SUNESIS PHARMACEUTICALS INC
Form 10-Q
November 16, 2009
**Table of Contents**

# UNITED STATES

# SECURITIES AND EXCHANGE COMMISSION

**Washington, D.C. 20549**

# FORM 10-Q

**(Mark One)**

**x QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
**For the quarterly period ended September 30, 2009**

**OR**

**¨ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
**For the transition period from to**

**Commission file number: 000-51531**

# SUNESIS PHARMACEUTICALS, INC.

**(Exact Name of Registrant as Specified in its Charter)**

| **Delaware** | **94-3295878** |
|---|---|
| **(State or Other Jurisdiction of Incorporation or Organization)** | **(I.R.S. Employer Identification Number)** |

**395 Oyster Point Boulevard, Suite 400**

**South San Francisco, California 94080**

**(Address of Principal Executive Offices including Zip Code)**

**(650) 266-3500**

**(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 Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file reports), and (2) has been subject to such filing requirements for the past 90 days. Yes x No ¨

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 during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ¨ No ¨

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

| | |
|---|---|
| Large accelerated filer ¨ | Accelerated filer ¨ |
| Non-accelerated filer ¨ (Do not check if a smaller reporting company) | Smaller reporting company x |

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

The registrant had 34,419,188 shares of common stock, $0.0001 par value per share, outstanding as of October 31, 2009.

Table of Contents

**SUNESIS PHARMACEUTICALS, INC.**

**TABLE OF CONTENTS**


| | | Page No. |
|---|---|---|
| **PART I. FINANCIAL INFORMATION** | | 3 |
| Item 1. | Financial Statements: | 3 |
| | Condensed Consolidated Balance Sheets as of September 30, 2009 and December 31, 2008 | 3 |
| | Condensed Consolidated Statements of Operations for the Three and Nine Months Ended September 30, 2009 and 2008 | 4 |
| | Condensed Consolidated Statements of Cash Flows for the Nine Months Ended September 30, 2009 and 2008 | 5 |
| | Notes to Condensed Consolidated Financial Statements | 6 |
| Item 2. | Management s Discussion and Analysis of Financial Condition and Results of Operations | 15 |
| Item 3. | Quantitative and Qualitative Disclosures About Market Risk | 21 |
| Item 4T. | Controls and Procedures | 21 |
| **PART II. OTHER INFORMATION** | | 22 |
| Item 1. | Legal Proceedings | 22 |
| Item 1A. | Risk Factors | 22 |
| Item 2. | Unregistered Sales of Equity Securities and Use of Proceeds | 35 |
| Item 3. | Defaults Upon Senior Securities | 35 |
| Item 4. | Submission of Matters to a Vote of Security Holders | 35 |
| Item 5. | Other Information | 35 |
| Item 6. | Exhibits | 35 |
| **Signatures** | | 36 |

Table of Contents

## PART I FINANCIAL INFORMATION

**Item 1. Financial Statements**

### SUNESIS PHARMACEUTICALS, INC.

### CONDENSED CONSOLIDATED BALANCE SHEETS

| | September 30, 2009 (Unaudited) | December 31, 2008 (1) |
|---|---|---|
| **ASSETS** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 3,872,322 | $ 6,296,942 |
| Marketable securities | | 4,321,844 |
| Prepaids and other current assets | 429,765 | 934,429 |
| Total current assets | 4,302,087 | 11,553,215 |
| Property and equipment, net | 321,402 | 612,241 |
| Assets held-for-sale | 23,653 | 470,547 |
| Deposits and other assets | 101,275 | 147,826 |
| Total assets | $ 4,748,417 | $ 12,783,829 |
| **LIABILITIES AND STOCKHOLDERS EQUITY** | | |
| Current liabilities: | | |
| Accounts payable | $ 581,771 | $ 790,546 |
| Accrued clinical expense | 1,207,370 | 1,865,773 |
| Accrued compensation | 536,189 | 537,215 |
| Accrued restructuring charges | 45,173 | 191,170 |
| Other accrued liabilities | 1,026,388 | 1,360,434 |
| Current portion of deferred rent | 27,266 | 1,409,513 |
| Current portion of deferred revenue | 39,583 | 27,083 |
| Total current liabilities | 3,463,740 | 6,181,734 |
| Non-current portion of deferred rent | 79,840 | 110,919 |
| Commitments | | |
| Stockholders equity: | | |
| Convertible preferred stock, $0.0001 par value; 10,000,000 and 5,000,000 shares authorized as of September 30, 2009 and December 31, 2008, respectively; 2,898,544 and 0 shares issued and outstanding as of September 30, 2009 and December 31, 2008, respectively | 56,144,950 | |
| Common stock, $0.0001 par value; 400,000,000 and 100,000,000 shares authorized as of September 30, 2009 and December 31, 2008, respectively; 34,419,188 and 34,409,768 shares issued and outstanding as of September 30, 2009 and December 31, 2008, respectively | 3,442 | 3,441 |
| Additional paid-in capital | 297,439,129 | 322,671,604 |
| Accumulated other comprehensive income | | 7,841 |
| Accumulated deficit | (352,382,684) | (316,191,710) |
| Total stockholders equity | 1,204,837 | 6,491,176 |
| Total liabilities and stockholders equity | $ 4,748,417 | $ 12,783,829 |

(1) The condensed consolidated balance sheet as of December 31, 2008 has been derived from the audited financial statements at that date included in the Company s Annual Report on Form 10-K for the year ended December 31, 2008.

See accompanying notes to condensed consolidated financial statements.

Table of Contents

**SUNESIS PHARMACEUTICALS, INC.**

**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**

| | Three months ended September 30, | | Nine months ended September 30, | |
|---|---|---|---|---|
| | 2009 | 2008 | 2009 | 2008 |
| | (Unaudited) | | (Unaudited) | |
| Revenue: | | | | |
| Collaboration revenue - related party (Note 3) | $ | $ | $ 1,500,000 | $ 4,310,551 |
| Collaboration revenue - other | 12,500 | 10,417 | 37,500 | 594,289 |
| License and other revenue | | 500,000 | 2,211,547 | 500,000 |
| Total revenues | 12,500 | 510,417 | 3,749,047 | 5,404,840 |
| Operating expenses: | | | | |
| Research and development | 3,355,977 | 4,662,556 | 11,068,814 | 21,668,055 |
| General and administrative | 1,533,367 | 2,827,797 | 5,883,283 | 9,328,987 |
| Restructuring charges | 70,375 | 192,225 | 1,933,767 | 5,389,745 |
| Total operating expenses | 4,959,719 | 7,682,578 | 18,885,864 | 36,386,787 |
| Loss from operations | (4,947,219) | (7,172,161) | (15,136,817) | (30,981,947) |
| Interest income | 2,045 | 138,668 | 20,858 | 868,465 |
| Interest expense | (62) | (40,278) | (1,049) | (154,084) |
| Other income (expense), net (Note 6) | (3,838) | 8,599 | (21,073,966) | 9,071 |
| Net loss | (4,949,074) | (7,065,172) | (36,190,974) | (30,258,495) |
| Deemed distribution to preferred stockholders (Note 6) | | | (26,375,000) | |
| Loss attributable to common stockholders | $ (4,949,074) | $ (7,065,172) | $ (62,565,974) | $ (30,258,495) |
| Basic and diluted loss attributable to common stockholders per common share | $ (0.14) | $ (0.21) | $ (1.82) | $ (0.88) |
| Shares used in computing basic and diluted loss attributable to common stockholders per common share | 34,419,185 | 34,401,519 | 34,413,977 | 34,381,335 |

See accompanying notes to condensed consolidated financial statements.

Table of Contents

**SUNESIS PHARMACEUTICALS, INC.**

**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**

| | Nine months ended September 30, 2009 | 2008 |
|---|---|---|
| | (Unaudited) | |
| **Cash flows from operating activities** | | |
| Net loss | $ (36,190,974) | $ (30,258,495) |
| Adjustments to reconcile loss to net cash used in operating activities: | | |
| Stock-based compensation expense | 1,138,927 | 1,571,672 |
| Depreciation and amortization | 283,285 | 992,624 |
| Non-cash expense related to private placement (Note 6) | 21,016,997 | |
| Non-cash restructuring (credits) charges, net | (1,396,287) | 1,664,817 |
| Loss (gain) on sale or disposal of property and equipment | 56,188 | (8,548) |
| Changes in operating assets and liabilities: | | |
| Prepaids and other current assets | 504,664 | 329,401 |
| Deposits and other assets | 46,551 | |
| Accounts payable | (208,775) | (871,387) |
| Accrued clinical expense | (658,403) | 598,320 |
| Accrued compensation | (1,026) | (1,036,534) |
| Accrued restructuring charges | (145,997) | 165,817 |
| Other accrued liabilities | (334,046) | (410,653) |
| Deferred rent | (3,813) | (40,161) |
| Deferred revenue | 12,500 | (1,187,448) |
| Net cash used in operating activities | (15,880,209) | (28,490,575) |
| **Cash flows from investing activities** | | |
| Purchases of property and equipment | (6,140) | (168,275) |
| Proceeds from sale of property and equipment | 391,174 | 10,870 |
| Purchases of marketable securities | (503,107) | (22,949,746) |
| Proceeds from maturities of marketable securities | 4,817,110 | 49,052,728 |
| Net cash provided by investing activities | 4,699,037 | 25,945,577 |
| **Cash flows from financing activities** | | |
| Payments on borrowing under equipment financing | | (745,657) |
| Proceeds from issuance of convertible preferred stock and warrants in private placement, net of issuance costs | 8,752,953 | |
| Proceeds from issuance of common stock and exercise of options, net of repurchases | 3,599 | 48,543 |
| Net cash provided by (used in) financing activities | 8,756,552 | (697,114) |
| Net increase (decrease) in cash and cash equivalents | (2,424,620) | (3,242,112) |
| Cash and cash equivalents at beginning of period | 6,296,942 | 11,726,126 |
| Cash and cash equivalents at end of period | $ 3,872,322 | $ 8,484,014 |
| Supplemental disclosure of cash flow information: | | |
| Interest paid | $ 987 | $ 157,543 |
| Supplemental disclosure of non-cash activities: | | |
| Deemed distribution to preferred stockholders | $ 26,375,000 | $ |
| Deferred stock-based compensation, net of (reversal) | $ | $ (28,500) |

See accompanying notes to condensed consolidated financial statements.

5

Table of Contents

**SUNESIS PHARMACEUTICALS, INC.**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

**SEPTEMBER 30, 2009**

**(Unaudited)**

**1. Organization and Summary of Significant Accounting Policies**

***Organization***

Sunesis Pharmaceuticals, Inc. (the Company or Sunesis ) was incorporated in the state of Delaware on February 10, 1998, and its facilities are located in South San Francisco, California. Sunesis is a biopharmaceutical company focused on the development and commercialization of new oncology therapeutics for the treatment of hematologic and solid tumor cancers. The Company s primary activities since incorporation have been conducting research and development internally and through corporate collaborators, in-licensing and out-licensing pharmaceutical compounds and technology, conducting clinical trials and raising capital.

Sunesis, Tethering and the Company s logo are registered trademarks of the Company. All other trademarks, trade names and service marks appearing in this Quarterly Report on Form 10-Q are the property of their respective owners.

***Significant Risks and Uncertainties***

The Company has incurred significant losses and negative cash flows from operations since its inception, and as of September 30, 2009, had cash, cash equivalents and marketable securities totaling $3.9 million and an accumulated deficit of $352.4 million. The Company s independent registered accounting firm issued an opinion on the audited consolidated financial statements in the Company s Annual Report on Form 10-K for the year ended December 31, 2008 that the Company s recurring operating losses raise substantial doubt about the Company s ability to continue as a going concern.

The Company believes that currently available cash, cash equivalents and marketable securities, including the net proceeds of approximately $4.7 million from the second closing of the Private Placement completed on October 30, 2009, as described in Notes 6 and 9, are sufficient to fund the Company s operations until the end of the first quarter of 2010, and the Company will need to raise additional funds in the near term in order to sustain operations beyond that time.

The Company will need to raise substantial additional funding before undertaking any additional clinical trials of voreloxin. The Company plans to finance these trials and its general operations with equity issuances, including a potential additional closing of the sale of common stock under the Private Placement, debt arrangements and/or a possible partnership or license of development and/or commercialization rights to voreloxin.

***Principles of Consolidation***

The Company s condensed consolidated financial statements include a wholly owned subsidiary, Sunesis Europe Limited, a United Kingdom corporation.

***Use of Estimates***

The preparation of financial statements in conformity with U.S. generally accepted accounting principles, or GAAP, requires management to make estimates and assumptions that affect the amounts reported in the Company s condensed consolidated financial statements and accompanying notes. Actual results could differ materially from these estimates. Significant estimates, assumptions and judgments made by management include those related to revenue recognition, clinical trial accounting, stock-based compensation and the valuation of equity instruments.

***Basis of Presentation***

The accompanying unaudited condensed consolidated financial statements assume that the Company will continue as a going concern and have been prepared in accordance with GAAP for interim financial information and with the instructions to Form 10-Q and Rule 10-01 of Regulation S-X. Accordingly, they do not include all of the information and notes required by GAAP for complete financial statements. The financial statements include all adjustments (consisting only of normal recurring adjustments) that management believes are necessary for a fair presentation of the periods presented. The balance sheet as of December 31, 2008 was

derived from the audited financial statements as of that date. These interim financial results are not necessarily indicative of results to be expected for the full year or any other interim period. Prior period revenues in the statements of operations and certain liabilities in the balance sheets and statements of cash flows have been reclassified to conform to the current year presentation. These unaudited condensed consolidated financial statements and the notes accompanying them should be read in conjunction with the Company s Annual Report on Form 10-K for the year ended December 31, 2008. The Company has evaluated subsequent events through November 16, 2009, the date on which the financial statements being presented were issued as part of this Quarterly Report on Form 10-Q, and not beyond that date.

Table of Contents

***Loss per Common Share***

Basic loss attributable to common stockholders per common share is calculated by dividing loss attributable to common stockholders by the weighted-average number of common shares outstanding for the period. Diluted loss attributable to common stockholders per common share is computed by dividing loss attributable to common stockholders by the weighted-average number of common shares outstanding for the period plus dilutive potential common shares as determined using the treasury stock method. Convertible preferred stock and options and warrants to purchase common stock are considered to be potential common shares, but have been excluded from the calculation of diluted loss attributable to common stockholders per common share as their effect is anti-dilutive. The excluded amounts stated below are on an as-converted basis as of the period end date.

