

NovaBay Pharmaceuticals, Inc.
Form S-1
February 14, 2007
Table of Contents

As filed with the Securities and Exchange Commission on February 14, 2007

Registration No. 333-

U.S. SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-1

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

NOVABAY PHARMACEUTICALS, INC.

(Exact Name of Registrant as Specified in Its Charter)

California (State or Other Jurisdiction of Incorporation or Organization)	2834 (Primary Standard Industrial Classification Number) 5980 Horton Street, Suite 550 Emeryville, CA 94608 (510) 899-8800	68-0454536 (I.R.S. Employer Identification No.)
--	---	--

(Address, Including Zip Code and Telephone Number, Including Area Code, of Registrant's Principal Executive Offices)

Ron Najafi, Ph.D.

Chairman of the Board, Chief Executive Officer and President

Edgar Filing: NovaBay Pharmaceuticals, Inc. - Form S-1

NovaBay Pharmaceuticals, Inc.

5980 Horton Street, Suite 550 Emeryville, CA 94608

(510) 899-8800

(Name, Address, Including Zip Code, and Telephone Number, Including Area Code, of Agent for Service)

Copies to:

Chris Barry, Esq.	Riccardo A. Leofanti, Esq.
Dorsey & Whitney LLP	Skadden, Arps, Slate, Meagher & Flom LLP
U.S. Bank Centre	222 Bay Street, Suite 1750
1420 Fifth Avenue, Suite 3400	Toronto, Ontario M5K 1J5
Seattle, WA 98101-4010	(416) 777-4700
(206) 903-8815	
Robert Mason, Esq.	John Kolada, Esq.
Fasken Martineau DuMoulin LLP	Blake, Cassels & Graydon LLP
66 Wellington Street West	Commerce Court West, Suite 2800
Suite 4200	Toronto, Ontario M5L 1A9
Toronto, Ontario M5K 1N6	(416) 863-2400
(416) 366-8381	

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

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 of 1933, 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, 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 filed pursuant to Rule 462(c) 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 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. "

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate	Amount of Registration Fee
Common Stock, \$0.01 par value	Offering Price(1)(2) \$23,000,000	\$2,461

(1) Includes the offering price attributable to shares that the Underwriters have the option to purchase solely to cover over-allotments, if any.

(2) Estimated solely for the purpose of computing the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended.

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 or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Table of Contents

EXPLANATORY NOTE

This Registration Statement contains a prospectus relating to an offering of our common stock in the United States, together with separate prospectus pages relating to an offering of our common stock in Canada. The U.S. prospectus and the Canadian prospectus will be identical in all material respects. The complete U.S. prospectus is included herein and is followed by those pages to be used solely in the Canadian prospectus. Each of the alternative pages for the Canadian prospectus included in this registration statement has been labeled Alternate Page for Canadian Prospectus.

Table of Contents

The information in this prospectus is not complete and may be changed. We cannot sell 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 _____, 2007

PROSPECTUS

Shares

Common Stock

This is NovaBay Pharmaceuticals, Inc.'s initial public offering in the United States and Canada. NovaBay Pharmaceuticals, Inc. is selling all of the shares of common stock offered by this prospectus.

We expect the public offering price to be between \$ _____ and \$ _____ per share. Currently, no public market exists for the shares. After pricing the offering, we expect that the common stock will be traded on the American Stock Exchange and on the Toronto Stock Exchange under the symbol NBY.

Investing in our common stock involves risks. See Risk Factors beginning on page 7.

PRICE \$ PER SHARE

	Per Share	Total
Public offering price	\$	\$
Underwriting discounts and commissions	\$	\$
Net proceeds, before expenses, to us	\$	\$

The underwriters may also purchase up to an additional _____ shares from us at the public offering price, less the underwriting discounts and commissions, until 30 days after the date of the closing of this offering to cover over-allotments, if any. The table above provides the maximum amount of underwriting discounts and commissions. Discounts and commissions on the sale of shares to certain investors identified by us will be 0.7% rather than 7%, and to the extent such investors purchase shares in this offering the aggregate underwriting discounts and commissions will be reduced accordingly. In addition, we have agreed to issue Dundee Securities a warrant to purchase up to 7% of the total number of shares sold in this offering, including pursuant to the over-allotment option.

The underwriters expect to deliver the shares on or about _____, 2007.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

Dundee Securities

The date of this prospectus is _____, 2007.

Table of Contents**TABLE OF CONTENTS**

	Page
<u>PROSPECTUS SUMMARY</u>	1
<u>RISK FACTORS</u>	7
<u>SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS</u>	25
<u>USE OF PROCEEDS</u>	26
<u>DIVIDEND POLICY</u>	26
<u>CAPITALIZATION</u>	27
<u>DILUTION</u>	28
<u>SELECTED FINANCIAL DATA</u>	30
<u>MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS</u>	32
<u>BUSINESS</u>	44
<u>MANAGEMENT</u>	73
<u>RELATED PARTY TRANSACTIONS</u>	87
<u>PRINCIPAL SHAREHOLDERS</u>	88
<u>DESCRIPTION OF CAPITAL STOCK</u>	90
<u>PRIOR SALES OF SHARES</u>	93
<u>SHARES ELIGIBLE FOR FUTURE SALE</u>	94
<u>MATERIAL U.S. FEDERAL INCOME AND ESTATE TAX CONSIDERATIONS TO NON-U.S. HOLDERS</u>	98
<u>MATERIAL CANADIAN FEDERAL INCOME TAX CONSIDERATIONS</u>	101
<u>UNDERWRITING</u>	104
<u>NOTICE TO INVESTORS</u>	108
<u>LEGAL MATTERS</u>	109
<u>EXPERTS</u>	109
<u>WHERE YOU CAN FIND MORE INFORMATION</u>	110
<u>INDEX TO FINANCIAL STATEMENTS</u>	F-1

You should rely only on the information contained in this prospectus. We have not, and the underwriters have not, authorized any other person to provide you with additional or different information. If anyone provides you different or inconsistent information, you should not rely on it. We and the underwriters are offering to sell and seeking offers to buy shares of our common stock only in jurisdictions where offers or sales are permitted. The information in this prospectus is only accurate as of the date of this prospectus, regardless of the time of delivery of this prospectus or of any sale of our common stock. Our business, financial condition, results of operations and prospects may have changed since the date of this prospectus.

Table of Contents

PROSPECTUS SUMMARY

This summary highlights information contained elsewhere in this prospectus. You should read the following summary together with the more detailed information appearing in this prospectus, including the Risk Factors and our financial statements and related notes included elsewhere in this prospectus, before deciding whether to purchase shares of our common stock. Unless the context otherwise requires, all references in this prospectus to we, our, us, the Company and NovaBay refer to NovaBay Pharmaceuticals, Inc.

Our Company

Overview

We are a biopharmaceutical company focused on developing innovative product candidates targeting the treatment or prevention of a wide range of infections in hospital and non-hospital environments. Many of these infections have become increasingly difficult to treat because of the rapid increase in infectious agents that have become resistant to current drugs.

We have developed a class of antimicrobial compounds, which we have named Aganocide compounds, that we believe could form a platform on which to create a variety of products to address differing needs in the treatment and prevention of bacterial infections. Our current development efforts are focused on Aganocide compounds to treat patients with infections of the eye, ear and sinus, to create an improved environment for the healing of wounds and to prevent infections that result from surgical or other hospital procedures, or that can be caused by the use of products, such as contact lens solutions, which can introduce an infection into the body. NVC-422 is our lead compound and forms the basis of all of our Aganocide compounds. NVC-422's primary advantage is that it kills a wide range of bacteria as well as certain yeasts, fungi and viruses very rapidly, and it is effective against these pathogens at concentrations that are significantly lower than the concentrations at which it begins to kill human cells.

Our current activities are focused on research and development of product candidates that require further development to receive regulatory approval or become commercialized products. The development and commercialization of products based on our compounds will require significantly more research, development and testing as well as governmental approvals. We intend to pursue in-house the development and commercialization of products designed to prevent selected nosocomial infections, or infections that originate or occur in a hospital or hospital-like setting, and to partner with leading companies to assist with the development of other products. In August 2006, we entered into a collaboration and licensing agreement with an affiliate of Alcon, Inc., a leading ophthalmic pharmaceutical company, to develop products incorporating Aganocide compounds for use in the eye, ear and sinus, as well as in contact lens solutions.

Industry Background

Combating bacterial infections is critical to modern medicine. Since the introduction of penicillin, antibiotics have greatly reduced the risks associated with bacterial infections, made possible the routine use of surgical procedures for non-critical purposes and have increased the probability of success of many modern complex operations. However, the effectiveness of available antibiotics is limited in some cases due to growing bacterial resistance and bacterial biofilm.

Bacteria are becoming resistant to different classes of antibiotics at increasing rates. These increasing levels of resistance are principally the result of repeated exposure of bacteria to non-lethal quantities of antibiotics and the ability of certain bacteria to transmit mutant genes to other bacterial species, thus enabling different species to survive the antibiotic to which the first species was exposed.

Table of Contents

Bacterial biofilm may explain other incidences of the ineffectiveness of antibiotics. Many bacteria spend much of their existence within a matrix that they create that has been called biofilm. Encased in biofilm, bacteria are often immune to both antibiotics and white blood cells. Bacterial biofilm is associated with diseases such as sinus infections (sinusitis), ear infections, chronic wounds and infections related to cystic fibrosis. Bacterial biofilms are also frequently found on the surfaces of medical devices, such as catheters and implants, and can cause severe chronic or acute infections.

