

MANKIND CORP
Form 424B5
November 27, 2006

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The information in this prospectus supplement and the accompanying prospectus is not complete and may be changed. This prospectus supplement and the accompanying prospectus are not an offer to sell these securities, and we are not soliciting offers to buy these securities in any state where the offer or sale is not permitted.

This filing is made pursuant to Rule 424(b)(5)
Under the Securities Act of 1933
In connection with Registration No. 333-138373

**Subject to Completion,
Preliminary Prospectus Supplement dated November 27, 2006**

**PROSPECTUS SUPPLEMENT
(To Prospectus dated November 7, 2006)**

\$100,000,000

**MannKind Corporation
% Senior Convertible Notes due 2013**

The Offering:

The notes will bear interest at the rate of % per year on the principal amount of the notes, payable in cash semiannually in arrears on June and December of each year, beginning June , 2007. The notes will mature on December , 2013. The notes will be our general, unsecured, senior obligations and will rank equally in right of payment with our other senior unsecured debt and will effectively rank junior in right of payment to all of our secured debt, to the extent of the value of the assets securing such debt, and to the debt and all other liabilities of our subsidiaries.

Convertibility of the Notes:

Holders may convert, at any time prior to the close of business on the business day immediately preceding the stated maturity date, any outstanding notes into shares of our common stock. The notes are convertible at a conversion rate of shares per \$1,000 principal amount of notes, which is equal to a conversion price of approximately \$ per share, subject to adjustment. If a holder elects to convert notes in connection with a fundamental change, such holder will also be entitled to receive a make-whole premium upon conversion in certain circumstances. Our common stock is quoted on the Nasdaq Global Market under the symbol MNKD. On November 24, 2006, the last sale price for our common stock as reported on the Nasdaq Global Market was \$17.44 per share.

Purchase of the Notes at the Option of the Holder:

Upon a fundamental change of our company, each holder may require us to purchase all or a portion of such holder's notes at a price equal to the principal plus accrued and unpaid interest, if any.

The underwriters have reserved up to \$50,000,000 of the notes in this offering for sale to our chairman, chief executive officer and principal stockholder, Alfred E. Mann. The underwriters will not receive any underwriting discount on the sale of notes sold directly to Mr. Mann. The amount of notes that Mr. Mann will be allocated in this

offering will depend on market conditions, and we cannot provide any assurance as to the exact amount of notes that Mr. Mann will be allocated, if any.

In addition, concurrently with this offering, we are offering 17,500,000 shares (or 20,125,000 shares if the underwriters exercise their over-allotment option in full) of our common stock in a public offering pursuant to a separate prospectus supplement. Although this note offering is not contingent upon the common stock offering and the common stock offering is not contingent upon this note offering, we currently anticipate raising approximately \$405,200,000 in aggregate gross proceeds from the two offerings. However, amounts sold in each offering may vary based on market conditions relating to that particular security.

Investing in our notes involves risks, including those described in the Risk Factors section beginning on page S-9 of this prospectus supplement and incorporated by reference in this prospectus supplement and the accompanying prospectus.

	Per Note	Total
Public offering price	\$	\$
Underwriting discounts and commissions ⁽¹⁾	\$	\$
Proceeds to MannKind, before expenses	\$	\$

(1) The underwriters will not receive any underwriting discount on the sale of notes to Alfred E. Mann.

We have granted the underwriters a 13-day option to purchase up to an additional \$15,000,000 principal amount of notes to cover over-allotments, if any.

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

The notes will be ready for delivery in book entry form only through The Depository Trust Company on or about December , 2006.

Merrill Lynch & Co.

JPMorgan

The date of this prospectus supplement is December , 2006.

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You should rely only on the information contained or incorporated by reference in this prospectus supplement, the accompanying prospectus and any free writing prospectus that we authorize to be distributed to you. We have not, and the underwriters have not, authorized anyone to provide you with different information. If anyone provides you with

different or inconsistent information, you should not rely on it. We are not, and the underwriters are not, making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus supplement, the accompanying prospectus, the documents incorporated by reference in this prospectus supplement and the accompanying prospectus, and any free writing prospectus is accurate only as of the date on those respective documents. Our business, financial condition, results of operations and prospects may have changed since those dates. You should read this prospectus supplement, the accompanying prospectus, the documents incorporated by reference in this prospectus supplement and the accompanying prospectus, and any free writing prospectus when making your investment decision. You should also read and consider the information in the documents we have referred you to in the sections of the prospectus entitled **Where You Can Find More Information** and **Incorporation by Reference**.

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ABOUT THIS PROSPECTUS SUPPLEMENT

This prospectus supplement and the accompanying prospectus are part of a registration statement that we filed with the Securities and Exchange Commission, or SEC, utilizing a shelf registration process. This prospectus supplement provides you with the specific details regarding this offering, including the principal amount, conversion ratio and ranking of our notes, and the risks of investing in our notes. The accompanying prospectus provides you with more general information, some of which does not apply to the offering of our notes. To the extent information in this prospectus supplement is inconsistent with the accompanying prospectus or any of the documents incorporated by reference into this prospectus supplement and the accompanying prospectus, you should rely on this prospectus supplement. You should read and consider the information in this prospectus supplement, the accompanying prospectus and any free writing prospectus, together with the additional information described under the headings *Where You Can Find More Information* and *Incorporation by Reference* in the accompanying prospectus.

This prospectus supplement and the accompanying prospectus have not been approved by the Financial Services Authority. The notes may not be offered or sold to any person in the United Kingdom except where the offer is exempt from the general prohibition against the offer of securities to the public under section 85 of the Financial Services and Markets Act 2000, or FMSA, by virtue of one or more of the criteria set out in section 86 of FMSA.

This prospectus supplement and the accompanying prospectus is directed only at (i) persons outside the United Kingdom, (ii) persons who have professional experience in matters relating to investments and who are investment professionals within the meaning of Article 19(5) of FMSA (Financial Promotion) Order 2005 of the United Kingdom (the Financial Promotion Order), (iii) persons who fall within Article 49(2)(a) through (d) (high net worth companies, unincorporated associations, etc.) of the Financial Promotion Order, or (iv) any other persons to whom this prospectus supplement and the accompanying prospectus for the purposes of Section 21 of FSMA can otherwise lawfully be made (all such persons together being referred to as Relevant Persons), and must not be acted on or relied upon by persons other than Relevant Persons.

Unless the context otherwise requires, references to *MannKind* or the company, *we*, *us*, and *our* in this prospectus supplement and the accompanying prospectus mean MannKind Corporation and its wholly owned subsidiaries.

Technosphere® and MedTone® are registered trademarks of MannKind Corporation. We have also applied for or registered company trademarks in other jurisdictions, including Europe and Japan. This prospectus supplement also include references to registered service marks and trademarks of other entities.

NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus supplement and the accompanying prospectus, including the documents that we incorporate by reference herein and therein, contain statements that are not strictly historical in nature and are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. These forward-looking statements are subject to the safe harbor created by Section 27A of the Securities Act and Section 21E of the Exchange Act and may include, but are not limited to, statements about:

the progress or success of our research, development and clinical programs;

the timing of completion of enrollment in our clinical trials, the timing of the interim analyses and the timing or success of the commercialization of our Technosphere Insulin System, or any other products or

therapies that we may develop;

our ability to market, commercialize and achieve market acceptance for our Technosphere Insulin System, or any other products or therapies that we may develop;

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our ability to protect our intellectual property and operate our business without infringing upon the intellectual property rights of others;

our estimates for future performance; our estimates regarding anticipated operating losses, future revenues, capital requirements and our needs for additional financing;

scientific studies and the conclusions we draw from them; and

our ability to successfully enter into strategic business collaborations.

In some cases, you can identify forward-looking statements by terms such as anticipates, believes, could, estimates, expects, goal, intends, may, plans, potential, predicts, projects, should, will, would, the negative words or similar expressions intended to identify forward-looking statements. These statements reflect our views as of the date on which they were made with respect to future events and are based on assumptions and subject to risks and uncertainties. The underlying information and expectations are likely to change over time. Given these uncertainties, you should not place undue reliance on these forward-looking statements as actual events or results may differ materially from those projected in the forward-looking statements due to various factors, including, but not limited to, those set forth under the heading Risk Factors in this prospectus supplement, in the accompanying prospectus and in our SEC filings. These forward-looking statements represent our estimates and assumptions only as of the date of the document containing the applicable statement.

You should rely only on the information contained, or incorporated by reference, in this prospectus supplement, the accompanying prospectus, the registration statement of which this prospectus supplement is a part, the documents incorporated by reference herein, and any applicable prospectus supplement and understand that our actual future results may be materially different from what we expect. We qualify all of the forward-looking statements in the foregoing documents by these cautionary statements. Unless required by law, we undertake no obligation to update or revise any forward-looking statements to reflect new information or future events or developments. Thus, you should not assume that our silence over time means that actual events are bearing out as expressed or implied in such forward-looking statements. Before deciding to purchase our securities, you should carefully consider the risk factors discussed here or incorporated by reference, in addition to the other information set forth in this prospectus supplement, the accompanying prospectus and in the documents incorporated by reference.

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PROSPECTUS SUPPLEMENT SUMMARY

This summary highlights selected information contained elsewhere or incorporated by reference in this prospectus supplement. This summary does not contain all the information that you should consider before investing in our notes. You should read the entire prospectus supplement, the accompanying prospectus and any free writing prospectus carefully, including Risk Factors, the financial statements and other information included or incorporated by reference in this prospectus supplement and the accompanying prospectus before making an investment decision. This prospectus supplement contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from the results anticipated in these forward-looking statements as a result of factors described under the Risk Factors section and elsewhere in this prospectus supplement and in the risk factors set forth under Item 1A. Risk Factors in our Annual Report on Form 10-K for the year ended December 31, 2005 and each of our Quarterly Reports on Form 10-Q for the periods ended March 31, 2006, June 30, 2006 and September 30, 2006, and elsewhere in the documents incorporated by reference.

MannKind Corporation

Overview

MannKind Corporation is a biopharmaceutical company focused on the discovery, development and commercialization of therapeutic products for diseases such as diabetes and cancer. Our lead investigational product candidate, the Technosphere Insulin System, is currently in Phase 3 clinical trials in the United States, Europe and Latin America to study its safety and efficacy in the treatment of diabetes. This therapy consists of a proprietary dry powder formulation of insulin that is inhaled into the deep lung using our proprietary inhaler. We believe that the performance characteristics, unique kinetics, convenience and ease of use of the Technosphere Insulin System may have the potential to change the way diabetes is treated. According to the Centers for Disease Control, diabetes affects approximately 20.8 million patients in the United States. Furthermore, we believe that not one diabetes drug is included among the top 20 best-selling drugs in the United States. We believe there is a large unmet medical need to treat diabetes patients with a convenient and effective insulin regimen.

We believe our Technosphere Insulin System will address some of the shortcomings of traditional insulin therapies. In particular, we have observed in our clinical trials to date that the Technosphere Insulin System produces a profile of insulin levels in the bloodstream that approximates the insulin profile normally seen in healthy individuals immediately following the beginning of a meal, but which is absent in patients with diabetes. Specifically, Technosphere Insulin is rapidly absorbed into the bloodstream following inhalation, reaching peak levels within 12 to 14 minutes. As a result of this rapid onset of action, most of the glucose-lowering activity of Technosphere Insulin occurs within the first three hours of administration which is generally when glucose becomes available from a meal instead of the much longer duration of action observed when insulin is injected subcutaneously. We believe that the relatively short duration of action of Technosphere Insulin reduces the need for patients to snack between meals in order to manage ongoing blood glucose excursions. Indeed, in our clinical trials, we have observed that patients using Technosphere Insulin have achieved significant reductions in post-meal glucose excursions and significant improvements in overall glucose control, as measured by decreases in glycosylated hemoglobin, or HbA1c, levels, without the weight gain typically associated with insulin therapy.

In our clinical trials to date, we have observed no difference in pulmonary function between patients treated with Technosphere Insulin and patients treated with standard diabetes care. However, the longest study that we have completed so far is a six-month trial. In September 2006, we completed patient enrollment in a pivotal, two-year, Phase 3, safety study of Technosphere Insulin that will compare the pulmonary function of diabetes patients

randomized to either Technosphere Insulin or standard diabetes care. We are continuing to enroll patients in three other major Phase 3 clinical trials, two of which are pivotal efficacy trials. Based on our discussions with the Food and Drug Administration, or FDA, we plan to accumulate two years of controlled safety data before we file a new drug application for the Technosphere Insulin System. We anticipate that our

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entire clinical trial program, including several special population studies, will involve more than 4,500 patients. Larger populations and longer durations of exposure may be necessary depending on the safety profile of our product.

Our Technosphere Insulin System utilizes our proprietary Technosphere formulation technology, which is based on a class of organic molecules that are designed to self-assemble into small particles onto which drug molecules can be loaded. We are also developing additional Technosphere-based products for the delivery of other drugs. In October 2006, we filed an investigational new drug application, or IND, in respect of our cancer immunotherapy program. This IND has received FDA clearance and we plan to initiate Phase 1 clinical trials of a therapeutic cancer vaccine by the end of 2006.

We are a development stage enterprise and have incurred significant losses since our inception in 1991. As of September 30, 2006, we have incurred a cumulative net loss of \$716.6 million. To date, we have not generated any product revenues and have funded our operations primarily through the sale of equity securities.

We do not anticipate sales of any product prior to regulatory approval and commercialization of our Technosphere Insulin System. We currently do not have the required approvals to market any of our product candidates, and we may not receive any approvals. We may not be profitable even if we succeed in commercializing any of our product candidates. We expect to make substantial and increasing expenditures and to incur additional operating losses for at least the next several years as we:

- continue the clinical development and commercialization of our Technosphere Insulin System for the treatment of diabetes;

- expand our manufacturing operations for our Technosphere Insulin System to meet our currently anticipated commercial production needs;

- expand our other research, discovery and development programs;

- expand our proprietary Technosphere platform technology and develop additional applications for the pulmonary delivery of other drugs; and

- enter into sales and marketing collaborations with other companies, if available on commercially reasonable terms, or develop these capabilities ourselves.

Our business is subject to significant risks, including but not limited to the risks inherent in our ongoing clinical trials and the regulatory approval process, the results of our research and development efforts, competition from other products and technologies and uncertainties associated with obtaining and enforcing patent rights.

Recent Developments

On September 16, 2006, we announced the results of a Phase 3 clinical study of Technosphere Insulin in patients with type 2 diabetes. This study was designed to evaluate whether our Technosphere Insulin System demonstrated similar safety and efficacy compared to patients treated with insulin aspart, an injected rapid-acting insulin analog, or RAA. The study included 308 patients with type 2 diabetes who were randomized to receive either Technosphere Insulin or RAA at meal times, in each case together with insulin glargine, a long-acting insulin, as basal insulin. After six months of treatment, both patient groups achieved statistically significant reductions in HbA1c levels, with the Technosphere Insulin patient group achieving an average 1.05% reduction and the injected RAA patient group achieving an average 1.30% reduction. Significantly fewer patients experienced hypoglycemia in the Technosphere Insulin patient group than in the injected RAA patient group. Additionally, after six months of treatment, the

Technosphere Insulin patient group experienced average weight loss of 1.7 pounds compared with the injected RAA patient group, which experienced average weight gain of 0.5 pounds. Pulmonary function did not differ between the two patient groups after six months of treatment and after a six-month withdrawal period. These results are consistent with our previous studies on Technosphere Insulin that demonstrated improvement in glycemic control with no effect on lung function.

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Company Information

We were incorporated in the State of Delaware on February 14, 1991. Our principal executive offices are located at 28903 North Avenue Paine, Valencia, California 91355, and our telephone number at that address is (661) 775-5300. MannKind Corporation and the MannKind Corporation logo are our service marks. Our website address is <http://www.mannkindcorp.com>. The information contained in, and that can be accessed through, our website is not incorporated into and does not form a part of this prospectus.

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THE OFFERING

The following is a brief summary of the terms of this offering. For a complete description of the terms of the notes, see Description of Notes in this prospectus supplement.

Issuer	MannKind Corporation
Notes to be offered	\$100,000,000 aggregate principal amount, or \$115,000,000 if the underwriters exercise their option to purchase additional notes in full.
Maturity date	December , 2013.
Interest and payment dates	% per year on the principal amount, payable semiannually in arrears in cash on June and December of each year, beginning June , 2007.
Conversion rights	The notes are convertible, at the option of the holder, at any time on or prior to the close of business on the business day immediately preceding the stated maturity date, into shares of our common stock at a conversion rate of shares per \$1,000 principal amount of notes per share, which is equal to a conversion price of approximately \$ per share. The conversion rate is subject to adjustment as set forth in Description of Notes Adjustment of Conversion Rate.
Make-whole premium upon a fundamental change	<p>If a fundamental change (as described in this prospectus supplement) occurs, other than a fundamental change described under the third or fourth bullet points under the definition of a change in control described in Description of Notes Repurchase at Option of Holders Upon a Fundamental Change, we will pay a make-whole premium on notes converted in connection with a fundamental change by increasing the conversion rate on such notes.</p> <p>The amount of the make-whole premium, if any, will be based on our common stock price and the effective date of the fundamental change. A description of how the make-whole premium will be determined and a table showing the make-whole premium that would apply at various common stock prices and fundamental change effective dates is set forth under Description of Notes Make-Whole Premium Upon a Fundamental Change.</p>
Repurchase of notes by us at the option of the holders upon a fundamental change	If we undergo a fundamental change, except in certain circumstances, each holder will have the option to require us to repurchase all or any portion of that holder's notes. The fundamental change repurchase price will be 100% of the principal amount of the notes to be repurchased plus accrued and unpaid interest, if any.
Ranking	The notes:

will be our general, unsecured, senior obligations and will rank equally in right of payment with our other unsecured senior debt;

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will effectively rank junior in right of payment to any of our existing and future secured debt, to the extent of the value of the assets securing such debt; and

will effectively rank junior in right of payment to any existing and future debt and other liabilities of our subsidiaries, including trade payables.

As of September 30, 2006, after giving effect to this offering of notes and the use of proceeds therefrom, we would have had no outstanding secured debt, and our subsidiaries would have had no outstanding liabilities to which the notes would rank effectively junior.

The terms of the supplemental indenture and the indenture under which the notes are issued do not limit our ability to incur additional debt, including secured debt.

Use of proceeds

We intend to use the net proceeds to us from this offering and the concurrent common stock offering to fund the costs of our clinical trials programs and other research and development activities, to expand our manufacturing operations, both on-going and planned, and for general corporate purposes, including working capital and repayment of \$70.0 million in principal amount of indebtedness, plus accrued interest, owed to Alfred E. Mann pursuant to an outstanding note. We may also use a portion of the net proceeds to in-license, invest in or acquire businesses or technologies that we believe are complementary to our own, although we have no current plan, commitments or agreements with respect to any acquisitions as of the date of this prospectus supplement. This offering is not contingent on the concurrent common stock offering. See Use of Proceeds.

Form and denomination

The notes will be issued in minimum denominations of \$1,000 and any integral multiple of \$1,000.

The notes will be issued in book-entry form and will be represented by permanent global certificates deposited with, or on behalf of, The Depository Trust Company, or DTC, and registered in the name of a nominee of DTC. Beneficial interests in any of the notes will be shown on, and transfers will be effected only through, records maintained by DTC or its nominee and any such interest may not be exchanged for certificated securities, except in limited circumstances. See Description of Notes Book-Entry System.

The notes will not be listed on any securities exchange or included in any automated quotation system. The notes will be new securities for which there is currently no public market.

Nasdaq symbol for common stock

Our common stock is quoted on the Nasdaq Global Market under the symbol MNKD.

Material U.S. federal income tax consequences

The notes and the shares of our common stock issuable upon conversion of the notes will be subject to certain U.S. federal income tax consequences. Holders are encouraged to consult their tax advisors as to the U.S. federal, state, local or other tax consequences of

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acquiring, owning and disposing of the notes. See Material U.S. Federal Income Tax Consequences.

Risk factors See Risk Factors and other information included in this prospectus supplement, the accompanying prospectus and the documents incorporated by reference in this prospectus supplement and the accompanying prospectus for a discussion of factors you should carefully consider before deciding to invest in our notes.

Unless otherwise noted, the information in this prospectus supplement assumes that the underwriters over-allotment option will not be exercised.

Sale of Notes in this Offering to Alfred E. Mann

The underwriters have reserved up to \$50.0 million of the notes in this offering for sale to our chairman, chief executive officer and principal stockholder, Alfred E. Mann.

Concurrent Common Stock Offering

Concurrently with this offering of notes, we are offering 17,500,000 shares (or 20,125,000 shares if the underwriters exercise their over-allotment option in full) of our common stock to the public at an assumed price of \$17.44 per share, based on the closing price of our common stock on the Nasdaq Global Market on November 24, 2006. We refer to that offering herein as the common stock offering. As part of the common stock offering, the underwriters have reserved up to 8,750,000 shares for sale to Alfred E. Mann, at a price equal to the greater of the public offering price in the common stock offering or the market value of our common stock immediately preceding the pricing of the common stock offering as determined by applicable Nasdaq rules.

Note and Concurrent Common Stock Offering

The concurrent common stock offering is being conducted as a separate public offering by means of a separate prospectus supplement. Although this note offering is not contingent upon the common stock offering and the common stock offering is not contingent upon this note offering, we currently anticipate raising approximately \$405.2 million in aggregate gross proceeds from the two offerings. However, amounts sold in each offering may vary based on market conditions relating to that particular security.

Unless otherwise noted, for presentation purposes, the information in this prospectus supplement assumes Alfred E. Mann will purchase \$50.0 million of the notes offered in this offering and 8,750,000 shares of our common stock in the concurrent common stock offering. The underwriters will not receive any underwriting discount on the sale of notes or common stock to Mr. Mann. The number of shares or amount of notes that Mr. Mann will be allocated in the offerings will depend on market conditions and the number of shares could be more or less than the amount initially reserved for allocation. We cannot provide any assurance as to the exact number of shares of common stock or notes that Mr. Mann will be allocated, if any. Any notes or shares of our common stock not allocated by the underwriters to Mr. Mann in the offerings may be sold by the underwriters to the public on the terms set forth in applicable prospectus supplements.

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RISK FACTORS

Investing in our securities involves a high degree of risk. You should consider carefully the risk factors described below and all other information contained in or incorporated by reference in this prospectus supplement, the accompanying prospectus and any free writing prospectus before deciding to invest in our securities. If any of the following risks actually occur, they may materially harm our business, financial condition, operating results and cash flow. As a result, the market price of our common stock could decline, and you could lose all or part of your investment. Additional risks and uncertainties that are not yet identified or that we think are immaterial may also materially harm our business, operating results and financial condition and could result in a complete loss of your investment.

Certain risks related to regulatory approvals

Our product candidates must undergo rigorous preclinical and clinical testing and we must obtain regulatory approvals, which could be costly and time-consuming and subject us to unanticipated delays or prevent us from marketing any products.

Our research and development activities, as well as the manufacturing and marketing of our product candidates, including our Technosphere Insulin System, are subject to regulation, including regulation for safety, efficacy and quality, by the FDA in the United States and comparable authorities in other countries. FDA regulations and the regulation of comparable foreign regulatory authorities are wide-ranging and govern, among other things:

product design, development, manufacture and testing;

product labeling;

product storage and shipping;

pre-market clearance or approval;

advertising and promotion; and

product sales and distribution.

