

OSCIENT PHARMACEUTICALS CORP

Form S-4/A

April 18, 2007

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As filed with the Securities and Exchange Commission on April 18, 2007

(S-4) Registration No. 333-141308/ (S-1) Registration No. 333-141309

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**UNITED STATES**

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**AMENDMENT NO. 2 TO**

**FORM S-4**

**REGISTRATION STATEMENT**

*UNDER THE SECURITIES ACT OF 1933*

(with respect to the 3.50% Convertible Senior Notes due 2011 being offered in the exchange offers)

**AMENDMENT NO. 2 TO**

**FORM S-1**

**REGISTRATION STATEMENT**

*UNDER THE SECURITIES ACT OF 1933*

(with respect to the 3.50% Convertible Senior Notes due 2011 being offered for cash)

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**Oscient Pharmaceuticals Corporation**

(Exact name of registrant as specified in its charter)

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Massachusetts  
(State or other jurisdiction of

2834  
(Primary Industrial

04-2297484  
(I.R.S. Employer

# Edgar Filing: OSCIENT PHARMACEUTICALS CORP - Form S-4/A

(Incorporation or organization)

(Classification Code Number)  
1000 Winter Street, Suite 2200

(Identification No.)

Waltham, Massachusetts 02451

(781) 398-2300

(Address, including ZIP code, and telephone number, including area code, of registrant's principal executive offices)

---

Philippe M. Maitre

Oscient Pharmaceuticals Corporation

1000 Winter Street, Suite 2200

Waltham, Massachusetts 02451

(781) 398-2300

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

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Oscient Pharmaceuticals  
Corporation

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(617) 951-7000

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

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. "

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, as amended (Securities Act), please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If this Form is a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(c) under the Securities Act, check the following box. "

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

**Calculation of Registration Fee**

<b>Title of Each Class of Securities to be Registered</b>	<b>Amount to be Registered</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee</b>
3.50% Convertible Senior Notes due 2011	\$129,682,298 <sup>(1)</sup>	\$129,682,298 <sup>(1)</sup>	\$3,981.25 <sup>(2)</sup>
3.50% Convertible Senior Notes due 2011 <sup>(3)</sup>	\$50,000,000	\$50,000,000	\$1,535.00 <sup>(2)</sup>
Common Stock, \$0.10 par value per share <sup>(4)</sup>	1,875,000	\$25,312,500	\$777.10
<b>Total Registration Fee</b>			<b>\$6,293.35<sup>(5)</sup></b>

<sup>(1)</sup>Pursuant to Rule 457(f) under the Securities Act, this amount is the market value as of March 9, 2007 of the aggregate principal amount outstanding of 3 1/2% Senior Convertible Notes due 2011 and the book value of the aggregate principal amount outstanding of 5% Convertible Promissory Notes due 2009 that may be received by the Registrant from tendering holders in the exchange offers and also includes the amount of new notes that the Registrant may issue to tendering holders of its 5% Convertible Promissory Notes due 2009 in exchange for accrued and unpaid interest on such tendered notes.

<sup>(2)</sup>The registration fee has been calculated pursuant to Rule 457(f) under the Securities Act.

<sup>(3)</sup>We are registering an additional amount of 3.50% Convertible Senior Notes due 2011 to be publicly offered for cash and for the potential payment of fees to the dealer manager.

<sup>(4)</sup>The shares of common stock that are being registered include 1,875,000 shares that could be issued if the Registrant elects under the terms of the new notes to make payments of additional interest in common shares instead of cash. Also includes an indeterminate number of shares of common stock

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issuable upon conversion of the new notes registered hereby, which shares are not subject to an additional fee pursuant to Rule 457(i) of the Securities Act.

Pursuant to Rule 416 under the Securities Act, such number of shares of common stock registered hereby shall include an indeterminate number of shares of common stock that may be issued in connection with stock splits, stock dividends, recapitalizations or similar events.

<sup>(5)</sup> \$5,608.89 of this registration fee was paid concurrently with the filing of the Registration Statement on March 15, 2007, which fee was offset against a fee previously paid in connection with the Issuer's Registration Statement on Form S-3 filed September 30, 2005 (File No. 333-128735). The remaining \$684.46 is being paid concurrently with the filing of Amendment No. 2 to the Form S-1 Registration Statement (File No. 333-141309).

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such date as the SEC acting pursuant to Section 8(a) may determine.**

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

Subject to Completion, dated April 18, 2007

## OSCIENT PHARMACEUTICALS

### Exchange Offers

**3.50% Convertible Senior Notes due 2011 for its**

**3 1/2% Senior Convertible Notes due 2011 and**

**5% Convertible Promissory Notes due 2009**

**and the Sale of up to \$50,000,000**

**3.50% Convertible Senior Notes due 2011**

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If you elect to participate in the exchange offers, for each \$1,000 principal amount of our 3 1/2% Senior Convertible Notes due 2011, or existing 2011 notes, you tender, you will receive from us \$1,000 principal amount of our 3.50% Convertible Senior Notes due 2011, or new notes. For each \$1,000 principal amount of our 5% Convertible Promissory Notes due 2009, or existing 2009 notes, you tender, you will receive from us \$1,300 principal amount of our 3.50% Convertible Senior Notes due 2011. We refer to the existing 2009 notes and the existing 2011 notes, together, as the existing notes. The new notes will be issued in denominations of \$1,000 and any integral multiples of \$1,000.

You may also give an indication of your interest in participating in the new money offering in which we are offering up to \$50,000,000 principal amount of additional 3.50% Convertible Senior Notes due 2011. We anticipate that the new notes will be issued at between 72.5% and 77.5% of the principal amount (plus accrued interest from , 2007). The new notes will be issued in denominations of \$1,000 and any integral multiples of \$1,000.

The exchange offers are open to all holders of our 3 1/2% Senior Convertible Notes due 2011 and our 5% Convertible Promissory Notes due 2009.

The exchange offers will expire at 11:59 p.m., New York City time, on April 25, 2007.

Our common shares are traded on the NASDAQ Global Market under the symbol OSCI. On April 17, 2007, the last reported sale price of our common shares on the NASDAQ Global Market was \$7.74 per share. The new notes will not be listed on the NASDAQ Global Market or any national securities exchange.

We mailed a preliminary prospectus and letters of transmittal on March 29, 2007.

See **Risk Factors** beginning on page 22 for a discussion of factors you should consider before deciding to participate in the exchange offers or purchase additional 3.50% Convertible Senior Notes due 2011 in the new money offering.

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We have retained Georgeson Inc. as our information agent to assist you in connection with the exchange offers. You may call Georgeson Inc. at (888) 549-6633, to receive additional documents and to ask questions.

### New Money Offering

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	Per Note	Total
Public Offering Price <sup>(1)</sup>	%	\$
Placement Agent's Commission <sup>(2)</sup>	%	\$
Proceeds to the Company <sup>(3)</sup>	%	\$

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<sup>(1)</sup>Plus interest, if any, accrued from the date of issuance.

