

# SAVIENT PHARMACEUTICALS INC

## FORM 10-Q (Quarterly Report)

Filed 08/08/11 for the Period Ending 06/30/11

Address	ONE TOWER CENTER EAST BRUNSWICK, NJ 08816
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Fiscal Year	12/31

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

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**FORM 10-Q**

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(Mark One)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2011**

**OR**

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

**FOR THE TRANSITION PERIOD FROM            TO**

**COMMISSION FILE NUMBER 000-15313**

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**SAVIENT PHARMACEUTICALS, INC.**

(Exact Name of Registrant as Specified in Its Charter)

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**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**13-3033811**  
(I.R.S. Employer  
Identification No.)

**One Tower Center, 14th Floor, East Brunswick, New Jersey**  
(Address of Principal Executive Offices)

**08816**  
(Zip Code)

**(732) 418-9300**

(Registrant's Telephone Number, Including Area Code)

(Former Name, Former Address and Former Fiscal Year, if Changed Since Last Report)

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Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES  NO

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). YES  NO

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

Large accelerated filer  Accelerated filer

Non-accelerated filer  (Do not check if a smaller reporting company) Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES  NO

The number of shares outstanding of the issuers' Common Stock, par value \$.01 per share, as of August 5, 2011 was 71,398,000.

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**SAVIENT PHARMACEUTICALS, INC.**  
**FORM 10-Q**  
**FOR THE QUARTERLY PERIOD ENDED JUNE 30, 2011**

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## PART I—FINANCIAL INFORMATION

## ITEM 1. FINANCIAL STATEMENTS

**SAVIENT PHARMACEUTICALS, INC. AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
(In thousands, except per share data)

	June 30, 2011 (Unaudited)	December 31, 2010
<b>ASSETS</b>		
Current Assets:		
Cash and cash equivalents	\$ 198,648	\$ 44,791
Short-term investments	41,698	20,070
Accounts receivable, net	2,050	909
Inventories, net	8,279	3,140
Prepaid expenses and other current assets	3,896	2,415
Total current assets	<u>254,571</u>	<u>71,325</u>
Deferred income taxes, net	—	4,200
Property and equipment, net	706	809
Deferred financing costs, net	4,299	—
Other assets (including restricted cash)	1,280	1,284
Total assets	<u>\$ 260,856</u>	<u>\$ 77,618</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current Liabilities:		
Accounts payable	\$ 8,112	\$ 1,601
Deferred revenues	252	428
Deferred income taxes	12,014	—
Accrued interest on convertible notes	4,400	—
Other current liabilities	15,414	16,023
Total current liabilities	<u>40,192</u>	<u>18,052</u>
Convertible notes, net of discount of \$56,677	173,323	—
Other liabilities	3,404	10,299
Commitments and contingencies		
Stockholders' Equity:		
Preferred stock—\$.01 par value 4,000,000 shares authorized; no shares issued	—	—
Common stock—\$.01 par value 150,000,000 shares authorized; 71,349,000 issued and outstanding at June 30, 2011 and 70,259,000 shares issued and outstanding at December 31, 2010	713	703
Additional paid-in-capital	402,579	364,139
Accumulated deficit	(359,355)	(315,576)
Accumulated other comprehensive income	—	1
Total stockholders' equity	<u>43,937</u>	<u>49,267</u>
Total liabilities and stockholders' equity	<u>\$ 260,856</u>	<u>\$ 77,618</u>

The accompanying notes are an integral part of these consolidated financial statements.

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**SAVIENT PHARMACEUTICALS, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF OPERATIONS**  
**(Unaudited)**  
**(In thousands, except per share data)**

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2011	2010	2011	2010
<b>Revenues:</b>				
Product sales, net	\$ 1,984	\$ 987	\$ 3,274	\$ 2,080
<b>Cost and expenses:</b>				
Cost of goods sold	1,008	381	1,424	577
Research and development	7,729	7,233	11,457	13,563
Selling, general and administrative	23,856	4,553	40,493	9,499
	<u>32,593</u>	<u>12,167</u>	<u>53,374</u>	<u>23,639</u>
Operating loss	(30,609)	(11,180)	(50,100)	(21,559)
Investment income, net	38	31	68	49
Interest expense on convertible notes	(4,876)	—	(7,987)	—
Other (expense) income, net	(202)	6,139	1,430	8,204
Loss before income taxes	(35,649)	(5,010)	(56,589)	(13,306)
Income tax benefit	(5,400)	—	(12,810)	—
Net loss	<u>\$(30,249)</u>	<u>\$ (5,010)</u>	<u>\$(43,779)</u>	<u>\$(13,306)</u>
<b>Loss per common share:</b>				
Basic and diluted	<u>\$ (0.43)</u>	<u>\$ (0.07)</u>	<u>\$ (0.63)</u>	<u>\$ (0.20)</u>
<b>Weighted-average number of common and common equivalent shares:</b>				
Basic and diluted	70,075	66,906	70,035	66,634

The accompanying notes are an integral part of these consolidated financial statements.

**SAVIENT PHARMACEUTICALS, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENT OF CHANGES IN STOCKHOLDERS' EQUITY**  
**(Unaudited)**  
**(In thousands)**

	Common Stock			Accumulated Deficit	Accumulated Other Comprehensive Income	Total Stockholders' Equity
	Shares	Par Value	Additional Paid-In- Capital			
<b>Balance December 31, 2010</b>	70,259	\$703	\$364,139	\$ (315,576)	\$ 1	\$ 49,267
Comprehensive loss:	—	—	—	—	—	—
Net loss	—	—	—	(43,779)	—	(43,779)
Unrealized loss on marketable securities, net	—	—	—	—	(1)	(1)
Total comprehensive loss	—	—	—	—	—	(43,780)
Restricted stock grants	1,069	10	(10)	—	—	—
Amortization of deferred compensation	—	—	1,410	—	—	1,410
Forfeiture of restricted stock grants	(54)	—	—	—	—	—
Exercise of stock options	34	—	168	—	—	168
Issuance of common stock	41	—	309	—	—	309
ESPP compensation expense	—	—	284	—	—	284
Stock option compensation expense	—	—	1,852	—	—	1,852
Convertible note conversion option, net of tax of \$23,924	—	—	34,427	—	—	34,427
<b>Balance June 30, 2011</b>	<u>71,349</u>	<u>\$713</u>	<u>\$402,579</u>	<u>\$ (359,355)</u>	<u>\$ —</u>	<u>\$ 43,937</u>

The accompanying notes are an integral part of these consolidated financial statements.

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**SAVIENT PHARMACEUTICALS, INC. AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**(Unaudited)**  
**(In thousands)**

	<b>Six Months Ended June 30,</b>	
	<b>2011</b>	<b>2010</b>
<b>Cash flows from operating activities:</b>		
Net loss	\$ (43,779)	\$ (13,306)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	194	221
Accretion of discount on convertible notes	3,587	—
Change in valuation of warrant liability	—	(10,193)
Warrant liability transferred to APIC upon exercise of warrant	—	1,866
Amortization of deferred compensation related to restricted stock (including restricted stock awards that contain performance conditions)	1,410	1,105
Amortization of deferred financing costs	320	—
Unrecognized tax benefit liability	(6,863)	131
Deferred income taxes	(7,710)	—
Stock compensation expense	2,136	1,434
Changes in:		
Accounts receivable, net	(1,141)	(720)
Inventories, net	(5,139)	11
Recoverable income taxes	—	2,006
Prepaid expenses and other current assets	(711)	(72)
Accounts payable	6,511	(6,156)
Accrued interest on convertible notes	4,400	—
Other current liabilities	(609)	(1,460)
Deferred revenues	(176)	358
Net cash used in operating activities	(47,570)	(24,775)
<b>Cash flows from investing activities:</b>		
Purchases of held-to-maturity securities (investments—short-term)	(21,628)	(19,871)
Capital expenditures	(91)	(21)
Changes in other long-term assets	4	5
Net cash used in investing activities	(21,715)	(19,887)
<b>Cash flows from financing activities:</b>		
Proceeds from issuance of common stock	477	1,372
Proceeds from issuance of convertible notes, net of expenses	222,697	4,250
Changes in other long-term liabilities	(32)	(25)
Net cash provided by financing activities	223,142	5,597
Net increase (decrease) in cash and cash equivalents	153,857	(39,065)
Cash and cash equivalents at beginning of period	44,791	108,172
Cash and cash equivalents at end of period	\$198,648	\$ 69,107
Supplementary Information		
Other information:		
Income tax paid	\$ —	\$ —
Interest paid	\$ 20	\$ 70

The accompanying notes are an integral part of these consolidated financial statements.

**SAVIENT PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(Unaudited)**

**Note 1—Basis of Presentation**

The accompanying unaudited consolidated financial statements have been prepared in accordance with generally accepted accounting principles (“GAAP”) in the United States for interim financial information and with the instructions to Form 10-Q and Article 10 of Regulation S-X. Accordingly, they do not include all of the information and notes required by GAAP for complete financial statements. In the opinion of management, the unaudited interim financial statements furnished herein include all adjustments necessary for a fair presentation of Savient Pharmaceuticals, Inc.’s (“Savient” or the “Company”) financial position at June 30, 2011, the results of its operations for the six months ended June 30, 2011 and 2010, and cash flows for the six months ended June 30, 2011 and 2010. Interim financial statements are prepared on a basis consistent with the Company’s annual financial statements. Results of operations for the six months ended June 30, 2011 are not necessarily indicative of the operating results that may be expected for the year ending December 31, 2011.

The consolidated balance sheet as of December 31, 2010 was derived from the audited financial statements at that date and does not include all of the information and notes required by GAAP for complete financial statements. The interim statements should be read in conjunction with the consolidated financial statements and notes thereto included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2010.

*Consolidation*

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries, Savient Pharma Holdings, Inc. and Savient Pharma Ireland Limited. Certain prior period amounts have been reclassified to conform to current period presentations. There was no effect on net loss or equity related to these reclassifications.

*Use of estimates*

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. On an ongoing basis, the Company evaluates its estimates, including those related to investments, accounts receivable, reserve for product returns, inventories, rebates, property and equipment, share-based compensation and income taxes. The estimates are based on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Results may differ from these estimates due to actual outcomes differing from those on which the Company bases its assumptions.

*Investments*

The Company classifies investments as “available-for-sale securities,” “held-to-maturity securities” or “trading securities.” Investments that are purchased and held principally for the purpose of selling them in the near-term are classified as trading securities and marked to fair value through earnings. Investments in debt securities that the Company has the positive intent and ability to hold to maturity are carried at amortized cost and classified as held-to-maturity securities. Investments not classified as trading securities or held-to-maturity securities are considered to be available-for-sale securities. Changes in the fair value of available-for-sale securities are reported as a component of accumulated other comprehensive income in the consolidated statements of stockholders’ equity and are not reflected in the consolidated statements of operations until a sale transaction occurs or when declines in fair value are deemed to be other-than-temporary (“OTT”).

*Inventories, net*

Inventories are stated at the lower of cost or market. Cost is determined based on actual cost. If inventory costs exceed expected market value due to obsolescence or quantities in excess of expected demand, reserves are recorded for the difference between cost and market value. These reserves are determined based on estimates.

*Convertible debt*

The debt and equity components of our convertible debt instruments are bifurcated and accounted for separately. The debt component of the convertible notes, which excludes the associated equity conversion feature, is recorded at fair value as of the issuance date. The equity component, representing the difference between the amount allocated to the debt component and the proceeds received upon issuance of the debt, is recorded in additional paid-in-capital in the Consolidated Balance Sheets. The carrying value of the convertible notes resulting from bifurcation is subsequently accreted back to its principal amount through the recognition of non-cash interest expense. See Note 14 to the consolidated financial statements for more details.

**SAVIENT PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—Continued**  
**(Unaudited)**

*Deferred Financing Costs, net*

The Company incurred \$7.3 million in financing costs related to the issuance of \$230 million principal amount of 4.75% Convertible Senior Notes (“the 2018 Convertible Notes”) due on February 1, 2018, which is allocated to the debt and equity components of the Company’s convertible debt instruments. The Company allocated \$5.4 million to the debt component and recorded it as deferred finance cost. The Company allocated the remaining \$1.9 million to the equity component and recorded it against additional paid-in-capital. As of June 30, 2011, the Company had \$5.1 million of net deferred financing costs recorded on the consolidated balance sheets, \$4.3 million of which was recorded as a long-term asset. These costs are being amortized using the effective interest rate method over the expected period that the 2018 Convertible Notes are outstanding.

**Note 2—Recently Issued Accounting Pronouncements**

In June 2011, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) 2011-05, *Presentation of Comprehensive Income*, which amends Accounting Standards Codification (“ASC”) Topic 220, *Comprehensive Income*. The amendments give an entity the option to present the total of comprehensive income, the components of net income, and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. In both choices, an entity is required to present each component of net income along with total net income, each component of other comprehensive income along with a total for other comprehensive income, and a total amount for comprehensive income. The amendments eliminate the option to present the components of other comprehensive income as part of the statement of changes in stockholders’ equity. The amendments do not change the items that must be reported in other comprehensive income or when an item of other comprehensive income must be reclassified to net income. ASU 2011-05 is effective prospectively for the Company’s consolidated financial statements for the year beginning January 1, 2012 and is not expected to have a significant impact on the Company’s consolidated financial statements.

In May 2011, the FASB issued ASU 2011-04, *Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and International Financial Reporting Standards (“IFRS”)*, which represents clarifications of ASC Topic 820, *Fair Value Measurement*, and includes some instances where a particular principle or requirement for measuring fair value or disclosing information about fair value measurements has changed. The amendments result in common fair value measurement and disclosure requirements in GAAP and IFRS. Consequently, the amendments change the wording used to describe many of the requirements in GAAP for measuring fair value and for disclosing information about fair value measurements. For many of the requirements, the amendments do not result in a change in the application of the requirements in ASC Topic 820. Some of the amendments clarify the application of existing fair value measurement requirements. Other amendments change a particular principle or requirement for measuring fair value or for disclosing information about fair value measurements. ASU 2011-04 is effective prospectively for the Company’s consolidated financial statements for the year beginning January 1, 2012. The Company is currently assessing the potential impact from its future adoption of ASU 2011-04 on its consolidated financial statements.

In December 2010, the FASB issued ASU 2010-27, *Other Expenses (Topic 720): Fees Paid to the Federal Government by Pharmaceutical Manufacturers*. ASU 2010-27 addresses questions concerning how pharmaceutical manufacturers should recognize and classify in their income statements fees mandated by the Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act (collectively, the Acts). The Acts impose an annual fee on the pharmaceutical manufacturing industry for each calendar year beginning on or after January 1, 2011. The amendments in this update specify that the liability for the fee should be estimated and recorded in full upon the first qualifying sale with a corresponding deferred cost that is amortized to expense using a straight-line method of allocation unless another method better allocates the fee over the calendar year that it is payable. ASU 2010-27 is not expected to have a significant effect on the Company’s consolidated financial statements.

**SAVIENT PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—Continued**  
**(Unaudited)**

**Note 3—Fair Value of Financial Instruments**

The Company categorizes its financial instruments into a three-level fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value into three broad levels. The fair value hierarchy gives the highest priority to quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3). If the inputs used to measure fair value fall within different levels of the hierarchy, the category level is based on the lowest priority level input that is significant to the fair value measurement of the instrument.

Financial assets recorded at fair value on the Company's consolidated balance sheets are categorized as follows:

Level 1: Unadjusted quoted prices for identical assets in an active market.

Level 2: Quoted prices in markets that are not active or inputs that are observable either directly or indirectly for substantially the full-term of the asset. Level 2 inputs include the following:

- quoted prices for similar assets in active markets,
- quoted prices for identical or similar assets in non-active markets,
- inputs other than quoted market prices that are observable, and
- inputs that are derived principally from or corroborated by observable market data through correlation or other means.

Level 3: Prices or valuation techniques that require inputs that are both unobservable and significant to the overall fair value measurement. They reflect management's own assumptions about the assumptions a market participant would use in pricing the asset.

