerous foreign countries. Some of those countries have granted our applications and other applications are still pending. Our pending patent applications may lack priority over other applications or may not result in the issuance of patents. Even if issued, our patents may not be sufficiently broad to provide protection against competitors with similar technologies and may be challenged, invalidated or circumvented, which could limit our ability to stop competitors from marketing related products or may not provide us with competitive advantages against competing products. We also rely on trade secrets and proprietary know-how, which are difficult to protect. We seek to protect such information, in part, through entering into confidentiality agreements with employees, consultants, collaborative partners and others before such persons or entities have access to our proprietary trade secrets and know-how. These confidentiality agreements may not be effective in certain cases, due to, among other things, the lack of an adequate remedy for breach of an agreement or a finding that an agreement is unenforceable. In addition, our trade secrets may otherwise become known or be independently developed by competitors.

Our ability to develop our technologies and to make commercial sales of products using our technologies also depends on not infringing other patents or intellectual property rights. We are not aware of any such intellectual property claims against us. However, the pharmaceutical industry has experienced extensive litigation regarding patents and other intellectual property rights. Patents issued to third parties relating to sustained release drug formulations or particular pharmaceutical compounds could in the future be asserted against us, although we believe that we do not infringe any valid claim of any patents. If claims concerning any of our products were to arise and it was determined that these products infringe a third party s proprietary rights, we could be subject to substantial damages for past infringement or be forced to stop or delay our activities with respect to any infringing product, unless we can obtain a license, or we may have to redesign our product so that it does not infringe upon such third party s patent rights, which may not be possible or could require substantial funds or time. Such a license may not be available on acceptable terms, or at all. Even if we, our collaborators or our licensors were able to obtain a license, the rights may be nonexclusive, which could give our competitors access to the same intellectual property. In addition, any public announcements related to litigation or interference proceedings initiated or threatened against us, even if such claims are without merit, could cause our stock price to decline.

From time to time, we may become aware of activities by third parties that may infringe our patents. Infringement of our patents by others may reduce our market shares (if a related product is approved) and, consequently, our potential future revenues and adversely affect our patent rights if we do not take appropriate enforcement action. We may need to engage in litigation to enforce any patents issued or licensed to us or to determine the scope and validity of third-party proprietary rights. For instance, we are engaged in litigation against three NUCYNTA® ER and NUCYNTA® ANDA filers, and one NUCYNTA® oral solution ANDA filer. In these or other proceedings, our issued or licensed patents may not be held valid by a court of competent jurisdiction or the PTAB. Whether or not the outcome of litigation or the PTAB proceeding is

favorable to us, the litigation and the proceedings take significant time, may be expensive, and may divert management s attention from other business concerns. We may also be required to participate in derivation proceedings or other post-grant proceedings declared by the U.S. Patent and Trademark Office for the purposes of, respectively, determining the priority of inventions in connection with our patent applications or determining validity of claims in our issued patents. Adverse determinations in litigation or proceedings at the U.S. Patent and Trademark Office would adversely affect our business, results of operations and financial condition and could require us to seek licenses which may not be available on commercially reasonable terms, or at all, or subject us to significant liabilities to third parties. If we need but cannot obtain a license, we may be prevented from marketing the affected product.

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Our failure to generate sufficient cash flow from our business to make payments on our debt would adversely affect our business, financial condition and results of operations.

We have incurred significant indebtedness in the aggregate principal amount of $920.0 million under our Senior Notes and our Convertible Notes. Our ability to make scheduled payments of the principal of, to pay interest on, or to refinance, the Convertible Notes, the Senior Notes and any additional debt obligations we may incur, depends on our future performance, which is subject to economic, financial, competitive and other factors that may be beyond our control. Our business may not generate cash flow from operations in the future sufficient to service our debt and to make necessary capital expenditures. If we are unable to generate such cash flow, we may be required to adopt one or more alternatives, such as selling assets, restructuring debt or obtaining additional equity capital on terms that may be onerous or highly dilutive. Our ability to refinance our indebtedness will depend on the capital markets and our financial condition at such time. We may not be able to engage in any of these activities or engage in these activities on commercially reasonable or acceptable terms, which could result in a default on our obligations, including the Convertible Notes and the Senior Notes.

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

- make it more difficult for us to meet our payment and other obligations under the Convertible Notes, the Senior Secured Notes or our other indebtedness;
- result in an event of default if we fail to comply with the financial and other covenants contained in the Note Purchase Agreement, which event of default could result in all of our debt becoming immediately due and payable;
- make us more vulnerable to adverse changes in general economic, industry and competitive conditions and adverse changes in government regulation;
- subject us to the risk of increased sensitivity to interest rate increases on our indebtedness with variable interest rates, including the Senior Notes;
- require the dedication of a substantial portion of our cash flow from operations to service our indebtedness, thereby reducing the amount of our cash flow available for other purposes, including working capital, clinical trials, research and development, capital expenditures and other general corporate purposes;
- prevent us from raising funds necessary to repurchase the Convertible Notes in the event we are required to do so following a fundamental change, as specified in the indenture governing the Convertible Notes, to repurchase the Senior Notes in the event we are required to do so following a major transaction or as required in the event that the principal amount outstanding under the Convertible Notes as of March 31, 2021 is greater than $100.0 million, as specified in the Note Purchase Agreement or to settle conversions of the Convertible Notes in cash;
- result in dilution to our existing shareholders as a result of the conversion of the Convertible Notes into shares of common stock;
- limit our flexibility in planning for, or reacting to, changes in our business and our industry;

- put us at a disadvantage compared to our competitors who have less debt; and

- limit our ability to borrow additional amounts for working capital and other general corporate purposes, including funding possible acquisitions of, or investments in, additional products, technologies, and companies.

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

Health care reform could increase our expenses and adversely affect the commercial success of our products.