The following table sets forth the computation of basic and diluted loss attributable to common stockholders per common share:

| | Three months ended September 30, | | Nine months ended September 30, | |
|---|---|---|---|---|
| | 2009 | 2008 | 2009 | 2008 |
| Historical numerator: | | | | |
| Net loss | $ (4,949,074) | $ (7,065,172) | $ (36,190,974) | $ (30,258,495) |
| Deemed distribution to preferred stockholders | | | (26,375,000) | |
| Loss attributable to common stockholders | $ (4,949,074) | $ (7,065,172) | $ (62,565,974) | $ (30,258,495) |
| Denominator: | | | | |
| Weighted-average common shares outstanding | 34,419,185 | 34,401,519 | 34,413,977 | 34,381,335 |
| Basic and diluted loss attributable to common stockholders per common share | $ (0.14) | $ (0.21) | $ (1.82) | $ (0.88) |
| Outstanding securities not included in diluted loss per common share calculations: | | | | |
| Convertible preferred stock | 28,985,440 | | 28,985,440 | |
| Options to purchase common stock | 6,463,850 | 4,920,708 | 6,463,850 | 4,920,708 |
| Warrants to purchase common stock | 31,646,285 | 2,693,237 | 31,646,285 | 2,693,237 |
| | 67,095,575 | 7,613,945 | 67,095,575 | 7,613,945 |

***Comprehensive Loss***

Comprehensive loss is comprised of net loss and unrealized gains or losses on marketable securities. Comprehensive loss for the periods presented is as follows:

| | Three months ended September 30, | | Nine months ended September 30, | |
|---|---|---|---|---|
| | 2009 | 2008 | 2009 | 2008 |
| Net loss | $ (4,949,074) | $ (7,065,172) | $ (36,190,974) | $ (30,258,495) |
| Change in unrealized gain or loss on marketable securities | (127) | (14,497) | (7,841) | (72,737) |
| Comprehensive loss | $ (4,949,201) | $ (7,079,669) | $ (36,198,815) | $ (30,331,232) |

Accumulated other comprehensive income (loss) consists entirely of unrealized gains or losses on marketable securities as of each balance sheet date presented.

**Recent Accounting Pronouncements**

In June 2009, the Financial Accounting Standards Board, or FASB, established the FASB Accounting Standards Codification, or FASB ASC, as the source of authoritative accounting principles recognized by the FASB. The FASB will issue new standards in the form of Accounting Standards Updates, or FASB ASUs. FASB ASC is effective for financial statements issued for interim and annual periods ending after September 15, 2009 and therefore is effective for the Company in the third quarter of 2009. The issuance of FASB

ASC does not change GAAP and therefore the adoption of FASB ASC only affects the specific references to GAAP literature in the notes to the Company s consolidated financial statements.

On April 1, 2009, the Company adopted the provisions of FASB ASC Topic 855, *Subsequent Events,* or ASC Topic 855. ASC Topic 855 establishes general standards of accounting for and disclosure of events that occur after the balance sheet date but before financial statements are issued or are available to be issued. ASC Topic 855 requires the disclosure of the date through which an entity has evaluated subsequent events and the basis for that date, that is, whether that date represents the date the financial statements were issued or were available to be issued. The required disclosures are included in the Basis of Presentation section of Note 1 above.

Table of Contents

On August 26, 2009, the Company adopted the provisions of ASU 2009-04, which amends FASB ASC Topic 480, *Distinguishing Liabilities from Equity*. ASU 2009-04 clarifies the guidance under ASC Topic 480, which was originally based on the pre-ASC guidance of Emerging Issues Task Force, or EITF, Topic D-98. The adoption of the amended provisions had no material effect on the Company s financial condition or results of operations.

**2. License Agreements**

***SARcode Corporation***

In March 2006, the Company entered into a license agreement with SARcode Corporation, or SARcode, a privately held biopharmaceutical company, granting SARcode an exclusive, worldwide license to all of the Company s lymphocyte function-associated antigen-1, or LFA-1, patents and related know-how. Pursuant to the license agreement, the Company received a total of $1.0 million in license fees $0.5 million in 2007 and $0.5 million in September 2008 which were recorded as revenue upon receipt. In addition, the Company received three secured convertible promissory notes, with a total principal amount of $1.0 million, which are due in 2012 and are convertible into the preferred stock of SARcode at the Company s option. The Company has yet to record these notes receivable from SARcode as revenue due to uncertainty of collectibility.

In March 2009, SARcode acquired the Company s interest in all of its LFA-1 patents and related know-how for a total cash consideration of $2.0 million. Of this amount, $1.8 million was received in March 2009 and was recorded as deferred revenue. The remaining $0.2 million was received in April 2009 upon delivery to SARcode of all records related to LFA-1. The entire $2.0 million was recorded as revenue in the second quarter of 2009 when all elements of the transaction had been delivered. In connection with the sale, the license agreement was terminated. Sunesis continues to hold the three secured convertible promissory notes with a total principal amount of $1.0 million.

**3. Strategic Collaborations**

The table below sets forth our collaboration revenue for the three and nine months ended September 30, 2009 and 2008:

| | Three months ended September 30, | | Nine months ended September 30, | |
|---|---|---|---|---|
| | 2009 | 2008 | 2009 | 2008 |
| Biogen Idec | $ | $ | $ 1,500,000 | $ 4,310,551 |
| Other | 12,500 | 10,417 | 37,500 | 594,289 |
| Total collaboration revenue | $ 12,500 | $ 10,417 | $ 1,537,500 | $ 4,904,840 |

***Biogen Idec, Inc.***

In August 2004, the Company entered into a collaboration agreement with Biogen Idec, Inc., or Biogen Idec, to discover, develop and commercialize small molecule inhibitors of Raf kinase and up to five additional targets that play a role in oncology and immunology indications or in the regulation of the human immune system. Concurrent with the signing of the agreement, Biogen Idec paid a $7.0 million upfront technology access fee and made a $14.0 million equity investment in the Company through the purchase of the Company s Series C-2 preferred stock, which converted into common stock upon the Company s initial public offering in September 2005. Biogen Idec s equity ownership was 8.5% of the Company s common shares outstanding as of September 30, 2009 and December 31, 2008.

Pursuant to the terms of the collaboration agreement, the Company applied its proprietary Tethering technology to generate small molecule leads during the research term, for which it received research funding, which was paid in advance to support some of the Company s scientific personnel. In connection with the Company s June 2008 restructuring, the parties agreed to terminate the research term and related funding as of June 30, 2008. A total of $20.0 million of research funding was received through this date. The Company had received a total of $3.0 million in milestone payments for meeting certain preclinical milestones through September 30, 2009, including a $1.5 million milestone for Biogen Idec s selection of a Raf kinase inhibitor development candidate for the treatment of cancer, which was recorded as revenue in June 2009 and received in July 2009, and a $0.5 million milestone received in June 2008.

The Company may in the future receive pre-commercialization milestone payments of up to $60.0 million per target, as well as royalty payments depending on product sales. Royalty payments may be increased if the Company exercises its option to co-develop and co-promote product candidates for up to two targets worldwide (excluding Japan) and may be reduced if Biogen Idec is required to in-license additional intellectual property related to certain technology jointly developed under the collaboration agreement in order to commercialize a collaboration product.

Table of Contents

***Johnson & Johnson Pharmaceutical Research & Development LLC***

In July 2009, Johnson & Johnson Pharmaceutical Research & Development LLC, or J&JPRD, provided written notice that it was terminating its collaboration related to the enzyme Cathepsin S, which it entered into with the Company in May 2002. In accordance with the terms of the collaboration agreement, the termination will be effective on January 13, 2010. As a result, the Company does not expect to receive any additional funding from J&JPRD or record any additional revenues under this collaboration agreement.

**4. Restructuring**

***2009 Restructuring***

On March 30, 2009, the Compensation Committee of the Company s board of directors, in conjunction with the anticipated closing of the initial closing of the Private Placement (see Note 6), committed to a restructuring plan, or the 2009 Restructuring, for an immediate reduction in force affecting six employees, including two executives. Employees were notified on March 31, 2009. All terminated employees were awarded severance payments and continuation of benefits based on length of service at the Company.

As a result of the 2009 Restructuring, the Company recorded a restructuring charge of $0.6 million in the first quarter of 2009 for employee severance and related benefit costs, which is included on a separate line in the Company s statement of operations. The severance payments were made in the second quarter of 2009, and other personnel-related expenses such as employee benefits will be substantially paid over the remainder of 2009. No further charges are expected related to this restructuring.

The following table summarizes the changes in the 2009 Restructuring liabilities, for which balances are included under Accrued restructuring charges in the Company s balance sheets:

| | Employee Severance and Related Benefits |
|---|---|
| 2009 Restructuring liabilities as of December 31, 2008 | $ |
| Charges in period | 602,102 |
| Cash payments in period | (556,929) |
| 2009 Restructuring liabilities as of September 30, 2009 | $ 45,173 |

***2008 Restructuring***

In June 2008, the Company implemented a corporate realignment to focus on the development of voreloxin. In conjunction with this restructuring, or the 2008 Restructuring, the Company expanded its late-stage development leadership team, ceased its internal discovery research activities and reduced its workforce by approximately 60%. All terminated employees were awarded severance payments, continuation of benefits based on length of service at the Company and career transition assistance. The Company also consolidated its remaining employees into the leased office premises at 395 Oyster Point Boulevard and a small leased laboratory facility at 349 Allerton Avenue, both in South San Francisco.

In January 2009, the Company entered into an Agreement for Termination of Lease and Voluntary Surrender of Premises with ARE-Technology Center, SSF, LLC, or Alexandria, with respect to a leased facility located at 341 Oyster Point Boulevard, South San Francisco, which formerly served as the Company s headquarters and research and development facility. Pursuant to the terms of the Termination Agreement, the Company was required to vacate the premises by February 28, 2009, and agreed to pay an aggregate fee of $2.2 million in consideration of early termination of the Lease Agreement. Under the original Lease Agreement, the Company was required to pay Alexandria base rents and operating expenses of $15.7 million between 2009 and 2013. The $2.2 million termination fee was paid in January 2009. In addition, the Company paid a commission of $0.4 million to a third party in January 2009 for negotiation of the lease termination.

In the first quarter of 2009, the Company recorded net restructuring charges of $1.3 million for these lease termination activities related to the 2008 Restructuring, which are included on a separate line in the Company s statement of operations. The net charge included the $2.2 million early termination fee and $0.4 million third-party commission, partially offset by the reversal of $1.4 million in non-cash deferred rent on this facility, which is recorded as a non-cash restructuring credit in the Company s statement of cash flows.

Table of Contents

The following table summarizes the changes in 2008 Restructuring liabilities, for which balances are included under Accrued restructuring charges in the Company s balance sheets:

| | Employee Severance and Related Benefits | Facilities Related and Other Costs | Total |
|---|---|---|---|
| 2008 Restructuring liabilities as of December 31, 2008 | $ 62,420 | $ 128,750 | $ 191,170 |
| Charges in period | | 2,654,360 | 2,654,360 |
| Cash payments in period | (62,420) | (2,783,110) | (2,845,530) |
| 2008 Restructuring liabilities as of September 30, 2009 | $ | $ | $ |

As of September 30, 2009, a total of $3.5 million of expenses had been incurred for the employee severance and related benefit costs, consisting of $3.2 million of severance and other benefit costs and $0.3 million of stock-based compensation. A total of $3.7 million had been incurred through September 30, 2009 related to facility exit costs, consisting of $2.2 million of lease termination fees, $1.6 million of asset impairments, $0.4 million of third-party commission and $0.9 million of other facility closure expenses, partially offset by the reversal of $1.4 million of deferred rent. No further charges are expected related to the 2008 Restructuring.

As part of the 2008 Restructuring, the Company implemented a corporate realignment to focus on the development of voreloxin. Due to the resulting termination of research activities, it was determined that laboratory equipment with a net book value of $1.2 million would be sold, and, accordingly, this equipment was recorded as held-for-sale. Held-for-sale equipment with a net book value of $0.5 million was sold in the first nine months of 2009 for net proceeds of $0.4 million. The $79,000 loss on sale has been included in Other income (expense), net in the Company s statement of operations. As of September 30, 2009, the remaining held-for-sale equipment was valued at $24,000. The Company expects to sell the remaining held-for-sale equipment by the end of 2009.

**5. Contingencies**

From time to time, the Company may be involved in legal proceedings, as well as demands, claims and threatened litigation, which arise in the normal course of its business or otherwise. The ultimate outcome of any litigation is uncertain and unfavorable outcomes could have a negative impact on the Company s results of operations and financial condition. Regardless of outcome, litigation can have an adverse impact on the Company because of the defense costs, diversion of management resources and other factors. The Company is not currently involved in any material legal proceedings.

**6. Stockholders Equity**

***Private Placement***

*Initial Closing of Units*

On April 3, 2009, the Company closed the initial $10.0 million of a private placement of up to $43.5 million of the Company s securities, or the Private Placement. The Private Placement contemplates the sale of up to $15.0 million of units consisting of Series A convertible preferred stock and warrants to purchase common stock, and up to $28.5 million in common stock, in three closings, to accredited investors, including certain members of management. The per unit purchase price for a share of Series A convertible preferred stock and a warrant to purchase 10 shares of common stock is $3.45 for both the initial and second closings. The warrants issued in the initial closing and issuable in the second closing have an exercise price of $0.22 per share and a term of seven years from issuance. In the initial closing, $10.0 million of units were sold, resulting in net proceeds of $8.8 million, which the Company used for working capital and other general corporate purposes. In the initial closing, the Company issued approximately 2.9 million shares of Series A convertible preferred stock, which are initially convertible into approximately 29.0 million shares of common stock and warrants to purchase an aggregate of approximately 29.0 million shares of common stock at $0.22 per share.

*Second Closing of Units*

An additional $5.0 million of units may be sold in a second closing (see Note 9), as approved by the Company s stockholders on June 18, 2009. This second closing may occur at the Company s election or at the election of the holders of a majority of the Series A convertible preferred stock issued in the Private Placement. The Company may elect to hold the second closing if the achievement of a specified milestone with respect to voreloxin has occurred and the Company s common stock is trading above a specified price. If the

Company has not delivered notice to the investors in the Private Placement of the Company s election to complete the second closing, or if the conditions for the second closing have not been met, the investors may elect to purchase the units in the second closing by delivering notice to the Company of their election. Notice of an election to complete the second closing, either by the Company or the investors in the Private Placement, must be delivered on or before the earliest to occur of December 31, 2009, the common equity closing described below, or the occurrence of a qualifying alternative common stock financing.

Table of Contents

*Common Equity Closing*

An additional $28.5 million of common stock may be sold in a common equity closing, as approved by the Company s stockholders on June 18, 2009. The common equity closing may be completed at the Company s election prior to the earlier of December 31, 2010 and a qualifying alternative common stock financing, or upon the election of the holders of a majority of the Series A convertible preferred stock issued in the Private Placement prior to a date determined with reference to the Company s cash and investment balance dropping below a specified level at certain future dates (see Note 9). If the Company elects to complete the common equity closing, it will be subject to the approval of the purchasers holding a majority of the Series A convertible preferred stock issued in the Private Placement and subject to a condition that the Company sells at least $28.5 million of common stock in the common equity closing. In the common equity closing, if completed, the Company would issue approximately 103.6 million shares of common stock at a purchase price of $0.275 per share.

*Other Investor Rights*

As of the initial closing, certain of the investors have the right to designate three of eight members of the Company s board of directors. The independent investors also have the right to designate five of nine members of the Company s board of directors on specified terms (see Note 9). In conjunction with the initial closing of the Private Placement, the investors received a number of additional rights as a result of their convertible preferred stock ownership, including the right to approve any sale of the Company, any issuance of debt or preferred stock and, unless certain conditions are met, any issuance of common stock, other than the second closing and the common equity closing described above. Upon any liquidation, dissolution or winding up of the Company, whether voluntary or involuntary, the holders of the Series A convertible preferred stock have a right to receive proceeds equal to $10.35 (i.e. three times the purchase price of each unit) for each share of Series A convertible preferred stock held, plus all declared and unpaid dividends, in preference to the holders of common stock. A change in control, as defined in the securities purchase agreement, shall be deemed a liquidation, and includes a consolidation or merger with or into any other corporation, or the sale, exclusive license or exclusive partnering of the majority of the Company s assets.