The method of delivery of most existing anti-infective drugs can also limit their effectiveness in treating bacterial infections. Most infections are localized. However, most current antibiotics used to treat bacterial infections are delivered systemically either orally or through injection or infusion. As a result, the entire body is exposed to the antibiotic in order to treat a local infection. Furthermore, the dosage required to treat a local infection by systemic delivery is substantially higher than would be necessary if delivered locally, resulting in greater risk of toxicity which can cause adverse side effects or other harmful effects on the body.

Increasing bacterial resistance, bacterial biofilm and the limitations of traditional antibiotic therapy are major contributors to the high cost of healthcare. These problems are particularly evident in dealing with nosocomial infections, which originate or occur in a hospital or hospital-like setting, often due to the high prevalence of disease causing organisms, patients' reduced immune systems and the exposure of patients to a variety of methods for transmitting infections.

Consequently, we believe a significant market opportunity exists to develop anti-infective products that can be delivered locally in appropriate concentrations to safely kill bacteria quickly and efficiently, whether or not they are within biofilm, and without generating resistance. If developed and approved by regulatory authorities, these products may be able to treat and prevent nosocomial infections, as well as other infections that are currently difficult to treat due to resistant bacteria and biofilm.

Our Solution

We believe the benefits of our product candidates based upon our antimicrobial compounds will include:

Preventing or Treating Infections Caused by Resistant Bacteria. Our tests indicate that our Aganocide compounds may be effective in destroying certain types of bacteria that have become resistant to existing antibiotics.

Destroying Bacteria Protected by Biofilm. In-vitro experiments indicate that our Aganocide compounds can be effective in destroying bacteria resident in biofilm.

Killing Numerous Species of Bacteria. We believe that our Aganocide compounds have the potential to be effective against most, if not all, species of bacteria, which would reduce the need to conduct diagnostic procedures to identify the bacteria causing the infection before commencing treatment.

Treating Certain Infections that May be Viral or Bacterial in Origin. We believe that our Aganocide compounds have the potential to kill not only bacteria but also some viruses, thereby permitting immediate treatment for certain diseases where the causative agent may be a bacterium or a virus.

Rapidly Killing Bacteria. Our in-vitro tests indicate that our Aganocide compounds eliminate certain bacterial colonies in minutes, whereas current therapies may take hours or days at comparable therapeutic concentrations.

Reducing Toxicity and Adverse Side Effects. We believe the ability to apply our Aganocide compounds locally and in lower concentrations may reduce the risk of toxicity resulting in adverse side effects. Because Aganocide compounds are small molecules, we believe they are also less likely to elicit an immune response in the body.

Table of Contents

Providing a High Therapeutic Index. The therapeutic index is the ratio of the concentration at which a compound kills normal cells to the concentration at which it kills bacteria. Our in-vitro testing indicates that our Aganocide compounds have a high therapeutic index in that they can kill bacteria when delivered in concentrations far below the level that will harm human cells.

Our Strategy

The key elements of our strategy include:

Developing Product Candidates In-house. We intend to develop our product candidates for selected indications for the prevention and treatment of nosocomial infections in-house, and use qualified clinical research organizations to assist us with the clinical trials.

Developing Products through to Proof-of-Concept for Multiple Indications. A major advantage of antimicrobial products is that laboratory and animal models tend to be more predictive of efficacy in humans than is often the case with other classes of drugs. We believe that this enables potential partners to evaluate our compounds much earlier than is normal for drugs in other therapeutic categories.

Licensing Indications through Partnering Arrangements with Leading Companies. We intend to pursue partnering arrangements with leading companies in cases where we expect the likely magnitude, duration and expense of the clinical trial program required to obtain approval will be substantial and beyond our internal resources.

Broadening the Range of Aganocide Compounds. We intend to continue to synthesize further Aganocide compounds, and are currently focusing our efforts on producing additional compounds for certain specific indications in collaboration with Alcon.

Corporate Information

We were incorporated in California in January 2000 as NovaCal Pharmaceuticals, Inc. but did not commence operations until July 1, 2002 when we acquired all of the assets of NovaCal Pharmaceuticals, LLC. In February 2007, we changed our name to NovaBay Pharmaceuticals, Inc. Our principal executive offices are located at 5980 Horton Street, Suite 550, Emeryville, California 94608, and our telephone number is (510) 899-8800. NovaBay, Aganocide, AgaNase and NeutroPhase are our trademarks. All other trademarks and trade names appearing in this prospectus are the property of their respective owners.

Presentation of Financial Information

We present our financial statements in United States dollars, which may be referenced in this prospectus as \$, U.S.\$, dollars or U.S. dollars. Amounts are stated in U.S. dollars unless otherwise indicated. On February 12, 2007, the noon buying rate in New York for cable transfers payable in Canadian dollars, as certified for customs purposes by the Federal Reserve Bank of New York, was U.S.\$1.00 to Cdn\$1.1746.

Our financial statements included in this prospectus have been prepared in accordance with United States generally accepted accounting principles, or U.S. GAAP, which differ in certain respects from Canadian generally accepted accounting principles, or Canadian GAAP.

Edgar Filing: NovaBay Pharmaceuticals, Inc. - Form S-1

the initial public offering price will be \$ _____ per share, the midpoint of the range set forth on the cover page of this prospectus;
and

sales will not be made to those investors for which the underwriters would receive a cash commission equal to 0.7% of the aggregate cash proceeds of such sales.

Table of Contents**Summary Financial Data**

The following table summarizes our financial data for the periods presented. You should read this data in conjunction with the information under Selected Financial Data and Management's Discussion and Analysis of Financial Condition and Results of Operations and our financial statements and related notes appearing elsewhere in this prospectus. The summary financial data for the years ended December 31, 2003, 2004 and 2005 are derived from our audited financial statements. We have also included data from our unaudited financial statements for the nine months ended September 30, 2005 and 2006. Our financial statements have been prepared in accordance with United States GAAP, which differ in certain respects from Canadian GAAP.

	Nine Months Ended				
	2003	Year Ended December 31,		September 30,	
		2004	2005	2005	2006
	(in thousands, except share and per share data)				
Statements of Operations Data:					
Revenue	\$	\$	\$	\$	\$ 208
Operating expenses:					
Research and development(1)	330	1,573	2,174	1,767	2,660
General and administrative(1)	623	1,253	1,395	993	1,730
Total operating expenses	953	2,826	3,569	2,760	4,390
Interest income (expense) and other, net	(24)	22	106	78	97
Net loss before income taxes	(977)	(2,804)	(3,463)	(2,682)	(4,085)
Provision for income taxes					
Net loss	\$ (977)	\$ (2,804)	\$ (3,463)	\$ (2,682)	\$ (4,085)
Net loss per share:					
Basic and diluted	\$ (0.12)	\$ (0.32)	\$ (0.36)	\$ (0.28)	\$ (0.37)
Shares used in per share calculations:					
Basic and diluted	8,087,239	8,755,418	9,704,207	9,579,761	11,051,270
Pro forma net loss per share (unaudited):					
Basic and diluted			\$ (0.13)		\$ (0.14)
Shares used in pro forma per share calculations (unaudited)(2):					
Basic and diluted			26,621,129		29,316,688

(1) Includes stock-based compensation expense as follows:

	Year Ended			Nine Months	
	2003	December 31,	2005	September 30,	2006
	(in thousands)				
Research and development	\$ 2	\$ 11	\$ 55	\$ 55	\$ 34
General and administrative			16		138
Total stock-based compensation expense	\$ 2	\$ 11	\$ 71	\$ 55	\$ 172

Edgar Filing: NovaBay Pharmaceuticals, Inc. - Form S-1

- (2) The pro forma weighted average common shares outstanding reflects the conversion of our convertible preferred stock (using the if-converted method) into common stock as though the conversion had occurred on the original dates of issuance.

Table of Contents

The following table presents a summary of our balance sheet as of September 30, 2006:

on an actual basis, and

on a pro forma as adjusted basis to reflect the conversion into common stock of all outstanding shares of our preferred stock and the sale in this offering of _____ shares of our common stock at an assumed initial public offering price of \$ _____ per share, after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

	As of September 30, 2006	
	Actual	Pro Forma As Adjusted
		(unaudited) (in thousands)
Balance Sheet Data:		
Cash, cash equivalents and short-term investments	\$ 12,990	
Working capital	9,801	
Total assets	13,479	
Deferred revenue - current and non-current	9,792	
Convertible preferred stock	192	
Common stock and additional paid-in capital	14,532	
Total stockholders' equity	2,854	

Table of Contents

RISK FACTORS

An investment in our common stock offered by this prospectus involves a substantial risk of loss. You should carefully consider these risk factors, together with all of the other information included in this prospectus, before you decide to purchase shares of our common stock. If any of the following risks actually occur, our business, financial condition or results of operations could be materially adversely affected, the value of our common stock could decline and you may lose all or part of your investment. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also impair our business and operations.

Risks Related to Our Business

We are an early stage company with a history of losses. We expect to incur net losses for the foreseeable future and we may never achieve or maintain profitability.