The following table presents the Company's cash and cash equivalents, and investments and including the hierarchy for its financial instruments measured at fair value on a recurring basis as of June 30, 2011:

	<u>Carrying Amount</u>	<u>Estimated Fair Value</u>	<u>Assets and Liabilities Measured at Fair Value (In thousands)</u>	<u>Level 1</u>	<u>Level 2</u>	<u>Level 3</u>
<b>Assets:</b>						
Cash and cash equivalents:						
Cash	\$ 4,315	\$ 4,315	\$ 4,315	\$ 4,315	\$ —	\$ —
Certificates of deposit	1,307	1,307	—	—	—	—
Money market funds	193,026	193,026	193,026	193,026	—	—
Total cash and cash equivalents	198,648	198,648	197,341	197,341	—	—
Short-term investments (available-for-sale):						
Equity securities	—	—	—	—	—	—
Short-term investments (held-to-maturity):						
Certificates of deposit	41,698	41,698	—	—	—	—
Total short-term investments	41,698	41,698	—	—	—	—
Total cash and cash equivalents and short-term investments	240,346	240,346	197,341	197,341	—	—
Long-term investments (held-to-maturity)						
Certificates of deposit	1,280	1,280	—	—	—	—
Total long-term investments	1,280	1,280	—	—	—	—
Total	<u>\$241,626</u>	<u>\$241,626</u>	<u>\$197,341</u>	<u>\$197,341</u>	<u>\$ —</u>	<u>\$ —</u>

The \$169.8 million debt component of the 2018 Convertible Notes was recorded at fair value as of the issuance date of February 4, 2011 based on a Level 3 input. The carrying value of the notes is subsequently accreted back to its principal. The \$173.3 million carrying amount of the notes as of June 30, 2011 includes accretion of the discount on the convertible notes subsequent to the issuance date of \$3.6 million. See Note 14 to the consolidated financial statements for more details.

**SAVIENT PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—Continued**  
**(Unaudited)**

**Note 4—Investments**

At June 30, 2011 and December 31, 2010, the Company held no trading securities. Available-for-sale and held-to-maturity securities consisted of the following:

	June 30, 2011			Estimated Fair Value
	Cost or Amortized	Gross Unrealized	Gross Unrealized	
	Cost	Gains	Losses	
(In thousands)				
<b>Available-for-sale securities:</b>				
Equity securities (1)	\$ —	\$ 1	\$ (1)	\$ —
Total available-for-sale securities	<u>—</u>	<u>1</u>	<u>(1)</u>	<u>—</u>

**Held-to-maturity securities:**

## Fixed maturities:

Bank deposits and certificates of deposit	44,285	—	—	44,285
Total held-to-maturity securities	<u>44,285</u>	<u>—</u>	<u>—</u>	<u>44,285</u>
Total	<u>\$ 44,285</u>	<u>\$ 1</u>	<u>\$ (1)</u>	<u>\$44,285</u>

	December 31, 2010			Estimated Fair Value
	Cost or Amortized	Gross Unrealized	Gross Unrealized	
	Cost	Gains	Losses	
(In thousands)				
<b>Available-for-sale securities:</b>				
Equity securities (1)	\$ —	\$ 1	\$ —	\$ 1
Total available-for-sale securities	<u>—</u>	<u>1</u>	<u>—</u>	<u>1</u>

**Held-to-maturity securities:**

## Fixed maturities:

Bank deposits and certificates of deposit	21,350	—	(1)	21,349
Total held-to-maturity securities	<u>21,350</u>	<u>—</u>	<u>(1)</u>	<u>21,349</u>
Total	<u>\$ 21,350</u>	<u>\$ 1</u>	<u>\$ (1)</u>	<u>\$21,350</u>

- (1) Equity securities at June 30, 2011 and December 31, 2010 were comprised of the Company's investment in common shares of Neuro-Hitech, Inc. The fair value of this investment is obtained from quoted prices in an inactive market. The Company considers the market for Neuro-Hitech, Inc. shares to be inactive due to its low trading volume and infrequency of trading.

The Company's available-for-sale and held-to-maturity securities were included in the following captions in its consolidated balance sheets:

	June 30, 2011		December 31, 2010	
	Available- for-Sale Securities:	Held-to- Maturity Securities:	Available- for-Sale Securities:	Held-to- Maturity Securities:
(In thousands)				
Cash and cash equivalents	\$ —	\$ 1,307	\$ —	\$ 6,200
Short-term investments	—	41,698	1	13,870
Other long-term assets (including investments and restricted cash)	—	1,280	—	1,280
	<u>\$ —</u>	<u>\$ 44,285</u>	<u>\$ 1</u>	<u>\$ 21,350</u>

At June 30, 2011, all of the Company's held-to-maturity securities classified as short-term investments had maturity dates of one year or less. Since available-for-sale securities are made up exclusively of equity securities, there are no maturity dates associated with available-for-sale securities. At June 30, 2011 and December 31, 2010, there was \$1,000 and \$2,000 net unrealized loss, respectively, included in comprehensive loss, net of taxes. Other long-term assets represent the Company's rent security deposit, which is secured by a cash deposit.

**SAVIENT PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—Continued**  
**(Unaudited)**

**Note 5—Inventories**

At June 30, 2011 and December 31, 2010, inventories at cost, net of reserves, were as follows:

	<u>June 30,</u> <u>2011</u>	<u>December 31,</u> <u>2010</u>
	(In thousands)	
Raw materials	\$ 899	\$ 888
Work-in-progress	7,590	2,605
Finished goods	798	913
Inventory at cost	9,287	4,406
Inventory reserves	(1,008)	(1,266)
Total	<u>\$ 8,279</u>	<u>\$ 3,140</u>

An allowance is established when management determines that certain inventories may not be saleable. The Company states inventories at the lower of cost or market. If inventory costs exceed expected market value due to obsolescence or quantities in excess of expected demand, the Company records reserves for the difference between the cost and the market value. These reserves are recorded based on estimates of expected sales demand for the Company's products which include KRYSTEXXA<sup>®</sup> (pegloticase), Oxandrin<sup>®</sup> and oxandrolone.

**Note 6—Property and Equipment, Net**

Property and equipment, net at June 30, 2011 and December 31, 2010 is summarized below:

	<u>June 30,</u> <u>2011</u>	<u>December 31,</u> <u>2010</u>
	(In thousands)	
Office equipment	\$ 2,691	\$ 2,628
Office equipment—capital leases	332	332
Leasehold improvements	1,574	1,546
	4,597	4,506
Accumulated depreciation and amortization	(3,891)	(3,697)
Total	<u>\$ 706</u>	<u>\$ 809</u>

Depreciation and amortization expense was approximately \$0.1 million for each of the three-month periods ended June 30, 2011 and 2010 and \$0.2 million for each of the six-month periods ended June 30, 2011 and 2010, respectively.

Capital lease obligations associated with capital lease office equipment are included in Other Current Liabilities and non-current Other Liabilities. See Note 13 to the consolidated financial statements for more details.

**SAVIENT PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—Continued**  
**(Unaudited)**

**Note 7—Revenue Recognition**

The Company generates revenue from product sales. Revenue is not recognized until it is realized or realizable and earned. Revenue is realized or realizable and earned when all revenue recognition criteria are met: (i) persuasive evidence of an arrangement exists, (ii) delivery has occurred or services have been rendered, (iii) the Company's price is fixed and determinable, and (iv) collectability is reasonably assured.

Revenue from sales transactions where the buyer has the right to return the product is recognized at the time of sale only if (i) the seller's price to the buyer is substantially fixed or determinable at the date of sale, (ii) the buyer has paid the seller, or the buyer is obligated to pay the seller and the obligation is not contingent on resale of the product, (iii) the buyer's obligation to the seller would not be changed in the event of theft or physical destruction or damage of the product, (iv) the buyer acquiring the product for resale has economic substance apart from that provided by the seller, (v) the seller does not have significant obligations for future performance to directly bring about resale of the product by the buyer, and (vi) the amount of future returns can be reasonably estimated.

Given the Company's limited sales history for KRYSTEXXA, coupled with the products' new entry into its market, the Company is currently unable to reasonably estimate future product returns. Therefore, the Company has determined that the shipments of KRYSTEXXA made to specialty distributors do not meet the criteria for revenue recognition at the time of shipment, and accordingly, such shipments are accounted for using the sell-through method. Under the sell-through method, the Company does not recognize revenue upon shipment of KRYSTEXXA to specialty distributors. For these product sales, the Company invoices the specialty distributor and records deferred revenue equal to the gross invoice price. The Company then recognizes revenue when KRYSTEXXA is sold through, or upon shipment of the product from the specialty distributors to their customers, including doctors and infusion suites. Because of the price of KRYSTEXXA, the short period from sale of product to patient infusion and limited product return rights, KRYSTEXXA distributors and their customers generally carry limited inventory. The Company also expects to sell KRYSTEXXA to wholesalers whereby the Company will drop-ship the product directly to hospitals. As there is limited risk of returns from hospitals as infusions will be taking place in their facilities, the Company records revenue when KRYSTEXXA has been received at the hospital and title has transferred in accordance with the terms of sale.

Oxandrin product sales are generally recognized when title to the product has transferred to the Company's customer in accordance with the terms of the sale. The Company ships its authorized generic oxandrolone product to its distributor and accounts for these shipments on a consignment basis until product is sold into the retail market. The Company defers recognition of revenue related to these shipments until it confirms that the product has been sold into the retail market and all other revenue recognition criteria have been met.

The Company's net product revenues represent total product revenues less allowances for returns, Medicaid rebates, other government rebates, other rebates, discounts, and distribution fees.

*Allowance for returns*

The Company's product sales in the United States are primarily composed of sales of KRYSTEXXA, Oxandrin and its authorized generic oxandrolone product. In general, the Company provides credit for product returns for KRYSTEXXA that are returned six months after the product expiration date. Additionally, the Company provides credit for product returns for Oxandrin and generic oxandrolone that are returned six months prior to and up to 12 months after the product expiration date. Upon sale, the Company estimates an allowance for future product returns. The Company provides additional reserves for contemporaneous events that were not known or knowable at the time of shipment. In order to reasonably estimate future returns, the Company analyzes both quantitative and qualitative information including, but not limited to, actual return rates by lot productions, the level of product manufactured by the Company, the level of product in the distribution channel, expected shelf life of the product, current and projected product demand, the introduction of new or generic products that may erode current demand, and general economic and industry-wide indicators.

The allowance for product returns at June 30, 2011 and December 31, 2010 was \$0.8 million and \$0.5 million, respectively. This allowance is included in Other Current Liabilities on the Company's consolidated balance sheets.

**SAVIENT PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—Continued**  
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*Allowances for Medicaid, other government rebates and other rebates*

The Company's contracts with Medicaid and other government agencies such as the Federal Supply System, commit it to providing those entities with the Company's most favorable pricing. This ensures that the Company's products remain eligible for purchase or reimbursement under these programs. Based upon the Company's contracts and the most recent experience with respect to sales through each of these channels, the Company provides an allowance for rebates. The Company monitors the sales trends and adjusts the rebate percentages on a regular basis to reflect the most recent rebate experience. The allowance for rebates at June 30, 2011 and December 31, 2010 was \$0.2 million and \$0.3 million, respectively. This allowance is included in Other Current Liabilities within the Company's consolidated balance sheets.

*Commercial discounts*

The Company sells directly to drug wholesalers and specialty distributors. Terms of these sales vary, but generally provide for invoice discounts for prompt payment to drug wholesalers only. These discounts are recorded by the Company at the time of sale. Gross product revenue is also reduced for promotion and pricing incentives.

*Distribution fees*

The Company has a distribution arrangement with a third-party logistics provider which includes payment terms equal to a flat monthly fee plus a per transaction fee for specified services. The Company also records distribution fees as incurred associated with wholesaler distribution services from its three largest wholesaler customers and its five specialty distributors.

**Note 8—Research and Development**

Research and development costs are expensed as incurred and include salaries and benefits, stock-based compensation, and costs paid to third-party contractors to perform research, conduct clinical trials, and develop drug materials.

Manufacturing costs are a significant component of research and development expenses and includes costs associated with third-party contractors for validation batch production, process technology transfer, quality control and stability testing, raw material purchases, overhead expenses and facilities costs. The Company previously recorded these manufacturing-related expenses, as research and development as incurred because these costs do not meet the definition of an inventory asset. Inventories include owned items that are held for sale in the ordinary course of business, that are in process of production for sale, or that will be consumed in the production of goods or services that will be held for sale. Following regulatory approval by the U.S. Food and Drug Administration ("FDA") of KRYSTEXXA, the Company is capitalizing certain manufacturing costs as an inventory asset that would previously have been expensed as research and development costs in cases where the manufacturing costs meet the definition of an inventory asset. The Company will continue to record as research and development expenses those manufacturing costs incurred at third parties that the Company is in the process of qualifying as secondary source suppliers of pegloticase drug substance, or in jurisdictions that have not received regulatory approval for the commercialization of KRYSTEXXA.

Clinical trial cost is another significant component of research and development expenses. Most of the Company's clinical studies are performed by third-party contract research organizations ("CROs"). The Company accrues costs for clinical studies performed by CROs that are milestone or event driven in nature and based on reports and invoices submitted by the CRO. These expenses are based on patient enrollment as well as costs consisting primarily of payments made to the CRO, clinical sites, investigators, testing facilities and patients for participating in the Company's clinical trials.

Non-refundable advance payments for future research and development activities are deferred and capitalized. Such amounts are recognized as an expense as the goods are delivered or the related services are performed. As a result of the FDA approval of KRYSTEXXA for marketing in the United States, the Company now defers and capitalizes all future fees incurred to reserve manufacturing capacity at its third-party service providers. The Company had no deferred research and development costs as of June 30, 2011 or December 31, 2010, respectively, and had no amortization expense for the six months ended June 30, 2011 and 2010, respectively, based on services performed.

**SAVIENT PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—Continued**  
**(Unaudited)**

**Note 9—Earnings (Loss) per Share of Common Stock**

The Company accounts for and discloses net earnings (loss) per share using the treasury stock method. Net earnings (loss) per common share, or basic earnings (loss) per share, is computed by dividing net earnings (loss) by the weighted-average number of common shares outstanding. Net earnings (loss) per common share assuming dilutions, or diluted earnings (loss) per share, is computed by reflecting the potential dilution from the exercise of in-the-money stock options, non-vested restricted stock and non-vested restricted stock units.

The Company's basic and diluted weighted-average number of common shares outstanding as of June 30, 2011 and 2010 were as follows:

	Six Months Ended	
	June 30,	
	2011	2010
	(In thousands)	
Basic	70,035	66,634
Incremental common stock equivalents	—	—
Diluted	<u>70,035</u>	<u>66,634</u>

At June 30, 2011 and 2010, all in-the-money stock options, unvested restricted stock and warrants amounting to 2,552,000 and 6,989,000, respectively, were excluded from the computation of diluted earnings (loss) per share as their effect would have been anti-dilutive, since the Company reported a net loss for these periods.

**Note 10—Stockholder's Equity**

In February 2011, the Company issued \$230 million principal amount of the 2018 Convertible Notes at par that become due on February 1, 2018. As part of the accounting for the convertible notes, the Company bifurcated the conversion feature and recorded \$34.4 million to additional paid-in-capital, net of a deferred tax liability of \$23.9 million as well as equity issuance costs of \$1.9 million. See Note 14 to the consolidated financial statements for more details.

On April 8, 2009, the Company raised \$31.0 million from a registered direct offering, which yielded approximately \$29.0 million in cash, net of approximately \$2.0 million of offering costs which were charged to additional paid-in-capital. The Company issued 5,927,343 shares of its common stock to existing and new institutional investors as part of the offering. The investors also received warrants to purchase up to 5,038,237 shares of the Company's common stock at an initial exercise price of \$10.46 per share.

The Company's warrant liability was marked-to-market each reporting period with the change in fair value recorded as a gain or loss within Other Expense, net on the Company's consolidated statement of operations until the warrants were exercised, expire or other facts and circumstances led the warrant liability to be reclassified as an equity instrument. The fair value of the warrant liability was determined at each reporting period by utilizing a Monte Carlo simulation model that takes into account estimated probabilities of possible outcomes provided by the Company. At the date of the transaction, April 8, 2009, the fair value of the warrant liability was \$12.6 million.

During the six months ended June 30, 2010, the Company recorded income of \$8.3 million within Other Income, net on its consolidated statement of operations to reflect the decrease in the valuation of the warrants, prior to being exercised.

During the year ended December 31, 2010, holders of the Company's warrants exercised warrants to purchase an aggregate of 5,038,237 shares of the Company's common stock, either through a cashless exercise or cash exercise. The Company received an aggregate of \$8.5 million of cash proceeds from the cash exercises of warrants to purchase an aggregate of 812,617 shares of common stock. The remainder of the warrants were exercised via a cashless net share settlement process, whereby warrants to purchase an aggregate of 4,225,620 shares of common stock were exercised, resulting in the forfeiture of 1,997,657 shares in satisfaction of the warrant exercise price, and the issuance of 2,227,963 shares of common stock. As of December 31, 2010, all of the warrants had been exercised and no warrants to purchase shares of the Company's common stock remained outstanding. As all of the warrants have been exercised and are no longer outstanding, the Company's warrant liability was completely converted into stockholders' equity as of December 31, 2010.