On June 29, 2009, certain documents executed in connection with the Private Placement were amended to: (a) clarify that in the event that an investor wishes to sell or transfer their shares of Series A convertible preferred stock, they must transfer all associated rights and obligations with such shares, including the option to participate in the second closing, or the Second Closing Option, and the option to participate in the common equity closing, or the Common Equity Closing Option, and (b) require approval by the Company s board of directors of any transaction that constitutes a change of control event that does not already require approval of the board of directors by statute.

*Accounting Treatment*

On April 3, 2009, the fair values of the four primary components of the Private Placement: (a) the Series A convertible preferred stock, (b) the warrants to purchase common stock, (c) the Second Closing Option, and (d) the Common Equity Closing Option, were computed using the Black-Scholes option-pricing model, or Black-Scholes Model. The values were calculated as a series of call options on the potential enterprise value of the Company at different valuation points at which the claims of the different stakeholder groups on the enterprise value would change. On April 3, 2009, the Company determined that the Second Closing Option and Common Equity Closing Option were freestanding instruments, and as a result, their fair values of $7.3 million and $10.2 million were initially recorded as liabilities in the Company s balance sheet. As the total fair value of these two components exceeded the gross proceeds of the initial closing of the Private Placement of $10.0 million, no value was attributed to the Series A convertible preferred stock or warrant components as of this date, and the $7.5 million excess of the fair value of the two closing options over the gross proceeds was recorded as a loss within other income (expense) in the Company s statement of operations.

On June 18, 2009, the Company s stockholders approved an increase in the authorized number of shares of common stock from 100 million to 400 million, subject to an administrative filing with the State of Delaware, which occurred on July 2, 2009. As a result, the Common Equity Closing Option liability was revalued to its fair value of $20.1 million as of June 18, 2009, resulting in a charge for the increase in fair value of $9.9 million, which was recorded within other income (expense) in the Company s statement of operations. The Common Equity Closing Option was then reclassified from a liability to additional paid-in-capital in the Company s balance sheet.

Table of Contents

On June 29, 2009, as a result of amendments to the Private Placement agreements, the convertible preferred stock, the Second Closing Option, and the Common Equity Closing Option were extinguished by the issuance of the amended convertible preferred stock instrument. The Second Closing Option liability was revalued upon extinguishment to its fair value of $10.9 million, resulting in a charge to other income (expense) for the increase in fair value of $3.6 million. The convertible preferred stock and Common Equity Closing Option were also revalued upon extinguishment to their fair values of $22.9 million and $23.6 million, respectively, resulting in an aggregate deemed distribution to preferred stockholders of $26.4 million. On June 29, 2009, the amended convertible preferred stock instrument was recorded as convertible preferred stock within stockholders equity, at its fair value of $57.4 million, less transaction costs of $1.2 million.

**7. Stock-Based Compensation**

***Overview***

Employee stock-based compensation expense has been calculated based on awards ultimately expected to vest, reduced for estimated forfeitures. Forfeitures are estimated at the time of grant and revised in subsequent periods if actual forfeitures differ from those estimates. Employee stock-based compensation expense related to the Company s stock-based awards is as follows:

| | Three months ended September 30, | | Nine months ended September 30, | |
|---|---|---|---|---|
| | 2009 | 2008 | 2009 | 2008 |
| Research and development | $ 95,467 | $ 46,663 | $ 278,183 | $ 588,123 |
| General and administrative | 241,014 | 206,707 | 850,571 | 982,769 |
| Restructuring charges | | 2,462 | | 366,533 |
| Total employee stock-based compensation expense | $ 336,481 | $ 255,832 | $ 1,128,754 | $ 1,937,425 |

***Fair Value of Awards***

The Company determines the fair value of stock-based awards on the grant date using the Black-Scholes Model, which is affected by the Company s stock price as well as assumptions regarding a number of highly subjective variables. The following table summarizes the assumptions used as inputs to the Black-Scholes Model, and resulting weighted-average and total estimated grant date fair values of employee stock options granted during the periods presented:

| | Three months ended September 30, | | Nine months ended September 30, | |
|---|---|---|---|---|
| | 2009 | 2008 | 2009 | 2008 |
| Assumptions (annualized): | | | | |
| Expected term (years) | 4.5 | 5.0 | 4.5 | 5.0 |
| Expected volatility | 87.0% | 71.6% | 87.0% | 71.6% |
| Risk-free interest rate | 1.9% | 3.2% | 1.9% | 3.3% |
| Dividend yield | 0.0% | 0.0% | 0.0% | 0.0% |
| Fair value: | | | | |
| Weighted-average estimated grant date fair value per share | $ 0.32 | $ 0.96 | $ 0.31 | $ 0.90 |
| Options granted to employees | 3,810,000 | 109,000 | 3,930,000 | 841,725 |
| Total estimated grant date fair value of options granted | $ 1.2 million | $ 0.1 million | $ 1.2 million | $ 0.8 million |

The estimated fair value of stock options that vested in the three months ended September 30, 2009 and 2008 was $0.3 million and $0.6 million, respectively, and for the nine months ended September 30, 2009 and 2008, was $0.8 million and $2.0 million, respectively.

No purchase rights were granted under the ESPP during the three months ended September 30, 2009 and 2008. The weighted-average estimated fair value of purchase rights granted under the ESPP for the nine months ended September 30, 2009 and 2008 was $0.37 and $1.16 per share, respectively, using the Black-Scholes model with the following annualized assumptions:

| | Nine months ended September 30, | |
|---|---|---|
| | 2009 | 2008 |
| Expected term (years) | 0.5 - 1.0 | 0.5 - 1.0 |
| Expected volatility | 162.9% | 68.5 - 71.6% |
| Risk-free interest rate | 1.6% | 2.0 - 5.1% |
| Dividend yield | 0.0% | 0.0% |

Table of Contents

For employee stock options, the Company based its assumptions for expected term and expected volatility on the information available with respect to its mature peer group in the same industry. For employee purchase rights under the ESPP, the expected term is equal to the purchase period. The risk-free interest rate assumptions are based upon observed interest rates appropriate for the expected life of the Company s employee stock options and employee purchase rights. The Company does not anticipate paying any cash dividends in the foreseeable future, and therefore uses an expected dividend yield of zero. The post-vesting forfeiture rate is derived from the Company s historical option cancellation information.

***Option Plan Activity***

The following table summarizes stock option activity for the Company s stock option plans in the nine months ended September 30, 2009:

| | Number of Shares | Weighted Average Exercise Price | Weighted Average Remaining Contractual Term (years) | Aggregate Intrinsic Value |
|---|---|---|---|---|
| Outstanding as of December 31, 2008 | 4,650,955 | $ 3.44 | | |
| Options granted | 3,985,000 | 0.47 | | |
| Options canceled/forfeited/expired | (2,172,105) | 3.32 | | |
| Outstanding as of September 30, 2009 | 6,463,850 | 1.65 | 8.47 | $ 14,738 |
| Vested and expected to vest as of September 30, 2009 | 5,842,455 | $ 1.76 | 8.33 | $ 13,364 |
| Exercisable as of September 30, 2009 | 2,048,555 | $ 3.56 | 5.97 | $ 225 |

The aggregate intrinsic value in the table above represents the total pre-tax intrinsic value (i.e., the difference between the Company s closing stock price on the last trading day of the quarter and the exercise price, multiplied by the number of in-the-money options) that would have been received by option holders if they had exercised all their options on September 30, 2009.

There were no options exercised during the three and nine months ended September 30, 2009 and 2008; therefore, the intrinsic value for options exercised during these periods is zero. As the Company believes it is more likely than not that no stock option related tax benefits will be realized, the Company does not record any net tax benefits related to exercised options.

The following table summarizes outstanding and exercisable options for the Company s stock option plans as of September 30, 2009:

| | Options Outstanding | | | Options Exercisable | |
|---|---|---|---|---|---|
| Range of Exercise Prices | Number Outstanding as of 9/30/09 | Weighted-Average Remaining Contractual Term | Weighted-Average Exercise Price | Number Exercisable as of 9/30/09 | Weighted-Average Exercise Price |
| $0.20 - $0.41 | 642,500 | 9.78 | $ 0.38 | 97,952 | $ 0.41 |
| $0.49 | 3,260,000 | 9.92 | 0.49 | 67,909 | 0.49 |
| $0.77 - $2.55 | 1,041,745 | 6.02 | 1.97 | 692,687 | 2.24 |
| $2.59 - $4.85 | 812,556 | 6.97 | 3.52 | 520,082 | 3.73 |
| $4.93 - $5.25 | 529,324 | 6.20 | 5.23 | 501,826 | 5.23 |
| $5.50 | 22,000 | 7.08 | 5.50 | 16,041 | 5.50 |
| $6.01 | 50,000 | 1.72 | 6.01 | 50,000 | 6.01 |
| $6.21 | 60,000 | 6.74 | 6.21 | 60,000 | 6.21 |
| $6.35 | 22,000 | 6.67 | 6.35 | 18,333 | 6.35 |
| $9.56 | 23,725 | 5.66 | 9.56 | 23,725 | 9.56 |

| | | | | | |
|---|---|---|---|---|---|
| $0.20 - $9.56 | 6,463,850 | 8.47 | 1.65 | 2,048,555 | 3.56 |

Total estimated unrecognized stock-based compensation cost related to unvested stock options was $3.6 million as of September 30, 2009, which is expected to be recognized over the respective vesting terms of each award. The weighted average term of the unrecognized stock-based compensation expense is 3.1 years.

Table of Contents

**8. Fair Value Measurements**

In accordance with applicable GAAP, the fair value of the Company s financial instruments reflect the amounts that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date (i.e. the exit price). A fair value hierarchy is also utilized to prioritize valuation inputs, as follows:

Level 1 - quoted prices in active markets for identical assets and liabilities

Level 2 - observable inputs other than quoted prices in active markets for identical assets and liabilities

Level 3 - unobservable inputs

All of the Company s financial instruments held at any time since January 1, 2008 have been valued using Level 1 or Level 2 inputs. The Company s Level 2 valuations are based upon quoted prices in active markets for similar securities, with prices adjusted for yield and number of days to maturity.

As of September 30, 2009, the Company held no financial assets that were measured on a recurring basis. The following table summarizes the fair value of the Company s financial assets measured on a recurring basis as of December 31, 2008, which is comprised solely of available-for-sale securities:

| December 31, 2008 | Input Level | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Estimated Fair Value |
|---|---|---|---|---|---|
| Money market funds | Level 1 | $ 5,417,903 | $ | $ | $ 5,417,903 |
| U.S. treasury obligations | Level 1 | 768,039 | | (76) | 767,963 |
| U.S. government agency obligations | Level 2 | 3,068,968 | 2,906 | | 3,071,874 |
| Corporate debt obligations | Level 2 | 996,102 | 3,898 | | 1,000,000 |
| Commercial paper | Level 2 | 248,857 | 1,113 | | 249,970 |
| Total available-for-sale securities | | 10,499,869 | 7,917 | (76) | 10,507,710 |
| Less: amounts classified as cash equivalents | | 6,185,942 | | (76) | 6,185,866 |
| Amounts classified as marketable securities | | $ 4,313,927 | $ 7,917 | $ | $ 4,321,844 |

There were no realized gains or losses on the sale of available-for-sale securities for the nine months ended September 30, 2009 and the year ended December 31, 2008. As of September 30, 2009, all available-for-sale securities had a contractual maturity of one year or less.

**9. Subsequent Events**

On October 27, 2009, the Company entered into an agreement to amend the definitive agreements executed in connection with the Private Placement, or the Amendment Agreement. The Amendment Agreement amends the Securities Purchase Agreement, dated March 31, 2009, by and between the Company and accredited investors, including certain members of management, or the Investors, to provide in part that, if the holders of a majority of the Series A Preferred Stock issued in the Private Placement, or the Majority Holders, elect to complete the common equity closing of the Private Placement, they must do so prior to a date determined with reference to the Company s cash balance dropping below $2.5 million at certain future dates, rather than $4.0 million as initially provided by the Securities Purchase Agreement. The Amendment Agreement also amends the Securities Purchase Agreement to provide that the Company will use commercially reasonable efforts to maintain a cash balance of at least $2.5 million as of January 8, 2010.

The Amendment Agreement also amends the Investor Rights Agreement, dated April 3, 2009, by and between the Company and the Investors, to defer the Investors right to designate five members of the Company s board of directors until January 1, 2010, or such later date as determined by the Majority Holders. As a result, on January 1, 2010, the Series A convertible preferred stock will become redeemable upon certain events that are outside of the control of the Company, and all Series A convertible preferred stock issued in the Private Placement that is outstanding at that time will be reclassified to mezzanine equity.

On October 30, 2009, the Company sold $5.0 million of units to existing investors in the second closing of the Private Placement (see Note 6). In conjunction with the sale, the Company issued approximately 1.45 million shares of Series A preferred stock, which are initially convertible into 14.5 million shares of common stock, and warrants to purchase 14.5 million shares of common stock. The warrants have an exercise price of $0.22 per share and a term of seven years from issuance. The per unit purchase price for a share of Series A preferred stock and a warrant to purchase 10 shares of common stock was $3.45, which is equivalent to the purchase price of the units sold in the initial closing of $10.0 million units in April 2009 in accordance with the terms of the Private Placement. The net proceeds of the second closing were approximately $4.7 million, which the Company expects to be used for working capital and other general corporate purposes. After accounting for the $4.7 million in net proceeds and the $1.5 million net loss for the month of October 2009, the Company s stockholders equity was $4.4 million as of October 31, 2009.

Table of Contents

**Item 2. Management s Discussion and Analysis of Financial Condition and Results of Operations**

*The following discussion and analysis of our financial condition as of September 30, 2009 and results of operations for the three and nine months ended September 30, 2009 and 2008 should be read together with our condensed consolidated financial statements and related notes included elsewhere in this report. This discussion and analysis contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities and Exchange Act of 1934, as amended, which involve risks, uncertainties and assumptions. All statements, other than statements of historical facts, are forward-looking statements for purposes of these provisions, including any projections of revenue, expenses or other financial items, cash requirements, financing plans, any statement of the plans and objectives of management for future operations, any statements concerning proposed new clinical trials or licensing or collaborative arrangements, any statements regarding future economic conditions or performance, and any statement of assumptions underlying any of the foregoing. In some cases, forward-looking statements can be identified by the use of terminology such as anticipates, believe, continue, estimates, expects, intend, look forward, may, could, seeks, plans, potential, or will or the negative thereof or other comparable terminology. Although we believe that the expectations reflected in the forward-looking statements contained herein are reasonable, there can be no assurance that such expectations or any of the forward-looking statements will prove to be correct, and actual results could differ materially from those projected or assumed in the forward-looking statements. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of many factors, including but not limited to those set forth under Risk Factors and elsewhere in this report. We urge you not to place undue reliance on these forward-looking statements, which speak only as of the date of this report. All forward-looking statements included in this report are based on information available to us on the date of this report, and we assume no obligation to update any forward-looking statements contained in this report.*

*In this report, Sunesis, the Company, we, us, and our refer to Sunesis Pharmaceuticals, Inc. and its wholly-owned subsidiary, except where it is made clear that the term means only the parent company.*

**Overview**

We are a biopharmaceutical company focused on the development and commercialization of new oncology therapeutics for the treatment of hematologic and solid tumor cancers. We have built a highly experienced cancer drug development organization committed to advancing our lead product candidate, voreloxin, in multiple indications to improve lives of people with cancer.