We have incurred net losses since our inception. For the years ended December 31, 2003, 2004 and 2005, we had net losses of approximately \$1.0 million, \$2.8 million and \$3.5 million, respectively and for the nine months ended September 30, 2006 we had a net loss of approximately \$4.1 million. Through September 30, 2006, we had an accumulated deficit of approximately \$11.9 million. To date, we have been, and expect to remain for the foreseeable future, mostly in a research and development stage. Since our inception, we have not generated revenue, except for modest revenue in 2006 relating to a research and development collaboration, and we have incurred substantial research and development expenses, which were approximately \$0.3 million, \$1.6 million and \$2.2 million for the years ended December 31, 2003, 2004, and 2005, respectively and \$2.7 million for the nine months ended September 30, 2006. We expect to continue to make, for at least the next several years, significant expenditures for the development of products that incorporate our Aganocide compounds, as well as continued research into the biological activities of our Aganocide compounds, which expenditures are accounted for as research and development expenses. We do not expect any of our current product candidates to be commercialized within the next several years, if at all, and we expect to continue to incur substantial losses for the foreseeable future, and we may never become profitable. We anticipate that our expenses will increase substantially in the foreseeable future as we:

conduct pre-clinical studies and clinical trials for our product candidates in different indications;

seek regulatory clearances and approvals for our product candidates;

develop, formulate, manufacture and commercialize our product candidates either independently or with partners;

pursue, acquire or in-license additional compounds, products or technologies, or expand the use of our technology;

maintain, defend and expand the scope of our intellectual property; and

hire additional qualified personnel.

We will need to generate significant revenues to achieve and maintain profitability. If we cannot successfully develop, obtain regulatory approval for and commercialize our product candidates, either independently or with partners, we will not be able to generate such revenues or achieve or maintain profitability in the future. Our failure to achieve and subsequently maintain profitability could have a material adverse impact on the market price of our common stock.

Our limited operating history may make it difficult for you to evaluate our business and to assess our future viability.

Our operations to date have been limited to organizing and staffing our company, developing our technology, researching and developing our compounds, and conducting preclinical studies and early-stage

Table of Contents

clinical trials of our compounds. We have not demonstrated the ability to succeed in achieving clinical endpoints, obtain regulatory approvals, formulate and manufacture products on a commercial scale or conduct sales and marketing activities. Consequently, any predictions you make about our future success or viability are unlikely to be as accurate as they could be if we had a longer operating history.

We currently do not have any marketable products, and if we are unable to develop and obtain regulatory approval for products that we develop, we may never generate product revenues.

To date, our revenues have been derived solely from a research and development collaboration. We have never generated revenues from sales of products and we cannot guarantee that we will ever have marketable drugs or other products. Before proceeding with clinical trials, we will conduct pre-clinical studies, which may, or may not be, valid predictors of potential outcomes in humans. If pre-clinical studies are favorable, we will then begin clinical trials. We must demonstrate that our product candidates satisfy rigorous standards of safety and efficacy before we can submit for and gain approval from the U.S. Food and Drug Administration, or FDA, and other regulatory authorities in the United States and in other countries. In addition, to compete effectively, our products will need to be easy to use, cost-effective and economical to manufacture on a commercial scale. We may not achieve any of these objectives. We cannot be certain that the clinical development of any of our current product candidates or any other product that we may develop in the future will be successful, that they will receive the regulatory approvals required to commercialize them, or that any of our other in-licensing efforts or pre-clinical testing will yield a product suitable for entry into clinical trials. Our commercial revenues from sales of products will be derived from sales of products that we do not expect to be commercially available for at least the next several years, if at all.

We have limited experience in developing drugs and medical devices, and we may be unable to commercialize any of the products we develop.

Development and commercialization of drugs and medical devices involves a lengthy and complex process. We have limited experience in developing products and have never received regulatory approval for, nor commercialized, any of our product candidates. In addition, no one has ever developed or commercialized a product based on our Aganocide compounds, and we cannot assure you that it is possible to develop, obtain regulatory approval for or commercialize any products based on these compounds or that we will be successful in doing so.

Before we can develop and commercialize any new products, we will need to expend significant resources to:

undertake and complete clinical trials to demonstrate the efficacy and safety of our product candidates;

maintain and expand our intellectual property rights;

obtain marketing and other approvals from the FDA and other regulatory agencies; and

select collaborative partners with suitable manufacturing and commercial capabilities.

The process of developing new products takes several years. Our product development efforts may fail for many reasons, including:

the failure of our product candidates to demonstrate safety and efficacy;

the high cost of clinical trials and our lack of financial and other resources; and

our inability to partner with firms with sufficient resources to assist us in conducting clinical trials.

Success in early clinical trials often is not replicated in later studies, and few research and development projects result in commercial products. At any point, we may abandon development of a product candidate or we

Table of Contents

may be required to expend considerable resources repeating clinical trials, which would eliminate or adversely impact the timing for revenues from those product candidates. If a clinical study fails to demonstrate the safety and effectiveness of our product candidates, we may abandon the development of the product or product feature that was the subject of the clinical trial, which could harm our business.

Even if we develop products for commercial use, these products may not be accepted by the medical and pharmaceutical marketplaces or be capable of being offered at prices that will enable us to become profitable. We cannot assure you that our products will be approved by regulatory authorities or ultimately prove to be useful for commercial markets, meet applicable regulatory standards, or be successfully marketed.

We do not have our own manufacturing capacity, and we plan to rely on partnering arrangements or third-party manufacturers for the manufacture of our potential products.

We do not currently operate manufacturing facilities for clinical or commercial production of our product candidates. We have no experience in drug formulation or manufacturing, and we lack the resources and the capabilities to manufacture any of our product candidates on a clinical or commercial scale. As a result, we expect to partner with third parties to manufacture our products or rely on contract manufacturers to supply, store and distribute product supplies for our clinical trials. Any performance failure on the part of our commercial partners or future manufacturers could delay clinical development or regulatory approval of our product candidates or commercialization of our products, producing additional losses and reducing the potential for product revenues.

Our products, if developed and commercialized, will require precise, high quality manufacturing. The failure to achieve and maintain high manufacturing standards, including the incidence of manufacturing errors, could result in patient injury or death, product recalls or withdrawals, delays or failures in product testing or delivery, cost overruns or other problems that could seriously harm our business. Contract manufacturers and partners often encounter difficulties involving production yields, quality control and quality assurance, as well as shortages of qualified personnel. These manufacturers and partners are subject to ongoing periodic unannounced inspection by the FDA and corresponding state agencies to ensure strict compliance with current Good Manufacturing Practice, or GMP, and other applicable government regulations and corresponding foreign standards; however, we do not have control over third-party compliance with these regulations and standards. If any of our manufacturers or partners fails to maintain compliance, the production of our products could be interrupted, resulting in delays, additional costs and potentially lost revenues.

In addition, if the FDA or other regulatory agencies approve any of our product candidates for commercial sale, we will need to manufacture them in larger quantities. Significant scale-up of manufacturing will require validation studies, which the FDA must review and approve. If we are unable to successfully increase the manufacturing capacity for a product, the regulatory approval or commercial launch of any drugs may be delayed or there may be a shortage in supply and our business may be harmed as a result.

If we do not maintain our current research collaboration with Alcon and enter into additional collaborations, a portion of our funding may decrease and inhibit our ability to develop new products.

We have entered into a collaborative arrangement with Alcon Manufacturing Ltd. (Alcon), and we rely on Alcon for joint intellectual property creation and for substantially all of our near-term revenues. We cannot assure you that our collaboration with Alcon or any other collaborative arrangement will be successful, or that we will receive the full amount of research funding, milestone payments or royalties, or that any commercially valuable intellectual property will be created, from these arrangements. If Alcon were to breach or terminate its agreement with us or otherwise fail to conduct its collaborative activities successfully and in a timely manner, the research contemplated by our collaboration with them could be delayed or terminated and our costs of

Table of Contents

performing studies may increase. We plan on entering into additional collaborations and licensing arrangements. We may not be able to negotiate additional collaborations on acceptable terms, if at all, and these collaborations may not be successful. Our current and future success depends in part on our ability to enter into successful collaboration arrangements and maintain the collaboration arrangement we currently have. If we are unable to enter into, maintain or extend successful collaborations, our business may be harmed.

We may acquire other businesses or form joint ventures or in-license compounds that could disrupt our business, harm our operating results, dilute your ownership interest in us, or cause us to incur debt or significant expense.

As part of our business strategy, we may pursue acquisitions of complementary businesses and assets, and enter into technology or pharmaceutical compound licensing arrangements. We also may pursue strategic alliances that leverage our core technology and industry experience to enhance our ability to commercialize our product candidates and expand our product offerings or distribution. We have no experience with respect to acquiring other companies and limited experience with respect to the formation of commercial partnering agreements, strategic alliances, joint ventures or in-licensing of compounds. If we make any acquisitions, we may not be able to integrate these acquisitions successfully into our existing business, and we could assume unknown or contingent liabilities. If we in-license any additional compounds, we may fail to develop the product candidates, and spend significant resources before determining whether a compound we have in-licensed will produce revenues. Any future acquisitions or in-licensing by us also could result in significant write-offs or the incurrence of debt and contingent liabilities, any of which could harm our operating results. Integration of an acquired company also may require management resources that otherwise would be available for ongoing development of our existing business. We may not identify or complete these transactions in a timely manner, on a cost-effective basis, or at all, and we may not realize the anticipated benefits of any acquisition, technology license, strategic alliance or joint venture.