**SAVIENT PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—Continued**  
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**Note 11—Share-Based Compensation**

The Company's 2004 Incentive Plan expired by its terms on April 30, 2011 and no further awards may be granted under it. In 2011, the Company adopted its 2011 Incentive Plan. Up to an aggregate of 7.75 million shares of the Company's common stock may be issued pursuant to awards granted by the Company under the 2011 Incentive Plan. Awards may be granted as incentive and non-statutory stock options, stock appreciation rights, restricted stock awards and restricted stock unit awards, performance-based stock option and restricted stock awards, and other forms of equity-based and cash incentive compensation. Under this plan, 7,264,000 shares remain available for issuance pursuant to future grants at June 30, 2011.

Total compensation cost that has been charged against income related to the above plans was \$1.7 million and \$1.0 million for the three months ended June 30, 2011 and 2010, respectively, and \$3.3 million and \$2.3 million for the six months ended June 30, 2011 and 2010, respectively. The exercise of stock options and the vesting of restricted stock during the three and six months ended June 30, 2011 generated an income tax deduction of approximately \$1.1 million and \$1.3 million, respectively. The Company does not recognize a tax benefit with respect to an excess stock compensation deduction until the deduction actually reduces the Company's income tax liability. At such time, the Company utilizes the net operating losses generated by excess stock-based compensation to reduce its income tax payable and the tax benefit is recorded as an increase in additional paid-in-capital. No income tax benefit was recognized in the consolidated statements of operations for share-based compensation arrangements for the six months ended June 30, 2011 and 2010, respectively.

The following table summarizes stock-based compensation related to the above plans by expense category for the three and six months ended June 30, 2011 and 2010:

	<u>Three Months Ended</u> <u>June 30,</u>		<u>Six Months Ended</u> <u>June 30,</u>	
	<u>2011</u>	<u>2010</u>	<u>2011</u>	<u>2010</u>
	(In thousands)			
Research and development	\$ 329	\$ 399	\$ 651	\$ 979
Selling, general and administrative	1,322	561	2,611	1,353
Total non-cash compensation expense related to share-based compensation included in operating expense	<u>\$ 1,651</u>	<u>\$ 960</u>	<u>\$3,262</u>	<u>\$2,332</u>

**Stock Options**

The Company grants stock options to employees and directors with exercise prices equal to the fair market value of the underlying shares of the Company's common stock on the date that the options are granted. Options granted have a term of 10 years from the grant date. Options granted to employees vest over a four-year period and options granted to directors vest in equal quarterly installments over a one-year period from the date of grant. Options to directors are granted on an annual basis and represent compensation for services performed on the Board of Directors. Compensation cost for stock options is charged against income on a straight-line basis between the grant date for the option and each vesting date, except for those options that contain performance and market-based conditions. The Company estimates the fair value of all stock option awards at the closing price on the grant date by applying the Black-Scholes option pricing valuation model. The application of this valuation model involves assumptions that are highly subjective, judgmental and sensitive in the determination of compensation cost.

During the six months ended June 30, 2011, the Company awarded to employees options to purchase an aggregate of approximately 1.5 million shares of common stock. In addition, on April 29, 2011, the Company made an inducement grant outside of the above mentioned plans, pursuant to the NASDAQ inducement grant exception, for the purchase of 50,000 shares of the Company's common stock with an exercise price equal to the closing price of the Company's common stock on the grant date. The option has a ten-year term, will vest and become exercisable as to 12,500 shares on April 29, 2012, and as to an additional 3,125 shares at the end of each successive three-month period thereafter until April 29, 2015. In the event of the termination by the Company without cause or for good reason, the time-based stock option will immediately accelerate and become fully vested.

**SAVIENT PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—Continued**  
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The weighted-average key assumptions used in determining the fair value of options granted during the six months ended June 30, 2011 and 2010 were as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2011	2010	2011	2010
Weighted-average volatility	100%	77%	92%	78%
Weighted-average risk-free interest rate	2.5%	2.8%	2.5%	2.9%
Weighted-average expected life in years	3.7	7.2	3.7	6.9
Dividend yield	0.0%	0.0%	0.0%	0.0%
Weighted-average grant date fair value per share	\$ 6.57	\$ 8.28	\$6.27	\$8.87

Historical information is the primary basis for the selection of the expected volatility and expected dividend yield. The expected terms of options granted prior to December 31, 2007 were based upon the simplified method. The simplified method estimates the expected term as the midpoint between vesting and the grant contractual life. The expected terms of options granted subsequent to December 31, 2007 are based upon the Company's historical experience for similar types of stock option awards. The risk-free interest rate is selected based upon yields of United States Treasury issues with a term equal to the expected life of the option being valued.

During the six months ended June 30, 2011 and 2010, the Company issued 33,000 shares and 188,000 shares, respectively, of common stock upon the exercise of outstanding stock options and received proceeds of \$0.2 million and \$1.2 million, respectively. For the three months ended June 30, 2011 and 2010, approximately \$0.7 million and \$0.5 million, respectively, of stock option compensation cost was charged against income. For the six months ended June 30, 2011 and 2010, approximately \$1.6 million and \$1.3 million, respectively, of stock option compensation cost was charged against income. As of June 30, 2011, there was \$5.7 million of unrecognized compensation cost, adjusted for estimated forfeitures, related to unamortized stock option compensation which is expected to be recognized over a weighted-average period of approximately 2.8 years. Total unrecognized compensation cost will be adjusted for future changes in estimated forfeitures.

Stock option activity during the six months ended June 30, 2011, was as follows:

	Number of Shares	Weighted- Average Exercise Price Per Share <small>(In thousands, except weighted-average data)</small>	Weighted- Average Remaining Contractual Term (in yrs)	Aggregate Intrinsic Value of In-the- Money Options
Outstanding at December 31, 2010	2,183	\$ 8.13	7.13	\$ 8,710
Granted	1,487	9.62	—	—
Exercised	(33)	5.08	—	—
Cancelled	(81)	10.10	—	—
Outstanding at June 30, 2011	<u>3,556</u>	<u>\$ 8.74</u>	<u>7.74</u>	<u>\$ 3,683</u>
Exercisable at June 30, 2011	<u>1,519</u>	<u>\$ 8.18</u>	<u>5.82</u>	<u>\$ 2,732</u>

The weighted-average grant date per share fair value for options granted during the six months ended June 30, 2011 and 2010 was \$6.27 and \$8.87, respectively. The aggregate intrinsic value in the previous table reflects the total pre-tax intrinsic value (the difference between the Company's closing stock price on the last trading day of the period and the exercise price of the options, multiplied by the number of in-the-money stock options) that would have been received by the option holders had all option holders exercised their options on June 30, 2011. The intrinsic value of the Company's stock options changes based on the closing price of the Company's common stock. The total intrinsic value of options exercised (the difference in the market price of the Company's common stock on the exercise date and the price paid by the optionee to exercise the option) for the six months ended June 30, 2011 was approximately \$0.1 million. The closing price per share of the Company's common stock was \$7.49 and \$12.60 on June 30, 2011 and 2010, respectively.

**SAVIENT PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—Continued**  
**(Unaudited)**

***Stock Options that Contain Performance or Market-Based Conditions***

*Performance or Market Conditions*

During the six months ended June 30, 2011, the Company recorded \$0.3 million compensation expense related to stock option awards that contained performance or market conditions, the vesting of which is contingent upon the achievement of various specific strategic objectives by June 30, 2013. At June 30, 2011, approximately 400,000 potential option shares with performance or market conditions remain unvested. These stock option awards with performance or market conditions encompass performance targets set for senior management personnel through 2013 and could result in approximately \$2.7 million of additional compensation expense if the performance targets are met or expected to be attained. In addition, during the six months ended June 30, 2011, the Company made two inducement grants outside of the above mentioned plans, pursuant to the NASDAQ inducement grant exception, to recruit key positions within the Company. On January 31, 2011, the Company awarded a performance-based stock option grant to purchase 250,000 shares of the Company’s common stock, with an exercise price equal to the closing price of the Company’s common stock on the date of grant, a ten-year term, and that will vest and become exercisable upon the satisfaction of certain performance conditions. In the event that any performance condition is not met, the portion of the option subject to the performance condition will remain outstanding and will vest (subject to the employees continued employment by the Company) upon the earlier of the fourth anniversary of the date of grant and a change of control of the Company. On April 29, 2011, the Company granted performance-based stock options to purchase 50,000 shares of the Company’s common stock.

The weighted-average key assumptions used in determining the fair value of stock option awards with performance or market conditions granted during the period ended June 30, 2011 were as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2011	2010	2011	2010
Weighted-average volatility	108%	—	86%	—
Weighted-average risk-free interest rate	1.1%	—	2.4%	—
Weighted-average expected term in years	3.1	—	3.1	—
Dividend yield	0.0%	—	0.0%	—
Weighted-average grant date fair value	\$ 5.01	—	\$ 5.21	—

A summary of the status of the Company’s non-vested stock option awards that contain performance or market conditions as of December 31, 2010 and changes during the six months ended June 30, 2011, is presented below:

	Number of	Weighted- Average Grant Date
	Shares (Shares in thousands)	Fair Value Per Share
Non-vested at December 31, 2010	15	\$ 8.43
Granted	400	5.21
Vested	—	—
Forfeited	(15)	8.43
Non-vested at June 30, 2011	<u>400</u>	<u>\$ 5.21</u>

The weighted-average grant date per share fair value for stock option awards that contain performance or market conditions granted during the six months ended June 30, 2011 was \$5.21. During the six months ended June 30, 2011, no stock options containing performance or market conditions vested.

**SAVIENT PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—Continued**  
**(Unaudited)**

***Restricted Stock***

The Company grants restricted stock and restricted stock unit (“RSU”) awards to its employees and to its directors. Restricted stock and RSU awards are recorded as deferred compensation and amortized into compensation expense on a straight-line basis over the vesting period, which ranges from one to four years in duration. Restricted stock and RSU awards to directors are granted on a yearly basis and represent compensation for services performed on the Company’s Board of Directors. Restricted stock awards to directors vest in equal quarterly installments over a one-year period from the grant date and RSU awards vest after one-year and thirty-one days. Compensation cost for restricted stock and RSU awards is based on the award’s grant date fair value, which is the closing market price of the Company’s common stock on the grant date, multiplied by the number of shares awarded. During the six months ended June 30, 2011, the Company issued 751,000 shares of restricted stock amounting to \$6.6 million in total aggregate fair market value. For the six months ended June 30, 2011 and 2010, approximately \$1.2 million and \$1.1 million, respectively, of deferred restricted stock compensation cost was charged against income. At June 30, 2011, approximately 917,000 shares remained unvested and there was approximately \$6.9 million of unrecognized compensation cost related to restricted stock and RSUs.

A summary of the status of the Company’s unvested restricted stock and RSUs as of December 31, 2010 and changes during the six months ended June 30, 2011, is presented below:

	Number of Shares	Weighted-Average Grant Date Fair Value Per Share
	(Shares in thousands)	
Unvested at December 31, 2010	315	\$ 11.56
Granted	751	8.74
Vested	(110)	12.46
Forfeited	(39)	10.82
Unvested at June 30, 2011	<u>917</u>	<u>\$ 9.17</u>

The weighted-average grant date fair value for restricted stock awards granted during the six months ended June 30, 2011 and 2010 was \$8.74 and \$11.65 per share, respectively. The total grant date fair value of restricted shares vested during the six months ended June 30, 2011 and 2010, was \$1.4 million and \$1.5 million, respectively.

***Restricted Stock Awards that Contain Performance or Market Conditions***

During the six months ended June 30, 2011 and 2010, the Company recorded \$187,000 and \$50,000, respectively, of compensation expense related to restricted stock awards that contain performance or market conditions. At June 30, 2011, approximately 317,000 shares of restricted stock awards with performance or market conditions remain unvested, and could result in approximately \$3.1 million of additional compensation expense if the performance targets are met or expected to be attained.

A summary of the status of the Company’s unvested restricted stock awards that contain performance or market conditions as of December 31, 2010 and changes during the six months ended June 30, 2011, is presented below:

	Number of Shares	Weighted-Average Grant Date Fair Value Per Share
	(Shares in thousands)	
Unvested at December 31, 2010	39	\$ 19.37
Granted	300	9.23
Vested	(7)	13.95
Forfeited	(15)	20.59
Unvested at June 30, 2011	<u>317</u>	<u>\$ 9.82</u>

**SAVIENT PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—Continued**  
**(Unaudited)**

***Employee Stock Purchase Plan***

In 1998, the Company adopted its 1998 Employee Stock Purchase Plan (the “1998 ESPP”). The 1998 ESPP is qualified as an employee stock purchase plan under Section 423 of the Internal Revenue Code of 1986, as amended. Under the 1998 ESPP, the Company grants rights to purchase shares of common stock (“Rights”) at prices not less than 85% of the lesser of (i) the fair market value of the shares on the date of grant of such Rights or (ii) the fair market value of the shares on the date such Rights are exercised. Therefore, the 1998 ESPP is considered compensatory since, along with other factors, it includes a purchase discount of greater than 5%. For each of the six-month periods ended June 30, 2011 and 2010, approximately \$0.2 million of compensation expense was charged against income related to participation in the 1998 ESPP.

**Note 12—Other Current Liabilities**

The components of Other Current Liabilities at June 30, 2011 and December 31, 2010, were as follows:

	<u>June 30,</u> <u>2011</u>	<u>December 31,</u> <u>2010</u>
	(In thousands)	
Manufacturing and technology transfer services	\$ 2,416	\$ 5,076
Selling and marketing expense accrual	1,030	1,317
Salaries and related expenses	3,170	2,460
Severance	1,765	271
Legal and professional fees	1,238	1,691
Accrued interest – tax	962	962
Allowance for product returns	849	469
Accrued taxes	821	733
Clinical research organization expenses	684	687
Returned product liability	546	679
Sales force recruiting	222	412
Allowance for product rebates	155	318
Other	1,556	948
Total	<u>\$15,414</u>	<u>\$ 16,023</u>

**Note 13—Other Liabilities**

The components of Other Liabilities at June 30, 2011 and December 31, 2010, were as follows:

	<u>June 30,</u> <u>2011</u>	<u>December 31,</u> <u>2010</u>
	(In thousands)	
Unrecognized tax benefit (1)	\$3,398	\$ 10,261
Capital leases	6	38
Total	<u>\$3,404</u>	<u>\$ 10,299</u>

(1) See Note 15 to the Company’s consolidated financial statements for further discussion of unrecognized tax benefits.

**SAVIENT PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—Continued**  
**(Unaudited)**

**Note 14—Convertible Notes**

*2018 Convertible Notes*

In February 2011, the Company issued the 2018 Convertible Notes at par that become due on February 1, 2018. The Company received cash proceeds from the sale of the notes of \$222.7 million, net of expenses. The aggregate principal amount of the notes sold reflects the full exercise by the underwriters of their option to purchase \$30 million principal amount of notes to cover over-allotments. The notes bear cash interest at a rate of 4.75% per year, payable semiannually in arrears on February 1 and August 1 of each year, beginning on August 1, 2011. The 2018 Convertible Notes may be converted into shares of the Company’s common stock based on an initial conversion rate of 86.6739 shares per \$1,000 principal amount of notes, which represents a conversion price of approximately \$11.54 per share. The Company may not redeem the notes prior to February 1, 2015. On or after February 1, 2015 and prior to the maturity date, the Company may redeem for cash all or part of the notes at a redemption price equal to 100% of the principal amount of the notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date. This conversion rate will be adjusted if the Company makes specified types of distributions or enter into certain other transactions with respect to the Company’s common stock.

The 2018 Convertible Notes may only be converted: (1) during any calendar quarter commencing after June 30, 2011 (and only during such calendar quarter), if the last reported sale price of the Company’s common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price on each applicable trading day; (2) during the five business day period after any five consecutive trading day period, or the measurement period, in which the trading price per \$1,000 principal amount of notes for each trading day of the measurement period was less than 98% of the product of the last reported sale price of the Company’s common stock and the conversion rate on each such trading day; (3) if the Company calls any or all of the notes for redemption, at any time prior to the close of business on the scheduled trading day immediately preceding the redemption date; or (4) upon the occurrence of specified corporate events. As of June 30, 2011, the 2018 Convertible Notes were not convertible.

As required for cash settled convertible notes, the debt and equity components of the 2018 Convertible Notes were bifurcated and accounted for separately. While the 2018 Convertible Notes are outstanding, their discounted carrying values resulting from the bifurcation are accreted back to their principal amounts over periods that end on the scheduled maturity dates, resulting in the recognition of non-cash interest expense. For the three months ended June 30, 2011, total interest expense for the 2018 Convertible Notes was \$4.9 million, consisting of \$2.7 million of accrued interest based upon the 4.75% coupon rate coupled with \$2.2 million of non-cash interest expense related to the amortization of the discount on the notes. For the six months ended June 30, 2011, total interest expense for the 2018 Convertible Notes was \$8.0 million, consisting of \$4.4 million of accrued interest based upon the 4.75% coupon rate coupled with \$3.6 million of non-cash interest expense related to the accretion of the discount on the note.