<sup>(2)</sup>Assumes all of the new notes offered in the new money offering are sold. See Plan of Distribution.

<sup>(3)</sup>Before deducting offering expenses payable by us in connection with the exchange offers and new money offering and estimated to be \$1.1 million.

The new money offering is being offered to the public on a best efforts basis. There is no minimum purchase requirement and no arrangement to place the proceeds in an escrow, trust or similar account.

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or passed upon the adequacy or accuracy of this prospectus. Any representation to the contrary is a criminal offense.**

**The dealer manager for the exchange offers and the placement agent for the new money offering:**

**Piper Jaffray**

The date of this Prospectus is , 2007

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

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**WHERE YOU CAN FIND MORE INFORMATION**

We have filed registration statements on Forms S-1 and S-4 with the Securities and Exchange Commission, or SEC, for the exchange offers and the new money offering. This prospectus does not include all of the information contained in the registration statements. You should refer to the registration statements and their exhibits for additional information. Although we have disclosed the material terms of any contracts, agreements, or other documents that are referenced in this prospectus, you should refer to the exhibits attached to the registration statements for copies of the actual contracts, agreements, or other documents.

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



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**PROSPECTUS SUMMARY**

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

**Our Company**

***Overview***

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

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

Additionally, we have a novel, late-stage antibiotic candidate, Ramoplanin, under investigation for the treatment of *Clostridium difficile*-associated disease. Having completed Phase II clinical trials and obtained a Special Protocol Assessment from the FDA for the Phase III program, we are currently exploring partnering and other strategic opportunities for the continued development and commercialization of Ramoplanin.

Our business growth strategy is to identify new products to acquire, in-license or co-promote for the U.S. marketplace in order to leverage our existing commercial infrastructure.

**ANTARA**

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

In 2006, total U.S. sales of fenofibrate products were approximately \$1.5 billion, a 25% increase over 2005 sales. The fenofibrate market has experienced a 35% average annual growth in sales since 2002. Since we began marketing ANTARA on August 18, 2006 through December 31, 2006, net sales of the drug totaled \$16.8 million.

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

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

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

***FACTIVE***

In April 2003, FACTIVE, a fluoroquinolone antibiotic, was approved by the FDA for the five-day treatment of AECB (acute bacterial exacerbations of chronic bronchitis) and seven-day treatment of CAP (community acquired pneumonia) of mild to moderate severity. We license the rights to gemifloxacin, the active ingredient in FACTIVE tablets, from LG Life Sciences. We launched FACTIVE in the U.S. in September 2004. In 2006, FACTIVE generated \$21.5 million in net revenues.

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

Community-acquired pneumonia, or CAP, is a common and serious illness in the U.S. Of the 4 to 5 million reported cases per year, nearly 1 million cases occur in patients over the age of 65. CAP cases result in approximately 10 million physician visits and as many as 1 million hospitalizations annually. Antibiotics are the mainstay of treatment for most patients with pneumonia, and where possible, antibiotic treatment should be specific to the pathogen responsible for the infection and individualized.

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

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FACTIVE is currently approved for CAP as a seven-day course of the therapy and we have completed a clinical trial designed to demonstrate that a five-day course of FACTIVE for the treatment of mild to moderate CAP is as effective as the seven-day course of treatment. On September 21, 2006, we received an approvable letter from the FDA for our supplemental New Drug Application (sNDA) seeking approval for the five-day treatment of CAP with FACTIVE tablets. In accordance with the letter, we provided clarification and additional interpretation regarding certain data included in the application to assist the FDA in its evaluation and the FDA has accepted our response as complete. We expect to receive an action letter from the FDA by May 1, 2007. The receipt of the approvable letter does not assure ultimate approval of our sNDA for the five-day treatment of CAP with FACTIVE tablets.

***Ramoplanin***

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

Based on the results we observed in our Phase II trial, we had discussions with the FDA on the design of a Phase III program. We subsequently agreed with the FDA to a Special Protocol Assessment regarding the specific components of a Phase III program that, if completed successfully, would support regulatory approval of Ramoplanin for the indication. Given our strategic decision to concentrate our financial resources on building our primary care business in the U.S., we are currently seeking to out-license, co-develop or sell our rights to Ramoplanin to a partner.

***Financial***

In 2006, our revenues increased to \$46.2 million from \$23.6 million in 2005, reflecting in part the acquisition of ANTARA in August 2006. As of December 31, 2006, we had approximately \$44.8 million in cash, cash equivalents, short-term and long-term marketable securities and restricted cash.

In financial guidance provided to investors, we have stated that we expect total revenue for fiscal year 2007 to increase by at least 80% from fiscal year 2006 revenue levels, with approximately two-thirds of those revenues from ANTARA. We anticipate net cash utilization of approximately \$40 million in 2007, and net cash utilization of between \$20 million and \$24 million in 2008. This guidance does not include any cash impact of the acquisition and marketing of a third product, which remains one of our top business development goals for 2007.

In the fourth quarter of 2007, we expect to reach a sustainable commercial breakeven point. We use the term commercial breakeven to describe the point at which our revenues from product sales exceed our cost of goods sold (excluding amortization of intangibles), selling and marketing expenses and royalty obligations. Once we have achieved the commercial breakeven point, our sales and marketing organization becomes a net generator of cash and begins to cover other expenses as we progress toward total company profitability.

The statements of financial guidance set forth above are forward-looking statements and are based on management's assumptions of our future financial performance. Some of the important risk factors that could cause our actual results to differ materially from those expressed in our forward-looking

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statements are included under the heading "Risk Factors" in this prospectus. We encourage you to read these risks carefully. We caution investors not to place significant reliance on the forward-looking statements contained in this prospectus.

***Recent Developments***

On April 11, 2007, we announced preliminary revenue for the first quarter of 2007. We expect to record total revenues of approximately \$23 million in the first quarter 2007, compared to \$11 million in total revenues in the first quarter of 2006, prior to the acquisition of ANTARA.

During the first quarter of 2007, we expect to record approximately \$12 million in revenue from ANTARA® (fenofibrate) capsules and approximately \$11 million in revenues from FACTIVE® (gemifloxacin mesylate) tablets. These results reflect a greater emphasis by our sales force on FACTIVE during the winter respiratory tract infection season.

We expect our total cash, including restricted cash and cash equivalents, as of March 31, 2007, to be approximately \$38 million, reflecting a cash position decrease during the first quarter of approximately \$7 million.

***Corporate Information***

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

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

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**The Exchange Offers**

We have summarized the terms of the exchange offers in this section. Before you decide whether to tender your existing notes in the applicable offer, you should read the detailed description of the offers under **The Exchange Offers** and of the new notes under **Description of New Notes** for further information. The exchange offer for the existing 2011 notes and the exchange offer for the existing 2009 notes are separate exchange offers. We may close, extend or terminate one exchange offer without closing, extending or terminating the other.

