Nile Therapeutics, Inc.
Form 424B3
April 12, 2010

The information in this prospectus supplement is not complete and may be changed. A registration statement relating to these securities has been filed with the Securities and Exchange Commission and has been declared effective. 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 jurisdiction where the offer or sale is not permitted.

Filed Pursuant to Rule 424(b)(3)
Registration No. 333-165167

Subject to Completion, dated April 12, 2010

Prospectus Supplement
(To Prospectus dated March 12, 2010)

Units

Common Stock
Warrants

We are offering units of our securities pursuant to this prospectus supplement and the accompanying prospectus. Each unit consists of shares of common stock and a warrant to purchase shares of our common stock at an exercise price of $ per share. The units will separate immediately and the common stock and warrants will be issued separately. There will be no market for the units. Each unit will be sold at a purchase price of $.

Our common stock is listed on the Nasdaq Capital Market under the symbol NLTX. On April 9, 2010, the last reported sale price of our common stock on the Nasdaq Capital Market was $0.97 per share. Currently, no public market exists for the warrants offered hereby. We have applied for listing the warrants on the Nasdaq Capital Market under the symbol NLTX.W. The warrants will begin trading on or promptly after the date of this prospectus supplement.

Investing in our securities involves a high degree of risk.
See Risk Factors beginning on page S-6 of this prospectus supplement.

	Per Unit	Total
Public offering price	$	$
Underwriting discounts and commissions[(1)]	$	$
Proceeds, before expenses, to us	$	$

Investing in our securities involves a high degree of risk. See Risk Factors beginning on page S-6 of this1prospec

(1) Does not include a non-accountable expense allowance in the amount of % of the gross proceeds of the offering, excluding any over-allotment proceeds. See Underwriting beginning on page S-37 of this prospectus supplement. We have granted the underwriters a 45-day option to purchase up to an additional units from us on the same terms and conditions set forth above.

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 accurate. Any representation to the contrary is a criminal offense.

Delivery of the common stock and warrants to purchase common stock is expected to be made on or about , 2010.

As of February 12, 2010, the aggregate market value of our outstanding common stock held by non-affiliates was approximately $27,268,048, which is based on 27,085,824 shares of outstanding common stock, of which 21,641,308 shares are held by non-affiliates, and a per share price of $1.25 based on the closing sale price of our common stock on February 12, 2010. As of the date of this prospectus supplement, we have not offered any securities pursuant to General Instruction I.B.6 of Form S-3 during the prior 12 calendar months that ends on the date of this prospectus supplement.

Maxim Group LLC **Ladenburg Thalmann & Co. Inc.**

The date of this prospectus supplement is April , 2010

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NILE THERAPEUTICS, INC.

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Through and including , 2010 (the 25th day after the date of this prospectus supplement), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This obligation is in addition to a dealer s obligation to deliver a prospectus when acting as an underwriter and with respect to an unsold allotment or subscription.

No dealer, salesperson or any other person is authorized to give any information or make any representations in connection with this offering other than those contained in this prospectus supplement and, if given or made, the information or representations must not be relied upon as having been authorized by us. This prospectus supplement does not constitute an offer to sell or a solicitation of an offer to buy any security other than the securities offered by this prospectus, or an offer to sell or a solicitation of an offer to buy any securities by anyone in any jurisdiction in which the offer of solicitation is not authorized or is unlawful.

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ABOUT THIS PROSPECTUS SUPPLEMENT

This document is in two parts. The first part is the prospectus supplement, which describes the terms of this offering of our common stock and warrants. The second part is the accompanying prospectus, which provides more general information. Generally, when we refer to the prospectus, we are referring to both parts of this document combined. To the extent there is a conflict between the information contained in this prospectus supplement, on the one hand, and the information contained in the accompanying prospectus or any document incorporated by reference therein, on the other hand, the information in this prospectus supplement shall control. This prospectus supplement contains information about the securities offered in this offering and may add, update or change information in the accompanying prospectus. Before you invest in our securities, you should carefully read this prospectus supplement, along with the accompanying prospectus, in addition to the information contained in the documents we refer to under the heading Incorporation of Certain Information by Reference in this prospectus supplement.

You should rely only on the information contained or incorporated by reference into this prospectus supplement and the accompanying prospectus. We have not authorized any person, including any salesman or broker, to provide information or represent anything other than that provided in this prospectus supplement and the accompanying prospectus. We have not authorized anyone to provide you with different information. You must not rely on any unauthorized information or representations. We are not making an offer in any jurisdiction or under any circumstances where the offer is not permitted. You should assume that the information in this prospectus supplement and the accompanying prospectus is accurate only as of the date on its cover page and that any information we have incorporated by reference is accurate only as of the date of the document incorporated by reference.

In this prospectus supplement and the accompanying prospectus, the terms Nile, we, us and our refer to Nile Therapeutics, Inc., a Delaware corporation.

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PROSPECTUS SUPPLEMENT SUMMARY

This summary highlights information contained elsewhere in this prospectus supplement and the accompanying prospectus. This summary does not contain all of the information you should consider before investing in our securities. We urge you to read this entire prospectus supplement and the accompanying prospectus carefully, especially the risks of investing in this offering that we discuss under Risk Factors in this prospectus supplement, as well as the documents identified under Incorporation of Certain Information by Reference in the accompanying prospectus.

Nile Therapeutics, Inc.

Overview

We are a development stage, biopharmaceutical company developing innovative products for the treatment of cardiovascular and renal diseases, with an initial focus on heart failure. We currently have two drug candidates in development, CD-NP and CU-NP. We are focused primarily on the development of CD-NP, our lead drug candidate, which we are currently evaluating in a Phase II clinical trial in patients with acute decompensated heart failure, or ADHF, an acute exacerbation of chronic heart failure. Using the net proceeds from this offering, we expect to complete this initial Phase II trial and have complete data from the trial by the end of 2010.

We hold exclusive, worldwide rights to several patents and patent applications relating to CD-NP and CU-NP pursuant to separate license agreements entered into in January 2006 and June 2008, respectively, between us and the Mayo Foundation for Medical Education and Research, or the Mayo Foundation, which is a part of the Mayo Clinic.

Our Product Candidates

CD-NP

Our lead product candidate CD-NP was designed by scientists at the Mayo Clinic s cardio-renal research laboratories and is in a class of compounds known as natriuretic peptides. Existing therapies for ADHF, which include other natriuretic peptide compounds, have been associated with favorable pharmacologic effects, but have also been associated with abnormally low blood pressure, known as hypotension, and decreased renal function, which limit their utility in clinical practice. CD-NP was designed to preserve the favorable effects of current therapies while eliminating or reducing the hypotensive response, and enhancing or preserving renal function. Results from our preclinical animal studies and early clinical trial data have supported this design hypothesis. In addition to ADHF, based on these preclinical and clinical data, we believe CD-NP has the potential to address additional cardiovascular indications, including chronic heart failure and acute myocardial infarction (heart attacks), as well as renal indications, including renal protection during cardiopulmonary bypass surgery and contrast induced nephropathy, a kidney disease caused by the use of iodine-based dye used in diagnostic imaging and interventional procedures.

We are currently evaluating CD-NP in a single-blind, placebo-controlled Phase II clinical trial designed to provide additional information on the safety and tolerability of CD-NP when infused for up to 72 hours in hospitalized patients with ADHF and impaired renal function. The purpose of the study, which was initiated in July 2009, is to determine a safe and tolerable dose range of CD-NP that can be used in ADHF patients in the acute setting in combination with the standard of care. The study also contains several exploratory efficacy endpoints to provide insight into the potential

for CD-NP to preserve or enhance renal function in ADHF patients. We anticipate enrolling a total of approximately 75 patients in this Phase II clinical trial. As of March 1, 2010, we have completed dosing 30 subjects in the study.

Interim top-line safety data from the ongoing Phase II study suggests that CD-NP is well-tolerated at dose levels of 1.25 and 2.5 ng/kg/min. In addition to these dose levels, we expect to enroll patient cohorts at increasing doses of CD-NP in this clinical trial. Following analysis of the data from this Phase II study, and subject to what such data indicate, we expect to initiate, either independently or with a development partner, a second larger Phase II dose-ranging, placebo-controlled, double-blind study in ADHF patients with impaired renal function.

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We anticipate that the proceeds from this offering will provide sufficient capital to complete our ongoing Phase II clinical trial and to process and analyze its data. However, we will need substantial additional capital in order to fund the continued development of CD-NP for the treatment of ADHF, particularly if we continue development independently. If the results of our current Phase II trial do not support pursuing further development of CD-NP for the treatment of ADHF, then we may consider development of CD-NP in other indications, including other cardiovascular or renal diseases or conditions. In that case, we will still require substantial additional capital to fund any research and development in such other indications.

CU-NP

CU-NP is also a natriuretic peptide that was designed by scientists at the Mayo Clinic. We are currently evaluating CU-NP in preclinical studies for potential treatment of a number of cardiovascular and renal diseases.

Heart Failure Background

According to the American Heart Association, heart failure is the fastest-growing clinical cardiac disease in the United States, affecting over 5 million Americans. Patients with ADHF are admitted to the hospital over 1 million times per year in the U.S., a rate that has nearly doubled from 15 years ago. Heart failure is the most frequent cause of hospital admission in the U.S. for patients older than 65 years, generating annual inpatient costs of more than $33 billion. We believe that approval of a novel agent with safety and efficacy improvements over existing therapies could potentially satisfy a significant unmet medical need and expand the market for heart failure treatments.

Heart failure, a condition that often follows a heart attack, occurs when the heart cannot pump blood to the body as quickly as needed. When blood returns to the heart faster than the heart can eject it, the system behind the heart becomes congested. Decreased blood flow to organs, such as the kidneys, also causes the body to retain more fluid, further complicating the problem. As a result, heart failure can often cause damage to the kidneys and other organs, which in turn worsens the condition of the heart. ADHF reflects an acute exacerbation of heart failure.

Patients with heart failure are currently treated with a combination of drugs in an attempt to improve cardiac output and reverse fluid overload. Diuretics, such as furosemide (also known by the brand name Lasix®), are used as a first-line treatment to relieve the symptoms of ADHF patients by helping to remove excess fluid from the body, which then helps to increase cardiac output. However, some studies have correlated high doses of intravenous furosemide with a decreased kidney function and some patients can become resistant to the effects of furosemide. Second-line treatments are often designed to only treat symptoms, and can come at the cost of an increased mortality rate. Despite aggressive therapy, one in three ADHF patients die of the disease within a year of diagnosis, reflecting a substantial need for novel treatments.

Corporate Information

We were originally incorporated under Delaware law in August 2005 under the name Nile Pharmaceuticals, Inc., and we changed our name to Nile Therapeutics, Inc. in January 2007. On September 17, 2007, we were acquired by SMI Products, Inc., or SMI, which was then a public shell company, in a reverse merger transaction whereby a wholly-owned subsidiary of SMI merged with and into Nile Therapeutics, with Nile Therapeutics remaining as the surviving corporation and a wholly-owned subsidiary of SMI. In accordance with the terms of this transaction, the stockholders of Nile Therapeutics exchanged all of their shares of Nile Therapeutics common stock for shares of SMI common stock, which immediately following the transaction represented approximately 95 percent of the issued and

outstanding common stock of SMI. Upon completion of the merger, the sole officer and director of SMI resigned and was replaced by the officers and directors of Nile Therapeutics. Additionally, following the merger, Nile Therapeutics, or Old Nile, was merged into SMI, and SMI changed its name to Nile Therapeutics, Inc. and adopted the business plan of Old Nile.

Our executive offices are located at 4 West 4th Avenue, Suite 400, San Mateo, California 94402. Our telephone number is (650) 458-2670, and our Internet address is *www.nilethera.com*. We do not incorporate the information on our website into this prospectus, and you should not consider it part of this prospectus or part of any prospectus supplement.

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The Offering

Securities offered by us

units, each unit consisting of shares of common stock and a tradable warrant to purchase shares of common stock. The units will separate immediately and the common stock and warrants will be issued separately. There will be no market for the units.

Common stock to be outstanding after this offering

shares

Terms of the warrants offered by us

Each warrant will be exercisable during the period commencing on the date of original issuance and ending five years thereafter at an exercise price of $ per share of common stock. See Description of the Securities We Are Offering beginning on page S-32. This prospectus supplement also relates to the offering of the shares of common stock issuable upon exercise of the warrants.

Redemption of warrants

In the event the closing sale price of our common stock is at least $3.00 per share for any 20 trading days within a 30 consecutive trading day period, we may call the warrants for redemption, at a redemption price of $0.01 per warrant, by providing at least 30 days notice to each warrant holder. Holders of the warrants will be entitled to exercise the warrants prior to the date scheduled for redemption, but there can be no assurance that the price of our common stock will exceed the call price or the warrant exercise price after the redemption call is made.

Use of proceeds

We intend to use the net proceeds from this offering to fund the completion of our ongoing Phase II clinical trial of CD-NP, and for general corporate purposes and working capital. However, we will need substantial additional capital to fund the development of CD-NP in ADHF or other indications beyond the completion of the ongoing Phase II clinical trial. See Use of Proceeds beginning on page S-29.

Market for our securities

Our common stock is listed for trading on the Nasdaq Capital Market under the symbol NLTX. We have applied for listing of the warrants on the Nasdaq Capital Market under the symbol NLTX.W.

Risk factors

This investment involves a high degree of risk. See Risk Factors beginning on page S-6 of this prospectus supplement as well as the other information included in or incorporated by reference in this prospectus supplement and the accompanying prospectus for a discussion of factors you should consider carefully before making an investment decision.

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The number of shares of our common stock to be outstanding after the offering is based on 27,085,824 shares outstanding as of March 31, 2010, and does not include:

4,901,499 shares of common stock issuable upon the exercise of outstanding stock options, with a weighted average exercise price of $2.29 per share;
969,902 shares of common stock available for future issuance under our Amended & Restated 2005 Stock Option Plan;
3,279,984 shares of common stock issuable upon the exercise of outstanding warrants, with a weighted average exercise price of $1.94 per share; and
exercise of the underwriters over-allotment option.

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Summary Financial Data

We derived the following information from our audited financial statements as of and for the years ended December 31, 2009, 2008 and 2007 and for the cumulative period from August 1, 2005 (inception) to December 31, 2009, which financial statements are included in our Annual Reports on Form 10-K for each of the years ended December 31, 2008 and 2009 that we filed with the SEC. The following information should be read in conjunction with our financial statements and related notes incorporated by reference in the accompanying prospectus, and our historical financial statements and related notes contained in our annual reports and quarterly reports.

	Year Ended December 31,			Period from August 1, 2005 (inception) to December 31, 2009
	2009	2008	2007	
Statement of Operations Data:				
Grant income	$	$	$101,400	$482,235
Operating expenses:				
Research and development	4,466,536	9,477,823	5,124,292	21,778,056
General and administrative	3,417,174	3,922,164	4,477,567	11,996,762
Total operating expenses	7,883,710	13,399,987	9,601,859	33,774,818
Total other income (expense)	11,413	268,391	(802,336)	(606,120)
Net loss	(7,872,297)	(13,131,596)	(10,302,795)	(33,898,703)
Net loss per share, basic and diluted	$(0.31)	$(0.54)	$(0.61)	
Weighted average shares used in computing net loss per share, basic and diluted	25,466,655	24,126,398	16,942,142	

	As of December 31, 2009	
	Actual	As Adjusted[1]
Balance Sheet Data:		
Cash and cash equivalents	$3,175,718	$
Total current assets	3,433,450	
Total assets	3,619,704	
Total current liabilities	637,554	637,554
Deficit accumulated during the development stage	(33,898,703)	(33,898,703)
Total stockholders equity	2,982,150	

(1) On an as adjusted basis to reflect the sale of units in this offering at a public offering price of $ per unit, after deducting the underwriting discounts, commissions and estimated offering expenses payable by us.

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RISK FACTORS

An investment in our securities involves a high degree of risk. In considering whether to purchase the securities offered by this prospectus supplement, you should carefully consider all of the information we have included or incorporated by reference in this prospectus supplement and the accompanying prospectus. In particular, you should carefully consider the following risk factors and the factors listed in Cautionary Note Regarding Forward-Looking Statements, as well as those incorporated by reference into this prospectus supplement and the accompanying prospectus from the reports we file with the Securities and Exchange Commission, or SEC. You should carefully review all of the information in this prospectus supplement and the accompanying prospectus about these securities.

Risks Relating to Our Business

Our business is substantially dependent on the results of our ongoing Phase II study of CD-NP for the treatment of ADHF and our ability to fund, either alone or with a strategic partner, its further development. If the results of this trial do not support further development of CD-NP in ADHF, our business and future prospects would be materially and adversely affected.

Nearly all of our current human and financial resources are focused on the development of CD-NP, our lead product candidate and our only product candidate in clinical development. In July 2009, we commenced a Phase II clinical trial of CD-NP in patients with ADHF and renal function insufficiency. The purpose of the study is to determine a safe and tolerable dose range of CD-NP that can be used in ADHF patients in the acute setting in combination with the standard of care. The study also contains several exploratory efficacy endpoints to provide insight into the potential for CD-NP to preserve or enhance renal function in acute heart failure patients. If the results of the Phase II trial do not support further development of CD-NP in the ADHF setting, our business and future prospects, as well as the value of our common stock, would be materially and adversely affected.

If the results of the Phase II study support further development of CD-NP for the treatment of ADHF, then we plan to either collaborate with a strategic partner to continue further development of CD-NP or undertake such further development on our own. If we undertake the further development of CD-NP for the treatment of ADHF on our own, then we will require substantial additional capital to fund such further activities and there can be no assurance that such additional capital would be available to us. Further, if the results of the ongoing Phase II trial do not support further development in the ADHF setting, we may choose to pursue development of CD-NP for the treatment of other cardiovascular or renal indications. However, we would also require substantial additional capital beyond the proceeds from this offering in order to fund such other development. If we are unable to identify and secure a partner to continue the further development of CD-NP or obtain the additional funds required to fund such development on our own, our business would be substantially and adversely affected and we would be forced to significantly curtail or even cease our operations, in which case you will lose your entire investment.