The principal balance, unamortized discount and net carrying amount of the liability components and the equity components of the 2018 Convertible Notes was as follows as of June 30, 2011 (In thousands):

	<u>Liability Component</u>			<u>Equity Component</u>
	<u>Principal Balance</u>	<u>Unamortized Discount</u>	<u>Net Carrying Amount</u>	<u>Net Carrying Amount</u>
<b>June 30, 2011</b>				
2018 Convertible Notes	\$230,000	\$ 56,677	\$ 173,323	\$ 34,427

*Debt Discount*

The accretion of debt discount expected to be included in the Company’s consolidated financial statements is as follows for each of the following calendar years:

<b>2018 Convertible Notes</b>	<b>(In thousands)</b>
Remainder of 2011	\$ 4,305
2012	\$ 8,609
2013	\$ 8,609
2014	\$ 8,609
2015	\$ 8,609
Thereafter	\$ 17,936

*Financing Costs*

Deferred financing costs are amortized to interest expense over the life of the debt using the effective interest method. Amortization of deferred financing costs is included as a component of interest expense and was \$0.2 million and \$0.3 million for the three and six months ended June 30, 2011.

**SAVIENT PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—Continued**  
**(Unaudited)**

**Note 15—Income Taxes**

The Company recorded a non-cash income tax benefit of \$12.8 million for the six months ended June 30, 2011. This benefit was partially the result of a reduction in a liability for an unrecognized tax benefit of \$3.6 million which was considered effectively settled due to the recent completion of a state tax audit in the first quarter of 2011. The remaining \$9.2 million of income tax benefit resulted from the allocation of a tax benefit to continuing operations pursuant to ASC 740-30-45, *Income Taxes*. This guidance requires that amounts credited to capital in excess of par value, other comprehensive income or discontinued operations during the year are considered sources of income that enable a company to recognize a tax benefit on its loss from continuing operations. As discussed in Note 14 – Convertible Notes, the 2018 Convertible Notes were bifurcated into debt and equity components for accounting purposes. As a result, the Company recorded a credit to the capital in excess of par value account of \$34.4 million, which caused the allocation of the \$9.2 million tax benefit to continuing operations. The Company expects the full year tax benefit allocated to continuing operations for this item to be approximately \$23.9 million. A deferred tax liability was also recorded as a result of the 2018 Convertible Notes creating a book carrying value that differs from the tax basis, since tax regulations do not recognize the beneficial conversion feature as an equity element.

	<u>(In thousands)</u>
Deferred tax liability set-up related to the convertible notes (net of finance costs)	\$ 23,924
Decrease in valuation allowance allowing an income tax benefit on current year net operating losses	(9,210)
Net deferred tax asset reserved for by a liability for unrecognized tax benefits	<u>(2,700)</u>
Net deferred tax liability on consolidated balance sheet	<u>\$ 12,014</u>

The total amount of federal, state and local unrecognized tax benefits was \$3.4 million at June 30, 2011 and \$10.2 million at December 31, 2010, including accrued penalties and interest. The decrease of \$6.8 million in the Company's liability for unrecognized tax benefits from December 31, 2010 to June 30, 2011 is primarily the result of a recently completed state tax audit during the first quarter of 2011. The Company also decreased a portion of its liability for unrecognized tax benefits due to a change in estimate resulting from a recently settled federal tax audit during the first quarter of 2011.

The Company recognizes accrued interest and penalties related to unrecognized tax benefits as a component of Other Income, net, in its consolidated statements of operations, which is consistent with the recognition of these items in prior reporting periods. Since adopting ASC 740-10, *Income Taxes*, the Company has recorded a decrease in liability of approximately \$3,000 and \$25,000 for the payment of interest and penalties, respectively, which is included as a component of the liability for unrecognized tax benefits within Other Liabilities on its consolidated balance sheets. The accrued liability for interest and penalties for unrecognized tax benefits decreased by \$1.2 million and \$0.5 million during the six months ended June 30, 2011, respectively, with a corresponding \$1.7 million increase recorded to Other Income, net, within the Company's statement of operations for the six months ended June 30, 2011. The decrease in interest and penalty is primarily the result of a recently completed state tax audit during the first quarter of 2011.

The Company has filed income tax returns in the United States and various state jurisdictions for all tax years through 2009. In January 2011, the Company settled the 2006 through 2008 examination by the Internal Revenue Service for no additional liability, although certain tax attributes were adjusted (i.e. NOL carryforwards, Orphan Drug Credit carryforward and Capital Loss carryforwards). However, the net results of these adjustments were not material to the Company's financial statements.

State income tax returns are generally subject to examination for a period of three to five years subsequent to the filing of the respective tax return. In March 2011, the Company settled the examination with the State of New Jersey for an immaterial amount of sales and use tax liability which included interest and penalty expense. The examination encompassed the review of the Company's 2005 through 2008 corporate income tax returns, the 2007 through 2009 gross employer tax returns and the April 2006 through March 2010 sales and use tax returns.

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and their basis for income tax purposes and the tax effects of capital loss, net operating loss and tax credit carryforwards. Valuation allowances reduce deferred tax assets to the amounts that are more likely than not to be realized.

At present, the likelihood of the Company being able to fully realize its deferred income tax benefits against future income is uncertain. Accordingly, at June 30, 2011, the Company had a valuation allowance against its deferred income tax assets except for the portion of the deferred tax asset that the Company expects to benefit from in the current year of \$9.2 million and for the deferred income tax assets of \$2.7 million that were offset by an unrecognized tax benefit reserve. As of December 31, 2010, the Company had a valuation allowance against its deferred income tax assets except for the deferred tax assets of \$4.2 million that were offset by an unrecognized tax benefit reserve.

As of June 30, 2011 and December 31, 2010, \$2.7 million and \$4.2 million, respectively, of the net deferred tax assets remaining were offset by an unrecognized tax benefit reserve recorded as components of Long-Term Liabilities on the Company's consolidated balance sheets.

**SAVIENT PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—Continued**  
**(Unaudited)**

**Note 16—Commitments and Contingencies**

*Commitments*

The Company’s corporate headquarters are located in East Brunswick, New Jersey, where it leases approximately 53,000 square feet of office space. The lease has a base average annual rental expense of approximately \$1.9 million and expires in March 2013. The Company has two five-year renewal options under the lease. In connection with this lease arrangement, the Company was required to provide a \$1.3 million security deposit by way of an irrevocable letter of credit, which is secured by a cash deposit of \$1.3 million and is reflected in Other Assets (as restricted cash) on the Company’s consolidated balance sheets at June 30, 2011 and December 31, 2010. The Company is also obligated to pay its share of operating maintenance and real estate taxes with respect to its leased property.

Rent expense from continuing operations was approximately \$0.5 million and \$1.0 million for the three and six months ended June 30, 2011, respectively, and \$0.5 million and \$0.9 million for the three and six months ended June 30, 2010, respectively. Rent expense is presented net of the sublease arrangement, within Research and Development and Selling, General and Administrative expense in the consolidated statement of operations.

The future annual minimum rentals (exclusive of amounts for real estate taxes, maintenance, etc.) for each of the following calendar years are:

	(In thousands)
Remainder of 2011	\$ 941
2012	\$ 1,883
2013	\$ 472
2014	\$ —

At June 30, 2011, the Company had employment agreements with seven senior officers. Under these agreements, the Company has committed to total aggregate base compensation per year of approximately \$2.6 million plus other fringe benefits and bonuses. These employment agreements generally have an initial term of three years and are automatically renewed thereafter for successive one-year periods unless either party gives the other notice of non-renewal. In addition, the Company currently has in place severance agreements with three former employees including our former President, which aggregate to approximately \$1.8 million, of which \$1.4 million will be paid in equal installments over a the next twelve months and \$0.4 million will be paid over the next two years.

In 2007, the Company entered into commercial supply and development agreements with Bio-Technology General (Israel) Ltd, (“BTG”), pursuant to which BTG serves as the manufacturer and commercial supplier of the pegloticase drug substance for KRYSTEXXA and provides development, manufacturing and other services in relation to the product. Under the agreements, BTG also provided support with respect to the Company’s biologics license application (“BLA”) for KRYSTEXXA. Pursuant to its terms, the development agreement automatically expired upon the FDA’s approval for marketing of KRYSTEXXA in the United States. Under the commercial supply agreement with BTG, as amended, BTG is obligated to manufacture the Company’s firmly forecasted commercial supply of KRYSTEXXA and the Company is obligated to purchase from BTG at least 80% of its worldwide requirements of pegloticase drug substance. However, if BTG produces specified numbers of failed batches of pegloticase drug substance within one or more calendar quarters, then the Company may purchase all of its KRYSTEXXA requirements from other suppliers until BTG demonstrates to the Company’s reasonable satisfaction that it has remedied its supply failure. In addition, if the Company’s product forecasts are reasonably anticipated to exceed BTG’s processing capacity, then the Company may purchase from other suppliers it’s KRYSTEXXA requirements that exceed BTG’s capacity. The Company is obligated to provide BTG with a rolling forecast on a monthly basis setting forth the total quantity of pegloticase drug substance it expects to require for commercial supply in the following 18 months. The first six months of each forecast represent a rolling firm irrevocable order, and the Company may only increase or decrease its forecast for the next 12 months within specified limits. As of June 30, 2011, based on the Company’s latest forecast, the Company expected to purchase an aggregate of approximately \$4.9 million of pegloticase drug substance over the following 12 months. During 2008, the Company paid to BTG non-refundable fees of \$2.2 million to reserve manufacturing capacity relating to the Company’s potential future orders of pegloticase drug substance. The Company recorded these capacity reservation fees, which may be credited as a discount against future orders of pegloticase drug substance, as research and development expenses as they were incurred. Beginning in December 2015, which is the seventh anniversary of BTG’s first delivery of pegloticase drug substance under the commercial supply agreement, either the Company or BTG may provide three years advance notice to terminate the commercial supply agreement, effective not earlier than December 2018. The commercial supply agreement may also be terminated in the event of insolvency or uncured material breach by either party.

**SAVIENT PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—Continued**  
**(Unaudited)**

In 2007, the Company entered into a services agreement with Fujifilm Diosynth Biotechnologies USA LLC (“Fujifilm”), pursuant to which Fujifilm is preparing to serve as the Company’s secondary source supplier in the United States of pegloticase drug substance for KRYSTEXXA. Under the agreement, the Company is obligated to make specified milestone payments related to the technology transfer, and subsequent performance, of the manufacturing and supply process, which was initiated in August 2007 with BTG’s cooperation. In November 2009, the Company entered into a revised services agreement with Fujifilm, pursuant to which the Company delayed the 2009 conformance batch production campaign until 2010. During the first quarter of 2010, the conformance batch production campaign at Fujifilm commenced. As a result of batch failures at Fujifilm based on one manufacturing specification, the 2010 conformance batch production campaign was terminated in December 2010. The Company and Fujifilm renegotiated the agreement in June 2011 and conformance batch production is planned to re-start during the second half of 2011. The Company expects the additional costs associated with its conformance campaign to approximate \$10.0 million, which includes non-refundable fees of \$1.0 million to reserve manufacturing capacity for the conformance batch campaign. The Company records the fees for capacity reservation, idle and down-time and other technology transfer services rendered by Fujifilm as research and development expenses as they are incurred. Either the Company or Fujifilm may terminate the services agreement in the event of an uncured material breach by the other party. In addition, the Company may terminate the agreement at any time upon 45 days advance notice. If the Company terminates the agreement other than for Fujifilm’s breach, or if Fujifilm terminates the agreement for our breach, the Company must pay Fujifilm a termination fee based on the value of then remaining unbilled activities under the agreement. Either party may also terminate the agreement within 30 days after any written notice from Fujifilm that, in its reasonable judgment and based on a change in the assumptions or objectives for the project, it cannot continue to perform its obligations without a change in the scope, price or payment schedule for the project.

In 2007, the Company entered into a supply agreement with NOF Corporation of Japan (“NOF”), pursuant to which NOF serves as the Company’s exclusive supplier of mPEG-NPC, which is used in the PEGylation process to produce the pegloticase drug substance for KRYSTEXXA. The Company must purchase its entire supply of mPEG-NPC from NOF unless NOF fails to supply at least 75% of the Company’s firm orders, in which case the Company may obtain mPEG-NPC from a third party until NOF’s supply failure is remedied to the Company’s reasonable satisfaction. Under the agreement, the Company is obligated to make specified minimum purchases of mPEG-NPC from NOF. The Company must provide NOF with a rolling forecast on a quarterly basis setting forth the total quantity of mPEG-NPC that it expects to require in the following 18 months. The first six months of each forecast represent a rolling firm irrevocable order, and the Company may only increase or decrease its forecast for the next 12 months within specified limits. As of June 30, 2011, based on current forecasts, the Company expected to purchase mPEG-NPC at an aggregate cost of approximately \$2.8 million over the following 12 months. For any given year, upon three months advance notice, the Company may terminate its minimum purchase obligation for the entire year or the remainder of that year by paying NOF 50% of the minimum purchase obligation for that year or the remainder of that year. NOF is obligated under the supply agreement to use commercially reasonable efforts to submit a Type II Drug Master File, or its equivalent, to the appropriate regulatory agency in one country outside of the United States or in the European Union. The Company’s agreement with NOF has an initial term ending in May 2017 and may be extended for an additional 10 years by mutual agreement of the parties at least 12 months before the expiration of the initial term. Prior to the expiration of the term, either the Company or NOF may terminate the agreement for convenience upon 24 months advance notice. Either the Company or NOF may terminate the agreement in the event of the other party’s insolvency or uncured material breach. In the event that NOF terminates the agreement for convenience or if the Company terminates the agreement for NOF’s breach or bankruptcy, the Company may require NOF to continue to supply mPEG-NPC for up to two years following the termination date. If the Company terminates the agreement for convenience or if NOF terminates the agreement for the Company’s breach, the Company must pay NOF 50% of the minimum purchase obligation for the period from the termination date until the date on which the agreement would have expired.

In 2008, the Company entered into a non-exclusive commercial supply agreement with Sigma-Tau PharmaSource, Inc. (“Sigma-Tau”) (formerly known as Enzon Pharmaceuticals, Inc., which was acquired by Sigma-Tau in January 2010). Under the terms of the commercial supply agreement, Sigma-Tau has agreed to fill, label, package, test and provide specified product support services for the final KRYSTEXXA product. In return, the Company agreed that once KRYSTEXXA received FDA marketing approval, the Company would purchase, product support services from Sigma-Tau. As of June 30, 2011, the Company expected to purchase from Sigma-Tau support services at an aggregate cost of approximately \$1.7 million over the next 12 months. These purchase obligations are based on a rolling forecast that the Company has agreed to provide to Sigma-Tau on a quarterly basis setting forth the total amount of final product that it expects to require in the following 24 months. The first six months of each forecast will represent a rolling firm irrevocable order, and the Company may only increase or decrease its forecast for the next 18 months within specified limits. If the Company cancels batches subject to a firm order, it must pay Sigma-Tau a fee. Under the agreement, the Company is also obligated to pay Sigma-Tau a rolling, non-refundable capacity reservation fee, which may be credited against the fees for Sigma-Tau’s production of the final product. During the six months ended June 30, 2011 and 2010, the Company did not incur any capacity reservation fees because such amounts were credited against purchases of final product from Sigma-Tau. Either the Company or Sigma-Tau may terminate the agreement upon 24 months advance notice given 30 days before each year’s anniversary date of the agreement. If the Company terminates the agreement, it would be obligated to pay Sigma-Tau a fee based on the previously submitted rolling forecasts. Either the Company or Sigma-Tau may also terminate the agreement in the event of insolvency or uncured material default in performance by either party.

The Company believes that its current arrangements for the supply of clinical and commercial quantities of pegloticase drug substance and finished form KRYSTEXXA will be adequate to satisfy its currently forecasted commercial requirements of KRYSTEXXA and any currently planned future clinical studies.