**Terms of the exchange offers** *Existing 2011 notes*

We are offering to exchange new notes for up to an aggregate principal amount of \$152,750,000 of existing 2011 notes. We are offering to exchange \$1,000 principal amount of new notes for each \$1,000 principal amount of existing 2011 notes. New notes will be issued in denominations of \$1,000 and any integral multiple of \$1,000. You may tender all, some or none of your existing 2011 notes.

*Existing 2009 notes*

We are offering to exchange new notes for up to an aggregate principal amount of \$22,310,000 of existing 2009 notes and accrued and unpaid interest on the existing 2009 notes. We are offering to exchange \$1,300 principal amount of new notes for each \$1,000 principal amount of existing 2009 notes. New notes will be issued in denominations of \$1,000 and any integral multiple of \$1,000. Any fractional new notes will be settled in cash. You may tender all, some or none of your existing 2009 notes. In connection with the exchange offer, we will be seeking consent from holders of existing 2009 notes to amend the agreement governing the existing 2009 notes to remove certain restrictive covenants. Holders who tender existing 2009 notes will be deemed to consent to the amendments, as described in the applicable letter of transmittal and consent.

**Deciding whether to participate in the exchange offers**

Neither we nor our officers or directors make any recommendation as to whether you should tender or refrain from tendering all or any portion of your existing notes in the exchange offers. Further, we have not authorized anyone to make any such recommendation. You must make your own decision whether to tender your existing notes in the exchange offers and, if so, the aggregate amount of existing notes to tender. You should read this prospectus and the applicable letter of transmittal and consult with your advisors, if any, to make that decision based on your own financial position and requirements. In particular, you should know that there are certain significant adverse tax consequences that could result from the exchange of existing notes or the holding, conversion or other disposition of the new notes. Investors considering the exchange of existing notes for new notes should discuss the tax

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consequences with their own tax advisors. See Certain U.S. Federal Income Tax Considerations. The exchange offers are separate and distinct from the new money offering and whether or not you indicate an interest to participate in the new money offering will have no effect on your ability to participate in the exchange offers.

**Expiration date; extension; termination**

Each exchange offer and withdrawal rights will expire at 11:59 p.m., New York City time, on April 25, 2007, or any subsequent time or date to which the applicable exchange offer is extended. We may extend the expiration date or amend any of the terms or conditions of the exchange offers for any reason. In the case of an extension, we will issue a press release or other public announcement no later than 9:00 a.m., New York City time, on the next business day after the previously scheduled expiration date. If we extend the expiration date, you must tender your existing notes prior to the date identified in the press release or public announcement if you wish to participate in the applicable exchange offer. In the case of an amendment, we will issue a press release or other public announcement. We have the right to:

extend the expiration date of the exchange offers and retain all tendered existing notes, subject to your right to withdraw your tendered existing notes; and

waive any condition or otherwise amend any of the terms or conditions of the exchange offers in any respect, other than the condition that the registration statement relating to the exchange offers be declared effective.

**Conditions to the exchange offers**

The exchange offers are subject to the registration statement, and any post-effective amendment to the registration statement covering the new notes, being effective under the Securities Act of 1933, as amended, or the Securities Act. The exchange offers are also subject to customary conditions, which we may waive. The satisfaction or waiver of the conditions, other than those that relate to governmental or regulatory conditions necessary to the consummation of the exchange offers, will be determined as of April 25, 2007, the expiration date of each exchange offer.

**Withdrawal rights**

You may withdraw a tender of your existing notes at any time before the applicable exchange offer expires by delivering a written notice of withdrawal to U.S. Bank National Association, the exchange agent, before the expiration date. If you change your mind, you may retender your existing notes by again following the exchange offer procedures before the applicable

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exchange offer expires. In addition, if we have not accepted your tendered existing notes for exchange, you may withdraw your existing notes at any time after May 25, 2007.

**Procedures for tendering outstanding existing notes** *Existing 2011 Notes* If you hold existing 2011 notes through a broker, dealer, commercial bank, trust company or other nominee, you should contact that person promptly if you wish to tender your existing 2011 notes. Tenders of your existing 2011 notes will be effected by book-entry transfers through The Depository Trust Company.

If you hold existing 2011 notes through a broker, dealer, commercial bank, trust company or other nominee, you may also comply with the procedures for guaranteed delivery.

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

*Existing 2009 notes*

If you wish to tender your existing 2009 notes, you should deliver the certificates representing such existing 2009 notes and a completed and signed letter of transmittal and consent together with certificates representing such existing 2009 notes to the exchange agent.

Please do not send certificates representing existing 2009 notes or letters of transmittal and consents to us. You should send letters of transmittal and consents to the exchange agent at its office as indicated under *The Exchange Offers* at the end of this prospectus or in the letter of transmittal and consent. The exchange agent can answer your questions regarding how to tender your existing 2009 notes.

**Accrued interest on existing notes** *Existing 2011 notes*

Existing 2011 note holders will receive accrued and unpaid interest on any existing 2011 notes accepted in the exchange offer. The amount of accrued interest will be calculated from the last interest payment date up to, but excluding, the closing date of the exchange offer and will be paid in cash. Accordingly, there will not be a gap in the interest accrual on existing 2011 notes tendered in the exchange offer.

*Existing 2009 notes*

Existing 2009 note holders will receive additional new notes in exchange for accrued and unpaid interest on any existing 2009 notes accepted in the exchange offer. The amount of accrued interest will be calculated from the original issuance date up to,

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but excluding, the closing date of the exchange offer. Accordingly, there will not be a gap in the interest accrual on existing 2009 notes tendered in the exchange offer.

<b>Interest on new notes</b>	Interest on the new notes will be payable at a rate of 3.50% per year, payable semiannually on April 15 and October 15 of each year, commencing October 15, 2007. Interest on the new notes will begin to accrue from the closing date of the applicable exchange offer.
<b>Trading</b>	Our common shares are traded on the NASDAQ Global Market under the symbol OSCI.
<b>Information agent</b>	Georgeson Inc.
<b>Exchange agent</b>	U.S. Bank National Association
<b>Dealer manager</b>	Piper Jaffray & Co.
<b>Risk factors</b>	You should carefully consider the matters described under Risk Factors, as well as other information set forth in this prospectus and in the applicable letter of transmittal.
<b>Consequences of not exchanging existing notes</b> <i>Existing 2011 Notes</i>	The liquidity and trading market for existing 2011 notes not tendered in the exchange offer could be adversely affected to the extent a significant amount of the existing 2011 notes are tendered and accepted in the exchange offer.
<i>Existing 2009 Notes</i>	The liquidity for existing 2009 notes not tendered in the exchange offer could be adversely affected to the extent a significant amount of the existing 2009 notes are tendered and accepted in the exchange offer. In addition, if we receive tenders and consents from holders of a majority of our existing 2009 notes, the agreement governing the existing 2009 notes will be amended to remove certain restrictive covenants. In that case, existing 2009 notes not tendered in the exchange offer would no longer have the benefit of such restrictive covenants.
<b>Tax consequences</b>	See Certain U.S. Federal Income Tax Considerations for a description of certain material U.S. federal income tax consequences associated with the exchange offers and the new money offering.
<b>Ratio of earnings to fixed charges</b>	Earnings were insufficient to cover fixed charges by \$78.5 million, \$88.6 million, \$93.3 million, \$29.8 million and \$34.0 million for the years ended December 31, 2006, 2005, 2004, 2003 and 2002, respectively.