Even following completion of this offering, we need substantial additional funding before we can complete the development of our product candidates. If we are unable to raise additional capital beyond the proceeds from this offering, we will be forced to delay, reduce or eliminate our product development programs and may not have the capital required to otherwise operate our business.

Developing biopharmaceutical products, including conducting pre-clinical studies and clinical trials and establishing manufacturing capabilities, is expensive. We expect our research and development expenses to increase in connection with our ongoing activities, particularly as we continue to develop CD-NP, our lead product candidate, and initiate

clinical development of CU-NP, our second product candidate. In addition, our expenses could increase beyond expectations if the U.S. Food and Drug Administration, or FDA, requires that we perform additional studies to those that we currently anticipate, and the timing of any potential product approval may be delayed. Other than our cash on hand, we currently have no commitments or arrangements for any additional financing to fund the research and development of our product candidates. We have not generated any product revenues, and do not expect to generate any revenues until, and only if, we receive approval to sell our drug candidates from the FDA and other regulatory authorities for our product candidates. As of December 31, 2009, we had cash and cash equivalents totaling $3.2 million. During the fiscal year ended December 31, 2009, we used net cash totaling $5.8 million in operating activities. We expect our

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negative cash flows from operations to continue for the foreseeable future and beyond potential regulatory approval and any product launch. Based on our current development plans, including our ongoing Phase II clinical trial of CD-NP for the treatment of ADHF, we anticipate that the net proceeds from this offering will be sufficient to complete the study activities and analyze the results, which we expect to be completed by the end of 2010. However, if the results from our current Phase II clinical trial are sufficient to support further clinical testing of CD-NP in the ADHF setting, then we will need substantial additional capital in order to initiate and fund the next clinical study of CD-NP, which we anticipate would be a Phase IIb clinical trial.

Until we can generate a sufficient amount of product revenue, if ever, we expect to finance future cash needs through public or private equity offerings, debt financings, or corporate collaboration and licensing arrangements. Additional funds may not be available when we need them on terms that are acceptable to us, or at all. If adequate funds are not available, we may be required to delay, reduce the scope of, or eliminate one or more of our research or development programs or our commercialization efforts. In addition, we could be forced to discontinue product development and reduce or forego attractive business opportunities. To the extent that we raise additional funds by issuing equity securities, our stockholders may experience additional significant dilution, and debt financing, if available, may involve restrictive covenants. To the extent that we raise additional funds through collaboration and licensing arrangements, it may be necessary to relinquish some rights to our technologies or our product candidates, or grant licenses on terms that may not be favorable to us. We may seek to access the public or private capital markets whenever conditions are favorable, even if we do not have an immediate need for additional capital at that time.

Our forecasts regarding our beliefs of the sufficiency of our financial resources to support our operations are forward-looking statements and involve significant risks and uncertainties, and actual results could vary as a result of a number of factors, including the factors discussed elsewhere in this Risk Factors section. We have based this estimate on assumptions that may prove to be wrong, and we could utilize our available capital resources sooner than we currently expect. Our future funding requirements will depend on many factors, including, but not limited to:

- the scope, rate of progress, cost and results of our research and development activities, especially our ongoing Phase II clinical trial of CD-NP;
- the costs and timing of regulatory approval;
- the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights;
- the effect of competing technological and market developments;
- the terms and timing of any collaboration, licensing or other arrangements that we may establish;
- the cost and timing of completion of clinical and commercial-scale outsourced manufacturing activities; and
- the costs of establishing sales, marketing and distribution capabilities for any product candidates for which we may receive regulatory approval.

We are largely dependent on the viability of CD-NP, our lead product candidate, and we cannot be certain it will receive regulatory approval to be commercialized.

We will need FDA approval to market and sell CD-NP in the United States and approvals from the FDA-equivalent regulatory authorities in foreign jurisdictions to commercialize our product candidates in those jurisdictions. In order to obtain FDA approval of any of our product candidates, we must submit to the FDA a new drug application, or NDA, demonstrating that the product candidate is safe for humans and effective for its intended use. This demonstration requires significant research and animal tests, which are referred to as pre-clinical studies, as well as human tests, which are referred to as clinical trials. Satisfaction of the FDA s regulatory requirements typically takes many years, depends upon the type, complexity, and novelty of the product candidate, and requires substantial resources for research, development, and testing. We cannot predict whether our research and clinical approaches will result in drugs that the FDA considers safe for humans and effective for indicated uses. The FDA has substantial discretion in the drug approval process and may require

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us to conduct additional pre-clinical and clinical testing or to perform post-marketing studies. The approval process may also be delayed by changes in government regulation, future legislation, or administrative action or changes in FDA policy that occur prior to or during our regulatory review.

Even if we comply with all FDA requests, the FDA may ultimately reject one or more of our NDAs. We cannot be sure that we will ever obtain regulatory clearance for our product candidates. Failure to obtain FDA approval of any of our product candidates will severely undermine our business by reducing our number of salable products and, therefore, corresponding product revenues, and will have a material and adverse impact on our business.

We are substantially dependent on our relationship with the Mayo Foundation, from which we license the rights to both of our CD-NP and CU-NP drug candidates. If requirements under our license agreements are not met, we could suffer significant harm, including losing rights to our drug candidates.

Our rights to our CD-NP and CU-NP drug candidates are both derived from separate license agreements between us and the Mayo Foundation. Our business depends substantially on these agreements to maintain the intellectual property rights to both our product candidates. These license agreements require us to perform certain obligations that affect our rights under these licensing agreements, including making cash payments upon the achievement of certain milestones relating to the development of each product candidate. Both of these agreements last either throughout the life of the patents, or with respect to other licensed technology, for a number of years after the first commercial sale of the relevant product. If we fail to comply with our obligations in our license agreements with the Mayo Foundation, we could lose important patent and other intellectual property rights which are critical to our business.

In addition, we are responsible for the cost of filing and prosecuting certain patent applications and maintaining certain issued patents licensed to us. If we do not meet our obligations under our license agreements in a timely manner, we could lose the rights to our proprietary technology.

Finally, we may be required to obtain licenses to patents or other proprietary rights of third parties in connection with the development and use of our product candidates and technologies. Licenses required under any such patents or proprietary rights might not be made available on terms acceptable to us, if at all.

Each of our product candidates is in an early stage of development.

Each of our two product candidates, CD-NP and CU-NP, is in an early stage of development and requires extensive clinical testing before it will be approved by the FDA or another regulatory authority in a jurisdiction outside the United States, which could take several years to complete, if ever. We cannot predict with any certainty the results of such clinical testing, including the results of our ongoing Phase II clinical trial of CD-NP in ADHF. We cannot predict with any certainty if, or when, we might commence any such clinical trials or whether such trials will yield sufficient data to permit us to proceed with additional clinical development and ultimately submit an application for regulatory approval of our product candidates in the United States or abroad, or whether such applications will be accepted by the appropriate regulatory agency.

Our independent registered public accounting firm has expressed substantial doubt as to our ability to continue as a going concern.

In their report accompanying our audited financial statements, our independent registered public accounting firm expressed substantial doubt as to our ability to continue as a going concern. A going concern opinion could impair our ability to finance our operations through the sale of debt or equity securities. Our ability to continue as a going concern will depend, in large part, on our ability to generate positive cash flow from operations and obtain additional

financing if necessary, neither of which is certain. If we are unable to achieve these goals, our business would be jeopardized and we may not be able to continue operations.

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We have a limited operating history upon which to base an investment decision, and we expect a number of factors to cause our operating results to fluctuate on a quarterly and annual basis, which may make it difficult to predict our future performance.

Our operations to date have been primarily limited to organizing and staffing our company, developing our technology, and undertaking pre-clinical studies and clinical trials of our product candidates. We have not yet obtained regulatory approvals for any of our product candidates. Consequently, any predictions you make about our future success or viability may not be as accurate as they could be if we had a longer operating history. Specifically, our financial condition and operating results have varied significantly in the past and will continue to fluctuate from quarter-to-quarter and year-to-year in the future due to a variety of factors, many of which are beyond our control. Factors relating to our business that may contribute to these fluctuations include the following factors, as well as other factors described elsewhere in this prospectus:

the need to obtain regulatory approval of our two product candidates, CD-NP and CU-NP;
delays in the commencement, enrollment, and timing of clinical testing;
the success of our clinical trials through all phases of clinical development;
the success of clinical trials of our CD-NP and CU-NP product candidates or future product candidates;
any delays in regulatory review and approval of our product candidates in clinical development;
our ability to receive regulatory approval or commercialize our products within and outside the United States;
potential side effects of our current or future products and product candidates that could delay or prevent commercialization or cause an approved treatment drug to be taken off the market;
regulatory difficulties relating to products that have already received regulatory approval;
market acceptance of our product candidates;
our ability to establish an effective sales and marketing infrastructure once our products are commercialized;
competition from existing products or new products that may emerge;
the impact of competition in the market in which we compete on the commercialization of CD-NP and CU-NP;
guidelines and recommendations of therapies published by various organizations;
the ability of patients to obtain coverage of or sufficient reimbursement for our products;
our ability to maintain adequate insurance policies;
our dependency on third parties to formulate and manufacture our product candidates;
our ability to establish or maintain collaborations, licensing or other arrangements;
our ability and third parties abilities to protect intellectual property rights;
costs related to and outcomes of potential intellectual property litigation;
compliance with obligations under intellectual property licenses with third parties;
our ability to adequately support future growth;
our ability to attract and retain key personnel to manage our business effectively; and
the level of experience in running a public company of our senior management who are relatively new to their current roles as managers of a public company.

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We have a history of net losses, expect to continue to incur substantial and increasing net losses for the foreseeable future, and we may never achieve or maintain profitability.

For the years ended December 31, 2009 and 2008, respectively, we had a net loss of $7.9 million and $13.1 million. Since our inception on August 1, 2005, through December 31, 2009, we have accumulated a deficit of $33.9 million and have stockholders equity of $3.0 million. We expect to incur substantial losses and negative operating cash flow for the foreseeable future, and we may never achieve or maintain profitability. Even if we succeed in developing and commercializing one or more of our product candidates, we expect to incur substantial losses for the foreseeable future, as we:

continue to undertake pre-clinical development and clinical trials for our product candidates;
seek regulatory approvals for our product candidates;
in-license or otherwise acquire additional products or product candidates;
implement additional internal systems and infrastructure; and
hire additional personnel.

We also expect to experience negative cash flow for the foreseeable future as we fund our operating losses and capital expenditures. These losses and negative cash flows have had, and will continue to have, an adverse effect on our stockholders equity and working capital. Our failure to achieve or maintain profitability could negatively impact the value of our common stock.

Because of the numerous risks and uncertainties associated with pharmaceutical product development, we are unable to accurately predict the timing or amount of increased expenses or when, or if, we will be able to achieve or maintain profitability. In addition, our expenses could increase beyond expectations if we are required by the FDA to perform studies in addition to those that we currently anticipate. Currently, we have no products approved for commercial sale, and to date we have not generated any product revenue. We have financed our operations primarily through the sale of equity securities and debt financings. The size of our future net losses will depend, in part, on the rate of growth of our expenses and the rate of growth, if any, of our revenues. Revenues from potential strategic partnerships are uncertain because we may not enter into any strategic partnerships. If we are unable to develop and commercialize one or more of our product candidates, or if sales revenue from any product candidate that receives marketing approval is insufficient, we will not achieve profitability. Even if we do achieve profitability, we may not be able to sustain or increase profitability.

The relationships between Two River Consulting, Riverbank Capital Securities and certain of our officers and directors may present potential conflicts of interest.

Arie S. Belldegrun and Joshua A. Kazam, each of whom are currently directors of our company, and David M. Tanen, a co-founder, director and secretary of our company until September 2009, are the managing members of Two River Consulting, LLC, or Two River. Since June 2009, Mr. Kazam has also served as our President and Chief Executive Officer. In July 2009, we entered into a services agreement with Two River pursuant to which it performs various management, clinical development, operational and administrative activities and services for us. As consideration for these services, we pay Two River a monthly cash fee of $65,000. In addition, upon entering into the services agreement, we issued to designees of Two River (excluding Dr. Belldegrun and Messrs. Kazam and Tanen) stock options to purchase an aggregate of 750,000 shares of our common stock at an exercise price of $0.89 per share. The right to purchase the shares subject to the option vests and becomes exercisable in three installments, the first of which, relating to 187,500 shares, was immediately exercisable upon issuance. A second installment, relating to a total of up to 375,000 shares, was scheduled to vest in its entirety if we, with Two River s services, completed specified clinical development milestones relating to our Phase II clinical trial of CD-NP by January 15, 2010; provided that the services agreement provided that the number of shares that may vest and become exercisable would decrease on a

monthly basis over a five-month period following January 15, 2010. On February 15, 2010, this milestone was achieved, resulting in the vesting of a total of 318,750 shares subject to the second milestone. The third installment, relating to a total of up to 187,500 shares, will vest in its entirety if Two River delivers to us specified data and other written materials relating to the Phase II clinical trial of CD-NP within 90 days

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of completion of the patient enrollment of that study; provided, that the number of shares that will become exercisable in connection with the third installment will decrease on a pro rata basis until the 150th day following completion of patient enrollment, at which time 50% of the shares subject to the third installment will vest, and after 150 days none of the shares subject to the third installment will vest. Each of Messrs. Kazam and Tanen, as well as Peter M. Kash, the chairman of our Board of Directors, are also officers and directors of Riverbank Capital Securities, Inc., or Riverbank, a registered broker-dealer, which served as placement agent in connection with our July 2009 private placement. Scott L. Navins, the Financial and Operations Principal of Riverbank, serves as our Treasurer.

Generally, Delaware corporate law requires that any transactions between us and any of our affiliates be on terms that, when taken as a whole, are substantially as favorable to us as those then reasonably obtainable from a person who is not an affiliate in an arms-length transaction. We believe that the terms of the agreements that we have entered into with Two River and Riverbank satisfy the requirements of Delaware law, but in the event one or more parties challenges the fairness of such terms we may have to expend substantial resources in resolving such challenges and can make no guarantees of the result. Further, none of our affiliates or Two River is obligated pursuant to any agreement or understanding with us to make any additional products or technologies available to us, nor can there be any assurance, and the investors should not expect, that any biomedical or pharmaceutical product or technology identified by such affiliates or Two River in the future will be made available to us. In addition, certain of our current officers and directors or certain of any officers or directors hereafter appointed may from time to time serve as officers or directors of other biopharmaceutical or biotechnology companies. There can be no assurance that such other companies will not have interests in conflict with our own.

We may not be able to manage our growth.

Should we achieve our near-term milestones, such as completion of our ongoing Phase II clinical trial of CD-NP with positive data, of which no assurance can be given, our long-term viability will depend upon the expansion of our operations and the effective management of our growth, which will place a significant strain on our management and on our administrative, operational and financial resources. To manage this growth, we may need to expand our facilities, augment our operational, financial and management systems and hire and train additional qualified personnel. If we are unable to manage our growth effectively, our business would be harmed.

We are substantially dependent on the services of Two River and other consultants.

We have only two employees Daron Evans, our Chief Financial Officer, and Hsiao Lieu, our Vice President of Clinical Development. We currently rely heavily on Two River to render various other management, clinical development, regulatory, operational and administrative activities and services for us. We also rely in substantial part, and for the foreseeable future will continue to rely, on certain independent organizations and consultants to provide other important services, including substantially all aspects of regulatory approval, clinical management, and manufacturing. There can be no assurance that the services of independent organizations, advisors and consultants will continue to be available to us on a timely basis when needed, or that we can find qualified replacements.

Our CEO provides his services on a part-time basis and significant other services are currently being rendered by outside consultants. If we are unable to hire additional qualified personnel in the future, our ability to grow our business may be harmed.

Although we currently engage Two River to provide personnel to perform a variety of management, clinical development and other services on our behalf on a consulting basis, we expect to directly hire employees, including at the senior management level, in the future as we further the development of our clinical programs. In addition, Joshua Kazam, our current President and Chief Executive Officer, provides his services to us on a part-time, non-employee

basis. As we further the development of our product candidates, we intend to hire a full-time chief executive officer and other employees to perform the services currently being rendered by Two River. Accordingly, our ability to attract and retain qualified personnel will be critical to managing and growing our business in the future, especially the hiring and retention of key executive personnel and scientific staff. There is intense competition and demand for qualified personnel in our area of

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business and no assurances can be made that we will be able to retain the personnel necessary for the development of our business on commercially reasonable terms, if at all.

We face potential product liability exposure, and if claims are brought against us or if we are found liable, we may incur substantial liability for a product candidate and may have to limit its commercialization.

The use of our product candidates in clinical trials and the sale of any products for which we obtain marketing approval, if at all, expose us to the risk of product liability claims. Product liability claims might be brought against us by consumers, health care providers or others using, administering or selling our products. If we cannot successfully defend ourselves against these claims, we will incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in:

withdrawal of clinical trial participants;
termination of clinical trial sites or entire trial programs;
costs of related litigation;
substantial monetary awards to patients or other claimants;
decreased demand for our product candidates;
impairment of our business reputation;
loss of revenues; and
the inability to commercialize our product candidates.

We have obtained product liability insurance coverage for our clinical trials, both foreign and domestically. However, our insurance coverage may not reimburse us or may not be sufficient to reimburse us for any expenses or losses we may suffer. Moreover, insurance coverage is becoming increasingly expensive, and, in the future, we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses due to liability. We intend to expand our insurance coverage to include the sale of commercial products if we obtain marketing approval for our product candidates in development, but we may be unable to obtain commercially reasonable product liability insurance for any products approved for marketing. On occasion, large judgments have been awarded in class action lawsuits based on drugs that had unanticipated side effects. A successful product liability claim or series of claims brought against us could cause our stock price to fall and, if judgments exceed our insurance coverage, could decrease our cash and adversely affect our business.