The ACA includes numerous provisions that affect pharmaceutical companies. For example, the ACA seeks to expand healthcare coverage to the uninsured through private health insurance reforms and an expansion of Medicaid. The ACA also imposes substantial costs on pharmaceutical manufacturers, such as an increase in liability for rebates paid to Medicaid, new drug discounts that must be offered to certain enrollees in the Medicare prescription drug benefit and an annual fee imposed on all manufacturers of brand prescription drugs in the U.S. The ACA also requires increased disclosure obligations and an expansion of an existing program requiring pharmaceutical discounts to certain types of hospitals and federally subsidized clinics and contains cost-containment measures that could reduce reimbursement levels for pharmaceutical products. The ACA also includes provisions known as the Physician Payments Sunshine Act, which require manufacturers of drugs, biologics, devices and medical supplies covered under Medicare and Medicaid to record any transfers of value to physicians and teaching hospitals and to report this data to the Centers for Medicare and Medicaid Services for subsequent public disclosure. Similar reporting requirements have also been enacted on the state level domestically, and an increasing number of countries worldwide either have adopted or are considering similar laws requiring transparency of interactions with health care professionals. Failure to report appropriate data may result in civil or criminal fines and/or penalties. These and other aspects of the ACA, including regulations that may be imposed in connection with the implementation of the ACA, could increase our expenses and adversely affect our ability to successfully commercialize our products and product candidates.

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Changes in laws and regulations may adversely affect our business.

The manufacture, marketing, sale, promotion and distribution of our products are subject to comprehensive government regulation. Changes in laws and regulations applicable to the pharmaceutical industry could potentially affect our business. For instance, federal, state and local governments have recently given increased attention to the public health issue of opioid abuse. As an example, we were named as a defendant in a case brought by the City of Chicago against a number of Pharmaceutical Companies marketing and selling opioid based pain medications, alleging misleading or otherwise improper promotion of opioid drugs to physicians and consumers. This case against the Company was dismissed. At the federal level, the White House Office of National Drug Control Policy continues to coordinate efforts between the FDA, U.S. Drug Enforcement Agency (DEA) and other agencies to address this issue. The DEA continues to increase its efforts to hold manufacturers, distributors, prescribers and pharmacies accountable through various enforcement actions as well as the implementation of compliance practices for controlled substances. In addition, many state legislatures are considering various bills intended to reduce opioid abuse, for example by establishing prescription drug monitoring programs and mandating prescriber education. Further the FDA has recently announced that it will require black-box warnings on immediate release opioids highlighting the risk of misuse, abuse, addiction, overdose and death. These and other changes in laws and regulations could adversely affect our business, financial condition and results of operations.

If we are unable to obtain or maintain regulatory approval for our products or product candidates, we will be limited in our ability to commercialize our products, and our business will suffer.

The regulatory process is expensive and time consuming. Even after investing significant time and expenditures on clinical trials, we may not obtain regulatory approval of our product candidates. Data obtained from clinical trials are susceptible to varying interpretations, which could delay, limit or prevent regulatory approval, and the FDA may not agree with our methods of clinical data analysis or our conclusions regarding safety and/or efficacy. Significant clinical trial delays could impair our ability to commercialize our products and could allow our competitors to bring products to market before we do. In addition, changes in regulatory policy for product approval during the period of product development and regulatory agency review of each submitted new application may cause delays or rejections. Even if we receive regulatory approval, this approval may entail limitations on the indicated uses for which we can market a product.

Further, with respect to our approved products, once regulatory approval is obtained, a marketed product and its manufacturer are subject to continual review. The discovery of previously unknown problems with a product or manufacturer may result in restrictions on the product, manufacturer or manufacturing facility, including withdrawal of the product from the market. Manufacturers of approved products are also subject to ongoing regulation and inspection, including compliance with FDA regulations governing current Good Manufacturing Practices (cGMP) or Quality System Regulation (QSR). The FDCA, the Controlled Substances Act of 1970 (CSA) and other federal and foreign statutes and regulations govern and influence the testing, manufacturing, packing, labeling, storing, record keeping, safety, approval, advertising, promotion, sale and distribution of our products. In addition, with respect to Lazanda®, we and our partners are also subject to ongoing DEA regulatory obligations, including annual registration renewal, security, recordkeeping, theft and loss reporting, periodic inspection and annual quota allotments for the raw material for commercial production of our products. The failure to comply with these regulations could result in, among other things, warning letters, fines, injunctions, civil penalties, recall or seizure of products, total or partial suspension of production, non-renewal of marketing applications or authorizations or criminal prosecution, which could adversely affect our business, results of operations and financial condition.

We are also required to report adverse events associated with our products to the FDA and other regulatory authorities. Unexpected or serious health or safety concerns could result in labeling changes, recalls, market withdrawals or other regulatory actions. Recalls may be issued at our discretion or at the discretion of the FDA or other empowered regulatory agencies. For example, in June 2010, we instituted a voluntary class 2 recall of 52 lots of our 500mg Glumetza product after chemical traces of 2,4,6-tribromoanisole (TBA) were found in the product bottle.

We are subject to risks associated with NDAs submitted under Section 505(b)(2) of the Food, Drug and Cosmetic Act.

The products we develop or acquire generally are or will be submitted for approval under Section 505(b)(2) of the FDCA, which 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 a 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 instance, the NDA for Gralise® relies on the FDA s prior approval of Neurontin, the immediate release formulation of gabapentin initially approved by the FDA.