We own worldwide development and commercialization rights to voreloxin and are currently preparing for anticipated Phase 3 development of the compound. Voreloxin is a first-in-class anti-cancer quinolone derivative, or AQD a class of compounds that has not been used previously for the treatment of cancer. Quinolone derivatives have been shown to mediate anti-tumor activity by targeting mammalian topoisomerase II, an enzyme critical for cell replication, and have demonstrated promising preclinical anti-tumor activity.

We are completing three clinical trials of voreloxin: (i) a Phase 2 clinical trial (known as the REVEAL-1 trial) in previously untreated elderly patients with acute myeloid leukemia, or AML, for which enrollment of a total of 113 patients dosed in one of three dosing schedules was completed in October 2009, (ii) a Phase 1b/2 clinical trial of voreloxin in combination with cytarabine for the treatment of patients with relapsed/refractory AML, and (iii) a Phase 2 single agent clinical trial in platinum-resistant ovarian cancer patients. In November 2009, we announced that the U.S. Food and Drug Administration, or FDA, had granted voreloxin orphan drug designation for the treatment of AML. We anticipate launching a pivotal trial of voreloxin for AML in 2010, and we may enter into partnering arrangements for this product candidate to maximize its commercial potential.

Two abstracts related to the voreloxin clinical program in AML have been accepted for presentation at the 51st Annual Meeting of the American Society of Hematology (ASH) in December 2009. At the American Society of Clinical Oncology (ASCO) 2009 Annual Meeting in June, we presented new data from the three ongoing clinical trials that we believe demonstrates that voreloxin shows promising safety and efficacy in acute myeloid leukemia and in platinum-resistant ovarian cancer.

We have taken a number of important steps to focus our resources and efforts on the advancement of voreloxin. We have discontinued development of our product candidate, SNS-032, a selective inhibitor of cyclin-dependent kinases, or CDKs, 2, 7 and 9, which we had in-licensed from Bristol-Myers Squibb Company, or BMS. In March 2009, the license agreement was terminated and SNS-032 was returned to BMS. In addition, in the first quarter of 2009, we completed a Phase 1 trial of SNS-314, a potent and selective pan-Aurora kinase inhibitor discovered internally at Sunesis, in patients with advanced solid tumors. A maximum tolerated dose was not established in the trial, and no responses were observed. We currently have no plans to conduct further development activities involving SNS-314 on our own, but we plan to seek a partner or licensee to support further development of SNS-314 in the future.

Table of Contents

In March 2009, we announced the sale of our interest in all of our lymphocyte function-associated antigen-1, or LFA-1, patents and related know-how to SARcode Corporation, or SARcode, for total cash consideration of $2.0 million, of which $1.8 million was received in March 2009 and $0.2 million was received in April 2009. The entire $2.0 million was recorded as revenue in the second quarter of 2009. In connection with the sale, the license agreement was terminated. SARcode had been the exclusive licensee of those assets since March 2006.

In June 2009, we earned a milestone of $1.5 million for Biogen Idec s selection of a Raf kinase inhibitor development candidate for the treatment of cancer, which was recorded as revenue in the second quarter of 2009. The milestone payment was received in July 2009. Biogen Idec is currently conducting IND-enabling preclinical work with the Raf kinase development candidate.

On April 3, 2009, we completed the initial closing of $10.0 million of a Private Placement of up to $43.5 million of the Company s securities. On October 30, 2009, we completed the second closing of $5.0 million of the Private Placement. In the initial closing, $10.0 million of units were sold, resulting in net proceeds of $8.8 million, and in the second closing, $5.0 million of units were sold, resulting in net proceeds of approximately $4.7 million. The units consist of Series A convertible preferred stock and warrants to purchase common stock, and were sold to accredited investors, including certain members of management. The Private Placement also contemplates the sale of up to $28.5 million in common stock to the same group of investors, subject to conditions described in Sources of Liquidity below.

We have incurred significant losses in each year since our inception. As of September 30, 2009, we had an accumulated deficit of $352.4 million. We expect to continue to incur significant net losses for the foreseeable future, as we continue the development of, and seek regulatory approvals for, voreloxin. We believe that currently available cash, cash equivalents and marketable securities, including the net proceeds of approximately $4.7 million from the second closing of the Private Placement completed on October 30, 2009, are sufficient to fund our operations until the end of the first quarter of 2010, and we will need to raise additional funds in the near term in order to sustain operations beyond that time.

On August 3, 2009, upon NASDAQ s approval, the listing of our common stock was transferred from The NASDAQ Global Market to The NASDAQ Capital Market. To maintain a listing on The NASDAQ Capital Market, we are required to meet certain requirements, including a minimum closing bid price of $1.00 per share, a market value of publicly held shares of at least $1.0 million, and stockholders equity of at least $2.5 million. After accounting for the $4.7 million in net proceeds from the second closing of the Private Placement and the $1.5 million net loss for the month of October 2009, our stockholders equity was $4.4 million as of October 31, 2009.

On September 16, 2009, we received a letter from NASDAQ notifying us that we do not comply with the minimum $1.00 per share requirement for a continued listing. To regain compliance, prior to March 15, 2010, the bid price of our common stock must close at $1.00 or more for at least 10 consecutive business days. If we do not demonstrate compliance by March 15, 2010, a determination will be made as to whether we meet the initial listing criteria for The NASDAQ Capital Market except for the $1.00 per share bid price requirement. If we do meet these criteria, we would expect to be granted an additional 180 calendar day compliance period. If we are not eligible for an additional compliance period, NASDAQ will notify us that our common stock may be delisted. At that time, we may appeal to the NASDAQ Listing Qualifications Panel, and would remain listed pending the Panel s decision. We cannot provide any assurance that the Panel will allow us to remain listed in the event of any appeal.

**Critical Accounting Policies and Significant Judgments and Estimates**

There have been no significant changes during the quarter ended September 30, 2009 to our critical accounting policies and significant judgments and estimates as disclosed in our management s discussion and analysis of financial condition and results of operations included in our Annual Report on Form 10-K for the year ended December 31, 2008, except as follows:

***Private Placement Accounting***

The accounting for the initial closing of the sale of $10.0 million of units under our Private Placement, and subsequent revaluations of the related financial instruments, required fair values to be established at different time-points for the four primary components of the Private Placement: (a) the Series A convertible preferred stock, (b) the warrants to purchase common stock, (c) the Second Closing Option, and (d) the Common Equity Closing Option. The Black-Scholes option-pricing model, or Black-Scholes Model, was selected to determine these fair values, which were calculated as a series of call options on the potential enterprise value of the company at different valuation points at which the claims of the different stakeholder groups on the enterprise value would change. The results of the Black-Scholes Model are affected by the company s stock price, as well as assumptions regarding a number of highly subjective variables. These variables include the expected term of the financial instruments and our expected stock price volatility, risk-free interest rate and dividend rate over the expected term.

16

Table of Contents

Alternative models could have been selected to calculate these fair values, which may have produced significantly different results. If we adopt a different valuation model in the future, this may result in a lack of consistency between periods and materially affect our fair value estimates. It may also result in a lack of comparability with other companies that use different models, methods and assumptions. Additionally, because the estimated fair values are affected by our stock price, fluctuations in our stock price, which has historically been volatile, may significantly affect our financial results.

**Recent Accounting Pronouncements**

The impact of recent accounting pronouncements that we have adopted is detailed in Note 1 to our consolidated financial statements.

**Results of Operations**

***Revenue***

We have not generated any revenue from sales of commercial products and do not expect to generate any product revenue in the foreseeable future.

*Collaboration Revenue.* In the past we have generated revenue primarily through payments received in connection with our collaborations, consisting principally of research funding and milestones paid by our collaborators, substantially offsetting our related research and development expenses. However, we are no longer conducting any research activities or receiving research funding in connection with any of our collaborations.

Collaboration revenue was $12,500 and $1.5 million for the three and nine months ended September 30, 2009 as compared to $10,000 and $4.9 million for the same periods in 2008. The decrease of $3.4 million between the nine month periods was primarily due to the completion in June 2008 of research funding and technology access fee amortization under the Biogen Idec collaboration, partially offset by an increase in milestone revenue as a result of the $1.5 million milestone earned in the 2009 period from Biogen Idec s selection of a Raf kinase inhibitor development candidate for the treatment of cancer.

We are entitled to receive milestone payments under our collaborations with Biogen Idec and Merck upon achievement of certain milestones by them. Additionally, we are entitled to receive royalty payments based on future sales of products, if any, resulting from these collaborations, although we do not expect to generate any royalty revenue from these collaborations in the foreseeable future, if at all.

In July 2009, Johnson & Johnson Pharmaceutical Research & Development LLC, or J&JPRD, provided written notice that it was terminating its collaboration related to the enzyme Cathepsin S, which it entered into with us in May 2002. In accordance with the terms of the collaboration agreement, the termination will be effective on January 13, 2010. As a result, we do not expect to receive any additional funding revenues from J&JPRD or record any additional revenues under this collaboration agreement.

We expect to have substantially lower collaboration revenue in 2009 and in future years from existing collaborations unless, and until, any products that may result from them advance to a level where significant milestones will be payable to us.

*License and Other Revenue.* License and other revenue was zero and $2.2 million for the three and nine months ended September 30, 2009 as compared to $0.5 million for each of the same periods in 2008. In March 2009, we sold to SARcode our interest in all of the patents and related know-how that had been the subject of a license agreement with them, and for which we received a $0.5 million payment in September 2008, for a total cash consideration of $2.0 million. Of this amount, $1.8 million was received in March 2009 and $0.2 million was received in April 2009. All deliverables under the agreement were completed in April 2009, and as a result, the entire $2.0 million was recorded as revenue in the second quarter. In connection with the sale, the license agreement was terminated and we will not receive any future license fees, milestones or royalties under that license. We still hold three secured convertible promissory notes issued under the original license agreement, with a total principal value of $1.0 million, which are due in 2012 and are convertible into the preferred stock of SARcode at our option. We have yet to record these notes as revenue due to uncertainty of their collectibility.

Table of Contents

***Research and Development Expense***

Most of our operating expenses to date have been for research and development activities, and include costs incurred:

- in the discovery and development of novel small molecule therapeutics and the advancement of product candidates towards clinical trials;
- in the execution of clinical trials, including those for voreloxin, SNS-032 and SNS-314;
- in the development of our proprietary fragment-based Tethering drug discovery approach and other novel fragment-based drug discovery methods;
- in the development of in-house research, preclinical study and development capabilities;
- in connection with in-licensing activities; and
- in the conduct of activities we are required to perform in connection with our strategic collaborations.

We expense all research and development costs as they are incurred.

The table below sets forth our research and development expense by program for the three and nine months ended September 30, 2009 and 2008 (in thousands):

| | Three months ended September 30, | | Nine months ended September 30, | |
|---|---|---|---|---|
| | 2009 | 2008 | 2009 | 2008 |
| Voreloxin | $ 3,285 | $ 3,730 | $ 10,656 | $ 12,614 |
| SNS-032 | 60 | 634 | 204 | 3,042 |
| SNS-314 | 11 | 299 | 209 | 1,755 |
| Discovery programs and new technologies | | | | 2,233 |
| Other kinase inhibitors | | | | 2,024 |
| Total research and development expense | $ 3,356 | $ 4,663 | $ 11,069 | $ 21,668 |

The decrease of $1.3 million in research and development expense between the three month periods was primarily due to our 2008 Restructuring, which resulted in decreases in facility costs of $0.5 million, outside services of $0.4 million and clinical expenses of $0.3 million. The decrease of $10.6 million between the nine month periods was also primarily due to the 2008 Restructuring, which resulted in decreases in headcount-related expenses of $4.2 million, facility costs of $2.8 million, clinical expenses of $1.4 million, outside services of $1.1 million and lab costs of $0.7 million. Research and development expenses are expected to be lower for 2009 as a whole as compared to 2008, primarily as a result of the reduction in research staffing and related facility costs.

As a result of our 2008 Restructuring and the resulting wind-down of our research activities, we do not anticipate incurring any significant additional research expenses related to the discovery of additional product candidates, the development or application of our proprietary fragment-based drug discovery methods, or the development of in-house research capabilities. In addition, we are no longer conducting any research activities in connection with our collaborations.

However, we expect to continue to incur significant expenses related to the development of voreloxin in 2009 and future years, including for the completion of the current Phase 2 clinical trials and in preparation for and conduct of anticipated pivotal trials. Due to the risks inherent in the clinical trial process, we are unable to estimate the additional substantial costs we will incur in the voreloxin development program.

We are currently focused on trials of voreloxin in targeted indications and patient populations. Based on results of translational research, clinical results, regulatory and competitive concerns and our overall financial resources, we anticipate that we will make determinations as to which indications to pursue and patient populations to treat and how much funding to direct to each indication on an ongoing basis. This will affect our research and development expense going forward.

We are currently anticipating that development of voreloxin will be our highest priority. If we engage a development or commercialization partner for our voreloxin program, or if, in the future, we acquire additional product candidates, our research and development expenses could be significantly affected. We cannot predict whether future collaborative or licensing arrangements will be secured, if at all, and to what degree such arrangements would affect our development plans and capital requirements.

Under our Biogen Idec agreement, we have the right to participate in the co-development and co-promotion of product candidates for up to two targets including, at our option, the Raf kinase target, on a worldwide basis (excluding Japan). If we were to exercise our option on one or more product candidates, our research and development expense would increase significantly.

Table of Contents

***General and Administrative Expense***

Our general and administrative expense consists primarily of salaries and other related costs for personnel in finance, human resources, legal, management and general administration, as well as non-cash stock-based compensation. Other significant costs include those related to facilities and fees paid to outside legal advisors and independent auditors.

General and administrative expense was $1.5 million and $5.9 million for the three and nine months ended September 30, 2009 as compared to $2.8 million and $9.3 million for the same periods in 2008. The decrease of $1.3 million between the three month periods was primarily due to the 2008 and 2009 Restructurings, which resulted in decreases in headcount-related expenses of $0.6 million, facility costs of $0.4 million and professional service costs of $0.2 million. The decrease of $3.4 million between the nine month periods was also primarily due to the 2008 and 2009 Restructurings, which resulted in decreases in headcount-related expenses of $2.2 million, facility costs of $0.5 million and professional service costs of $0.5 million. We expect general and administrative expense to be lower for 2009 as a whole as compared to 2008, primarily as a result of the reduction in administrative headcount.

***Restructuring Charges***

Restructuring charges were $0.1 million and $1.9 million for the three and nine months ended September 30, 2009 as compared to $0.2 million and $5.4 million for the same periods in 2008. Net charges for the nine months ended September 30, 2009 included $1.3 million for lease termination activities related to the 2008 Restructuring and $0.6 million for employee severance and related benefit costs related to the 2009 Restructuring. The net charge for lease termination activities includes $2.2 million for early lease termination fees paid to the landlord and $0.4 million for third party commission, partially offset by the reversal of $1.4 million in non-cash deferred rent on this facility. Net charges for the nine months ended September 30, 2008 included $5.8 million related to the 2008 Restructuring, partially offset by a $0.4 million reversal of charges related to facility exit costs from a restructuring in 2007.

***Interest Income***

Interest income was $2,000 and $21,000 for the three and nine months ended September 30, 2009 as compared to $0.1 million and $0.9 million for the same periods in 2008. The decreases between the periods were primarily due to lower average balances of cash, cash equivalents and marketable securities and lower average interest rates during the 2009 periods.