We are controlled by current directors, officers, and principal stockholders.

Our directors, officers, and principal stockholders beneficially own approximately 36% of our outstanding voting securities. Accordingly, our executive officers, directors, and principal stockholders will have the ability to exert substantial influence over the election of our Board of Directors and the outcome of issues submitted to our stockholders.

We are required to implement additional finance and accounting systems, procedures and controls in order to satisfy requirements under the securities laws, including the Sarbanes-Oxley Act of 2002, which increase our costs and divert management s time and attention.

We have established processes, controls and procedures that will allow our management to report on, and our independent registered public accounting firm to attest to, our internal control over financial reporting when required to do so under Section 404 of the Sarbanes-Oxley Act of 2002. Additionally, we periodically review the effectiveness of our internal controls and procedures with a continuous improvement philosophy.

As a company with limited capital and human resources, we anticipate that more of management s time and attention will be diverted from our business to ensure compliance with these regulatory requirements than would be the case with a company that has well established controls and procedures. This diversion of management s time and attention may have a material adverse effect on our business, financial condition and results of operations.

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In the event we identify significant deficiencies or material weaknesses in our internal control over financial reporting that we cannot remediate in a timely manner, or if we are unable to receive a positive attestation from our independent registered public accounting firm with respect to our internal control over financial reporting when we are required to do so, investors and others may lose confidence in the reliability of our financial statements. If this occurs, the trading price of our common stock, if any, and ability to obtain any necessary equity or debt financing could suffer. In addition, in the event that our independent registered public accounting firm is unable to rely on our internal control over financial reporting in connection with its audit of our financial statements, and in the further event that it is unable to devise alternative procedures in order to satisfy itself as to the material accuracy of our financial statements and related disclosures, we may be unable to file our periodic reports with the SEC. This would likely have an adverse affect on the trading price of our common stock, if any, and our ability to secure any necessary additional financing, and could result in the delisting of our common stock. In such event, the liquidity of our common stock would be severely limited and the market price of our common stock would likely decline significantly.

Recent turmoil in the financial markets and the global recession has adversely affected and may continue to adversely affect our industry, business and ability to obtain financing.

Recent global market and economic conditions have been unprecedented and challenging with tighter credit conditions and recession in most major economies continuing into 2010. Continued concerns about the systemic impact of potential long-term and wide-spread recession, energy costs, geopolitical issues, the availability and cost of credit, and the global housing and mortgage markets have contributed to increased market volatility and diminished expectations for western and emerging economies. In the second half of 2008, added concerns fueled by the U.S. government conservatorship of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association, the declared bankruptcy of Lehman Brothers Holdings Inc., the U.S. government financial assistance to American International Group Inc., Citibank, Bank of America and other federal government interventions in the U.S. financial system lead to increased market uncertainty and instability in both U.S. and international capital and credit markets. These conditions, combined with volatile oil prices, declining business and consumer confidence and increased unemployment, have contributed to volatility of unprecedented levels.

As a result of these market conditions, the cost and availability of credit has been and may continue to be adversely affected by illiquid credit markets and wider credit spreads. Concern about the stability of the markets generally and the strength of counterparties specifically has led many lenders and institutional investors to reduce, and in some cases, cease to provide credit to businesses and consumers. These factors have lead to a decrease in spending by businesses and consumers alike, and a corresponding decrease in global infrastructure spending. Continued turbulence in the U.S. and international markets and economies and prolonged declines in business consumer spending may adversely affect our liquidity and financial condition, including our ability to refinance any maturing liabilities and access the capital markets to meet liquidity needs. If the conditions in the U.S. and world economic markets remain uncertain or continue to be volatile, or if they deteriorate further, our industry and business may be adversely affected.

Risks Relating to the Clinical Testing, Regulatory Approval, Manufacturing and Commercialization of Our Product Candidates

Delays in the commencement, enrollment, and completion of clinical testing could result in increased costs to us and delay or limit our ability to obtain regulatory approval for our product candidates.

Delays in the commencement, enrollment, and completion of clinical testing could also significantly affect our product development costs. We do not know whether our ongoing Phase II clinical trial of CD-NP will be completed on schedule or at all. Thereafter, subject to the results of our current Phase II trial, we do not know whether further planned clinical trials for CD-NP will begin on time or be completed on schedule, if at all. The commencement and completion of clinical trials requires us to identify and maintain a sufficient number of trial sites, many of which may already be engaged in other clinical trial programs for the same indication as our product candidates, may be required to withdraw from a clinical trial as a result of changing standards of care, or may become ineligible to participate in clinical studies.

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The commencement, enrollment, and completion of clinical trials can be delayed for a variety of other reasons, including delays related to:

reaching agreements on acceptable terms with prospective clinical research organizations, or CROs, and trial sites, the terms of which can be subject to extensive negotiation and may vary significantly among different CROs and trial sites;

obtaining regulatory approval to commence a clinical trial;

obtaining institutional review board, or IRB, approval to conduct a clinical trial at numerous prospective sites;

recruiting and enrolling patients to participate in clinical trials for a variety of reasons, including meeting the enrollment criteria for our study and competition from other clinical trial programs for the same indication as our product candidates;

retaining patients who have initiated a clinical trial but may be prone to withdraw due to the treatment protocol, lack of efficacy, personal issues, or side effects from the therapy, or who are lost to further follow-up;

maintaining and supplying clinical trial material on a timely basis;

complying with design protocols of any applicable special protocol assessment we receive from the FDA; and

collecting, analyzing and reporting final data from the clinical trials.

In addition, a clinical trial may be suspended or terminated by us, the FDA, or other regulatory authorities due to a number of factors, including:

failure to conduct the clinical trial in accordance with regulatory requirements or our clinical protocols;

inspection of the clinical trial operations or trial sites by the FDA or other regulatory authorities resulting in the imposition of a clinical hold;

unexpected delays in approvals of protocol amendments by regulatory authorities;

unforeseen safety issues or any determination that a trial presents unacceptable health risks;

lack of adequate funding to continue the clinical trial, including the incurrence of unforeseen costs due to enrollment delays; or

requirements to conduct additional trials and studies, and increased expenses associated with the services of our CROs and other third parties.

If we are required to conduct additional clinical trials or other testing of our product candidates beyond those that we currently contemplate, particularly for our CD-NP and CU-NP product candidates, we or our development partners, if any, may be delayed in obtaining, or may not be able to obtain, marketing approval for these product candidates. Based upon our discussions with the FDA, we intend to conduct clinical programs for each of our CD-NP and CU-NP product candidates. We may not be able to obtain approval for indications that are as broad as intended, or we may be able to obtain approval only for indications that are entirely different than those indications for which we sought approval.

Additionally, changes in regulatory requirements and guidance may occur, and we may need to amend clinical trial protocols to reflect these changes with appropriate regulatory authorities. Amendments may require us to resubmit our clinical trial protocols to IRBs for re-examination, which may impact the costs, timing, or successful completion of a clinical trial. If we experience delays in the completion of, or if we terminate, our clinical trials, the commercial prospects for our product candidates will be harmed, and our ability to generate product revenues will be delayed. In addition, many of the factors that cause, or lead to, a delay in the commencement or completion of clinical trials may also ultimately lead to the denial of

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regulatory approval of a product candidate. Even if we are able to ultimately commercialize our product candidates, other therapies for the same or similar indications may have been introduced to the market and established a competitive advantage.

Any delays in obtaining regulatory approvals may:

delay commercialization of, and our ability to derive product revenues from, our product candidates;
impose costly procedures on us; or
diminish any competitive advantages that we may otherwise enjoy.

If we do not establish strategic partnerships, we will have to undertake development and commercialization efforts on our own, which would be costly and delay our ability to commercialize any future products or product candidates.

An element of our business strategy includes potentially partnering with pharmaceutical, biotechnology and other companies to obtain assistance for the development and potential commercialization of our product candidates, including the cash and other resources we need for such development and potentially commercialization. We intend to enter into potential strategic partnerships with third parties to develop and commercialize our product candidates that are intended for larger markets, and we may enter into strategic partnerships for product candidates that are targeted toward specialty markets. We face significant competition in seeking appropriate strategic partners, and these potential strategic partnerships can be intricate and time consuming to negotiate and document. In addition, the early development stage of our product candidates may make it more difficult for us to identify and secure a strategic partner because of the additional risks inherent in early stage technologies. We may not be able to negotiate strategic partnerships on acceptable terms, or at all. We are unable to predict when, if ever, we will enter into any potential strategic partnerships because of the numerous risks and uncertainties associated with establishing strategic partnerships. If we are unable to negotiate strategic partnerships for our product candidates we may be forced to curtail the development of a particular candidate, reduce or delay its development program, delay its potential commercialization, reduce the scope of our sales or marketing activities or undertake development or commercialization activities at our own expense. In addition, we will bear all the risk related to the development of that product candidate. If we elect to increase our expenditures to fund development or commercialization activities on our own, we will need to obtain substantial additional capital, which may not be available to us on acceptable terms, or at all. If we do not have sufficient funds, we will not be able to bring our product candidates to market and generate product revenue.

If we enter into strategic partnerships, we may be required to relinquish important rights to and control over the development of our product candidates or otherwise be subject to terms unfavorable to us.

If we enter into any strategic partnerships with pharmaceutical or biotechnology companies we will be subject to a number of risks, including:

we may not be able to control the amount and timing of resources that our strategic partners devote to the development or commercialization of product candidates;
strategic partners may delay clinical trials, provide insufficient funding, terminate a clinical trial or abandon a product candidate, repeat or conduct new clinical trials or require a new version of a product candidate for clinical testing;
strategic partners may not pursue further development and commercialization of products resulting from the strategic partnering arrangement or may elect to discontinue research and development programs;
strategic partners may not commit adequate resources to the marketing and distribution of any future products, limiting our potential revenues from these products;

disputes may arise between us and our strategic partners that result in the delay or termination of the research, development or commercialization of our product candidates or that result in costly litigation or arbitration that diverts management s attention and consumes resources;

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strategic partners may experience financial difficulties;
strategic partners may not properly maintain or defend our intellectual property rights or may use our proprietary information in a manner that could jeopardize or invalidate our proprietary information or expose us to potential litigation;
business combinations or significant changes in a strategic partner s business strategy may also adversely affect a strategic partner s willingness or ability to complete its obligations under any arrangement; and
strategic partners could independently move forward with a competing product candidate developed either independently or in collaboration with others, including our competitors.

As the results of earlier clinical trials are not necessarily predictive of future results, CD-NP, CU-NP or any other product candidate we advance into clinical trials may not have favorable results in later clinical trials or receive regulatory approval.

Even if our clinical trials are completed as planned, including our ongoing Phase II clinical trial of CD-NP, we cannot be certain that their results will support the claims of our product candidates. Positive results in pre-clinical testing and early clinical trials does not ensure that results from later clinical trials will also be positive, and we cannot be sure that the results of later clinical trials will replicate the results of prior clinical trials and pre-clinical testing. A number of companies in the pharmaceutical industry, including those with greater resources and experience, have suffered significant setbacks in Phase III clinical trials, even after seeing promising results in earlier clinical trials.

Our clinical trial process may fail to demonstrate that our product candidates are safe for humans and effective for indicated uses. This failure would cause us to abandon a product candidate and may delay development of other product candidates. Any delay in, or termination of, our clinical trials will delay the filing of our NDAs with the FDA and, ultimately, our ability to commercialize our product candidates and generate product revenues. In addition, our clinical trials to date involve a small patient population. Because of the small sample size, the results of these clinical trials may not be indicative of future results.

Despite the results reported in earlier clinical trials for our product candidates, we do not know whether any Phase II, Phase III or other clinical programs we may conduct will demonstrate adequate efficacy and safety to result in regulatory approval to market our product candidates.

Our product candidates use novel alternative technologies and therapeutic approaches, which have not been widely studied.

Our product development efforts focus on novel alternative technologies and therapeutic approaches that have not been widely studied. These approaches and technologies may not be successful. We are applying these approaches and technologies in our attempt to discover new treatments for conditions that are also the subject of research and development efforts of many other companies.

Our drug development programs depend upon third-party researchers who are outside our control.

We will depend upon independent investigators and collaborators, such as universities and medical institutions, to conduct our pre-clinical and clinical trials under agreements with us. These collaborators are not our employees, and we cannot control the amount or timing of resources that they devote to our programs. These investigators may not assign as great a priority to our programs or pursue them as diligently as we would if we were undertaking such programs ourselves. If outside collaborators fail to devote sufficient time and resources to our drug-development programs, or if their performance is substandard, the approval of our FDA applications, if any, and our introduction of new drugs, if any, will be delayed. These collaborators may also have relationships with other commercial entities, some of whom may compete with us. If our collaborators assist our competitors at our expense, our competitive

position would be harmed.

We rely exclusively on third parties to formulate and manufacture our product candidates.

We have no experience in drug formulation or manufacturing and do not intend to establish our own manufacturing facilities. We lack the resources and expertise to formulate or manufacture our own product

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candidates. We currently, and intend in the future to, contract with one or more manufacturers to manufacture, supply, store, and distribute drug supplies for our clinical trials. If any of our product candidates receive FDA approval, we will rely on one or more third-party contractors to manufacture supplies of our drug candidates. Our current and anticipated future reliance on a limited number of third-party manufacturers exposes us to the following risks:

We may be unable to identify manufacturers needed to manufacture our product candidates on acceptable terms or at all, because the number of potential manufacturers is limited, and subsequent to approval of a new drug application, or NDA, the FDA must approve any replacement contractor. This approval would require new testing and compliance inspections. In addition, a new manufacturer may have to be educated in, or develop substantially equivalent processes for, production of our products after receipt of FDA approval, if any.

Some of the raw materials needed to manufacture our product candidates are available from a very limited number of suppliers. Although we believe we have good relationships with these suppliers, we may have difficulty identifying alternative suppliers if our arrangements with our current suppliers are disrupted or terminated.

Our third-party manufacturers might be unable to formulate and manufacture our drugs in the volume and of the quality required to meet our clinical and commercial needs, if any.

Our future contract manufacturers may not perform as agreed or may not remain in the contract manufacturing business for the time required to supply our clinical trials or to successfully produce, store, and distribute our products.

Drug manufacturers are subject to ongoing periodic unannounced inspection by the FDA, the Drug Enforcement Agency, and corresponding state agencies to ensure strict compliance with good manufacturing practice and other government regulations and corresponding foreign standards. We do not have control over third-party manufacturers compliance with these regulations and standards.

Each of these risks could delay our clinical trials, the approval, if any, of our product candidates by the FDA, or the commercialization of our product candidates, or result in higher costs or deprive us of potential product revenues.

Our product candidates may have undesirable side effects and cause our approved drugs to be taken off the market.

If any of our product candidates receive marketing approval and we or others later identify undesirable side effects caused by such product candidates:

regulatory authorities may require the addition of labeling statements, specific warnings, a contraindication, or field alerts to physicians and pharmacies;

regulatory authorities may withdraw their approval of the product;

we may be required to change the way the product is administered, conduct additional clinical trials or change the labeling of the product;

we may have limitations on how we promote our drugs;

regulatory authorities may require us to take our approved drug off the market;

sales of products may decrease significantly;

we may be subject to litigation or product liability claims; and

our reputation may suffer.

Any of these events could prevent us from achieving or maintaining market acceptance of the affected product or could substantially increase our commercialization costs and expenses, which in turn could delay or prevent us from generating significant revenues from its sale.

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Even if our product candidates receive regulatory approval in the United States, we may never receive approval or commercialize our product candidates outside of the United States.

In order to market and commercialize any product candidate outside of the United States, we must establish and comply with numerous and varying regulatory requirements of other countries regarding safety and efficacy. Approval procedures vary among countries and can involve additional product testing and additional administrative review periods. For example, European regulatory authorities generally require a trial comparing the efficacy of the new drug to an existing drug prior to granting approval. The time required to obtain approval in other countries might differ from that required to obtain FDA approval. The regulatory approval process in other countries may include all of the risks detailed above regarding FDA approval in the United States as well as other risks. Regulatory approval in one country does not ensure regulatory approval in another, but a failure or delay in obtaining regulatory approval in one country may have a negative effect on the regulatory approval process in others. Failure to obtain regulatory approval in other countries or any delay or setback in obtaining such approval could have the same adverse effects detailed above regarding FDA approval in the United States. Such effects include the risks that our product candidates may not be approved for all indications requested, which could limit the uses of our product candidates and have an adverse effect on product sales and potential royalties, and that such approval may be subject to limitations on the indicated uses for which the product may be marketed or require costly, post-marketing follow-up studies.

If clinical trials of our CD-NP and CU-NP product candidates or future product candidates do not produce results necessary to support regulatory approval in the United States or elsewhere or if they show undesirable side effects, we will be unable to commercialize these product candidates.

To receive regulatory approval for the commercial sale of CD-NP, CU-NP or any other product candidates, we must conduct adequate and well-controlled clinical trials to demonstrate efficacy and safety in humans. Clinical testing is expensive, takes many years and has an uncertain outcome. Clinical failure can occur at any stage of the testing. Our clinical trials may produce negative or inconclusive results, and we may decide, or regulators may require us, to conduct additional clinical and/or non-clinical testing. In addition, the results of our clinical trials may show that our product candidates may cause undesirable side effects, which could interrupt, delay or halt clinical trials, resulting in the denial of regulatory approval by the FDA and other regulatory authorities.

In light of widely publicized events concerning the safety risk of certain drug products, regulatory authorities, members of Congress, the Government Accounting Office, medical professionals and the general public have raised concerns about potential drug safety issues. These events have resulted in the withdrawal of drug products, revisions to drug labeling that further limit use of the drug products and establishment of risk management programs that may, for instance, restrict distribution of drug products. The increased attention to drug safety issues may result in a more cautious approach by the FDA to clinical trials. Data from clinical trials may receive greater scrutiny with respect to safety, which may make the FDA or other regulatory authorities more likely to terminate clinical trials before completion, or require longer or additional clinical trials that may result in substantial additional expense and a delay or failure in obtaining approval or approval for a more limited indication than originally sought.