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**The New Money Offering**

We have summarized the terms of the new money offer in this section. The new money offering is separate and distinct from the exchange offers. Before you decide to invest in additional new notes in the new money offering, you should read the detailed description of the offer under [The New Money Offering](#) and of the new notes under [Description of New Notes](#) for further information.

<b>Terms of the new money offering</b>	We are offering to the public up to \$50,000,000 aggregate principal amount of new notes for cash.
<b>Offering price</b>	We anticipate that the new notes will be issued at between 72.5% and 77.5% of the principal amount (plus accrued interest from _____, 2007).
<b>Use of proceeds</b>	We expect to use the net proceeds from the new money offering for general corporate purposes, which may include expanding our commercial and marketing efforts, increasing working capital, funding capital and clinical developments, acquiring new products or technologies, and making other investments.
<b>Placement agent</b>	Piper Jaffray & Co.
<b>Indications of interest</b>	If you are interested in participating in the new money offering, you should provide your indication of interest directly to Piper Jaffray at (415) 984-5141, attention Simon Manning or Brian Sullivan. All sales of the new notes will be made at the discretion of the placement agent in consultation with us. You need not participate in the exchange offers in order to deliver an indication of interest to participate in the new money offering.
<b>Allocation of new notes in the new money offering</b>	Neither we nor the placement agent may confirm an allocation on any indication of interest or offer to buy new notes until the registration statement relating to the new money offering, of which this prospectus is a part, has become effective. You may withdraw or change your indication of interest or offer to buy new notes, without obligation or commitment of any kind, at any time prior to being contacted by the placement agent, informed of your allocation and asked to confirm your allocation or withdraw your indication of interest after the effective date of the registration statement of which this prospectus is a part. You will not be obligated to buy new notes by indicating an interest or offering to buy new notes. Even if you indicate your interest in buying new notes, you may not receive any allocation of new notes or your allocation may be for an amount substantially less than the amount of your indication of interest. Allocations of new notes may not be proportional to the total indications of interest that are made in the new money offering. Allocation decisions will be at the discretion of the placement agent, in consultation with the Company, who will

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consider various factors such as, but not limited to, investment interest in us, investment objectives, and investor diversification. Neither we nor the placement agent will consider whether or not you are a holder of the existing notes or participate in the exchange offers as a relevant factor when determining the allocation of the new notes in the new money offering.

**Deciding whether to participate in the new money offering**

Neither we nor our officers or directors make any recommendation as to whether you should indicate your interest in participating in the new money offering. Further, we have not authorized anyone to make any such recommendation. You must make your own decision whether to indicate your interest in purchasing new notes, and if so, whether to purchase the total amount of new notes that may be allocated to you. You should read this prospectus and consult with your advisors, if any, to make that decision based on your own financial position and requirements. In particular, you should know that there are certain significant adverse tax consequences that could result from the holding, conversion or other disposition of the new notes. Investors considering the purchase of new notes in the new money offering should discuss the tax consequences with their own tax advisors. See Certain U.S. Federal Income Tax Considerations.

**Table of Contents****Comparison of New Notes and Existing Notes**

The following is a brief summary of the terms of the new notes and the existing notes. For a more detailed description of the new notes and existing notes, see Description of New Notes, Description of Existing 2009 Notes, and Description of Existing 2011 Notes.

	<b>New Notes</b>	<b>Existing 2011 Notes</b>	<b>Existing 2009 Notes</b>
<b>Securities</b>	Up to \$236,792,000 in principal amount of our 3.50% Convertible Senior Notes due 2011, \$186,792,000 of which is being offered in the exchange offers and up to \$50,000,000 of which is being separately offered in the new money offering.	As of the date of this prospectus, there is \$152,750,000 in principal amount of our existing 3 1/2% Senior Convertible Notes due 2011 outstanding.	As of the date of this prospectus, there is \$22,310,000 in principal amount of our existing 5% Convertible Promissory Notes due 2009 outstanding. As of May 1, 2007, the expected closing date of the exchange offers, there will be approximately \$3,876,000 in accrued interest on our existing 5% Convertible Promissory Notes due 2009.
<b>Issuer</b>	Oscient Pharmaceuticals Corporation, a Massachusetts corporation.	Oscient Pharmaceuticals Corporation, a Massachusetts corporation.	Oscient Pharmaceuticals Corporation, a Massachusetts corporation.
<b>Maturity</b>	April 15, 2011.	April 15, 2011.	February 6, 2009.
<b>Interest</b>	Interest on the new notes will be payable at a rate of 3.50% per year, payable semiannually on April 15 and October 15 of each year, commencing October 15, 2007.  We will pay interest on the new notes only in cash.	Interest on the existing 2011 notes is payable at a rate of 3.50% per year, payable semiannually on April 15 and October 15 of each year.  Interest on the existing 2011 notes is payable only in cash.	Interest on the existing 2009 notes is payable at a rate of 5.00% per year, compounded semiannually, to be paid on the maturity date and on any accelerated maturity.  Accrued interest is payable in cash on the maturity date, redemption at our option or the option of the holders upon a liquidation event and any accelerated maturity.

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	New Notes	Existing 2011 Notes	Existing 2009 Notes
<b>Conversion rights</b>	<p>The new notes will be convertible, at the option of the holder, at anytime on or prior to maturity, into shares of our common stock at an initial conversion rate of 74.0741 shares per \$1,000 principal amount of new notes (equal to a conversion price of approximately \$13.50 per share). The conversion rate will be subject to adjustment.</p> <p>There will be no limitation as to the principal amount of the new notes you can convert at any time.</p>	<p>The existing 2011 notes are convertible, at the option of the holder, at anytime on or prior to maturity, into shares of our common stock at a conversion rate of 18.8196 shares per \$1,000 principal amount of existing 2011 notes (equal to a conversion price of approximately \$53.14 per share).</p> <p>There is no limitation as to the principal amount of existing 2011 notes you can convert at any time.</p>	<p>The existing 2009 notes are convertible, at the option of the holder, at anytime on or prior to maturity, into shares of our common stock at a conversion rate of 18.8202 shares per \$1,000 principal amount of existing 2009 notes (equal to a conversion price of approximately \$53.13 per share).</p> <p>There is no limitation as to the principal amount of existing 2009 notes you can convert at any time.</p>
<b>Auto-conversion</b>	<p>We will have the right to automatically convert some or all of the new notes (an automatic conversion ) on or prior to the maturity date if the closing price of our common shares has exceeded 130% of the conversion price then in effect for at least 20 trading days during any consecutive 30 trading day period (an automatic conversion price ).</p>	<p>None.</p>	<p>We have the right to automatically convert some or all of the existing 2009 notes on or prior to the maturity date if the average of the closing sale prices for any 15 consecutive trading days is greater than 150% of the conversion price then in effect.</p>