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For NDAs submitted under Section 505(b)(2) of the FDCA, the patent certification and related provisions of the Hatch-Waxman Act apply. In accordance with the Hatch-Waxman Act, such NDAs may be required to include certifications, known as Paragraph IV certifications, that certify any patents listed in the Orange Book publication in respect to any product referenced in the 505(b)(2) application are invalid, unenforceable, and/or will not be infringed by the manufacture, use, or sale of the product that is the subject of the 505(b)(2) application. Under the Hatch-Waxman Act, the holder of the NDA which the 505(b)(2) application references may file a patent infringement lawsuit after receiving notice of the Paragraph IV certification. Filing of a patent infringement lawsuit triggers a one-time automatic 30-month stay of the FDA s ability to approve the 505(b) (2) application. Accordingly, we may invest a significant amount of time and expense in the development of one or more products only to be subject to significant delay and patent litigation before such products may be commercialized, if at all. A Section 505(b) (2) application may also not be approved until any 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. The FDA may also require us to perform one or more additional clinical studies or measurements to support the change from the approved product. The FDA may then approve the new formulation for all or only some of the indications sought by us. The FDA may also reject our future Section 505(b) (2) submissions and require us to file such submissions under Section 501(b) (1) of the FDCA, which could be considerably more expensive and time consuming. These factors, among others, may limit our ability to successfully commercialize our product candidates.

If a product liability claim against us is successful, our business will suffer.

Our business involves exposure to potential product liability risks that are inherent in the development production and commercialization of pharmaceutical products. Side effects, manufacturing defects, misuse or abuse of any of our products could result in patient injury or death. For instance, Lazanda® is a self-administered, opioid analgesic that contains fentanyl, a Schedule II controlled substance under the CSA. A patient s failure to follow instructions on the use and administration of, or the abuse of Lazanda® could result in injury or death. In addition, patients using Lazanda® have been diagnosed with cancer, an often fatal disease. Patient injury or death can result in product liability claims being brought against us, even if our products did not cause an injury or death. Product liability claims may be brought against us by consumers, health care providers, pharmaceutical companies or others who come into contact with our products.

We have obtained product liability insurance for our anticipated 2016 sales of our products and clinical trials currently underway, but:

- we may be unable to maintain product liability insurance on acceptable terms;
- we may be unable to obtain product liability insurance for future trials;
- we may be unable to obtain product liability insurance for future products;
- we may be unable to secure increased coverage as the commercialization of our Acuform gastric retentive technology expands; or
- our insurance may not provide adequate protection against potential liabilities.

Our inability to obtain or maintain adequate insurance coverage at an acceptable cost could prevent or inhibit the commercialization of our products. Defending a lawsuit could be costly and significantly divert management s attention from conducting our business. If third parties were to bring a successful product liability claim or series of claims against us for uninsured liabilities or in excess of insured liability limits, our business, results of operations and financial condition could be adversely affected.

Our collaborative arrangements may give rise to disputes over commercial terms, contract interpretation and ownership or protection of our intellectual property and may adversely affect the commercial success of our products.

We currently have collaboration or license arrangements with a number of companies, including Grünenthal, Janssen Pharma and Ironwood. In addition, we have in the past and may in the future enter into other collaborative arrangements, some of which have been based on less definitive agreements, such as memoranda of understanding, material transfer agreements, options or feasibility agreements. We may not execute definitive agreements formalizing these arrangements.

Collaborative relationships are generally complex and may give rise to disputes regarding the relative rights, obligations and revenues of the parties, including the ownership of intellectual property and associated rights and obligations, especially when the applicable collaborative provisions have not been fully negotiated and documented. Such disputes can delay collaborative research, development or commercialization of potential products, and can lead to lengthy, expensive litigation or arbitration. The terms of collaborative arrangements may also limit or preclude us from developing products or technologies developed pursuant to such collaborations. Additionally, the collaborative partners under these arrangements might breach the terms of their respective agreements or fail to maintain, protect or prevent infringement of the licensed patents or our other intellectual property rights by third parties. Moreover, negotiating collaborative arrangements often takes considerably longer to conclude than the parties initially anticipate, which could cause us to enter into less favorable agreement terms that delay or defer recovery of our development costs and reduce the funding available to support key programs. Any failure by our collaborative partners to abide by the terms of their respective agreements with us, including their failure to accurately calculate, report or pay any royalties payable to us, may adversely affect our results of operations.

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We may be unable to enter into future collaborative arrangements on acceptable terms, which could harm our ability to develop and commercialize our current and potential future products and technologies. Other factors relating to collaborations that may adversely affect the commercial success of our products include:

- any parallel development by a collaborative partner of competitive technologies or products;
- arrangements with collaborative partners that limit or preclude us from developing products or technologies;
- premature termination of a collaboration agreement; or
- failure by a collaborative partner to devote sufficient resources to the development and commercial sales of products using our current and potential future products and technologies.

Our collaborative arrangements do not necessarily restrict our collaborative partners from competing with us or restrict their ability to market or sell competitive products. Our current and any future collaborative partners may pursue existing or other development-stage products or alternative technologies in preference to those being developed in collaboration with us. Our collaborative partners may also terminate their collaborative relationships with us or otherwise decide not to proceed with development and commercialization of our products.

Any failure by us or our partners to comply with applicable statutes or regulations relating to controlled substances could adversely affect our business.

Each of NUCYNTA® ER and NUCYNTA® are opioid analgesics that contain tapentadol. Lazanda® is an opioid analgesic that contains fentanyl. cebranopadol is a development stage opioid analgesic. Tapentadol and fentanyl are regulated controlled substances under the CSA. The CSA establishes, among other things, certain registration, production quotas, security, recordkeeping, reporting, import, export and other requirements administered by the DEA. The DEA regulates controlled substances as Schedule I, II, III, IV or V substances, with Schedule II substances being those that present the highest risk of abuse. Each of tapentadol and fentanyl are, and cebranopadol may be, listed by the DEA as a Schedule II substance under the CSA. The manufacture, shipment, storage, sale and use, among other things, of controlled substances that are pharmaceutical products are subject to a high degree of regulation. For example, generally all Schedule II substance prescriptions, such as prescriptions for fentanyl, must be written and signed by a physician, physically presented to a pharmacist and may not be refilled without a new prescription.