Our failure to adequately demonstrate the efficacy and safety of CD-NP, CU-NP or any other product candidates would prevent regulatory approval and, ultimately, the commercialization of that product candidate.

We have no experience selling, marketing, or distributing products and no internal capability to do so. If we are unable to establish an effective and focused sales force and marketing infrastructure, we will not be able to commercialize our product candidates successfully.

We currently have no sales, marketing, or distribution capabilities. We do not anticipate having resources in the foreseeable future to allocate to the sales and marketing of our proposed products. Our future success depends, in part, on our ability to enter into and maintain sales and marketing collaborative relationships, or on our ability to build sales and marketing capabilities internally. If we enter into a sales and marketing collaborative relationship, then we will be dependent upon the collaborator s strategic interest in the products under development, and such collaborator s ability to successfully market and sell any such products. We intend to pursue collaborative arrangements regarding the sales and marketing of our products, however, there

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can be no assurance that we will be able to establish or maintain such collaborative arrangements, or if able to do so, that they will have effective sales forces. To the extent that we decide not to, or are unable to, enter into collaborative arrangements with respect to the sales and marketing of our proposed products, significant capital expenditures, management resources, and time will be required to establish and develop an in-house marketing and sales force with technical expertise. There can also be no assurance that we will be able to establish or maintain relationships with third-party collaborators or develop in-house sales and distribution capabilities. To the extent that we depend on third parties for marketing and distribution, any revenues we receive will depend upon the efforts of such third parties, and there can be no assurance that such efforts will be successful. In addition, there can also be no assurance that we will be able to market and sell our product in the United States or overseas.

We will experience intense competition with respect to our existing and future product candidates.

The pharmaceutical industry is highly competitive, with a number of established, large pharmaceutical companies, as well as many smaller companies. Many of these companies have greater financial resources, marketing capabilities, and experience in obtaining regulatory approvals for product candidates. There are many pharmaceutical companies, biotechnology companies, public and private universities, government agencies, and research organizations actively engaged in research and development of products which may target the same indications as our product candidates. We expect any future products and product candidates we develop to compete on the basis of, among other things, product efficacy and safety, time to market, price, extent of adverse side effects, and convenience of treatment procedures. One or more of our competitors may develop products based upon the principles underlying our proprietary technologies earlier than us, obtain approvals for such products from the FDA more rapidly than us, or develop alternative products or therapies that are safer, more effective and/or more cost effective than any products developed by us.

Competitors may seek to develop alternative formulations of our product candidates that address our targeted indications. The commercial opportunity for our product candidates could be significantly harmed if competitors are able to develop alternative formulations outside the scope of our product candidates. Compared to us, many of our potential competitors have substantially greater:

capital resources;
development resources, including personnel and technology;
clinical trial experience;
regulatory experience;
expertise in prosecution of intellectual property rights;
manufacturing and distribution experience; and
sales and marketing experience.

As a result of these factors, our competitors may obtain regulatory approval of their products more rapidly than we are able to or may obtain patent protection or other intellectual property rights that limit our ability to develop or commercialize our product candidates. Our competitors may also develop drugs that are more effective, useful, and less costly than ours, and may also be more successful than us in manufacturing and marketing their products.

Developments by competitors may render our product candidates or technologies obsolete or non-competitive.

The biotechnology and pharmaceutical industries are intensely competitive and subject to rapid and significant technological change. The drugs that we are attempting to develop will have to compete with existing therapies. In addition, a large number of companies are pursuing the development of pharmaceuticals that target the same diseases and conditions that we are targeting. We face competition from pharmaceutical and biotechnology companies in the United States and abroad. In addition, companies pursuing different but related fields represent substantial

competition. Many of these organizations competing with us have substantially greater capital resources, larger research and development staffs and facilities, longer drug

Risks Relating to the Clinical Testing, Regulatory Approval, Manufacturing and Commercialization of Our Product C

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development history in obtaining regulatory approvals, and greater manufacturing and marketing capabilities than we do. These organizations also compete with us to attract qualified personnel and parties for acquisitions, joint ventures, or other collaborations.

If any of our product candidates for which we receive regulatory approval do not achieve broad market acceptance, the revenues that we generate from their sales will be limited.

The commercial viability of our product candidates for which we obtain marketing approval from the FDA or other regulatory authorities will depend upon their acceptance among physicians, the medical community, and patients, and coverage and reimbursement of them by third-party payors, including government payors. The degree of market acceptance of any of our approved products will depend on a number of factors, including:

limitations or warnings contained in a product s FDA-approved labeling;
changes in the standard of care for the targeted indications for any of our product candidates, which could reduce the marketing impact of any claims that we could make following FDA approval;
limitations inherent in the approved indication for any of our product candidates compared to more commonly understood or addressed conditions;
lower demonstrated clinical safety and efficacy compared to other products;
prevalence and severity of adverse effects;
ineffective marketing and distribution efforts;
lack of availability of reimbursement from managed care plans and other third-party payors;
lack of cost-effectiveness;
timing of market introduction and perceived effectiveness of competitive products;
availability of alternative therapies at similar costs; and
potential product liability claims.

Our ability to effectively promote and sell our product candidates in the marketplace will also depend on pricing and cost effectiveness, including our ability to manufacture a product at a competitive price. We will also need to demonstrate acceptable evidence of safety and efficacy and may need to demonstrate relative convenience and ease of administration. Market acceptance could be further limited depending on the prevalence and severity of any expected or unexpected adverse side effects associated with our product candidates. If our product candidates are approved but do not achieve an adequate level of acceptance by physicians, health care payors, and patients, we may not generate sufficient revenue from these products, and we may not become or remain profitable. In addition, our efforts to educate the medical community and third-party payors on the benefits of our product candidates may require significant resources and may never be successful. If our approved drugs fail to achieve market acceptance, we will not be able to generate significant revenue, if any.

Even if our product candidates receive regulatory approval, we may still face future development and regulatory difficulties.

Even if United States regulatory approval is obtained, the FDA may still impose significant restrictions on a product s indicated uses or marketing, or impose ongoing requirements for potentially costly post-approval studies. Given the number of recent high-profile adverse safety events with certain drug products, the FDA may require, as a condition of approval, costly risk management programs which may include safety surveillance, restricted distribution and use, patient education, enhanced labeling, special packaging or labeling, expedited reporting of certain adverse events, pre-approval of promotional materials, and restrictions on direct-to-consumer advertising. Furthermore, heightened Congressional scrutiny on the adequacy of the FDA s drug approval process and the agency s efforts to assure the safety of marketed drugs has resulted in the proposal of new legislation addressing drug safety issues. If enacted, any new legislation could result in delays or increased costs during the period of product development, clinical trials, and

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regulatory review and approval, as well as increased costs to assure compliance with any new post-approval regulatory requirements. Any of these restrictions or requirements could force us to conduct costly studies or increase the time for us to become profitable. For example, any labeling approved for CD-NP, CU-NP, or any other product candidates may include a restriction on the term of its use, or it may not include one or more of our intended indications.

Our product candidates will also be subject to ongoing FDA requirements for the labeling, packaging, storage, advertising, promotion, record-keeping, and submission of safety and other post-market information on the drug. In addition, approved products, manufacturers, and manufacturers facilities are subject to continual review and periodic inspections. If a regulatory agency discovers previously unknown problems with a product, such as adverse events of unanticipated severity or frequency, or problems with the facility where the product is manufactured, a regulatory agency may impose restrictions on that product or us, including requiring withdrawal of the product from the market. If our product candidates fail to comply with applicable regulatory requirements, such as current cGMPs, a regulatory agency may:

issue warning letters;
require us to enter into a consent decree, which can include imposition of various fines, reimbursements for inspection costs, required due dates for specific actions, and penalties for noncompliance;
impose other civil or criminal penalties;
suspend regulatory approval;
suspend any ongoing clinical trials;
refuse to approve pending applications or supplements to approved applications filed by us;
impose restrictions on operations, including costly new manufacturing requirements; or
seize or detain products or require a product recall.

Our ability to generate product revenues will be diminished if our drugs sell for inadequate prices or patients are unable to obtain adequate levels of reimbursement.

Our ability to generate significant sales of our products depend on the availability of adequate coverage and reimbursement from third-party payors. Healthcare providers that purchase medicine or medical products for treatment of their patients generally rely on third-party payors to reimburse all or part of the costs and fees associated with the products. Adequate coverage and reimbursement from governmental, such as Medicare and Medicaid, and commercial payors is critical to new product acceptance. Patients are unlikely to use our products if they do not receive reimbursement adequate to cover the cost of our products.

In addition, the market for our future products will depend significantly on access to third-party payors drug formularies, or lists of medications for which third-party payors provide coverage and reimbursement. Industry competition to be included in such formularies results in downward pricing pressures on pharmaceutical companies. Third-party payors may refuse to include a particular branded drug in their formularies when a generic equivalent is available.

All third-party payors, whether governmental or commercial, whether inside the United States or outside, are developing increasingly sophisticated methods of controlling healthcare costs. In addition, in the United States, no uniform policy of coverage and reimbursement for medical technology exists among all these payors. Therefore, coverage of and reimbursement for medical products can differ significantly from payor to payor.

Further, we believe that future coverage and reimbursement may be subject to increased restrictions both in the United States and in international markets. Third-party coverage and reimbursement for our products may not be available or adequate in either the United States or international markets, limiting our ability to sell our products on a profitable

basis.

Risks Relating to the Clinical Testing, Regulatory Approval, Manufacturing and Commercialization of Our Product C

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Significant uncertainty exists as to the reimbursement status of newly approved healthcare products. Healthcare payors, including Medicare, are challenging the prices charged for medical products and services. Government and other healthcare payors increasingly attempt to contain healthcare costs by limiting both coverage and the level of reimbursement for drugs. Even if our product candidates are approved by the FDA, insurance coverage may not be available, and reimbursement levels may be inadequate, to cover our drugs. If government and other healthcare payors do not provide adequate coverage and reimbursement levels for any of our products, once approved, market acceptance of our products could be reduced.

Risks Related to Our Intellectual Property

It is difficult and costly to protect our proprietary rights, and we may not be able to ensure their protection. If we fail to protect or enforce our intellectual property rights adequately or secure rights to patents of others, the value of our intellectual property rights would diminish.

Our commercial viability will depend in part on obtaining and maintaining patent protection and trade secret protection of our product candidates, and the methods used to manufacture them, as well as successfully defending these patents against third-party challenges. Our ability to stop third parties from making, using, selling, offering to sell, or importing our products is dependent upon the extent to which we have rights under valid and enforceable patents or trade secrets that cover these activities.

We license certain patent and other intellectual property rights that covers our product candidates from the Mayo Foundation. We rely on the Mayo Foundation to file, prosecute, and maintain patent applications, and otherwise protect the intellectual property to which we have a license, and we have not had and do not have primary control over these activities for certain of these patents or patent applications and other intellectual property rights. We cannot be certain that such activities by the Mayo Foundation have been or will be conducted in compliance with applicable laws and regulations, or will result in valid and enforceable patents and other intellectual property rights. Our enforcement of certain of these licensed patents or defense of any claims asserting the invalidity of these patents would also be subject to the cooperation of the third parties.

The patent positions of pharmaceutical and biopharmaceutical companies can be highly uncertain and involve complex legal and factual questions for which important legal principles remain unresolved. No consistent policy regarding the breadth of claims allowed in biopharmaceutical patents has emerged to date in the United States. The biopharmaceutical patent situation outside the United States is even more uncertain. Changes in either the patent laws or in interpretations of patent laws in the United States and other countries may diminish the value of our intellectual property. Accordingly, we cannot predict the breadth of claims that may be allowed or enforced in the patents we own or to which we have a license or third-party patents. Further, if any of our patents are deemed invalid and unenforceable, it could impact our ability to commercialize or license our technology.

The degree of future protection for our proprietary rights is uncertain because legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep our competitive advantage. For example:

others may be able to make compounds that are similar to our product candidates but that are not covered by the claims of any of our patents;
we might not have been the first to make the inventions covered by any issued patents or patent applications we may have (or third parties from whom we license intellectual property may have);
we might not have been the first to file patent applications for these inventions;

it is possible that any pending patent applications we may have will not result in issued patents;

any issued patents may not provide us with any competitive advantages, or may be held invalid or unenforceable as a result of legal challenges by third parties;

we may not develop additional proprietary technologies that are patentable; or

the patents of others may have an adverse effect on our business.

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We also may rely on trade secrets to protect our technology, especially where we do not believe patent protection is appropriate or obtainable. However, trade secrets are difficult to protect. Although we use reasonable efforts to protect our trade secrets, our employees, consultants, contractors, outside scientific collaborators, and other advisors may unintentionally or willfully disclose our information to competitors. Enforcing a claim that a third party illegally obtained and is using any of our trade secrets is expensive and time consuming, and the outcome is unpredictable. In addition, courts outside the United States are sometimes less willing to protect trade secrets. Moreover, our competitors may independently develop equivalent knowledge, methods, and know-how.

If any of our trade secrets, know-how or other proprietary information is disclosed, the value of our trade secrets, know-how and other proprietary rights would be significantly impaired and our business and competitive position would suffer.

Our viability also depends upon the skills, knowledge and experience of our scientific and technical personnel, our consultants and advisors as well as our licensors and contractors. To help protect our proprietary know-how and our inventions for which patents may be unobtainable or difficult to obtain, we rely on trade secret protection and confidentiality agreements. To this end, we require all of our employees, consultants, advisors and contractors to enter into agreements which prohibit the disclosure of confidential information and, where applicable, require disclosure and assignment to us of the ideas, developments, discoveries and inventions important to our business. These agreements may not provide adequate protection for our trade secrets, know-how or other proprietary information in the event of any unauthorized use or disclosure or the lawful development by others of such information. If any of our trade secrets, know-how or other proprietary information is disclosed, the value of our trade secrets, know-how and other proprietary rights would be significantly impaired and our business and competitive position would suffer.

We may incur substantial costs as a result of litigation or other proceedings relating to patent and other intellectual property rights and we may be unable to protect our rights to, or use of, our technology.

If we choose to go to court to stop someone else from using the inventions claimed in our patents, that individual or company has the right to ask the court to rule that these patents are invalid and/or should not be enforced against that third party. These lawsuits are expensive and would consume time and other resources even if we were successful in stopping the infringement of these patents. In addition, there is a risk that the court will decide that these patents are not valid and that we do not have the right to stop the other party from using the inventions. There is also the risk that, even if the validity of these patents is upheld, the court will refuse to stop the other party on the ground that such other party s activities do not infringe our rights to these patents. In addition, the United States Supreme Court has recently invalidated some tests used by the United States Patent and Trademark Office, or USPTO, in granting patents over the past 20 years. As a consequence, several issued patents may be found to contain invalid claims according to the newly revised standards. Some of our own or in-licensed patents may be subject to challenge and subsequent invalidation in a re-examination proceeding before the USPTO or during litigation under the revised criteria which make it more difficult to obtain patents.

Furthermore, a third party may claim that we or our manufacturing or commercialization partners are using inventions covered by the third party s patent rights and may go to court to stop us from engaging in our normal operations and activities, including making or selling our product candidates. These lawsuits are costly and could affect our results of operations and divert the attention of managerial and technical personnel. There is a risk that a court would decide that we or our commercialization partners are infringing the third party s patents and would order us or our partners to stop the activities covered by the patents. In addition, there is a risk that a court will order us or our partners to pay the other party damages for having violated the other party s patents. We have agreed to indemnify certain of our commercial partners against certain patent infringement claims brought by third parties. The biotechnology industry has produced a proliferation of patents, and it is not always clear to industry participants, including us, which patents

cover various types of products or methods of use. The coverage of patents is subject to interpretation by the courts, and the interpretation is not always uniform. If we are sued for patent infringement, we would need to demonstrate that our products or methods of use either do not infringe the patent claims of the relevant patent

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and/or that the patent claims are invalid, and we may not be able to do this. Proving invalidity, in particular, is difficult since it requires a showing of clear and convincing evidence to overcome the presumption of validity enjoyed by issued patents.

Because some patent applications in the United States may be maintained in secrecy until the patents are issued, because patent applications in the United States and many foreign jurisdictions are typically not published until eighteen months after filing, and because publications in the scientific literature often lag behind actual discoveries, we cannot be certain that others have not filed patent applications for technology covered by our issued patents or our pending applications, or that we were the first to invent the technology. Our competitors may have filed, and may in the future file, patent applications covering technology similar to ours. Any such patent application may have priority over our patent applications or patents, which could further require us to obtain rights to issued patents covering such technologies. If another party has filed a United States patent application on inventions similar to ours, we may have to participate in an interference proceeding declared by the USPTO to determine priority of invention in the United States. The costs of these proceedings could be substantial, and it is possible that such efforts would be unsuccessful if unbeknownst to us, the other party had independently arrived at the same or similar invention prior to our own invention, resulting in a loss of our United States patent position with respect to such inventions.

Some of our competitors may be able to sustain the costs of complex patent litigation more effectively than we can because they have substantially greater resources. In addition, any uncertainties resulting from the initiation and continuation of any litigation could have a material adverse effect on our ability to raise the funds necessary to continue our operations.

Risks Relating to this Offering and Our Common Stock

We expect that our stock price will fluctuate significantly, and you may not be able to resell your shares at or above your investment price.