Clinical testing can be costly and take many years, and the outcome is uncertain and susceptible to varying interpretations. We expect, based on our discussions with the FDA and on our understanding of the interactions between the FDA and other pharmaceutical companies developing inhaled insulin delivery systems, that we will need safety data covering at least two years from patients treated with our Technosphere Insulin System and that we must complete a two-year carcinogenicity study and an additional six-month carcinogenicity study of Technosphere Insulin in rodents to obtain approval, among other requirements. We cannot be certain when or under what conditions we will undertake further clinical trials. The clinical trials of our product candidates may not be completed on schedule, the FDA or foreign regulatory agencies may order us to stop or modify our research, or these agencies may not ultimately approve any of our product candidates for commercial sale. The data collected from our clinical trials may not be sufficient to support regulatory approval of our various product candidates, including our Technosphere Insulin System. Even if we believe the data collected from our clinical trials are sufficient, the FDA has substantial discretion in the approval process and may disagree with our interpretation of the data. For example, even if we obtain statistically significant results with respect to the primary endpoint in a pivotal clinical study (102) of the

Technosphere Insulin System, the FDA may deem the results uninterpretable because of issues related to the open-label, non-inferiority design of the study. Our failure to adequately demonstrate the safety and efficacy of any of our product candidates would delay or prevent regulatory approval of our product candidates, which could prevent us from achieving profitability.

The requirements governing the conduct of clinical trials and manufacturing and marketing of our product candidates, including our Technosphere Insulin System, outside the United States vary widely from country to country. Foreign approvals may take longer to obtain than FDA approvals and can require, among other things, additional testing and different clinical trial designs. Foreign regulatory approval processes

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include all of the risks associated with the FDA approval processes. Some of those agencies also must approve prices of the products for government reimbursement. Approval of a product by the FDA does not ensure approval of the same product by the health authorities of other countries. In addition, changes in regulatory policy in the United States or in foreign countries for product approval during the period of product development and regulatory agency review of each submitted new application may cause delays or rejections.

The process of obtaining FDA and other required regulatory approvals, including foreign approvals, is expensive, often takes many years and can vary substantially based upon the type, complexity and novelty of the products involved. We are not aware of any precedent for the successful commercialization of products based on our technology. On January 26, 2006, the FDA approved the first inhaled insulin product, Exubera. This may impact the development and registration of our Technosphere Insulin System in many ways, including: the approval of Exubera may increase the difficulty of enrolling patients in our clinical trials; Exubera may be viewed as standard of care by the FDA and used as a reference for the safety/efficacy evaluations of our Technosphere Insulin System; and the approval standards set for Exubera may be applied to other products that follow including our Technosphere Insulin System. The FDA has advised us that it will regulate our Technosphere Insulin System as a combination product because of the complex nature of the system that includes the combination of a new drug (Technosphere Insulin) and a new medical device (the MedTone inhaler used to administer the insulin). The FDA indicated that the review of a future drug marketing application for our Technosphere Insulin System will involve three separate review groups of the FDA: (1) the Metabolic and Endocrine Drug Products Division; (2) the Pulmonary Drug Products Division; and (3) the Center for Devices and Radiological Health within the FDA that reviews medical devices. We currently understand that the Metabolic and Endocrine Drug Products Division will be the lead group and will obtain consulting reviews from the other two FDA groups. The FDA has not made an official final decision in this regard, however, and we can make no assurances at this time about what impact FDA review by multiple groups will have on the review and approval of our product or whether we are correct in our understanding of how the Technosphere Insulin System will be reviewed and approved.

Also, questions that have been raised about the safety of marketed drugs generally, including pertaining to the lack of adequate labeling, may result in increased cautiousness by the FDA in reviewing new drugs based on safety, efficacy, or other regulatory considerations and may result in significant delays in obtaining regulatory approvals. Such regulatory considerations may also result in the imposition of more restrictive drug labeling or marketing requirements as conditions of approval, which may significantly affect the marketability of our drug products. FDA review of our Technosphere Insulin System as a combination product therapy may lengthen the product development and regulatory approval process, increase our development costs and delay or prevent the commercialization of our Technosphere Insulin System.

We are developing our Technosphere Insulin System as a new treatment for diabetes utilizing unique, proprietary components. As a combination product, any changes to either the MedTone inhaler, the Technosphere material or the insulin, including new suppliers, could possibly result in FDA requirements to repeat certain clinical studies. This means, for example, that switching to an alternate delivery system could require us to undertake additional clinical trials and other studies, which could significantly delay the development and commercialization of our Technosphere Insulin System. Our product candidates that are currently in development for the treatment of cancer also face similar obstacles and costs.

We currently expect that our inhaler will be reviewed for approval as part of the New Drug Application, or NDA, for our Technosphere Insulin System. No assurances exist that we will not be required to obtain separate device clearances or approval for use of our inhaler with our Technosphere Insulin System. This may result in our being subject to medical device review user fees and to other device requirements to market our inhaler and may result in significant delays in commercialization. Even if the device component is approved as part of our NDA for the Technosphere Insulin System, numerous device regulatory requirements still apply to the device part of the

drug-device combination.

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Risks Related to the Notes and Our Common Stock

The effective subordination of the notes may limit our ability to satisfy our obligations under the notes.

The notes will be our senior unsecured obligations and will rank equally in right of payment with all of our other senior unsecured indebtedness. However, the notes will be effectively subordinated in right of payment to all of our secured indebtedness, including any secured indebtedness we may incur in the future, to the extent of the value of the collateral securing such indebtedness. As of September 30, 2006, we had no outstanding secured indebtedness. The indenture governing the notes does not prohibit us from incurring secured indebtedness in the future. Consequently, in the event of a bankruptcy, liquidation, dissolution, reorganization or similar proceeding with respect to us, the holders of any secured indebtedness will be entitled to proceed directly against the collateral that secures such indebtedness. Therefore, the collateral will not be available for satisfaction of any amounts owed under our unsecured indebtedness, including the notes, until the secured indebtedness is satisfied in full.

The notes also will be effectively subordinated in right of payment to all unsecured and secured liabilities of our subsidiary. In the event of a bankruptcy, liquidation, dissolution, reorganization or similar proceeding with respect to our subsidiary, we, as an equity owner of the subsidiary, and therefore you, as holders of our debt, including the notes, will be subject to the prior claims of the subsidiary's creditors, including trade creditors and preferred equity holders. As of September 30, 2006, our subsidiaries had no indebtedness (exclusive of intercompany debt, trade payables, distribution payables, accrued expenses and other liabilities). The indenture governing the notes does not prohibit our subsidiaries from incurring indebtedness in the future.

We may not have the ability to repurchase notes for cash pursuant to their terms.

In connection with a fundamental change, you may require us to repurchase all or a portion of your notes in cash. If you were to require us to repurchase your notes, we may not be able to pay the amount required in cash. Our ability to repurchase the notes is subject to our liquidity position at the time, and may be limited by law, by the indenture, and by indebtedness and agreements that we may enter into in the future which may replace, supplement or amend our existing or future debt. In addition, if we did not have sufficient cash to meet our obligations, while we could seek to obtain third-party financing to pay for any amounts due in cash upon such events, third-party financing may not be available on commercially reasonable terms, if at all. Our failure to repurchase the notes would constitute an event of default under the indenture under which we issued the notes, which might constitute an event of default under the terms of our other indebtedness at that time.

The notes contain no financial covenants, therefore, the note holders will not have protection against adverse changes in our business.

The indenture does not contain any financial covenants, restrict our ability to repurchase our securities other than the notes in accordance with their terms, pay dividends or make restricted payments or contain any covenants or other provisions to afford holders protection in the event of a transaction that substantially increases the level of our indebtedness. Furthermore, the indenture will contain only limited protections in the event of a change in control. We could also engage in many types of transactions, such as acquisitions, refinancings or recapitalizations, that could substantially affect our capital structure and the value of the notes and our common stock.

Because your right to require us to repurchase the notes is limited, the market price of the notes may decline if we enter into a transaction that is not a fundamental change under the indenture.

The term "fundamental change" is limited and may not include every event that might cause the market price of the notes to decline. The term "fundamental change" does not apply to transactions in which 90% of the consideration paid

for our common stock, excluding cash payments for fractional shares and cash payments made in respect of dissenters appraisal rights, in a merger or similar transaction is publicly traded

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common stock. Our obligation to repurchase the notes upon certain fundamental changes may not preserve the value of the notes in the event of a highly leveraged transaction, reorganization, merger or similar transaction. See Description of Notes Repurchase at Option of Holders Upon a Fundamental Change.

The make-whole premium that may be payable upon conversion in connection with certain fundamental changes may not adequately compensate you for the lost option time value of your notes as a result of such change in control.

If you convert notes in connection with certain fundamental changes, we may be required to pay a make-whole premium by increasing the conversion rate. The make-whole payment is described under Description of Notes Make-Whole Premium Upon a Fundamental Change. While the make-whole premium is designed to compensate you for the lost option time value of your notes as a result of certain fundamental changes, the make-whole amount is only an approximation of such lost value and may not adequately compensate you for such loss. In addition, in some other cases described under Description of Notes Make-Whole Premium Upon a Fundamental Change, there will be no such make-whole premium.

Conversion of the notes may dilute the ownership interest of existing stockholders.

The conversion of some or all of the notes may dilute the ownership interests of existing stockholders, including holders who have previously converted their notes. Any sales in the public market of the common stock issuable upon such conversion could adversely affect prevailing market prices of our common stock. In addition, the existence of the notes may encourage short selling by market participants, because the conversion of the notes could depress the price of our common stock.

The conversion rate of the notes may not be adjusted for all dilutive events.

The conversion rate of the notes is subject to adjustment for certain events, including, among others, the issuance of stock dividends on our common stock, the issuance of rights or warrants to acquire shares of our common stock or securities convertible into shares of our common stock, subdivisions and combinations of our common stock, dividends of our capital stock, certain cash dividends and certain tender or exchange offers. See Description of Notes Adjustment of Conversion Rate. The conversion rate will not be adjusted for other events, such as an issuance of shares of common stock for cash, that may adversely affect the trading price of the notes or our common stock. It is also possible that an event that adversely affects the value of the notes, but does not result in an adjustment to the conversion rate, could occur.

If you hold notes, you are not entitled to any rights with respect to our common stock, but you are subject to all changes made with respect to our common stock.

If you hold notes, you are not entitled to any rights with respect to our common stock, including, without limitation, voting rights and rights to receive any dividends or other distributions on our common stock, but you are subject to all changes affecting the common stock. You will only be entitled to rights on the common stock if and when we deliver shares of common stock to you in exchange for your notes and in limited cases under the anti-dilution adjustment provisions of the notes. For example, in the event that an amendment is proposed to our restated certificate of incorporation or amended and restated bylaws requiring stockholder approval and the record date for determining the stockholders of record entitled to vote on the amendment occurs prior to delivery of the common stock, you will not be entitled to vote on the amendment, although you will nevertheless be subject to any changes in the powers or rights of our common stock.

You may have to pay taxes with respect to distributions on our common stock that you do not receive.

The conversion rate of the notes is subject to adjustment for certain events arising from stock splits and combinations, stock dividends and other actions by us that modify our capital structure. See Description of Notes Adjustment of Conversion Rate. The conversion rate is also subject to adjustment for other events such as certain fundamental changes resulting in the payment of a make-whole premium by us. See Description of Notes Make-Whole Premium Upon a Fundamental Change. If the conversion rate is

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adjusted, under certain circumstances you may be deemed to have received a constructive dividend from us, resulting in ordinary income to you for U.S. federal income tax purposes, even though you would not receive any cash related to that adjustment and even though you might not exercise your conversion right. See Material U.S. Federal Income Tax Consequences.

An active trading market for the notes may not develop, and you may not be able to sell your notes at attractive prices or at all.

The notes are a new issue of our securities for which there is currently no public market, and no active trading market might ever develop. If the notes are traded after their initial issuance, they may trade at a discount from their initial offering price, depending on prevailing interest rates, the market for similar securities, the price, and volatility in the price, of shares of our common stock, our performance and other factors. In addition, we do not know whether an active trading market will develop for the notes and even if one develops, that it will be maintained. To the extent that an active trading market does not develop or is maintained, the liquidity and trading prices for the notes may be harmed.

We have no plans to list the notes on a securities exchange. We have been advised by the underwriters that they presently intend to make a market in the notes. However, the underwriters are not obligated to do so. Any market-making activity, if initiated, may be discontinued at any time, for any reason or for no reason, without notice. If the underwriters cease to act as the market makers for the notes, we cannot assure you another firm or person will make a market in the notes.

The liquidity of any market for the notes will depend upon the number of holders of the notes, our results of operations and financial condition, the market for similar securities, the interest of securities dealers in making a market in the notes and other factors. An active or liquid trading market of the notes may not develop.

An adverse rating of the notes may cause their trading prices to fall.

If a rating agency rates the notes, it may assign a rating that is lower than investors' expectations. Rating agencies also may lower ratings on the notes in the future. If rating agencies assign a lower-than-expected rating or reduce, or indicate that they may reduce, their ratings in the future, the trading price of the notes could significantly decline.

We may issue additional shares of common stock and thereby materially and adversely affect the price of our notes.

We are not restricted from issuing additional shares of common stock during the life of the notes. If we issue additional shares of common stock, the price of our common stock, and in turn, the price of the notes may decline.

Our management will have broad discretion in how we use the net proceeds of this offering and the common stock offering.

We have not determined the specific allocation of the net proceeds from this offering and the concurrent common stock offering. Our management will have broad discretion over the use and investment of the net proceeds, 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 management may spend a portion or all of the new proceeds in ways that our securityholders may not desire or that may not yield a favorable return. The failure of our management to apply the net proceeds from this offering and the concurrent common stock offering effectively could harm our business, financial condition and results of operations.

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Our stock price is volatile and may affect the trading price of the notes.

The stock market, particularly in recent years, has experienced significant volatility particularly with respect to pharmaceutical and biotechnology stocks, and this trend may continue. The volatility of pharmaceutical and biotechnology stocks often does not relate to the operating performance of the companies represented by the stock. Our business and the market price of our common stock may be influenced by a large variety of factors, including:

the progress and results of our clinical trials;

announcements by us or our competitors concerning their clinical trial results, acquisitions, strategic alliances, technological innovations and newly approved commercial products;

the availability of critical materials used in developing and manufacturing our Technosphere Insulin System or other product candidates;

developments or disputes concerning our patents or proprietary rights;

developments in our litigation with our former Chief Medical Officer;

the expense and time associated with, and the extent of our ultimate success in, securing regulatory approvals;

changes in securities analysts' estimates of our financial and operating performance;

general market conditions and fluctuations for emerging growth and pharmaceutical market sectors;

sales of large blocks of our common stock, including sales by our executive officers, directors and significant stockholders;

discussion of our Technosphere Insulin System, our other product candidates, competitors' products, or our stock price by the financial and scientific press, the healthcare community and online investor communities such as chat rooms; and

general economic, political or stock market conditions.

Any of these risks, as well as other factors, could cause the market price of our common stock to decline.

Because the notes are convertible into shares of our common stock, volatility or depressed prices for our common stock could have a similar effect on the trading price of the notes. This may result in greater volatility in the trading price of the notes than would be expected for any non-convertible debt securities we may issue. Holders who receive our common stock upon conversion of the notes will also be subject to the risk of volatility and depressed prices of our common stock.

If other biotechnology and biopharmaceutical companies or the securities markets in general encounter problems, the market price of our common stock could be adversely affected.

Public companies in general and companies included on the Nasdaq Global Market in particular have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. There has been particular volatility in the market prices of securities of biotechnology and other

life sciences companies, and the market prices of these companies have often fluctuated because of problems or successes in a given market segment or because investor interest has shifted to other segments. These broad market and industry factors may cause the market price of our common stock to decline, regardless of our operating performance. We have no control over this volatility and can only focus our efforts on our own operations, and even these may be affected due to the state of the capital markets.

In the past, following periods of large price declines in the public market price of a company's securities, securities class action litigation has often been initiated against that company. Litigation of this type

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could result in substantial costs and diversion of management's attention and resources, which would hurt our business. Any adverse determination in litigation could also subject us to significant liabilities.

Our chairman, chief executive officer and principal stockholder can individually control our direction and policies, and his interests may be adverse to the interests of our other stockholders. After his death, his stock will be left to his funding foundations for distribution to various charities, and we cannot assure you of the manner in which those entities will manage their holdings.

Alfred E. Mann has been our primary source of financing to date. At September 30, 2006, Mr. Mann beneficially owned approximately 48.9% of our outstanding shares of capital stock. Members of Mr. Mann's family beneficially owned at least an additional 2.0% of our outstanding shares of common stock, although Mr. Mann does not have voting or investment power with respect to these shares. The underwriters have reserved up to 8,750,000 shares in the common stock offering and up to \$50.0 million of the notes in this note offering for sale to Mr. Mann. By virtue of his holdings, Mr. Mann can and will continue to be able to effectively control the election of the members of our board of directors, our management and our affairs and prevent corporate transactions such as mergers, consolidations or the sale of all or substantially all of our assets that may be favorable from our standpoint or that of our other stockholders or cause a transaction that we or our other stockholders may view as unfavorable.

Subject to compliance with federal and state securities laws and the lockup restrictions described in "Underwriting - No Sales of Similar Securities," Mr. Mann is free to sell the shares of our stock he holds at any time. Upon his death, we have been advised by Mr. Mann that his shares of our capital stock will be left to the Alfred E. Mann Medical Research Organization, or AEMMRO, and AEM Foundation for Biomedical Engineering, or AEMFBE, not-for-profit medical research foundations that serve as funding organizations for Mr. Mann's various charities, including the Alfred Mann Foundation, or AMF, and the Alfred Mann Institutes at the University of Southern California and at the Technion-Israel Institute of Technology, and that may serve as funding organizations for any other charities that he may establish. The AEMMRO is a membership foundation consisting of six members, including Mr. Mann, four of his children and Dr. Joseph Schulman, the director of AMF. The AEMFBE is a membership foundation consisting of five members, including Mr. Mann and the same four of his children. Although we understand that the members of AEMMRO and AEMFBE have been advised of Mr. Mann's objectives for these foundations, once Mr. Mann's shares of our capital stock become the property of the foundations, we cannot assure you as to how those shares will be distributed or how they will be voted.

The future sale of our common stock could negatively affect our stock price.

As of September 30, 2006, and assuming the sale of shares in the concurrent common stock offering, we had approximately 67,395,691 shares of common stock outstanding. Substantially all of these shares are available for public sale, subject in some cases to volume and other limitations or delivery of a prospectus. If our common stockholders sell substantial amounts of common stock in the public market, or the market perceives that such sales may occur, the market price of our common stock may decline. Furthermore, if we were to include in a company-initiated registration statement shares held by our stockholders pursuant to the exercise of their registrations rights, the sale of those shares could impair our ability to raise needed capital by depressing the price at which we could sell our common stock.

In addition, we will need to raise substantial additional capital in the future to fund our operations. If we raise additional funds by issuing equity securities, the market price of our common stock may decline and our existing stockholders may experience significant dilution.

Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of us, which may be beneficial to our stockholders, more difficult and may prevent attempts by our stockholders to

replace or remove our current management.

We are incorporated in Delaware. Certain anti-takeover provisions of Delaware law and our certificate of incorporation and amended and restated bylaws, as currently in effect, may make a change of

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control of our company more difficult, even if a change in control would be beneficial to our stockholders. Our anti-takeover provisions include provisions such as a prohibition on stockholder actions by written consent, the authority of our board of directors to issue preferred stock without stockholder approval, and supermajority voting requirements for specified actions. In addition, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which generally prohibits stockholders owning 15% or more of our outstanding voting stock from merging or combining with us in certain circumstances. These provisions may delay or prevent the acquisition of us, even if the acquisition may be considered beneficial by some of our stockholders. In addition, they may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management.

Because we do not expect to pay dividends in the foreseeable future, you must rely on stock appreciation for any return on your investment.

We have paid no cash dividends on any of our capital stock to date, and we currently intend to retain our future earnings, if any, to fund the development and growth of our business. As a result, we do not expect to pay any cash dividends in the foreseeable future, and payment of cash dividends, if any, will also depend on our financial condition, results of operations, capital requirements and other factors and will be at the discretion of our board of directors. Furthermore, we may in the future become subject to contractual restrictions on, or prohibitions against, the payment of dividends. Accordingly, the success of your investment in our common stock will likely depend entirely upon any future appreciation. There is no guarantee that our common stock will appreciate in value after the offering or even maintain the price at which you purchased your shares, and you may not realize a return on your investment in our common stock.

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The following table sets forth our ratio of earnings to fixed charges for the periods indicated:

Fiscal the Year Ended December 31,					Nine Months Ended September 30,
2001	2002	2003	2004	2005	2006

Ratio of earnings to fixed charges

For the purpose of this table, earnings consist of income (loss) from continuing operations before income taxes, extraordinary items, cumulative effect of accounting changes, equity in net losses of affiliates and fixed charges and fixed charges consist of interest expense and the portion of operating lease expense that represents interest. For the fiscal years ended December 31, 2001, 2002, 2003, 2004 and 2005, and the nine months ended September 30, 2006, we had no earnings. Our earnings for those periods were insufficient to cover fixed charges by \$48.2 million, \$206.3 million, \$65.9 million, \$76.0 million, \$114.3 million and \$158.6 million, respectively.

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USE OF PROCEEDS

We estimate the net proceeds to us from the sale of the notes will be approximately \$98.3 million or \$112.8 million if the underwriters exercise their over-allotment option in full, after payment of underwriting discounts and commissions and estimated expenses of this offering. We estimate that the net proceeds from the sale of common stock in the concurrent common stock offering will be approximately \$297.4 million or \$340.9 million if the underwriters exercise their over-allotment option in full, after payment of underwriting discounts and commissions and estimated expenses of these offerings at an assumed offering price to the public and to Alfred E. Mann of \$17.44 per share, based on the closing price of our common stock on the Nasdaq Global Market on November 24, 2006. Each \$1.00 increase or decrease in the assumed offering price of the common stock of \$17.44 per share would increase or decrease, respectively, the net proceeds from the common stock offering by approximately \$17.1 million, after deducting the underwriting discount and estimated expenses of the offering.

Though this note offering is not contingent upon the common stock offering and the common stock offering is not contingent upon this note offering, we currently anticipate raising approximately \$405.2 million in aggregate gross proceeds from the two offerings. However, the amounts sold in each offering may vary based on market conditions relating to that particular security. Additionally, the underwriters have reserved up to 8,750,000 shares in the common stock offering and up to \$50.0 million of notes in this offering for sale to Alfred E. Mann. The underwriters will not receive any underwriting discount or commission on the sale of notes or common stock to Mr. Mann. The number of shares or amount of notes that Mr. Mann will be allocated in the offerings will depend on market conditions and the number of shares could be more or less than the amount initially reserved for allocation. We cannot provide any assurance as to the exact number of shares of common stock or notes that Mr. Mann will be allocated, if any.