**SAVIENT PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—Continued**  
**(Unaudited)**

The Company is a party to an exclusive royalty bearing license agreement with Mountain View Pharmaceuticals (“MVP”) and Duke University (“Duke”), originally entered into in 1997 and amended in 2001, granting the Company rights under technology relating to mammalian and non-mammalian uricases, and MVP’s technology relating to mPEG conjugates of these uricases, as well as patents and pending patent applications covering this technology, to make, use and sell, for human treatment, products that use this technology. These patents and pending patent applications constitute the fundamental composition of matter and underlying manufacturing patents for KRYSTEXXA. Under this agreement, the Company also has the exclusive license to the trademark Puricase<sup>®</sup>, which is a registered trademark of MVP and was available for potential use as the proprietary name of the product candidate the Company now refers to as KRYSTEXXA. However, if the Company elects not to use the trademark Puricase, or if the Company otherwise fails to use the trademark Puricase within one year after the first sale of any product which uses the licensed technology, then MVP would retain all rights to use the trademark Puricase. Under the agreement, the Company is required to use best efforts to diligently market products that use the licensed technology. The agreement requires the Company to pay to MVP and Duke quarterly royalty payments within 60 days after the end of each quarter based on KRYSTEXXA net sales made in that quarter by the Company. The royalty rate for a particular quarter ranges between 8% and 12% of net sales based on the amount of cumulative net sales made by the Company. Also under the agreement, for sales made by sub-licensees and not by the Company, the Company is required to pay royalties of 20% on any revenues or other consideration it receives from sub-licensees during any quarter. During the year ended December 31, 2010, the Company made aggregate milestone payments of approximately \$0.8 million to MVP and Duke upon obtaining regulatory approval for KRYSTEXXA in the United States which was one of the five major global markets identified in the agreement. The Company is also required to pay up to an aggregate of approximately \$1.8 million to MVP and Duke if it successfully commercializes KRYSTEXXA and attains specified KRYSTEXXA sales targets. As of June 30, 2011, the Company had made aggregate payments of approximately \$2.5 million to MVP and Duke for the achievement of milestones under this agreement. The agreement remains in effect, on a country-by-country basis, for the longer of 10 years from the date of first sale of KRYSTEXXA in such country, or the date of expiration of the last-to-expire patent covered by the agreement in such country. The Company may terminate this agreement in one or more countries with six months prior notice, and it may also terminate the agreement with respect to any country in which the licensed patents are infringed by a third party or in which the manufacture, use or sale of KRYSTEXXA infringes a third party’s intellectual property rights. Either the Company or the licensors may also terminate the agreement, with respect to the countries affected, upon the other party’s material breach, if not cured within a specified period of time, or immediately upon the other party’s third or subsequent material breach of the agreement or the other party’s fraud, willful misconduct or illegal conduct. Either party may also terminate the agreement for the other party’s bankruptcy or insolvency. Upon a termination of the agreement in one or more countries, all intellectual property rights conveyed to the Company with respect to the terminated countries under the agreement, including regulatory applications and pre-clinical and clinical data, revert to MVP and Duke and the Company is permitted to sell off any remaining inventory of KRYSTEXXA for such countries.

The Company has received financial grants in support of research and development from the Office of the Chief Scientist of the State of Israel (“OCS”), and the Israel-United States Bi-national Industrial Research and Development Foundation (“BIRD”), of approximately \$2.0 million and \$0.6 million, respectively, for the development of KRYSTEXXA. These grants plus interest are subject to repayment through royalties on the commercial sale of KRYSTEXXA. The OCS grants were received by the Company’s former subsidiary, BTG, and upon the Company’s divestiture of BTG to Ferring, it agreed to remain obligated to reimburse BTG for its repayments to OCS that relate to the KRYSTEXXA financial grants. In addition, under the Israeli Law of Encouragement of Research and Development in Industry, as amended, as a result of the funding received from OCS, if the Company does not manufacture 100% of its annual worldwide bulk product requirements in Israel, the Company may be subject to total payments ranging from 120% to 300% of the repayment obligation plus interest, based upon the percentage of manufacturing that does not occur in Israel. The Company’s aggregate principal repayment obligation plus interest to OCS and BIRD, if it manufactures more than 20% of its annual worldwide bulk product requirements outside of Israel, would be between \$4.2 million and \$9.2 million at June 30, 2011.

***Contingencies***

In May 2007, the Company filed a notice of appeal with the New Jersey Division of Taxation contesting a New Jersey Sales & Use Tax assessment of \$1.2 million for the tax periods 1999 through 2003. The Company believes it is not subject to taxes on services that were provided to the Company. In May 2010, the Company attended an appeals conference with the Conference and Appeals Branch of the New Jersey Division of Taxation to discuss its case in contesting the Sales & Use Tax assessment. After discussions with the New Jersey appellate division, the Company’s appeal was denied. The previous assessment of \$1.2 million was increased by \$0.5 million to \$1.7 million reflecting additional interest and penalties. The Company filed a timely appeal with the New Jersey Tax Court to continue the appeal process on December 13, 2010.

**SAVIENT PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—Continued**  
**(Unaudited)**

In a civil action filed in the Fayette Circuit Court in Kentucky on August 31, 2007 ( *Joseph R. Berger vs. Savient Pharmaceuticals, Inc.* ), Dr. Joseph Berger alleged that he had entered into an agreement with the Company in December 1993, under which he assigned an invention and patent rights relating to the use of oxandrolone to treat an HIV-related disorder, the “Invention”, to the Company in exchange for its agreement to use him as a researcher in certain clinical trials relating to the Invention, and that the Company had breached that agreement. Berger’s verified complaint requested disgorgement of profits and assignment to Berger of the patents obtained on the Invention. During fact discovery in the action, the Company uncovered an April 6, 1992 Consulting Agreement between Berger and Savient’s predecessor, Gynex Pharmaceuticals (“Gynex”), wherein Berger assigned the Invention to Gynex in consideration of, among other things, \$20,000 from Gynex. After the April 6, 1992 agreement was presented to Berger, he filed an amended verified complaint which acknowledged the April 6, 1992 agreement, but contended that the \$20,000 paid to him under the Agreement was not consideration for the assignment of the Invention. The Company filed a motion for summary judgment on Berger’s claims and, on August 17, 2009, the Court issued an order granting the Company’s motion and dismissing Berger’s complaint and amended complaint with prejudice. Berger appealed the decision of the trial court granting the Company’s motion for summary judgment, and the Company filed a notice of cross-appeal solely with respect to the decision of the trial court to apply Kentucky law to the facts of the case. On January 4, 2011, the Kentucky Appellate Court issued an order taking up Berger’s appeal and the Company’s cross-appeal on the papers. The Company intends to vigorously defend this action.

In November 2008, Richard Sagall, an alleged stockholder, commenced an action in the U.S. District Court for the Southern District of New York seeking to certify a class of shareholders who held Savient securities between December 13, 2007 and October 24, 2008. The suit alleges that the Company made false and misleading statements relating to the GOUT1 and GOUT2 phase 3 clinical trials, and that the Company failed to disclose in a timely manner serious adverse events which occurred in five patients in these trials. In March 2009, the Court issued an order appointing a lead plaintiff and the law firm Pomerantz Haudek Block Grossman & Gross LLP as lead counsel. The action was also re-captioned as *Lawrence J. Koncelik vs. Savient Pharmaceuticals, et al.* . Thereafter, the lead plaintiff filed his amended complaint in April 2009, seeking unspecified monetary damages. In June 2009, Savient and the other named defendants moved to dismiss the complaint. The lead plaintiff subsequently filed an opposition to the Company’s motion to dismiss and the Company filed its reply in October 2009. Oral arguments were heard by the Court in February 2010 relating to our motion to dismiss. On September 29, 2010, the Court issued a memorandum decision and order granting our motion to dismiss the amended complaint in its entirety. On October 28, 2010, the lead plaintiff timely filed a notice of appeal of the Court’s decision with the United States Court of Appeals for the Second Circuit and the briefing on that appeal was completed in June 2011. The Second Circuit is unlikely to issue a decision on the appeal before the fall of 2011. The Company intends to continue to vigorously defend against this action.

From time to time, the Company becomes subject to legal proceedings and claims in the ordinary course of business. Such claims, even if without merit, could result in the significant expenditure of the Company’s financial and managerial resources. The Company is not aware of any legal proceedings or claims that it believes will, individually or in the aggregate, materially harm its business, results of operations, financial condition or cash flows.

The Company is obligated under certain circumstances to indemnify certain customers for certain or all expenses incurred and damages suffered by them as a result of any infringement of third-party patents. In addition, the Company is obligated to indemnify its officers and directors against all reasonable costs and expenses related to stockholder and other claims pertaining to actions taken in their capacity as officers and directors which are not covered by the Company’s directors and officers insurance policy. These indemnification obligations are in the regular course of business and in most cases do not include a limit on maximum potential future payments, nor are there any recourse provisions or collateral that may offset the cost. As of June 30, 2011, the Company has not recorded a liability for any obligations arising as a result of these indemnification obligations.

**SAVIENT PHARMACEUTICALS, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—Continued**  
**(Unaudited)**

**Note 17—Segment Information**

The Company currently operates within one “Specialty Pharmaceutical” segment which includes sales of KRYSTEXXA, Oxandrin and oxandrolone and the research and development activities of KRYSTEXXA.

**Note 18—Investment Income, Net**

The Company’s investment income, net for the three and six months ended June 30, 2011 and 2010, was as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2011	2010	2011	2010
	(In thousands)			
Interest and dividend income from cash, cash equivalents and investments	\$ 38	\$ 31	\$ 68	\$ 49

**Note 19—Other (Expense) Income, Net**

The Company’s other (expense), income net for three and six months ended June 30, 2011 and 2010, was as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2011	2010	2011	2010
	(In thousands)			
Realized gain on change in valuation of warrant liability	\$ —	\$ 6,200	\$ —	\$8,327
Reversal of interest expense and penalties on unrecognized tax liability	—	—	1,782	—
Amortization of deferred financing costs on convertible debt	(193)	—	(320)	—
Other non-operating expenses	(9)	(61)	(32)	(123)
Total other (expense) income, net	\$ (202)	\$ 6,139	\$1,430	\$8,204

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### ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

*Our management's discussion and analysis of financial condition and results of operations contains statements which constitute forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, including statements that set forth anticipated results based on management's plans and assumptions. From time to time, we also provide forward-looking statements in other materials we release to the public as well as oral forward-looking statements. Such statements discuss our strategy, expected future financial position, results of operations, cash flows, financing plans, development of products, strategic alliances, intellectual property, competitive position, plans and objectives of management. We often use words such as "anticipate," "estimate," "expect," "project," "intend," "plan," "believe," "will" and similar expressions to identify forward-looking statements. In particular, any statements about our ability to obtain necessary foreign regulatory approvals for KRYSTEXXA® (pegloticase), our ability to complete the development of and execute upon our commercial strategy for KRYSTEXXA, our ability to achieve profitability and raise additional capital needed to achieve our business objectives, our financing needs and liquidity, and the market size for KRYSTEXXA and its expected degree of market acceptance are forward-looking statements. Additionally, forward-looking statements include those relating to future actions, future performance, sales efforts, expenses, interest rates, and the outcome of contingencies, such as legal proceedings, and financial results.*

*We cannot guarantee that any forward-looking statement will be realized. Achievement of future results is subject to risks, uncertainties and potentially inaccurate assumptions. Should known or unknown risks or uncertainties materialize, or should underlying assumptions prove inaccurate, actual results could differ materially from past results and those anticipated, estimated or projected. You should bear this in mind as you consider forward-looking statements.*

*We undertake no obligation to publicly update forward-looking statements. You are advised, however, to consult any further disclosures we make on related subjects in our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K.*

#### Overview

We are a specialty biopharmaceutical company focused on commercializing KRYSTEXXA in the United States and completing the development and seeking regulatory approval outside of the United States for KRYSTEXXA, particularly in the European Union. Additionally, we are also investigating the expansion of the clinical utility for KRYSTEXXA. KRYSTEXXA was approved for marketing by the U.S. Food and Drug Administration, or FDA, on September 14, 2010 and became commercially available in the United States by prescription on December 1, 2010, when we commenced sales and shipments to our network of specialty and wholesale distributors.

The active pharmaceutical ingredient, or API, in KRYSTEXXA is a PEGylated enzyme that converts uric acid to allantoin. KRYSTEXXA is indicated for the treatment of chronic gout in adult patients refractory to conventional therapy. Chronic gout that is refractory to conventional therapy occurs in patients who have failed to normalize serum uric acid and whose signs and symptoms are inadequately controlled with xanthine oxidase inhibitors, at the maximum medically appropriate dose or for whom these drugs are contraindicated. KRYSTEXXA is not recommended for the treatment of an elevation of blood concentration of uric acid that is not accompanied by signs or symptoms of gout. This condition is referred to as asymptomatic hyperuricemia.

Gout develops when urate accumulates in the tissues and joints as a result of elevation of blood concentration of uric acid. Gout is usually associated with bouts of severe joint pain and disability, or gout flares, and tissue deposits of urate, which may occur in concentrated forms, or gout tophi. Patients with severe gout have an associated increased risk of kidney failure and increased risk of cardiovascular disease. Uricase, an enzyme not naturally expressed in humans but present in other mammals, eliminates uric acid from the body by converting uric acid to allantoin, which is easily excreted by the kidney. We believe that treatment with KRYSTEXXA eliminates hyperuricemia and provides clinical benefits by eliminating uric acid in the blood and tissue deposits of urate.

During the first quarter of 2011, we worked together with a leading independent life science consulting firm to conduct a comprehensive market research study to determine the number of patients in the United States who are refractory to conventional therapy, thereby suffering from Refractory Chronic Gout, or RCG. This study was conducted using both secondary data sources and primary market research. The secondary data was used to quantify the diagnosed prevalent gout population and the treated gout population. This included a review of all available published literature, NHANES, the nationally representative survey sponsored by the United States Centers for Disease Control and Prevention, Medicare claims data and commercial claims data. The study was completed in July 2011 and indicated that there are approximately 120,000 RCG patients in the U.S., which represents approximately 4.2% of the overall annual treated gout population in the U.S. The total available market opportunity for KRYSTEXXA will ultimately depend on, among other things, our marketing and sales efforts, reimbursement and market acceptance by physicians, infusion site personnel, healthcare payers and others in the medical community.

The FDA granted KRYSTEXXA an Orphan Drug designation in 2001, which we expect will provide the drug with orphan drug marketing exclusivity in the United States until September 2017, seven years from the date of its approval. The composition, manufacture and methods of use and administration of KRYSTEXXA are also the subject of a broad portfolio of patents and patent applications, which we expect will provide patent protection through 2026, assuming issuance of patents from currently pending patent applications.

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We completed a full promotional launch of KRYSTEXXA in the United States during the first quarter of 2011 with our sales force commencing field promotion to physicians on February 28, 2011. To support the commercial launch of KRYSTEXXA, we have hired a 62-person sales force, all with biologics drug experience, six regional business directors, six regional medical scientists and six managed care executives. We have also hired an additional 12 field reimbursement specialists and may increase the number of sales force professionals in the future, if deemed necessary. This sales force will allow us to target the rheumatologists and nephrologists with access to infusion centers that treat adult patients suffering from chronic gout refractory to conventional therapy. To date, our sales force has reached over 90% of our key rheumatologists, and 57% of key nephrologists. On June 20, 2011, the Company implemented the KRYSTEXXA Patient Initiation Program, or KPIP, which provides patients with RCG with two free doses of KRYSTEXXA. We believe this initiative may be a way for patients and physicians to begin therapy and have the opportunity to experience the potential benefits of KRYSTEXXA.

We have built an inventory of finished KRYSTEXXA product as of June 30, 2011, that is packaged and labeled for distribution and additional supplies of bulk product that are scheduled to be packaged and labeled as part of our ongoing FDA approved commercial manufacturing process. We believe this inventory will be sufficient for us to meet internal estimates of market demand through the second quarter of 2012. To date, several large private managed care organizations have added KRYSTEXXA as a covered medical benefit and other managed care organizations are actively evaluating medical benefits coverage. In December 2010, we filed for a temporary "C" code and a permanent "J" code application with the U.S. Centers for Medicare & Medicaid Services, or CMS, for reimbursement of the cost of treatment with KRYSTEXXA. On April 1, 2011, we received a notice from CMS that a temporary "C" code was assigned to KRYSTEXXA. We also were awarded a contract from the U.S. Department of Veterans Affairs, or the VA, for KRYSTEXXA to be covered for reimbursement for VA member patients. We received this contract award from the VA in March 2011 with the contract effective as of April 1, 2011. The contract calls for us to sell KRYSTEXXA to the VA at a price of \$1,748 per vial, an approximate 24% discount to our list selling price for our other customers.

In support of our efforts to obtain regulatory approval for KRYSTEXXA outside of the United States, in May 2011 we submitted a Marketing Authorization Application, or MAA, for centralized review in the European Union. We received validation of the MAA that was filed with the European Medicines Agency, or EMA, for KRYSTEXXA for the treatment of chronic gout in adult patients refractory to conventional therapy, which results in the initiation of the EMA's regulatory review process. In December 2010, the Pediatric Committee of the European Medicines Agency approved our pediatric investigation plan for the treatment and prevention of hyperuricemia, which is a condition for marketing approval in the European Union.

We also sell and distribute branded and generic versions of oxandrolone, a drug used to promote weight gain following involuntary weight loss. We launched our authorized generic version of oxandrolone in December 2006 in response to the approval and launch of generic competition to our branded product, Oxandrin®. The introduction of oxandrolone generics has led to significant decreases in demand for Oxandrin and our authorized generic version of oxandrolone. We believe that revenues from Oxandrin and our authorized generic version of oxandrolone will decrease in future periods.