The DEA also conducts periodic inspections of certain registered establishments that handle controlled substances. Facilities that conduct research, manufacture, distribute, import or export controlled substances must be registered to perform these activities and have the security, control and inventory mechanisms required by the DEA to prevent drug loss and diversion. Failure to maintain compliance, particularly non-compliance resulting in loss or diversion, can result in regulatory action that could adversely affect our business, results of operations and financial condition. The DEA may seek civil penalties, refuse to renew necessary registrations, or initiate proceedings to restrict, suspend or revoke those registrations and in certain circumstances, violations could lead to criminal proceedings against us or our manufacturing and distribution partners, and our respective employees, officers and directors.

In addition to federal regulations, many individual states also have controlled substances laws. Although state controlled substances laws generally mirror federal law, because the states are separate jurisdictions they may separately schedule our products. Any failure by us or our partners to obtain separate state registrations, permits, or licenses in order to be able to obtain, handle, and distribute fentanyl or to meet applicable regulatory requirements could lead to enforcement and sanctions by the states in addition to those from the DEA or otherwise arising under federal law and would adversely affect our business, results of operations and financial condition.

Limitations on the production of Schedule II substances in the U.S. could limit our ability to successfully commercialize NUCYNTA® ER, NUCYNTA® and Lazanda®.

The availability and production of all Schedule II substances, including tapentadol and fentanyl, is limited by the DEA through a quota system that includes a national aggregate quota, production quotas for individual manufacturers and procurement quotas that authorize the procurement of specific quantities of Schedule II controlled substances for use in drug manufacturing. The DEA annually establishes an aggregate quota for total tapentadol and total fentanyl production in the U.S. based on the DEA s estimate of the quantity needed to meet commercial and scientific need. The aggregate quota of tapentadol and fentanyl that the DEA allows to be produced in the U.S. annually is allocated among applicable individual drug manufacturers, which must submit applications annually to the DEA for individual production quotas. In turn, the manufacturers of NUCYNTA® ER, NUCYNTA® and Lazanda® have to obtain a procurement quota to source tapentadol and fentanyl for the production of NUCYNTA® ER, NUCYNTA® and

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Lazanda®, respectively. The DEA requires substantial evidence and documentation of expected legitimate medical and scientific needs before assigning quotas for these activities. The DEA may adjust aggregate production quotas and individual production and procurement quotas from time to time during the year, although the DEA has substantial discretion in whether or not to make such adjustments. Based on a variety of factors, including public policy considerations, the DEA may set the aggregate quota lower for tapentadol or fentanyl than the total amount requested by individual manufacturers. Although through our manufacturing partner we are permitted to ask the DEA to increase our manufacturer s procurement quota after it is initially established, we cannot be certain that the DEA would act favorably upon such a request. In addition, our manufacturers obtain a procurement quota for tapentadol or fentanyl for all tapentadol or fentanyl products manufactured at their facility, which is allocated to NUCYNTA® ER, NUCYNTA® and Lazanda®, as applicable, at the manufacturer s discretion. If the available quota of tapentadol or fentanyl is insufficient to meet our commercial demand or clinical needs, our business, results of operations and financial condition could be adversely affected. In addition, any delay or refusal by the DEA or our manufacturer in establishing the production or procurement quota or any reduction by the DEA or our manufacturer in the allocated quota for tapentadol or fentanyl could adversely affect our business, results of operations and financial condition.

The FDA-mandated Risk Evaluation and Mitigation Strategy program may limit the commercial success of NUCYNTA® ER and Lazanda®.

NUCYNTA® ER and Lazanda® are subject to a FDA-mandated Risk Evaluation and Mitigation Strategy (REMS) protocol that requires enrollment and participation in the REMS program to prescribe, dispense or distribute such products for outpatient use. Lazanda® is subject to a REMS protocol that is specific to Transmucosal Immediate Release Fentanyl (TIRF) medicines for outpatient use. Many physicians, health care practitioners and pharmacies are unwilling to enroll and participate in the REMS programs. As a result, there are relatively few prescribers and dispensers of products subject to REMS protocols, and in particular, TIRF products. If we are not able to successfully promote NUCYNTA® ER and Lazanda® to participants in the applicable REMS program, our business, results of operations and financial condition could be adversely affected.

The market price of our common stock historically has been volatile. Our results of operations may fluctuate and affect our stock price.

The trading price of our common stock has been, and is likely to continue to be, volatile and could be subject to wide fluctuations in response to various factors, some of which are beyond our control. From March 31, 2014 through March 31, 2016, our stock price has ranged from $9.85 to $33.74 per share.

Factors affecting our operating results and that could adversely affect our stock price include:

- the degree of commercial success and market acceptance of NUCYNTA® ER, NUCYNTA®, Gralise®, CAMBIA®, Zipsor® and Lazanda®;

- filings and other regulatory or governmental actions or proceedings related to our products and product candidates and those of our collaborative partners;

- the outcome of our patent infringement litigation against the filers of ANDAs for NUCYNTA® ER and NUCYNTA®;

- developments concerning proprietary rights, including patents, infringement allegations, inter party review proceedings and litigation matters;

- our ability to generate sufficient cash flow from our business to make payments on our indebtedness;

- our and our collaborative partners compliance or non-compliance with legal and regulatory requirements and with obligations under our collaborative agreements;

- our plans to acquire, in-license or co-promote other products, compounds or acquire or combine with other companies, and our degree of success in realizing the intended advantages of, and mitigating any risks associated with, any such transaction;

- our ability to successfully develop, obtain regulatory approval for and commercialize a product containing cebranopadol;

- adverse events related to our products, including recalls;

- interruptions of manufacturing or supply, or other manufacture or supply difficulties;

- variations in revenues obtained from collaborative agreements, including milestone payments, royalties, license fees and other contract revenues;

- adverse events or circumstances related to our peer companies or our industry;

- adoption of new technologies by us or our competitors;

- the outcome of our patent infringement litigation against Purdue;

- the outcome and impact of the Starboard proxy contest;

- our compliance with the terms and conditions of the agreements governing our indebtedness;

- decisions by collaborative partners to proceed or not to proceed with subsequent phases of a collaboration or program;

- sales of large blocks of our common stock or the dilutive effect of our Convertible Notes; and

- variations in our operating results, earnings per share, cash flows from operating activities, deferred revenue, and other financial metrics and non-financial metrics, and how those results compare to analyst expectations.