We intend to use the net proceeds to us from this note offering and of the concurrent common stock offering to fund the costs of our clinical trials programs and other research and development activities, to expand our manufacturing operations, both on-going and planned, and for general corporate purposes, including working capital and repayment of \$70.0 million in principal amount of indebtedness, plus accrued interest, owed to Alfred E. Mann pursuant to an outstanding note. This indebtedness accrues interest at the lesser of London Interbank Offered Rate plus 3% per annum and the maximum rate permissible by law, and matures one year from the date of each advance. We may also use a portion of the net proceeds to in-license, invest in or acquire businesses or technologies that we believe are complementary to our own, although we have no current plan, commitments or agreements with respect to any acquisitions as of the date of this prospectus supplement. Pending these uses, we intend to invest the net proceeds in investment-grade, interest-bearing securities. As of the date of this prospectus supplement, we cannot specify with certainty all of the particular uses for the net proceeds to us from the offerings. Accordingly, we will retain broad discretion over the use of these proceeds.

Table of Contents**CAPITALIZATION**

The following table shows our cash and cash equivalents and marketable securities and capitalization as of September 30, 2006:

on an actual basis;

on an as-adjusted basis to give effect to our issuance and sale of \$100.0 million aggregate principal amount of notes in this offering, after deducting the underwriting discount and estimated offering expenses payable by us, and (ii) the (a) receipt by us of \$20.0 million in cash that was borrowed pursuant to our loan arrangement with Alfred E. Mann after September 30, 2006 and (b) the repayment on the date of this offering of all amounts owed under our loan arrangement with Mr. Mann (\$70.0 million in principal amount of indebtedness plus approximately \$0.9 million in accrued interest); and

on a pro forma as-adjusted basis to give effect to (i) both our issuance and sale of \$100.0 million aggregate principal amount of notes in this offering and our concurrent issuance of 17,500,000 shares of common stock in the common stock offering at an assumed offering price to the public and to Alfred E. Mann of \$17.44 per share, based on the closing sale price of our common stock on the Nasdaq Global Market on November 24, 2006, after deducting the underwriting discount and estimated offering expenses payable by us, and (ii) the (a) receipt by us of \$20.0 million in cash that was borrowed pursuant to our loan arrangement with Alfred E. Mann after September 30, 2006 and (b) the repayment on the date of this offering of all amounts owed under our loan arrangement with Mr. Mann (\$70.0 million in principal amount of indebtedness plus approximately \$0.9 million in accrued interest).

This table should be read with our financial statements and the related notes incorporated by reference in this prospectus supplement and the accompanying prospectus.

(in thousands, except for share and per share data)	As of September 30, 2006		
	Actual	As-Adjusted (This Offering and Debt Repayment) ⁽¹⁾	Pro Forma As-Adjusted (Both Offerings and Debt Repayment) ⁽¹⁾⁽²⁾
Cash, cash equivalents and marketable securities	\$ 50,093	\$ 97,471	\$ 394,830
Note payable to principal stockholder ⁽³⁾	50,000		
Deferred compensation and other liabilities	24	24	24
Senior convertible notes		100,000	100,000
Stockholders' equity:			
Undesignated preferred stock, \$0.01 par value, 10,000,000 shares authorized; no shares issued or outstanding			
Common stock, \$0.01 par value; 90,000,000 shares authorized; 49,895,691 shares issued and outstanding; 49,895,691 shares issued and outstanding as adjusted; 67,395,691 shares issued and outstanding pro forma as adjusted ⁽¹⁾	499	499	674

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Additional paid-in capital	778,053	778,053	1,075,237
Deficit accumulated during the development stage	(716,581)	(716,581)	(716,581)
Total stockholders' equity	61,971	61,971	359,330
Total capitalization	\$ 111,995	\$ 161,995	\$ 459,354

(1) The number of shares of common stock is based on the actual number of shares outstanding as of September 30, 2006, but excludes:

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an aggregate of 5,891,800 shares of our common stock issuable upon exercise of stock options outstanding as of September 30, 2006, having a weighted average exercise price of \$13.46 per share, of which options to purchase 2,604,125 shares were exercisable as of that date at a weighted average exercise price of \$12.46 per share;

an aggregate of 3,026,659 shares of common stock reserved for issuance upon the exercise of warrants outstanding as of September 30, 2006, with a weighted average exercise price of \$12.23 per share, all of which are exercisable as of that date;

an aggregate of 823,102 of our common stock issuable upon vesting of restricted stock units as of September 30, 2006, granted under our 2004 Equity Incentive Plan;

an aggregate of 6,300,143 shares of our common stock reserved for future issuance under our 2004 Equity Incentive Plan, 2004 Non-Employee Directors Stock Option Plan and 2004 Employee Stock Purchase Plan as of September 30, 2006; and

shares of common stock reserved for issuance upon conversion of the convertible notes concurrently being offered by us in this offering.

- (2) Each \$1.00 increase or decrease in the assumed offering price of the common stock of \$17.44 per share in the common stock offering would increase or decrease, respectively, the amount of total stockholders equity and total capital by approximately \$17.1 million, assuming the sale and issuance of 17,500,000 shares of common stock offered by us in the common stock offering, after deducting the estimated underwriting discount and estimated offering expenses.
- (3) The amount of Note payable to principal stockholder in the Actual column reflects the \$50.0 million in principal amount outstanding as of September 30, 2006 and does not reflect the additional \$20.0 million in principal amount that has since been borrowed by us and will also be repaid with the proceeds from this offering.

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Our common stock is traded on the Nasdaq Global Market under the symbol MNKD. The following table sets forth, during the periods indicated, the high and low sales prices per share of our common stock, as reported on the Nasdaq Global Market:

	Common Stock Price	
	High	Low
Year Ended December 31, 2004		
Third Quarter (beginning July 28, 2004)	\$ 24.31	\$ 10.71
Fourth Quarter	\$ 20.40	\$ 14.32
Year Ended December 31, 2005		
First Quarter	\$ 16.15	\$ 11.67
Second Quarter	\$ 15.98	\$ 8.58
Third Quarter	\$ 13.94	\$ 8.42
Fourth Quarter	\$ 13.85	\$ 10.60
Year Ended December 31, 2006		
First Quarter	\$ 21.74	\$ 11.20
Second Quarter	\$ 21.74	\$ 16.42
Third Quarter	\$ 21.48	\$ 16.26
Fourth Quarter (through November 24, 2006)	\$ 21.68	\$ 16.42

The last reported sale price of our common stock on the Nasdaq Global Market on November 24, 2006 was \$17.44. As of November 22, 2006, there were approximately 206 stockholders of record of our common stock.

DIVIDEND POLICY

We have never declared or paid cash dividends. We do not anticipate declaring or paying cash dividends in the foreseeable future. Instead, we will retain our earnings, if any, for the future operation and expansion of our business.

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DESCRIPTION OF NOTES

The notes will be issued under a senior indenture and supplemental indenture between us and Wells Fargo Bank, National Association, as trustee. We refer to the supplemental indenture together with the senior indenture, as the indenture. Copies of the form of indenture and the notes will be made available to prospective investors in the notes upon request to us.

The following description is a summary of the material provisions of the notes and the indenture. It does not purport to be complete. This summary is subject to and is qualified by reference to all the provisions of the notes and the indenture, including the definitions of some terms used in these documents. Wherever particular provisions or defined terms of the indenture or form of note are referred to, these provisions or defined terms are incorporated in this prospectus supplement by reference. This description of the particular terms of the notes supplements and, to the extent inconsistent with the description of the general terms of the senior debt securities and the indenture set forth in the accompanying prospectus under Description of Debt Securities, replaces the description in the accompanying prospectus. We urge you to read the indenture and the notes because they define your rights as a holder of the notes. Capitalized terms not defined in this description have the meanings given them in the indenture. In this section, MannKind, we, our and us each refers only to MannKind Corporation and not to any existing or future subsidiary.

General

The notes are our general, unsecured, senior obligations and are convertible into our common stock as described under Conversion Rights below. The notes are limited to an aggregate principal amount of \$100,000,000 (or \$115,000,000 if the underwriter exercises its overallotment option in full) and will mature on December 15, 2013.

The notes bear interest at the rate of 7.00% per year from the date of issuance of the notes, or from the most recent date to which interest had been paid or provided for. Interest is payable semi-annually in arrears on June and December 15 of each year, commencing June 15, 2007 to holders of record at the close of business on the preceding May and November 15, respectively, except interest payable upon repurchase on a fundamental change will be paid to the person to whom principal is payable. Interest is computed on the basis of a 360-day year comprised of twelve 30-day months. Payment of cash interest on the notes will include interest accrued for the period commencing on and including the immediately preceding interest payment date (or, if none, the original issuance date) through the day before the applicable interest payment date or fundamental change purchase date, as the case may be. In the event of the maturity, conversion or purchase by us at the option of the holder of a note, interest ceases to accrue on the note under the terms of, and subject to the conditions of, the indenture.

We may pay interest by check mailed to the holder's address as it appears in the note register, provided that if the holder holds an aggregate principal amount in excess of \$2.0 million, the holder shall be paid, at the holder's written election, by wire transfer in immediately available funds. However, payments to The Depository Trust Company, New York, New York, which we refer to as DTC, in respect of notes represented by global certificates in book-entry, will be made by wire transfer of immediately available funds to the account of DTC or its nominee.

Principal is payable, and notes may be presented for conversion, registration of transfer and exchange, without service charge, at our office or the agency we designate for that purpose.

We may, without the consent of the holders, reopen the notes and issue additional notes under the indenture with the same terms and with the same CUSIP numbers as the notes offered by this prospectus in an unlimited aggregate principal amount, provided that no such additional notes may be issued unless fungible with the notes offered hereby

for U.S. federal income tax purposes. We may also from time to time repurchase the notes in open market purchases or negotiated transactions without prior notice to holders.

The indenture does not contain any financial covenants or any restrictions on the payment of dividends, the incurrence of other indebtedness, or the issuance or repurchase of securities by us. The indenture does not contain any covenants or other provisions to protect holders of the notes in the event of a

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highly leveraged transaction or a change of control, except to the extent described under **Make-Whole Premium Upon a Fundamental Change** and **Repurchase at Option of Holders Upon a Fundamental Change** below.

Ranking

The notes:

will be our general, unsecured, senior obligations and will rank equally in right of payment with our other unsecured senior debt;

will effectively rank junior in right of payment to any of our existing and future secured debt, to the extent of the value of the assets securing such debt; and

will effectively rank junior in right of payment to any existing and future debt and other liabilities of our subsidiaries, including trade payables.

As of September 30, 2006, after giving effect to this offering of notes and the use of proceeds therefrom, we would have had no outstanding secured debt, and our subsidiaries would have had no outstanding liabilities to which the notes would rank effectively junior.

The terms of the supplemental indenture and the indenture under which the notes are issued do not limit our ability to incur additional debt, including secured debt.

Conversion Rights

Holder may convert their notes into shares of our common stock at any time prior to the stated maturity, unless the notes have been previously redeemed or purchased. For each \$1,000 principal amount of the notes surrendered for conversion, a holder may convert any outstanding notes into our common stock at an initial conversion rate of _____ shares of our common stock per note, equal to an initial conversion price of approximately \$ _____. Upon conversion in connection with certain fundamental changes, we will pay a make-whole premium to holders of notes upon the conversion of their notes, as described below.

The conversion rate and the equivalent conversion price in effect at any given time are referred to as the applicable conversion rate and the applicable conversion price, respectively, and will be subject to adjustment as described below. A holder may convert fewer than all of such holder's notes so long as the amount of notes converted is an integral multiple of \$1,000 principal amount.

Upon conversion of a note, a holder will not receive any cash payment of interest (unless in certain circumstances such conversion occurs between a regular record date and the interest payment date to which it relates) and we will not adjust the conversion rate to account for accrued and unpaid interest. We will not issue fractional shares of common stock upon conversion of notes. Instead, we will pay cash in lieu of fractional shares based on the closing sale price of our common stock on the business day prior to the conversion date. Our delivery to the holder of the full number of shares of our common stock into which the note is convertible, together with any cash payment for such holder's fractional shares, will be deemed to satisfy our obligation to pay the principal amount of the note and our obligation to pay accrued and unpaid interest. As a result, any accrued but unpaid interest to the conversion date is deemed to be cancelled, extinguished and forfeited upon conversion. For a discussion of the tax treatment to you of receiving our common stock upon conversion, see **Material U.S. Federal Income Tax Considerations**.

If a holder converts notes, we will pay any documentary, stamp or similar issue or transfer tax due on the issuance of shares of our common stock upon the conversion, unless the tax is due because the holder requests the shares to be issued or delivered to a person other than the holder, in which case the holder will pay that tax.

If the holder holds a beneficial interest in a global note, to convert the holder must comply with DTC's procedures for converting a beneficial interest in a global note and if required, pay funds equal to the

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interest payable on the next interest payment date to which the holder is not entitled and, if required, pay all taxes or duties, if any.

If the holder holds a beneficial interest in a global note, to convert the holder must comply with DTC's procedures for converting a beneficial interest in a global note and, if required, pay funds equal to the interest payable on the next interest payment date to which the holder is not entitled and, if required, pay all taxes or duties, if any.

If the holder holds a certificated note, to convert the holder must:

complete and manually sign the conversion notice on the back of the note, or facsimile of the conversion notice;

deliver the conversion notice, which is irrevocable, and the note to the conversion agent;

if required, furnish appropriate endorsements and transfer documents;

if required, pay all transfer or similar taxes; and

if required, pay funds equal to interest payable on the next interest payment date to which the holder is not entitled.

The date the holder complies with these requirements is the conversion date under the indenture.

If a holder has already delivered a fundamental change purchase notice as described under Repurchase at Option of Holders Upon a Fundamental Change with respect to a note, however, the holder may not surrender that note for conversion until the holder has withdrawn the fundamental change purchase notice in accordance with the indenture.

Holders may surrender their notes for conversion to shares of our common stock at the applicable conversion rate at any time prior to the close of business on the business day immediately preceding the stated maturity date. The notes and the shares issuable upon conversion of the notes will be registered under the Securities Act on the date the notes are issued.

Holders of notes at the close of business on a regular record date will receive payment of interest payable on the corresponding interest payment date notwithstanding the conversion of such notes at any time after the close of business on the applicable regular record date. Notes surrendered for conversion by a holder during the period from the close of business on any regular record date to the opening of business on the next interest payment date must be accompanied by payment of an amount equal to the interest that the holder is to receive on the notes; *provided, however*, that no such payment need be made (1) if we have specified a purchase date following a fundamental change that is after a record date and on or prior to the next interest payment date, (2) only to the extent of overdue interest, if any overdue interest exists at the time of conversion with respect to such note, or (3) if conversion occurs after the last record date prior to the maturity date.

Adjustment of Conversion Rate

The applicable conversion rate will be adjusted only as described below; provided, however, that we will not make any adjustments to the conversion rate if holders of the notes participate (as a result of holding the notes, and at the same time as the common stockholders participate) in any of the transactions described below as if such holders of the notes held a number of shares of our common stock equal to the applicable conversion rate, *multiplied* by the principal amount (expressed in thousands) of notes held by such holder, without having to convert their notes.

- (1) If we issue shares of our common stock as a dividend or distribution on shares of our common stock, or if we effect a share split or share combination, the conversion rate will be adjusted based on the following formula:

$$CR = CR \times \frac{OS}{OS_0}$$

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where,

CR_0 = the conversion rate in effect immediately prior to the ex-dividend date for such dividend or distribution, or the effective date of such share split or share combination, as the case may be;

CR = the new conversion rate in effect immediately after the ex-dividend date for such dividend or distribution, or the effective date of such share split or share combination, as the case may be;

OS_0 = the number of shares of our common stock outstanding immediately prior to the ex-dividend date for such dividend or distribution, or the effective date of such share split or share combination, as the case may be; and

OS = the number of shares of our common stock outstanding immediately after such dividend or distribution, or the effective date of such share split or share combination, as the case may be.

Any adjustment made pursuant to this clause (1) shall become effective immediately after (x) the ex-dividend date for such dividend or distribution or (y) the date on which such split or combination becomes effective, as applicable. If any dividend or distribution described in this clause (1) is declared but not so paid or made, the new conversion rate shall be readjusted to the conversion rate that would then be in effect if such dividend or distribution had not been declared.

The ex-dividend date is the first date on which shares of our common stock trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question.

- (2) If we distribute to all holders of our common stock any rights or warrants entitling them to purchase, for a period of not more than 45 days after the ex-dividend date for the distribution, shares of our common stock at a price per share less than the average of the last reported sales prices of our common stock for the 10 consecutive business-day period ending on the business day preceding the ex-dividend date for such distribution, the conversion rate will be adjusted based on the following formula:

$$CR = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR_0 = the conversion rate in effect immediately prior to the ex-dividend date for such distribution;

CR = the new conversion rate in effect immediately prior to the ex-dividend date for such distribution;

OS_0 = the number of shares of our common stock outstanding immediately prior to the ex-dividend date for such distribution;

X = the total number of shares of our common stock issuable pursuant to such rights or warrants; and

Y = the number of shares of our common stock equal to the aggregate price payable to exercise such rights or warrants divided by the average of the last reported sale prices of our common stock over the 10 consecutive business-day period ending on the business-day immediately preceding the ex-dividend date for such distribution.

For purposes of this clause (2), in determining whether any rights or warrants entitled the holders to subscribe for or purchase our common stock at less than the applicable last reported sale prices of our common stock, and in determining the aggregate exercise or conversion price payable for such common stock, there shall be taken into account any consideration received by us for such rights or warrants and any amount payable on exercise or conversion thereof, with

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the value of such consideration, if other than cash, to be determined by our board of directors. If any right or warrant described in this clause (2) is not exercised or converted prior to the expiration of the exercisability or convertibility thereof, the new conversion rate shall be readjusted to the conversion rate that would then be in effect if such right or warrant had not been so issued. Any adjustment made pursuant to this clause (2) shall become effective immediately after the ex-dividend date for the applicable distribution.

- (3) If we distribute shares of our capital stock, evidences of our indebtedness or other assets or property of ours to all holders of our common stock, excluding:

dividends or distributions referred to in clause (1) or (2) above;

dividends or distributions paid exclusively in cash; and

spin-offs to which the provisions set forth below in this clause (3) shall apply;

then the conversion rate will be adjusted based on the following formula:

$$CR = CR_0 \times \frac{SP_0}{SP_0 + FMV}$$

where,

CR_0 = the conversion rate in effect immediately prior to the ex-dividend date for such distribution;

CR = the new conversion rate in effect immediately after the ex-dividend date for such distribution;

SP_0 = the average of the last reported sale prices of our common stock over the 10 consecutive business-day period ending on the business day immediately preceding the ex-dividend date for such distribution; and

FMV = the average of the fair market values (as determined by our board of directors) of the shares of capital stock, evidences of indebtedness, assets or property distributed with respect to each outstanding share of our common stock over the 10 consecutive business-day period ending on the business day immediately preceding the ex-dividend date for such distribution.

An adjustment to the conversion rate made pursuant to this clause (3) shall become effective immediately after the ex-dividend date for the applicable distribution.

With respect to an adjustment pursuant to this clause (3) where there has been a payment of a dividend or other distribution on our common stock or shares of capital stock of any class or series, or similar equity interest, of or relating to a subsidiary or other business unit, which we refer to as a spin-off, the conversion rate in effect immediately before 5:00 p.m., New York City time, on the tenth business day immediately following, and including, the effective date of the spin-off will be increased based on the following formula:

$$FMV_0 + MP_0$$

$$CR = CR_x \frac{MP_0}{MP_0}$$

where,

CR_0 = the conversion rate in effect immediately prior to the tenth business day immediately following, and including, the effective date of the spin-off;

CR = the new conversion rate in effect immediately after the tenth business day immediately following, and including, the effective date of the spin-off;

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FMV₀ = the average of the last reported sale prices of the capital stock or similar equity interest distributed to holders of our common stock applicable to one share of our common stock over the first 10 consecutive business-day period immediately following, and including, the effective date of the spin-off; and

MP₀ = the average of the last reported sale prices of our common stock over the first 10 consecutive business-day period immediately following, and including, the effective date of the spin-off.

The adjustment to the conversion rate under this clause (3) will occur immediately after the tenth business day immediately following, and including, the effective date of the spin-off provided that, for purposes of determining the conversion rate, in respect of any conversion during the ten business days following the effective date of any spin-off, references within the portion of this clause (3) related to spin-offs to 10 business days shall be deemed replaced with such lesser number of business days as have elapsed between the effective date of such spin-off and the relevant conversion date.

If any such dividend or distribution described in this clause (3) is declared but not paid or made, the new conversion rate shall be readjusted to be the conversion rate that would then be in effect if such dividend or distribution had not been declared.

- (4) If any cash dividend or distribution is made to all holders of our common stock, the conversion rate will be adjusted based on the following formula:

$$CR = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR₀ = the conversion rate in effect immediately prior to the ex-dividend date for such distribution;

CR = the new conversion rate in effect immediately after the ex-dividend date for such distribution;

SP₀ = the last reported sale price of our common stock on the business day immediately preceding the ex-dividend date for such distribution; and

C = the amount in cash per share we distribute to holders of our common stock.

An adjustment to the conversion rate made pursuant to this clause (4) shall become effective immediately after the ex-dividend date for the applicable dividend or distribution. If any dividend or distribution described in this clause (4) is declared but not so paid or made, the new conversion rate shall be readjusted to the conversion rate that would then be in effect if such dividend or distribution had not been declared.

- (5) If we or any of our subsidiaries make a payment in respect of a tender offer or exchange offer for our common stock, to the extent that the cash and value of any other consideration included in the payment per share of common stock exceeds the last reported sale price of our common stock on the business day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the conversion rate will be increased based on the following formula:

$$CR = C_0 \times \frac{AC + (SP \times OS)}{OS_0 \times SP}$$

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where,

CR_0 = the conversion rate in effect at the close of business on the last business day of the 10 consecutive business-day period commencing on the business day next succeeding the date such tender or exchange offer expires;

CR = the new conversion rate in effect immediately following the last business day of the 10 consecutive business-day period commencing on the business day next succeeding the date such tender or exchange offer expires;

AC = the aggregate value of all cash and any other consideration (as determined by our board of directors) paid or payable for shares purchased in such tender or exchange offer;

OS_0 = the number of shares of our common stock outstanding immediately prior to the expiration of such tender or exchange offer;

OS = the number of shares of our common stock outstanding immediately after the expiration of such tender or exchange offer (after giving effect to the purchase or exchange of shares pursuant to such tender or exchange offer); and

SP = the average of the last reported sale prices of our common stock over the 10 consecutive business-day period commencing on the business day next succeeding the date such tender or exchange offer expires.

The adjustment to the conversion rate under this clause (5) shall become effective immediately following the tenth business day next succeeding the date such tender or exchange offer expires; provided that, for purposes of determining the conversion rate, in respect of any conversion during the ten business days following the date that any tender or exchange offer expires, references within this clause (5) to 10 business days shall be deemed replaced with such lesser number of business days as have elapsed between the date such tender or exchange offer expires and the relevant conversion date. If we or one of our subsidiaries is obligated to purchase our common stock pursuant to any such tender or exchange offer but are permanently prevented by applicable law from effecting any such purchase or all such purchases are rescinded, the new conversion rate shall be readjusted to be the conversion rate that would be in effect if such tender or exchange offer had not been made.