To finance any acquisitions, we may choose to issue shares of our common stock as consideration, which would dilute your interest in us. If the price of our common stock is low or volatile, we may not be able to acquire other companies for stock. Alternatively, it may be necessary for us to raise additional funds for acquisitions by incurring indebtedness. Additional funds may not be available on terms that are favorable to us, or at all.

We may be unable to raise additional capital on acceptable terms in the future which may in turn limit our ability to develop and commercialize products and technologies.

We expect our capital outlays and operating expenditures to substantially increase over at least the next several years as we expand our product pipeline and increase research and development efforts and clinical and regulatory activities. In addition, we may require significant capital outlays and operating expenditures if we do not partner with a third party to develop and commercialize our products.

We may need to raise additional capital through future private or public equity offerings, strategic alliances or debt financing to, among other things:

acquire or in-license technologies or drugs;

conduct clinical validation studies;

expand our technologies into other areas;

finance capital expenditures; and

fund general and administrative expenses.

Additional financing may not be available on favorable terms, or at all. Even if we succeed in selling additional securities to raise funds, our existing shareholders' ownership percentage would be diluted and new

Table of Contents

investors may demand rights, preferences or privileges senior to those of existing shareholders. If we raise additional capital through strategic alliance and licensing arrangements, we may have to trade our rights to our technology, intellectual property or products to others on terms that may not be favorable to us. If we raise additional capital through debt financing, the financing may involve covenants that restrict our business activities.

In addition, it is often the case that the cost of pharmaceutical development can be significantly greater than initially anticipated. This may be due to any of a large number of possible reasons, some of which could have been anticipated, while others may be caused by unpredictable circumstances. A significant increase in our costs would cause the amount of financing that would be required to enable us to achieve our goals to be likewise increased.

If we determine that we need to raise additional funds and we are not successful in doing so, we may be unable to complete the clinical development of some or all of our product candidates or to seek or obtain FDA approval of our product candidates. Such events could force us to discontinue product development, enter into a relationship with a strategic partner earlier than currently intended, reduce sales and marketing efforts or forego attractive business opportunities.

We depend on skilled and experienced personnel to operate our business effectively. If we are unable to recruit, hire and retain these employees, our ability to manage and expand our business will be harmed, which would impair our future revenue and profitability.

Our success largely depends on the skills, experience and efforts of our officers, especially our chief executive officer, chief financial officer, vice-president of research and development and vice president of medical affairs, and other key employees. The efforts of each of these persons is critical to us as we continue to develop our technologies and as we attempt to transition into a company with commercial products. Any of our officers and other key employees may terminate their employment at any time. The loss of any of our senior management team members could weaken our management expertise and harm our ability to compete effectively, develop our technologies and implement our business strategies.

Our ability to retain our skilled labor force and our success in attracting and hiring new skilled employees will be a critical factor in determining whether we will be successful in the future. Our research and development programs and collaborations depend on our ability to attract and retain highly skilled scientists and technicians. We may not be able to attract or retain qualified scientists and technicians in the future due to the intense competition for qualified personnel among life science businesses, particularly in the San Francisco Bay Area. We also face competition from universities and public and private research institutions in recruiting and retaining highly qualified scientific personnel. If we need to recruit qualified personnel from outside the San Francisco Bay Area, we may not be successful because the cost of housing in the area is substantially higher than that in many other areas in North America.

If we fail to manage our growth effectively, we may be unable to execute our business plan.

Our future growth, if any, may cause a significant strain on our management, and our operational, financial and other resources. Our ability to manage our growth effectively will require us to implement and improve our operational, financial and management information systems and to expand, train, manage and motivate our employees. These demands may require the hiring of additional management personnel and the development of additional expertise by management. Any increase in resources devoted to research and product development without a corresponding increase in our operational, financial and management information systems could have a material adverse effect on our business, financial condition, and results of operations.

It may be difficult to recruit and retain independent members for our Board of Directors.

The burdens being placed on the members of a board of directors by applicable laws and regulations are making it increasingly difficult to recruit qualified candidates to be members of a board of directors of a public

Table of Contents

company. These same burdens may make it increasingly difficult to retain members of our board of directors. If we are unable to maintain a board of directors in which our shareholders have confidence, this could have an adverse impact on shareholder confidence and on the price of our stock.

If our facilities become inoperable, we will be unable to perform our research and development activities, fulfill the requirements under our collaboration agreement and continue developing products and, as a result, our business will be harmed.

We do not have redundant laboratory facilities. We perform substantially all of our research, development and testing in our laboratory located in Emeryville, California. Emeryville is situated on or near active earthquake fault lines. Our facility and the equipment we use to perform our research, development and testing would be costly to replace and could require substantial lead time to repair or replace. The facility may be harmed or rendered inoperable by natural or man-made disasters, including earthquakes, flooding and power outages, which may render it difficult or impossible for us to perform our research, development and testing for some period of time. The inability to perform our research and development activities may result in the loss of partners or harm our reputation, and we may be unable to regain those partnerships in the future. Our insurance coverage for damage to our property and the disruption of our business may not be sufficient to cover all of our potential losses and may not continue to be available to us on acceptable terms, or at all.

If we fail to obtain the necessary regulatory approvals, we will not be able to commercialize our proposed products, and we will not generate product revenues.

Satisfaction of all regulatory requirements applicable to our product candidates typically takes many years, is dependent upon the type, complexity, novelty and classification of the product candidates, and requires the expenditure of substantial resources for research and development and testing. Our research and clinical development may not lead to products that the FDA considers safe and effective for indicated uses we are pursuing. The FDA may require us to conduct additional clinical testing, in which case we would have to expend additional time and resources and such additional clinical testing would likely delay the date of potentially receiving regulatory approval. The approval process may also be delayed by changes in government regulation, future legislation or administrative action or changes in FDA policy that occur prior to or during our regulatory review. Delays in obtaining regulatory approvals may:

delay commercialization of, and product revenues from, our product candidates; and

diminish the competitive advantages that we may have otherwise enjoyed, which would have an adverse effect on our operating results and financial condition.

Even if we comply with all FDA regulatory requirements, we may never obtain regulatory approval for some or all of our product candidates. If we fail to obtain regulatory approval for any of our product candidates, we will have fewer saleable products, if any, and corresponding lower product revenues, if any.

Obtaining regulatory approval in the United States does not ensure we will obtain regulatory approval in other countries.

We will aim to obtain regulatory approval in the United States as well as in other countries. To obtain regulatory approval to market our proposed products outside of the United States, we and any collaborator must comply with numerous and varying regulatory requirements in other countries regarding safety and efficacy. Approval procedures vary among countries and can involve additional product testing and additional administrative review periods. The time required to obtain approval in other countries might differ significantly from that required to obtain FDA approval. The regulatory approval process in other countries include all of the risk associated with FDA approval as well as additional, presently unanticipated risks. Regulatory approval in one country does not ensure regulatory approval in another, but a failure or delay in obtaining regulatory approval in one country may negatively impact the regulatory process in others. Failure to obtain regulatory

Table of Contents

approval in other countries or any delay or setback in obtaining such approval could have the same adverse effects associated with regulatory approval in the United States, including the risk that our product candidates may not be approved for all indications requested and that such approval may be subject to limitations on the indicated uses for which the product may be marketed. In addition, failure to comply with applicable regulatory requirements in other countries can result in, among other things, warning letters, fines, injunctions, civil penalties, recall or seizure of products, total or partial suspension of production, refusal of the government to renew marketing applications and criminal prosecution.

If we are unable to design, conduct and complete clinical trials successfully, we will not be able to obtain regulatory approval for our products.

In order to obtain FDA approval for some of our product candidates, we must submit to the FDA a New Drug Application, or NDA, demonstrating that the product candidate is safe and effective for its intended use. This demonstration requires significant research and animal tests, which are referred to as preclinical studies, as well as human tests, which are referred to as clinical trials.

Any clinical trials we conduct or that are conducted by our partners may not demonstrate the safety or efficacy of our product candidates. Success in pre-clinical testing and early clinical trials does not ensure that later clinical trials will be successful. Results of later clinical trials may not replicate the results of prior clinical trials and pre-clinical testing. Even if the results of one or more of our clinical trials are positive, we may have to commit substantial time and additional resources to conducting further preclinical studies or clinical trials before we can submit NDAs or obtain FDA approvals for our product candidates, and positive results of a clinical trial may not be replicated in subsequent trials.

Clinical trials are very expensive and difficult to design and implement. The clinical trial process is also time-consuming. Furthermore, if participating patients in clinical studies suffer drug-related adverse reactions during the course of such trials, or if we or the FDA believe that participating patients are being exposed to unacceptable health risks, we will have to suspend or terminate our clinical trials. Failure can occur at any stage of the trials, and we could encounter problems that cause us to abandon clinical trials or to repeat clinical studies.

In addition, the completion of clinical trials can be delayed by numerous factors, including:

delays in identifying and agreeing on acceptable terms with prospective clinical trial sites;

slower than expected rates of patient recruitment and enrollment;

increases in time required to complete monitoring of patients during or after participation in a trial; and

unexpected need for additional patient-related data.

Any of these delays, if significant, could impact the timing, approval and commercialization of our product candidates and could significantly increase our overall costs of drug development.