The stock market, particularly in recent years, has experienced significant volatility, particularly with respect to pharmaceutical, biotechnology and other life sciences company stocks. The volatility of pharmaceutical, biotechnology and other life sciences company stocks often does not relate to the operating performance of the companies represented by the stock. Factors that could cause volatility in the market price of our common stock include, but are not limited to:

results from, delays in, or discontinuation of, any of the clinical trials for our drug candidates, and including delays resulting from slower than expected or suspended patient enrollment or discontinuations resulting from a failure to meet pre-defined clinical end-points;

announcements concerning clinical trials;

failure or delays in entering additional drug candidates into clinical trials;

failure or discontinuation of any of our research programs;

issuance of new or changed securities analysts reports or recommendations;

developments in establishing new strategic alliances;

market conditions in the pharmaceutical, biotechnology and other healthcare related sectors;

actual or anticipated fluctuations in our quarterly financial and operating results;

developments or disputes concerning our intellectual property or other proprietary rights;

introduction of technological innovations or new commercial products by us or our competitors;

issues in manufacturing our drug candidates or drugs;

market acceptance of our drugs;

third-party healthcare coverage and reimbursement policies;
FDA or other United States or foreign regulatory actions affecting us or our industry;

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litigation or public concern about the safety of our drug candidates or drugs;
additions or departures of key personnel; or
volatility in the stock prices of other companies in our industry.

These and other external factors may cause the market price and demand for our common stock to fluctuate substantially, which may limit or prevent investors from readily selling their shares of common stock and may otherwise negatively affect the liquidity of our common stock. In addition, when the market price of a stock has been volatile, holders of that stock have instituted securities class action litigation against the company that issued the stock. If any of our stockholders brought a lawsuit against us, we could incur substantial costs defending the lawsuit. Such a lawsuit could also divert our management s time and attention.

Since we have broad discretion in how we use the proceeds from this offering, we may use the proceeds in ways with which you disagree.

We intend to use the net proceeds from this offering first to complete our ongoing Phase II clinical trial of CD-NP, including resources necessary to analyze the data from this study. However, our management will have significant flexibility in applying the net proceeds of this offering. You will be relying on the judgment of our management with regard to the use of these net proceeds, and you will not have the opportunity, as part of your investment decision, to assess whether the proceeds are being used appropriately. It is possible that the net proceeds will be invested in a way that does not yield a favorable, or any, return for us. The failure of our management to use such funds effectively could have a material adverse effect on our business, financial condition, operating results and cash flow.

There is no minimum offering amount required to consummate this offering.

There is no minimum offering amount which must be raised in order for us to consummate this offering. Accordingly, the amount of money raised may not be sufficient for us to meet our business objectives. Moreover, if only a small amount of money is raised, all or substantially all of the offering proceeds may be applied to cover the offering expenses and we will not otherwise benefit from the offering. In addition, because there is no minimum offering amount required, investors will not be entitled to a return of their investment if we are unable to raise sufficient proceeds to meet our business objectives.

Investors in this offering will pay a much higher price than the book value of our stock.

If you purchase units in this offering, you will incur an immediate and substantial dilution in net tangible book value of $ per share, based upon our tangible net book value as of December 31, 2009 but after giving effect to the sale by us of the common stock and warrants in this offering and assuming no exercise of the warrants offered hereby.

An active trading market for our common stock and other securities may not develop.

Although our common stock is currently listed on the Nasdaq Capital Market, trading in our common stock is often sporadic, including frequent days in which fewer than 10,000 shares are traded. We have applied for listing of the warrants on the Nasdaq Capital Market, but no trading market for the warrants currently exists. An active trading market for our securities may never develop or be sustained. If an active market for our common stock and other securities does not develop, it may be difficult for you to sell the securities you purchase in this offering without depressing the market price for such securities.

We have never paid dividends and we do not anticipate paying dividends in the future.

We have never paid dividends on our capital stock and do not anticipate paying any dividends for the foreseeable future. As a result, capital appreciation, if any, of our common stock will be your sole source of gain for the foreseeable future. You should not invest in this offering with any expectation that you will receive dividends.

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There may be additional issuances of shares of blank check preferred stock in the future.

Our certificate of incorporation authorizes the issuance of up to 10,000,000 shares of preferred stock, none of which are issued or currently outstanding. Our Board of Directors will have the authority to fix and determine the relative rights and preferences of preferred shares, as well as the authority to issue such shares, without further stockholder approval. As a result, our Board of Directors could authorize the issuance of a series of preferred stock that is senior to the our common stock that would grant to holders preferred rights to our assets upon liquidation, the right to receive dividends, additional registration rights, anti-dilution protection, the right to the redemption to such shares, together with other rights, none of which will be afforded holders of our common stock.

We cannot assure you that we will continue to meet Nasdaq listing requirements. If we are delisted from the Nasdaq Capital Market, our common stock may become less liquid, which may make it more difficult for you to sell shares of our common stock when you desire and for us to raise additional capital when needed.

Our common stock is listed and traded on the Nasdaq Capital Market. To remain eligible to be listed on the Nasdaq Capital Market, we are required to satisfy a number of qualitative and quantitative continued listing standards, which include maintaining a minimum bid price of our stock at $1.00 and having total stockholders equity of at least $2.5 million. For extended periods during 2008 and 2009, and again beginning on March 31, 2010, our stock price fell below $1.00. In addition, as of December 31, 2009, our total stockholders equity was approximately $3.0 million, and as adjusted to reflect the sale of units in this offering at an assumed public offering price of $ per unit and after deducting the underwriting discounts, commissions and estimated offering expenses, our stockholders equity will be approximately $ million.

Listing on Nasdaq may provide our stockholders with greater liquidity and provide us with greater access to capital. However, if we are unable to continue satisfying Nasdaq s continued listing standards, our common stock may be de-listed from the Nasdaq Capital Market. We cannot assure you that we will be able to maintain a listing of our common stock on Nasdaq Capital Market. If for any reason our common stock is de-listed from the Nasdaq Capital Market, trading in our common stock would likely occur on the OTC Bulletin Board, where our stockholders may experience increased difficulty selling their shares of our common stock at desired times and prices. In addition, we may experience increased difficulty raising additional capital by selling shares of our common stock.

Further, if we are delisted from the Nasdaq Capital Market and do not obtain a listing on another national securities exchange, our common stock will be considered a penny stock under applicable SEC rules if it trades at a price of less than $5.00 per share. Broker-dealers who sell penny stocks must provide purchasers of these stocks with a standardized risk-disclosure document prepared by the SEC. This document provides information about penny stocks and the nature and level of risks involved in investing in the penny stock market. A broker must also give a purchaser, orally or in writing, bid and offer quotations and information regarding broker and salesperson compensation, make a written determination that the penny stock is a suitable investment for the purchaser, and obtain the purchaser s written agreement to the purchase. Broker-dealers also must provide customers that hold penny stocks in their accounts with such broker-dealer a monthly statement containing price and market information relating to the penny stock. If a penny stock is sold to an investor in violation of the penny stock rules, he or she may be able to cancel the purchase and get his or her money back. Because of these rules, there is typically less trading in penny stocks and many brokers simply choose not to participate in penny stock transactions. Accordingly, if our common stock becomes subject to the penny stock rules, the trading volume of our common stock may significantly decline and you may not always be able to resell shares of our common stock publicly at times and prices that you feel are appropriate.

Because we became public by means of a reverse merger, we may not be able to attract the attention of major brokerage firms.

Additional risks may exist since we became public through a reverse merger. Security analysts of major brokerage firms may not provide coverage of us since there is no incentive to brokerage firms to recommend the purchase of our common stock. No assurance can be given that brokerage firms will want to

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conduct any secondary offerings on behalf of our company in the future. The lack of such analyst coverage may decrease the public demand for our common stock, making it more difficult for you to resell your shares when you deem appropriate.

If our results do not meet analysts forecasts and expectations, our stock price could decline.

In the future, analysts who cover our business and operations may provide valuations regarding our stock price and make recommendations whether to buy, hold or sell our stock. Our stock price may be dependent upon such valuations and recommendations. Analysts valuations and recommendations are based primarily on our reported results and their forecasts and expectations concerning our future results regarding, for example, expenses, revenues, clinical trials, regulatory marketing approvals and competition. Our future results are subject to substantial uncertainty, and we may fail to meet or exceed analysts forecasts and expectations as a result of a number of factors, including those discussed above under the sections Risks Related to Our Business and Risks Related to the Clinical Testing, Regulatory Approval, Manufacturing and Commercialization of Our Product Candidates. If our results do not meet analysts forecasts and expectations, our stock price could decline as a result of analysts lowering their valuations and recommendations or otherwise.

The operational and other projections and forecasts that we may make from time to time are subject to inherent risks.

The projections and forecasts that our management may provide from time to time (including, but not limited to, those relating to timing, progress and anticipated results of the clinical development, regulatory processes, clinical trial timelines and any anticipated benefits of our product candidates) reflect numerous assumptions made by management, including assumptions with respect to our specific as well as general business, economic, market and financial conditions and other matters, all of which are difficult to predict and many of which are beyond our control. Accordingly, there is a risk that the assumptions made in preparing the projections, or the projections themselves, will prove inaccurate. There will be differences between actual and projected results, and actual results may be materially different from than those contained in the projections. The inclusion of the projections in (or incorporated by reference in) this prospectus supplement should not be regarded as an indication that we or our management or representatives considered or consider the projections to be a reliable prediction of future events, and the projections should not be relied upon as such.

Our certificate of incorporation and by-laws contain provisions that may discourage, delay or prevent a change in our management team that stockholders may consider favorable.

Our certificate of incorporation, our bylaws and Delaware law contain provisions that may have the effect of preserving our current management, such as:

authorizing the issuance of blank check preferred stock without any need for action by stockholders;
eliminating the ability of stockholders to call special meetings of stockholders; and
establishing advance notice requirements for nominations for election to the board of directors or for proposing matters that can be acted on by stockholders at stockholder meetings.

These provisions could make it more difficult for our stockholders to effect our corporate policies, make changes in our Board of Directors and for a third party to acquire us, even if doing so would benefit our stockholders.

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CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus supplement and the accompanying prospectus, including the documents that we incorporate by reference, contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. Any statements about our expectations, beliefs, plans, objectives, assumptions or future events or performance are not historical facts and may be forward-looking. These statements are often, but not always, made through the use of words or phrases such as anticipate, estimate, plan, project, continuing, ongoing, expect, believe in words or phrases. Accordingly, these statements involve estimates, assumptions and uncertainties that could cause actual results to differ materially from those expressed in them. Any forward-looking statements are qualified in their entirety by reference to the factors discussed in this prospectus supplement, the accompanying prospectus or incorporated by reference.

Because the factors discussed in this prospectus supplement, the accompanying prospectus or incorporated by reference into this prospectus supplement or the accompanying prospectus could cause actual results or outcomes to differ materially from those expressed in any forward-looking statements made by us or on our behalf, you should not place undue reliance on any such forward-looking statements. These statements are subject to risks and uncertainties, known and unknown, which could cause actual results and developments to differ materially from those expressed or implied in such statements. Such risks and uncertainties relate to, among other factors:

the development of our product candidates;
the regulatory approval of our product candidates;
our use of clinical research centers and other contractors;
our ability to find collaborative partners for research, development and commercialization of potential products;
acceptance of our products by doctors, patients or payors;
our ability to market any of our product candidates;
our history of operating losses;
our ability to compete against other companies and research institutions;
our ability to secure adequate protection for our intellectual property;
our ability to attract and retain key personnel;
availability of reimbursement for our product candidates;
the effect of potential strategic transactions on our business;
our ability to obtain adequate financing; and
the volatility of our stock price.

These and other risks are detailed in this prospectus supplement under the discussion entitled Risk Factors, as well as in our reports filed with the SEC from time to time under the Securities Act and the Exchange Act. You are encouraged to read these filings as they are made.

Further, any forward-looking statement speaks only as of the date on which it is made, and we undertake no obligation to update any forward-looking statement or statements to reflect events or circumstances after the date on which such statement is made or to reflect the occurrence of unanticipated events. New factors emerge from time to time, and it is not possible for us to predict which factors will arise. In addition, we cannot assess the impact of each factor on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements.

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USE OF PROCEEDS

We estimate that the net proceeds from the sale of units of our common stock and warrants that we are offering will be approximately $ million, based on the offering price of $ per unit, or approximately $ million if the underwriters exercise their over-allotment option in full, after deducting underwriting discounts, commissions and estimated offering expenses payable by us.

We expect to use the net proceeds of this offering, and our existing cash and cash equivalents, to fund our ongoing research and development activities, and in particular, the completion of our ongoing Phase II clinical trial of CD-NP, and for general corporate purposes, including the possible licensing, acquisition and development of new products and product candidates. We anticipate that we will need to spend up to an additional approximately $2.5 million to complete our ongoing Phase II clinical trial and to process and analyze the data from the study.

If the results of the current Phase II clinical trial indicate that CD-NP may have benefit in treating ADHF, we expect to thereafter commence a larger clinical trial (likely another Phase II clinical trial) of CD-NP in ADHF patients, either alone or with a development partner. If we undertake such further development by ourselves, we will need to raise substantial additional capital beyond the net proceeds from this offering in order to fund the further development of CD-NP and to fund the further development of CU-NP. In addition, if the results of our current Phase II clinical trial do not support further development in the ADHF setting, then we may consider whether to pursue additional development in other therapeutic settings, including, without limitation, for the treatment of other cardiovascular or renal diseases or conditions. However, we would still require substantial additional capital in order to fund any research and development activities in such other settings.

The amount of funds we expect to need to complete our ongoing Phase II clinical trial of CD-NP is based, in part, on our estimate of the number of additional patients we expect to enroll. The amount and timing of our actual expenditures may vary significantly depending on numerous factors, including, without limitation, slower than anticipated patient enrollment in the study, unforeseen safety issues, and any unforeseen cash needs. See Risk Factors Risks Relating to Our Business beginning at page S-6 and Risk Factors Risks Relating to the Clinical Testing, Regulatory Approval, Manufacturing and Commercialization of Our Product Candidates beginning at page S-13, above. Therefore, we will retain broad discretion over the use of the net proceeds of this offering. We have no present understandings, commitments or agreements with respect to any acquisitions, investments or joint ventures and no portion of the net proceeds has been allocated for any acquisition.

Pending the use of the net proceeds, we intend to invest the net proceeds in short-term, interest-bearing, investment-grade securities.

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PRICE RANGE OF COMMON STOCK AND DIVIDEND POLICY

Our common stock was traded on the OTC Bulletin Board, or the OTCBB, under the trading symbol SPDU.OB until October 11, 2007, at which time our symbol changed to NILT.OB. Since May 13, 2008, our common stock has been listed on the Nasdaq Capital Market, or the Nasdaq, under the trading symbol NLTX. Set forth below are the high and low bid or sale prices for our common stock by quarter for the fiscal years ended December 31, 2009 and December 31, 2008, respectively, as reported by Commodity Systems, Inc. Although our common stock is quoted on the Nasdaq, it has traded sporadically with minimal volume. The quotations reflect inter-dealer prices, without retail markup, markdown, or commission, and may not represent actual transactions. Consequently, the information provided below may not be indicative of our common stock price under different conditions.

	High	Low
Year ended December 31, 2008		
First Quarter	$ 5.51	$ 3.75
Second Quarter	5.50	4.25
Third Quarter	5.26	3.28
Fourth Quarter	4.73	0.27
Year ended December 31, 2009		
First Quarter	$ 1.02	$ 0.28
Second Quarter	1.10	0.25
Third Quarter	2.30	0.89
Fourth Quarter	1.70	1.18
Year ended December 31, 2010		
First Quarter	$ 1.50	$ 0.90

On April 9, 2010, the last reported sale price of our common stock on the Nasdaq Capital Market was $0.97 per share.

We have never declared or paid any cash dividend on our common stock. We currently expect to retain any future earnings in the operation and expansion of our business and do not anticipate paying any cash dividends on our common stock for the foreseeable future.

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DILUTION

If you invest in this offering, your ownership interest will be diluted to the extent of the difference between the public offering price per share of our common stock, assuming no value is attributed to the warrants included in the units you purchase in this offering, and the pro forma net tangible book value per share of our common stock after this offering. Our historical net tangible book value as of December 31, 2009 was approximately $2.88 million, or approximately $0.11 per share. Net tangible book value per share represents the amount of our total tangible assets, less our total liabilities, divided by the total number of shares of our common stock outstanding. Dilution in historical net tangible book value per share represents the difference between the amount per share paid by purchasers of shares of common stock in this offering and the pro forma net tangible book value per share of our common stock immediately after the closing of this offering.

After giving effect to the sale of units in this offering at the offering price of $ per unit, after deducting underwriting commissions and estimated offering expenses, our pro forma net tangible book value as of December 31, 2009 would have been approximately $ million, or $ per share of common stock. This represents an immediate increase in pro forma net tangible book value of $ per share to existing stockholders and an immediate dilution of $ per share to new investors purchasing our securities in this offering.

The following table illustrates dilution on a per share basis:

Offering price per share		$
Historical net tangible book value per share as of December 31, 2009	$ 0.11	
Increase per share attributable to new investors	$	
Pro forma net tangible book value per share after this offering		$
Dilution per share to new investors		$

If the underwriters exercise their over-allotment option in full to purchase additional shares of common stock in this offering, the pro forma as adjusted net tangible book value per share after the offering would be $ per share, the increase in the pro forma net tangible book value per share to existing stockholders would be $ per share and the pro forma dilution to new investors purchasing common stock in this offering would be $ per share.

The table below summarizes, as of December 31, 2009, on the pro forma basis described above, the number of shares of our common stock, the total consideration and the average price per share (i) paid to us by existing stockholders, and (ii) to be paid by new investors purchasing shares of our common stock in this offering.

	Shares Purchased		Total Consideration		Average Price
	Number	%	Amount	%	Per share
Existing stockholders	27,085,824		$ 36,880,853		$ 1.36
New investors					
Total		100.0	$	100.0	

The above discussion and tables are based on 27,085,824 shares of common stock outstanding as of December 31, 2009 and does not include, as of December 31, 2009:

5,035,152 shares of common stock issuable upon the exercise of outstanding stock options, with a weighted average exercise price of $2.28 per share;

836,249 shares of common stock available for future issuance under our Amended & Restated 2005 Stock Option Plan; and

3,279,984 shares of common stock issuable upon the exercise of outstanding warrants, with a weighted average exercise price of $1.94 per share.