Except as stated herein, we will not adjust the conversion rate for the issuance of shares of our common stock or any securities convertible into or exchangeable for shares of our common stock or the right to purchase shares of our common stock or such convertible or exchangeable securities. If, however, the application of the foregoing formulas would result in a decrease in the conversion rate, no adjustment to the conversion rate will be made (except on account of share combinations).

To the extent that we have a rights plan in effect upon conversion of the notes into common stock, holders will receive, upon conversion of notes, the rights under the rights plan, unless prior to any conversion, the rights have separated from the common stock, in which case, and only in such case, the conversion rate will be adjusted at the time of separation as if we distributed to all holders of our common stock, shares of our capital stock, evidences of indebtedness or assets as described in the clause (3) above, subject to readjustment in the event of the expiration, termination or redemption of such rights.

We will not make any adjustment to the conversion rate except as specifically set forth in this Adjustment of Conversion Rate and in Make-Whole Premium Upon a Fundamental Change. Without limiting the foregoing, the applicable conversion rate will not be adjusted:

upon the issuance of any shares of our common stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on our securities and the investment of additional optional amounts in shares of our common stock under any plan;

upon the issuance of any shares of our common stock or options or rights to purchase those shares pursuant to any present or future employee, director or consultant benefit plan or program or employee stock purchase plan of or assumed by us or any of our subsidiaries;

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upon the issuance of any shares of our common stock pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in the preceding bullet and outstanding as of the date the notes were first issued;

for a change in the par value of the common stock;

for any make-whole premium; or

for accrued and unpaid interest and additional interest, if any.

If any adjustment of the conversion rate would be less than 1% of the then effective rate, such adjustment shall be carried forward and adjustment with respect thereto made at the time of and together with any subsequent adjustment which, together with the original adjustment shall aggregate at least 1% of the then effective conversion rate; provided, however, that any carry forward amount shall be paid to the holder upon conversion regardless of the 1% threshold.

In the case of:

any recapitalization, reclassification or change of our common stock, other than changes resulting from a subdivision or combination;

a consolidation, merger or combination involving us;

a sale, conveyance or lease to another corporation of all or substantially all of our property and assets; or

any statutory share exchange,

in each case as a result of which holders of our common stock are entitled to receive stock, other securities, other property or assets (including cash or any combination thereof) (the reference property) with respect to or in exchange for our common stock, the holders of the notes then outstanding will be entitled thereafter to convert those notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) which they would have owned or been entitled to receive upon such business combination had such notes been converted into our common stock immediately prior to such business combination. In the event holders of our common stock have the opportunity to elect the form of consideration to be received in such business combination, the reference property will be deemed to be the weighted average of the types and amounts of consideration received by the holders of our common stock that affirmatively make such election. We will notify the holders of the weighted average as soon as practicable after such determination is made. We may not become a party to any such transaction unless its terms are consistent with the preceding. None of the foregoing provisions shall affect the right of a holder of notes to convert its notes into shares of our common stock prior to the effective date of such transaction.

If we make a distribution of property to holders of our common stock that would be taxable to them as a dividend for U.S. federal income tax purposes and the conversion rate is increased, this increase would generally be deemed to be the receipt of taxable income by U.S. holders (as defined in Material U.S. Federal Income Tax Consequences) of the notes and would generally result in withholding taxes for non-U.S. holders (as defined in Material U.S. Federal Income Tax Consequences). Because this deemed income would not give rise to any cash from which any applicable withholding tax could be satisfied, we may offset any such withholding tax applicable to non-U.S. holders against cash payments of interest payable on the notes. See Material U.S. Federal Income Tax Consequences Consequences to U.S. Holders Constructive Dividends and Consequences to Non-U.S. Holders Dividends.

We may from time to time, to the extent permitted by law, increase the conversion rate of the notes by any amount for any period of at least 20 days. In that case we will give at least 15 days notice of such increase. We may make such increase in the conversion rate, in addition to those set forth above, as our board of directors deems advisable to avoid or diminish any income tax to holders of our common stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

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Table of Contents**Make-Whole Premium Upon a Fundamental Change**

If a fundamental change, other than a fundamental change described under the third and fourth bullet points under the definition of a change of control described below under **Repurchase at Option of Holders Upon a Fundamental Change**, occurs, in certain circumstances, we will pay a make-whole premium upon the conversion of the notes in connection with any such transaction by increasing the conversion rate on such notes. The make-whole premium will be in addition to, and not in substitution for, any cash, securities or other assets otherwise due to holders of notes upon conversion. The make-whole premium will be determined by reference to the table below and is based on the date on which the fundamental change becomes effective, referred to as the **effective date**, and the price, referred to as the **stock price**, paid, or deemed to be paid, per share of our common stock in the transaction constituting the fundamental change, subject to adjustment as described below. If holders of our common stock receive only cash in the fundamental change, the stock price shall be the cash amount paid per share. In all other cases, the stock price shall be the average closing sale price of our common stock for the 10 trading days immediately prior to but not including the effective date.

The following table shows what the make-whole premium would be for each hypothetical stock price and effective date set forth below, expressed as additional shares of common stock per \$1,000 principal amount of notes.

Stock Price on Effective Date	Effective Date							
	12/ /06	12/ /07	12/ /08	12/ /09	12/ /10	12/ /11	12/ /12	12/ /13

The hypothetical stock prices and additional share amounts set forth above are based on a common stock price of \$ per share on November , 2006 and an initial conversion price of \$ per share.

The actual stock price and effective date may not be set forth on the table, in which case:

if the actual stock price on the effective date is between two stock prices on the table or the actual effective date is between two effective dates on the table, the make-whole premium will be determined by a straight-line interpolation between the make-whole premiums set forth for the two stock prices and the two effective dates on the table based on a 365-day year, as applicable;

if the stock price on the effective date exceeds \$ per share, subject to adjustment as described below, no make-whole premium will be paid; and

if the stock price on the effective date is less than \$ per share, subject to adjustment as described below, no make-whole premium will be paid.

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The stock prices set forth in the first column of the table above will be adjusted as of any date on which the conversion rate of the notes is adjusted. The adjusted stock prices will equal the stock prices applicable immediately prior to such adjustment multiplied by a fraction, the numerator of which is the conversion rate immediately prior to the adjustment giving rise to the stock price adjustment and the denominator of which is the conversion rate as so adjusted. The number of additional shares set forth in the table above will be adjusted in the same manner as the conversion rate as set forth above under Conversion Rights, other than by operation of an adjustment to the conversion rate by adding the make-whole premium as described above.

A conversion of the notes by a holder will be deemed for these purposes to be in connection with a fundamental change if the conversion notice is received by the conversion agent on or subsequent to the date we provide the notice referred to in the next sentence but before the close of business on the 10th business day immediately following the effective date of the fundamental change. We will notify holders of notes of the anticipated effective date of any fundamental change as promptly as practicable following the date we publicly announce such fundamental change, but in no event less than 20 days prior to such date.

Notwithstanding the foregoing, in no event will the conversion rate exceed per \$1,000 principal amount of notes, subject to adjustments in the same manner as the conversion rate.

The additional shares will be delivered upon the later of the settlement date for the conversion and promptly following the effective date of the fundamental change transaction.

If a holder converts its notes prior to the effective date of any fundamental change, and the fundamental change does not occur, you will not be entitled to additional shares in connection with such conversion.

Our obligation to pay the make-whole premium may constitute a penalty under applicable contract law, and therefore its enforceability cannot be assured.

Repurchase at Option of Holders Upon a Fundamental Change

If a fundamental change occurs, each holder of notes will have the right to require us to repurchase all or any portion of that holder's notes that is equal to \$1,000 or a whole multiple of \$1,000, on the fundamental change purchase date, which shall be a date specified by us, but that shall not be less than 20 days nor more than 35 days after the date we give notice of the fundamental change, at a purchase price, payable in cash, equal to 100% of the principal amount of the notes to be repurchased, together with interest accrued and unpaid to, but excluding, the fundamental change date.

We will mail to all record holders a notice of a fundamental change within 10 days after it has occurred. We are also required to deliver to the trustee a copy of the fundamental change notice. If a holder elects to require us to repurchase the holder's notes, the holder must deliver to us or our designated agent, on or before the fundamental change purchase date, the holder's fundamental change purchase notice. Our notice of the fundamental change (delivered in any manner permitted by the indenture, including through DTC) will be provided to all holders of the notes and the trustee and paying agent and include notice of the occurrence of the fundamental change and of the resulting repurchase right. Such purchase notice shall state, among other things:

the events causing a fundamental change;

the date of the fundamental change;

the last date on which a holder may exercise the repurchase right;

the fundamental change purchase price;

the fundamental change purchase date;

the name and address of the paying agent and the conversion agent, if applicable;

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that the notes with respect to which a fundamental change purchase notice has been delivered by a holder may be converted only if the holder withdraws the fundamental change purchase notice in accordance with the terms of the indenture; and

the procedures that holders must follow to require us to purchase their notes.

Simultaneously with providing such notice, we will publish a notice containing this information in a newspaper of general circulation in The City of New York or publish the information on our website or through such other public medium as we may use at that time.

To exercise the repurchase right, a holder must deliver, on or before the business day immediately preceding the fundamental change purchase date, subject to extension to comply with applicable law, the notes to be purchased, duly endorsed for transfer, together with a written purchase notice and the form entitled "Form of Fundamental Change Purchase Notice" on the reverse side of the notes duly completed, to the paying agent. The holder's fundamental change purchase notice must state:

if certificated, the certificate numbers of the holder's notes to be delivered for purchase, or if not certificated, the holder's notice must comply with appropriate DTC procedures;

the portion of the principal amount of notes to be purchased, which must be \$1,000 or a multiple thereof; and

that the notes are to be purchased by us pursuant to the applicable provisions of the notes and the indenture.

A holder may withdraw any fundamental change purchase notice in whole or in part by a written notice of withdrawal delivered to the paying agent prior to the close of business on the business day prior to the fundamental change purchase date. The notice of withdrawal must state:

the principal amount of the withdrawn notes;

if certificated notes have been issued, the certificate numbers of the withdrawn notes, or if not certificated, the holder's notice must comply with appropriate DTC procedures; and

the principal amount, if any, which remains subject to the purchase notice.

We will be required to purchase the notes on the fundamental change purchase date, subject to extension to comply with the applicable law. Holders will receive payment of the fundamental change purchase price promptly following the later of the fundamental change purchase date or the time of book-entry transfer or the delivery of the notes. If the paying agent holds money or securities sufficient to pay the fundamental change purchase price of the notes on the business day following the fundamental change purchase date, then:

the notes will cease to be outstanding and interest, including any additional interest, if any, will cease to accrue (whether or not book-entry transfer of the notes is made or whether or not the note is delivered to the paying agent); and

all other rights of the holder will terminate (other than the right to receive the fundamental change purchase price and previously accrued and unpaid interest (including any additional interest) upon

delivery or transfer of the notes).

A fundamental change will be deemed to have occurred upon a change of control or a termination of trading, each as defined below.

A change of control will be deemed to have occurred at such time after the original issuance of the notes when the following has occurred:

the acquisition by any person, including any syndicate or group deemed to be a person under Section 13(d)(3) of the Securities Exchange Act of 1934, as amended (Exchange Act), of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of transactions of shares of our capital stock entitling that person to exercise

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50% or more of the total voting power of all shares of our capital stock entitled to vote generally in elections of directors, other than;

any acquisition by us, any of our subsidiaries or any of our employee benefit plans,

any acquisition during the lifetime of Alfred E. Mann by Mr. Mann or his estate, by any trust where Mr. Mann is the trustee or grantor, by any not-for-profit entity where the acquisition is directed by Mr. Mann or by any entity wholly-owned by Mr. Mann or his estate; *provided* that the total beneficial ownership of all such persons and entities, together with the persons and entities in the next bullet point, does not exceed 70% or more of the total voting power of all shares of our capital stock entitled to vote generally in elections of directors, or

any acquisition by any person or entity so long as the shares acquired by such person or entity are acquired directly from one of the persons or entities listed in the preceding bullet point and no consideration is paid in connection with such acquisition;

our consolidation or merger with or into any other person, any merger of another person into us, or any conveyance, transfer, sale, lease or other disposition of all or substantially all of our properties and assets to another person, other than:

any transaction

that does not result in any reclassification, conversion, exchange or cancellation of outstanding shares of our capital stock, and

pursuant to which holders of our capital stock immediately prior to the transaction have the entitlement to exercise, directly or indirectly, 50% or more of the total voting power of all shares of our capital stock entitled to vote generally in the election of directors of the continuing or surviving person immediately after the transaction; or

any merger solely for the purpose of changing our jurisdiction of incorporation and resulting in a reclassification, conversion or exchange of outstanding shares of common stock solely into shares of common stock of the surviving entity;

during any consecutive two-year period, individuals who at the beginning of that two-year period constituted our board of directors, together with any new directors whose election to our board of directors, or whose nomination for election by our stockholders, was approved by a vote of a majority of the directors then still in office who were either directors at the beginning of such period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority of our board of directors then in office; or

our stockholders pass a resolution approving a plan of liquidation or dissolution.

However, a change in control will not be deemed to have occurred if, in the case of a merger or consolidation, at least 90% of the consideration (excluding cash payments for fractional shares and cash payments pursuant to dissenters appraisal rights) in the merger or consolidation constituting the change in control consists of common stock traded on a U.S. national securities exchange or quoted on the Nasdaq Global Market (or which will be so traded or quoted when issued or exchanged in connection with such change in control) and as a result of such transaction or transactions the notes become convertible solely into such common stock.

A termination of trading will be deemed to have occurred if our common stock or other common stock into which the notes are convertible is neither listed for trading on a U.S. national securities exchange nor approved for listing on Nasdaq or any similar U.S. system of automated dissemination of quotations of securities prices, or traded in over-the-counter securities markets, and no American Depositary Shares or similar instruments for such common stock are so listed or approved for listing in the U.S.

The beneficial owner shall be determined in accordance with Rule 13d-3 promulgated by the SEC under the Exchange Act. The term person includes any syndicate or group which would be deemed to be a person under Section 13(d)(3) of the Exchange Act.

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The second bullet of the definition of change of control includes a phrase relating to the conveyance, transfer, lease, or other disposition of all or substantially all of our assets. There is no precise established definition of the phrase substantially all under applicable law. Accordingly, the ability of a holder of notes to require us to repurchase such notes as a result of a conveyance, transfer, lease, or other disposition of less than all of our assets may be uncertain.

In some circumstances, the fundamental change repurchase feature of the notes may make it more difficult or discourage a potential acquirer and thus the removal of incumbent management. The fundamental change repurchase feature, however, is not the result of management's knowledge of any specific effort to accumulate shares of common stock or to obtain control of us by means of a merger, tender offer, solicitation or otherwise, or part of a plan by management to adopt a series of anti-takeover provisions. Instead, the fundamental change repurchase feature is the result of negotiations between us and the underwriters.

In connection with any purchase offer pursuant to a fundamental change purchase notice, we will, if required:

comply with the provisions of the tender offer rules under the Exchange Act that may then be applicable; and

file a Schedule TO or any other required schedule under the Exchange Act.

We may, to the extent permitted by applicable law, at any time purchase the notes in the open market or by tender at any price or by private agreement. Any note so purchased by us may, to the extent permitted by applicable law, be reissued or resold or may be surrendered to the trustee for cancellation. Any notes surrendered to the trustee may not be reissued or resold and will be canceled promptly.

The term fundamental change is limited to specific transactions and may not include other events that might adversely affect our financial condition or business operations. The preceding provisions would not necessarily protect holders of the notes if highly leveraged or other transactions involving us occur that may adversely affect holders.

Our ability to repurchase notes upon the occurrence of a fundamental change is subject to important limitations. The occurrence of a fundamental change could cause an event of default under, or be prohibited or limited by, the terms of then existing indebtedness or financing arrangements. We cannot assure you that we would have the financial resources, or would be able to arrange financing, to pay the repurchase price for all the notes that might be delivered by holders of notes seeking to exercise the repurchase right. Any failure by us to repurchase the notes when required following a fundamental change would result in an event of default under the indenture. Any such default may, in turn, cause a default under existing or future senior debt.

No Stockholder Rights for Holders of Notes

Holders of notes, as such, will not have any rights as our stockholders (including, without limitation, voting rights and rights to receive any dividends or other distributions on shares of our common stock), except in limited circumstances described above under Adjustment of Conversion Rate.

Calculations in Respect of the Notes

Except as explicitly specified otherwise herein, we will be responsible for making all calculations required under the notes. These calculations include, but are not limited to, determinations of the conversion price and conversion rate applicable to the notes. We will make all these calculations in good faith and, absent manifest error, our calculations will be final and binding on holders of the notes. We will provide a schedule of our calculations to the trustee, and the trustee is entitled to rely upon the accuracy of our calculations without responsibility for independent verification

thereof. The trustee will forward our calculations to any holder of notes upon written request.

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Consolidation, Merger and Sale of Assets

We may, without the consent of the holders of notes, consolidate with, merge into or transfer all or substantially all of our assets to any corporation, limited liability company, partnership or trust organized under the laws of the U.S. or any of its political subdivisions provided that:

the surviving entity assumes all our obligations under the indenture and the notes, as provided in the indenture;

at the time of such transaction, no event of default, and no event which, after notice or lapse of time, would become an event of default, shall have happened and be continuing; and

an officers' certificate and an opinion of counsel, each stating that the consolidation, merger or transfer complies with the provisions of the indenture, have been delivered to the trustee.

Events of Default

Each of the following will constitute an event of default under the indenture:

our failure to pay when due the principal of or premium, if any, on any of the notes at maturity, upon exercise of a repurchase right or otherwise;

our failure to pay an installment of interest on any of the notes for 30 days after the date when due;

our failure to deliver shares of common stock, together with cash instead of fractional shares, when those shares of common stock or cash instead of fractional shares, are required to be delivered following conversion of a note, and that failure continues for 10 days;

our failure to perform or observe any other term, covenant or agreement contained in the notes or the indenture for a period of 60 days after written notice of such failure, requiring us to remedy the same, shall have been given to us by the trustee or to us and the trustee by the holders of at least 25% in aggregate principal amount of the notes then outstanding;

our failure to make any payment by the end of the applicable grace period, if any, after the maturity of any indebtedness for borrowed money in an amount in excess of \$25.0 million, or there is an acceleration of indebtedness for borrowed money in an amount in excess of \$25.0 million because of a default with respect to such indebtedness without such indebtedness having been discharged or such acceleration having been cured, waived, rescinded or annulled, in either case, for a period of 30 days after written notice to us by the trustee or to us and the trustee by holders of at least 25% in aggregate principal amount of the notes then outstanding;

our failure to give you notice of your rights to require us to repurchase your notes upon a fundamental change; and

certain events of our bankruptcy, insolvency or reorganization.

If an event of default specified in the seventh bullet point above occurs and is continuing, then the principal of all the notes and the interest thereon shall automatically become immediately due and payable. If an event of default occurs and is continuing, other than an event of default specified in the seventh bullet point above, the trustee or the holders,

with written notice to the trustee, of at least 25% in aggregate principal amount of the notes then outstanding may declare the notes due and payable at their principal amount together with accrued interest, and thereupon the trustee may, at its discretion, proceed to protect and enforce the rights of the holders of notes by appropriate judicial proceedings. Such declaration may be rescinded and annulled with the written consent of the holders of a majority in aggregate principal amount of the notes then outstanding, subject to the provisions of the indenture.

Notwithstanding the foregoing, the indenture will provide that, to the extent elected by us, the sole remedy for an event of default relating to the failure to comply with the reporting obligations in the indenture, which are described below under the caption Reports, and for any failure to comply with the requirements

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of Section 314(a)(1) of the Trust Indenture Act, will for the first 60 days after the occurrence of such an event of default consist exclusively of the right to receive special interest on the notes at an annual rate equal to 0.25% of the principal amount of the notes. This special interest will be paid semi-annually in arrears, with the first semi-annual payment due on the first interest payment date following the date on which the special interest began to accrue on any notes. The special interest will accrue on all outstanding notes from and including the date on which an event of default relating to a failure to comply with the reporting obligations in the indenture first occurs to but not including the 60th day thereafter (or such earlier date on which the event of default shall have been cured or waived). On such 60th day (or earlier, if the event of default relating to the reporting obligations is cured or waived prior to such 60th day), such special interest will cease to accrue and, if the event of default relating to reporting obligations has not been cured or waived prior to such 60th day, the notes will be subject to acceleration as provided above. The provisions of the indenture described in this paragraph will not affect the rights of holders in the event of the occurrence of any other event of default. In the event we do not elect to pay special interest upon an event of default in accordance with this paragraph, the notes will be subject to acceleration as provided above.

If we elect to pay special interest as the sole remedy for an event of default relating to the failure to comply with reporting obligations in the indenture, which are described below under Reports, and for any failure to comply with the requirements of Section 314(a)(1) of the Trust Indenture Act in accordance with the immediately preceding paragraph, we will notify all holders of notes and the trustee and paying agent of such election on or before the close of business on the date on which such event of default first occurs.

The holders of a majority in aggregate principal amount of notes at the time outstanding through their written consent, or the holders of a majority in aggregate principal amount of notes then outstanding represented at a meeting at which a quorum is present by a written resolution, may waive any existing default or event of default and its consequences, except any default or event of default:

in any payment on the notes;

in respect of the conversion rights of the notes; or

in respect of the covenants or provisions in the indenture that may not be modified or amended without the consent of the holder of each note affected as described in Modification, Waiver and Meetings below.

Holders of a majority in aggregate principal amount of the notes then outstanding through their written consent, or the holders of a majority in aggregate principal amount of the notes then outstanding represented at a meeting at which a quorum is present by a written resolution, may direct the time, method and place of conducting any proceeding for any remedy available to the trustee or exercising any trust or power conferred upon the trustee, subject to the provisions of the indenture. The indenture contains a provision entitling the trustee, subject to the duty of the trustee during a default to act with the required standard of care, to be indemnified by the holders of notes before proceeding to exercise any right or power under the indenture at the request of such holders. The rights of holders of the notes to pursue remedies with respect to the indenture and the notes are subject to a number of additional requirements set forth in the indenture.

No holder of the notes may pursue any remedy under the indenture, except in the case of a default in the payment of principal, premium, if any, or interest on the notes, unless:

the holder has given the trustee written notice of an event of default;

the holders of at least 25% in principal amount of outstanding notes make a written request, and offer reasonable indemnity, to the trustee to pursue the remedy;

the trustee does not receive an inconsistent direction from the holders of a majority in principal amount of the notes;

the holder or holders have offered reasonable security or indemnity to the trustee against any costs, liability or expense of the trustee; and

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the trustee fails to comply with the request within 60 days after receipt of the request and offer of indemnity.

The indenture will provide that the trustee shall, within 90 days of the occurrence of a default, give to the registered holders of the notes notice of all uncured defaults known to it, but the trustee shall be protected in withholding such notice if it, in good faith, determines that the withholding of such notice is in the best interest of such registered holders, except in the case of a default in the payment of the principal of, or premium, if any, or interest on, any of the notes when due or in the payment of any repurchase obligation.