Even if our clinical trials are completed as planned, their results may not support our expectations or intended marketing claims. The clinical trials process may fail to demonstrate that our products are safe and effective for indicated uses. Such failure would cause us to abandon a product candidate for some indications and could delay development of other product candidates.

Government agencies may establish usage guidelines that directly apply to our proposed products or change legislation or regulations to which we are subject.

Government usage guidelines typically address matters such as usage and dose, among other factors. Application of these guidelines could limit the use of products that we may develop. In addition there can be no assurance that government regulations applicable to our proposed products or the interpretation thereof will not

Table of Contents

change and thereby prevent the marketing of some or all of our products for a period of time or permanently. The FDA's 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 adverse government regulation that may arise from future legislation or administrative action, either in the United States or in other countries.

In particular, several potential indications for our product candidates may be regulated under the medical device regulations of the FDA administered by the Center for Devices and Radiological Health or by the Center for Drug Evaluation and Research and the same physical product may be regulated by one such agency for one indication and the other agency for another indication. A reclassification by the FDA of an indication from a device to a drug indication during our development for that indication could have a significant adverse impact, significantly increasing development costs and prolonging the time for development and approval, thus delaying revenues. A reclassification of an indication after approval from a drug to a device could result in a change in classification for reimbursement. In many cases, reimbursement for devices is significantly lower than for drugs and there could be a significant negative impact on our revenues.

Conducting clinical trials of our product candidates may expose us to expensive liability claims, and we may not be able to maintain liability insurance on reasonable terms or at all.

The risk of clinical trial liability is inherent in the testing of pharmaceutical and medical device products. If we cannot successfully defend ourselves against any clinical trial claims, we may incur substantial liabilities or be required to limit or terminate testing of one or more of our product candidates. Our inability to obtain sufficient clinical trial insurance at an acceptable cost to protect us against potential clinical trial claims could prevent or inhibit the commercialization of our product candidates. Our current clinical trial insurance may not cover all claims and we may not be able to obtain additional insurance coverage at a reasonable cost, if at all, in the future. In addition, if our agreements with any future corporate collaborators entitle us to indemnification against product liability losses and clinical trial liability, such indemnification may not be available or adequate should any claim arise.

If product liability lawsuits are brought against us, they could result in costly litigation and significant liabilities.

The product candidates we are developing or attempting to develop will, in most cases, undergo extensive clinical testing and will require regulated approval from the applicable regulatory authorities prior to sale. However, despite all reasonable efforts to ensure safety, it is possible that we or our collaborators will sell products which are defective, to which patients react in an unexpected manner, or which are alleged to have side effects. The manufacture and sale of such products may expose us to potential liability, and the industries in which our products are likely to be sold have been subject to significant product liability litigation. Any claims, with or without merit, could result in costly litigation, reduced sales, significant liabilities and diversion of our management's time and attention and could have a material adverse effect on our financial condition, business and results of operations.

If a product liability claim is brought against us, we may be required to pay legal and other expenses to defend the claim and, if the claim is successful, damage awards may not be covered, in whole or in part, by our insurance. We may not have sufficient capital resources to pay a judgment, in which case our creditors could levy against our assets. We may also be obligated to indemnify our collaborators and make payments to other parties with respect to product liability damages and claims. Defending any product liability claims, or indemnifying others against those claims, could require us to expend significant financial and managerial resources.

Table of Contents

If we receive regulatory approval for drug products that we develop, we and our collaborators will also be subject to ongoing FDA obligations and continued regulatory review, such as continued safety reporting requirements, and we and our collaborators may also be subject to additional FDA post-marketing obligations or new regulations, all of which may result in significant expense and which may limit our ability to commercialize our potential drug products.

Any regulatory approvals that we receive for drug products that we develop may also be subject to limitations on the indicated uses for which the drug may be marketed or contain requirements for potentially costly post-marketing follow-up studies. The FDA may require us to commit to perform lengthy Phase IV post-approval studies (as further described below), for which we would have to expend additional resources, which could have an adverse effect on our operating results and financial condition. In addition, if the FDA approves any of our drug product candidates, the labeling, packaging, adverse event reporting, storage, advertising, promotion and record keeping for the drug will be subject to extensive regulatory requirements. The subsequent discovery of previously unknown problems with the drugs, including adverse events of unanticipated severity or frequency, may result in restrictions on the marketing of the drugs or the withdrawal of the drugs from the market. If we are not able to maintain regulatory compliance, we may be subject to fines, suspension or withdrawal of regulatory approvals, product recalls, seizure of products, operating restrictions and criminal prosecution. Any of these events could prevent us from marketing any products we may develop and our business could suffer.

Failure to obtain sufficient quantities of products and substances necessary for research and development, pre-clinical trials, human clinical trials and product commercialization that are of acceptable quality at reasonable prices or at all could constrain our product development and have a material adverse effect on our business.

We have relied and will continue to rely on contract manufacturers for the foreseeable future to produce quantities of products and substances necessary for research and development, pre-clinical trials, human clinical trials and product commercialization. It will be important to us that such products and substances can be manufactured at a cost and in quantities necessary to make them commercially viable. At this point in time, we have not attempted to identify, and do not know whether there will be, any third party manufacturers which will be able to meet our needs with respect to timing, quantity and quality for commercial production. In addition, if we are unable to contract for a sufficient supply or required products and substances on acceptable terms, or if we should encounter delays or difficulties in our relationships with manufacturers, our research and development, pre-clinical and clinical testing would be delayed, thereby delaying the submission of product candidates for regulatory approval or the market introduction and subsequent sales of products. Any such delay may have a material adverse effect on our business, financial condition and results of operations.

If we use biological and hazardous materials in a manner that causes injury, we could be liable for damages. Compliance with environmental regulations can be expensive, and noncompliance with these regulations may result in adverse publicity and potentially significant monetary damages and fines.

Our activities currently require the controlled use of potentially harmful biological materials and other hazardous materials and chemicals and may in the future require the use of radioactive compounds. We cannot eliminate the risk of accidental contamination or injury to employees or third parties from the use, storage, handling or disposal of these materials. In the event of contamination or injury, we could be held liable for any resulting damages, and any liability could exceed our resources or any applicable insurance coverage we may have. Additionally, we are subject, on an ongoing basis, to U.S. federal, state and local laws and regulations governing the use, storage, handling and disposal of these materials and specified waste products. The cost of compliance with these laws and regulations might be significant and could negatively affect our operating results. In addition, if more stringent laws and regulations are adopted in the future, the costs of compliance with these new laws and regulations could be substantial or could impose significant changes in our testing and production process.

Table of Contents

Because our clinical development activities rely heavily on sensitive and personal information, an area which is highly regulated by privacy laws, we may not be able to generate, maintain or access essential patient samples or data to continue our research and development efforts in the future on reasonable terms and conditions, which may adversely affect our business.

As a result of our clinical development, we will have access to very sensitive data regarding the patients enrolled in our clinical trials. This data will contain information that is personal in nature. The maintenance of this data is subject to certain privacy-related laws, which impose upon us administrative and financial burdens, and litigation risks. We can provide no assurance that future legislation will not prevent us from generating or maintaining personal data or that patients will consent to the use of their personal information, either of which may prevent us from undertaking or publishing essential research. These burdens or risks may prove too great for us to reasonably bear, and may adversely affect our ability to function profitably in the future.

We may be subject to fines, penalties, injunctions and other sanctions if we are deemed to be promoting the use of our products for non-FDA-approved, or off-label, uses.

Our business and future growth depend on the development, use and ultimate sale of products that are subject to FDA regulation, clearance and approval. Under the U.S. Federal Food, Drug, and Cosmetic Act and other laws, we are prohibited from promoting our products for off-label uses. This means that we may not make claims about the safety or effectiveness of our products and may not proactively discuss or provide information on the use of our products, except as allowed by the FDA.

There is a risk that the FDA or other federal or state law enforcement authorities could determine that the nature and scope of our sales and marketing activities may constitute the promotion of our products for a non-FDA-approved use in violation of applicable law. We also face the risk that the FDA or other regulatory authorities might pursue enforcement based on past activities that we have discontinued or changed, including sales activities, arrangements with institutions and doctors, educational and training programs and other activities.

Government investigations concerning the promotion of off-label uses and related issues are typically expensive, disruptive and burdensome and generate negative publicity. If our promotional activities are found to be in violation of applicable law or if we agree to a settlement in connection with an enforcement action, we would likely face significant fines and penalties and would likely be required to substantially change our sales, promotion, grant and educational activities. In addition, were any enforcement actions against us or our senior officers to arise, we could be excluded from participation in U.S. government healthcare programs such as Medicare and Medicaid.

If we are unable to protect our intellectual property, our competitors could develop and market products similar to ours that may reduce demand for our products.

Our success, competitive position and potential future revenues will depend in significant part on our ability to protect our intellectual property. We rely on the patent, trademark, copyright and trade secret laws of the United States and other countries, as well as confidentiality and nondisclosure agreements, to protect our intellectual property rights. We apply for patents covering our technologies as we deem appropriate. We cannot assure you that patents will issue from any of our applications or, for those patents that do issue, that the claims will be sufficiently broad to protect our proprietary rights, or that it will be economically possible to pursue sufficient numbers of patents to afford significant protection. In addition, we cannot assure you that any patents issued to us or licensed or assigned to us by third parties will not be challenged, invalidated, found unenforceable or circumvented, or that the rights granted thereunder will provide competitive advantages to us. If we or our collaborators or licensors fail to file, prosecute or maintain certain patents, our competitors could market products that contain features and clinical benefits similar to those of any products we develop, and demand for our products could decline as a result. Further, although we have taken steps to protect our intellectual property

Table of Contents

and proprietary technology, we cannot assure you that third parties will not be able to design around our patents or, if they do infringe upon our technology, that we will be successful in or have sufficient resources to pursue a claim of infringement against those third parties. Any pursuit of an infringement claim by us may involve substantial expense and diversion of management attention.