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DESCRIPTION OF THE SECURITIES WE ARE OFFERING

In this offering, we are offering units, consisting of shares of common stock and warrants to purchase shares of common stock. Each unit consists of shares of common stock and a tradeable warrant to purchase shares of common stock at an exercise price of $ per share. The units will separate immediately and the common stock and warrants will be issued separately. There will be no market for the units. We are also issuing warrants to purchase up to an aggregate of shares of our common stock at an exercise price of $ per share to the underwriters as underwriting compensation. This prospectus supplement also relates to the offering of shares of our common stock upon exercise, if any, of the warrants.

Common Stock

The material terms and provisions of our common stock are described under the caption Description of Common Stock starting on page 4 of the accompanying prospectus.

Warrants to Be Issued In This Offering

The material terms and provisions of the warrants being offered pursuant to this prospectus supplement are summarized below. This summary is subject to, and qualified in its entirety by, the form of warrant agreement and warrant certificate included as exhibits to our Current Report on Form 8-K that will be filed with the SEC in connection with this offering. You should review copies of these items for a complete description of the terms and conditions applicable to the warrants.

Each warrant entitles the registered holder to purchase one share of our common stock at a price equal to $, which represents 110% of the closing bid price of our common stock on the date of this prospectus supplement. The warrants may only be exercised for cash. The warrants will expire five years from the date of this prospectus supplement at 5:00 p.m., New York City time.

We may call the warrants for redemption as follows:

at a price of $0.01 per share for each warrant at any time while the warrants are exercisable, so long as a registration statement relating to the common stock issuable upon exercise of the warrants is effective and current;
upon not less than 30 days prior written notice of redemption to each warrant holders; and
if, and only if, the last reported sale price of the common stock equals or exceeds $3.00 per share for any 20 trading days within a period of 30 consecutive trading days.

If the foregoing conditions are satisfied and we call the warrants for redemption, each warrant holder will then be entitled to exercise his or her warrant prior to the date scheduled for redemption. However, there can be no assurance that the price of the common stock will exceed the call price or the warrant exercise price after the redemption call is made.

The warrants will be issued in registered form under a warrant agreement between American Stock Transfer & Trust Company, as warrant agent, and us. We have applied for listing of the warrants on the Nasdaq Capital Market under the symbol NLTX.W.

The exercise price and number of shares of common stock issuable on exercise of the warrants may be adjusted in certain circumstances, including but not limited to in the event of a stock split, stock dividend, recapitalization, reorganization, merger or consolidation. However, the warrants will not be adjusted for the issuances of common stock or securities convertible or exercisable into common stock at a price below their respective exercise prices.

The warrants may be exercised upon surrender of the warrant certificate on or prior to the expiration date at the offices of the warrant agent, with the exercise form on the reverse side of the warrant certificate completed and executed as indicated, accompanied by full payment of the exercise price, by certified check payable to us, for the number of warrants being exercised. The warrant holders do not have the rights or privileges of holders of common stock and any voting rights until they exercise their warrants and received shares of common stock. After issuance of shares of common stock upon exercise of the warrants, each holder will be entitled to one vote for each share held of record on all matters to be voted on by stockholders.

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No warrants will be exercisable unless at the time of exercise a prospectus relating to common stock issuable upon exercise of the warrants is current and the common stock has been registered or qualified or deemed to be exempt under the securities laws of the state of residence of the holder of the warrants. Under the terms of the warrant agreement, we have agreed to meet these conditions and use our best efforts to maintain a current prospectus relating to common stock issuable upon exercise of the warrants until the expiration of the warrants. However, we cannot assure you that we will be able to do so, and if we do not maintain a current prospectus related to the common stock issuable upon exercise of the warrants, holders will be unable to exercise their warrants and we will not be required to settle any such warrant exercise. If the prospectus relating to the common stock issuable upon the exercise of the warrants is not current or if the common stock is not qualified or exempt from qualification in the jurisdictions in which the holders of the warrants reside, we will not be required to net cash settle or cash settle the warrant exercise, the warrants may have no value, the market for the warrants may be limited and the warrants may expire worthless.

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MATERIAL UNITED STATES FEDERAL TAX CONSIDERATIONS FOR NON-U.S. HOLDERS

The following is a general discussion of certain material U.S. federal income and estate tax consequences of the ownership and disposition of common stock acquired in this offering by a beneficial owner that is a Non-U.S. Holder. A Non-U.S. Holder is a person or entity that, for U.S. federal income tax purposes, is a non-resident alien individual, a foreign corporation or a foreign estate or trust. The test for whether an individual is a resident of the United States for federal estate tax purposes differs from the test used for federal income tax purposes.

This discussion is based on the U.S. Internal Revenue Code of 1986, as amended, judicial decisions and administrative regulations and interpretations in effect as of the date of this prospectus supplement, all of which are subject to change, including changes with retroactive effect. This discussion does not address all aspects of U.S. federal income and estate taxation that may be relevant to Non-U.S. Holders in light of their particular circumstances (including, without limitation, Non-U.S. Holders who are controlled foreign corporations, passive foreign investment companies, U.S. expatriates, pass-through entities or who hold their common stock through pass-through entities) and does not address any tax consequences arising under the laws of any state, local or non-U.S. jurisdiction. Prospective holders should consult their tax advisors with respect to the federal income and estate tax consequences of holding and disposing of our common stock in light of their particular situations and any consequences to them arising under the laws of any state, local or non-U.S. jurisdiction.

Dividends

Subject to the discussion below, distributions, if any, made to a Non-U.S. Holder of our common stock out of our current or accumulated earnings and profits generally will constitute dividends for U.S. tax purposes and will be subject to withholding tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty. To obtain a reduced rate of withholding under a treaty, a Non-U.S. Holder generally will be required to provide us with a properly-executed IRS Form W-8BEN certifying the Non-U.S. Holder s entitlement to benefits under that treaty. Treasury Regulations and the applicable treaty provide rules to determine whether, for purposes of determining the applicability of the tax treaty, dividends paid to a Non-U.S. Holder that is an entity should be treated as paid to the entity or to those holding an interest in that entity. To the extent distributions exceed our current and accumulated earnings and profits, they will constitute a return of capital and will first reduce the Non-U.S. Holder s basis in our common stock, but not below zero, and then will be treated as gain from the sale of stock.

There will be no withholding tax on dividends paid to a Non-U.S. Holder that are effectively connected with the Non-U.S. Holder s conduct of a trade or business within the United States if a properly-executed IRS Form W-8ECI, stating that the dividends are so connected, is provided to us. Instead, the effectively connected dividends will be subject to regular U.S. income tax, generally in the same manner as if the Non-U.S. Holder were a U.S. citizen or resident alien or a domestic corporation, as the case may be, unless a specific treaty exemption applies. A corporate Non-U.S. Holder receiving effectively connected dividends may also be subject to an additional branch profits tax, which is imposed, under certain circumstances, at a rate of 30% (or such lower rate as may be specified by an applicable treaty) on the corporate Non-U.S. Holder s effectively connected earnings and profits, subject to certain adjustments. If you are eligible for a reduced rate of withholding tax pursuant to a tax treaty, you may obtain a refund of any excess amounts currently withheld if you file an appropriate claim for refund with the U.S. Internal Revenue Service.

Gain on Disposition of Common Stock

A Non-U.S. Holder generally will not be subject to U.S. federal income tax with respect to gain realized on a sale or other disposition of our common stock unless (i) the gain is effectively connected with a trade or business of such holder in the United States or, if a treaty applies, is attributable to a permanent establishment of the Non-U.S. Holder in the United States, (ii) in the case of a Non-U.S. Holder who is a nonresident alien individual and holds our common stock as a capital asset, such individual is present in the United States for 183 or more days in the taxable year of the disposition and certain other conditions are met, or (iii) our common stock constitutes a U.S. real property interest by reason of our status as a United States real property holding corporation, or USRPHC, for U.S. federal income tax purposes at any time during the shorter of the period

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during which you hold our common stock or the five-year period ending on the date on which you dispose of shares of our common stock and, if our common stock is treated as regularly traded on an established securities market (within the meaning of applicable Treasury regulations), you held, directly or indirectly, at any time within the five-year period preceding the disposition, more than 5% of our common stock.

If you are a Non-U.S. Holder described in (i) above, you will be required to pay tax on the net gain derived from the sale at regular graduated U.S. federal income tax rates, and corporate Non-U.S. Holders described in (i) above may be subject to the branch profits tax at a 30% rate or such lower rate as may be specified by an applicable income tax treaty. If you are an individual Non-U.S. Holder described in (ii) above, you will be required to pay a flat 30% tax on the gain derived from the sale, which tax may be offset by U.S. source capital losses (even though you are not considered a resident of the United States).

The determination of whether we are a USRPHC depends on the fair market value of our U.S. real property interests relative to the fair market value of our interests in real property located outside the United States and the fair market value of our other business assets. While we believe that we are not a USRPHC, there can be no assurances that we are not a USRPHC. Even if we are not a USRPHC at the present time, since the determination of USRPHC status in the future will be based upon the composition of our assets from time to time, there can be no assurances that we will not become a USRPHC in the future. However, as indicated above, so long as our common stock is treated as regularly traded on an established securities market (within the meaning of applicable Treasury regulations), our common stock will not be treated as a U.S. real property interest unless you hold, directly or indirectly, at any time within the five-year period preceding your disposition, more than 5% of our common stock. If any gain on your disposition is taxable because we are a USRPHC and your ownership of our common stock exceeds 5%, you will be taxed on such disposition generally in the manner applicable to U.S. persons and in addition, the purchaser of your common stock may be required to withhold a tax equal to 10% of the amount realized on the sale. You should consult your tax advisor regarding the application of the USRPHC rules discussed above to a disposition by you of our common stock.

Information Reporting Requirements and Backup Withholding

Generally, we must report to the U.S. Internal Revenue Service the amount of dividends paid, the name and address of the recipient, and the amount, if any, of tax withheld. A similar report is sent to the holder. Pursuant to tax treaties or certain other agreements, the U.S. Internal Revenue Service may make its reports available to tax authorities in the recipient s country of residence.

Backup withholding will generally not apply to payments of dividends made by us or our paying agents to a Non-U.S. Holder if the holder has provided its federal taxpayer identification number, if any, or the required certification that it is not a U.S. person (which is generally provided by furnishing a properly-executed IRS Form W-8BEN), unless the payer otherwise has knowledge or reason to know that the payee is a U.S. person.

Under current U.S. federal income tax law, information reporting and backup withholding will apply to the proceeds of a disposition of our common stock effected by or through a U.S. office of a broker unless the disposing holder certifies as to its non-U.S. status or otherwise establishes an exemption. Generally, U.S. information reporting and backup withholding will not apply to a payment of disposition proceeds where the transaction is effected outside the United States through a non-U.S. office of a non-U.S. broker. However, unless the Non-U.S. Holder is entitled to an exemption, U.S. information reporting requirements (but not backup withholding) will apply to a payment of disposition proceeds where the transaction is effected outside the United States by or through an office outside the United States of a broker that fails to maintain documentary evidence that the holder is a Non-U.S. Holder and that

certain conditions are met and the broker is (i) a U.S. person, (ii) a foreign person which derived 50% or more of its gross income for certain periods from the conduct of a trade or business in the United States, (iii) a controlled foreign corporation for U.S. federal income tax purposes, or (iv) a foreign partnership (a) at least 50% of the capital or profits interest in which is owned by U.S. persons, or (b) that is engaged in a U.S. trade or business. Backup withholding may apply to a payment of disposition proceeds if the broker has actual knowledge that the holder is a U.S. person.

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Backup withholding is not an additional tax. Rather, the tax liability of persons subject to backup withholding will be reduced by the amount of tax withheld. If withholding results in an overpayment of taxes, a refund may be obtained, provided that the required information is furnished to the U.S. Internal Revenue Service.

Federal Estate Tax

The estates of nonresident alien individuals generally are subject to U.S. federal estate tax on property with a U.S. situs. Because we are a U.S. corporation, our common stock will be U.S. situs property and therefore will be included for U.S. estate tax purposes in the taxable estate of a nonresident alien decedent who was treated as the owner of, or has made certain lifetime transfers of, an interest in our common stock.

New Legislation Relating to Foreign Accounts

Newly enacted legislation may impose withholding taxes on certain types of payments made to foreign financial institutions and certain other non-U.S. entities. Under this legislation, the failure to comply with additional certification, information reporting and other specified requirements could result in withholding tax being imposed on payments of dividends and sales proceeds to foreign intermediaries and certain non-U.S. holders. The legislation imposes a 30% withholding tax on dividends on, or gross proceeds from the sale or other disposition of, our common stock paid to a foreign financial institution or to a foreign non-financial entity, unless (i) the foreign financial institution undertakes certain diligence and reporting obligations or (ii) the foreign non-financial entity either certifies it does not have any substantial U.S. owners or furnishes identifying information regarding each substantial U.S. owner. If the payee is a foreign financial institution, it must enter into an agreement with the U.S. Treasury requiring, among other things, that it undertake to identify accounts held by certain U.S. persons or U.S.-owned foreign entities, annually report certain information about such accounts and withhold 30% on payments to account holders whose actions prevent it from complying with these reporting and other requirements. The legislation applies to payments made after December 31, 2012. Prospective investors should consult their tax advisors regarding this legislation.

THE PRECEDING DISCUSSION OF U.S. FEDERAL INCOME TAX CONSIDERATIONS IS FOR GENERAL INFORMATION ONLY. IT IS NOT TAX ADVICE. EACH PROSPECTIVE INVESTOR SHOULD CONSULT ITS OWN TAX ADVISOR REGARDING THE PARTICULAR U.S. FEDERAL, STATE, LOCAL AND FOREIGN TAX CONSEQUENCES OF PURCHASING, HOLDING, AND DISPOSING OF OUR COMMON STOCK, INCLUDING THE CONSEQUENCES OF ANY PROPOSED CHANGE IN APPLICABLE LAWS.

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UNDERWRITING

Subject to the terms and conditions in the underwriting agreement, dated April , 2010, between us and Maxim Group LLC, the representative of the underwriters of this offering, each underwriter named below has severally agreed to purchase from us, on a firm commitment basis, the number of units of common stock and warrants to purchase common stock set forth opposite its name below, at the public offering price, less the underwriting discount set forth on the cover page of this prospectus supplement.

Underwriter	Number of Units
Maxim Group LLC	
Ladenburg Thalmann & Co. Inc.	
Total	

Nature of Underwriting Commitment

The underwriting agreement provides for the purchase of a specific number of units by each of the underwriters. The underwriters obligations are several, which means that each underwriter is required to purchase a specified number of units, but is not responsible for the commitment of any other underwriter to purchase units.

The underwriters have agreed to purchase all of the units offered by this prospectus supplement (other than those covered by the over-allotment option described below) if any are purchased. Under the underwriting agreement, if an underwriter defaults in its commitment to purchase units, the commitments of non-defaulting underwriters may be increased or the underwriting agreement may be terminated, depending on the circumstances. The underwriting agreement provides that the obligations of the underwriters to pay for and accept delivery of the units are subject to the passing upon certain legal matters by counsel and to certain other conditions, such as confirmation of the accuracy of our representations and warranties made in the underwriting agreement about our financial condition and operations.

The units should be ready for delivery on or about , 2010 against payment in immediately available funds. The underwriters may reject all or part of any order. The units will separate immediately and the common stock and warrants will be issued separately. There will be no market for the units.

The representative has advised us that the underwriters propose to offer the units directly to the public at the public offering price that appears on the cover page of this prospectus supplement. In addition, the representative may offer some of the units to other securities dealers at such price less a concession of $ per unit. The underwriters may also allow, and such dealers may reallow, a concession not in excess of $ per unit to other dealers. After the units are released for sale to the public, the representatives may change the offering price and other selling terms at various times.

Commissions and Discounts

The following table provides information regarding the amount of the discount to be paid to the underwriters by us:

	Total

	Per Unit	Without Over-Allotment	With Over-Allotment
Public offering price	$	$	$
Underwriting discount	$	$	$
Non-accountable expense allowance[1]	$	$	$
Proceeds, before expenses, to us[2]	$	$	$

(1) The non-accountable expense allowance of % of the gross proceeds of the offering payable to Maxim Group is not payable with respect to the units sold upon exercise of the underwriters over-allotment option.

(2) We estimate that the total expenses of the offering payable by us, not including underwriting discounts, and commissions, and not taking into consideration the underwriters over-allotment option, will be approximately $. These expenses include, but are not limited to, Nasdaq Capital Market listing fees, accounting fees and expenses, legal fees and expenses, printing expenses and transfer and warrant agent fees.

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We have agreed to sell the units to the underwriters at the initial public offering price less the underwriting discount set forth on the cover page of this prospectus supplement. The underwriting agreement also provides that Maxim Group, the representative of the underwriters, will be paid a non-accountable expense allowance equal to % of the gross proceeds from the sale of the units offered by this prospectus ($ of which has been previously advanced to Maxim), exclusive of any units purchased on exercise of the underwriters over-allotment option.

Over-allotment Option

We have granted the underwriters an over-allotment option. This option, which is exercisable for up to 45 days after the date of this prospectus supplement, permits the underwriters to purchase a maximum of additional units, consisting of an aggregate of shares of common stock and warrants to purchase an aggregate of shares of common stock, from us to cover over-allotments. If the underwriters exercise all or part of this option, they will purchase units covered by the option at the public offering price that appears on the cover page of this prospectus supplement, less the underwriting discount. If this option is exercised in full, the total price to the public will be $ and the total net proceeds to us will be approximately $ in each case based on an initial public offering price of $ per unit. The underwriters have severally agreed that, to the extent the over-allotment option is exercised, they will each purchase a number of additional units proportionate to the underwriter s initial amount reflected in the foregoing table.