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	<b>New Notes</b>	<b>Existing 2011 Notes</b>	<b>Existing 2009 Notes</b>
<b>Additional interest upon automatic conversion</b>	<p>If we elect to automatically convert some or all of your new notes on or prior to May 10, 2010, we will pay additional interest to holders of new notes being converted. This additional interest will be equal to the amount of interest that would have been payable on the new notes from the last day interest was paid on the new notes, through and including May 10, 2010. Additional interest, if any, will be paid in cash or, solely at our option, in our common shares or a combination of cash and our common shares. If we pay additional interest upon an automatic conversion with our common shares, such shares will be valued at 90% of the automatic conversion price that is in effect at that time.</p>	<p>None.</p>	<p>None.</p>

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	New Notes	Existing 2011 Notes	Existing 2009 Notes
<b>Additional interest upon voluntary conversion</b>	If you elect to voluntarily convert some or all of your new notes on or prior to May 10, 2010, we will pay additional interest to holders of new notes being converted. This additional interest will be equal to the amount of interest that would have been payable on the new notes from the last day interest was paid on the new notes, through and including May 10, 2010. Additional interest, if any, will be paid in cash or, solely at our option, in our common shares or a combination of cash and our common shares. If we pay additional interest upon a voluntary conversion with our common shares, such shares will be valued at the conversion price then in effect.		
<b>Repurchase or redemption at holder's option upon a fundamental change</b>	You may require us to repurchase your new notes upon a fundamental change, as described in Description of New Notes, in cash at 100% of the principal amount, plus accrued and unpaid interest, to but excluding the fundamental change repurchase date.	You may require us to repurchase your existing 2011 notes upon a fundamental change, as described in Description of Existing 2011 Notes, in cash at 100% of the principal amount, plus accrued and unpaid interest, to but excluding the fundamental change repurchase date.	You may require us to redeem your existing 2009 notes upon the occurrence of a liquidation event, as described in Description of Existing 2009 Notes, at a price equal to 100% of the principal amount, plus accrued and unpaid interest, to but excluding the liquidation event repurchase date.

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	<b>New Notes</b>	<b>Existing 2011 Notes</b>	<b>Existing 2009 Notes</b>
<b>Conversion rate adjustment upon a fundamental change</b>	<p>In the event of a fundamental change, we may be required to increase the conversion rate for the new notes surrendered for conversion in connection with the fundamental change. See Description of New Notes Conversion rate adjustment on a fundamental change.</p> <p>In no event will the conversion rate exceed 113.0741 shares per \$1,000 principal amount of new notes (subject to adjustment).</p>	<p>None, although in connection with a fundamental change, we may be required to pay a make-whole premium to the holders of existing 2011 notes. See Description of Existing 2011 Notes Repurchase of the existing 2011 notes at the option of holders upon a fundamental change.</p>	<p>None.</p>
<b>Optional redemption</b>	<p>Prior to May 10, 2010, the new notes are not redeemable.</p> <p>On or after May 10, 2010, we may redeem some or all of the new notes for cash at 100% of the principal amount of the new notes to be redeemed, plus accrued and unpaid interest, to but excluding the redemption date.</p>	<p>Prior to May 10, 2010, the existing 2011 notes are not redeemable.</p> <p>On or after May 10, 2010, we may redeem some or all of the existing 2011 notes for cash at 100% of the principal amount of the existing 2011 notes to be redeemed, plus accrued and unpaid interest, to but excluding the redemption date.</p>	<p>None.</p>

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	New Notes	Existing 2011 Notes	Existing 2009 Notes
<b>Ranking</b>	The new notes will be unsecured and unsubordinated obligations and will rank equal in priority with all of our existing and future unsecured and unsubordinated indebtedness, including any existing notes that remain outstanding after the expiration of the exchange offers and senior in right of payment to all of our future subordinated indebtedness. The new notes will effectively rank junior to any of our secured indebtedness and any of our indebtedness that is guaranteed by our subsidiaries. The new notes will be structurally subordinated to all liabilities of our subsidiaries.	The existing 2011 notes are unsecured and unsubordinated obligations and rank equal in priority with all of our existing and future unsecured and unsubordinated indebtedness, and senior in right of payment to all of our future subordinated indebtedness. The existing 2011 notes effectively rank junior to any of our secured indebtedness and any of our indebtedness that is guaranteed by our subsidiaries. The existing 2011 notes are structurally subordinated to all liabilities of our subsidiaries.	The existing 2009 notes are unsecured and unsubordinated obligations and rank equal in priority with all of our existing and future unsecured and unsubordinated indebtedness, and senior in right of payment to all of our future subordinated indebtedness. The existing 2009 notes effectively rank junior to any of our secured indebtedness and any of our indebtedness that is guaranteed by our subsidiaries. The existing 2009 notes are structurally subordinated to all liabilities of our subsidiaries.
<b>Limitations on indebtedness and liens</b>	None.	None.	There are certain limitations on our ability to incur indebtedness and liens. See Description of Existing 2009 Notes Certain Covenants. However, in connection with the exchange offer for the existing 2009 notes, we will be seeking consent from holders of existing 2009 notes to amend the agreement governing the existing 2009 notes to remove such limitations.



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	New Notes	Existing 2011 Notes	Existing 2009 Notes
Extension of cure period for event of default for late SEC reports	<p>If we fail to timely file our annual or quarterly reports with the SEC in accordance with the new notes indenture or to comply with the requirements of Section 314(a)(1) of the Trust Indenture Act, which we refer to as a filing failure, we may elect to pay the holders an extension fee which will accrue at a rate of 1.00% per annum of the aggregate principal amount of new notes then outstanding. The extension fee will accrue on the new notes from the date that is 60 days after notice of the filing failure is given by holders to, but excluding, the earlier of the date on which we make the filings that gave rise to the filing failure and the date that is 180 days after the date such notice was given by holders.</p>	None.	None.

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**Questions and Answers About the Exchange Offers and New Money Offering**

**Why is the Company doing the exchange offers and the new money offering?**

We believe that the exchange offers and new money offering are important components of our plan to re-calibrate our capital structure in order to better execute our business strategy. If the exchange offers and new money offer are fully subscribed, they will:

position us to be able to convert a substantial portion of our debt into common shares if the closing price of our common shares exceeds 130% of the conversion price; and

provide us with additional capital for general corporate purposes, which may include expanding our commercial and marketing efforts, increasing working capital, funding capital expenditures and clinical development, acquiring new products or technologies, and making other investments.