We currently operate within one "Specialty Pharmaceutical" segment, which includes sales of Oxandrin and oxandrolone and the sales and research and development activities of KRYSTEXXA. Total revenues from continuing operations were \$3.3 million for the six months ended June 30, 2011, an increase of \$1.2 million, or 57%, from \$2.1 million for the same period in the prior year.

### Recent Changes in Our Senior Management

In April 2011, we appointed Richard Crowley as Executive Vice President of Biopharmaceutical Operations, effective April 30, 2011. Mr. Crowley will lead the overall management of the Company's manufacturing, regulatory, quality, product management and KRYSTEXXA product teams. Mr. Crowley previously served as Senior Vice President of Biopharmaceutical Operations at ImClone Systems, a wholly-owned subsidiary of Eli Lilly and Company. Prior to that, Mr. Crowley served as Vice President of Manufacturing and General Manager at ImClone Systems. Mr. Crowley has also held positions at BASF Bioresearch Corporation, Genencor International, Eastman Kodak Company and Monsanto Company.

On May 30, 2011, we entered into an agreement with Paul Hamelin, our former President, providing for the termination of his employment on mutually agreed terms. Mr. Hamelin's termination is deemed an "involuntary termination by us without Cause" (as defined in the Employment Agreement dated as of May 23, 2006 between Mr. Hamelin and us, as amended on February 15, 2008 and on December 19, 2008 (as so amended, the "Employment Agreement")), and as a result, Mr. Hamelin is entitled to receive the compensation and benefits required under the Employment Agreement in the event of an involuntary termination by us without Cause. Mr. Hamelin is not entitled to any payments or benefits, except those required by the terms of the Employment Agreement. Mr. Hamelin's options to purchase shares of our common stock will be exercisable until November 30, 2011, after which their exercisability will terminate. In addition, the vesting of 37,500 stock options previously granted to Mr. Hamelin and scheduled to vest on December 19, 2011 was accelerated and such options vested immediately on May 30, 2011. In consideration for receiving accelerated stock option vesting and extended exercisability, Mr. Hamelin has released the Company from all claims and causes of action that he may have had against us.

On August 1, 2011 we appointed Dr. Kenneth M. Bahrt Executive Vice President and Chief Medical Officer of the Company. Dr. Bahrt will report directly to Mr. John H. Johnson, Chief Executive Officer and President of Savient, and will lead the overall management of Savient's clinical development, drug safety and medical affairs teams. Dr. Bahrt previously served as Therapeutic Area Head for US Medical Affairs (Immunology) at Genentech. He also previously served as Global Medical Director (Inflammation and Immunology) for F. Hoffmann - La Roche, Inc. Additionally, Dr. Bahrt worked in leadership positions of increasing breadth and responsibility at Bristol Meyers Squibb Co., where he was the Executive Director of Global Medical Affairs (Immunology), and Pfizer, where he served as Medical Director and Team Leader for

rheumatology portfolio products. Prior to joining the pharmaceutical industry, Dr. Bahrt had a rheumatology practice for 15 years. Dr. Bahrt is board certified rheumatologist.

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### Results of Operations

During 2010 and the six months ended June 30, 2011, we incurred substantial expenses relating to the commercialization and clinical development of KRYSTEXXA. We expect to continue to incur significant losses in 2011, as we anticipate continued substantial expenses relating to the commercialization and further development of KRYSTEXXA. Our expenses relating to the commercialization and development of KRYSTEXXA will depend on many factors, including:

- the timing of, and the costs involved in, obtaining regulatory approvals for KRYSTEXXA in countries other than the United States,
- the cost of manufacturing activities,
- the cost of our post-approval commitments to the FDA, including an observational study and a risk evaluation and mitigation strategy, or REMS, program, and
- the cost of commercialization activities, including product marketing, sales and distribution.

During the three and six months ended June 30, 2011 and 2010, the expenses associated with our regulatory, clinical, manufacturing and commercial development of KRYSTEXXA were the most significant factors affecting our results of operations. The following table summarizes our costs and expenses and indicates the significance of selling, general and administrative costs related to our commercialization of KRYSTEXXA, as well as percentage of total cost of expenses for the periods indicated:

	Three Months Ended June 30,				Six Months Ended June 30,			
	2011		2010		2011		2010	
	(In thousands)							
Cost of goods sold	\$ 1,008	3.1%	\$ 381	3.1%	\$ 1,424	2.6%	\$ 577	2.4%
Research and development	7,729	23.7%	7,233	59.5%	11,457	21.5%	13,563	57.4%
Selling, general & administrative	23,856	73.2%	4,553	37.4%	40,493	75.9%	9,499	40.2%
Total costs and expenses	<u>\$32,593</u>	<u>100.0%</u>	<u>\$12,167</u>	<u>100.0%</u>	<u>\$53,374</u>	<u>100.0%</u>	<u>\$23,639</u>	<u>100.0%</u>

Our revenues for the three and six months ended June 30, 2011 were derived primarily from product sales of KRYSTEXXA, Oxandrin and our authorized generic version of oxandrolone. Following the full commercial launch of KRYSTEXXA in February 2011, we expect sales from KRYSTEXXA to increase in future periods. As a result of increased competition to Oxandrin and oxandrolone from generics, we expect our Oxandrin and oxandrolone revenues to decrease in future periods and be of diminished significance to our results of operations in future periods.

Our future revenues depend on our success in the commercialization of KRYSTEXXA. The commercial success of KRYSTEXXA will depend on many factors including:

- whether we are successful in marketing and selling KRYSTEXXA after the full commercial launch of the product,
- market acceptance of KRYSTEXXA by physicians and patients in this largely previously untreated patient population,
- market acceptance of the price that we charge for KRYSTEXXA and under what conditions private and public payors will reimburse patients for KRYSTEXXA,
- whether and to what extent our label expansion activities for KRYSTEXXA are successful,
- whether and when we face generic or other competition with respect to KRYSTEXXA,
- our ability to maintain a sufficient inventory of KRYSTEXXA to meet commercial demand, and
- the timing and costs of regulatory approval for KRYSTEXXA in any countries other than the United States.

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The following table summarizes net product sales of our commercialized products and their percentage of total net product sales for the periods indicated:

	Three Months Ended June 30,				Six Months Ended June 30,			
	2011		2010		2011		2010	
	(In thousands)							
KRYSTEXXA	\$1,091	55.0%	\$—	—	\$1,350	41.2%	\$ —	—
Oxandrolone	748	37.7%	648	65.7%	1,812	55.4%	1,302	62.6%
Oxandrin	145	7.3%	339	34.3%	112	3.4%	778	37.4%
	<u>\$1,984</u>	<u>100.0%</u>	<u>\$987</u>	<u>100.0%</u>	<u>\$3,274</u>	<u>100.0%</u>	<u>\$2,080</u>	<u>100.0%</u>

### Results of Operations for the Three Months Ended June 30, 2011 and June 30, 2010

#### Revenues

Total revenues increased \$1.0 million, or 101%, to \$2.0 million for the three months ended June 30, 2011, as compared to \$1.0 million for the three months ended June 30, 2010. The higher net sales for the three months ended June 30, 2011 resulted from our full commercial launch of KRYSTEXXA in February 2011 generating approximately \$1.1 million in incremental net sales during the period.

Oxandrolone, our authorized generic version of Oxandrin, also generated higher net sales for the three months ended June 30, 2011, increasing \$0.1 million from the three months ended June 30, 2010 to \$0.7 million.

Offsetting the higher net sales of oxandrolone was a \$0.2 million decrease in net sales of our branded product Oxandrin as compared to the three months ended June 30, 2010. We expect that sales of Oxandrin and oxandrolone will decrease in future periods depending on various factors, including the pricing of competing generic products, the number of competing products and overall demand in the marketplace.

#### Cost of goods sold

Cost of goods sold increased by \$0.6 million to \$1.0 million for the three months ended June 30, 2011 as compared to the three months ended June 30, 2010. This increase is primarily due to higher stability testing expenses and manufacturing indirect overhead costs relating to KRYSTEXXA.

#### Research and development expenses

Research and development expenses increased by \$0.5 million, or 6.9%, to \$7.7 million for the three months ended June 30, 2011, from \$7.2 million for the three months ended June 30, 2010. The increase is primarily due to fees paid to our potential secondary source supplier of pegloticase drug substance during the current quarter to reserve manufacturing capacity.

#### Selling, general and administrative expenses

Selling, general and administrative expenses increased \$19.3 million to \$23.9 million for the three months ended June 30, 2011, from \$4.6 million for the three months ended June 30, 2010. The increase in costs was primarily due to increased selling and marketing expenses associated with the full commercial launch of KRYSTEXXA coupled with increased headcount as a result of the hiring of our KRYSTEXXA sales force and reimbursement specialists.

#### Interest expense on convertible notes

Interest expense was \$4.9 million for the three months ended June 30, 2011, consisting of \$2.7 million of interest expense from the 4.75% coupon on our 2018 Convertible Notes and \$2.2 million of non-cash accretion of the debt discount also associated with our 2018 Convertible Notes.

#### Other (expense) income, net

Other (expense) income, net reflected an expense of \$0.2 million for the three months ended June 30, 2011 as compared to income of \$6.1 million for the three months ended June 30, 2010. The \$0.2 million expense in the current period represents the amortization of deferred financing costs on our convertible notes. The income for the three months ended June 30, 2010 reflects the mark-to-market adjustment on our previous warrant liability which was settled in its entirety during the fourth quarter of 2010.

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### *Income tax benefit*

We recorded an income tax benefit of \$5.4 million for the three months ended June 30, 2011 as compared to a zero income tax benefit for the three months ended June 30, 2010. This income tax benefit resulted from the allocation of a tax benefit to continuing operations pursuant to ASC 740-30-45. This guidance requires that amounts credited to capital in excess of par value, other comprehensive income or discontinued operations during the year are considered sources of income that enable a company to recognize a tax benefit on its loss from continuing operations. As discussed in Note 14 – Convertible Notes, the 2018 Convertible Notes were bifurcated into debt and equity components for accounting purposes. As a result, the Company recorded a credit to the capital in excess of par value account of \$34.4 million, which caused the allocation of the \$5.4 million tax benefit to continuing operations. The \$5.4 million tax benefit for the three months ended June 30, 2011 does not result in additional cash flow for the Company.

### ***Results of Operations for the Six Months Ended June 30, 2011 and June 30, 2010***

#### *Revenues*

Total revenues increased \$1.2 million, or 57%, to \$3.3 million for the six months ended June 30, 2011, as compared to \$2.1 million for the six months ended June 30, 2010. The higher net sales for the six months ended June 30, 2011 resulted from our full commercial launch of KRYSTEXXA during February 2011, generating approximately \$1.4 million in incremental net sales during the period.

#### *Cost of goods sold*

Cost of goods sold increased by \$0.8 million, or 147%, to \$1.4 million for the six months ended June 30, 2011 as compared to \$0.6 million for the six months ended June 30, 2010. This increase is primarily due to higher stability testing expenses and manufacturing indirect overhead costs relating to KRYSTEXXA.

#### *Research and development expenses*

Research and development expenses decreased by \$2.1 million, or 16%, to \$11.5 million for the six months ended June 30, 2011, from \$13.6 million for the six months ended June 30, 2010. The decrease related to lower costs associated with the technology transfer process at our potential secondary source supplier of pegloticase drug substance and a decrease in outside laboratory costs associated with the wind down of our open label extension clinical study in 2010.

#### *Selling, general and administrative expenses*

Selling, general and administrative expenses increased \$31.0 million to \$40.5 million for the six months ended June 30, 2011, from \$9.5 million for the six months ended June 30, 2010. The increase was primarily due to increased selling and marketing expenses associated with the full commercial launch of KRYSTEXXA coupled with increased headcount as a result of the hiring of our KRYSTEXXA sales force and reimbursement specialists.

#### *Interest expense on convertible notes*

Interest expense was \$8.0 million for the six months ended June 30, 2011, consisting of \$4.4 million of interest expense from the 4.75% coupon on our 2018 Convertible Notes and \$3.6 million of non-cash accretion of the debt discount also associated with our 2018 Convertible Notes.

#### *Other income, net*

Other income, net was \$1.4 million for the six months ended June 30, 2011 as compared to \$8.2 million for the six months ended June 30, 2010. Other income for the six months ended June 30, 2011 reflects a benefit received as a result of the reversal of a \$1.8 million liability for accrued interest and penalties relating to the reversal of an unrecognized tax benefit liability offset by \$0.3 million of expense as a result of the amortization of deferred financing costs on our convertible notes. The income for the six months ended June 30, 2010 represents the mark-to-market adjustment on our previous warrant liability, which was settled in its entirety during the fourth quarter of 2010.

#### *Income tax benefit*

We recorded an income tax benefit of \$12.8 million for the six months ended June 30, 2011 as compared to a zero income tax benefit for the six months ended June 30, 2010. This benefit was partially the result of a reduction in a liability for an unrecognized tax benefit of \$3.6 million, which was considered effectively settled due to the recent completion of a state tax audit in the first quarter of 2011. The remaining \$9.2 million income tax benefit resulted from the allocation of a tax benefit to continuing operations pursuant to ASC 740-30-45 *Income Taxes*. This guidance requires that amounts credited to capital in excess of par value, other comprehensive income or discontinued operations during the year are considered sources of income that enable a company to recognize a tax benefit on its loss from continuing operations. As discussed in Note 14 – Convertible Notes, the 2018 Convertible Notes were bifurcated into debt and equity components for accounting purposes. As a result, the Company recorded a credit to the capital in excess of par value account of \$34.4 million, which caused the allocation of the \$9.2 million tax benefit to continuing operations. The \$12.8 million tax benefit for the six months ended June 30, 2011 does not result in additional cash flow for the Company.

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### Liquidity and Capital Resources

As of June 30, 2011, we had \$240.3 million in cash, cash equivalents and short-term investments as compared to \$64.9 million as of December 31, 2010. We primarily invest our cash equivalents and short-term investments in highly liquid, interest-bearing, U.S. Treasury money market funds and bank certificates of deposit in order to preserve principal. In February 2011, we completed the sale of \$230 million aggregate principal amount of 4.75% Convertible Senior Notes due 2018. We received cash proceeds from the sale of the notes of \$222.7 million, net of expenses. The aggregate principal amount of the notes sold reflects the full exercise by the underwriters of their option to purchase \$30 million principal amount of notes to cover over-allotments. The notes bear cash interest at a rate of 4.75% per year, payable semiannually in arrears on February 1 and August 1 of each year, beginning on August 1, 2011. The notes will mature on February 1, 2018. The notes are convertible into shares of our common stock under specified circumstances, initially at a rate of 86.6739 shares of common stock per \$1,000 principal amount of notes; equivalent to an initial conversion price of approximately \$11.54 per share of common stock. We may not redeem the notes prior to February 1, 2015. On or after February 1, 2015 and prior to the maturity date, we may redeem for cash all or part of the notes at a redemption price equal to 100% of the principal amount of the notes to be redeemed, plus accrued and unpaid interest to, but excluding, the redemption date.

We are using the net proceeds of the issuance of the notes to commercialize KRYSTEXXA in the United States, including for the recruiting and hiring of our sales force, expanding our marketing organization and completing the establishment of a commercial infrastructure, funding of clinical development activities directed to potential label expansion for KRYSTEXXA in the United States, to further develop and seek regulatory approval for KRYSTEXXA in jurisdictions outside the United States, particularly in the European Union, and for general corporate purposes, including working capital. As a result, our management has broad discretion to allocate the net proceeds from the offering. Pending the application of the net proceeds, we intend to invest the net proceeds in short-term U.S. government security money market funds and bank certificates of deposit.

In October 2009, we completed an underwritten public offering of 4,945,000 shares of our common stock for net proceeds of \$61.4 million. We are continuing to use the net proceeds from the offering to develop a program of regulatory filings and review of KRYSTEXXA in other countries, to explore the expansion of the clinical utility of KRYSTEXXA, to engage a global secondary source supplier and a secondary fill and finish manufacturer for KRYSTEXXA and for working capital and other general corporate purposes.

On April 8, 2009, we raised \$31.0 million through a registered direct offering of our common stock, which yielded \$29.0 million in cash net of approximately \$2.0 million of offering costs, which were charged to additional paid-in-capital. We issued 5,927,343 shares of our common stock to existing and new institutional investors as part of the offering. The investors also received warrants to purchase up to 5,038,237 shares of our common stock at an initial exercise price of \$10.46 per share. The warrants were exercisable at any time after the date of issuance and on November 2, 2010. During the year ended December 31, 2010, holders of our warrants exercised warrants to purchase an aggregate of 5,038,237 shares of common stock, either through a cashless exercise or cash exercise. We received an aggregate of \$8.5 million of cash proceeds from the cash exercises of warrants to purchase an aggregate of 812,617 shares of common stock. The remainder of the warrants were exercised via a cashless net share settlement process, whereby warrants to purchase an aggregate of 4,225,620 shares of common stock were exercised, resulting in the forfeiture of 1,997,657 shares in satisfaction of the warrant exercise price, and the issuance of 2,227,963 shares of common stock. As all of the warrants have been exercised and none remain outstanding, our warrant liability had been completely converted into stockholders' equity as of December 31, 2010.