Representative s Warrant

We have also agreed to issue to Maxim Group, for $100, a common stock purchase warrant to purchase a number of shares of our common stock equal to an aggregate of (%) percent of the shares of common stock underlying units sold in the offering (or shares). The warrant will have an exercise price equal to $ per share. The warrant is exercisable commencing six months following the closing of this offering, and will be exercisable for five years thereafter. The warrant is not redeemable by us, and allows for cashless exercise. The warrant also provides for one demand and for unlimited piggyback registration rights with respect to the underlying shares during the five year period commencing six months after the effective date of this offering. Pursuant to the rules of the Financial Industry Regulatory Authority, Inc., or FINRA, and in particular Rule 5110, the warrants (and underlying shares of common stock) issued to Maxim Group may not be sold, transferred, assigned, pledged, or hypothecated, or the subject of any hedging, short sale, derivative, put or call transaction that would result in the effective disposition of the securities by any person for a period of 180 days immediately following the date of delivery and payment for the units offered; provided, however, the warrant (and underlying shares) may be transferred to officers or directors of Maxim Group and members of the underwriting syndicate and their affiliates as long as the warrants (and underlying shares) remain subject to the lockup.

Lock-Ups

Our executive officers, directors and certain of our stockholders have agreed to a 90 day lock-up from the date of this prospectus supplement of shares of our common stock that they beneficially own, including the issuance of common stock upon the exercise of currently outstanding options and options which may be issued. This means that, for a period of 90 days following the date of this prospectus supplement, such persons may not offer, sell, pledge or otherwise dispose of these securities without the prior written consent of Maxim Group. The lock-up period described in the preceding paragraph will be extended if (1) during the last 17 days of the lock-up period we issue an earnings release or material news or a material event relating to us occurs or (2) prior to the expiration of the lock-up period we announce that we will release earnings results during the 16-day period beginning on the last day of the lock-up

period, in which case the lock-up period will be extended until the expiration of the 18-day period beginning on the date of issuance of the earnings release or the occurrence of the material news or material event.

Maxim Group has no present intention to waive or shorten the lock-up period; however, the terms of the lock-up agreements may be waived at their discretion. In determining whether to waive the terms of the lock-up agreements, Maxim Group may base its decision on its assessment of the relative strengths of the securities markets and companies similar to ours in general, and the trading pattern of, and demand for, our securities in general.

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In addition, the underwriting agreement provides that we will not, for a period of three (3) months following the date of this prospectus supplement, offer, sell or distribute any of our securities, without the prior written consent of Maxim. The underwriting agreement further provides that we will not, for a period of three (3) months following the date of this prospectus supplement, offer, sell or distribute any convertible securities convertible at a price that may, at the time of conversion, be less than the fair market value of our common stock on the date of the original sale, without the prior written consent of Maxim. For purposes hereof, the term fair market value shall mean the greater of: (i) the average of the volume weighted average price of our common stock for each of the thirty (30) trading days prior to the date of the original sale; and (ii) the last sale price of our common stock, during normal operating hours, as reported on the Nasdaq Capital Market, or any other exchange or electronic quotation system on which our common stock is then listed.

Other Terms

The underwriting agreement provides for indemnification between us and the underwriters against specified liabilities, including liabilities under the Securities Act, and for contribution by us and the underwriters to payments that may be required to be made with respect to those liabilities. We have been advised that, in the opinion of the SEC, indemnification liabilities under the Securities Act is against public policy as expressed in the Securities Act, and is therefore, unenforceable.

This prospectus supplement and the accompanying prospectus in electronic format may be made available on a website maintained by the representatives of the underwriters and may also be made available on a website maintained by other underwriters. The underwriters may agree to allocate a number of units of our common stock and warrants to purchase our common stock to underwriters for sale to their online brokerage account holders. Internet distributions will be allocated by the representatives of the underwriters to underwriters that may make Internet distributions on the same basis as other allocations. In connection with the offering, the underwriters or syndicate members may distribute prospectuses electronically. No forms of electronic prospectus other than prospectuses that are printable as Adobe® PDF will be used in connection with this offering.

The underwriters have informed us that they do not expect to confirm sales of our common stock offered by this prospectus supplement to accounts over which they exercise discretionary authority.

Stabilization

Rules of the SEC may limit the ability of the underwriters to bid for or purchase shares of our common stock before the distribution of the units of common stock and warrants to purchase common stock is completed. However, to facilitate the offering, the underwriters may engage in transactions that stabilize, maintain or otherwise affect the price of our common stock or publicly traded warrants during and after the offering. Specifically, the underwriters may over-allot or otherwise create a short position in the common stock or publicly traded warrants for their own account by selling more shares of common stock or warrants than have been sold to them by us. Short sales involve the sale by the underwriters of a greater number of shares or warrants than they are required to purchase in this offering. Covered short sales are sales made in an amount not greater than the underwriters over-allotment option to purchase additional shares in this offering. The underwriters may close out any covered short position by either exercising their option to purchase additional shares or purchasing shares in the open market. In determining the source of shares to close out the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the over-allotment option. Naked short sales are sales in excess of this option. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are

concerned that there may be downward pressure on the price of the common stock in the open market after pricing that could adversely affect investors who purchase in this offering.

In addition, the underwriters may stabilize or maintain the price of the common stock or publicly traded warrants by bidding for or purchasing shares of common stock or warrants in the open market and may impose penalty bids. If penalty bids are imposed, selling concessions allowed to syndicate members or other broker dealers participating in the offering are reclaimed if shares of common stock or warrants previously distributed in the offering are repurchased, whether in connection with stabilization transactions or otherwise. The effect of these transactions may be to stabilize or maintain the market price of the common stock or

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warrants at a level above that which might otherwise prevail in the open market. The imposition of a penalty bid may also effect the price of the common stock or warrants to the extent that it discourages resales of the common stock or warrants. The magnitude or effect of any stabilization or other transactions is uncertain. These transactions may be effected on The NASDAQ Capital Market or otherwise and, if commenced, may be discontinued at any time.

Neither we nor the underwriters make any representation or prediction as to the effect that the transactions described above may have on the price of our common stock or warrants.

Foreign Regulatory Restrictions on Purchase of Units

We have not taken any action to permit a public offering of the units outside the United States or to permit the possession or distribution of this prospectus outside the United States. Persons outside the United States who come into possession of this prospectus must inform themselves about and observe any restrictions relating to this offering of units and the distribution of the prospectus outside the United States.

European Economic Area. In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a relevant member state), with effect from and including the date on which the Prospectus Directive is implemented in that relevant member state (the relevant implementation date) an offer of securities to the public in that relevant member state prior to the publication of a prospectus in relation to the securities that have been approved by the competent authority in that relevant member state or, where appropriate, approved in another relevant member state and notified to the competent authority in that relevant member state, all in accordance with the Prospectus Directive, except that, with effect from and including the relevant implementation date, an offer of securities may be offered to the public in that relevant member state at any time:

to any legal entity that is authorized or regulated to operate in the financial markets or, if not so authorized or regulated, whose corporate purpose is solely to invest in securities;
to any legal entity which has two or more of (1) an average of at least 250 employees during the last financial year; (2) a total balance sheet of more than €43,000,000 and (3) an annual net turnover of more than €50,000,000, as shown in its last annual or consolidated accounts;
to fewer than 100 natural or legal persons (other than qualified investors as defined in the Prospectus Directive) subject to obtaining the prior consent of for any such offer; or
in any other circumstances which do not require the publication of a prospectus pursuant to Article 3 of the Prospectus Directive.

Each purchaser of securities described in this prospectus located within a relevant member state will be deemed to have represented, acknowledged and agreed that it is a qualified investor within the meaning of Article 2(1)(e) of the Prospectus Directive.

For the purposes of this provision, the expression an offer to the public in any relevant member state means the communication in any form and by any means of sufficient information on the terms of the offer and the securities to be offered so as to enable an investor to decide to purchase or subscribe the securities, as the expression may be varied in that member state by any measure implementing the Prospectus Directive in that member state and the expression Prospectus Directive means Directive 2003/71/EC and includes any relevant implementing measure in each relevant member state.

Israel. The units offered by this prospectus have not been approved or disapproved by the Israeli Securities Authority (ISA). The units may not be offered or sold, directly or indirectly, to the public in Israel. The ISA has not issued permits, approvals or licenses in connection with the offering of the units or publishing the prospectus; nor has it

authenticated the details included herein, confirmed their reliability or completeness, or rendered an opinion as to the quality of the securities being offered. Any resale, directly or indirectly, to the public of the units offered by this prospectus is subject to restrictions on transferability and must be effected only in compliance with the Israeli securities laws and regulations.

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United Kingdom. In the United Kingdom, the units offered by this prospectus are directed to and will only be available for purchase to a person who is an exempt person as referred to at paragraph (c) below and who warrants, represents and agrees that: (a) it has not offered or sold, will not offer or sell, any units offered by this prospectus to any person in the United Kingdom except in circumstances which do not constitute an offer to the public in the United Kingdom for the purposes of the section 85 of the Financial Services and Markets Act 2000 (as amended) (FSMA); and (b) it has complied and will comply with all applicable provisions of FSMA and the regulations made thereunder in respect of anything done by it in relation to the units offered by this prospectus in, from or otherwise involving the United Kingdom; and (c) it is a person who falls within the exemptions to Section 21 of the FSMA as set out in The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the Order), being either an investment professional as described under Article 19 or any body corporate (which itself has or a group undertaking has a called up share capital or net assets of not less than £500,000 (if more than 20 members) or otherwise £5 million) or an unincorporated association or partnership (with net assets of not less than £5 million) or is a trustee of a high value trust or any person acting in the capacity of director, officer or employee of such entities as defined under Article 49(2)(a) to (d) of the Order, or a person to whom the invitation or inducement may otherwise lawfully be communicated or cause to be communicated. The investment activity to which this document relates will only be available to and engaged in only with exempt persons referred to above. Persons who are not investment professionals and do not have professional experience in matters relating to investments or are not an exempt person as described above, should not review nor rely or act upon this document and should return this document immediately. It should be noted that this document is not a prospectus in the United Kingdom as defined in the Prospectus Regulations 2005 and has not been approved by the Financial Services Authority or any competent authority in the United Kingdom.

Italy. This offering of the units has not been cleared by Consob, the Italian Stock Exchanges regulatory agency of public companies, pursuant to Italian securities legislation and, accordingly, no units may be offered, sold or delivered, nor may copies of this prospectus or of any other document relating to the units to be distributed in Italy, except (1) to professional investors (operatori qualificati); or (2) in circumstances which are exempted from the rules on solicitation of investments pursuant to Decree No. 58 and Article 33, first paragraph, of Consob Regulation No. 11971 of May 14, 1999, as amended. Any offer, sale or delivery of the securities or distribution of copies of this prospectus or any other document relating to the securities in Italy under (1) or (2) above must be (i) made by an investment firm, bank or financial intermediary permitted to conduct such activities in Italy in accordance with the Decree No. 58 and Legislative Decree No. 385 of September 1, 1993, or the Banking Act; and (ii) in compliance with Article 129 of the Banking Act and the implementing guidelines of the Bank of Italy, as amended from time to time, pursuant to which the issue or the offer of securities in Italy may need to be preceded and followed by an appropriate notice to be filed with the Bank of Italy depending, *inter alia*, on the aggregate value of the securities issued or offered in Italy and their characteristics; and (iii) in compliance with any other applicable laws and regulations.

Germany. The offering of the units is not a public offering in the Federal Republic of Germany. The units may only be acquired in accordance with the provisions of the Securities Sales Prospectus Act (Wertpapier-Verkaufsprospektgesetz), as amended, and any other applicable German law. No application has been made under German law to publicly market the securities in or out of the Federal Republic of Germany. The units are not registered or authorized for distribution under the Securities Sales Prospectus Act and accordingly may not be, and are not being, offered or advertised publicly or by public promotion. Therefore, this prospectus is strictly for private use and the offering is only being made to recipients to whom the document is personally addressed and does not constitute an offer or advertisement to the public. The units will only be available to persons who, by profession, trade or business, buy or sell securities for their own or a third party s account.

France. The units offered by this prospectus may not be offered or sold, directly or indirectly, to the public in France. This prospectus has not been or will not be submitted to the clearance procedure of the Autorité des Marchés Financiers, or the AMF, and may not be released or distributed to the public in France. Investors in France may only

purchase the securities offered by this prospectus for their own account and in accordance with articles L. 411-1, L. 441-2 and L. 412-1 of the Code Monétaire et Financier and decree no. 98-880 dated October 1, 1998, provided they are qualified investors within the meaning of said decree.

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Each French investor must represent in writing that it is a qualified investor within the meaning of the aforesaid decree. Any resale, directly or indirectly, to the public of the units offered by this prospectus may be effected only in compliance with the above mentioned regulations.

Les actions offertes par ce document d information ne peuvent pas être, directement ou indirectement, offertes ou vendues au public en France. Ce document d information n a pas été ou ne sera pas soumis au visa de l Autorité des Marchés Financiers et ne peut être diffusé ou distribué au public en France. Les investisseurs en France ne peuvent acheter les actions offertes par ce document d information que pour leur compte propre et conformément aux articles L. 411-1, L. 441-2 et L. 412-1 du Code Monétaire et Financier et du décret no. 98-880 du 1 octobre 1998, sous réserve qu ils soient des investisseurs qualifiés au sens du décret susvisé. Chaque investisseur doit déclarer par écrit qu il est un investisseur qualifié au sens du décret susvisé. Toute revente, directe ou indirecte, des actions offertes par ce document d information au public ne peut être effectuée que conformément à la réglementation susmentionnée.

Switzerland. This prospectus may only be used by those persons to whom it has been directly handed out by the offeror or its designated distributors in connection with the offer described therein. The units are only offered to those persons and/or entities directly solicited by the offeror or its designated distributors, and are not offered to the public in Switzerland. This prospectus constitutes neither a public offer in Switzerland nor an issue prospectus in accordance with the respective Swiss legislation, in particular but not limited to Article 652A Swiss Code Obligations. Accordingly, this prospectus may not be used in connection with any other offer, whether private or public and shall in particular not be distributed to the public in Switzerland.

Norway. This prospectus has not been produced in accordance with the prospectus requirements laid down in the Norwegian Securities Trading Act 1997 as amended. This prospectus has not been approved or disapproved by, or registered with, neither the Oslo Stock Exchange nor the Norwegian Registry of Business Enterprises. This prospectus may not, either directly or indirectly be distributed to other Norwegian potential investors than the addressees without the prior consent of Vringo, Inc.

Denmark. This prospectus has not been prepared in the context of a public offering of securities in Denmark within the meaning of the Danish Securities Trading Act No. 171 of 17 March 2005 as amended from time to time or any Executive Orders issued on the basis thereof and has not been and will not be filed with or approved by or filed with the Danish Financial Supervisory Authority or any other public authorities in Denmark. The offering of units will only be made to persons pursuant to one or more of the exemptions set out in Executive Order No. 306 of 28 April 2005 on Prospectuses for Securities Admitted for Listing or Trade on a Regulated Market and on the First Public Offer of Securities exceeding EUR 2,500,000 or Executive Order No. 307 of 28 April 2005 on Prospectuses for the First Public Offer of Certain Securities between EUR 100,000 and EUR 2,500,000, as applicable.

Sweden. Neither this prospectus nor the units offered hereunder have been registered with or approved by the Swedish Financial Supervisory Authority under the Swedish Financial Instruments Trading Act (1991:980) (as amended), nor will such registration or approval be sought. Accordingly, this prospectus may not be made available nor may the units offered hereunder be marketed or offered for sale in Sweden other than in circumstances which are deemed not to be an offer to the public in Sweden under the Financial Instruments Trading Act. This prospectus may not be distributed to the public in Sweden and a Swedish recipient of the prospectus may not in any way forward the prospectus to the public in Sweden.

British Virgin Islands. No shares, warrants or units of the Company shall be offered or sold, directly or indirectly, to the public or any member of the public in the British Virgin Islands.

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LEGAL MATTERS

The validity of the securities offered hereby will be passed upon for us by Fredrikson & Byron, P.A., Minneapolis, Minnesota. The underwriters have been represented by Ellenoff Grossman & Schole LLP, New York, New York.

EXPERTS

Our financial statements as of December 31, 2009 and for the year then ended and for the period from August 1, 2005 (inception) through December 31, 2009 incorporated into the accompanying prospectus by reference to our Annual Report on Form 10-K for the year ended December 31, 2009 have been so incorporated in reliance on the report of Crowe Horwath LLP, an independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

Our financial statements as of December 31, 2008, and for the year then ended incorporated into the accompanying prospectus by reference to our Annual Report on Form 10-K for the year ended December 31, 2009 have been so incorporated in reliance on the report of Hays & Company LLP, independent registered public accounting firm, given on the authority of said firm as experts in auditing and accounting.

WHERE YOU CAN FIND MORE INFORMATION

We have filed a registration statement on Form S-3 with the SEC for the securities we are offering by this prospectus supplement. This prospectus supplement and the accompanying prospectus do not include all of the information contained in the registration statement. You should refer to the registration statement and its exhibits for additional information.

We are required to file annual and quarterly reports, special reports, proxy statements, and other information with the SEC. We make these documents publicly available, free of charge, on our website at *www.nilethera.com* as soon as reasonably practicable after filing such documents with the SEC. You can read our SEC filings, including the registration statement, on the SEC s website at *http://www.sec.gov*. You also may read and copy any document we file with the SEC at its public reference facility at:

Public Reference Room
100 F Street N.E.
Washington, DC 20549.

Please call the SEC at 1-800-732-0330 for further information on the operation of the public reference facilities.

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INCORPORATION OF CERTAIN INFORMATION BY REFERENCE

The SEC allows us to incorporate by reference into this prospectus supplement and the accompanying prospectus the information 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 considered to be part of this prospectus supplement and the accompanying prospectus, and information in documents that we file later with the SEC will automatically update and supersede information in this prospectus supplement. We incorporate by reference into this prospectus supplement the documents listed below and any future filings made by us with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act until we close this offering, including all filings made after the date of the initial registration statement and prior to the effectiveness of the registration statement. We hereby incorporate by reference the following documents:

Our Annual Report on Form 10-K for the year ended December 31, 2009 (File No. 001-34058); and

The description of our common stock contained in our registration statement on Form 8-A filed May 9, 2008, under the Exchange Act, including any amendment or report filed for the purpose of updating such description.