We also rely on trade secrets and proprietary know-how that we seek to protect by confidentiality agreements with our employees, consultants and collaborators. We cannot assure you that these agreements will be enforceable, will not be breached, that we will have adequate remedies for any breach, or that our trade secrets and proprietary know-how will not otherwise become known or be independently discovered by competitors.

In particular, we operate in the State of California and the laws of the State prevent us from imposing a delay before an employee who may have access to trade secrets and proprietary know-how can commence employment with a competing company. Although we may be able to pursue legal action against competitive companies improperly using our proprietary information, we may not be aware of any use of our trade secrets and proprietary know-how until after significant damage has been done to our company.

Furthermore, the laws of foreign countries may not protect our intellectual property rights to the same extent as the laws of the United States. If our intellectual property does not provide significant protection against foreign or domestic competition, our competitors, including generic manufacturers, could compete more directly with us, which could result in a decrease in our market share. All of these factors may harm our competitive position.

If we are unable to protect the intellectual property and market exclusivity of Aganocide compounds and products, thereby enabling other parties to commercialize competing products, our ability to generate revenues from the sale of our products may be limited or diminished.

We have filed a patent application with claims directed to the NVC-422 Aganocide compounds and claims directed to the method of using the Aganocide compounds with the United States Patent and Trademark Office, or USPTO, and a related international patent application under the Patent Cooperation Treaty, or PCT. We cannot assure you that any national or regional patents will eventually be issued from the U.S. or international patent applications. Should we be unable to obtain patents with sufficiently broad scope to protect our proprietary rights, the interest of potential partners for the development and commercialization of our Aganocide products would be greatly diminished or eliminated.

If no such patents are issued or if they are issued but are later found invalid or unenforceable or are not of sufficient scope, or after such patents expire in a given jurisdiction, our competitors may produce generic products and make them available at a cost that is cheaper than the price at which we, or our commercial partners, would offer to sell any Aganocide products we develop.

We have also filed a patent application claiming various derivatives and analogs of NVC-422 Aganocide compounds and their method of use with the USPTO as well as a corresponding PCT application. If our efforts to protect the intellectual property and market position of the NVC-422 Aganocide products and their methods of use do not succeed, our ability to generate revenues from the sale of any such products may be limited or diminished.

We have received a Notice of Allowance for a U.S. patent application covering a method of treatment of various medical conditions using NVC-101. However, to date, we do not have any composition of matter patent directed to the NVC-101 composition. If a potential competitor introduces a similar method of using NVC-101 with a similar composition that does not fall within the scope of the method of treatment claims, then we or a potential marketing partner would be unable to rely on the allowed claims to protect its market position for the method of using the NVC-101 composition, and any revenues arising from such protection would be adversely impacted.

Table of Contents

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

Some of our employees may have been previously employed at universities or other biotechnology or pharmaceutical companies, including our competitors or potential competitors. Although no claims against us are currently pending, we may be subject to claims that these employees or we have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers. Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management. If we fail in defending such claims, in addition to paying money damages, we may lose valuable intellectual property rights or personnel. A loss of key research personnel or their work product could hamper or prevent our ability to commercialize product candidates, which could severely harm our business.

The pharmaceutical and biopharmaceutical industries are characterized by patent litigation and any litigation or claim against us may cause us to incur substantial costs, and could place a significant strain on our financial resources, divert the attention of management from our business and harm our reputation.

There has been substantial litigation in the pharmaceutical and biopharmaceutical industries with respect to the manufacture, use and sale of new products that are the subject of conflicting patent rights. For the most part, these lawsuits relate to the validity, enforceability and infringement of patents. Generic companies are encouraged to challenge the patents of pharmaceutical products in the United States because a successful challenger can obtain six months of exclusivity as a generic product under the Waxman-Hatch Act. We expect that we will rely upon patents, trade secrets, know-how, continuing technological innovations and licensing opportunities to develop and maintain our competitive position and we may initiate claims to defend our intellectual property rights as a result. Other parties may have issued patents or be issued patents that may prevent the sale of our products or know-how or require us to license such patents and pay significant fees or royalties in order to produce our products. In addition, future patents may issue to third parties which our technology may infringe. Because patent applications can take many years to issue, there may be applications now pending of which we are unaware that may later result in issued patents that our products may infringe.

Intellectual property litigation, regardless of outcome, is expensive and time-consuming, could divert management's attention from our business and have a material negative effect on our business, operating results or financial condition. If such a dispute were to be resolved against us, we may be required to pay substantial damages, including treble damages and attorneys fees if we were to be found to have willfully infringed a third party's patent, to the party claiming infringement, develop non-infringing technology, stop selling any products we develop, cease using technology that contains the allegedly infringing intellectual property or enter into royalty or license agreements that may not be available on acceptable or commercially practical terms, if at all. Our failure to develop non-infringing technologies or license the proprietary rights on a timely basis could harm our business. Modification of any products we develop or development of new products thereafter could require us to conduct additional clinical trials and to revise our filings with the FDA and other regulatory bodies, which would be time-consuming and expensive. In addition, parties making infringement claims may be able to obtain an injunction that would prevent us from selling any products we develop, which could harm our business.

If bacteria develop resistance to Aganocide compounds, our revenues could be significantly reduced.

Based on our understanding of the hypothesis of the mechanism of action of our Aganocide compounds, we do not expect bacteria to be able to develop resistance to Aganocide compounds. However, we cannot assure you that one or more strains of bacteria will not develop resistance to our compounds, either because our hypothesis of the mechanism of action is incorrect or because a strain of bacteria undergoes some unforeseen genetic mutation that permits it to survive. Since we expect lack of resistance to be a major factor in the commercialization of our product candidates, the discovery of such resistance would have a major adverse impact on the acceptability and sales of our products.

Table of Contents

If physicians and patients do not accept and use our products, we will not achieve sufficient product revenues and our business will suffer.

Even if the FDA approves any product candidates that we develop, physicians and patients may not accept and use them. Acceptance and use of our products may depend on a number of factors including:

perceptions by members of the healthcare community, including physicians, about the safety and effectiveness of our products;

published studies demonstrating the cost-effectiveness of our products relative to competing products;

availability of reimbursement for our products from government or healthcare payers; and

effectiveness of marketing and distribution efforts by us and our licensees and distributors, if any.

The failure of any of our products to find market acceptance would harm our business and could require us to seek additional financing.

If we are unable to develop our own sales, marketing and distribution capabilities, or if we are not successful in contracting with third parties for these services on favorable terms, or at all, revenues from any products we develop could be disappointing.

We currently have no internal sales, marketing or distribution capabilities. In order to commercialize any product candidates approved by the FDA, we will either have to develop such capabilities internally or collaborate with third parties who can perform these services for us. If we decide to commercialize any products we develop, we may not be able to hire the necessary experienced personnel and build sales, marketing and distribution operations which are capable of successfully launching new products and generating sufficient product revenues. In addition, establishing such operations will take time and involve significant expense.

If we decide to enter into co-promotion or other licensing arrangements with third parties, we may be unable to identify acceptable partners because the number of potential partners is limited and because of competition from others for similar alliances with potential partners. Even if we are able to identify one or more acceptable partners, we may not be able to enter into any partnering arrangements on favorable terms, or at all. If we enter into any partnering arrangements, our revenues are likely to be lower than if we marketed and sold our products ourselves.

In addition, any revenues we receive would depend upon our partners' efforts which may not be adequate due to lack of attention or resource commitments, management turnover, change of strategic focus, further business combinations or other factors outside of our control. Depending upon the terms of our agreements, the remedies we have against an under-performing partner may be limited. If we were to terminate the relationship, it may be difficult or impossible to find a replacement partner on acceptable terms, or at all.

If we cannot compete successfully for market share against other companies, we may not achieve sufficient product revenues and our business will suffer.

The market for our product candidates is characterized by intense competition and rapid technological advances. If our product candidates receive FDA approval, they will compete with a number of existing and future drugs, devices and therapies developed, manufactured and marketed by others. Existing or future competing products may provide greater therapeutic convenience or clinical or other benefits for a specific indication than our products, or may offer comparable performance at a lower cost. If our products are unable to capture and maintain market share, we may not achieve sufficient product revenues and our business will suffer.

We will compete for market share against fully integrated pharmaceutical companies or other companies that develop products independently or collaborate with larger pharmaceutical companies, academic institutions, government agencies and other public and private research organizations. In addition, many of these competitors,

Table of Contents

either alone or together with their collaborative partners, have substantially greater capital resources, larger research and development staffs and facilities, and greater financial resources than we do, as well as significantly greater experience in:

developing drugs and devices;

conducting preclinical testing and human clinical trials;

obtaining FDA and other regulatory approvals of product candidates;

formulating and manufacturing products; and

launching, marketing, distributing and selling products.