We are required to furnish annually to the trustee a written statement as to the fulfillment of our obligations under the indenture. In addition, we are required to file with the trustee a written notice of the occurrence of any default or event of default within five business days of our becoming aware of the occurrence of any default or event of default.

Modification, Waiver and Meetings

The indenture contains provisions for convening meetings of the holders of notes to consider matters affecting their interests.

The indenture (including the terms and conditions of the notes) may be modified or amended by us and the trustee, without the consent of the holder of any note, for the purposes of, among other things:

adding to our covenants for the benefit of the holders of notes;

surrendering any right or power conferred upon us;

providing for conversion rights of holders of notes if any recapitalization, reclassification or change of our common stock or any consolidation, merger or sale, conveyance or lease of all or substantially all of our assets or a statutory share exchange occurs;

providing for the assumption of our obligations to the holders of notes in the case of a merger, consolidation, conveyance, transfer or lease;

increasing the conversion rate, provided that the increase will not adversely affect the interests of holders of notes in any material respect;

complying with the requirements of the SEC in order to effect or maintain the qualification of the indenture under the Trust Indenture Act of 1939, as amended;

curing any ambiguity or correcting or supplementing any defective provision contained in the indenture, provided that such modification or amendment does not adversely affect the interests of the holders of the notes in any material respect;

adding or modifying any other provisions which we and the trustee may deem necessary or desirable and which will not adversely affect the interests of the holders of notes in any material respect; or

conforming, as necessary, the indenture and the form or terms of the notes to the Description of Notes as set forth in this prospectus supplement.

Modifications and amendments to the indenture or to the terms and conditions of the notes may also be made, and non-compliance by us with any provision of the indenture or the notes may be waived, either:

with the written consent of the holders of at least a majority in aggregate principal amount of the notes at the time outstanding; or

by the adoption of a resolution at a meeting of holders at which a quorum is present by at least a majority in aggregate principal amount of the notes represented at such meeting.

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However, no such modification, amendment or waiver may, without the written consent or the affirmative vote of the holder of each note affected:

change the stated maturity date of the principal of, or the time of payment of any installment of interest on, any note;

reduce the principal amount of any note;

reduce the interest rate or interest on any note;

change the currency of payment of principal of, premium, if any, or interest on any note;

impair the right to institute suit for the enforcement of any payment with respect to, or the conversion of, any note;

except as otherwise permitted or contemplated by provisions of the indenture concerning specified reclassifications or corporate reorganizations, adversely affect the conversion rights of holders of the notes;

adversely affect the repurchase option of holders upon a fundamental change;

reduce the percentage in aggregate principal amount of notes outstanding necessary to modify or amend the indenture or to waive any past default; or

reduce the percentage in aggregate principal amount of notes outstanding required for the adoption of a resolution or the quorum required at any meeting of holders of notes at which a resolution is adopted.

The quorum at any meeting called to adopt a resolution will be persons holding or representing a majority in aggregate principal amount of the notes at the time outstanding.

Unclaimed Money

If money deposited with the trustee or paying agent for the payment of principal of, or accrued and unpaid interest on, the notes remains unclaimed for two years, the trustee and paying agent will pay the money back to us upon our written request. However, the trustee and paying agent have the right to withhold paying the money back to us until they publish in a newspaper of general circulation in New York City, or mail to each holder, a notice stating that the money will be paid back to us if unclaimed after a date no less than 30 days from the publication or mailing. After the trustee or paying agent pays the money back to us, holders of notes entitled to the money must look to us for payment as general creditors, subject to applicable law, and all liability of the trustee and the paying agent with respect to the money will cease.

Book-Entry System

We will issue the notes in the form of one or more global securities in denominations of \$1,000 principal amount and whole multiples of \$1,000. The global security will be deposited with the trustee as custodian for DTC and registered in the name of a nominee of DTC. Except as set forth below, the global security may be transferred, in whole and not in part, only to DTC or another nominee of DTC. You will hold your beneficial interests in the global security directly through DTC if you have an account with DTC or indirectly through organizations that have accounts with DTC.

Notes in definitive certificated form (called certificated securities) will be issued only in certain limited circumstances described below.

DTC has advised us that it is:

a limited purpose trust company organized under the laws of the State of New York;

a member of the Federal Reserve System;

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- a clearing corporation within the meaning of the New York Uniform Commercial Code; and
- a clearing agency registered pursuant to the provisions of Section 17A of the Exchange Act.

DTC was created to hold securities of institutions that have accounts with DTC (called participants) and to facilitate the clearance and settlement of securities transactions among its participants in such securities through electronic book-entry changes in accounts of the participants, thereby eliminating the need for physical movement of securities certificates. DTC's participants include securities brokers and dealers, which may include the initial purchaser, banks, trust companies, clearing corporations and certain other organizations. Access to DTC's book-entry system is also available to others such as banks, brokers, dealers and trust companies (called, the indirect participants) that clear through or maintain a custodial relationship with a participant, whether directly or indirectly.

We expect that pursuant to procedures established by DTC upon the deposit of the global security with DTC, DTC will credit, on its book-entry registration and transfer system, the principal amount of notes represented by such global security to the accounts of participants. The accounts to be credited shall be designated by the initial purchaser. Ownership of beneficial interests in the global security will be limited to participants or persons that may hold interests through participants. Ownership of beneficial interests in the global security will be shown on, and the transfer of those beneficial interests will be effected only through, records maintained by DTC (with respect to participants' interests), the participants and the indirect participants.

The laws of some jurisdictions may require that certain purchasers of securities take physical delivery of such securities in definitive form. These limits and laws may impair the ability to transfer or pledge beneficial interests in the global security. Accordingly, the ability to transfer beneficial interests in the notes represented by the global security to those persons may be limited. In addition, because DTC can act only on behalf of its participants, who in turn act on behalf of persons who hold interests through participants, the ability of a person having a beneficial interest in notes represented by the global security to pledge or transfer those interests to persons or entities that do not participate in DTC's system, or otherwise to take actions in respect of such interest, may be affected by the lack of a physical definitive security in respect of such interest.

Owners of beneficial interests in global securities who desire to convert their interests for common stock should contact their brokers or other participants or indirect participants through whom they hold such beneficial interests to obtain information on procedures, including proper forms and cut-off times, for submitting requests for conversion. So long as DTC, or its nominee, is the registered owner or holder of a global security, DTC or its nominee, as the case may be, will be considered the sole owner or holder of the notes represented by the global security for all purposes under the indenture and the notes. In addition, no owner of a beneficial interest in a global security will be able to transfer that interest except in accordance with the applicable procedures of DTC.

Except as set forth below, as an owner of a beneficial interest in the global security, you will not be entitled to have the notes represented by the global security registered in your name, will not receive or be entitled to receive physical delivery of certificated securities and will not be considered to be the owner or holder of any notes under the global security. We understand that under existing industry practice, if an owner of a beneficial interest in the global security desires to take any action that DTC, as the holder of the global security, is entitled to take, DTC would authorize the participants to take such action. Additionally, in such case, the participants would authorize beneficial owners owning through such participants to take such action or would otherwise act upon the instructions of beneficial owners owning through them.

We will make payments of principal of, premium, if any, and interest on the notes represented by the global security registered in the name of and held by DTC or its nominee to DTC or its nominee, as the case may be, as the registered

owner and holder of the global security. Neither we, the trustee nor any paying agent will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial interests in the global security or for maintaining, supervising or reviewing any records relating to such beneficial interests.

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We expect that DTC or its nominee, upon receipt of any payment of principal of, premium, if any, or interest on the global security, will credit participants' accounts with payments in amounts proportionate to their respective beneficial interests in the principal amount of the global security as shown on the records of DTC or its nominee. We also expect that payments by participants or indirect participants to owners of beneficial interests in the global security held through such participants or indirect participants will be governed by standing instructions and customary practices and will be the responsibility of such participants or indirect participants. We will not have any responsibility or liability for any aspect of the records relating to, or payments made on account of, beneficial interests in the global security for any note or for maintaining, supervising or reviewing any records relating to such beneficial interests or for any other aspect of the relationship between DTC and its participants or indirect participants or the relationship between such participants or indirect participants and the owners of beneficial interests in the global security owning through such participants.

Transfers between participants in DTC will be effected in the ordinary way in accordance with DTC rules and will be settled in same-day funds.

DTC has advised us that it will take any action permitted to be taken by a holder of notes only at the direction of one or more participants to whose account the DTC interests in the global security is credited and only in respect of such portion of the aggregate principal amount of notes as to which such participant or participants has or have given such direction. However, if DTC notifies us that it is unwilling to be a depository for the global security or ceases to be a clearing agency or there is an event of default under the notes, DTC will convert global security for certificated securities which it will distribute to its participants. Although DTC is expected to follow the foregoing procedures in order to facilitate transfers of interests in the global security among participants of DTC, it is under no obligation to perform or continue to perform such procedures, and such procedures may be discontinued at any time. Neither we nor the trustee will have any responsibility, or liability for the performance by DTC or the participants or indirect participants of their respective obligations under the rules and procedures governing their respective operations.

Because DTC can only act on behalf of participants, who in turn act on behalf of indirect participants, the ability of a person having a beneficial interest in the principal amount represented by the global note to pledge such interest to persons or entities that do not participate in the DTC system, or otherwise take actions in respect of such interest, may be affected by the lack of a physical certificate evidencing its interest.

Satisfaction and Discharge

We may discharge our obligations under the indenture while notes remain outstanding, subject to certain conditions, if all outstanding notes will become due and payable at their scheduled maturity within one year and we have deposited with the trustee an amount sufficient to pay and discharge all outstanding notes on the date of their scheduled maturity.

Reports

The Company shall deliver to the trustee, within 15 days after filing with the Commission, copies of its annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may by rules and regulations prescribe) which the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act. In the event the Company is at any time no longer subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, it shall continue to provide the trustee with reports containing substantially the same information as would have been required to be filed with the Commission had the Company continued to have been subject to such reporting requirements. In such event, such reports shall be provided at the times the Company would have been required to provide reports had it continued to have been subject to such reporting requirements. The Company also shall comply with the other provisions of Section 314(a) of the Trust

Indenture Act.

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Notices

Except as otherwise provided in the indenture, notices to holders of notes will be given by mail to the addresses of holders of the notes as they appear in the note register.

Governing Law

The indenture and the notes will be governed by, and construed in accordance with, the law of the State of New York.

Information Regarding the Trustee

Wells Fargo Bank, National Association, as trustee under the indenture, has been appointed by us as the initial paying agent, conversion agent, registrar and custodian with regard to the notes. Mellon Investors Services LLC is the transfer agent and registrar for our common stock. The trustee or its affiliates may from time to time in the future provide banking and other services to us in the ordinary course of their business.

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MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES

The following is a summary of certain material U.S. federal income tax consequences relating to the purchase, ownership and disposition of the notes and common stock into which the notes are convertible, but does not purport to be a complete analysis of all the potential tax consequences relating thereto. This summary is based upon the provisions of the Internal Revenue Code of 1986, as amended, or Code, U.S. Treasury Regulations promulgated thereunder, administrative rulings and judicial decisions, all as of the date hereof. These authorities may be changed, possibly retroactively, so as to result in U.S. federal income tax consequences different from those set forth below. We have not sought any ruling from the Internal Revenue Service, or IRS, with respect to the statements made and the conclusions reached in the following summary, and there can be no assurance that the IRS will agree with such statements and conclusions.

This summary is limited to holders who purchase notes upon their initial issuance at their initial issue price and who hold the notes and the common stock into which such notes are convertible as capital assets. This summary also does not address the tax considerations arising under the laws of any foreign, state or local jurisdiction or any federal estate or gift tax rules. In addition, this discussion does not address tax considerations applicable to an investor's particular circumstances or to investors that may be subject to special tax rules, including, without limitation:

banks, insurance companies or other financial institutions;

regulated investment companies or real estate investment trusts;

persons subject to the alternative minimum tax;

tax-exempt organizations;

dealers in securities or currencies;

traders in securities that elect to use a mark-to-market method of accounting for their securities holdings;

persons who hold the notes or common stock through S-corporations, partnerships or other pass-through entities;

controlled foreign corporations, passive foreign investment companies, foreign personal holding companies, corporations that accumulate earnings to avoid federal income tax, and individuals who are U.S. expatriates;

U.S. holders, as defined below, whose functional currency is not the U.S. dollar;

persons who hold the notes or common stock as a position in a hedging transaction, straddle, conversion transaction or other risk reduction transaction; or

persons deemed to sell the notes or common stock under the constructive sale provisions of the Code.

You are urged to consult your tax advisor with respect to the application of the U.S. federal income tax laws to your particular situation, as well as any tax consequences of the purchase, ownership and disposition of the notes and common stock arising under the federal estate or gift tax rules or under the laws of any state, local,

foreign or other taxing jurisdiction or under any applicable tax treaty.

Consequences to U.S. Holders

The following is a summary of certain material U.S. federal income tax consequences that will apply to you if you are a U.S. holder of the notes or the common stock. Certain consequences to non-U.S. holders of the notes or common stock are described under **Consequences to Non-U.S. Holders** below. U.S. holder means a beneficial owner of our notes or our common stock that is:

an individual citizen or resident of the U.S.;

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a corporation or other entity taxable as a corporation for U.S. federal income tax purposes, created or organized in the U.S. or under the laws of the U.S., any state thereof, or the District of Columbia;

an estate, the income of which is subject to U.S. federal income taxation regardless of its source; or

a trust that (i) is subject to the primary supervision of a U.S. court and the control of one or more U.S. persons or (ii) has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. person.

If a partnership holds our notes or common stock, the tax treatment of a partner will generally depend upon the status of the partner and the activities of the partnership. If you are a partner in a partnership holding the notes, you should consult your own tax advisor.

Payment of Interest

Generally, you will be required to include interest paid on the notes as ordinary income at the time it is paid or accrued, depending upon your regular method of tax accounting.

We note that, in certain circumstances, additional payments may be made with respect to the notes in excess of stated principal and interest. We are taking the position that the possibility of such payments are remote within the meaning of applicable U.S. Treasury Regulations and that the notes are not subject to the contingent payment debt rules. Assuming such position is respected, U.S. holders would be required to include in income the amount of any such additional payment at the time such payment is received or accrued according to each holder's regular method of tax accounting. If the IRS successfully challenged this position, and the notes were treated as contingent payment debt instruments, U.S. holders could be required to accrue interest income on a constant yield basis at an assumed yield determined at the time of the issuance of the notes (which is not expected to be significantly higher than the yield provided by the stated interest on the notes) and to treat as ordinary income, rather than capital gain, any gain recognized on a sale or exchange of a note prior to the resolution of all contingencies. Please note that the tax consequences of this methodology are uncertain and subject to challenge by the IRS. You should consult your own tax advisors with respect to the tax consequences related to such payments or potential payments and the potential application of the contingent payment debt rules to the notes and the consequences thereof.

Sale, Exchange or Repurchase of the Notes

Upon the sale, exchange, conversion or repurchase of a note, you generally will recognize capital gain or loss equal to the difference between the amount you receive (including the amount of cash and the fair market value of any property) and your adjusted tax basis in the notes. A portion of the proceeds may be attributable to accrued interest and should not be taken into account when computing capital gain or loss. Instead, that portion should be recognized as ordinary interest income to the extent such accrued interest has not been previously included in income. Any gain you recognize generally will be treated as long-term capital gain or loss if you held the notes for more than one year. The deductibility of capital losses is subject to limitations.

Special rules apply in determining the tax basis of a note. Your basis in a note will generally equal your original purchase price for the notes, increased by interest you previously accrued on the notes, before taking into account any adjustments, and reduced by the amount of any payments made with respect to such accrued interest.

Conversion of the Notes

You should not recognize gain or loss upon conversion of the notes into our common stock, except with respect to any cash received in lieu of fractional shares.

Your tax basis in the shares of our common stock received upon conversion of the notes will be equal to your aggregate tax basis in the notes converted, less any portion allocable to cash received in lieu of a

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fractional share. The holding period of the shares of our common stock received by you upon conversion of the notes generally will include the period during which you held the notes prior to conversion. The receipt of cash for fractional shares generally will result in the recognition of gain or loss equal to the difference between the cash received and your adjusted tax basis in the fractional share.

Constructive Dividends

U.S. holders of convertible debt instruments such as the notes may, in certain circumstances, be deemed to have received distributions of stock if the conversion price of such instruments is adjusted. However, adjustments to the conversion price made pursuant to a bona fide reasonable adjustment formula which has the effect of preventing the dilution of the interest of the holders of the debt instruments will generally not be deemed to result in a constructive distribution of stock. Certain of the possible adjustments provided in the notes, including, without limitation, adjustments in respect of taxable dividends to our stockholders and the make-whole premium upon a fundamental change, may not qualify as being pursuant to a bona fide reasonable adjustment formula. If such adjustments are made, you will be deemed to have received constructive distributions includible in your income in the manner described under *Dividends* below even though you have not received any cash or property as a result of such adjustments. In certain circumstances, the failure to provide for such an adjustment may also result in a constructive distribution to you.

Dividends

Distributions, if any, made on our common stock held by you in connection with the conversion of the notes generally will be included in your income as ordinary dividend income to the extent of our current and accumulated earnings and profits as determined for U.S. federal income tax purposes. With respect to non-corporate taxpayers for taxable years beginning before January 1, 2009, such dividends are generally taxed at the lower applicable capital gains rate provided certain holding period requirements are satisfied. Distributions in excess of our current and accumulated earnings and profits will be treated as a return of capital to the extent of your adjusted tax basis in the common stock and thereafter as capital gain from the sale or exchange of such common stock. Dividends received by a corporate U.S. holder may be eligible for a dividends received deduction, subject to applicable limitations.

Sale or Exchange of Common Stock

Upon the sale or exchange of our common stock held by you in connection with the conversion of the notes, you generally will recognize capital gain or loss equal to the difference between (i) the amount of cash and the fair market value of any property received upon the sale or exchange and (ii) your adjusted tax basis in the common stock. Such capital gain or loss will be long-term capital gain or loss if your holding period in the common stock is more than one year at the time of the sale or exchange. Your adjusted tax basis and holding period in common stock received in connection with the conversion of notes are determined as discussed above under *Conversion of the Notes*. Long-term capital gains recognized by certain non-corporate U.S. holders, including individuals, will generally be subject to a reduced rate of U.S. federal income tax. The deductibility of capital losses is subject to limitations.

Backup Withholding and Information Reporting

Certain noncorporate U.S. holders may be subject to IRS information reporting and backup withholding (which is currently imposed at a 28% rate) on payments of interest on the notes, dividends on common stock and proceeds from the sale or other disposition of the notes or common stock. Backup withholding should only be imposed where the noncorporate U.S. holder is not otherwise exempt and:

fails to furnish its taxpayer identification number, or TIN;

furnishes an incorrect TIN;

is notified by the IRS that he or she has failed to properly report payments of interest or dividends;

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under certain circumstances, fails to certify, under penalties of perjury, that he or she has furnished a correct TIN and has not been notified by the IRS that he or she is subject to backup withholding; or the IRS otherwise requires us to backup withhold.

You generally will be entitled to credit any amounts withheld under the backup withholding rules against your U.S. federal income tax liability provided that the required information is furnished to the IRS in a timely manner.

Consequences to Non-U.S. Holders

The following is a summary of certain material U.S. federal income tax consequences that will apply to you if you are a non-U.S. holder of the notes. For purposes of this discussion, a non-U.S. holder means a beneficial owner of our notes that is not a U.S. holder.

Payments of Interest

Generally, all payments of interest made to you on the notes will be subject to a 30% U.S. federal withholding tax. However, the interest may be exempt from withholding tax if it qualifies as portfolio interest. You may be entitled to the exemption if:

- you do not own, actually or constructively, 10% or more of the total combined voting power of all classes of our stock entitled to vote;
- you are not a controlled foreign corporation with respect to which we are, directly or indirectly, a related person;
- you are not a bank receiving interest pursuant to a loan agreement entered into in the ordinary course of its trade or business; and
- you provide your name and address, and certify, under penalties of perjury, that you are not a U.S. person, which certification may be made on an IRS Form W-8BEN or successor form, or that you hold your notes through certain intermediaries, and you and the intermediaries satisfy the certification requirements of applicable U.S. Treasury Regulations.

Prospective investors should consult their tax advisors regarding the certification requirements for non-U.S. holders.

If you cannot satisfy the requirements described above, you will be subject to the 30% U.S. federal withholding tax with respect to payments of interest, or payments treated as interest, on the notes, unless you provide us with a properly executed (i) IRS Form W-8BEN or successor form claiming an exemption from or reduction in withholding under the benefit of an applicable U.S. income tax treaty or (ii) IRS Form W-8ECI or successor form stating that interest paid on the note is not subject to withholding tax because it is effectively connected with the conduct of a U.S. trade or business.

If you are engaged in a trade or business in the U.S. and interest on a note is effectively connected with your conduct of that trade or business, you generally will be subject to U.S. federal income tax on that interest in the same manner as if you were a U.S. person as defined under the Code, although you will be exempt from the 30% withholding tax, provided the certification requirements described above are satisfied. In addition, if you are a foreign corporation, you may be subject to a branch profits tax equal to 30%, or lower rate as may be prescribed under an applicable

U.S. income tax treaty, of your earnings and profits for the taxable year, subject to adjustments, that are effectively connected with your conduct of a trade or business in the U.S. For this purpose, interest, including original issue discount, will be included in your earnings and profits.

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Conversion of the Notes

A non-U.S. holder will generally avoid any tax on the conversion of the notes in the same manner as a U.S. holder. See *Consequences to U.S. Holders Conversion of the Notes* above.

Sale, Exchange or Other Disposition of Notes or Common Stock

Any gain that a non-U.S. holder realizes upon the sale, exchange or other disposition of our notes (except to the extent a portion is attributable to accrued interest) or our common stock generally will not be subject to U.S. federal income tax unless:

the gain is effectively connected with your conduct of a trade or business in the U.S.;

you are an individual who is present in the U.S. for 183 days or more in the taxable year of sale, exchange or other disposition and certain conditions are met; or

in the case of common stock, we are or have been a U.S. real property holding corporation, or USRPHC, for U.S. federal income tax purposes at any time during the shorter of the five-year period ending on the date of disposition or the period that you held our common stock.

The determination of whether we are a USRPHC depends on the fair market value of our United States real property interests relative to the fair market value of our business assets. If we are or in the future become a USRPHC, then if at such time our common stock is regularly traded on an established securities market within the meaning of Section 897(c)(3) of the Code, such common stock will be treated as a United States real property interest with respect to a non-U.S. holder only if they own directly or indirectly more than 5% of such stock at any time during the applicable period. We expect that our common stock will be regularly traded on an established securities market. If we are or become a USRPHC, and a non-U.S. holder owned directly or indirectly more than 5% of our common stock at any time during the applicable period, or our common stock were not considered to be regularly traded on an established securities market, then any gain recognized by a non-U.S. holder on the sale or other disposition of our common stock would be treated as effectively connected with a U.S. trade or business (except for purposes of the branch profits tax) and would be subject to U.S. federal income tax at regular graduated U.S. federal income tax rates in much the same manner as if the non-U.S. holder were a U.S. person. In addition, if we are or become a USRPHC, and our common stock is not regularly traded on an established securities market, the non-U.S. holder would be subject to 10% withholding on the gross proceeds realized with respect to the sale or other disposition of our common stock and any amount withheld in excess of the tax owed, as determined in accordance with the preceding sentence, may be refundable if the required information is timely furnished to the IRS.