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As a result of these factors, our stock price may continue to be volatile and investors may be unable to sell their shares at a price equal to, or above, the price paid. Any significant drops in our stock price could give rise to shareholder lawsuits, which are costly and time consuming to defend against and which may adversely affect our ability to raise capital while the suits are pending, even if the suits are ultimately resolved in our favor.

In addition, if the market for pharmaceutical stocks or the stock market in general experiences uneven investor confidence, the market price of our common stock could decline for reasons unrelated to our business, operating results or financial condition. For example, if one or more securities or industry analysts downgrades our stock or publishes an inaccurate research report about our company, the market price for our common stock would likely decline. The market price of our common stock might also decline in reaction to events that affect other companies within, or outside, our industry even if these events do not directly affect us.

We have incurred operating losses in the past and may incur operating losses in the future.

To date, we have recorded revenues from product sales, license fees, royalties, collaborative research and development arrangements and feasibility studies. For 2015 we incurred a net loss of $75.7 million and for 2014 we recognized net income of $131.8 million respectively. We will incur operating losses in 2016 and may incur operating losses in future years. Any such losses may have an adverse impact on our total assets, shareholders equity and working capital.

Our existing capital resources may not be sufficient to fund our future operations or product acquisitions and strategic transactions which we may pursue.

We fund our operations primarily through revenues from product sales and do not have any committed sources of capital. To the extent that our existing capital resources and revenues from ongoing operations are insufficient to fund our future operations, or product acquisitions and strategic transactions which we may pursue, we will have to raise additional funds through the sale of our equity securities, through additional debt financing, from development and licensing arrangements, or the sale of assets. We may be unable to raise such additional capital on favorable terms, or at all. If we raise additional capital by selling our equity or convertible debt securities, the issuance of such securities could result in dilution of our shareholders equity positions.

The development of drug candidates such as cebranopadol is inherently difficult and uncertain and we cannot be certain that any of our product candidates or those of our collaborative partners will be approved for marketing or, if approved, will achieve market acceptance.

Clinical development is a long, expensive and uncertain process and is subject to delays and failures. As a condition to regulatory approval, each product candidate must undergo extensive and expensive preclinical studies and clinical trials to demonstrate to a statistically significant degree that the product candidate is safe and effective. The results at any stage of the development process may lack the desired safety, efficacy or pharmacokinetic characteristics. Positive or encouraging results of prior clinical trials are not necessarily indicative of the results obtained in later clinical trials, as was the case with the Phase 3 trial for Gralise® for the management of PHN that we completed in 2007, and with the Phase 3 trials evaluating Sefelsa, our prior product candidate, for menopausal hot flashes, the last of which we completed in October 2011. Further, product candidates in later clinical trials may fail to show the desired safety and efficacy despite having progressed in development. In addition, data obtained from pivotal clinical trials are susceptible to varying interpretations, which could delay, limit or prevent regulatory

approval.

Our own product candidates, including cebranopadol, and those of our collaborative partners are subject to the risk that any or all of them may be found to be ineffective or unsafe, or otherwise may fail to receive necessary regulatory clearances. The FDA or other applicable regulatory agency may determine our data is not sufficiently compelling to warrant marketing approval and require us to engage in additional clinical trials or provide further analysis, which may be costly and time-consuming. 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 preclinical studies or earlier clinical trials. If one of our product candidates fails at any stage of development, it will not receive regulatory approval, we will not be able to commercialize it, and we will not receive any return on our investment in that product candidate.

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Other factors could delay or result in the termination of our current and future clinical trials and related development programs, including:

- negative or inconclusive results;
- patient noncompliance with the protocol;
- adverse medical events or side effects among patients during the clinical trials;
- FDA inspections of our clinical operations;
- failure of our third party clinical trial vendors to comply applicable regulatory laws and regulations;
- inability of our third party clinical trial vendors to satisfactorily perform their contractual obligations, comply with applicable laws and regulations or meet expected deadlines;
- delays or failures in obtaining clinical materials and manufacturing sufficient quantities of the product candidate for use in our clinical trials
- delays or failures in recruiting qualified patients to participate in our clinical trials; and
- actual or perceived lack of efficacy or safety of the product candidate.

We are unable to predict whether any of our product candidates, including cebranopadol, or those of our collaborative partners will receive regulatory clearances or be successfully manufactured or marketed. Further, due to the extended testing and regulatory review process required before marketing clearance can be obtained, the time frame for commercializing a product is long and uncertain. Even if these other product candidates receive regulatory clearance, our products may not achieve or maintain market acceptance. If it is discovered that the Acuform technology could have adverse effects or other characteristics that indicate it is unlikely to be effective as a delivery system for drugs or therapeutics, our product development efforts and our business could be significantly harmed.

Even assuming our products obtain regulatory approval, successful commercialization requires, a:

- market acceptance;
- cost-effective commercial scale production; and
- reimbursement under private or governmental health plans.

Any material delay or failure in the governmental approval process and/or the successful commercialization of our potential products or those of our collaborative partners could adversely impact our financial position and liquidity.

We depend on third party contract research organizations, clinical investigators and clinical sites to conduct our clinical trials, and if they do not perform their regulatory, legal and contractual obligations, or successfully enroll patients in and manage our clinical trials, we may not be able to obtain regulatory approvals for our product candidates, including cebranopadol.

We rely on third party contract research organizations and other third parties to assist us in designing, managing, monitoring and otherwise conducting our clinical trials. We do not control these third parties and, as a result, we may be unable to control the amount and timing of resources that they devote to our clinical trials.