Our competitors may:

develop and patent processes or products earlier than we will;

develop and commercialize products that are less expensive or more efficient than any products that we may develop;

obtain regulatory approvals for competing products more rapidly than we will; and

improve upon existing technological approaches or develop new or different approaches that render our technology or products obsolete or uncompetitive.

We cannot assure you that our competitors will not succeed in developing technologies and products that are more effective than any developed by us or that would render our technologies and any products we develop obsolete. If we are unable to compete successfully against current or future competitors, we may be unable to obtain market acceptance for any product candidates that we create, which could prevent us from generating revenues or achieving profitability and could cause the market price of our common stock to decline.

Our ability to generate revenues from any products we develop will be diminished if we fail to obtain acceptable prices or an adequate level of reimbursement for our products from healthcare payers.

Our ability to commercialize our product candidates will depend, in part, on the extent to which health insurers, government authorities and other third-party payers will reimburse the costs of products which may be developed by us or our partners. We expect that a portion of our economic return from partnering arrangements with pharmaceutical companies and other collaborators will be derived from royalties, fees or other revenues linked to final sales of products that we or our partners develop. Newly-approved pharmaceuticals and other products which are developed by us or our partners will not necessarily be reimbursed by third-party payers or may not be reimbursed at levels sufficient to generate significant sales. Government and other third-party payers are increasingly attempting to contain health care costs by limiting both coverage and the level of reimbursement for new drugs or medical devices. Cost control initiatives such as these could adversely affect our or our collaborators' ability to commercialize products. In addition, real or anticipated cost control initiatives for final products may reduce the willingness of pharmaceutical companies or other potential partners to collaborate with us on the development of new products.

Significant uncertainty exists as to the reimbursement status of newly-approved healthcare products. Healthcare payers, including Medicare, health maintenance organizations and managed care organizations, are challenging the prices charged for medical products or are seeking

Edgar Filing: NovaBay Pharmaceuticals, Inc. - Form S-1

pharmacoeconomic data to justify formulary acceptance and reimbursement practices. We currently have not generated pharmacoeconomic data on any of our product candidates. Government and other healthcare payers increasingly are attempting to contain healthcare costs by limiting both coverage and the level of reimbursement for drugs and medical devices, and by refusing, in some cases, to provide coverage for uses of approved products for disease indications for which the FDA has or has not granted labeling approval. Adequate third-party insurance coverage may not be available to patients for any products we discover and develop, alone or with collaborators. If government and other healthcare payers do not provide adequate coverage and reimbursement levels for our products, market acceptance of our product candidates could be limited.

Table of Contents

A significant terrorist attack or threat of such attack may adversely impact our ability to obtain financing.

A major terrorist attack, the threat of such attack or other unforeseen events beyond our control, may occur at a time when we need to raise additional financing. Closure or severe perturbation of the financial markets as a result of such events may make such financing impossible or unattractive and our plans may be seriously disrupted. As a consequence, the progress of the company towards revenues or profits could be significantly impaired.

Risks Related to This Offering and Ownership of Our Common Stock

Our common stock has not been publicly traded, and we expect that the price of our common stock will fluctuate substantially.

Before this offering, there has been no public market for our common stock. We intend to apply to list our shares on the Toronto Stock Exchange and the American Stock Exchange. Any such listing will be subject to the approval of the relevant stock exchange, and any such approval will not be given unless all of the original listing requirements are met. An active public trading market for our common stock may not develop after completion of this offering or, if developed, may not be sustained. If an active public market does not develop or is not maintained, you may have difficulty selling your shares. The initial public offering price of our shares was determined by negotiations between us and the underwriters for this offering and may not be indicative of the price at which our common stock will trade following the completion of this offering. We cannot assure you that the market price of our common stock will not materially decline below the initial public offering price. The market price for our common stock after this offering will be affected by a number of factors, including:

the results of preclinical or clinical trials relating to our product candidates;

the announcement of new products by us or our competitors;

announcement of partnering arrangements by us or our competitors;

quarterly variations in our or our competitors' results of operations;

announcements by us related to litigation;

changes in our earnings estimates, investors' perceptions, recommendations by securities analysts or our failure to achieve analysts' earnings estimates;

developments in our industry; and

general market conditions and other factors unrelated to our operating performance or the operating performance of our competitors. The stock prices of many companies in the pharmaceutical and biotechnology industry have experienced wide fluctuations that have often been unrelated to the operating performance of those companies. These factors and price fluctuations may also materially and adversely affect the market price of our common stock.

We must implement additional and expensive finance and accounting systems, procedures and controls in order to grow our business and organization and to satisfy new reporting requirements, which will increase our costs and require additional management resources.

Edgar Filing: NovaBay Pharmaceuticals, Inc. - Form S-1

As a public reporting company, we will be required to comply with the Sarbanes-Oxley Act of 2002 and the related rules and regulations of the Securities and Exchange Commission, or SEC, and Canadian securities regulatory authorities, including expanded disclosures and accelerated reporting requirements and more complex accounting rules. Upon approval for listing as a public company on the TSX and on AMEX, we will also be required to comply with marketplace rules and the heightened corporate governance standards of the TSX and AMEX. Compliance with Section 404 of the Sarbanes-Oxley Act of 2002, which will be required by 2009, and other requirements of the SEC, Canadian securities regulatory authorities, AMEX and the TSX will increase our costs and require additional

Table of Contents

management resources. We recently have begun upgrading our finance and accounting systems, procedures and controls and will need to continue to implement additional finance and accounting systems, procedures and controls as we grow our business and organization and to satisfy new reporting requirements. If we are unable to complete the required Section 404 assessment as to the adequacy of our internal control over financial reporting, if we fail to maintain or implement adequate controls, or if our independent registered public accounting firm is unable to provide us with an unqualified report as to the effectiveness of our internal control over financial reporting as of the date of the first Annual Report on Form 10-K for which compliance is required, our ability to obtain additional financing could be impaired. In addition, investors could lose confidence in the reliability of our internal control over financial reporting and in the accuracy of our periodic reports filed with the SEC and with Canadian securities regulatory authorities. A lack of investor confidence in the reliability and accuracy of our public reporting could cause our stock price to decline.

The volume of trading of our common stock may be low, leaving our common stock open to risk of high volatility.

The number of shares of our common stock being traded may be very low. Any shareholder wishing to sell his/her stock may cause a significant fluctuation in the price of our stock. In addition, low trading volume of a stock increases the possibility that, despite rules against such activity, the price of the stock may be manipulated by persons acting in their own self-interest. We may not have adequate market makers and market making activity to prevent manipulation.

New investors in our common stock will experience immediate and substantial dilution in the book value of their investment after this offering.

The initial public offering price of our common stock is substantially higher than the book value per share of our common stock. If you purchase common stock in this offering, you will incur immediate dilution of \$ _____ in the pro forma net tangible book value per share of common stock, based on an initial public offering price of \$ _____ per share. In addition, 31,849,813 shares of common stock were outstanding as of December 31, 2006, which assumes the conversion of all of our outstanding preferred stock into an aggregate of 19,227,195 shares of common stock on the completion of this offering, and an additional _____ shares will be reserved for issuance under our stock option plans as of the date of this prospectus. Investors will incur additional dilution upon the exercise of stock options. For a further description of the effects of dilution in the net tangible book value of our common stock, see Dilution.

Future sales of shares by our shareholders could cause the market price of our common stock to drop significantly, even if our business is doing well.

After this offering, we will have outstanding _____ shares of common stock based on the number of shares outstanding at _____. This includes the _____ shares we are selling in this offering, which may be resold in the public market immediately. In addition, _____ shares outstanding as of December 31, 2006, which shares were issued by us prior to _____, 2005, will be available for immediate sale in the public market as of the date of this prospectus. Following the expiration of, or release from, lock-up agreements with the representatives of the underwriters and applicable Canadian escrow requirements, _____ additional shares will become available for sale in the public market six months after the closing of this offering, subject in some cases to compliance with the volume and other limitations of Rule 144 and in other cases subject to compliance with applicable Canadian requirements. Thereafter, _____ additional shares held by our officers and directors will become eligible for sale in the public market over the three to 18 month period following the initial six month lock-up period, as the shares are released from the lock-up agreements with the representatives of the underwriters and applicable Canadian escrow requirements.

In addition, at any time and without public notice, the underwriters may in their sole discretion release all or some of the securities subject to the lock-up agreements subject to applicable regulatory requirements. As restrictions on resale end, the market price of our stock could drop significantly if the holders of those shares sell

Table of Contents

them or are perceived by the market as intending to sell them. These declines in our stock price could occur even if our business is otherwise doing well.

Our directors, officers and principal shareholders have significant voting power and may take actions that may not be in the best interests of our other shareholders.

After this offering, our officers and directors collectively will control approximately % of our outstanding common stock, without giving effect to the purchase of shares by any such persons in this offering. Furthermore, our largest shareholder, a family trust established and controlled by Dr. Najafi, our Chairman and Chief Executive Officer, will beneficially own % of our outstanding common stock after giving effect to this offering, assuming no additional purchases of shares in this offering by Dr. Najafi, the trust or persons affiliated with them. As a result, Dr. Najafi can significantly influence the management and affairs of our Company and most matters requiring shareholder approval, including the election of directors and approval of significant corporate transactions. This concentration of ownership may have the effect of delaying or preventing a change in control and might adversely affect the market price of our common stock. This concentration of ownership may not be in the best interests of our other shareholders.