You may request a copy of these filings, at no cost, by writing or telephoning us at the following address:

Nile Therapeutics, Inc.
4 West 4th Avenue, Suite 400
San Mateo, CA 94402
Attention: Investor Relations
Phone: (650) 458-2670

Copies of these filings are also available, without charge, through the Investor Relations section of our website (*www.nilethera.com*) as soon as reasonably practicable after they are filed electronically with the SEC. The information contained on our website is not a part of this prospectus supplement.

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PROSPECTUS

Nile Therapeutics, Inc.

$25,000,000
Common Stock
Preferred Stock
Debt Securities
Warrants

From time to time, we may offer and sell up to $25,000,000 of any combination of the following securities, either individually or in units:

shares of our common stock;
shares of our preferred stock;
debt securities consisting of debentures, notes or other evidences of indebtedness; or
warrants to purchase shares of our common stock, preferred stock and/or debt securities.

This prospectus provides a general description of the securities we may offer. Each time we sell these securities, we will provide the specific terms of the securities offered in a supplement to this prospectus. We may also authorize one or more free writing prospectuses to be provided to you in connection with these offerings. The prospectus supplement and any related free writing prospectus may also add, update or change information contained in this prospectus. You should carefully read this prospectus, the applicable prospectus supplement and any related free writing prospectus, as well as any documents incorporated by reference, before buying any of the securities being offered.

The securities may be sold directly by us to our stockholders or to purchasers, through agents on our behalf or to or through underwriters or dealers. If any agents or underwriters are involved in the sale of the securities, the applicable prospectus supplement will provide the names of the agents or underwriters and any applicable fees, commissions or discounts. For additional information on the methods of sale, you should refer to the section entitled Plan of Distribution in this prospectus.

Our common stock is listed on the Nasdaq Capital Market under the symbol NLTX. On March 12, 2010, the last sale price for our common stock, as reported by the Nasdaq Capital Market, was $1.14.

As of March 2, 2010, the aggregate market value of our outstanding common stock held by non-affiliates was approximately $25,969,689, which is based on 27,085,824 shares of outstanding common stock, of which 21,641,408 shares are held by non-affiliates, and a per share price of $1.20 based on the closing sale price of our common stock on March 2, 2010. As of the date of this prospectus, we have not offered any securities pursuant to General Instruction I.B.6 of Form S-3 during the prior 12 calendar months that ends on the date of this prospectus.

Investing in our securities involves a high degree of risk. You should review carefully the risks and uncertainties described under the heading Risk Factors contained in the applicable prospectus supplement and any related free writing prospectus, and under similar headings in the other documents that are incorporated by reference into this prospectus.

This prospectus may not be used to consummate a sale of any securities unless accompanied by a prospectus supplement.

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

The date of this prospectus is March 12, 2010.

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement on Form S-3 that we filed with the Securities and Exchange Commission, or SEC, utilizing a shelf registration process. Under this shelf registration statement, we may, from time to time, sell any combination of the securities referred to herein in one or more offerings for total gross proceeds of up to $25,000,000. This prospectus provides you with a general description of the securities we may offer. Each time we offer a type or series of securities under this prospectus, we will provide a prospectus supplement that will contain more specific information about the terms of the offered securities. We also may authorize one or more free writing prospectuses to be provided to you that may contain material information relating to these offerings. This prospectus, together with applicable prospectus supplements and any related free writing prospectuses, includes all the material information relating to these offerings. We also may add, update or change, in the prospectus supplement and in any related free writing prospectus that we may authorize to be provided to you, any of the information contained in this prospectus or in the documents that we have incorporated by reference into this prospectus. We urge you to read carefully this prospectus, any applicable prospectus supplement and any related free writing prospectus, together with the information incorporated herein by reference as described under the section entitled Where You Can Find Additional Information, in this prospectus before buying any of the securities being offered.

THIS PROSPECTUS MAY NOT BE USED TO CONSUMMATE A SALE OF SECURITIES UNLESS IT IS ACCOMPANIED BY A PROSPECTUS SUPPLEMENT.

You should rely only on the information that we have provided or incorporated by reference in this prospectus, any applicable prospectus supplement and any related free writing prospectus that we may authorize to be provided to you. We have not authorized any other person to provide you with different information. No dealer, salesperson or other person is authorized to give any information or to represent anything not contained in this prospectus, any applicable prospectus supplement or any related free writing prospectus that we may authorize to be provided to you. You must not rely on any unauthorized information or representation. This prospectus, any applicable supplement to this prospectus or any related free writing prospectus does not constitute an offer to sell or the solicitation of an offer to buy any securities other than the registered securities to which they relate, nor does this prospectus, any applicable supplement to this prospectus or any related free writing prospectus constitute an offer to sell or the solicitation of an offer to buy securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. You should not assume that the information contained in this prospectus and any accompanying prospectus supplement, if any, is accurate on any date subsequent to the date set forth on the front of the document or that any information we have incorporated by reference is correct on any date subsequent to the date of the document incorporated by reference, even though this prospectus and any accompanying prospectus supplement is delivered or securities are sold on a later date.

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OUR COMPANY

We are a development stage biopharmaceutical company in the business of developing innovative products for the treatment of cardiovascular diseases. We currently have rights to develop two drug candidates:

CD-NP, our lead product candidate, is a novel chimeric natriuretic peptide in clinical development for an initial indication of acute decompensated heart failure, or ADHF. CD-NP was rationally designed by scientists at the Mayo Clinic s cardio-renal research labs. Current therapies for ADHF, including B-type natriuretic peptide, have been associated with favorable pharmacologic effects, but have also been associated with hypotension and decreased renal function which limit their utility in clinical practice. CD-NP was designed to preserve the favorable effects of current therapies while eliminating or attenuating the hypotensive response, and enhancing or preserving renal function. In addition to an initial indication for ADHF, CD-NP has potential utility in other indications which include preservation of cardiac function subsequent to acute myocardial infarction, and prevention of renal damage following to cardiac surgery.

In July 2009, we dosed the first patient in a single-blind, placebo-controlled Phase II clinical trial designed to provide additional information on the safety and tolerability of CD-NP when infused for up to 72 hours in hospitalized patients with acute heart failure and renal function insufficiency. The purpose of the study is to determine a safe and tolerable dose range of CD-NP that can be used in ADHF patients in the acute setting in combination with the standard of care. The study also contains several exploratory efficacy endpoints to provide insight into the potential for CD-NP to preserve or enhance renal function in acute heart failure patients. We anticipate completing this Phase II clinical trial and obtain its complete data in the second half of 2010.

CU-NP, is a pre-clinical rationally designed natriuretic peptide that consists of amino acid chains identical to those produced by the human body, specifically the ring structure of C-type natriuretic peptide, or CNP, and the N- and C-termini of Urodilatin, or URO. We are currently evaluating the potential for the chronic dosing of CU-NP, which could be used to treat a number of cardiovascular and renal diseases.

We were originally incorporated under Delaware law in August 2005 under the name Nile Pharmaceuticals, Inc. and we changed our name to Nile Therapeutics, Inc. in January 2007. On September 17, 2007, we were acquired by SMI Products, Inc., or SMI, which was then a public shell company, in a reverse merger transaction whereby a wholly-owned subsidiary of SMI merged with and into Nile Therapeutics, with Nile Therapeutics remaining as the surviving corporation and a wholly-owned subsidiary of SMI. In accordance with the terms of this transaction, the stockholders of Nile Therapeutics exchanged all of their shares of Nile Therapeutics common stock for shares of SMI common stock, which immediately following the transaction represented approximately 95 percent of the issued and outstanding common stock of SMI. Upon completion of the merger, the sole officer and director of SMI resigned and was replaced by the officers and directors of Nile Therapeutics. Additionally, following the merger, Nile Therapeutics, or Old Nile, was merged into SMI, and SMI changed its name to Nile Therapeutics, Inc. and adopted the business plan of Old Nile.

Our executive offices are located at 4 West 4th Avenue, Suite 400, San Mateo, California 94402. Our telephone number is (650) 458-2670 and our Internet address is *www.nilethera.com*. We do not incorporate the information on our website into this prospectus, and you should not consider it part of this prospectus or part of any prospectus supplement.

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RISK FACTORS

Investing in our securities involves risk. You should consider the risks, uncertainties and assumptions discussed under the heading Risk Factors in our Annual Report on Form 10-K for the fiscal year ended December 31, 2009 filed on March 3, 2010 with the SEC, which is incorporated herein by reference, and may be amended, supplemented or superseded from time to time by other reports we file with the SEC in the future. The risks and uncertainties we have described are not the only ones we face. Additional risks and uncertainties not presently known to us or that we currently deem immaterial may also affect our operations. If any of these risks were to occur, our business, financial condition, and results of operations could be severely harmed. This could cause the trading price of our common stock to decline, and you could lose all or part of your investment.

In addition, any prospectus supplement applicable to each offering of the securities described in this prospectus will contain a discussion of the risks applicable to such an investment in us. Prior to making a decision about investing in our securities, you should carefully consider the specific factors discussed under the heading Risk Factors in the applicable prospectus supplement, together with all of the other information contained or incorporated by reference in such prospectus supplement or appearing or incorporated by reference in this prospectus.

NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and the documents incorporated by reference in this prospectus contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, which we refer to as the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, which we refer to as the Exchange Act. These statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performances or achievements expressed or implied by the forward-looking statements. All statements, other than statements of historical facts, are forward-looking statements for purposes of these provisions, including without limitation any statements relating to:

our strategy, including our plans with respect to the development of our product candidates;
our research and development programs, including clinical testing;
sufficiency of our cash resources;
any statements concerning proposed regulatory activities or licensing or collaborative arrangements,
our research and development and other expenses;
our operations and legal risks; and
assumptions underlying any of the foregoing.

In some cases, you can identify forward-looking statements by terms such as anticipates, believes, could, estimates, expects, intends, may, plans, potential, predicts, projects, should, will, would and similar expr identify forward-looking statements. Discussions containing these forward-looking statements may be found, among other places, in the Business and Management s Discussion and Analysis of Financial Condition and Results of Operations sections incorporated by reference from our most recent Annual Report on Form 10-K and from our most recent Quarterly Report on Form 10-Q, as well as any amendments thereto reflected in subsequent filings with the SEC. Forward-looking statements reflect our current views with respect to future events, are based on assumptions and are subject to risks, uncertainties and other important factors. We discuss many of these risks, uncertainties and other important factors in greater detail under the heading Risk Factors contained in our most recent Annual Report on Form 10-K and in our most recent Quarterly Report on Form 10-Q, as well as any amendments thereto reflected in

subsequent filings with the SEC. Given these risks, uncertainties and other important factors, you should not place undue reliance on these forward-looking statements. Also, these forward-looking statements represent our estimates and assumptions only as of the date such forward-looking statements are made. You should carefully read this supplement and any prospectus supplement, together with the information incorporated herein by reference as described under the section entitled Where You Can Find

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Additional Information, completely and with the understanding that our actual future results may be materially different from what we expect. We can give no assurances that any of the events anticipated by the forward-looking statements will occur or, if any of them do, what impact they will have on our business, results of operations and financial condition.

USE OF PROCEEDS

We will retain broad discretion over the use of the net proceeds from the sale of the securities described in this prospectus. Except as described in any prospectus supplement, we currently intend to use the net proceeds from the sale of these securities to fund the research and development of our product candidates and other general and administrative expenses, and for general corporate purposes. We may also use a portion of the net proceeds to acquire or invest in businesses, products and technologies that are complementary to our own.

PLAN OF DISTRIBUTION

We may sell the common stock covered by this prospectus:

to or through one or more underwriters or dealers;
directly to purchasers, or to purchasers through agents; or
through a combination of any of these methods of sale.

We may distribute the common stock offered hereby:

from time to time in one or more transactions at a fixed price or prices, which may be changed from time to time;
at market prices prevailing at the times of sale;
at prices related to such prevailing market prices; or
at negotiated prices.

We will describe the method of distribution of the securities in the applicable prospectus supplement.

We may determine the price or other terms of the common stock offered under this prospectus by use of an electronic auction. We will describe how any auction will determine the price or any other terms, how potential investors may participate in the auction and the nature of the obligations of the underwriter, dealer or agent in the applicable prospectus supplement.

Underwriters, dealers or agents may receive compensation in the form of discounts, concessions or commissions from us or our purchasers (as their agents in connection with the sale of the common stock). In addition, underwriters may sell common stock to or through dealers, and those dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from the purchasers for whom they act as agent. These underwriters, dealers or agents may be considered to be underwriters under the Securities Act. As a result, discounts, commissions, or profits on resale received by the underwriters, dealers or agents may be treated as underwriting discounts and commissions. Each applicable prospectus supplement will identify any such underwriter, dealer or agent, and describe any compensation received by them from us. Any initial public offering price and any discounts or concessions allowed or reallowed or paid to dealers may be changed from time to time.

We may enter into agreements that provide for indemnification against certain civil liabilities, including liabilities under the Securities Act, or for contribution with respect to payments made by the underwriters, dealers or agents and to reimburse these persons for certain expenses.

We may grant underwriters who participate in the distribution of the common stock an option to purchase additional shares of common stock to cover over-allotments, if any, in connection with the distribution. Underwriters or agents and their associates may be customers of, engage in transactions with, or perform services for us in the ordinary course of business.

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In connection with the offering of the common stock, certain underwriters and selling group members and their respective affiliates, may engage in transactions that stabilize, maintain or otherwise affect the market price of the common stock. These transactions may include stabilization transactions effected in accordance with Rule 104 of Regulation M promulgated by the SEC pursuant to which these persons may bid for or purchase common stock for the purpose of stabilizing its market price.

The underwriters in an offering of the common stock may also create a short position for their account by selling more common stock in connection with the offering than they are committed to purchase from us. In that case, the underwriters could cover all or a portion of the short position by either purchasing common stock in the open market or by exercising any over-allotment option granted to them by us. In addition, any managing underwriter may impose penalty bids under contractual arrangements with other underwriters, which means that they can reclaim from an underwriter (or any selling group member participating in the offering) for the account of the other underwriters, the selling concession for the common stock that are distributed in the offering but subsequently purchased for the account of the underwriters in the open market. Any of the transactions described in this paragraph or comparable transactions that are described in any accompanying prospectus supplement may result in the maintenance of the price of the common stock at a level above that which might otherwise prevail in the open market. None of the transactions described in this paragraph or in an accompanying prospectus supplement are required to be taken by any underwriters and, if they are undertaken, may be discontinued at any time.

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DESCRIPTION OF COMMON STOCK

The following summary of the terms of our common stock is subject to and qualified in its entirety by reference to our charter and by-laws, copies of which are on file with the SEC as exhibits to previous SEC filings. Please refer to Where You Can Find More Information below for directions on obtaining these documents.

As of the date of this prospectus, we are authorized to issue 100,000,000 shares of common stock, par value $0.001 per share. As of March 1, 2010, we had 27,085,824 shares of common stock outstanding.

General

The holders of our common stock are entitled to one vote for each share on all matters voted on by stockholders, including elections of directors, and, except as otherwise required by law or provided in any resolution adopted by our board with respect to any series of preferred stock, the holders of such shares possess all voting power. Our certificate of incorporation does not provide for cumulative voting in the election of directors. Subject to any preferential rights of any outstanding series of our preferred stock created by our board from time to time, the holders of common stock are entitled to such dividends as may be declared from time to time by our board from funds available therefore and upon liquidation are entitled to receive pro rata all assets available for distribution to such holders. Our common stock is not redeemable.

The holders of our common stock have no preemptive rights. The rights, preferences and privileges of holders of common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock which we may designate and issue in the future.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is American Stock Transfer and Trust Company, LLC.

Nasdaq Capital Market

Our common stock is listed for quotation on the Nasdaq Capital Market under the symbol NLTX.

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DESCRIPTION OF PREFERRED STOCK

We are authorized to issue up to 10,000,000 shares of preferred stock, par value $0.001 per share. Our board of directors, without further action by the holders of our common stock, may issue shares of our preferred stock. Our board is vested with the authority to fix by resolution the designations, preferences and relative, participating, optional or other special rights, and such qualifications, limitations or restrictions thereof, including, without limitation, redemption rights, dividend rights, liquidation preferences and conversion or exchange rights of any class or series of preferred stock, and to fix the number of classes or series of preferred stock, the number of shares constituting any such class or series and the voting powers for each class or series.

The authority possessed by our board to issue preferred stock could potentially be used to discourage attempts by third parties to obtain control of Nile through a merger, tender offer, proxy contest or otherwise by making such attempts more difficult or more costly. Our board may issue preferred stock with voting rights or conversion rights that, if exercised, could adversely affect the voting power of the holders of common stock. There are no current agreements or understandings with respect to the issuance of preferred stock.

If we offer a specific class or series of preferred stock under this prospectus, we will describe the terms of the preferred stock in the prospectus supplement for such offering and will file a copy of the certificate establishing the terms of the preferred stock with the SEC. To the extent required, this description will include:

the title and stated value;
the number of shares offered, the liquidation preference per share and the purchase price;
the dividend rate(s), period(s) and/or payment date(s), or method(s) of calculation for such dividends;
whether dividends will be cumulative or non-cumulative and, if cumulative, the date from which dividends will accumulate;
the procedures for any auction and remarketing, if any;
the provisions for a sinking fund, if any;
the provisions for redemption, if applicable;
any listing of the preferred stock on any securities exchange or market;
whether the preferred stock will be convertible into our common stock, and, if applicable, the conversion price (or how it will be calculated) and conversion period;
whether the preferred stock will be exchangeable into debt securities, and, if applicable, the exchange price (or how it will be calculated) and exchange period;
voting rights, if any, of the preferred stock;
a discussion of any material U.S. federal income tax considerations applicable to the preferred stock;
the relative ranking and preferences of the preferred stock as to dividend rights and rights upon liquidation, dissolution or winding up of the affairs of the Company; and
any material limitations on issuance of any class or series of preferred s