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

If you tender your existing notes in the exchange offers you will receive new notes with the following characteristics:

For each \$1,000 in principal amount of your existing 2011 notes exchanged, you will receive \$1,000 in principal amount of our new notes;

For each \$1,000 in principal amount of your existing 2009 notes exchanged, you will receive \$1,300 in principal amount of our new notes;

Interest will accrue on the new notes at a rate of 3.50% per year;

Each \$1,000 in principal amount of new notes will be convertible at an initial conversion rate of 74.0741 shares per \$1,000 principal amount of notes (equal to a conversion price of approximately \$13.50 per share), subject to adjustment, at any time prior to the close of business on the maturity date;

After May 10, 2010, we may redeem some or all of the notes at 100% of the principal amount of the notes to be redeemed, plus accrued and unpaid interest.

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

**Are the exchange offers conditioned upon a minimum number of existing 2011 notes or existing 2009 notes being tendered or any minimum number of new notes being purchased for cash in the new money offering?**

No, neither of the exchange offers are conditioned upon any minimum number of either the existing 2011 notes or the existing 2009 notes being tendered or any minimum number of new notes being purchased for cash. We may close, extend or terminate one exchange offer without closing, extending or terminating the other. The exchange offers are subject to customary conditions, which we may waive.

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

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Unless we extend the expiration date, the exchange offers will expire on April 25, 2007 at 11:59 p.m., New York City time. The exchange agent must receive all required documents and instructions on or before April 25, 2007 or you will not be able to participate in the exchange offers.

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**What happens if I do not participate in the exchange offers?**

The decision of a holder of existing notes not to participate in the exchange offers will not affect his or her eligibility to indicate interest for new notes in the new money offering. If a significant number of the existing notes are tendered and accepted in the exchange offers, the liquidity and the trading market for the existing notes that remain outstanding will likely be impaired. We and the placement agent will not consider whether or not a holder of the existing notes participates in the exchange offers as a relevant factor when determining the allocation of the new notes in the new money offering.

In addition, if in connection with the exchange offer, we receive tenders and consents from holders of a majority of our existing 2009 notes, the agreement governing the existing 2009 notes will be amended to remove certain restrictive covenants. In that case, existing 2009 notes not tendered in the exchange offer would no longer have the benefit of such restrictive covenants.

**How do I indicate my interest for new notes for cash in the new money offering?**

If you are interested in purchasing new notes for cash, please contact Piper Jaffray & Co. at (415) 984-5141, attention Simon Manning or Brian Sullivan. Allocations of new notes in the new money offering will be made by the placement agent, after consultation with us. The closing of the new money offering is anticipated to occur on the same day as the closing of the exchange offers.

**How will fractional new notes be settled in the exchange offer for the existing 2009 notes?**

We will exchange \$1,300 principal amount of new notes for each \$1,000 principal amount of existing 2009 notes tendered in the exchange offer. We will issue new notes only in denominations of \$1,000 and integral multiples of \$1,000. We will settle any fractional new notes in cash. For example, if you tender three existing 2009 notes (\$3,000 aggregate principal amount), you will receive three new notes (\$3,000 aggregate principal amount) and \$900 in cash in lieu of fractional new notes (\$3,000 aggregate principal amount of existing 2009 notes x 1.3 = \$3,900, which you would receive in the form of three new notes and \$900 in cash).

**What should I do if I have additional questions about the exchange offers or the new money offering?**

If you have any questions, need additional copies of the offering material, or otherwise need assistance, please contact the information agent for the offering:

Georgeson Inc.

17 State Street, 10th Floor

New York, New York 10004

(888) 549-6633

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

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**Questions and Answers About Voluntary Conversion and Automatic Conversion of the New Notes**

**When can I voluntarily convert my new notes?**

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

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

For each new note that you voluntarily convert before May 10, 2010, you will receive additional interest equal to the amount of interest that would have been payable on the new notes from the last day interest was paid on the new notes, through and including May 10, 2010. This additional interest will be paid in cash or in common shares, at our option. If we pay this additional interest in common shares, these shares will be valued at the conversion price that is in effect at the time of conversion.

**When can the Company automatically convert my new notes?**

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

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

If we elect to automatically convert all or a portion of your notes before May 10, 2010, you will receive, for each new note so converted, additional interest equal to the amount of interest that would have been payable on the new notes from the last day interest was paid on the new notes, through and including May 10, 2010. This additional interest shall be paid in cash or in common shares at our option. If we pay this additional interest in common shares, these shares will be valued at 90% of the automatic conversion price that is in effect at that time.

**Table of Contents****SUMMARY HISTORICAL FINANCIAL DATA**

The following table presents our summary historical financial data. You should read carefully the financial statements included in this prospectus, including the notes to the financial statements and Management's Discussion and Analysis of Financial Condition and Results of Operations. The summary financial data in this section are not intended to replace the financial statements. We derived the statement of operations data for the years ended December 31, 2006, 2005 and 2004 and the balance sheet data as of December 31, 2006 and 2005 from our audited financial statements, which are included elsewhere in this prospectus. We derived the statement of operations data for the years ended December 31, 2003 and 2002 and the balance sheet data as of December 31, 2004, 2003 and 2002 from our audited financial statements which are not included herein. Historical results are not necessarily indicative of future results. See the notes to the financial statements for an explanation of the method used to determine the number of shares used in computing basic and diluted net loss per common share.

	2006 <sup>(3)</sup>	For the Year Ended December 31,			
		2005	2004 <sup>(4)</sup>	2003	2002
Statement of Operations Data:	(in thousands, except per share data)				
Revenues:					
Product sales	\$ 38,244	\$ 20,458	\$ 4,067	\$	\$
Co-promotion	6,890	2,954			
Biopharmaceutical/other	1,018	197	2,546	7,009	7,716
Total revenues <sup>(1)</sup>	46,152	23,609	6,613	7,009	7,716
Costs of product sales and operating expenses	118,071	112,281	97,229	39,943	41,460
Loss from operations	(71,919)	(88,672)	(90,616)	(32,934)	(33,744)
Net other (expense) income	(6,379)	44	(2,863)	3,546	(116)
Loss from continuing operations before income tax	(78,298)	(88,628)	(93,479)	(29,388)	(33,860)
Provision for income tax	(179)				
Net loss from continuing operations	(78,477)	(88,628)	(93,479)	(29,388)	(33,860)
Income (loss) from discontinued operations		35	208	(401)	(157)
Net loss	\$ (78,477)	\$ (88,593)	\$ (93,271)	\$ (29,789)	\$ (34,017)
Net loss per common share basic and diluted <sup>(2)</sup>	\$ (6.58)	\$ (9.26)	\$ (10.61)	\$ (9.06)	\$ (11.87)
Weighted average basic and diluted common shares outstanding <sup>(2)</sup>	11,925	9,569	8,794	3,286	2,865

Balance Sheet Data:	As of December 31,				
	2006	2005	2004	2003	2002
Cash and cash equivalents, restricted cash, and long and short-term marketable securities	\$ 44,808	\$ 80,044	\$ 176,628	\$ 28,665	\$ 50,866
Working capital	39,808	77,750	156,021	18,897	36,511
Total assets	279,407	241,095	340,560	40,516	65,845
Long-term liabilities	250,977	191,289	193,397	292	15,654
Shareholders' (deficit) equity	(1,996)	28,101	114,400	29,940	35,417

<sup>(1)</sup> Does not include revenue from discontinued operations related to our genomics business.