We have broad discretion in the use of proceeds of this offering for working capital and general corporate purposes.

We expect to spend the net proceeds that we will receive from this offering on advancement of the clinical development of our Aganocide compounds, research and development, working capital, general corporate purposes, and potential acquisitions of other complementary businesses, products or technologies. Within those categories, we have not determined the specific allocation of the net proceeds of this offering. Our management will have broad discretion over the use and investment of the net proceeds of this offering within those categories, and accordingly investors in this offering will need to rely upon the judgment of our management with respect to the use of proceeds, with only limited information concerning management's specific intentions.

Our amended and restated articles of incorporation and bylaws and California law, contain provisions that could discourage a third party from making a takeover offer that is beneficial to our shareholders.

Anti-takeover provisions of our amended and restated articles of incorporation, amended and restated bylaws and California law may have the effect of deterring or delaying attempts by our shareholders to remove or replace management, engage in proxy contests and effect changes in control. The provisions of our charter documents will include:

a classified board so that only one of the three classes of directors on our Board of Directors is elected each year;

elimination of cumulative voting in the election of directors;

procedures for advance notification of shareholder nominations and proposals;

the ability of our Board of Directors to amend our bylaws without shareholder approval; and

the ability of our Board of Directors to issue up to 5,000,000 shares of preferred stock without shareholder approval upon the terms and conditions and with the rights, privileges and preferences as our Board of Directors may determine.

In addition, as a California corporation, we are subject to California law, which includes provisions that may have the effect of deterring hostile takeovers or delaying or preventing changes in control or management of NovaBay. Provisions of the California Corporations Code could make it more difficult for a third party to acquire a majority of our outstanding voting stock by discouraging a hostile bid, or delaying, preventing or deterring a merger, acquisition or tender offer in which our shareholders could receive a premium for their shares, or effect a proxy contest for control of NovaBay or other changes in our management.

Table of Contents

We have not paid dividends in the past and do not expect to pay dividends in the future, and any return on investment may be limited to the value of our stock.

We have never paid cash dividends on our common stock and do not anticipate paying cash dividends on our common stock in the foreseeable future. The payment of dividends on our common stock will depend on our earnings, financial condition and other business and economic factors affecting us at such time as our Board of Directors may consider relevant. If we do not pay dividends, you will experience a return on your investment in our shares only if our stock price appreciates. We cannot assure you that you will receive a return on your investment when you do sell your shares or that you will not lose the entire amount of your investment.

If we were deemed to be an investment company, we would become subject to provisions of the Investment Company Act that likely would have a material adverse impact on our business.

A company is required to register as an investment company under the Investment Company Act of 1940, or the 1940 Act, if, among other things, and subject to various exceptions:

it is or holds itself out to be engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities; or

it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such company's total assets exclusive of government securities and cash items on an unconsolidated basis.

A major portion of our assets has been invested in investment grade interest-bearing securities. Such investments could in some circumstances require us to register as an investment company under the 1940 Act. Registration under the 1940 Act, or a determination that we failed to register when required to do so, could have a material adverse impact on us. We believe that we are and will remain exempt from such registration requirements, but absent interpretation by the courts or the SEC of the relevant exemption as applied to companies engaged in research and development, this result cannot be assured. In addition, a change in our allocation of assets on account of 1940 Act concerns could reduce the rate of return on our liquid assets.

We may be considered a foreign investment entity which may have adverse Canadian tax consequences for our Canadian investors.

Although we believe that we are not currently a foreign investment entity within the meaning of the FIE Tax Proposals (as defined in Material Canadian Federal Income Tax Considerations Foreign Investment Entity Status), no assurances can be given in this regard or as to the Company's status in the future. If the Company becomes a foreign investment entity within the meaning of the FIE Tax Proposals, there may be certain adverse tax consequences for our Canadian investors. See Material Canadian Federal Income Tax Considerations Foreign Investment Entity Status.

Because we are a California corporation and the majority of our directors and officers are resident in the United States, it may be difficult for investors in Canada to enforce against us certain civil liabilities and judgments based solely upon the securities laws of Canada.

We are organized under the laws of California and our principal executive offices are located in California. A majority of the directors and officers and the experts named in this prospectus reside principally in the United States and all or a substantial portion of their assets and all or a substantial portion of our assets are located in the United States. Consequently, it may be difficult for shareholders to effect service of process within Canada upon us or our directors, officers or experts who are residents of the United States. Furthermore, it may not be possible to enforce against us or such directors, officers or experts, in the United States, judgments obtained in Canadian courts, including judgments based upon the civil liability provisions of applicable Canadian securities law.

Table of Contents

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains forward-looking statements that are based on our management's current beliefs and assumptions and on information currently available to our management. The forward-looking statements are contained principally in the sections entitled Prospectus Summary, Risk Factors, Use of Proceeds, Management's Discussion and Analysis of Financial Condition and Results of Operations and Business. In some cases, you can identify forward-looking statements by terms such as anticipates, believes, could, estimates, expects, intends, may, plan, potential, predicts, projects, should, will, would and similar expressions intended to identify forward-looking statements. Forward-looking statements include but are not limited to, statements about:

The efficacy and safety of our product candidates;

The timing of clinical development of our product candidates;

The expected characteristics of Aganocide compounds and our ability to demonstrate those characteristics;

The outcome or success of pre-clinical studies and clinical trials;

Our expectation regarding federal, state and foreign (including Canadian provincial) regulatory requirements;

Allocation of resources for the purposes of bringing our proposed products to market;

The amount of research and development expenses we expect to incur;

Our ability to develop third-party partnerships;

Our expectations regarding the use of proceeds from this offering;

Our plans to in-license products to address new markets;

Strategies to strengthen our intellectual property protection for our compounds and proposed products; and

Anticipated trends and challenges in our business and the markets in which we operate.

Forward-looking statements involve a variety of known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be materially different from any future results, performances or achievements expressed or implied by the forward-looking statements. We discuss many of these risks in this prospectus in greater detail under the heading Risk Factors. Given these uncertainties, you should not place undue reliance on these forward-looking statements. You should read this prospectus and the documents that we reference in this prospectus and have filed as exhibits to the registration statement for the shares in this offering completely and with the understanding that our actual future results may be materially different from what we expect.

Edgar Filing: NovaBay Pharmaceuticals, Inc. - Form S-1

The forward-looking statements made in this prospectus relate only to events or information as of the date on which the statements are made in this prospectus. Except as required by law, we assume no obligation to update these forward-looking statements publicly, or to update the reasons actual results could differ materially from those anticipated in these forward-looking statements, even if new information becomes available in the future.

Table of Contents

USE OF PROCEEDS

We estimate that the net proceeds from the sale of _____ shares of common stock that we are selling in this offering will be approximately \$ _____ million, based on an assumed initial public offering price of \$ _____ per share, after deducting underwriting discounts and commissions and estimated offering expenses. If the underwriters' over-allotment option is exercised in full, we estimate that we will receive net proceeds of approximately \$ _____ million, after deducting underwriting discounts and commissions and estimated offering expenses.

We currently expect to use our net proceeds from this offering as follows:

approximately \$ _____ million for the advancement of the clinical development of our Aganocide compounds; and

the remainder of the net proceeds for research and development, working capital and other general corporate purposes.

We may also use a portion of the net proceeds to acquire or invest in complementary businesses, services or technologies, or to enter into strategic marketing relationships with third parties, but we have no current understandings, commitments or agreements to do so. From time to time, in the ordinary course of business, we expect to evaluate potential acquisitions of or investments in these businesses, services or technologies and strategic relationships.

Although we currently anticipate that we will use the net proceeds of this offering as described above, there may be circumstances where for sound business reasons, a reallocation of funds may be necessary. We may re-allocate the net proceeds from time to time depending upon the ultimate amount of net proceeds raised and upon changes in business conditions prevalent at the time. The timing and amount of our actual expenditures will be based on many factors, including the successful early clinical development of our lead product candidates, cash flows from operations and the anticipated growth of our business. Pending these uses, we intend to invest the net proceeds of this offering primarily in short-term, investment-grade, interest-bearing instruments.

DIVIDEND POLICY

We have never declared or paid any cash dividends on our common stock. We currently intend to retain any future earnings to finance the growth and development of our business. Therefore, we do not anticipate that we will declare or pay any cash dividends on our common stock in the foreseeable future. Any future determination to pay cash dividends will be at the discretion of our Board of Directors and will be dependent upon our financial condition, results of operations, capital requirements, restrictions under any existing indebtedness and other factors the Board of Directors deems relevant.

Table of Contents

CAPITALIZATION

The following table sets forth our cash, cash equivalents, and capitalization at September 30, 2006, as follows:

on an actual basis;

on a pro forma basis after giving effect to the conversion of all outstanding shares of our preferred stock into an aggregate of 19,227,195 shares of our common stock upon the closing of this offering; and

on a pro forma as adjusted basis after giving effect to (a) the conversion of all outstanding shares of our preferred stock into an aggregate of 19,227,195 shares of our common stock upon the closing of this offering and (b) the issuance of shares of our common stock at an assumed initial public offering price of \$ per share, after deducting underwriting discounts and commissions and estimated offering expenses payable by us.

You should read this table in conjunction with the sections titled Selected Financial Data and Management's Discussion and Analysis of Financial Condition and Results of Operations and our financial statements and related notes included elsewhere in this prospectus.