***Interest Expense***

Interest expense was zero and $1,000 for the three and nine months ended September 30, 2009 as compared to $40,000 and $0.2 million for the same periods in 2008. The decreases between the periods resulted from the full payment of the outstanding balance under our equipment financing agreement with General Electric Capital Corporation in November 2008.

***Other Income (Expense), Net***

Other expense, net was $4,000 and $21.1 million for the three and nine months ended September 30, 2009 as compared to other income, net of $9,000 for each of the same periods in 2008. The expense in the nine months ended September 30, 2009 was primarily due to non-cash charges of $21.0 million related to the accounting for the Private Placement, which consisted of $7.5 million recorded upon the initial closing in April 2009 and $13.5 million upon the revaluation in June 2009 of the options to participate in the second closing and common equity closing.

**Liquidity and Capital Resources**

***Sources of Liquidity***

Since our inception, we have funded our operations primarily through the issuance of common and preferred stock; research funding, technology access fees and milestone payments from our collaboration partners; research grants; loans from Biogen Idec and other debt financings.

Our cash, cash equivalents and marketable securities totaled $3.9 million as of September 30, 2009, as compared to $10.6 million as of December 31, 2008. The decrease of $6.7 million was primarily due to $15.9 million of net cash used in operating activities, partially offset by net proceeds of $8.8 million from the first closing of the Private Placement, as described below. No debt was outstanding at either balance sheet date.

On April 3, 2009, we completed the initial closing of $10.0 million of a Private Placement of up to $43.5 million of our securities. On October 30, 2009, we completed the second closing of $5.0 million of the Private Placement. In the initial closing, $10.0 million of units were sold, resulting in net proceeds of $8.8 million, and in the second closing, $5.0 million of units were sold, resulting in net

proceeds of approximately $4.7 million. The units consist of Series A convertible preferred stock and warrants to purchase common stock, and were sold to accredited investors, including certain members of management.

Table of Contents

Under the Private Placement, an additional $28.5 million of common stock may be sold in a common equity closing, as approved by our stockholders on June 18, 2009. The common equity closing may be completed at our election prior to the earlier of December 31, 2010 and a qualifying alternative common stock financing, or upon the election of the holders of a majority of the Series A convertible preferred stock issued in the Private Placement prior to a date determined with reference to our cash and investments balance dropping below $2.5 million at certain future dates. If we elect to complete the common equity closing, it will be subject to the approval of the purchasers holding a majority of the Series A convertible preferred stock issued in the Private Placement and subject to a condition that we sell at least $28.5 million of common stock in the common equity closing.

***Cash Flows***

Net cash used in operating activities was $15.9 million for the nine months ended September 30, 2009, as compared to $28.5 million for the same period in 2008. Net cash used in the 2009 period resulted primarily from the net loss of $36.2 million and changes in operating assets and liabilities of $0.8 million, partially offset by net adjustments for non-cash items of $21.1 million, including non-cash expense of $21.0 million related to the Private Placement, and a credit of $1.4 million for deferred rent related to the 2008 Restructuring. Net cash used in the 2008 period resulted primarily from our net loss of $30.3 million and changes in operating assets and liabilities of $2.5 million (including decreases of $1.2 million in deferred revenue, $1.0 million in accrued compensation and $0.9 million in accounts payable), partially offset by adjustments for non-cash items of $4.2 million (including $1.7 million of non-cash restructuring charges, $1.6 million of stock-based compensation and $1.0 million of depreciation and amortization).

Net cash provided by investing activities was $4.7 million for the nine months ended September 30, 2009, as compared to $25.9 million for the same period in 2008. Net cash provided in the 2009 period consisted of net proceeds from marketable securities transactions of $4.3 million and proceeds from the sale of property and equipment of $0.4 million. Net cash provided in the 2008 period consisted of net proceeds from marketable securities transactions of $26.1 million, partially offset by capital expenditures of $0.2 million.

Net cash provided by financing activities was $8.8 million for the nine months ended September 30, 2009 as compared to net cash used of $0.7 million for the same period in 2008. Net cash provided in the 2009 period consisted of the net proceeds from the initial closing of the Private Placement transaction. Net cash used in the 2008 period consisted primarily of equipment loan repayments of $0.7 million.

***Operating Capital and Capital Expenditure Requirements***

We expect to continue to incur substantial operating losses in the future. We will not receive any product revenue until a product candidate has been approved by the FDA, or similar regulatory agencies in other countries, and has been successfully commercialized. We need to raise substantial additional funds to complete the development and commercialization of voreloxin. Additionally, we may evaluate in-licensing and acquisition opportunities to gain access to new drugs or drug targets that would fit with our strategy. Any such transaction would likely increase our funding needs in the future.

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

- the rate of progress and cost of our clinical trials, need for additional clinical trials, and other development activities;
- the economic and other terms and timing of any licensing or partnering arrangement into which we may enter;
- the costs associated with building or accessing manufacturing and commercialization capabilities;
- the costs of acquiring or investing in businesses, product candidates and technologies, if any;
- the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights;
- the costs and timing of seeking and obtaining FDA and other regulatory approvals; and

the effect of competing technological and market developments.

Our independent registered accounting firm issued an opinion on the audited consolidated financial statements in our Annual Report on Form 10-K for the year ended December 31, 2008 that stated that our recurring operating losses raise substantial doubt about our ability to continue as a going concern.

We believe that currently available cash, cash equivalents and marketable securities, including the net proceeds of approximately $4.7 million from the second closing of the Private Placement completed on October 30, 2009, are sufficient to fund our operations until the end of the first quarter of 2010, and we will need to raise additional funds in the near term in order to sustain operations beyond that time.

Table of Contents

Until we can generate a sufficient amount of collaboration or product revenue to finance our cash requirements, which we may never do, we expect to finance future cash needs primarily through equity issuances (including the possible common equity closing in the Private Placement described above and subject to the satisfaction of the conditions described above), debt arrangements and/or a possible partnership or license of development and/or commercialization rights to voreloxin. We do not know whether additional funding will be available on acceptable terms, or at all.

Our failure to raise significant additional capital in the near term would require us to delay or reduce the scope of our voreloxin development program and limit our ability to continue operations. Any one of the foregoing would have a material adverse effect on our business, financial condition and results of operations.

**Contractual Obligations**

Our operating lease obligations as of September 30, 2009 relate to the leases for two facilities in South San Francisco, California. In December 2006, we leased approximately 15,000 square feet of office space in a building at 395 Oyster Point Boulevard. This lease expires in April 2013, subject to our option to extend the lease through February 2014. In October 2008, we leased approximately 5,500 square feet of laboratory space at 349 Allerton Avenue. This lease expires in October 2010 with our option to extend the lease through October 2012.

The lease for the facility located at 341 Oyster Point Boulevard, which formerly served as our headquarters and research and development facility, was terminated in the first quarter of 2009.

**Off-Balance Sheet Arrangements**

Since our inception, we have not had any off-balance sheet arrangements or relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or variable interest entities, which are typically established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

**Item 3. Quantitative and Qualitative Disclosures About Market Risk**

This item is not applicable to us as a smaller reporting company.

**Item 4T. Controls and Procedures**

***Evaluation of Disclosure Controls and Procedures***

We maintain disclosure controls and procedures, as such term is defined in SEC Exchange Act Rule 13a-15(e), that are designed to ensure that information required to be disclosed in our reports under the Securities Exchange Act of 1934, as amended, is recorded, processed, summarized and reported within the time periods specified in the SEC s rules and forms and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow for timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management is required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

As required by SEC Exchange Act Rule 13a-15(b), we carried out an evaluation, 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 on Form 10-Q. Based on the foregoing, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective at the reasonable assurance level as of the end of the period covered by this Quarterly Report on Form 10-Q.

***Changes in Internal Control over Financial Reporting***

There were no changes in our internal control over financial reporting during the quarter ended September 30, 2009 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

21

Table of Contents

## PART II. OTHER INFORMATION

### Item 1. Legal Proceedings

From time to time, we may be involved in routine legal proceedings, as well as demands, claims and threatened litigation, which arise in the normal course of our business. The ultimate outcome of any litigation is uncertain and unfavorable outcomes could have a negative impact on our results of operations and financial condition. Regardless of outcome, litigation can have an adverse impact on us because of the defense costs, diversion of management resources and other factors.

We believe there is no litigation pending that could, individually or in the aggregate, have a material adverse effect on our results of operations or financial condition.

### Item 1A. Risk Factors

Investing in our common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below and all information contained in this Quarterly Report on Form 10-Q before you decide to purchase our common stock. If any of the possible adverse events described below actually occurs, we may be unable to conduct our business as currently planned and our financial condition and operating results could be harmed. In addition, the trading price of our common stock could further decline due to the occurrence of any of these risks, and you may lose all or part of your investment.

Please see the language regarding forward-looking statements in Managements Discussion and Analysis of Financial Condition and Results of Operations.

**We have marked with an asterisk (*) those risk factors below that reflect substantive changes from the risk factors included in our Annual Report on Form 10-K filed with the Securities and Exchange Commission on April 3, 2009.**

**Risks Related to Our Business**

**** If we are unable to raise additional capital in the near term, we may not be able to continue to operate as a going concern.***

We will need to raise substantial additional capital to continue the development and commercialization of voreloxin. We will need to raise substantial additional capital in the near term to:

- fund clinical trials and seek regulatory approvals;
- continue and expand our development activities;
- hire additional development personnel;
- maintain, defend and expand the scope of our intellectual property portfolio;
- implement additional internal systems and infrastructure; and
- build or access manufacturing and commercialization capabilities.

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

- the rate of progress and cost of our clinical trials, need for additional clinical trials, and other development activities;
- the economic and other terms and timing of any licensing or other partnering arrangement into which we may enter;
- the costs associated with building or accessing manufacturing and commercialization capabilities;
- the costs of acquiring or investing in businesses, product candidates and technologies, if any;
- the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights;
- the costs and timing of seeking and obtaining FDA and other regulatory approvals; and
- the effect of competing technological and market developments.

On April 3, 2009, we closed the initial $10.0 million of a Private Placement of up to $43.5 million of our securities. On October 30, 2009, we completed the second closing of $5.0 million of the Private Placement. In the initial closing, $10.0 million of units were sold, resulting in net proceeds of $8.8 million, and in the second closing, $5.0 million of units were sold, resulting in net proceeds of approximately $4.7 million. The units consist of Series A convertible preferred stock and warrants to purchase common stock, and were sold to accredited investors, including certain members of management. An additional $28.5 million of common stock may be sold in a common equity closing, as approved by our stockholders on June 18, 2009. The common equity closing may be completed at our election prior to the earlier of December 31, 2010 or a qualifying alternative common stock financing, or upon the election of the holders of a majority of the Series A convertible preferred stock issued in the Private Placement prior to a date

Table of Contents

determined with reference to our cash and investments balance dropping below $2.5 million at certain future dates. If we elect to complete the common equity closing, it will be subject to the approval of the purchasers holding a majority of the Series A convertible preferred stock issued in the Private Placement and subject to a condition that we sell at least $28.5 million of common stock in the common equity closing. The common equity closing is entirely in the discretion of the investors in the Private Placement, and it is possible that they will not elect to complete that closing for reasons related to our business or other factors.

Our independent registered accounting firm issued an opinion on the audited consolidated financial statements in our Annual Report on Form 10-K for the year ended December 31, 2008 that stated that our recurring operating losses raise substantial doubt about our ability to continue as a going concern.

We believe that currently available cash, cash equivalents and marketable securities, including the net proceeds of approximately $4.7 million from the second closing of the Private Placement completed on October 30, 2009, are sufficient to fund our operations until the end of the first quarter of 2010, and we will need to raise additional funds in the near term in order to sustain operations beyond that time.

Until we can generate a sufficient amount of collaboration or product revenue to finance our cash requirements, which we may never do, we expect to finance future cash needs primarily through equity issuances (including the possible common equity closing in the Private Placement described above and subject to the satisfaction of the conditions described above), debt arrangements and/or a possible partnership or license of development and/or commercialization rights to voreloxin. We do not know whether additional funding will be available on acceptable terms, or at all.

We are currently conducting clinical trials of voreloxin in acute myeloid leukemia, or AML, and ovarian cancer. If we are not able to secure additional funding when needed, we may have to delay, reduce the scope of or eliminate one or more of our clinical trials, scale back our development program or conduct additional workforce or other expense reductions. For example, in June 2008, we announced that we reduced our workforce by approximately 60% and implemented a revised operating plan to focus our efforts on voreloxin, wind down our internal discovery research activities to streamline our operations and extend our financial resources.

Our failure to raise significant additional capital in the near term would require us to delay or reduce the scope of our voreloxin development program and limit our ability to continue our operations. Any one of the foregoing would have a material adverse effect on our business, financial condition and results of operations.

***Our independent registered public accountants have indicated that our recurring operating losses raise substantial doubt as to our ability to continue as a going concern.***

Our audited financial statements for the fiscal year ended December 31, 2008 and our unaudited financial statements for the nine months ended September 30, 2009 were prepared on a basis that our business would continue as a going concern in accordance with United States generally accepted accounting principles. This basis of presentation assumes that we will continue in operation for the foreseeable future and will be able to realize our assets and discharge our liabilities and commitments in the normal course of business. However, our independent registered public accountants have indicated in their audit report on our 2008 consolidated financial statements that our recurring operating losses raise substantial doubt as to our ability to continue as a going concern. We will be forced to delay or reduce the scope of our voreloxin development program and/or limit or cease our operations if are unable to raise additional funds to meet our working capital needs. However, we cannot guarantee that we will be able to obtain sufficient additional funds when needed or that such funds, if available, will be obtainable on terms satisfactory to us. In the event that these plans cannot be effectively realized, there can be no assurance that we will be able to continue as a going concern.

***Economic conditions may make it more difficult and costly to raise additional capital.***

Recently, there has been turmoil in the U.S. economy, which has led to reduced credit availability. Banks have tightened their lending standards and investors have been unwilling to buy certain corporate stock and bonds. If economic conditions continue to affect the capital markets, our ability to raise capital may be adversely affected.

***We have incurred losses since inception and anticipate that we will continue to incur losses for the foreseeable future. We may not ever achieve or sustain profitability.***

We are a clinical-stage biopharmaceutical company with a limited operating history as a public company. We are not profitable and have incurred losses in each year since our inception in 1998. Our net losses for the nine months ended September 30, 2009 and the years ended December 31, 2008 and 2007 were $36.2 million, $37.2 million and $38.8 million, respectively. As of September 30, 2009, we had an accumulated deficit of $352.4 million. We do not currently have any products that have been approved for marketing, and we continue to incur substantial development and general and administrative expenses related to our operations. We expect to continue to incur losses for the foreseeable future, and we expect these losses to increase significantly, especially upon commencing pivotal and Phase 3 clinical trials for voreloxin, as we conduct development of, and seek regulatory approvals for, voreloxin, and as we

commercialize any approved drugs. Our losses, among other things, have caused and will continue to cause our stockholders equity and working capital to decrease.