Based on our current plans for completing the commercial launch of KRYSTEXXA, including our anticipated expenses for the continued build of a commercial infrastructure, sales and marketing expenses, the cost of purchasing additional inventory, and the cost of pursuing additional development and filing for regulatory approval in the European Union and in other countries, and assuming that we are able to generate KRYSTEXXA revenues at the level that we are currently expecting, we believe that our available cash, cash equivalents and short-term investments will be sufficient to fund anticipated levels of operations for at least the next twenty-one months.

We believe we have sufficient quantities of KRYSTEXXA to complete a commercial launch in accordance with our launch plan. We also believe that this inventory will be sufficient for us to meet market demand through the second quarter of 2012.

### *Tax Benefits*

The Company recorded an income tax benefit of \$12.8 million for the six months ended June 30, 2011 as compared to a zero income tax benefit for the six months ended June 30, 2010. This benefit was partially the result of a reduction in a liability for an unrecognized tax benefit of \$3.6 million, which was considered effectively settled due to the recent completion of a state tax audit in the first quarter of 2011. The remaining \$9.2 million income tax benefit resulted from the allocation of a tax benefit to continuing operations pursuant to ASC 740-30-45 *Income Taxes*. This guidance requires that amounts credited to capital in excess of par value, other comprehensive income or discontinued operations during the year are considered sources of income that enable a company to recognize a tax benefit on its loss from continuing operations. As discussed in Note 14 – Convertible Notes, the 2018 Convertible Notes were bifurcated into debt and equity components for accounting purposes. As a result, the Company recorded a credit to the capital in excess of par value account of \$34.4 million, which caused the allocation of the \$9.2 million tax benefit to continuing operations. The \$12.8 million tax benefit for the six months ended June 30, 2011 does not result in additional cash flow for the Company. The Company expects the full year tax benefit allocated to continuing operations for this item to be approximately \$23.9 million.

In February 2010, we received an additional \$2.0 million refund of federal income taxes paid in prior years. The recovery in February 2010 of prior alternative minimum income taxes is the result of an amendment of Section 172(b)(1)(H) and 810(b) of the Internal Revenue Code, which was amended under Section 13 of the Worker, Homeownership, and Business Assistance Act of 2009.

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### *Cash Flows*

Cash used in operating activities for the six months ended June 30, 2011 was \$47.6 million, which reflects our net loss for the period of \$43.8 million, as well as a non-cash gain of \$1.8 million as a result of an unrecognized tax benefit. Cash used in investing activities of \$21.7 million during the six months ended June 30, 2011 reflects the purchase of held-to-maturity securities consisting of bank certificates of deposit. Cash provided by financing activities for the six months ended June 30, 2011 was \$223.1 million mainly due to the cash proceeds received from the issuance of the convertible notes of \$222.7 million.

Cash used in operating activities for the six months ended June 30, 2010 was \$24.8 million, which reflects our net loss for the period of \$13.3 million and a non-cash gain of \$8.3 million as a result of the mark-to-market valuation of our former warrant liability. Cash used in investing activities of \$19.9 million during the six months ended June 30, 2010 reflects the purchase of held-to-maturity securities consisting of bank certificates of deposit. We received \$5.6 million in cash proceeds from financing activities due to the issuance of common stock, primarily resulting from the exercise of stock options of \$1.4 million and \$4.3 million from the exercise of a warrant.

### *Funding Requirements*

We are now focusing our efforts on commercializing KRYSTEXXA which was made available by prescription in the United States on December 1, 2010, and completing the development and seeking regulatory approval outside of the United States for KRYSTEXXA, particularly in the European Union.

Our future capital requirements will depend on many factors, including:

- whether we are successful in marketing and selling KRYSTEXXA after the full commercial launch of the product,
- the cost of our post-approval commitments to the FDA, including an observational study and a REMS program,
- the cost of clinical trials directed to potential expansion of clinical utility opportunities for KRYSTEXXA,
- the cost of commercialization activities, including product marketing, sales and distribution,
- the cost of manufacturing activities,
- market acceptance of KRYSTEXXA by physicians and patients in this largely previously untreated patient population,
- market acceptance of the price that we charge for KRYSTEXXA and under what conditions private and public payors will reimburse patients for KRYSTEXXA, and
- the timing and cost involved in obtaining regulatory approvals for KRYSTEXXA in countries other than the United States.

As we are independently pursuing the commercialization of KRYSTEXXA, our cash needs will increase, and we may need to seek additional funding through customary methods, or to explore a strategic licensing or co-promotion transaction in certain territories as a means of raising additional funding. Should we elect to seek additional funding through customary methods, we may not be able to obtain additional funds or, if such funds are available, such funding may not be on terms that are acceptable to us. If we raise additional funds by issuing equity securities, dilution to our then-existing stockholders will result. If we issue preferred stock, it would likely include a liquidation preference and other terms that would adversely affect our stockholders. If we raise additional funds through the issuance of debt securities or borrowings, we may incur substantial interest expense and could become subject to financial and other covenants that could restrict our ability to take specified actions, such as incurring additional debt or making capital expenditures. If we explore a strategic licensing or co-promotion transaction, one may not be available to us or may only be available on terms that are not acceptable to us. If funds are not available on favorable terms, or at all, our business, results of operations and financial condition may be materially adversely affected and we may be required to curtail or cease operations.

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### Contractual Obligations

The below table presents our contractual obligations and commitments as of June 30, 2011:

#### Payments Due by Period

<u>Contractual Obligations</u>	<u>Total</u>	<u>Less Than One Year</u>	<u>1-3 Years</u> <u>(In thousands)</u>	<u>3-5 Years</u>	<u>More Than 5 Years</u>
Capital lease obligations	\$ 76	\$ 69	\$ 7	\$ —	\$ —
Operating lease obligations	3,315	962	2,353	—	—
Purchase commitment obligations (1)	55,339	28,395	15,568	5,688	5,688
Other commitments (2)	3,486	1,870	1,616	—	—
Total	<u>\$62,216</u>	<u>\$31,296</u>	<u>\$19,544</u>	<u>\$ 5,688</u>	<u>\$5,688</u>

- (1) Purchase commitment obligations represent our contractually obligated minimum purchase requirements based on our current manufacturing and supply and other agreements in place with third parties. The table does not include potential future purchase commitments for which the amounts and timing of payments cannot be reasonably predicted. Our obligation to pay certain of these amounts may be reduced or eliminated based on future events.
- (2) Other commitments represent obligations related to developmental milestone payments that have been met as of the balance sheet date. Other commitments include an aggregate of approximately \$1.8 million in sales-based milestone payments that will become due and payable to Duke University, or Duke, and Mountain View Pharmaceuticals, or MVP, on the attainment of specified KRYSTEXXA sales targets, the timing of which is based on our best estimates and assumptions and could shift from period to period. Sales-based royalty payments to Duke and MVP are not included in the table above due to the contingent nature of such obligations. The royalty rate owed to Duke and MVP for any particular quarter ranges between 8% and 12% of net sales based on the amount of cumulative net sales made by us. We are also required to pay royalties of 20% of any milestones, revenues or other consideration we receive from sublicensees during any quarter. Other commitments also reflects employment agreements with seven senior officers. Under these agreements, the Company has committed to total aggregate base compensation per year of approximately \$2.6 million plus other fringe benefits and bonuses. These employment agreements generally have an initial term of three years and are automatically renewed thereafter for successive one-year periods unless either party gives the other notice of non-renewal. In addition, we currently have in place severance agreements with three former employees including our former President, which aggregate to approximately \$1.8 million, of which \$1.4 million will be paid in equal installments over a the next twelve months and \$0.4 million will be paid over the next two years.

We have received financial grants in support of research and development from the Office of the Chief Scientist of the State of Israel, or OCS, and the Bi-national Industrial Research and Development Foundation, or BIRD, of approximately \$2.0 million and \$0.6 million, respectively, for the development of KRYSTEXXA. These grants are subject to repayment through royalties on the commercial sale of KRYSTEXXA if and when commercial sale commences. The OCS grants were received by our former subsidiary, BTG, and upon our divestiture of BTG to Ferring, we agreed to remain obligated to reimburse BTG for its repayments to OCS that relate to the KRYSTEXXA financial grants. In addition, under the Israeli Law of Encouragement of Research and Development in Industry, as amended, as a result of the funding received from OCS, if we do not manufacture 100% of its annual worldwide bulk product requirements in Israel, we may be subject to total payments ranging from 120% to 300% of the repayment obligation plus interest based upon the percentage of manufacturing that does not occur in Israel. Our aggregate principal repayment obligation plus interest to OCS if we successfully launch KRYSTEXXA and, per our agreements with BTG, manufacture more than 20% of its annual worldwide bulk product requirements outside of Israel, would be between \$4.2 million and \$9.2 million at June 30, 2011. These payments have been excluded from the table above due to the uncertainties surrounding the potential future cash flows from the commercialization of KRYSTEXXA.

We have a liability for unrecognized tax benefits of \$3.4 million as of June 30, 2011. We are unable to estimate the amount or the timing of any future payments for this liability, if any.

### Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that are material to investors.

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### Critical Accounting Policies and Estimates

Our discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements, which we have prepared in accordance with accounting principles generally accepted in the United States. Applying these principles requires our judgment in determining the appropriateness of acceptable accounting principles and methods of application in diverse and complex economic activities. The preparation of these financial statements requires us to make estimates and judgments that affect the reported amounts of revenues, expenses, assets and liabilities, and related disclosure of contingent assets and liabilities. We base our estimates on historical experience and other assumptions that we believe are reasonable under the circumstances. Actual results may differ from these estimates under different assumptions or conditions.

While our significant accounting policies are more fully described in Note 1 to our consolidated financial statements included in Item 8 of our Annual Report on Form 10-K, for the year ended December 31, 2010, we believe the following accounting policies include management estimates that are most critical to our reported financial results:

*Research and Development* . Research and development costs are expensed as incurred and include salaries and benefits, stock-based compensation, and costs paid to third-party contractors to perform research, conduct clinical trials, and develop drug materials.

Manufacturing costs are a significant component of research and development expenses and include costs associated with third-party contractors for validation and commercial batch production, process technology transfer, quality control and stability testing, raw material purchases, overhead expenses and facilities costs. We previously recorded these manufacturing-related expenses as research and development as incurred because these costs did not meet the definition of an inventory asset, as future use could not be determined based upon the uncertainty of whether KRYSTEXXA would be approved for marketing in the United States by the FDA. Inventories include owned items that are held for sale in the ordinary course of business, that are in process of production for sale, or that will be consumed in the production of goods or services that will be held for sale. Following regulatory approval by the FDA of KRYSTEXXA, we are capitalizing certain manufacturing costs as an inventory asset that would previously have been expensed as research and development costs in cases where the manufacturing costs meet the definition of an inventory asset. We will continue to record as research and development expenses those manufacturing costs incurred at third parties, such as Fujifilm Diosynth USA LLC, or Fujifilm, who we are trying to qualify as our secondary source supplier of pegloticase drug substance, or in jurisdictions that have not received regulatory approval for the commercialization of KRYSTEXXA.

Clinical trial costs have been another significant component of research and development expenses and most of our clinical studies are performed by third-party contract research organizations, or CROs. We accrue costs for clinical studies performed by CROs that are milestone or event driven in nature and based on reports and invoices submitted by the CRO. These expenses are based on patient enrollment as well as costs consisting primarily of payments made to the CRO, clinical sites, investigators, testing facilities and patients for participating in our clinical trials.

Non-refundable advance payments for future research and development activities are deferred and capitalized. Such amounts are recognized as an expense as the goods are delivered or the related services are performed. As a result of the FDA's approval on September 14, 2010 of KRYSTEXXA for marketing in the United States, we will defer and capitalize all future fees incurred to reserve manufacturing capacity at our third-party suppliers. We have not deferred any research and development costs as of June 30, 2011 and December 31, 2010 and had no amortization expense for the six-month periods ended June 30, 2011 and 2010, respectively, based on services performed.

*Share-Based Compensation* . We have share-based compensation plans in place and record the associated stock-based compensation expense over the requisite service period. The share-based compensation plans are described in Note 11 to the consolidated financial statements.

Compensation cost for stock options that contain service conditions is charged against income on a straight-line basis between the grant date for the option and the vesting period. We estimate the fair value of all stock option awards that contain service conditions as of the grant date by applying the Black-Scholes option pricing valuation model. The application of this valuation model involves assumptions that are highly subjective, judgmental and sensitive in the determination of compensation cost. Total unrecognized compensation cost will be adjusted for future changes in estimated forfeitures. In addition, as future grants are made, we expect to incur additional compensation costs.

Restricted stock and restricted stock unit, or RSU, awards that contain service conditions are recorded as deferred compensation and amortized into compensation expense on a straight-line basis over the vesting period, which ranges from one to four years in duration. Compensation cost for restricted stock and RSU awards that contain service conditions is based on the grant date fair value of the award, which is the closing market price of our common stock on the grant date multiplied by the number of shares awarded.

Compensation cost for restricted stock and stock option awards that contain performance or market conditions is based on the grant date fair value of the award. Compensation expense is recorded over the implicit or explicit requisite service period based on management's best estimate as to whether it is probable that the shares awarded are expected to vest. For purposes of recording compensation expense, we consider performance conditions that depend on a change in control event or an FDA approval, once the transaction is consummated or the event occurs. Previously recognized compensation expense is fully reversed if performance targets are not satisfied. We assess the probability of the performance indicators being met on a continuous basis and record compensation expense from that date, over the remainder of the requisite service period.

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We grant stock options that contain service conditions to employees and directors with exercise prices equal to the fair market value of the underlying shares of our common stock on the date that the options are granted. Options granted have a term of 10 years from the grant date. Options granted to employees vest over a four-year period and options granted to directors vest in equal quarterly installments over a one-year period, from the date of grant. Options to directors are granted on an annual basis and represent compensation for services performed on the Board of Directors. Compensation cost for stock options is charged against income on a straight-line basis between the grant date for the option and each vesting date. We estimate the fair value of all stock option awards at the closing price on the grant date by applying the Black-Scholes pricing valuation model. The application of this valuation model involves assumptions that are highly subjective, judgmental and sensitive in the determination of compensation cost. During the six months ended June 30, 2011 and 2010, we issued 33,000 shares and 188,000 shares, respectively, of common stock upon the exercise of outstanding stock options and received proceeds of \$0.2 million and \$1.2 million, respectively. For the six months ended June 30, 2011 and 2010, approximately \$1.6 million and \$1.3 million, respectively, of stock option compensation cost was charged against income. As of June 30, 2011, there was \$5.7 million of unrecognized compensation cost, adjusted for estimated forfeitures, related to unamortized stock option compensation expense which is expected to be recognized over a weighted-average period of approximately 2.8 years. Total unrecognized compensation cost will be adjusted for future changes in estimated forfeitures.

During the six months ended June 30, 2011, we recorded \$0.3 million of compensation expense related to the vesting of stock option awards that contained performance or market conditions, the vesting of which was contingent upon the achievement of various specific strategic objectives by June 30, 2011, including the filing of our MAA for KRYSTEXXA in the European Union and other business development objectives. At June 30, 2011, approximately 400,000 shares underlying stock options with performance or market conditions remained unvested.

We grant restricted stock awards that contain service conditions to our employees and to our directors. Additionally, we also grant RSUs to directors. Restricted stock and RSU awards are recorded as deferred compensation and amortized into compensation expense on a straight-line basis over the vesting period, which ranges from one to four years in duration. Restricted stock and RSU awards to directors are granted on a yearly basis and represent compensation for services performed on the Board of Directors. Restricted stock awards to directors vest in equal quarterly installments over a one-year period from the grant date and RSU awards vest after one year and thirty-one days. Compensation cost for restricted stock and RSU awards that contain service conditions is based on the award's grant date fair value, which is the closing market price of our common stock on the grant date, multiplied by the number of shares awarded. For the six months ended June 30, 2011, we issued 751,000 shares of restricted stock at a weighted-average grant date fair value of \$8.74 per share amounting to \$6.6 million in total aggregate fair market value. During the six months ended June 30, 2011 and 2010, approximately \$1.2 million and \$1.1 million, respectively, of deferred restricted stock compensation cost was charged against income. At June 30, 2011, approximately 917,000 shares remained unvested and there was approximately \$6.9 million of unrecognized compensation cost related to restricted stock and RSUs that contain service conditions.