If your gain is described in the first bullet point above, you generally will be subject to U.S. federal income tax on the net gain derived from the sale. If you are a corporation, then any such effectively connected gain received by you may also, under certain circumstances, be subject to the branch profits tax at a 30% rate, or such lower rate as may be prescribed under an applicable U.S. income tax treaty. If you are an individual described in the second bullet point above, you will be subject to a flat 30% U.S. federal income tax on the gain derived from the sale, which may be offset by U.S. source capital losses, even though you are not considered a resident of the U.S. Such holders are urged to consult their tax advisers regarding the tax consequences of the acquisition, ownership and disposition of the notes or the common stock.

Constructive Dividends

Under certain circumstances, a non-U.S. holder may be deemed to have received a constructive dividend. See **Consequences to U.S. Holders – Constructive Dividends** above. Any constructive dividend deemed paid to a non-U.S. holder will be subject to withholding tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty. A non-U.S. holder who wishes to claim the benefit of an applicable treaty rate is required to satisfy applicable certification and other requirements. It is possible that U.S. federal tax on the constructive dividend would be withheld from interest paid to the non-U.S. holder of the notes. A non-U.S. holder who is subject to withholding tax under such circumstances should consult its own tax advisor as to whether it can obtain a refund for all or a portion of the withholding tax.

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Dividends

In general, dividends, if any, received by a non-U.S. holder with respect to our common stock will be subject to withholding of U.S. federal income tax at a 30% rate, unless such rate is reduced by an applicable U.S. income tax treaty. Dividends that are effectively connected with your conduct of a trade or business in the U.S. and, where a tax treaty applies, are attributable to a U.S. permanent establishment or fixed base, are not subject to the withholding tax, but instead are subject to U.S. federal income tax on a net income basis at applicable individual or corporate rates. As discussed above, certain certification and disclosure requirements must be complied with in order for effectively connected income to be exempt from withholding. Any such effectively connected dividends received by a non-U.S. holder that is a corporation may also, under certain circumstances, be subject to the branch profits tax at a 30% rate or such lower rate as may be prescribed under an applicable U.S. income tax treaty.

A non-U.S. holder of shares of common stock who wishes to claim the benefit of an applicable treaty rate is required to satisfy applicable certification and other requirements. If you are eligible for a reduced rate of U.S. withholding tax pursuant to an income tax treaty, you may obtain a refund of any excess amounts withheld by filing an appropriate claim for refund with the IRS.

Backup Withholding and Information Reporting

In general, you will not be subject to backup withholding and information reporting with respect to payments that we make to you, provided that we do not have actual knowledge or reason to know that you are a U.S. person and you have given us an appropriate statement certifying, under penalties of perjury, that you are not a U.S. person. In addition, you will not be subject to backup withholding or information reporting with respect to the proceeds of the sale of a note or of a share of common stock within the U.S. or conducted through certain U.S.-related financial intermediaries, if the payor receives the statement described above and does not have actual knowledge or reason to know that you are a U.S. person or you otherwise establish an exemption. However, we may be required to report annually to the IRS and to you the amount of, and the tax withheld with respect to, any dividends paid to you, regardless of whether any tax was actually withheld. Copies of these information returns may also be made available under the provisions of a specific treaty or agreement to the tax authorities of the country in which you reside.

You generally will be entitled to credit any amounts withheld under the backup withholding rules against your U.S. federal income tax liability provided that the required information is furnished to the IRS in a timely manner.

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Subject to the terms and conditions described in a purchase agreement among us and the underwriters named below, we have agreed to sell to the underwriters, and the underwriters have agreed to purchase from us, the aggregate principal amount of notes listed opposite their names below:

Underwriter	Principal Amount
Merrill Lynch, Pierce, Fenner & Smith Incorporated J.P. Morgan Securities Inc.	
Total	\$ 100,000,000

The underwriters have agreed to purchase all of the notes sold under the purchase agreement if any of the notes are purchased. If an underwriter defaults, the purchase agreement provides that the purchase commitments of the nondefaulting underwriters may be increased or the purchase agreement may be terminated.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act of 1933, as amended, or to contribute to payments the underwriter may be required to make in respect of these liabilities.

The underwriters are offering the notes, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel, and other conditions contained in the purchase agreement, such as the receipt by the representatives of the underwriters of officers' certificates and legal opinions. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

The underwriters have reserved up to \$50.0 million of the notes in this offering for sale to our chairman, chief executive officer and principal stockholder, Alfred E. Mann. The underwriters will not receive any underwriting discount on the sale of notes directly to Mr. Mann. The amount of notes that Mr. Mann will be allocated in this offering will depend on market conditions, and we cannot provide any assurance as to the exact amount of notes that Mr. Mann will be allocated, if any. Any notes not allocated by the underwriters to Mr. Mann may be sold by the underwriters to the public on the terms set forth in this prospectus supplement.

Commissions and Discounts

The underwriters have advised us that they propose initially to offer the notes to the public at the public offering price on the cover page of this prospectus supplement and to dealers at that price less a concession not in excess of % of the principal amount of the notes. The underwriters may allow, and the dealers may reallow, a discount not in excess of % of the principal amount of the notes to the other dealers. After the public offering, the public offering price, concession and discount may be changed.

The following table shows the public offering price, underwriting discount and proceeds before expenses to us. The information assumes either no exercise or full exercise by the underwriters of their overallotment option.

	Per Note	Without Option	With Option
Public offering price	\$	\$	\$
Underwriting discount ⁽¹⁾	\$	\$	\$
Proceeds, before expenses, to us	\$	\$	\$

(1) The underwriters will not receive any underwriting discount on notes to Alfred E. Mann.

The estimated expenses of this offering, not including the underwriting discount payable by us, will be approximately \$210,750.

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In compliance with the guidelines of the National Association of Securities Dealers, or NASD, the maximum consideration or discount to be received by any NASD member may not exceed 8% of the aggregate amount of the securities offered pursuant to this prospectus supplement.

Overallotment Option

We have granted to the underwriters an option to purchase up to an additional \$15,000,000 in aggregate principal amount of notes at the public offering price less the underwriting discount. The underwriters may exercise their option for 13 days from the date of this prospectus supplement solely to cover any overallotments.

No Sales of Similar Securities

We and our executive officers and directors have agreed, with exceptions, not to sell or transfer any of our common stock for 90 days after the date of this prospectus supplement without first obtaining the written consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated and J.P. Morgan Securities Inc. Specifically, we and these individuals have agreed not to directly or indirectly:

offer, pledge, announce the intention to sell, sell or contract to sell any of our common stock;

sell any option or contract to purchase any of our common stock;

purchase any option or contract to sell any of our common stock;

grant any option, right or warrant for the sale of any of our common stock;

otherwise dispose of or transfer any of our common stock; or

enter into any swap or other agreement that transfers, in whole or in part, the economic consequence of ownership of any of our common stock whether any such swap or transaction is to be settled by delivery of shares or other securities, in cash or otherwise.

The restrictions described in the preceding paragraph do not apply to:

shares we issue in the concurrent common stock offering, the notes we issue in this offering or shares issued upon conversion of such notes;

grants of equity awards we make under our existing equity incentive plans;

shares we issue upon the exercise of options granted under our equity incentive plans or under other options, warrants or other rights outstanding as of the date hereof;

bona fide gifts by our executive officers and directors;

transfers by our executive officers and directors to trusts for the direct or indirect benefit of such individuals or the immediate family of any such individual (for these purposes immediate family shall mean any relationship by blood, marriage or adoption, not more remote than first cousin);

provided that, in the case of transfers by our executive officers and directors:

Merrill Lynch and J.P. Morgan Securities Inc. receive a signed lockup agreement for the balance of the 90 day restriction period from each donee, trustee, distributee, or transferee, as the case may be,

any such transfer shall not involve a disposition for value,

such transfers are not required to be reported in any public report or filing with the SEC, or otherwise, and

the individual subject to the lockup does not otherwise voluntarily effect any such public report or filing regarding such transfers.

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Additionally, the restrictions do not apply to up to 422,987 shares of our common stock held by certain of our officers and directors that may be sold pursuant to the terms of 10b5-1 trading plans in existence as of the date of this prospectus supplement or that may be adopted following the completion of this offering.

Notwithstanding the foregoing, if:

during the last 17 days of the 90-day period, we issue an earnings release or material news or a material event relating to us occurs; or

prior to the expiration of the 90-day period, we announce that we will release earnings results or we become aware that material news or a material event will occur during the 16-day period beginning on the last day of the 90-day period,

the lockup restrictions will continue to apply until the expiration of the 18-day period beginning on our issuance of the earnings release or the occurrence of the material news or material event, as applicable, unless Merrill Lynch and J.P. Morgan Securities Inc. waive, in writing, such extension.

This lockup provision applies to our common stock and to securities convertible into or exchangeable or exercisable for our common stock. It also applies to common stock owned or acquired during the lockup period by the person executing the agreement or for which the person executing the agreement later acquires the power of disposition.

Our executive officers and directors have also agreed during the lockup period not to make any demand for or exercise any right with respect to, the registration of any shares of our common stock or any security convertible into or exercisable or exchangeable for our common stock.

New Issue of Notes

The notes are a new issue of securities with no established trading market. We do not intend to apply for listing of the notes on any national securities exchange or for quotation of the notes on any automated dealer quotation system. The underwriters have advised us that they presently intend to make a market in the notes after completion of this offering. However, they are under no obligation to do so and may discontinue any market-making activities at any time without notice. We cannot assure the liquidity of the trading market for the notes or that an active public market for the notes will develop. If an active public trading market for the notes does not develop, the market price and liquidity of the notes may be adversely affected. If the notes are traded, they may trade at a discount from their initial offering price, depending on prevailing interest rates, the market for similar securities, our performance and other factors. Our shares of common stock are listed on the Nasdaq Global Market under the symbol MNKD.

Price Stabilization and Short Positions

In connection with the offering, the underwriters are permitted to engage in transactions that stabilize the market price of the notes. Such transactions consist of bids or purchases to peg, fix or maintain the price of the notes. If the underwriters create a short position in the notes in connection with the offering, i.e., if they sell more notes than are on the cover page of this prospectus, the underwriters may reduce that short position by purchasing notes in the open market. Purchases of a security to stabilize the price or to reduce a short position could cause the price of the security to be higher than it might be in the absence of such purchases.

Neither we nor the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of the notes. In addition, neither we nor the underwriters

make any representation that the underwriters will engage in these transactions or that these transactions, once commenced, will not be discontinued without notice.

Other Relationships

From time to time, the underwriters and certain of their affiliates may in the future engage in transactions with, and perform investment banking and/or commercial banking services, for us and our affiliates in the ordinary course of business.

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Transfer Agent

The transfer agent for our common stock is Mellon Investor Services LLC.

Electronic Distribution

A prospectus supplement and an accompanying prospectus in electronic format may be made available on the websites maintained by one or more of the underwriters of this offering or their affiliates. Other than the electronic prospectus supplement and accompanying prospectus, the information on the website of the underwriter is not part of this prospectus. The underwriters may agree to allocate a number of notes to itself for sale to its online brokerage account holders. Internet distributions will be allocated to the underwriters that may make Internet distributions on the same basis as other allocations.

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LEGAL MATTERS

Certain legal matters relating to the notes being offered hereby will be passed upon for us by Cooley Godward Kronish LLP, San Diego, California. Latham & Watkins LLP, Costa Mesa, California is representing the underwriters in connection with this offering.

EXPERTS

The consolidated financial statements and management's report on the effectiveness of internal control over financial reporting incorporated in this prospectus by reference from the Company's Annual Report on Form 10-K for the year ended December 31, 2005 have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their reports, which are incorporated herein by reference, and have been so incorporated in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.

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This filing is made pursuant to Rule 424(b)(3)
Under the Securities Act of 1933
In connection with Registration No. 333-138373

PROSPECTUS

\$500,000,000

MANNKIND CORPORATION

**COMMON STOCK
WARRANTS
DEBT SECURITIES**

From time to time, we may sell up to an aggregate of \$500,000,000 of our common stock, warrants or debt securities. We will specify in any accompanying prospectus supplement the terms of any offering.

Our common stock is traded on the NASDAQ Global Market under the trading symbol MNKD. The applicable prospectus supplement will contain information, where applicable, as to other listings, if any, on the NASDAQ Global Market or other securities exchange of the securities covered by the prospectus supplement.

Our principal executive offices are located at 28903 North Avenue Paine, Valencia, California 91355, and our telephone number at that address is (661) 775-5300.

You should read this prospectus and any prospectus supplement carefully before you invest.

INVESTING IN OUR SECURITIES INVOLVES A HIGH DEGREE OF RISK. SEE THE SECTIONS ENTITLED RISK FACTORS IN OUR MOST RECENT ANNUAL REPORT ON FORM 10-K AND IN OUR MOST RECENT QUARTERLY REPORT ON FORM 10-Q, BOTH AS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION, AND BOTH OF WHICH ARE INCORPORATED HEREIN BY REFERENCE IN THEIR ENTIRETY.

This prospectus may not be used to offer or sell any securities unless accompanied by a prospectus supplement.

The securities may be sold directly by us to investors, through agents designated from time to time or to or through underwriters or dealers. For additional information on the methods of sale, you should refer to the section entitled Plan of Distribution. If any underwriters are involved in the sale of any securities with respect to which this prospectus is

being delivered, the names of such underwriters and any applicable discounts or commissions and over allotment options will be set forth in a prospectus supplement. The price to the public of such securities and the net proceeds we expect to receive from such sale will also be set forth in a prospectus supplement.

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.

The date of this Prospectus is November 7, 2006.

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You should rely only on the information contained or incorporated by reference in this prospectus and any applicable prospectus supplement. We have not authorized anyone to provide you with information different from that contained or incorporated by reference in this prospectus and any applicable prospectus supplement. No dealer, salesperson or other person is authorized to give any information or to represent anything not contained or incorporated by reference in this prospectus and any applicable prospectus supplement. You must not rely on any unauthorized information or representation. This prospectus is an offer to sell and is seeking offers to buy only the securities offered hereby, but only under circumstances and in jurisdictions where it is lawful to do so. You should assume that the information contained in this prospectus is accurate only as of the date on the front of this prospectus and that any information we have incorporated by reference or included in any prospectus supplement is accurate only as of the date given in the document incorporated by reference or the prospectus supplement, as applicable, regardless of the time of delivery of this prospectus, any applicable prospectus supplement or any sale of our securities. Our business, financial condition, results of operations and prospects may have changed since that date.

Technosphere® and MedTone® are our registered trademark in the United States. We have also applied for or registered company trademarks in other jurisdictions, including Europe and Japan. This document also contains trademarks and service marks owned by other companies that are the property of their respective owners. Use or display by us of other parties' trademarks, trade dress or products in this prospectus is not intended to, and does not imply a relationship with, or endorsements or sponsorship of, us by the trademark or trade dress owners.

ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we filed with the Securities and Exchange Commission, or SEC, using a shelf registration process. Under this shelf registration process, we may sell common stock, warrants or debt securities in one or more offerings up to a total dollar amount of \$500,000,000. This prospectus provides you with a general description of the securities we may offer. Each time we sell common stock, warrants or debt securities, we will provide a prospectus supplement that will contain more specific information about the securities offered. We may also use a prospectus supplement to add, update or change any of the information contained in this prospectus or in the documents we have incorporated by reference into this prospectus. This prospectus, together with any applicable prospectus supplement and the materials we have incorporated by reference into this prospectus and the prospectus supplement, includes all material information relating to this offering. Please carefully read both this prospectus and any applicable prospectus supplement together with the additional information described below under **Where You Can Find More Information** before buying any securities in this offering.

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SUMMARY

The following summary provides an overview of selected information relating to this offering and does not contain all the information that you should consider before investing in our securities. You should carefully read this prospectus, all documents incorporated by reference, any prospectus supplement, and the additional information described under the caption WHERE YOU CAN FIND MORE INFORMATION, beginning on page 21, before buying securities in this offering. References in this prospectus to MannKind, the Company, we, us and our refer to MannKind Corporation and its subsidiary, on a consolidated basis, unless the context requires otherwise.

MannKind Corporation

MannKind Corporation is a biopharmaceutical company focused on the discovery, development and commercialization of therapeutic products for diseases such as diabetes and cancer. Our lead investigational product candidate, the Technosphere Insulin System, is currently in Phase 3 clinical trials in the United States, Europe and Latin America to study its safety and efficacy in the treatment of diabetes. This therapy consists of a proprietary dry powder formulation of insulin that is inhaled into the deep lung using our proprietary inhaler. We believe that the performance characteristics, unique kinetics, convenience and ease of use of the Technosphere Insulin System may have the potential to change the way diabetes is treated.

In particular, we have observed in our clinical trials to date that the Technosphere Insulin System produces a profile of insulin levels in the bloodstream that approximates the insulin profile normally seen in healthy individuals immediately following the beginning of a meal, but which is absent in patients with diabetes. Specifically, Technosphere Insulin is rapidly absorbed into the bloodstream following inhalation, reaching peak levels within 12 to 14 minutes. As a result of this rapid onset of action, most of the glucose-lowering activity of Technosphere Insulin occurs within the first three hours of administration which is generally when glucose becomes available from a meal instead of the much longer duration of action observed when insulin is injected subcutaneously. We believe that the relatively short duration of action of Technosphere Insulin reduces the need for patients to snack between meals in order to manage ongoing blood glucose excursions. Indeed, in our clinical trials, we have observed that patients using Technosphere Insulin have achieved significant reductions in post-meal glucose excursions and significant improvements in overall glucose control, as measured by decreases in HbA1c levels, without the weight gain typically associated with insulin therapy.

In our clinical trials to date, we have observed no difference in pulmonary function between patients treated with Technosphere Insulin and patients treated with standard diabetes care. However, the longest study that we have completed so far is a six-month trial. In September 2006, we completed patient enrollment in a pivotal, two-year, Phase 3, safety study of Technosphere Insulin that will compare the pulmonary function of diabetes patients randomized to either Technosphere Insulin or standard diabetes care. We are continuing to enroll patients in three other major Phase 3 clinical trials, two of which are pivotal efficacy trials. Based on our discussions with the Food and Drug Administration, we plan to accumulate two years of controlled safety data before we file a new drug application for the Technosphere Insulin System. We anticipate that our entire clinical trial program, including several special population studies, will involve more than 4,500 patients. Larger populations and longer durations of exposure may be necessary depending on the safety profile of our product.

Our Technosphere Insulin System utilizes our proprietary Technosphere formulation technology, which is based on a class of organic molecules that are designed to self-assemble into small particles onto which drug molecules can be loaded. We are also developing additional Technosphere-based products for the delivery of other drugs. We plan to initiate Phase 1 clinical trials of a therapeutic cancer vaccine by the end of 2006.

We are a development stage enterprise and have incurred significant losses since our inception in 1991. As of September 30, 2006, we have incurred a cumulative net loss of \$716.6 million. To date, we have not generated any product revenues and have funded our operations primarily through the sale of equity securities.

We do not anticipate sales of any product prior to regulatory approval and commercialization of our Technosphere Insulin System. We currently do not have the required approvals to market any of our product candidates, and we may not receive any approvals. We may not be profitable even if we succeed in commercializing

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any of our product candidates. We expect to make substantial and increasing expenditures and to incur additional operating losses for at least the next several years as we:

continue the clinical development and commercialization of our Technosphere Insulin System for the treatment of diabetes;

expand our manufacturing operations for our Technosphere Insulin System to meet our currently anticipated commercial production needs;

expand our other research, discovery and development programs;

expand our proprietary Technosphere platform technology and develop additional applications for the pulmonary delivery of other drugs; and

enter into sales and marketing collaborations with other companies, if available on commercially reasonable terms, or develop these capabilities ourselves.

Our business is subject to significant risks, including but not limited to the risks inherent in our ongoing clinical trials and the regulatory approval process, the results of our research and development efforts, competition from other products and technologies and uncertainties associated with obtaining and enforcing patent rights.

Risk Factors

An investment in our securities involves a high degree of risk. Prior to making a decision about investing in our securities, you should carefully consider the specific risk factors discussed in the sections entitled Risk Factors contained in any applicable prospectus supplement and our filings with the SEC and incorporated by reference in this prospectus, together with all of the other information contained in this prospectus, any applicable prospectus supplement, or incorporated by reference in this prospectus. These risks and uncertainties are not the only risks and uncertainties we face. Additional risks and uncertainties not presently known to us, or that we currently view as immaterial, may also impair our business. If any of the risks or uncertainties described in our SEC filings or any prospectus supplement or any additional risks and uncertainties actually occur, our business, financial condition and results of operations could be materially and adversely affected. In that case, the trading price of our securities could decline and you might lose all or part of your investment.

The Securities We May Offer

We may offer shares of our common stock, various series of debt securities and/or warrants to purchase any of these securities, with a total value of up to \$500,000,000, from time to time under this prospectus at prices and on terms to be determined by market conditions at the time of offering. This prospectus provides you with a general description of the securities we may offer. Each time we offer a type or series of securities, we will provide a prospectus supplement that will describe the specific amounts, prices and other important terms of the securities, including, to the extent applicable:

designation or classification;

aggregate principal amount or aggregate offering price;

maturity, if applicable;

original issue discount, if any;

rates and times of payment of interest, dividends or other payments, if any;

redemption, conversion, exercise, exchange or sinking fund terms, if any;

ranking;

restrictive covenants, if any;

voting or other rights, if any; and

certain federal income tax considerations.

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A prospectus supplement also may add, update or change information contained in this prospectus or in documents we have incorporated by reference. However, no prospectus supplement shall offer a security that is not registered and described in this prospectus at the time of its effectiveness.

This prospectus may not be used to offer or sell securities unless it is accompanied by a prospectus supplement.

We may sell the securities directly to or through agents, underwriters or dealers. We, and our agents, dealers or underwriters, reserve the right to accept or reject all or part of any proposed purchase of securities. If we do offer securities through agents or underwriters, we will include in the applicable prospectus supplement:

- the name of those agents or underwriters;
- applicable fees, discounts and commissions to be paid to them;
- details regarding over-allotment options, if any; and
- the net proceeds to us.

Common Stock. We may issue shares of our common stock from time to time. Holders of our common stock are entitled to one vote per share on all matters submitted to a vote of stockholders. Subject to any preferences of any of our preferred stock that may be outstanding, holders of our common stock are entitled to dividends when and if declared by our board of directors.

Warrants. We may issue warrants for the purchase of common stock or debt securities in one or more series, from time to time. We may issue warrants independently or together with common stock or debt securities, and the warrants may be attached to or separate from these securities. In this prospectus, we have summarized certain general features of the warrants. We urge you, however, to read the prospectus supplement related to the series of warrants being offered, as well as the warrant agreements that contain the terms of the warrants. Forms of the warrant agreements and forms of warrants containing the terms of the warrants being offered have been filed as exhibits to the registration statement of which this prospectus is a part, and supplemental agreements and forms of warrants containing the terms of the warrants being offered will be filed as exhibits to the registration statement of which this prospectus is a part or will be incorporated by reference from reports we file with the SEC.