Table of Contents

Our business model had been based in part upon entering into strategic collaborations for the discovery and/or the development of some of our product candidates. To date, we have derived substantially all of our revenue from research collaboration agreements. The research phase for all of our revenue-generating collaboration agreements is completed. We do not expect to enter into any new collaboration agreement that will result in research revenue for us. We also do not anticipate that we will generate revenue from the sale of products for the foreseeable future. In the absence of additional sources of capital, which may not be available to us on acceptable terms, or at all, the development of voreloxin or future product candidates, if any, may be reduced in scope, delayed or terminated. If our product candidates or those of our collaborators fail in clinical trials or do not gain regulatory approval, or if our future products do not achieve market acceptance, we may never become profitable. Even if we achieve profitability in the future, we may not be able to sustain profitability in subsequent periods.

***The development of voreloxin could be halted or significantly delayed for various reasons; our clinical trials for voreloxin may not demonstrate safety or efficacy or lead to regulatory approval.***

Voreloxin is prone to the risks of failure inherent in the drug development process. We need to conduct significant additional preclinical studies and clinical trials before we can attempt to demonstrate that voreloxin is safe and effective to the satisfaction of the FDA and other regulatory authorities. Failure can occur at any stage of the development process, and successful preclinical studies and early clinical trials do not ensure that later clinical trials will be successful. A number of companies in the pharmaceutical industry have suffered significant setbacks in advanced clinical trials, even after obtaining promising results in earlier trials.

For example, we terminated two Phase 2 trials of voreloxin in small cell and non-small cell lung cancer. We recently ceased development of SNS-032 and terminated our related license agreement with BMS after completion of a Phase 1 trial as no responses demonstrating efficacy were observed in that trial. In addition, in our Phase 1 trial of SNS-314, a maximum tolerated dose was not established and no responses were observed. As a result, we have suspended further development of SNS-314 and plan to seek a partner or licensee to support further development in the future. If our clinical trials result in unacceptable toxicity or lack of efficacy, we may have to terminate them. If clinical trials are halted, or if they do not show that voreloxin is safe and effective in the indications for which we are seeking regulatory approval, our future growth will be limited and we may not have any other product candidates to develop.

We do not know whether our ongoing clinical trials or any other future clinical trials with voreloxin or any of our product candidates will be completed on schedule, or at all, or whether our ongoing or planned clinical trials will begin or progress on the time schedule we anticipate. The commencement of our planned clinical trials could be substantially delayed or prevented by several factors, including:

- delays or failures to raise additional funding;
- results of meetings with the FDA and/or other regulatory bodies;
- a limited number of, and competition for, suitable patients with particular types of cancer for enrollment in our clinical trials;
- delays or failures in obtaining regulatory approval to commence a clinical trial;
- delays or failures in obtaining sufficient clinical materials;
- delays or failures in obtaining approval from independent institutional review boards to conduct a clinical trial at prospective sites; or
- delays or failures in reaching acceptable clinical trial agreement terms or clinical trial protocols with prospective sites.

The completion of our clinical trials could also be substantially delayed or prevented by several factors, including:

delays or failures to raise additional funding;

slower than expected rates of patient recruitment and enrollment;

failure of patients to complete the clinical trial;

unforeseen safety issues;

lack of efficacy during clinical trials;

inability or unwillingness of patients or clinical investigators to follow our clinical trial protocols; and

inability to monitor patients adequately during or after treatment.

Table of Contents

Additionally, our clinical trials may be suspended or terminated at any time by the FDA, other regulatory authorities, ourselves or, in some cases, our collaboration partners. Any failure to complete or significant delay in completing, clinical trials for our product candidates could harm our financial results and the commercial prospects for our product candidates.

In March 2008, we informed the FDA of a stability observation in our voreloxin drug product. Specifically, visible particles were observed during stability studies of one of our voreloxin drug product lots. We have since identified a process impurity in the voreloxin active pharmaceutical ingredient, or API, that, when formulated into the packaged vial of the voreloxin drug product, can result in the formation of particles over time. As a response to these findings, we implemented a revised manufacturing process to attempt to control the impurity and thereby prevent particle formation. Two lots of voreloxin API manufactured using the revised manufacturing process have been formulated into drug product lots that have completed six to 12 months of stability testing without formation of particles. These drug product lots are currently being used in our clinical trials. It will take time to evaluate whether or not this revised manufacturing process for voreloxin API will be successful in stopping the formation of particles in these drug product lots over the longer term, and to evaluate whether or not such control of particle formation would also be reliably and consistently achieved in subsequent lots over the shorter or longer term. We provided an update on the results from our process optimization activities to the FDA in December 2008. If the change in manufacturing process does not adequately control the formation of visible particles, we will need to discuss other possibilities with the FDA, which could include temporary clinical hold until the issue has been resolved to their satisfaction.

***The failure to enroll patients for clinical trials may cause delays in developing voreloxin.***

We may encounter delays if we are unable to enroll enough patients to complete clinical trials of voreloxin. Patient enrollment depends on many factors, including the size of the patient population, the nature of the protocol, the proximity of patients to clinical sites and the eligibility criteria for the trial. Moreover, when one product candidate is evaluated in multiple clinical trials simultaneously, patient enrollment in ongoing trials can be adversely effected by negative results from completed trials. Voreloxin is being tested in patients with AML and ovarian cancer, which can be difficult patient populations to recruit.

***The results of preclinical studies and clinical trials may not satisfy the requirements of the FDA or other regulatory agencies.***

Prior to receiving approval to commercialize voreloxin or future product candidates, if any, in the United States or abroad, we and our collaboration partners must demonstrate with substantial evidence from well-controlled clinical trials, to the satisfaction of the FDA and other regulatory authorities, that such product candidates are safe and effective for their intended uses. The results from preclinical studies and clinical trials can be interpreted in different ways. Even if we and our collaboration partners believe the preclinical or clinical data are promising, such data may not be sufficient to support approval by the FDA and other regulatory authorities.

***We rely on third parties to manufacture our voreloxin drug product and its active pharmaceutical ingredient, and depend on a single supplier for the active pharmaceutical ingredient. There are a limited number of manufacturers that are capable of manufacturing voreloxin.***

We do not currently own or operate manufacturing facilities and lack the capability to manufacture voreloxin on a clinical or commercial scale. As a result, we rely on third parties to manufacture both the voreloxin API and the finished drug product. The API is classified as a toxic substance, limiting the available manufacturers. We believe that there are at least five contract manufacturers in North America with suitable capabilities for API manufacture, and at least four that can manufacture finished drug product. We currently have established relationships with only one manufacturer for API and two manufacturers for the finished drug product. If our third-party API manufacturer is unable or unwilling to produce voreloxin, we will need to establish a contract with another supplier. However, establishing a relationship with an alternative supplier would likely delay our ability to produce API for six to nine months, during which time we would rely on current inventory to supply our drug product manufacturing activities. We expect to continue to depend on third-party contract manufacturers for all our API and finished drug product needs in the foreseeable future.

Voreloxin requires precise, high quality manufacturing. A contract manufacturer is subject to ongoing periodic unannounced inspection by the FDA and corresponding state agencies to ensure strict compliance with current Good Manufacturing Practice, or cGMP, and other applicable government regulations and corresponding foreign standards. Our contract manufacturer s failure to achieve and maintain high manufacturing standards in compliance with cGMP regulations could result in manufacturing errors resulting in patient injury or death, product recalls or withdrawals, delays or interruptions of production or failures in product testing or delivery, delay or prevention of filing or approval of marketing applications for voreloxin, cost overruns or other problems that could seriously harm our business.

Table of Contents

To date, voreloxin has been manufactured in small quantities for preclinical studies and clinical trials. Prior to being approved for commercial sale, we will need to manufacture finished drug product in larger quantities. Significant scale-up of manufacturing will be accompanied by significant validation studies, which will be reviewed by the FDA prior to approval. If we are unable to successfully increase the manufacturing capacity for voreloxin, the regulatory approval or commercial launch may be delayed or there may be a shortage in commercial supply.

Any performance failure on the part of a contract manufacturer could delay clinical development or regulatory approval of our product candidates or commercialization of our future products, depriving us of potential product revenue and resulting in additional losses. For example, because we rely on a single supplier for voreloxin API, the failure of such supplier to have sufficient quantities of the API or to supply API on a timely basis or at all would negatively affect us. In addition, our dependence on a third party for manufacturing may adversely affect our future profit margins. Our ability to replace an existing manufacturer may be difficult because the number of potential manufacturers is limited and the FDA must approve any replacement manufacturer before it can be an approved commercial supplier. Such approval would require new testing and compliance inspections. It may be difficult or impossible for us to identify and engage a replacement manufacturer on acceptable terms in a timely manner, or at all.

***We expect to expand our clinical development capabilities, and any difficulties hiring or retaining key personnel or managing this growth could disrupt our operations.***

We are highly dependent on the principal members of our development staff. We expect to expand our clinical development capabilities by increasing expenditures in these areas, hiring additional employees and expanding the scope of our current operations. Future growth will require us to continue to implement and improve our managerial, operational and financial systems and continue to retain, recruit and train additional qualified personnel, which may impose a strain on our administrative and operational infrastructure. The competition for qualified personnel in the biopharmaceutical field is intense. We are highly dependent on our continued ability to attract, retain and motivate highly qualified management and specialized personnel required for clinical development. Due to our limited resources, we may not be able to effectively manage the expansion of our operations or recruit and train additional qualified personnel. If we are unable to retain key personnel or manage our growth effectively, we may not be able to implement our business plan.

***If we are sued for infringing intellectual property rights of third parties, litigation will be costly and time consuming and could prevent us from developing or commercializing voreloxin.***

Our commercial success depends on not infringing the patents and other proprietary rights of third parties and not breaching any collaboration or other agreements we have entered into with regard to our technologies and product candidates. If a third party asserts that we are using technology or compounds claimed in issued and unexpired patents owned or controlled by the third party, we may need to obtain a license, enter into litigation to challenge the validity of the patents or incur the risk of litigation in the event that a third party asserts that we infringe its patents.

If a third party asserts that we infringe its patents or other proprietary rights, we could face a number of challenges that could seriously harm our competitive position, including:

- infringement and other intellectual property claims, which would be costly and time consuming to litigate, whether or not the claims have merit, and which could delay the regulatory approval process and divert management s attention from our business;
- substantial damages for past infringement, which we may have to pay if a court determines that voreloxin or any future product candidates infringe a third party s patent or other proprietary rights;
- a court order prohibiting us from selling or licensing voreloxin or any future product candidates unless a third party licenses relevant patent or other proprietary rights to us, which it is not required to do; and
- if a license is available from a third party, we may have to pay substantial royalties or grant cross licenses to our patents or other proprietary rights.

***If our competitors develop and market products that are more effective, safer or less expensive than voreloxin, our commercial opportunities will be negatively impacted.***

The life sciences industry is highly competitive, and we face significant competition from many pharmaceutical, biopharmaceutical and biotechnology companies that are researching, developing and marketing products designed to address the treatment of cancer, including AML and ovarian cancer. Voreloxin is a small molecule therapeutic that will compete with other drugs and therapies that currently exist or are being developed. Many of our competitors have significantly greater financial, manufacturing, marketing and drug development resources than we do. Large pharmaceutical companies in particular have extensive experience in clinical testing and in obtaining regulatory approvals for, and marketing, drugs.

Table of Contents

We believe that our ability to successfully compete in the marketplace with voreloxin and any future product candidates, if any, will depend on, among other things:

- our ability to develop novel compounds with attractive pharmaceutical properties and to secure, protect and maintain intellectual property rights based on our innovations;
- the efficacy, safety and reliability of our product candidates;
- the speed at which we develop our product candidates;
- our ability to design and successfully execute appropriate clinical trials;
- our ability to maintain a good relationship with regulatory authorities;
- our ability to obtain, and the timing and scope of, regulatory approvals;
- our ability to manufacture and sell commercial quantities of future products to the market; and
- acceptance of future products by physicians and other healthcare providers.

Some of the current key competitors of voreloxin in AML include Genzyme Corporation s clofarabine, Eisai Corporation s decitabine, Celgene Corporation s azacitidine and Vion Pharmaceuticals, Inc. s laromustine, any or all of which could change the treatment paradigm of acute leukemia. Each of these compounds is further along in clinical development than is voreloxin. Liposomal doxorubicin and topotecan are current standards of care in platinum-resistant ovarian cancer patients, and we are aware that several of our competitors have initiated Phase 3 clinical trials for this indication.

We expect competition for voreloxin to increase as additional products are developed and approved to treat AML and ovarian cancer in various patient populations. If our competitors market products that are more effective, safer or less expensive than voreloxin or our other future products, if any, or that reach the market sooner we may not achieve commercial success or substantial market penetration. In addition, the biopharmaceutical industry is characterized by rapid change. Products developed by our competitors may render voreloxin or any future product candidates obsolete.

***We rely on third parties to conduct our clinical trials. If these third parties do not successfully carry out their contractual duties or meet expected deadlines, we may be unable to obtain regulatory approval for or commercialize voreloxin.***

We rely on third parties, such as contract research organizations, medical institutions, clinical investigators and contract laboratories, to conduct our planned and existing clinical trials for voreloxin. If the third parties conducting our clinical trials do not perform their contractual duties or obligations, do not meet expected deadlines or need to be replaced, or if the quality or accuracy of the clinical data they obtain is compromised due to the failure to adhere to our clinical trial protocols or for any other reason, we may need to enter into new arrangements with alternative third parties and our clinical trials may be extended, delayed or terminated or may need to be repeated, and we may not be able to obtain regulatory approval for or commercialize the product candidate being tested in such trials.

***Our proprietary rights may not adequately protect voreloxin or future product candidates, if any.***

Our commercial success will depend on our ability to obtain patents and maintain adequate protection for voreloxin and any future product candidates in the United States and other countries. We own, co-own or have rights to a significant number of issued U.S. and foreign patents and pending U.S. and foreign patent applications. We will be able to protect our proprietary rights from unauthorized use by third parties only to the extent that our proprietary technologies and future products are covered by valid and enforceable patents or are effectively maintained as trade secrets.

We apply for patents covering both our technologies and product candidates, as we deem appropriate. However, we may fail to apply for patents on important technologies or product candidates in a timely fashion, or at all. Our existing patents and any future patents we obtain may not be sufficiently broad to prevent others from practicing our technologies or from developing competing products and technologies. In addition, we generally do not exclusively control the patent prosecution of subject matter that we license to or from others. Accordingly, in such cases we are unable to exercise the same degree of control over this intellectual property as we would over our own. Moreover, the patent positions of biopharmaceutical companies are highly uncertain and involve complex legal and factual questions for which important legal principles remain unresolved. As a result, the validity and enforceability of patents cannot be predicted with certainty. In addition, we do not know whether:

- we, our licensors or our collaboration partners were the first to make the inventions covered by each of our issued patents and pending patent applications;
- we, our licensors or our collaboration partners were the first to file patent applications for these inventions;
- others will independently develop similar or alternative technologies or duplicate any of our technologies;
- any of our or our licensors pending patent applications will result in issued patents;

Table of Contents

- any of our, our licensors or our collaboration partners patents will be valid or enforceable;
- any patents issued to us, our licensors or our collaboration partners will provide us with any competitive advantages, or will be challenged by third parties;
- we will develop additional proprietary technologies that are patentable; or
- the patents of others will have an adverse effect on our business.