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, as well as the FDA s and other applicable regulatory agencies requirements, including 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. If we, contract research organizations or other third parties assisting us with our clinical trials fail to comply with applicable good clinical practices, the clinical data generated in our clinical trials may be deemed unreliable and the FDA, or other applicable regulatory agency, may require us to perform additional clinical trials before approving our marketing applications. We cannot be certain that, upon inspection, the FDA or other applicable regulatory agency 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 cGMP regulations and similar regulations outside of the United States. Our failure, or the failure of our product manufacturers, to comply with these regulations may require us to repeat or redesign clinical trials, which would delay the regulatory approval process.

We also rely on clinical investigators and clinical sites to enroll patients and other third parties to manage our trials and to perform related data collection and analysis. If our clinical investigators and clinical sites fail to enroll a sufficient number of patients in our clinical trials or fail to enroll them on our planned schedule, we will be unable to complete these trials or to complete them as planned, which could delay or prevent us from obtaining regulatory approvals for our product candidates.

Our agreements with clinical investigators and clinical sites for clinical testing and for trial management services place substantial responsibilities on these parties, which could result in delays in, or termination of, our clinical trials if these parties fail to perform as expected. If these clinical investigators, clinical sites or other third parties do not carry out their contractual duties or obligations or fail to meet expected deadlines, or if the quality or accuracy of the clinical data they obtain is compromised due to their failure to adhere to our clinical protocols or for other reasons, our clinical trials may be extended, delayed or terminated, and we may be unable to obtain regulatory approval for, or successfully commercialize, our product candidates.

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Our success is dependent in large part upon the continued services of our Chief Executive Officer and senior management with whom we do not have employment agreements.

Our success is dependent in large part upon the continued services of our President and Chief Executive Officer, James A. Schoeneck, and other members of our executive management team, and on our ability to attract and retain key management and operating personnel. We do not have agreements with Mr. Schoeneck or any of our other executive officers that provide for their continued employment with us. We may have difficulty filling open senior commercial, scientific and financial positions. Management, scientific and operating personnel are in high demand in our industry and are often subject to competing offers. The loss of the services of one or more members of management or key employees or the inability to hire additional personnel as needed could result in delays in the research, development, and commercialization of our products and potential product candidates.

If we are unable to satisfy regulatory requirements relating to internal controls, our stock price could suffer.

Section 404 of the Sarbanes-Oxley Act of 2002 requires companies to conduct a comprehensive evaluation of the effectiveness of their internal control over financial reporting. At the end of each fiscal year, we must perform an evaluation of our internal control over financial reporting, include in our annual report the results of the evaluation and have our external auditors also publicly attest to the effectiveness of our internal control over financial reporting. If material weaknesses are found in our internal controls in the future, if we fail to complete future evaluations on time or if our external auditors cannot attest to the effectiveness of our internal control over financial reporting, we could fail to meet our regulatory reporting requirements and be subject to regulatory scrutiny and a loss of public confidence in our internal controls, which could have an adverse effect on our stock price.

Changes in fair value of contingent consideration assumed as part of our acquisitions could adversely affect our results of operations.

Contingent consideration obligations arise from the Zipsor®, CAMBIA® and Lazanda® acquisitions and relate to the potential future milestone payments and royalties payable under the respective agreements. The contingent consideration is initially recognized at its fair value on the acquisition date and is re-measured to fair value at each reporting date until the contingency is resolved with changes in fair value recognized in earnings. The estimates of fair values for the contingent consideration contain uncertainties as it involves assumptions about the probability assigned to the potential milestones and royalties being achieved and the discount rate. Significant judgment is employed in determining these assumptions as of the acquisition date and for each subsequent period. Updates to assumptions could have a significant impact on our results of operations in any given period.

The value of our deferred tax assets could become impaired, which could adversely affect our results of operations.

As of March 31, 2016, we had a significant amount of deferred tax assets, exclusive of a deferred tax liability for the convertible debt issuance. These deferred tax assets are principally comprised of state net operating loss carryovers and temporary differences related to intangible assets and other temporary differences that are expected to reverse in the future. We assess on a quarterly basis the probability of the realization of deferred tax assets, using significant judgments and estimates with respect to, among other things, the historical operating results, expectations of future earnings and significant risks and uncertainties related to our business. If we determine in the future that there is not sufficient positive evidence to support the valuation of these assets, due to the risk factors described herein or other factors, we may be required to further adjust

the valuation allowance to reduce our deferred tax assets. Such a reduction could result in material non-cash expenses in the period in which the valuation allowance is adjusted and could have an adverse effect on our results of operations.

We may not have the ability to raise the funds necessary to settle conversions of the Convertible Notes in cash, to repurchase the Convertible Notes upon a fundamental change or to repurchase the Senior Notes upon a major transaction put or as required in the event that the principal amount outstanding under the Convertible Notes as of March 31, 2021 is greater than $100.0 million.

Holders of the Convertible Notes will have the right to require us to repurchase all or a portion of their Convertible Notes upon the occurrence of certain events, including events deemed to be a fundamental change , at a repurchase price equal to 100% of the principal amount of the outstanding Convertible Notes to be repurchased, plus accrued and unpaid interest, if any. Upon conversion of the Convertible Notes, unless we elect to deliver solely shares of our common stock to settle such conversion (other than paying cash in lieu of delivering any fractional share), we will be required to make cash payments in respect of the Convertible Notes being converted.

Furthermore, holders of the Senior Notes will have the right to require us to repurchase all of their Senior Notes (i) if the principal amount outstanding under the Convertible Notes as of March 31, 2021 is greater than $100.0 million, at a repurchase price equal to 100% of the principal amount of the outstanding Senior Notes to be repurchased, *plus* accrued and unpaid interest, if any, or (ii) upon the occurrence of certain events deemed to be a major transaction at a repurchase price equal to: (a) 100% of the principal amount of the outstanding Senior Notes to be repurchased, *plus* (b) accrued and unpaid interest, if any, *plus* (c) a prepayment premium, which may be substantial.