<sup>(2)</sup> Adjusted to account for the effect of the 1-for-8 reverse stock split effectuated on November 15, 2006.

<sup>(3)</sup> We acquired the ANTARA assets on August 18, 2006.

<sup>(4)</sup> We completed a merger with Genesoft on February 6, 2004.



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**RISK FACTORS**

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

**Risks Related to Our Business**

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

We have a history of significant operating losses and expect losses to continue for some time. We had a net loss of approximately \$78,477,000 for the year ended December 31, 2006 and at that date had an accumulated deficit of approximately \$415,905,000. The losses have resulted primarily from costs incurred in research and development, including our clinical trials and product acquisitions, from sales and marketing, and from general and administrative costs associated with our operations and product sales. These costs have exceeded our revenues which to date have been generated principally from sales of FACTIVE and ANTARA, co-promotion revenues based on the sale of TESTIM gel (which we no longer promote), and our legacy collaborations, government grants and sequencing services.

We anticipate that we will incur additional losses in the current year and in future years and cannot predict when, if ever, we will achieve profitability. These losses are expected to continue, principally in the sales and marketing area as we seek to grow sales of FACTIVE tablets and ANTARA capsules and as we seek to acquire additional approved products or product candidates. Additionally, our partners' product development efforts that utilize our genomic discoveries are at an early stage and, accordingly, we do not expect our losses to be substantially mitigated by revenues from milestone payments or royalties under those agreements for a number of years, if ever.

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

FACTIVE tablets and ANTARA capsules are currently our only commercial products and we expect that they will likely account for substantially all of our product revenues for at least the next several years or until we successfully acquire, in-license or enter into co-promotion agreements for additional products.

FACTIVE tablets have FDA marketing approval for the treatment of community-acquired pneumonia of mild to moderate severity, or CAP, and acute bacterial exacerbations of chronic bronchitis, or AECB. ANTARA is approved by the FDA to treat hypercholesterolemia (high blood cholesterol) and hypertriglyceridemia (high triglycerides) in combination with a healthy diet. The commercial success of FACTIVE and ANTARA will depend upon their continued acceptance by regulators, physicians, patients and other key decision-makers as a safe, therapeutic and cost-effective alternative to other products used, or currently being developed, to treat CAP and AECB, in the case of FACTIVE tablets, or hypercholesterolemia and hypertriglyceridemia, in the case of ANTARA capsules. If FACTIVE and ANTARA are not commercially successful, we will have to find additional sources of funding or curtail or cease operations.



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

The intellectual property rights of biopharmaceutical companies, including us, are generally uncertain and involve complex legal, scientific and factual questions. Our success in developing and commercializing biopharmaceutical products may depend, in part, on our ability to operate without infringing on the intellectual property rights of others and to prevent others from infringing on our intellectual property rights. There has been substantial litigation regarding patents and other intellectual property rights in the biopharmaceutical industry. We may become party to patent litigation or proceedings at the U.S. Patent and Trademark Office or a foreign patent office to determine our patent rights with respect to third parties which may include competitors in the biopharmaceutical industry. Interference proceedings in the U.S. Patent and Trademark Office or opposition proceedings in a foreign patent office may be necessary to establish which party was the first to discover such intellectual property. We may become involved in patent litigation against third parties to enforce our patent rights, to invalidate patents held by such third parties, or to defend against such claims. The cost to us of any patent litigation or similar proceeding could be substantial, and it may absorb significant management time. We do not expect to maintain separate insurance to cover intellectual property infringement. Our general liability insurance policy does not cover our infringement of the intellectual property rights of others. If infringement litigation against us is resolved unfavorably, we may be enjoined from manufacturing or selling certain of our products or services and be liable for damages. In certain cases, a license may be available, although we may not be able to obtain such a license on commercially acceptable terms, or at all.

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

### **We intend to raise additional funds in the future.**

We believe our existing funds and anticipated cash generated from operations should be sufficient to support our current plans through at least the end of 2007. We will need to raise additional capital in the future to fund our operations, to support our sales and marketing activities, fund clinical trials and other research and development activities, and other potential commercial or development opportunities. In addition, if we are unable to complete the new money offering, we will need to seek additional capital from an alternative source. We may seek funding through additional public or private equity offerings, debt or other strategic financings or agreements with customers or vendors. Our ability to raise additional capital, however, will be impacted by, among other factors, the investment market for biopharmaceutical companies and the progress of the FACTIVE and ANTARA commercial programs, our ability to acquire, in-license or enter into co-promotion agreements for additional products, our progress in finding a development and commercialization partner for Ramoplanin and our progress with

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other business development transactions. There is no assurance we will be successful in raising any additional funds in the new money offering and other sources of financing may not be available to us when needed, or, if available, may not be available on favorable terms. If we cannot obtain adequate financing on acceptable terms when such financing is required, our business will be adversely affected.

### **Future fundraising could dilute the ownership interests of our shareholders.**

In order to raise additional funds, we may issue equity or convertible debt securities in the future. Depending upon the market price of our shares at the time of any transaction, we may be required to sell a significant percentage of the outstanding shares of our common stock in order to fund our operating plans, potentially requiring a shareholder vote. In addition, we may have to sell securities at a discount to the prevailing market price, resulting in further dilution to our shareholders.

### **We need to continue to develop marketing and sales capabilities to successfully commercialize FACTIVE tablets, ANTARA capsules and our other product candidates, including effectively integrating the ANTARA product into our commercial operations.**

FACTIVE tablets and ANTARA capsules are the first two FDA-approved products which we own and promote. To date, we still have limited marketing and sales experience. The launch of FACTIVE occurred in September of 2004, and we recently acquired the rights to ANTARA in August 2006. The continued development of these marketing and sales capabilities, including any expansion of our sales force, will require significant expenditures, management resources and time. Failure to continue to successfully integrate ANTARA and establish sufficient sales and marketing capabilities in a timely and regulatory compliant manner may adversely affect our ability to assume and continue to grow the ANTARA brand and related product sales.

### **Our product and product candidates face significant competition in the marketplace.**

#### **ANTARA**

ANTARA is a fenofibrate product approved by the FDA to treat hypercholesterolemia and hypertriglyceridemia in combination with a healthy diet. The marketing of current and additional branded versions of fenofibrate could reduce our net sales of ANTARA and adversely impact our revenues. The primary competition for ANTARA in the fenofibrate market is Tricor 145 mg, a product manufactured by Abbott Laboratories, which accounted for approximately 94% of U.S. fenofibrate sales for the twelve month period ended December 31, 2006. ANTARA also competes with Triglide, a fenofibrate marketed by Sciele Pharma, Inc., which accounted for approximately 1.2% of U.S. fenofibrate sales for the twelve month period ended December 31, 2006.