We also rely on trade secrets to protect some of our technology, especially where we do not believe patent protection is appropriate or obtainable. However, trade secrets are difficult to maintain. While we use reasonable efforts to protect our trade secrets, our or our collaboration partners employees, consultants, contractors or scientific and other advisors, or those of our licensors, may unintentionally or willfully disclose our proprietary information to competitors. Enforcement of claims that a third party has illegally obtained and is using trade secrets is expensive, time consuming and uncertain. In addition, foreign courts are sometimes less willing than U.S. courts to protect trade secrets. If our competitors independently develop equivalent knowledge, methods and know-how, we would not be able to assert our trade secrets against them and our business could be harmed.

***The composition of matter patents covering voreloxin are due to expire in 2015. Even if voreloxin is approved by the FDA, we may not be able to recover our development costs prior to the expiration of these patents.***

The voreloxin API composition of matter is covered by U.S. patent 5,817,669 and its counterpart patents and patent applications in 43 foreign jurisdictions. U.S. patent 5,817,669 is due to expire in October 2015, and most of its foreign counterparts are due to expire in June 2015. We do not know whether patent term extensions and data exclusivity periods will be available in the future. Voreloxin must undergo extensive clinical trials before it can be approved by the FDA. We do not know when, if ever, voreloxin will be approved by the FDA. Even if voreloxin is approved by the FDA in the future, we may not have sufficient time to commercialize our voreloxin product to enable us to recover our development costs prior to the expiration of the U.S. and foreign patents covering voreloxin. Our obligation to pay royalties to Dainippon, the company from which we licensed voreloxin, may extend beyond the patent expiration, which would further erode the profitability of this product.

***Our workforce reductions in August 2007, June 2008, March 2009 and any future workforce and expense reductions may have an adverse impact on our internal programs, our ability to hire and retain key personnel and may be distracting to management.***

In August 2007, we conducted a workforce reduction of approximately 25% in order to reduce expenses. In June 2008, we conducted a second workforce reduction of approximately 60% to focus on the development of voreloxin. In March 2009, in conjunction with the closing of the Private Placement, we conducted an additional workforce reduction of six employees. In light of our continued need for funding and expense control, we may be required to implement further workforce and expense reductions in the future. Further workforce and expense reductions could result in reduced progress on our internal programs. In addition, employees, whether or not directly affected by a reduction, may seek future employment with our business partners or competitors. Although our employees are required to sign a confidentiality agreement at the time of hire, the confidential nature of certain proprietary information may not be maintained in the course of any such future employment. Further, we believe that our future success will depend in large part upon our ability to attract and retain highly skilled personnel. We may have difficulty retaining and attracting such personnel as a result of a perceived risk of future workforce and expense reductions. In addition, the implementation of expense reduction programs may result in the diversion of efforts of our executive management team and other key employees, which could adversely affect our business.

***We may be subject to damages resulting from claims that we or our employees have wrongfully used or disclosed alleged trade secrets of our employees former employers.***

Many of our employees were previously employed at biotechnology or pharmaceutical companies, including our competitors or potential competitors. We may be subject to claims that we or our employees have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers. Litigation may be necessary to defend against these claims. If we fail in defending such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. A loss of key personnel or the work product of current or former personnel could hamper or prevent our ability to commercialize voreloxin, which could severely harm our business. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management.

***We currently have limited marketing staff and no sales or distribution organization. If we are unable to develop a sales and marketing and distribution capability on our own or through collaborations with marketing partners, we will not be successful in commercializing voreloxin.***

We currently have no sales or distribution capabilities and limited marketing staff. We intend to establish our own sales and marketing organization with technical expertise and supporting distribution capabilities to commercialize voreloxin in North

Table of Contents

America, which will be expensive and time consuming. Any failure or delay in the development of our internal sales, marketing and distribution capabilities would adversely impact the commercialization of these products. We plan to collaborate with third parties that have direct sales forces and established distribution systems to commercialize voreloxin. To the extent that we enter into co-promotion or other licensing arrangements, our product revenue is likely to be lower than if we marketed or sold voreloxin directly. In addition, any revenue we receive will depend upon the efforts of third parties, which may not be successful and are only partially within our control. If we are unable to enter into such arrangements on acceptable terms or at all, we may not be able to successfully commercialize voreloxin. If we are not successful in commercializing voreloxin or our future product candidates, if any, either on our own or through collaborations with one or more third parties, our future product revenue will suffer and we may incur significant additional losses.

***We depend on various consultants and advisors for the success and continuation of development efforts.***

We work extensively with various consultants and advisors, who provide advice and or services in various business and development functions, including clinical development, operations and strategy, regulatory matters, accounting and finance. The potential success of our drug development programs depends, in part, on continued collaborations with certain of these consultants and advisors. Our consultants and advisors are not our employees and may have commitments and obligations to other entities that may limit their availability to us. We do not know if we will be able to maintain such relationships or that such consultants and advisors will not enter into other arrangements with competitors, any of which could have a detrimental impact on our development objectives and our business.

***If conflicts of interest arise between our collaboration partners and us, any of them may act in their self interest, which may be adverse to our interests.***

If a conflict of interest arises between us and one or more of our collaboration partners, they may act in their own self interest or otherwise in a way that is not in the interest of our company or our stockholders. Our collaboration partners are conducting multiple product development efforts within the disease area that is the subject of collaboration with our company. In some of our collaborations, we have agreed not to conduct, independently or with any third party, any research that is competitive with the research conducted under our collaborations. Our collaboration partners, however, may develop, either alone or with others, products in related fields that are competitive with the product candidates that are the subject of these collaborations. Competing products, either developed by our collaboration partners or to which our collaboration partners have rights, may result in their withdrawal of support for a product candidate covered by the collaboration agreement.

If one or more of our collaboration partners were to breach or terminate their collaboration agreements with us or otherwise fail to perform their obligations thereunder in a timely manner, the preclinical or clinical development or commercialization of the affected product candidates could be delayed or terminated. We do not know whether our collaboration partners will pursue alternative technologies or develop alternative product candidates, either on their own or in collaboration with others, including our competitors, as a means for developing treatments for the diseases targeted by collaboration agreements with our company.

***Our facilities are located near known earthquake fault zones, and the occurrence of an earthquake or other catastrophic disaster could cause damage to our facilities and equipment, which could require us to cease or curtail operations.***

Our facilities are located in the San Francisco Bay Area near known earthquake fault zones and are vulnerable to significant damage from earthquakes. We are also vulnerable to damage from other types of disasters, including fires, floods, power loss, communications failures and similar events. If any disaster were to occur, our ability to operate our business at our facilities may be seriously or completely impaired and our data could be lost or destroyed.

***Compliance with changing regulation of corporate governance and public disclosure may result in additional expenses.***

Changing laws, regulations and standards relating to corporate governance and public disclosure may create uncertainty regarding compliance matters. New or changed laws, regulations and standards are subject to varying interpretations in many cases. As a result, their application in practice may evolve over time. We are committed to maintaining high standards of corporate governance and public disclosure. Complying with evolving interpretations of new or changed legal requirements may cause us to incur higher costs as we revise current practices, policies and procedures, and may divert management time and attention from potential revenue-generating activities to compliance matters. If our efforts to comply with new or changed laws, regulations and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to practice, our reputation may also be harmed. Further, our board members, chief executive officer and chief financial officer could face an increased risk of personal liability in connection with the performance of their duties. As a result, we may have difficulty attracting and retaining qualified board members and executive officers, which could harm our business.

29

Table of Contents

***Global credit and financial market conditions could negatively impact the value of our portfolio of cash equivalents or short-term investments and our ability to meet our financing objectives.***

Our cash and cash equivalents are maintained in highly liquid investments with remaining maturities of 90 days or less at the time of purchase. Our marketable securities consist primarily of investments in readily marketable debt securities with remaining maturities of more than 90 days at the time of purchase. While, as of the date of this filing, we are not aware of any downgrades, material losses, or other significant deterioration in the fair value of our cash equivalents or marketable securities, no assurance can be given that further deterioration in conditions of the global credit and financial markets would not negatively impact our current or future portfolio of cash equivalents or marketable securities or our ability to meet our liquidity needs.

**Risks Related to Our Industry**

***The regulatory approval process is expensive, time consuming and uncertain and may prevent us from obtaining approval for the commercialization of voreloxin.***

The research, testing, manufacturing, selling and marketing of product candidates are subject to extensive regulation by the FDA and other regulatory authorities in the United States and other countries, which regulations differ from country to country. Neither we nor our collaboration partners are permitted to market our product candidates in the United States until we receive approval of a new drug application or NDA, from the FDA, or in any other country without the equivalent marketing approval from such country. We have not received marketing approval for voreloxin. None of our collaboration partners have had a product resulting from our collaboration enter clinical trials. In addition, failure to comply with FDA and other applicable U.S. and foreign regulatory requirements may subject us to administrative or judicially imposed sanctions, including warning letters, civil and criminal penalties, injunctions, product seizure or detention, product recalls, total or partial suspension of production, and refusal to approve pending NDAs, supplements to approved NDAs or their foreign equivalents.

Regulatory approval of an NDA or NDA supplement or a foreign equivalent is not guaranteed, and the approval process is expensive and may take several years. Furthermore, the development process for oncology products may take longer than in other therapeutic areas. Regulatory authorities have substantial discretion in the drug approval process. Despite the time and expense exerted, failure can occur at any stage, and we could encounter problems that cause us to abandon clinical trials or to repeat or perform additional preclinical studies and clinical trials. The number of preclinical studies and clinical trials that will be required for marketing approval varies depending on the drug candidate, the disease or condition that the drug candidate is designed to address, and the regulations applicable to any particular drug candidate. While we plan to commence a pivotal clinical trial of voreloxin for the treatment of AML in 2010, we may not be able to reach agreement with the FDA on a development plan that would support potential regulatory approval based on the results of the clinical trials that we anticipate.

The FDA or a foreign regulatory authority can delay, limit or deny approval of a drug candidate for many reasons, including:

- the drug candidate may not be deemed safe or effective;
- regulatory officials may not find the data from preclinical studies and clinical trials sufficient;
- the FDA or foreign regulatory authority might not approve our or our third-party manufacturer s processes or facilities; or
- the FDA or foreign regulatory authority may change its approval policies or adopt new regulations.

***We may be subject to costly claims related to our clinical trials and may not be able to obtain adequate insurance.***

Because we conduct clinical trials in humans, we face the risk that the use of voreloxin or future product candidates, if any, will result in adverse side effects. We cannot predict the possible harms or side effects that may result from our clinical trials. Although we have clinical trial liability insurance for up to $10.0 million in aggregate, our insurance may be insufficient to cover any such events. We do not know whether we will be able to continue to obtain clinical trial coverage on acceptable terms, or at all. We may not have sufficient resources to pay for any liabilities resulting from a claim excluded from, or beyond the limit of, our insurance coverage. There is also a risk that third parties that we have agreed to indemnify could incur liability. Any litigation arising from our clinical trials, even if we were ultimately successful, would consume substantial amounts of our financial and managerial resources and may create adverse publicity.

***Even if we receive regulatory approval to sell voreloxin, the market may not be receptive to voreloxin.***

Even if voreloxin obtains regulatory approval, it may not gain market acceptance among physicians, patients, healthcare payors and/or the medical community. We believe that the degree of market acceptance will depend on a number of factors, including:

- timing of market introduction of competitive products;
- efficacy of our product;

Table of Contents

- prevalence and severity of any side effects;
- potential advantages or disadvantages over alternative treatments;
- strength of marketing and distribution support;
- price of voreloxin, both in absolute terms and relative to alternative treatments; and
- availability of reimbursement from health maintenance organizations and other third-party payors.

For example, the potential toxicity of single and repeated doses of voreloxin has been explored in a number of animal studies that suggest the dose-limiting toxicities in humans receiving voreloxin may be similar to some of those observed with approved cytotoxic agents, including reversible toxicity to bone marrow cells, the gastrointestinal system and other systems with rapidly dividing cells. In our Phase 1 and Phase 2 clinical trials of voreloxin, we have witnessed the following side effects, irrespective of causality, ranging from mild to more severe: lowered white blood cell count that may lead to a serious or possibly life-threatening infection, hair loss, mouth sores, fatigue, nausea with or without vomiting, lowered platelet count, which may lead to an increase in bruising or bleeding, lowered red blood cell count (anemia), weakness, tiredness, shortness of breath, diarrhea and intestinal blockage.

If voreloxin fails to achieve market acceptance, due to unacceptable side effects or any other reasons, we may not be able to generate significant revenue or to achieve or sustain profitability.

***Even if we receive regulatory approval for voreloxin, we will be subject to ongoing FDA and other regulatory obligations and continued regulatory review, which may result in significant additional expense and limit our ability to commercialize voreloxin.***

Any regulatory approvals that we or our collaboration partners receive for voreloxin or our future product candidates, if any, may also be subject to limitations on the indicated uses for which the product may be marketed or contain requirements for potentially costly post-marketing studies. In addition, even if approved, the labeling, packaging, adverse event reporting, storage, advertising, promotion and recordkeeping for any product will be subject to extensive and ongoing regulatory requirements. The subsequent discovery of previously unknown problems with a product, including adverse events of unanticipated severity or frequency, may result in restrictions on the marketing of the product, and could include withdrawal of the product from the market.

Regulatory policies may change and additional government regulations may be enacted that could prevent or delay regulatory approval of our product candidates. We cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative action, either in the United States or abroad. If we are not able to maintain regulatory compliance, we might not be permitted to market voreloxin or our future products and we may not achieve or sustain profitability.

***The coverage and reimbursement status of newly approved drugs is uncertain, and failure to obtain adequate coverage and reimbursement could limit our ability to market voreloxin and decrease our ability to generate revenue.***

There is significant uncertainty related to the third party coverage and reimbursement of newly approved drugs both nationally and internationally. The commercial success of voreloxin and our future products, if any, in both domestic and international markets depends on whether third-party coverage and reimbursement is available for the ordering of our future products by the medical profession for use by their patients. Medicare, Medicaid, health maintenance organizations and other third-party payors are increasingly attempting to manage healthcare costs by limiting both coverage and the level of reimbursement of new drugs and, as a result, they may not cover or provide adequate payment for our future products. These payors may not view our future products as cost-effective, and reimbursement may not be available to consumers or may not be sufficient to allow our future products to be marketed on a competitive basis. Likewise, legislative or regulatory efforts to control or reduce healthcare costs or reform government healthcare programs could result in lower prices or rejection of our future products. Changes in coverage and reimbursement policies or healthcare cost containment initiatives that limit or restrict reimbursement for our future products may reduce any future product revenue.

***Failure to obtain regulatory approval in foreign jurisdictions will prevent us from marketing voreloxin abroad.***

We intend to market voreloxin in international markets. In order to market voreloxin in Canada, the European Union and many other foreign jurisdictions, we must obtain separate regulatory approvals. We have had limited interactions with foreign regulatory authorities, and the approval procedures vary among countries and can involve additional testing at significant cost. The time required to obtain approval may differ from that required to obtain FDA approval. Approval by the FDA does not ensure approval by regulatory

authorities in other countries, and approval by one foreign regulatory authority does not ensure approval by regulatory authorities in other foreign countries or by the FDA. The foreign regulatory approval processes may include all of the risks associated with obtaining FDA approval. We may not obtain foreign regulatory approvals on a timely basis, if at all. We may not be able to file for regulatory approvals and may not receive necessary approvals to commercialize voreloxin or any other future products in any market.