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However, we may not have enough available cash or be able to obtain financing at the time we are required to make repurchases of Convertible Notes or Senior Notes or pay cash with respect to Convertible Notes being converted. In addition, our ability to repurchase or to pay cash upon conversion of the Convertible Notes may be limited by law, regulatory authority or agreements governing our future indebtedness. An event of default under the indenture governing the Convertible Notes, including our failure to repurchase Convertible Notes when required by the indenture governing the Convertible Notes, would constitute a default under the Note Purchase Agreement. In addition, an event of default under the Note Purchase Agreement, including our failure to repurchase Senior Notes when the repurchase is required by the Note Purchase Agreement, would constitute a default under the indenture governing the Convertible Notes. Moreover, the occurrence of a fundamental change under the indenture governing the Convertible Notes or a major transaction under the Note Purchase Agreement could constitute an event of default under either the indenture governing the Convertible Notes or the Note Purchase Agreement, as applicable and any agreements that may govern any future indebtedness. Following an event of default, if the payment of our outstanding indebtedness were to be accelerated after any applicable notice or grace periods, we may not have sufficient funds to repay such indebtedness.

The conditional conversion feature of the Convertible Notes, if triggered, may adversely affect our financial condition and operating results.

In the event the conditional conversion feature of the Convertible Notes is triggered, holders of Convertible Notes will be entitled to convert the Convertible Notes at any time during specified periods at their option. If one or more holders elect to convert their Convertible Notes, unless we elect to satisfy our conversion obligation by delivering solely shares of our common stock (other than paying cash in lieu of delivering any fractional share), we would be required to settle a portion or all of our conversion obligation in cash, which could adversely affect our liquidity. In addition, even if holders do not elect to convert their Convertible Notes, we could be required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the Convertible Notes as a current rather than long-term liability, which would result in a material reduction of our net working capital.

The accounting method for convertible debt securities that may be settled in cash, such as the Convertible Notes could have a material effect on our reported financial results.

In May 2008, FASB issued FASB Staff Position No. APB 14-1, Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement), which has subsequently been codified as Accounting Standards Codification 470-20, Debt with Conversion and Other Options (ASC 470-20). Under ASC 470-20, an entity must separately account for the liability and equity components of the convertible debt instruments (such as the Convertible Notes) that may be settled entirely or partially in cash upon conversion in a manner that reflects the issuer s economic interest cost. The effect of ASC 470-20 on the accounting for the Convertible Notes is that the equity component is required to be included in the additional paid-in capital within shareholders equity on our consolidated balance sheet at the issuance date and the value of the equity component would be treated as debt discount for purposes of accounting for the debt component of the Convertible Notes. As a result, we will be required to record a greater amount of non-cash interest expense as a result of the accretion of the discounted carrying value of the Convertible Notes to their face amount over the term of the notes. We will report lower net income (or larger net losses) in our financial results because ASC 470-20 will require interest to include both the accretion of the debt discount and the instrument s non-convertible coupon interest rate, which could adversely affect our reported or future financial results, the trading price of our common stock.

In addition, if the Convertible Notes become convertible, we are required under applicable accounting rules to reclassify all or a portion of the outstanding principal of the Convertible Notes as a current rather than a long-term liability, which would result in a material reduction of our net working capital. Finally, we use the if-converted method to compute diluted earnings per share with respect to our convertible debt, which could more dilutive than assuming the debt would be settled in cash as opposed to shares.

Any of these factors could cause a decrease in the market price of our common stock.

Certain provisions applicable to the Convertible Notes and the Senior Notes could delay or prevent an otherwise beneficial takeover or takeover attempt.

Certain provisions applicable to the Convertible Notes and the indenture governing the Convertible Notes, the Senior Notes and the Note Purchase Agreement, could make it more difficult or more expensive for a third party to acquire us. For example, if an acquisition event constitutes a fundamental change under the indenture for the Convertible Notes or a major transaction under the Note Purchase Agreement, holders of the Convertible Notes or the Senior Notes, as applicable, will have the right to require us to repurchase their notes in cash. In addition, if an acquisition event constitutes a make-whole fundamental change under the indenture, we may be required to increase the conversion rate for holders who convert their Convertible Notes in connection with such make-whole fundamental change. In any of these cases, and in other cases, our obligations under the Convertible Notes and the indenture, the Senior Notes and the Note Purchase Agreement, as well as provisions of our organizational documents and other agreements, could increase the cost of acquiring us or otherwise discourage a third party from acquiring us or removing incumbent management.

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Provisions in our restated articles of incorporation and bylaws, our shareholder rights plan and California law might discourage, delay or prevent a change of control of our company or changes in our management and, therefore, depress the market price of our common stock.

Certain provisions of our articles of incorporation and the California General Corporation Law could discourage a third party from acquiring, or make it more difficult for a third party to acquire, control of our company without approval of our board of directors. These provisions could also limit the price that certain investors might be willing to pay in the future for shares of our common stock. Certain provisions allow the Board of Directors to authorize the issuance of preferred stock with rights superior to those of the common stock.

On July 12, 2015, our Board of Directors declared a dividend of one right (Right) for each outstanding share of our common stock to shareholders of record at the close of business on July 23, 2015. The description and terms of the Rights are set forth in a Rights Agreement dated as of July 12, 2015 as it may from time to time be supplemented or amended (the Rights Agreement) between Depomed and Continental Stock Transfer & Trust Company, as Rights Agent. The Rights, which will expire at the close of business on the date of our next annual meeting of shareholders, will have certain anti-takeover effects. The Rights will cause substantial dilution to any person or group that attempts to acquire us without the approval of our Board of Directors. As a result, the overall effect of the Rights may be to render more difficult or discourage any attempt to acquire us even if such acquisition may be favorable to the interests of our shareholders.