We will evidence each series of warrants by warrant certificates that we will issue under a separate agreement. We will enter into the warrant agreements with a warrant agent. Each warrant agent will be a bank that we select. We will state the name and address of the warrant agent in the applicable prospectus supplement relating to a particular series of warrants.

Debt Securities. We may offer debt securities from time to time, in one or more series, as either senior or subordinated debt or as senior or subordinated convertible debt. The senior debt securities will rank equally with any other unsecured and unsubordinated debt. The subordinated debt securities will be subordinate and junior in right of payment, to the extent and in the manner described in the instrument governing the debt, to all of our senior indebtedness. Convertible debt securities will be convertible into or exchangeable for our common stock or our other securities. Conversion may be mandatory or at your option and would be at prescribed conversion rates.

The debt securities will be issued under one or more documents called indentures, which are contracts between us and a national banking association, as trustee. In this prospectus, we have summarized certain general features of the debt securities. We urge you, however, to read the prospectus supplement related to the series of debt securities being

offered, as well as the complete indentures that contain the terms of the debt securities. Indentures have been filed as exhibits to the registration statement of which this prospectus is a part, and supplemental indentures and forms of debt securities containing the terms of debt securities being offered will be filed as exhibits to the registration statement of which this prospectus is a part or will be incorporated by reference from reports we file with the SEC.

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RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth our ratio of earnings to fixed charges for the periods indicated:

Fiscal the Year Ended December 31,					Nine Months Ended
2001	2002	2003	2004	2005	September 30, 2006

Ratio of earnings to fixed charges

For the purpose of this table, earnings consist of income (loss) from continuing operations before income taxes, extraordinary items, cumulative effect of accounting changes, equity in net losses of affiliates and fixed charges and fixed charges consist of interest expense and the portion of operating lease expense that represents interest. For the fiscal years ended December 31, 2001, 2002, 2003, 2004 and 2005, and the nine months ended September 30, 2006, we had no earnings. Our earnings for those periods were insufficient to cover fixed charges by \$48.2 million, \$206.3 million, \$65.9 million, \$76.0 million, \$114.3 million and \$158.6 million, respectively.

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

Statements contained in this prospectus, in the documents incorporated by reference herein and in any prospectus supplement that are not strictly historical in nature are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and within the meaning of Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. These forward-looking statements are subject to the safe harbor created by Section 27A of the Securities Act and Section 21E of the Exchange Act and may include, but are not limited to, statements about:

the progress or success of our research, development and clinical programs;

the timing of completion of enrollment in our clinical trials, the timing of the interim analyses and the timing or success of the commercialization of our Technosphere Insulin System, or any other products or therapies that we may develop;

our ability to market, commercialize and achieve market acceptance for our Technosphere Insulin System, or any other products or therapies that we may develop;

our ability to protect our intellectual property and operate our business without infringing upon the intellectual property rights of others;

our estimates for future performance; our estimates regarding anticipated operating losses, future revenues, capital requirements and our needs for additional financing;

scientific studies and the conclusions we draw from them; and

our ability to successfully enter into strategic business collaborations.

In some cases, you can identify forward-looking statements by terms such as anticipates, believes, could, estimates, expects, goal, intends, may, plans, potential, predicts, projects, should, will, would, the negative words or similar expressions intended to identify forward-looking statements. These statements reflect our views as of the date on which they were made with respect to future events and are based on assumptions and subject to risks and uncertainties. The underlying information and expectations are likely to change over time. Given these uncertainties, you should not place undue reliance on these forward-looking statements as actual events or results may differ materially from those projected in the forward-looking statements due to various factors, including, but not limited to, those set forth under the heading Risk Factors in any applicable prospectus supplement and in our SEC filings. These forward-looking statements represent our estimates and assumptions only as of the date of the document containing the applicable statement.

You should rely only on the information contained, or incorporated by reference, in this prospectus, the registration statement of which this prospectus is a part, the documents incorporated by reference herein, and any applicable prospectus supplement and understand that our actual future results may be materially different from what we expect. We qualify all of the forward-looking statements in the foregoing documents by these cautionary statements. Unless required by law, we undertake no obligation to update or revise any forward-looking statements to reflect new information or future events or developments. Thus, you should not assume that our silence over time means that actual events are bearing out as expressed or implied in such forward-looking statements. Before deciding to purchase our securities, you should carefully consider the risk factors discussed here or incorporated by reference, in addition to

the other information set forth in this prospectus, any accompanying prospectus supplement and in the documents incorporated by reference.

USE OF PROCEEDS

Except as described in any prospectus supplement, we currently intend to use the net proceeds from the sale of the securities offered hereby to fund the costs of our clinical trials program and other research and development activities and expand our manufacturing operations, both on-going and planned, and for general corporate purposes, including working capital and repayment of outstanding indebtedness. We may also use a portion of the net proceeds to in-license, invest in or acquire businesses or technologies that we believe are complementary to our own, although we have no current plans, commitments or agreements with respect to any acquisitions as of the date

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of this prospectus other than our agreement to license certain technology from the Technion Research and Development Foundation Ltd, an Israeli corporation affiliated with the Technion-Israel Institute of Technology. Pending these uses, we intend to invest the net proceeds in investment-grade, interest-bearing securities.

DESCRIPTION OF COMMON STOCK

Our authorized capital stock consists of 90,000,000 shares of common stock, \$0.01 par value, and 10,000,000 shares of preferred stock, \$0.01 par value. As of September 30, 2006, there were 49,895,691 shares of common stock outstanding and no shares of preferred stock outstanding.

Voting Rights

Each holder of our common stock is entitled to one vote for each share on all matters submitted to a vote of our stockholders, including the election of our directors. Under our amended and restated certificate of incorporation and bylaws, our stockholders will not have cumulative voting rights. Accordingly, the holders of a majority of our outstanding shares of common stock entitled to vote in any election of directors can elect all of the directors standing for election, if they should so choose. In all other matters, an action by our common stockholders requires the affirmative vote of the holders of a majority of our outstanding shares of common stock entitled to vote.

Dividends

Subject to preferences that may be applicable to any outstanding shares of our preferred stock, holders of our common stock are entitled to receive ratably any dividends our board of directors declares out of funds legally available for that purpose. Any dividends on our common stock will be non-cumulative.

Liquidation, Dissolution or Winding Up

If we liquidate, dissolve or wind up, the holders of our common stock are entitled to share ratably in all assets legally available for distribution to our stockholders after the payment of all of our debts and other liabilities and the satisfaction of any liquidation preference granted to the holders of any outstanding shares of our preferred stock.

Rights and Preferences

Our common stock has no preemptive, conversion or subscription rights. There are no redemption or sinking fund provisions applicable to our common stock. The rights, preferences and privileges of the holders of our common stock are subject to, and may be adversely affected by, the rights of the holders of any outstanding shares of our preferred stock, which we may designate and issue in the future.

Anti-Takeover Effects of Provisions of Delaware Law and Our Certificate of Incorporation and Bylaws

Delaware takeover statute

We are subject to Section 203 of the Delaware General Corporation Law, or DGCL, which regulates acquisitions of some Delaware corporations. In general, Section 203 prohibits, with some exceptions, a publicly held Delaware corporation from engaging in a business combination with an interested stockholder for a period of three years following the date of the transaction in which the person became an interested stockholder, unless:

the board of directors of the corporation approved the business combination or the other transaction in which the person became an interested stockholder prior to the date of the business combination or other transaction;

upon consummation of the transaction that resulted in the person becoming an interested stockholder, the person owned at least 85% of the voting stock of the corporation outstanding at the time the transaction commenced, excluding shares owned by persons who are directors and also officers of the corporation and shares issued under employee stock plans under which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or

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on or subsequent to the date the person became an interested stockholder, the board of directors of the corporation approved the business combination and the stockholders of the corporation authorized the business combination at an annual or special meeting of stockholders by the affirmative vote of at least 66 $\frac{2}{3}$ % of the outstanding stock of the corporation not owned by the interested stockholder.

Section 203 of the DGCL generally defines a "business combination" to include any of the following:

any merger or consolidation involving the corporation and the interested stockholder;

any sale, transfer, pledge or other disposition of 10% or more of the corporation's assets or outstanding stock involving the interested stockholder;

in general, any transaction that results in the issuance or transfer by the corporation of any of its stock to the interested stockholder;

any transaction involving the corporation that has the effect of increasing the proportionate share of its stock owned by the interested stockholder; or

the receipt by the interested stockholder of the benefit of any loans, advances, guarantees, pledges or other financial benefits provided by or through the corporation.

In general, Section 203 defines an "interested stockholder" as any person who, together with the person's affiliates and associates, owns, or within three years prior to the determination of interested stockholder status did own, 15% or more of a corporation's voting stock.

Section 203 of the DGCL could depress our stock price and delay, discourage or prohibit transactions not approved in advance by our board of directors, such as takeover attempts that might otherwise involve the payment to our stockholders of a premium over the market price of our common stock.

Amended and restated certificate of incorporation and bylaw provisions

Our amended and restated certificate of incorporation and amended and restated bylaws include a number of provisions that may have the effect of deterring hostile takeovers or delaying or preventing changes in our control or our management, including, but not limited to the following:

Our board of directors can issue up to 10,000,000 shares of preferred stock with any rights or preferences, including the right to approve or not approve an acquisition or other change in our control.

Our amended and restated certificate of incorporation provides that all stockholder actions must be effected at a duly called meeting of holders and not by written consent.

Our amended and restated bylaws provide that special meetings of the stockholders may be called only by the Chairman of our board of directors, by our Chief Executive Officer, by our board of directors upon a resolution adopted by a majority of the total number of authorized directors or, under certain limited circumstances, by the holders of at least 5% of our outstanding voting stock.

Our amended and restated bylaws provide that stockholders seeking to present proposals before a meeting of stockholders or to nominate candidates for election as directors at a meeting of stockholders must provide

timely notice in writing and also specify requirements as to the form and content of a stockholder's notice. These provisions may delay or preclude stockholders from bringing matters before a meeting of our stockholders or from making nominations for directors at a meeting of stockholders, which could delay or deter takeover attempts or changes in our management.

Our amended and restated certificate of incorporation provides that, subject to the rights of the holders of any outstanding series of preferred stock, all vacancies, including newly created directorships, may, except as otherwise required by law, be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum. In addition, our amended and restated certificate of incorporation provides that our board of directors may fix the number of directors by resolution.

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Our amended and restated certificate of incorporation does not provide for cumulative voting for directors. The absence of cumulative voting may make it more difficult for stockholders who own an aggregate of less than a majority of our voting stock to elect any directors to our board of directors.

These and other provisions contained in our amended and restated certificate of incorporation and amended and restated bylaws are expected to discourage coercive takeover practices and inadequate takeover bids. These provisions are also designed to encourage persons seeking to acquire control of us to first negotiate with our board of directors. However, these provisions could delay or discourage transactions involving an actual or potential change in control of us or our management, including transactions in which our stockholders might otherwise receive a premium for their shares over market price of our stock and may limit the ability of stockholders to remove our current management or approve transactions that our stockholders may deem to be in their best interests and, therefore, could adversely affect the price of our common stock.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Mellon Investor Services. Mellon Investor Services address is 400 South Hope Street, Suite 400, Los Angeles, California 90071.

DESCRIPTION OF WARRANTS

The following description, together with the additional information we include in any applicable prospectus supplement, summarizes the material terms and provisions of the warrants that we may offer under this prospectus, which may consist of warrants to purchase common stock or debt securities and may be issued in one or more series. Warrants may be offered independently or together with common stock or debt securities offered by any prospectus supplement, and may be attached to or separate from those securities. While the terms we have summarized below will generally apply to any future warrants we may offer under this prospectus, we will describe the particular terms of any warrants that we may offer in more detail in the applicable prospectus supplement. The terms of any warrants we offer under a prospectus supplement may differ from the terms we describe below.

We will issue the warrants under a warrant agreement which we will enter into with a warrant agent to be selected by us. We have filed forms of the warrant agreements and the related warrant certificates for each type of warrant we may offer under this prospectus as exhibits to the registration statement of which this prospectus is a part. We use the term *warrant agreement* to refer to any of these warrant agreements. We use the term *warrant agent* to refer to the warrant agent under any of these warrant agreements. The warrant agent will act solely as an agent of ours in connection with the warrants and will not act as an agent for the holders or beneficial owners of the warrants.

The following summaries of material provisions of the warrants and the warrant agreements are subject to, and qualified in their entirety by reference to, all the provisions of the warrant agreement applicable to a particular series of warrants. We urge you to read the applicable prospectus supplement related to the warrants that we sell under this prospectus, as well as the complete warrant agreements that contain the terms of the warrants.

General

We will describe in the applicable prospectus supplement the terms relating to a series of warrants.

If warrants for the purchase of common stock are offered, the applicable prospectus supplement will describe the following terms, to the extent applicable:

the offering price and the aggregate number of warrants offered;

the total number of shares that can be purchased if a holder of the warrants exercises them;

the number of shares of common stock that can be purchased if a holder exercises the warrant and the price at which such common stock may be purchased upon exercise, including, if applicable, any provisions for changes to or adjustments in the exercise price and in the securities or other property receivable upon exercise;

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the terms of any rights to redeem or call, or accelerate the expiration of, the warrants;

the date on which the right to exercise the warrants begins and the date on which that right expires;

certain federal income tax consequences of holding or exercising the warrants; and

any other specific terms, preferences, rights or limitations of, or restrictions on, the warrants.

If warrants for the purchase of debt securities are offered, the applicable prospectus supplement will describe the following terms, to the extent applicable:

the offering price and the aggregate number of warrants offered;

the currencies in which the warrants are being offered;

the designation, denominations and terms of the series of debt securities that can be purchased if a holder exercises a warrant;

the principal amount of the series of debt securities that can be purchased if a holder exercises a warrant and the price at which and currencies in which such principal amount may be purchased upon exercise;

the terms of any rights to redeem or call the warrants;

the date on which the right to exercise the warrants begins and the date on which such right expires;

certain federal income tax consequences of holding or exercising the warrants; and

any other specific terms, preferences, rights or limitations of, or restrictions on, the warrants.

Warrants will be in registered form only.

If the warrants are offered attached to common stock or debt securities, the applicable prospectus supplement will also describe the date on and after which the holder of the warrants can transfer them separately from the related common stock or debt securities.

A holder of warrant certificates may exchange them for new certificates of different denominations, present them for registration of transfer and exercise them at the corporate trust office of the warrant agent or any other office indicated in the applicable prospectus supplement. Until any warrants to purchase common stock are exercised, holders of the warrants will not have any rights of holders of the underlying common stock, including any rights to receive dividends or to exercise any voting rights, except to the extent set forth under **Warrant Adjustments** below. Until any warrants to purchase debt securities are exercised, the holder of the warrants will not have any of the rights of holders of the debt securities that can be purchased upon exercise, including any rights to receive payments of principal, premium or interest on the underlying debt securities or to enforce covenants in the applicable indenture.

Exercise of Warrants

Each holder of a warrant is entitled to purchase the number of shares of common stock or principal amount of debt securities at the exercise price described in the applicable prospectus supplement. After the close of business on the

day when the right to exercise terminates (or a later date if we extend the time for exercise), unexercised warrants will become void.

A holder of warrants may exercise them by following the general procedure outlined below:

delivering to the warrant agent the payment required by the applicable prospectus supplement to purchase the underlying security;

properly completing and signing the reverse side of the warrant certificate representing the warrants; and

delivering the warrant certificate representing the warrants to the warrant agent within five business days of the warrant agent receiving payment of the exercise price.

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If you comply with the procedures described above, your warrants will be considered to have been exercised when the warrant agent receives payment of the exercise price, subject to the transfer books for the securities issuable upon exercise of the warrant not being closed on such date. After you have completed those procedures and subject to the foregoing, we will, as soon as practicable, issue and deliver to you the common stock or debt securities that you purchased upon exercise. If you exercise fewer than all of the warrants represented by a warrant certificate, a new warrant certificate will be issued to you for the unexercised amount of warrants. Holders of warrants will be required to pay any tax or governmental charge that may be imposed in connection with transferring the underlying securities in connection with the exercise of the warrants.

Amendments and Supplements to the Warrant Agreements

We may amend or supplement a warrant agreement without the consent of the holders of the applicable warrants to cure ambiguities in the warrant agreement, to cure or correct a defective provision in the warrant agreement, or to provide for other matters under the warrant agreement that we and the warrant agent deem necessary or desirable, so long as, in each case, such amendments or supplements do not materially adversely affect the interests of the holders of the warrants.

Warrant Adjustments

Unless the applicable prospectus supplement states otherwise, the exercise price of, and the number of securities covered by, a common stock warrant will be adjusted proportionately if we subdivide or combine our common stock. In addition, unless the applicable prospectus supplement states otherwise, if we without receiving payment:

- issue capital stock or other securities convertible into or exchangeable for common stock, or any rights to subscribe for, purchase or otherwise acquire any of the foregoing, as a dividend or distribution to holders of our common stock;

- issue any evidence of our indebtedness or rights to subscribe for or purchase our indebtedness to holders of our common stock; or

- issue common stock or additional stock or other securities or property to holders of our common stock by way of spinoff, split-up, reclassification, combination of shares or similar corporate rearrangement,

then the holders of common stock warrants will be entitled to receive upon exercise of the warrants, in addition to the securities otherwise receivable upon exercise of the warrants and without paying any additional consideration, the amount of stock and other securities and property such holders would have been entitled to receive had they held the common stock issuable under the warrants on the dates on which holders of those securities received or became entitled to receive such additional stock and other securities and property.

Except as stated above, the exercise price and number of securities covered by a common stock warrant and the amounts of other securities or property to be received, if any, upon exercise of those warrants, will not be adjusted or provided for if we issue those securities or any securities convertible into or exchangeable for those securities, or securities carrying the right to purchase those securities or securities convertible into or exchangeable for those securities.

Holders of common stock warrants may have additional rights under the following circumstances:

- certain reclassifications, capital reorganizations or changes of the common stock;

certain share exchanges, mergers, or similar transactions involving us and which result in changes of the common stock; or

certain sales or dispositions to another entity of all or substantially all of our property and assets.

If one of the above transactions occurs and holders of our common stock are entitled to receive stock, securities or other property with respect to or in exchange for their securities, the holders of the common stock warrants then outstanding will be entitled to receive upon exercise of their warrants the kind and amount of shares of stock and

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other securities or property that they would have received upon the applicable transaction if they had exercised their warrants immediately before the transaction.

DESCRIPTION OF DEBT SECURITIES

The following description, together with the additional information we include in any applicable prospectus supplement, summarizes the material terms and provisions of the debt securities that we may offer under this prospectus. While the terms we have summarized below will apply generally to any future debt securities we may offer under this prospectus, we will describe the particular terms of any debt securities that we may offer in more detail in the applicable prospectus supplement. The terms of any debt securities we offer under a prospectus supplement may differ from the terms we describe below. However, no prospectus supplement shall fundamentally change the terms that are set forth in this prospectus or offer a security that is not registered and described in this prospectus at the time of its effectiveness. As of the date of this prospectus, we have no outstanding registered debt securities.

We will issue the senior debt securities under the senior indenture that we will enter into with the trustee named in the senior indenture. We will issue the subordinated debt securities under the subordinated indenture that we will enter into with the trustee named in the subordinated indenture. We have filed forms of these documents as exhibits to the registration statement which includes this prospectus. We use the term *indentures* in this prospectus to refer to both the senior indenture and the subordinated indenture.

The indentures will be qualified under the Trust Indenture Act of 1939, as amended, or Trust Indenture Act. We use the term *debenture trustee* to refer to either the trustee under the senior indenture or the trustee under the subordinated indenture, as applicable.

The following summaries of material provisions of the senior debt securities, the subordinated debt securities and the indentures are subject to, and qualified in their entirety by reference to, all the provisions of the indenture applicable to a particular series of debt securities. We urge you to read the applicable prospectus supplements related to the debt securities that we sell under this prospectus, as well as the indenture that contains the terms of the debt securities. Except as we may otherwise indicate, the terms of the senior indenture and the subordinated indenture are identical.

General

We will describe in each applicable prospectus supplement the terms relating to a series of debt securities, including:

the title;

the principal amount being offered, and if a series, the total amount authorized and the total amount outstanding;

any limit on the amount that may be issued;

whether or not we will issue the series of debt securities in global form, the terms and who the depositary will be;

the maturity date;

whether and under what circumstances, if any, we will pay additional amounts on any debt securities held by a person who is not a United States person for tax purposes, and whether we can redeem the debt securities if we have to pay such additional amounts;

the annual interest rate, which may be fixed or variable, or the method for determining the rate and the date interest will begin to accrue, the dates interest will be payable and the regular record dates for interest payment dates or the method for determining such dates;

whether or not the debt securities will be secured or unsecured, and the terms of any secured debt;

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the terms of the subordination of any series of subordinated debt;

the place where payments will be payable;

restrictions on transfer, sale or other assignment, if any;

our right, if any, to defer payment of interest and the maximum length of any such deferral period;

the date, if any, after which, and the price at which, we may, at our option, redeem the series of debt securities pursuant to any optional or provisional redemption provisions and the terms of those redemptions provisions;

the date, if any, on which, and the price at which we are obligated, pursuant to any mandatory sinking fund or analogous fund provisions or otherwise, to redeem, or at the holder's option to purchase, the series of debt securities and the currency or currency unit in which the debt securities are payable;

whether the indenture will restrict our ability or the ability of our subsidiaries to:

incur additional indebtedness;

issue additional securities;

create liens;

pay dividends or make distributions in respect of our capital stock or the capital stock of our subsidiaries;

redeem capital stock;

place restrictions on our subsidiaries' ability to pay dividends, make distributions or transfer assets;

make investments or other restricted payments;

sell or otherwise dispose of assets;

enter into sale-leaseback transactions;

engage in transactions with stockholders or affiliates;

issue or sell stock of our subsidiaries; or

effect a consolidation or merger;

whether the indenture will require us to maintain any interest coverage, fixed charge, cash flow-based, asset-based or other financial ratios;

a discussion of certain material or special United States federal income tax considerations applicable to the debt securities;

information describing any book-entry features;

provisions for a sinking fund purchase or other analogous fund, if any;

whether the debt securities are to be offered at a price such that they will be deemed to be offered at an original issue discount as defined in paragraph (a) of Section 1273 of the Internal Revenue Code;

the denominations in which we will issue the series of debt securities, if other than denominations of \$1,000 and any integral multiple thereof; and

any other specific terms, preferences, rights or limitations of, or restrictions on, the debt securities, including any additional events of default or covenants provided with respect to the debt securities, and any terms that may be required by us or advisable under applicable laws or regulations.

Conversion or Exchange Rights

We will set forth in the applicable prospectus supplement the terms on which a series of debt securities may be convertible into or exchangeable for our common stock or our other securities. We will include provisions as to

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whether conversion or exchange is mandatory, at the option of the holder or at our option. We may include provisions pursuant to which the number of shares of our common stock or our other securities that the holders of the series of debt securities receive would be subject to adjustment.