Table of Contents

***Foreign governments often impose strict price controls, which may adversely affect our future profitability.***

We intend to seek approval to market voreloxin in both the United States and foreign jurisdictions. If we obtain approval in one or more foreign jurisdictions, we will be subject to rules and regulations in those jurisdictions relating to voreloxin. In some foreign countries, particularly in the European Union, prescription drug pricing is subject to governmental control. In these countries, pricing negotiations with governmental authorities can take considerable time after the receipt of marketing approval for a drug candidate. To obtain reimbursement or pricing approval in some countries, we may be required to conduct a clinical trial that compares the cost-effectiveness of voreloxin to other available therapies. If reimbursement of voreloxin is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, we may be unable to achieve or sustain profitability.

***We may incur significant costs complying with environmental laws and regulations, and failure to comply with these laws and regulations could expose us to significant liabilities.***

We use hazardous chemicals and radioactive and biological materials in our business and are subject to a variety of federal, state, regional and local laws and regulations governing the use, generation, manufacture, storage, handling and disposal of these materials. Although we believe our safety procedures for handling and disposing of these materials and waste products comply with these laws and regulations, we cannot eliminate the risk of accidental injury or contamination from the use, storage, handling or disposal of hazardous materials. In the event of contamination or injury, we could be held liable for any resulting damages, and any liability could significantly exceed our insurance coverage, which is limited to $0.1 million for pollution cleanup, and we are uninsured for third-party contamination injury.

**Risks Related to Our Common Stock**

***If we fail to regain compliance with the continued listing requirements of The NASDAQ Capital Market, our common stock may be delisted and the price of our common stock and our ability to access the capital markets could be negatively impacted.***

On August 3, 2009, we transferred the listing of our common stock from The NASDAQ Global Market to The NASDAQ Capital Market. To maintain a listing on The NASDAQ Capital Market, we are required to meet certain requirements, including a minimum closing bid price of $1.00 per share, a market value of publicly held shares (excluding shares held by our executive officers, directors and 10% or more stockholders) of at least $1.0 million, and stockholders equity of at least $2.5 million.

We announced on September 18, 2009 that we had received a letter, dated September 16, 2009, from the Listing Qualifications Department of The NASDAQ Stock Market notifying us that, for the last 30 consecutive business days, the bid price for our common stock had closed below the minimum $1.00 per share requirement for continued inclusion on The NASDAQ Capital Market pursuant to NASDAQ Listing Rules. In accordance with NASDAQ Listing Rules, we have been given 180 calendar days, or until March 15, 2010, to regain compliance. To regain compliance, the bid price of our common stock must close at or above $1.00 for at least 10 consecutive business days at any time prior to March 15, 2010, unless the Listing Qualifications Department exercises its discretion to extend this 10-day period. If we do not demonstrate compliance by March 15, 2010, but meet The NASDAQ Capital Market initial inclusion criteria, except for the $1.00 per share bid price requirement, we will be granted an additional 180 calendar day compliance period. If we do not regain compliance with the Rule by March 15, 2010 and are not eligible for an additional compliance period at that time, the Listing Qualifications Department will provide written notification to us that our common stock may be delisted. At that time, we may appeal the delisting determination to a NASDAQ Listing Qualifications Panel, or Panel. Our common stock would remain listed pending the Panel s decision. There can be no assurance that, if we do appeal the delisting determination to the Panel, that such appeal would be successful.

Additionally, as of September 30, 2009, our stockholders equity was below the $2.5 million minimum requirement for a continued listing. On October 30, 2009, we completed the second closing of $5.0 million of the Private Placement, resulting in net proceeds of approximately $4.7 million, which increased our stockholders equity above the $2.5 million minimum requirement as of this date. However, there is no assurance that our stockholders equity will remain above this level in the future, and if it does not, we expect to receive a further letter from NASDAQ notifying us that we do not comply with the $2.5 million minimum stockholders equity requirement for a continued listing. We currently expect that stockholders equity will be below $2.5 million on December 31, 2009 unless additional equity is raised or our net income is greater than currently anticipated.

If we fail to regain compliance with the minimum bid price requirement, or fail to meet the minimum stockholder s equity or any other listing requirement in the future, our common stock could be delisted.

If we are delisted, we would expect our common stock to be traded in the over-the-counter market, which could adversely affect the liquidity of our common stock. Additionally, we could face significant material adverse consequences, including:

a limited availability of market quotations for our common stock;

a reduced amount of news and analyst coverage for us;

a decreased ability to issue additional securities or obtain additional financing in the future;

Table of Contents

- reduced liquidity for our stockholders;
- potential loss of confidence by collaboration partners and employees; and
- loss of institutional investor interest and fewer business development opportunities.

***The closing of the Private Placement has resulted and could result in further substantial dilution to our stockholders. If we sell shares of our common stock in future financings or other arrangements, stockholders may experience additional dilution.***

We need to raise substantial additional funds, through the Private Placement and otherwise, to continue our operations, fund additional clinical trials of voreloxin and potentially commercialize voreloxin. We plan to continue to finance our operations with a combination of equity issuances (including the possible common equity closing in the Private Placement and subject to the satisfaction of the conditions described above), debt arrangements and a possible partnership or license of development and/or commercialization rights to voreloxin. Any issuance of convertible debt securities, preferred stock or common stock may be at a discount from the then-current trading price of our common stock. If we issue additional common or preferred stock or securities convertible into common stock, our stockholders will experience additional dilution, which may be significant.

The closing of the Private Placement has resulted and could result in further substantial dilution to our stockholders. Following the initial closing, the holders of our common stock prior thereto held approximately 54.3% of our outstanding common stock (assuming conversion of the Series A convertible preferred stock at the current conversion price), and would hold approximately 37.3% if the warrants issued at the initial closing are exercised in full. Following the second closing for $5.0 million of units, the holders of our common stock prior to the Private Placement hold approximately 44.2% of our outstanding common stock (assuming conversion of the Series A convertible preferred stock at the current conversion price), and would hold approximately 28.4% if the warrants issued at the initial and second closings are exercised in full. Following the common equity closing, if completed, the holders of our common stock prior to the Private Placement would hold approximately 19.0% of our outstanding common stock (assuming conversion of the Series A convertible preferred stock at the current conversion price), and would hold approximately 15.3% if the warrants issued at the initial and second closings are exercised in full.

***We may not have the sufficient funding to distribute capital to our common stockholders or continue our business upon a change of control event.***

If a change of control (as that term is defined in the certificate of designation related to the convertible Series A convertible preferred stock), which includes a sale or merger of Sunesis or a significant partnering transaction, occurs, the holders of the Series A convertible preferred stock would be entitled to receive, before any proceeds are distributed to common stockholders, three times the amount that the investors in the Private Placement paid for the units (i.e. three times the total of $15.0 million invested in the initial and second closings, or $45.0 million). We would not have any capital to distribute to our common stockholders if the consideration received in a transaction that triggers a change of control event under the certificate of designation is less than this liquidation preference amount. Further, if the investors elect to treat a partnering transaction as a change of control, entitling the holders of the convertible preferred to the liquidation preference described above, the holders of the Series A convertible preferred stock would be entitled to the full amount of any payments made by a corporate partner by surrendering the Series A convertible preferred stock, up to the liquidation preference amount, which may leave us with insufficient resources to continue our business. This right of the holders of the Series A convertible preferred stock may also impair our ability to enter into a significant partnering transaction since a partner would be willing to enter into a partnering agreement with us only if we have or had access to sufficient capital to satisfy our obligations under the partnering agreement. Whether or not we would have sufficient resources would depend on the terms of the partnering agreement and other cash resources available to us at that time.

***We cannot take fundamental actions related to Sunesis without the consent of a majority of the holders of the convertible preferred stock issued in the Private Placement.***

For as long as our convertible Series A convertible preferred stock is outstanding, the holders of the Series A convertible preferred stock issued or to be issued in the second closing, if this ever occurs, of the Private Placement, will have a number of rights, including the right to approve any sale of the company, any significant partnering transaction, any issuance of debt or convertible preferred and, unless certain conditions are met, any issuance of common stock other than the second closing and the common equity closing contemplated by the Private Placement. It is possible that the interests of the holders of the Series A convertible preferred stock and the holders of common stock may be inconsistent, resulting in the inability to obtain the consent of the holders of Series A convertible preferred stock to matters that may be in the best interests of the common stockholders.

Table of Contents

***The price of our common stock may continue to be volatile, and the value of an investment in our common stock may decline.***

In the nine months ended September 30, 2009, our common stock traded as low as $0.05 and as high as $0.90, and in 2008, traded as low as $0.18 and as high as $2.10. Factors that could cause continued volatility in the market price of our common stock include, but are not limited to:

- failure to raise additional capital to carry through with our clinical development plans and current and future operations;
- results from, and any delays in or discontinuance of, ongoing and planned clinical trials for voreloxin;
- announcements of FDA non-approval of voreloxin, delays in filing regulatory documents with the FDA or other regulatory agencies, or delays in the review process by the FDA or other foreign regulatory agencies;
- announcements relating to our collaborations with Biogen Idec, J&JPRD and Merck;
- announcements relating to restructuring and other operational changes;
- delays in the commercialization of voreloxin or our future products, if any;
- market conditions in the pharmaceutical, biopharmaceutical and biotechnology sectors;
- issuance of new or changed securities analysts reports or recommendations;
- actual and anticipated fluctuations in our quarterly operating results;
- developments or disputes concerning our intellectual property or other proprietary rights;
- introduction of new products by our competitors;
- issues in manufacturing voreloxin drug substance or drug product, or future products, if any;
- market acceptance of voreloxin or our future products, if any;
- deviations in our operating results from the estimates of analysts;
- third-party healthcare reimbursement policies;

- FDA or other U.S. or foreign regulatory actions affecting us or our industry;
- litigation or public concern about the safety of voreloxin or future products, if any;
- failure to develop or sustain an active and liquid trading market for our common stock;
- sales of our common stock by our officers, directors or significant stockholders; and
- additions or departures of key personnel.

In addition, the stock markets in general, and the markets for pharmaceutical, biopharmaceutical and biotechnology stocks in particular, have experienced extreme volatility that has often been unrelated to the operating performance of the issuer. These broad market fluctuations may adversely affect the trading price or liquidity of our common stock. In the past, when the market price of a stock has been volatile, holders of that stock have sometimes instituted securities class action litigation against the issuer. If any of our stockholders were to bring such a lawsuit against us, we could incur substantial costs defending the lawsuit and the attention of our management would be diverted from the operation of our business.

***Provisions of our charter documents or Delaware law could delay or prevent an acquisition of our company, even if the acquisition would be beneficial to our stockholders, and could make it more difficult to change management.***

Provisions of our amended and restated certificate of incorporation and amended and restated bylaws may discourage, delay or prevent a merger, acquisition or other change in control that stockholders might otherwise consider favorable, including transactions in which stockholders might otherwise receive a premium for their shares. In addition, these provisions may frustrate or prevent any attempt by our stockholders to replace or remove our current management by making it more difficult to replace or remove our board of directors. These provisions include:

- a classified board of directors so that not all directors are elected at one time;
- a prohibition on stockholder action through written consent;
- limitations on our stockholders ability to call special meetings of stockholders;
- an advance notice requirement for stockholder proposals and nominations; and
- the authority of our board of directors to issue preferred stock with such terms as our board of directors may determine.

Table of Contents

In addition, Delaware law prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder, generally a person who, together with its affiliates, owns or within the last three years has owned 15% of our voting stock, for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner. Accordingly, Delaware law may discourage, delay or prevent a change in control of our company.

Provisions in our charter documents and provisions of Delaware law could limit the price that investors are willing to pay in the future for shares of our common stock.

***The ownership of our capital stock is highly concentrated, and your interests may conflict with the interests of our existing stockholders.***

Our executive officers and directors and their affiliates beneficially owned approximately 38.9% of our outstanding capital stock as of September 30, 2009, assuming the conversion of the Series A convertible preferred stock and the exercise in full of the warrants to purchase common stock held by these stockholders as of such date. As of the second closing of the Private Placement on October 30, 2009, our executive officers and directors and their affiliates beneficially own approximately 43.5% of our outstanding capital stock, assuming the conversion of the Series A convertible preferred stock and the exercise in full of the warrants to purchase common stock held by these stockholders as of such date. Accordingly, these stockholders, acting as a group, could have significant influence over the outcome of corporate actions requiring stockholder approval, including the election of directors, any merger, consolidation or sale of all or substantially all of our assets or any other significant corporate transaction. The significant concentration of stock ownership may adversely affect the trading price of our common stock due to investors perception that conflicts of interest may exist or arise.

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

We have never declared or paid cash dividends on our capital stock. We do not anticipate paying any cash dividends on our capital stock in the foreseeable future. We currently intend to retain all available funds and any future earnings to fund the development and growth of our business. As a result, capital appreciation, if any, of our common stock will be our stockholders sole source of gain for the foreseeable future.

***We are at risk of securities class action litigation.***

In the past, securities class action litigation has often been brought against a company following a decline in the market price of its securities. This risk is especially relevant for us because biotechnology companies have experienced greater than average stock price volatility in recent years. If we faced such litigation, it could result in substantial costs and a diversion of management s attention and resources, which could harm our business.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

None.

**Item 3. Defaults Upon Senior Securities**

None.

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

None.

**Item 5. Other Information**

None.

**Item 6. Exhibits**

A list of exhibits filed with this report or incorporated herein by reference is found in the Exhibit Index immediately following the signature page of this report.

Table of Contents

**SIGNATURE**

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.

**SUNESIS PHARMACEUTICALS, INC.**
*(Registrant)*

Date: November 16, 2009

/s/ ERIC H. BJERKHOLT
**Eric H. Bjerkholt**

**Senior Vice President, Corporate Development and Finance,**

**Chief Financial Officer and Corporate Secretary**

36

Table of Contents

**Exhibit Index**

| Exhibit Number | Description |
|---|---|
| 3.1 | Amended and Restated Certificate of Incorporation of the Registrant (Delaware) (incorporated by reference to Exhibit 3.1 to the Registrant s Annual Report on Form 10-K/A filed on May 23, 2007). |
| 3.2 | Amended and Restated Bylaws of the Registrant (incorporated by reference to Exhibit 3.2 to the Company s Annual Report on Form 10K-A on Form S-1 filed on May 23, 2007). |
| 3.3 | Certificate of Designation of the Series A Preferred Stock of the Registrant (incorporated by reference to Exhibit 3.3 to the Registrant s Current Report on Form 8-K filed on April 3, 2009). |
| 4.1 | Reference is made to Exhibits 3.1, 3.2, 3.3 and 3.4. |
| 4.2 | Investor Rights Agreement, dated April 3, 2009, by and among the Registrant and the purchasers identified on the signature pages thereto (incorporated by reference to Exhibit 4.1 to the Registrant s Current Report on Form 8-K filed on April 3, 2009). |
| 31.1 | Certification of Chief Executive Officer as required by Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended. |
| 31.2 | Certification of Chief Financial Officer as required by Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended. |
| 32.1 # | Certification of Chief Executive Officer as required by Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended. |
| 32.2 # | Certification of Chief Financial Officer as required by Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended. |

Filed herewith.

* Management contract, compensatory plan or arrangement.

\# In accordance with Item 601(b)(32)(ii) of Regulation S-K and SEC Release Nos. 33-8238 and 34-47986, Final Rule; Management s Reports on Internal Control over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports, the Certifications furnished in Exhibits 32.1 and 32.2 hereto are deemed to accompany this Form 10-Q and will not be filed for purposes of Section 18 of the Exchange Act. Such certifications will not be deemed incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.