On July 12, 2015, our Board of Directors adopted and approved an amendment and restatement to our Bylaws (the Amended Bylaws). The Amended Bylaws, among other things, provide for the establishment of a measurement record date for purposes of ascertaining shareholders eligible to call for a special meeting of shareholders and establish certain other procedures relating to the calling of a special meeting of shareholders. The Amended Bylaws also supplement the advanced notice requirements and procedures for the submission by shareholders of nominations for the board of directors and of other proposals to be presented at shareholder meetings, and provide that the exclusive forum for any shareholder to bring any: (i) derivative action, (ii) claim asserting a breach of fiduciary duty, (iii) action under the California Corporations Code or the our organizational documents or (iv) other action relating to our internal affairs, shall in each case be the Santa Clara County Superior Court within the State of California or, if no state court located within the State of California has jurisdiction, the federal district court for the Northern District of California. The Amended Bylaws also make certain other ministerial changes.

We are also subject to the provisions of Section 1203 of the California General Corporation Law which requires a fairness opinion to be provided to our shareholders in connection with their consideration of any proposed interested party reorganization transaction.

We do not intend to pay dividends on our common stock so any returns on shares of our common stock will be limited to changes in the value of our common stock.

We have never declared or paid any cash dividends on our common stock. We currently anticipate that we will retain future earnings for the development, operation and expansion of our business and do not anticipate declaring or paying any cash dividends for the foreseeable future. In addition, our ability to pay cash dividends on our common stock may be prohibited or limited by the terms of any future debt financing arrangement. Any return to shareholders will therefore be limited to the increase, if any, of our stock price.

Business interruptions could limit our ability to operate our business.

Our operations and infrastructure, and those of our partners, third party suppliers and vendors are vulnerable to damage or interruption from cyber-attacks and security breaches, human error, natural disasters, fire, flood, power loss, telecommunications failures, equipment failures, intentional acts of theft, vandalism, terrorism and similar events. In particular, our corporate headquarters are located in the San Francisco Bay area, which has a history of seismic activity. We have not established a formal disaster recovery plan, and our back-up operations and our business interruption insurance may not be adequate to compensate us for losses that occur. A significant business interruption could result in losses or damages incurred by us and require us to cease or curtail our operations.

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Data breaches and cyber-attacks could compromise our intellectual property or other sensitive information and cause significant damage to our business.

In the ordinary course of our business, we collect, maintain and transmit sensitive data on our computer networks and information technology systems, including our intellectual property and proprietary or confidential business information. The secure maintenance of this information is critical to our business. We believe that companies have been increasingly subject to a wide variety of security incidents, cyber-attacks and other attempts to gain unauthorized access. These threats can come from a variety of sources, ranging in sophistication from an individual hacker to a state-sponsored attack and motive (including corporate espionage). Cyber threats may be generic, or they may be custom-crafted against our information systems. Cyber-attacks are becoming increasingly more prevalent and much harder to detect and defend against. Our network and storage applications and those of our third party vendors may be subject to unauthorized access by hackers or breached due to operator error, malfeasance or other system disruptions. It is often difficult to anticipate or immediately detect such incidents and the damage caused by such incidents. These data breaches and any unauthorized access or disclosure of our information or intellectual property could compromise our intellectual property and expose sensitive business information, including the information of our business partners. Cyber-attacks could cause us to incur significant remediation costs, result in product development delays, disrupt key business operations and divert attention of management and key information technology resources. Our network security and data recovery measures and those of our third party vendors may not be adequate to protect against such security breaches and disruptions. These incidents could also subject us to liability, expose us to significant expense and cause significant harm to our business.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

Not applicable.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

Not applicable.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5. OTHER INFORMATION

Not applicable.

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ITEM 6. EXHIBITS

(a) Exhibits

3.1	(1)	Third Amended and Restated Articles of Incorporation
3.2	(2)	Certificate of Amendment to Amended and Restated Articles of Incorporation
3.3	(3)	Certificate of Determination of Series RP Preferred Stock of the Company
3.4	(4)	Certificate of Amendment to Certificate of Determination of Series RP Preferred Stock of Depomed, Inc.
3.5	(4)	Certificate of Determination of Series B Junior Participating Preferred Stock of Depomed, Inc.
3.6	(4)	Amended and Restated Bylaws
4.1	(4)	Rights Agreement as of July 12, 2015 between Depomed, Inc. and Continental Stock Transfer & Trust
4.2	(5)	First Amendment to Rights Agreement as of April 25, 2016 by and between Depomed, Inc. and Continental Stock Transfer & Trust.
10.1	(*)	Depomed, Inc. Amended and Restated Annual Bonus Plan, as adopted on February 12, 2016
10.2	(*)	Amended and Restated Form of Management Continuity Agreement between the Company and its executives, as adopted on February 12, 2016
31.1	(*)	Certification pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934 of James A. Schoeneck
31.2	(*)	Certification pursuant to Rule 13a-14(a) under the Securities Exchange Act of 1934 of August J. Moretti
32.1	(*)	Certification pursuant to 18 U.S.C. Section 1350 of James A. Schoeneck
32.2	(*)	Certification pursuant to 18 U.S.C. Section 1350 of August J. Moretti
101	(*)	Interactive Data Files pursuant to Rule 405 of Regulation S-T

(1) Incorporated by reference to the Company s registration statement on Form SB-2 (File No. 333-25445)

(2) Incorporated by reference to the Company s Form 10-K filed on March 31, 2003 (File No. 001-13111)

(3) Incorporated by reference to the Company s Form 10-Q filed on May 10, 2005 (File No. 001-13111)

(4) Incorporated by reference to the Company s Form 8-K filed on July 13, 2015 (File No. 001-13111)

(5) Incorporated by reference to the Company s Form 8-K filed on April 25, 2016 (File No. 001-13111)

(*) Filed herewith

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SIGNATURES

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

Date: May 6, 2016

DEPOMED, INC.

/s/ James A. Schoeneck
James A. Schoeneck
President and Chief Executive Officer

/s/ August J. Moretti
August J. Moretti
Chief Financial Officer