Consolidation, Merger or Sale

The indentures do not contain any covenant that restricts our ability to merge or consolidate, or sell, convey, transfer or otherwise dispose of all or substantially all of our assets. However, any successor to or acquirer of such assets must assume all of our obligations under the indentures or the debt securities, as appropriate. If the debt securities are convertible for our other securities or securities of other entities, the person with whom we consolidate or merge or to whom we sell all of our property must make provisions for the conversion of the debt securities into securities that the holders of the debt securities would have received if they had converted the debt securities before the consolidation, merger or sale.

Events of Default Under the Indenture

The following are events of default under the indentures with respect to any series of debt securities that we may issue:

if we fail to pay interest when due and payable and our failure continues for 90 days and the time for payment has not been extended or deferred;

if we fail to pay the principal, premium or sinking fund payment, if any, when due and payable and the time for payment has not been extended or delayed;

if we fail to observe or perform any other covenant contained in the debt securities or the indentures, other than a covenant specifically relating to another series of debt securities, and our failure continues for 90 days after we receive notice from the debenture trustee or holders of at least 25% in aggregate principal amount of the outstanding debt securities of the applicable series; and

if specified events of bankruptcy, insolvency or reorganization occur.

If an event of default with respect to debt securities of any series occurs and is continuing, other than an event of default specified in the last bullet point above, the debenture trustee or the holders of at least 25% in aggregate principal amount of the outstanding debt securities of that series, by notice to us in writing, and to the debenture trustee if notice is given by such holders, may declare the unpaid principal of, premium, if any, and accrued interest, if any, due and payable immediately. If an event of default specified in the last bullet point above occurs with respect to us, the principal amount of and accrued interest, if any, of each issue of debt securities then outstanding shall be due and payable without any notice or other action on the part of the debenture trustee or any holder.

The holders of a majority in principal amount of the outstanding debt securities of an affected series may waive any default or event of default with respect to the series and its consequences, except defaults or events of default regarding payment of principal, premium, if any, or interest, unless we have cured the default or event of default in accordance with the indenture. Any waiver shall cure the default or event of default.

Subject to the terms of the indentures, if an event of default under an indenture shall occur and be continuing, the debenture trustee will be under no obligation to exercise any of its rights or powers under such indenture at the request or direction of any of the holders of the applicable series of debt securities, unless such holders have offered the debenture trustee reasonable indemnity. The holders of a majority in principal amount of the outstanding debt

securities of any series will have the right to direct the time, method and place of conducting any proceeding for any remedy available to the debenture trustee, or exercising any trust or power conferred on the debenture trustee, with respect to the debt securities of that series, provided that:

the direction so given by the holder is not in conflict with any law or the applicable indenture; and

subject to its duties under the Trust Indenture Act, the debenture trustee need not take any action that might involve it in personal liability or might be unduly prejudicial to the holders not involved in the proceeding.

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A holder of the debt securities of any series will only have the right to institute a proceeding under the indentures or to appoint a receiver or trustee, or to seek other remedies if:

the holder has given written notice to the debenture trustee of a continuing event of default with respect to that series;

the holders of at least 25% in aggregate principal amount of the outstanding debt securities of that series have made written request, and such holders have offered reasonable indemnity to the debenture trustee to institute the proceeding as trustee; and

the debenture trustee does not institute the proceeding, and does not receive from the holders of a majority in aggregate principal amount of the outstanding debt securities of that series other conflicting directions within 90 days after the notice, request and offer.

These limitations do not apply to a suit instituted by a holder of debt securities if we default in the payment of the principal, premium, if any, or interest on, the debt securities.

We will periodically file statements with the debenture trustee regarding our compliance with specified covenants in the indentures.

Modification of Indenture; Waiver

We and the debenture trustee may change an indenture without the consent of any holders with respect to specific matters:

to fix any ambiguity, defect or inconsistency in the indenture;

to comply with the provisions described above under Consolidation, Merger or Sale ;

to comply with any requirements of the SEC in connection with the qualification of any indenture under the Trust Indenture Act;

to add to, delete from or revise the conditions, limitations, and restrictions on the authorized amount, terms, or purposes of issue, authentication and delivery of debt securities, as set forth in the indenture;

to provide for the issuance of and establish the form and terms and conditions of the debt securities of any series as provided under General to establish the form of any certifications required to be furnished pursuant to the terms of the indenture or any series of debt securities, or to add to the rights of the holders of any series of debt securities;

to evidence and provide for the acceptance of appointment hereunder by a successor trustee;

to provide for uncertificated debt securities and to make all appropriate changes for such purpose;

to add to our covenants such new covenants, restrictions, conditions or provisions for the protection of the holders, and to make the occurrence, or the occurrence and the continuance, of a default in any such additional covenants, restrictions, conditions or provisions an event of default; or

to change anything that does not materially adversely affect the interests of any holder of debt securities of any series.

In addition, under the indentures, the rights of holders of a series of debt securities may be changed by us and the debenture trustee with the written consent of the holders of at least a majority in aggregate principal amount of the outstanding debt securities of each series that is affected. However, we and the debenture trustee may only make the following changes with the consent of each holder of any outstanding debt securities affected:

extending the fixed maturity of the series of debt securities;

reducing the principal amount, reducing the rate of or extending the time of payment of interest, or reducing any premium payable upon the redemption of any debt securities; or

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reducing the percentage of debt securities, the holders of which are required to consent to any amendment, supplement, modification or waiver.

Discharge

Each indenture provides that we can elect to be discharged from our obligations with respect to one or more series of debt securities, except for specified obligations, including obligations to:

- register the transfer or exchange of debt securities of the series;
- replace stolen, lost or mutilated debt securities of the series;
- maintain paying agencies;
- hold monies for payment in trust;
- recover excess money held by the debenture trustee;
- compensate and indemnify the debenture trustee; and
- appoint any successor trustee.

In order to exercise our rights to be discharged, we must deposit with the debenture trustee money or government obligations sufficient to pay all the principal of, any premium and interest on, the debt securities of the series on the dates payments are due.

Form, Exchange and Transfer

We will issue the debt securities of each series only in fully registered form without coupons and, unless we otherwise specify in the applicable prospectus supplement, in denominations of \$1,000 and any integral multiple thereof. The indentures provide that we may issue debt securities of a series in temporary or permanent global form and as book-entry securities that will be deposited with, or on behalf of, The Depository Trust Company or another depository named by us and identified in a prospectus supplement with respect to that series. See *Legal Ownership of Securities* for a further description of the terms relating to any book-entry securities.

At the option of the holder, subject to the terms of the indentures and the limitations applicable to global securities described in the applicable prospectus supplement, the holder of the debt securities of any series can exchange the debt securities for other debt securities of the same series, in any authorized denomination and of like tenor and aggregate principal amount.

Subject to the terms of the indentures and the limitations applicable to global securities set forth in the applicable prospectus supplement, holders of the debt securities may present the debt securities for exchange or for registration of transfer, duly endorsed or with the form of transfer endorsed thereon duly executed if so required by us or the security registrar, at the office of the security registrar or at the office of any transfer agent designated by us for this purpose. Unless otherwise provided in the debt securities that the holder presents for transfer or exchange, we will make no service charge for any registration of transfer or exchange, but we may require payment of any taxes or other governmental charges.

We will name in the applicable prospectus supplement the security registrar, and any transfer agent in addition to the security registrar, that we initially designate for any debt securities. We may at any time designate additional transfer agents or rescind the designation of any transfer agent or approve a change in the office through which any transfer agent acts, except that we will be required to maintain a transfer agent in each place of payment for the debt securities of each series.

If we elect to redeem the debt securities of any series, we will not be required to:

issue, register the transfer of, or exchange any debt securities of that series during a period beginning at the opening of business 15 days before the day of mailing of a notice of redemption of any debt securities that may be selected for redemption and ending at the close of business on the day of the mailing; or

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register the transfer of or exchange any debt securities so selected for redemption, in whole or in part, except the unredeemed portion of any debt securities we are redeeming in part.

Information Concerning the Debenture Trustee

The debenture trustee, other than during the occurrence and continuance of an event of default under an indenture, undertakes to perform only those duties as are specifically set forth in the applicable indenture. Upon an event of default under an indenture, the debenture trustee must use the same degree of care as a prudent person would exercise or use in the conduct of his or her own affairs.

Subject to this provision, the debenture trustee is under no obligation to exercise any of the powers given it by the indentures at the request of any holder of debt securities unless it is offered reasonable security and indemnity against the costs, expenses and liabilities that it might incur.

Payment and Paying Agents

Unless we otherwise indicate in the applicable prospectus supplement, we will make payment of the interest on any debt securities on any interest payment date to the person in whose name the debt securities, or one or more predecessor securities, are registered at the close of business on the regular record date for the interest.

We will pay principal of and any premium and interest on the debt securities of a particular series at the office of the paying agents designated by us, except that unless we otherwise indicate in the applicable prospectus supplement, we will make interest payments by check that we will mail to the holder or by wire transfer to certain holders. Unless we otherwise indicate in a prospectus supplement, we will designate the corporate trust office of the debenture trustee in the City of New York as our sole paying agent for payments with respect to debt securities of each series. We will name in the applicable prospectus supplement any other paying agents that we initially designate for the debt securities of a particular series. We will maintain a paying agent in each place of payment for the debt securities of a particular series.

All money we pay to a paying agent or the debenture trustee for the payment of the principal of or any premium or interest on any debt securities that remains unclaimed at the end of two years after such principal, premium or interest has become due and payable will be repaid to us, and the holder of the debt security thereafter may look only to us for payment thereof.

Governing Law

The indentures and the debt securities will be governed by and construed in accordance with the laws of the State of New York, except to the extent that the Trust Indenture Act is applicable.

Subordination of Subordinated Debt Securities

The subordinated debt securities will be unsecured and will be subordinate and junior in priority of payment to certain of our other indebtedness to the extent described in a prospectus supplement. The subordinated indenture does not limit the amount of subordinated debt securities that we may issue. It also does not limit us from issuing any other secured or unsecured debt.

LEGAL OWNERSHIP OF SECURITIES

We can issue securities in registered form or in the form of one or more global securities. We describe global securities in greater detail below. We refer to those persons who have securities registered in their own names on the books that we or any applicable trustee maintain for this purpose as the holders of those securities. These persons are the legal holders of the securities. We refer to those persons who, indirectly through others, own beneficial interests in securities that are not registered in their own names, as indirect holders of those securities.

As we discuss below, indirect holders are not legal holders, and investors in securities issued in book-entry form or in street name will be indirect holders.

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Book-Entry Holders

We may issue securities in book-entry form only, as we will specify in the applicable prospectus supplement. This means securities may be represented by one or more global securities registered in the name of a financial institution that holds them as depositary on behalf of other financial institutions that participate in the depositary's book-entry system. These participating institutions, which are referred to as participants, in turn hold beneficial interests in the securities on behalf of themselves or their customers.

Only the person in whose name a security is registered is recognized as the holder of that security. Securities issued in global form will be registered in the name of the depositary or its participants. Consequently, for securities issued in global form, we will recognize only the depositary as the holder of the securities, and we will make all payments on the securities to the depositary. The depositary passes along the payments it receives to its participants, which in turn pass the payments along to their customers who are the beneficial owners. The depositary and its participants do so under agreements they have made with one another or with their customers; they are not obligated to do so under the terms of the securities.

As a result, investors in a book-entry security will not own securities directly. Instead, they will own beneficial interests in a global security, through a bank, broker or other financial institution that participates in the depositary's book-entry system or holds an interest through a participant. As long as the securities are issued in global form, investors will be indirect holders, and not legal holders, of the securities.

Street Name Holders

We may terminate a global security or issue securities in non-global form. In these cases, investors may choose to hold their securities in their own names or in street name. Securities held by an investor in street name would be registered in the name of a bank, broker or other financial institution that the investor chooses, and the investor would hold only a beneficial interest in those securities through an account he or she maintains at that institution.

For securities held in street name, we will recognize only the intermediary banks, brokers and other financial institutions in whose names the securities are registered as the holders of those securities, and we will make all payments on those securities to them. These institutions pass along the payments they receive to their customers who are the beneficial owners, but only because they agree to do so in their customer agreements or because they are legally required to do so. Investors who hold securities in street name will be indirect holders, not legal holders, of those securities.

Legal Holders

Our obligations, as well as the obligations of any applicable trustee and of any third parties employed by us or a trustee, run only to the legal holders of the securities. We do not have obligations to investors who hold beneficial interests in global securities, in street name or by any other indirect means. This will be the case whether an investor chooses to be an indirect holder of a security or has no choice because we are issuing the securities only in global form.

For example, once we make a payment or give a notice to the holder, we have no further responsibility for the payment or notice even if that holder is required, under agreements with depositary participants or customers or by law, to pass it along to the indirect holders but does not do so. Similarly, we may want to obtain the approval of the holders to amend an indenture, to relieve us of the consequences of a default or of our obligation to comply with a particular provision of the indenture or for other purposes. In such an event, we would seek approval only from the legal holders, and not the indirect holders, of the securities. Whether and how the holders contact the indirect holders

is up to the legal holders.

Special Considerations for Indirect Holders

If you hold securities through a bank, broker or other financial institution, either in book-entry form or in street name, you should check with your own institution to find out:

how it handles securities payments and notices;

whether it imposes fees or charges;

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how it would handle a request for the holders' consent, if ever required;

whether and how you can instruct it to send you securities registered in your own name so you can be a holder, if that is permitted in the future;

how it would exercise rights under the securities if there were a default or other event triggering the need for holders to act to protect their interests; and

if the securities are in book-entry form, how the depository's rules and procedures will affect these matters.

Global Securities

A global security is a security that represents one or any other number of individual securities held by a depository. Generally, all securities represented by the same global securities will have the same terms.

Each security issued in book-entry form will be represented by a global security that we deposit with and register in the name of a financial institution or its nominee that we select. The financial institution that we select for this purpose is called the depository. Unless we specify otherwise in the applicable prospectus supplement, The Depository Trust Company, New York, New York, known as DTC, will be the depository for all securities issued in book-entry form.

A global security may not be transferred to or registered in the name of anyone other than the depository, its nominee or a successor depository, unless special termination situations arise. We describe those situations below under "Special Situations When a Global Security Will Be Terminated." As a result of these arrangements, the depository, or its nominee, will be the sole registered owner and legal holder of all securities represented by a global security, and investors will be permitted to own only beneficial interests in a global security. Beneficial interests must be held by means of an account with a broker, bank or other financial institution that in turn has an account with the depository or with another institution that does. Thus, an investor whose security is represented by a global security will not be a legal holder of the security, but only an indirect holder of a beneficial interest in the global security.

If the prospectus supplement for a particular security indicates that the security will be issued in global form only, then the security will be represented by a global security at all times unless and until the global security is terminated. If termination occurs, we may issue the securities through another book-entry clearing system or decide that the securities may no longer be held through any book-entry clearing system.

Special Considerations for Global Securities

As an indirect holder, an investor's rights relating to a global security will be governed by the account rules of the investor's financial institution and of the depository, as well as general laws relating to securities transfers. We do not recognize an indirect holder as a legal holder of securities and instead deal only with the depository that holds the global security.

If securities are issued only in the form of a global security, an investor should be aware of the following:

An investor cannot cause the securities to be registered in his or her name and cannot obtain non-global certificates for his or her interest in the securities, except in the special situations we describe below.

An investor will be an indirect holder and must look to his or her own bank or broker for payments on the securities and protection of his or her legal rights relating to the securities, as we describe above.

An investor may not be able to sell interests in the securities to some insurance companies and to other institutions that are required by law to own their securities in non-book-entry form.

An investor may not be able to pledge his or her interest in a global security in circumstances where certificates representing the securities must be delivered to the lender or other beneficiary of the pledge in order for the pledge to be effective.

The depositary's policies, which may change from time to time, will govern payments, transfers, exchanges and other matters relating to an investor's interest in a global security. We and any applicable trustee have no

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responsibility for any aspect of the depositary's actions or for its records of ownership interests in a global security. We and the trustee also do not supervise the depositary in any way.

The depositary may, and we understand that DTC will, require that those who purchase and sell interests in a global security within its book-entry system use immediately available funds, and your broker or bank may require you to do so as well.

Financial institutions that participate in the depositary's book-entry system, and through which an investor holds its interest in a global security, may also have their own policies affecting payments, notices and other matters relating to the securities. There may be more than one financial intermediary in the chain of ownership for an investor. We do not monitor and are not responsible for the actions of any of those intermediaries.

Special Situations when a Global Security Will Be Terminated

In a few special situations described below, the global security will terminate, and interests in it will be exchanged for physical certificates representing those interests. After that exchange, the choice of whether to hold securities directly or in street name will be up to the investor. Investors must consult their own banks or brokers to find out how to have their interests in securities transferred to their own name, so that they will be direct holders. We have described the rights of holders and street name investors above.

The global security will terminate when the following special situations occur:

if the depositary notifies us that it is unwilling, unable or no longer qualified to continue as depositary for that global security and we do not appoint another institution to act as depositary within 90 days;

if we notify any applicable trustee that we wish to terminate that global security; or

if an event of default has occurred with regard to securities represented by that global security and has not been cured or waived.

The applicable prospectus supplement may also list additional situations for terminating a global security that would apply only to the particular series of securities covered by the prospectus supplement. When a global security terminates, the depositary, and not we or any applicable trustee, is responsible for deciding the names of the institutions that will be the initial direct holders.

PLAN OF DISTRIBUTION

We may sell the common stock warrants or debt securities to or through underwriters or dealers, through agents, or directly to one or more purchasers. A prospectus supplement or supplements will describe the terms of the offering of the securities, including:

the name or names of any underwriters, if any;

the purchase price of the securities and the proceeds we will receive from the sale;

any over-allotment options under which underwriters may purchase additional securities from us;

any agency fees or underwriting discounts and other items constituting agents' or underwriters' compensation;

any public offering price;

any discounts or concessions allowed or reallocated or paid to dealers; and

any securities exchange or market on which the securities may be listed.

Only underwriters named in the prospectus supplement are underwriters of the securities offered by the prospectus supplement.

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If underwriters are used in the sale, they will acquire the securities for their own account and may resell the securities from time to time in one or more transactions at a fixed public offering price or at varying prices determined at the time of sale. The obligations of the underwriters to purchase the securities will be subject to the conditions set forth in the applicable underwriting agreement. We may offer the securities to the public through underwriting syndicates represented by managing underwriters or by underwriters without a syndicate. Subject to certain conditions, the underwriters will be obligated to purchase all of the securities offered by the prospectus supplement. Any public offering price and any discounts or concessions allowed or reallocated or paid to dealers may change from time to time. We may use underwriters with whom we have a material relationship. We will describe in the prospectus supplement, naming the underwriter, the nature of any such relationship.

We may sell securities directly or through agents we designate from time to time. We will name any agent involved in the offering and sale of securities and we will describe any commissions we will pay the agent in the prospectus supplement. Unless the prospectus supplement states otherwise, our agent will act on a best-efforts basis for the period of its appointment.

We may authorize agents or underwriters to solicit offers by certain types of institutional investors to purchase securities from us at the public offering price set forth in the prospectus supplement pursuant to delayed delivery contracts providing for payment and delivery on a specified date in the future. We will describe the conditions to these contracts and the commissions we must pay for solicitation of these contracts in the prospectus supplement.

We may provide agents and underwriters with indemnification against civil liabilities related to this offering, including liabilities under the Securities Act, or contribution with respect to payments that the agents or underwriters may make with respect to these liabilities. Agents and underwriters may engage in transactions with, or perform services for, us in the ordinary course of business.

All securities we offer, other than common stock, will be new issues of securities with no established trading market. Any underwriters may make a market in these securities, but will not be obligated to do so and may discontinue any market making at any time without notice. We cannot guarantee the liquidity of the trading markets for any securities.

Any underwriter may engage in overallotment, stabilizing transactions, short covering transactions and penalty bids in accordance with Regulation M under the Exchange Act. Overallotment involves sales in excess of the offering size, which create a short position. Stabilizing transactions permit bids to purchase the underlying security so long as the stabilizing bids do not exceed a specified maximum. Short covering transactions involve purchases of the securities in the open market after the distribution is completed to cover short positions. Penalty bids permit the underwriters to reclaim a selling concession from a dealer when the securities originally sold by the dealer are purchased in a covering transaction to cover short positions. Those activities may cause the price of the securities to be higher than it would otherwise be. If commenced, the underwriters may discontinue any of the activities at any time.

Any underwriters who are qualified market makers on the NASDAQ Global Market may engage in passive market making transactions in the common stock, warrants and debt securities on the NASDAQ Global Market in accordance with Rule 103 of Regulation M, during the business day prior to the pricing of the offering, before the commencement of offers or sales of the securities. Passive market makers must comply with applicable volume and price limitations and must be identified as passive market makers. In general, a passive market maker must display its bid at a price not in excess of the highest independent bid for such security; if all independent bids are lowered below the passive market maker's bid, however, the passive market maker's bid must then be lowered when certain purchase limits are exceeded.

LEGAL MATTERS

The validity of the securities being offered hereby will be passed upon for us by Cooley Godward Kronish LLP, San Diego, California.

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EXPERTS

The financial statements and management's report on the effectiveness of internal control over financial reporting incorporated in this prospectus by reference from the Company's Annual Report on Form 10-K have been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their reports, which are incorporated herein by reference, and have been so incorporated in reliance upon the reports of such firm given upon their authority as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We are a reporting company and file annual, quarterly and current reports, proxy statements and other information with the SEC. We have filed with the SEC a registration statement on Form S-3 under the Securities Act with respect to the securities we are offering under this prospectus. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits which are part of the registration statement. For further information with respect to us and the securities we are offering under this prospectus, we refer you to the registration statement and the exhibits and schedules filed as a part of the registration statement. You may read and copy any document we file with the SEC at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for more information about the operation of the Public Reference Room. Our SEC filings are also available at the SEC's website at www.sec.gov. We maintain a website at www.mannkindcorp.com. Information contained in our website does not constitute a part of this prospectus.

INCORPORATION BY REFERENCE

The SEC allows us to incorporate by reference information that we file with it, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is an important part of this prospectus. Information in this prospectus supersedes information incorporated by reference that we filed with the SEC prior to the date of this prospectus, while information that we file later with the SEC will automatically update and supersede the information in this prospectus. We incorporate by reference into this registration statement and prospectus the documents listed below, and any future filings we will make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act after the date of the initial registration statement but prior to effectiveness of the registration statement and after the date of this prospectus but prior to the termination of the offering of the securities covered by this prospectus (other than current reports or portions thereof furnished under Item 2.02 or Item 7.01 of Form 8-K):

our Annual Report on Form 10-K for the year ended December 31, 2005;

our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2006, June 30, 2006 and September 30, 2006;

our Current Reports on Form 8-K filed on February 22, 2006, May 31, 2006 and October 18, 2006; and

the description of our common stock set forth in our registration statement on Form 8-A, filed with the SEC on July 23, 2004, including any amendments or reports filed for the purposes of updating this description.

We will furnish without charge to you, on written or oral request, a copy of any or all of the documents incorporated by reference, including exhibits to these documents. You should direct any requests for documents to:

Investor Relations
MannKind Corporation
28903 North Avenue Paine
Valencia, CA 91355
(661) 775-5300

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\$100,000,000

MannKind Corporation

% Senior Convertible Notes due 2013

PROSPECTUS SUPPLEMENT

**Merrill Lynch & Co.
JPMorgan**

December , 2006