Additionally, several generic versions of fenofibrate in varying doses are also available for the treatment of dyslipidemias. In May 2005, Teva Pharmaceutical Industries, Ltd. obtained final FDA approval to market a generic version of Abbott Laboratories' 160 mg Tricor tablet (which is no longer marketed or sold). In January 2006, Cipher Pharmaceuticals, Inc. obtained final FDA approval to market a 150 mg strength of fenofibrate.

There are also several non-fenofibrate FDA-approved products with similar indications as ANTARA which could compete with ANTARA, including statins, omega-3 fatty acids, niacin and fixed-dose, combination products.

We are also aware that LifeCycle Pharma A/S is developing a 40 mg and a 120 mg fenofibrate product and, on December 27, 2006, we received notice that LifeCycle Pharma had filed a new drug application with the FDA referencing ANTARA in accordance with the provisions of section 505(b)(2) of the Federal Food, Drug, and Cosmetic Act. Under current FDA policies, a section 505(b)(2) new drug application may be used to seek approval based in part on the FDA's prior findings of safety and efficacy for another

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entity's application, including for a product whose strength, dosage form, route of administration or labeling differs from the product covered by the application for the other drug being referenced, known as the reference listed drug. A 505(b)(2) application can be based in part on a showing that the proposed product is bioequivalent to the reference listed drug. LifeCycle Pharma's 505(b)(2) application included a certification, known as a Paragraph IV certification, alleging that its fenofibrate product does not infringe the patents that have been submitted to the FDA for ANTARA and listed in FDA's publication known as the Orange Book. We decided, based on the current patent estate for ANTARA and Lifecycle Pharma's product description, not to pursue litigation.

The growth of any of these competitive branded products or the marketing of generic fenofibrate products could result in a decrease in ANTARA sales, pressure on the price at which we are able to sell ANTARA, reduce our profit margins, reduce our net sales of ANTARA and adversely impact our revenues.

### ***FACTIVE***

FACTIVE tablets are approved for the treatment of community-acquired pneumonia of mild to moderate severity and acute bacterial exacerbations of chronic bronchitis. There are several classes of antibiotics that are primary competitors for the treatment of these indications, including other fluoroquinolones (levofloxacin, ciprofloxacin and moxifloxacin), macrolides (clarithromycin and azithromycin), telithromycin and penicillins (amoxicillin/clavulanate potassium).

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

### ***Ramoplanin***

Ramoplanin is in clinical development for the treatment of *Clostridium difficile*-associated disease (CDAD). We are aware of two products currently utilized in the marketplace Vancocin® pulvules (vancomycin), a product marketed by ViroPharma Inc., and metronidazole, a generic product for treatment of this indication. We are also aware of several companies with products in development for the treatment of CDAD as well as the potential for generic vancomycin.

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

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

As part of our growth strategy, we intend to acquire, develop and commercialize additional product candidates or approved products. The success of this strategy depends upon our ability to identify, select and acquire biopharmaceutical products that meet our criteria. We may not be able to acquire the rights

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

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

manufactured or produced economically;

successfully commercialized; or

widely accepted in the marketplace.

**We cannot expand the indications for which we will market FACTIVE unless we receive FDA approval for each additional indication. Failure to expand these indications will limit the size of the commercial market for FACTIVE.**

In April 2003, FACTIVE tablets were approved by the FDA for the seven-day treatment of community-acquired pneumonia of mild to moderate severity (CAP) and the five-day treatment of acute bacterial exacerbations of chronic bronchitis (AECB). In our attempt to continue to develop the market for FACTIVE, we completed a clinical trial designed to demonstrate that a five-day course of FACTIVE for the treatment of mild to moderate CAP is as effective as the currently approved seven-day course of treatment. On September 21, 2006, we received an approvable letter from the FDA for the sNDA seeking approval for the five-day treatment CAP with FACTIVE tablets. According to the letter, we were required to provide clarification and additional interpretation regarding certain data included in the application to assist the FDA in its evaluation. We recently delivered this additional information to the FDA and the FDA has accepted our response as complete. We cannot be certain whether additional data will be required or if the five-day CAP sNDA will ultimately be approved. In November 2005, we filed an sNDA seeking approval for acute bacterial sinusitis. In September 2006, the FDA's Anti-Infective Drugs Advisory Committee voted not to recommend approval of this sNDA and, in November 2006, we voluntarily withdrew our sNDA. If we encounter similar issues with the FDA in the future or are otherwise unsuccessful in expanding the approved indications for the use of FACTIVE, the size of the commercial market for FACTIVE will be limited.

**Seasonal fluctuations in demand for FACTIVE may cause our operating results to vary significantly from quarter to quarter.**

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

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

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

For instance, we, along with many other pharmaceutical companies, recently received notification from the FDA that it had some concerns over the reliability of studies conducted by MDS Pharma Services between 2000 and 2004. The predecessor owner of the rights to ANTARA, Reliant Pharmaceuticals, had engaged MDS Pharma to perform certain bioequivalence studies for ANTARA, including some studies that were submitted in support of the original approval of bioequivalence. In its letter, the FDA requested that we confirm whether any of the analyses of our products were conducted by MDS Pharma in order for the FDA to determine whether we might have to validate, confirm or repeat certain studies. The FDA has stated that it has not detected any signals or any evidence that the products mentioned in the letters pose a safety risk or that there has been any impact on efficacy. Because the outcome of this issue is uncertain, we cannot predict whether this issue will have a material impact on our results of operations.

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

Numerous proposals have been made in recent months and years to impose new requirements on drug approvals, expand post-approval requirements, and restrict sales and promotional activities. For example, federal legislation has been proposed that would require all new drug applicants to submit risk evaluation and minimization plans to monitor and address potential safety issues for products upon approval, grant FDA the authority to impose risk management measures for marketed products and to mandate labeling changes in certain circumstances, and establish new requirements for disclosing the results of clinical trials. Additional measures have also been proposed to address perceived shortcomings in FDA's handling of drug safety issues, and to limit pharmaceutical company sales and promotional practices that some see as excessive or improper. If these or other legal or regulatory changes are enacted, it may become more difficult or burdensome for us to obtain extended or new product approvals, and our current approvals may be restricted or subject to onerous post-approval requirements. Such changes may increase our costs and adversely affect our operations. The ability of us or our partners to commercialize approved products successfully may be hindered, and our business may be harmed as a result.

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

restrictions on our products or manufacturing processes;

notice of violation letters regarding promotional and marketing materials and activities;

withdrawal of FACTIVE, ANTARA or a product candidate from the market;

voluntary or mandatory recall of FACTIVE, ANTARA or a product candidate;

finances against us or our partners;

suspension or withdrawal of regulatory approvals for FACTIVE, ANTARA or a product candidate which subsequently receives regulatory approval;

suspension or termination of any of our ongoing clinical trials of a product candidate;

refusal to permit import or export of our products;