During the six months ended June 30, 2011 and 2010, we recorded \$187,000 and \$50,000, respectively, of compensation expense related to restricted stock awards to senior management personnel that contain performance or market conditions, the vesting of which is contingent upon the achievement of certain specific strategic objectives and other business development objectives. At June 30, 2011, approximately 317,000 shares of restricted stock with performance or market conditions remained unvested and could result in approximately \$3.1 million of additional compensation expense if the performance targets are met or expected to be achieved.

*Income Taxes* . In the six months ended June 30, 2011, we recorded an income tax benefit of \$12.8 million for the six months ended June 30, 2011 as compared to a zero income tax benefit for the six months ended June 30, 2010. This benefit was partially the result of a reduction in a liability for an unrecognized tax benefit of \$3.6 million, which was considered effectively settled due to the recent completion of a state tax audit in the first quarter of 2011. The remaining \$9.2 million income tax benefit resulted from the allocation of a tax benefit to continuing operations pursuant to ASC 740-30-45 *Income Taxes* . This guidance requires that amounts credited to capital in excess of par value, other comprehensive income or discontinued operations during the year are considered sources of income that enable a company to recognize a tax benefit on its loss from continuing operations. As discussed in Note 14 – Convertible Notes, the 2018 Convertible Notes were bifurcated into debt and equity components for accounting purposes. As a result, the Company recorded a credit to the capital in excess of par value account of \$34.4 million, which caused the allocation of the \$9.2 million tax benefit to continuing operations. The \$12.8 million tax benefit for the six months ended June 30, 2011 does not result in additional cash flow for the Company. The Company expects the full year tax benefit allocated to continuing operations for this item to be approximately \$23.9 million.

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis and net operating loss and tax credit carry forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. We regularly review our deferred tax assets for recoverability and establish a valuation allowance based on historical taxable income, projected future taxable income, applicable tax strategies, and the expected timing of the reversals of existing temporary differences. A valuation allowance is provided when it is more likely than not that some portion or all of the deferred tax assets will not be realized. In forming our judgment regarding the recoverability of deferred tax assets related to deductible temporary differences and tax attribute carry forwards, we give weight to positive and negative evidence based on the extent to which the forms of evidence can be objectively verified. We attach the most weight to historical earnings due to its verifiable nature. Weight is attached to tax planning strategies if the strategies are prudent and feasible and implementable without significant obstacles. Less weight is attached to forecasted future earnings due to its subjective nature. In 2010, based on the net operating loss generated in 2010 and historical losses and the uncertainty of profitability in the near future, we concluded that we would maintain a full valuation allowance on all of our deferred tax assets except those assets that are reserved by a liability for unrecognized tax benefits. We maintained a valuation allowance as of June 30, 2011 of \$202 million. The increase in the valuation allowance from December 31, 2010 was primarily due to an increase in net operating loss carry forwards and the uncertainty that these additional deferred tax assets will be realized.



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We use judgment in determining income tax provisions and in evaluating our tax positions. Additional provisions for income taxes are established when, despite the belief that tax positions are fully supportable, there remain certain positions that do not meet the minimum probability threshold, which is a tax position that is more-likely-than-not to be sustained upon examination by the applicable taxing authority. We are examined by Federal and state tax authorities and we regularly assess the potential outcomes of these examinations and any future examinations for the current or prior years in determining the adequacy of our provision for income taxes. We continually assess the likelihood and amount of potential adjustments and adjust the income tax provision, the current tax liability and deferred taxes in the period in which the facts that give rise to a revision become known.

The total amount of federal, state and local liabilities for unrecognized tax benefits was \$3.4 million as of June 30, 2011, including accrued penalties and interest. The decrease of \$6.8 million in the Company's liability for unrecognized tax benefits from December 31, 2010 to June 30, 2011 is primarily the result of a recently completed state tax audit in the first quarter of 2011 which resulted in a decrease to state unrecognized tax positions from prior years that are considered effectively settled. The Company also decreased a portion of its liability for unrecognized tax benefits due to a change in estimate which is the direct result of the recently settled Federal Income Tax Audit in January of 2011

The net decrease of \$1.0 million in the liability for unrecognized tax benefits subsequent to adoption of the new accounting guidance on accounting for uncertainties in income taxes as codified under ASC 740-10, *Income Taxes*, resulted in a corresponding increase to the income tax benefit within our consolidated statements of operations as well as a reduction to the interest and penalty expense in our consolidated statements of operations.

*Disclosures about Fair Values of Financial Instruments*. We categorize our financial instruments into a three-level fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value into three broad levels. The fair value hierarchy gives the highest priority to quoted prices in active markets for identical assets or liabilities (Level 1) and the lowest priority to unobservable inputs (Level 3). If the inputs used to measure fair value fall within different levels of the hierarchy, the category level is based on the lowest priority level input that is significant to the fair value measurement of the instrument.

Financial assets recorded at fair value on our consolidated balance sheets are categorized as follows:

Level 1: Unadjusted quoted prices for identical assets in an active market.

Level 2: Quoted prices in markets that are not active or inputs that are observable either directly or indirectly for substantially the full-term of the asset. Level 2 inputs include the following:

- Quoted prices for similar assets in active markets,
- Quoted prices for identical or similar assets in non-active markets,
- Inputs other than quoted market prices that are observable, and
- Inputs that are derived principally from or corroborated by observable market data through correlation or other means.

Level 3: Prices or valuation techniques that require inputs that are both unobservable and significant to the overall fair value measurement. They reflect management's own assumptions about the assumptions a market participant would use in pricing the asset.

The carrying amounts of Cash and Cash Equivalents, Notes Receivable, Accounts Receivable, Accounts Payable and Other Current Liabilities approximate fair value. See Note 2 to our consolidated financial statements for further discussion of the fair value of financial instruments.

*Other-Than-Temporary Impairment Losses on Investments*. We regularly monitor our available-for-sale and held-to-maturity portfolios to evaluate the necessity of recording impairment losses for other-than-temporary, or OTT, decreases in the fair value of investments. The impairment of a debt security is considered OTT if an entity concludes that it intends to sell the impaired security, that it is more likely than not that it will be required to sell the security before the recovery of its cost basis or that it does not otherwise expect to recover the entire cost basis of the security. Management makes determinations relating to recording impairment losses for OTT through the consideration of various factors such as management's intent to sell an investment before the recovery of its cost basis. OTT impairment losses result in a permanent reduction to the cost basis of the investment. For the six months ended June 30, 2011 and 2010, we did not experience or record realized investment losses due to OTT declines in fair value.

*Product Revenue Recognition*. We generate revenue from product sales. Revenue is not recognized until it is realized or realizable and earned. Revenue is realized or realizable and earned when all of the following criteria are met: (i) persuasive evidence of an arrangement exists, (ii) delivery has occurred or services have been rendered, (iii) our price to the buyer is fixed and determinable, and (iv) collectability is reasonably assured.

Revenue from sales transactions where the buyer has the right to return the product is recognized at the time of sale only if (i) the seller's price to the buyer is substantially fixed or determinable at the date of sale, (ii) the buyer has paid the seller, or the buyer is obligated to pay the seller and the obligation is not contingent on resale of the product, (iii) the buyer's obligation to the seller would not be changed in the event of theft or physical destruction or damage of the product, (iv) the buyer acquiring the product for resale has economic substance apart from that provided by the seller, (v) the seller does not have significant obligations for future performance to directly bring about resale of the product by the buyer, and (vi) the amount of future returns can be reasonably estimated.

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Given our limited sales history for KRYSTEXXA coupled with the product being a new entry into its market, we believe that we are currently unable to reasonably estimate future product returns. Therefore, we have determined that the shipments of KRYSTEXXA made to specialty distributors do not meet the criteria for revenue recognition at the time of shipment, and, accordingly, such shipments are accounted for using the sell-through method. Under the sell-through method, we do not recognize revenue upon shipment of KRYSTEXXA to specialty distributors. For these product sales, we invoice the specialty distributor and record deferred revenue equal to the gross invoice price. We then recognize revenue when KRYSTEXXA is sold through, or upon shipment of the product from the specialty distributors to their customers, including doctors and infusion suites. Because of the price of KRYSTEXXA, the short period from sale of product to patient infusion and limited product return rights, KRYSTEXXA distributors and their customers generally carry limited inventory. We are also selling KRYSTEXXA to wholesalers whereby we drop ship the product directly to hospitals. As there is limited risk of returns from hospitals as infusions will be taking place in their facilities, we are recording revenue when KRYSTEXXA has been received at the hospital and title has transferred in accordance with the terms of sale.

Oxandrin product sales are generally recognized when title to the product has transferred to our customers in accordance with the terms of the sale. We ship our authorized generic oxandrolone to our distributor and account for these shipments on a consignment basis until product is sold into the retail market. We defer the recognition of revenue related to these shipments until we confirm that the product has been sold into the retail market and all other revenue recognition criteria have been met.

Our net product revenues represent total product revenues less allowances for returns, Medicaid rebates, other government rebates, discounts, and distribution fees.

*Allowances for Returns* . In general, we provide credit for product returns for KRYSTEXXA that are returned six months after the product expiration date. Additionally, we provide credit for product returns for Oxandrin and generic oxandrolone that are returned six months prior to or up to 12 months after the product expiration date. Our product sales in the United States primarily relate to the following products:

<u>Product</u>	<u>Expiration (in years)</u>
KRYSTEXXA 8mg	2
Oxandrin and oxandrolone 2.5 mg	5
Oxandrin and oxandrolone 10 mg	3-4

Upon sale, we estimate an allowance for future returns. We provide additional reserves for contemporaneous events that were not known or knowable at the time of shipment. In order to reasonably estimate future returns, we analyze both quantitative and qualitative information including, but not limited to, actual return rates by lot productions, the level of product manufactured by us, the level of product in the distribution channel, expected shelf life of the product, current and projected product demand, the introduction of new or generic products that may erode current demand, and general economic and industry-wide indicators. The aggregate net product return allowance reserve was \$0.8 million and \$0.5 million as of June 30, 2011 and December 31, 2010, respectively.

*Allowances for Medicaid and Other Government Rebates* . Our contracts with Medicaid and other government agencies such as the Federal Supply System commit us to providing those agencies with our most favorable pricing. This ensures that our products remain eligible for purchase or reimbursement under these government-funded programs. Based upon our contracts and the most recent experience with respect to sales through each of these channels, we provide an allowance for rebates. We monitor the sales trends and adjust the rebate percentages on a regular basis to reflect the most recent rebate experience. The aggregate net rebate accrual balances were \$0.2 million as of June 30, 2011 and \$0.3 million as of December 31, 2010.

*Inventory Valuation* . We state inventories at the lower of cost or market. Cost is determined based on actual cost. If inventory costs exceed expected market value due to obsolescence or quantities in excess of expected demand, we record reserves for the difference between the cost and market value. We determine these reserves based on estimates.

We continually analyze the impact of generic competition on our inventory reserves considering the Oxandrin inventory currently on hand, inclusive of raw materials and finished goods, and the current demand forecasts. The aggregate net inventory valuation reserves as of June 30, 2011 and December 31, 2010 were \$1.0 million and \$1.3 million, respectively.

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### Recently Issued Accounting Pronouncements

In June 2011, the FASB issued Accounting Standards Update (“ASU”) 2011-05, *Presentation of Comprehensive Income*, which amends Accounting Standards Codification (“ASC”) Topic 220, *Comprehensive Income*. The amendments give an entity the option to present the total of comprehensive income, the components of net income, and the components of other comprehensive income either in a single continuous statement of comprehensive income or in two separate but consecutive statements. In both choices, an entity is required to present each component of net income along with total net income, each component of other comprehensive income along with a total for other comprehensive income, and a total amount for comprehensive income. The amendments eliminate the option to present the components of other comprehensive income as part of the statement of changes in stockholders’ equity. The amendments do not change the items that must be reported in other comprehensive income or when an item of other comprehensive income must be reclassified to net income. ASU 2011-05 is effective prospectively for our consolidated financial statements for the year beginning January 1, 2012 and is not expected to have a significant impact on our consolidated financial statements.

In May 2011, the FASB issued ASU 2011-04, *Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and International Financial Reporting Standard, or IFRS*, which represents clarifications of ASC Topic 820, *Fair Value Measurement*, and includes some instances where a particular principle or requirement for measuring fair value or disclosing information about fair value measurements has changed. The amendments result in common fair value measurement and disclosure requirements in U.S. GAAP and IFRS. Consequently, the amendments change the wording used to describe many of the requirements in U.S. GAAP for measuring fair value and for disclosing information about fair value measurements. For many of the requirements, the amendments do not result in a change in the application of the requirements in ASC Topic 820. Some of the amendments clarify the application of existing fair value measurement requirements. Other amendments change a particular principle or requirement for measuring fair value or for disclosing information about fair value measurements. ASU 2011.04 is effective prospectively for our consolidated financial statements for the year beginning January 1, 2012. We are currently assessing the potential impact from the adoption of ASU 2011-04 on our consolidated financial statements.

In December 2010, the FASB issued ASU 2010-27, *Other Expenses (Topic 720): Fees Paid to the Federal Government by Pharmaceutical Manufacturers*. ASU 2010-27 addresses questions concerning how pharmaceutical manufacturers should recognize and classify in their income statements fees mandated by the Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act (collectively, the Acts). The Acts impose an annual fee on the pharmaceutical manufacturing industry for each calendar year beginning on or after January 1, 2011. The amendments in this update specify that the liability for the fee should be estimated and recorded in full upon the first qualifying sale with a corresponding deferred cost that is amortized to expense using a straight-line method of allocation unless another method better allocates the fee over the calendar year that it is payable. ASU 2010-27 is not expected to have a significant effect on our consolidated financial statements. In July 2010, the FASB issued ASU 2010-20, *Disclosure about the Credit Quality of Financing Receivables and the Allowance for Credit Losses*. ASU 2010-20 amends ASU 310 to require additional disclosures regarding the credit quality of financing receivables and the related allowance for credit losses. The amended guidance requires entities to disaggregate by segment or class certain existing disclosures and provide certain new disclosures about its financial receivables and related allowance for credit losses. The amended guidance is effective for interim and annual financial periods beginning after December 15, 2010. We do not expect ASU 2010-20 to have a material effect on our consolidated financial statements.

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### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market risk is the exposure to loss resulting from changes in interest rates, foreign currency exchange rates, commodity prices and equity prices. To date, our exposure to market risk has been limited. We do not currently hedge any market risk, although we may do so in the future. We do not hold any derivative financial instruments for trading or other speculative purposes.

Our material interest-bearing assets consist of cash and cash equivalents and short-term investments, including investments in U.S. Treasury and other money market funds and bank certificates of deposit. Our investment income is primarily sensitive to changes in U.S. Treasury security interest rates, general interest rates within the U.S. economy and other market conditions.

### ITEM 4. CONTROLS AND PROCEDURES

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports under the Securities Exchange Act of 1934, as amended, or the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer and President, or CEO, and our Chief Financial Officer, or CFO, as appropriate, to allow timely decisions regarding required disclosure.

We do not expect that our disclosure controls and procedures or our internal control over financial reporting will prevent or detect all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control systems are met. Further, the design of a control system must reflect the fact that there are resource constraints and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in a cost-effective control system, no evaluation of internal control over financial reporting can provide absolute assurance that misstatements due to error or fraud will not occur or that all control issues and instances of fraud, if any, within our Company have been detected.

These inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of simple error or mistake. Controls can also be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the controls. The design of any system of controls is based in part on certain assumptions about the likelihood of future events and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Projections of any evaluation of control effectiveness to future periods are subject to risks. Over time, controls may become inadequate because of changes in conditions or deterioration in the degree of compliance with policies or procedures.

Our management, with the participation of our CEO and President and our CFO, evaluated the effectiveness of our disclosure controls and procedures. Based on this evaluation, as of the end of the period covered by this Quarterly Report on Form 10-Q, our CEO and President and our CFO have concluded that our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) are effective.

There has been no change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) during the quarter ended June 30, 2011 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II—OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

**Intellectual Property-Related Litigation**

In a civil action filed in the Fayette Circuit Court in Kentucky on August 31, 2007 ( *Joseph R. Berger vs. Savient Pharmaceuticals, Inc.* ), Dr. Joseph Berger alleged that he had entered into an agreement with us in December 1993, under which he assigned to us an invention and patent rights relating to the use of oxandrolone to treat an HIV-related disorder, the Invention, in exchange for our agreement to use him as a researcher in certain clinical trials relating to the Invention, and that we had breached that agreement. Berger’s verified complaint requested disgorgement of profits and assignment to Berger of the patents obtained on the Invention. During fact discovery in the action, we uncovered an April 6, 1992 Consulting Agreement between Berger and our predecessor, Gynex Pharmaceuticals (“Gynex”), wherein Berger assigned the Invention to Gynex in consideration of, among other things, \$20,000 from Gynex. After the April 6, 1992 Agreement was presented to Berger, he filed an amended verified complaint which acknowledged the April 6, 1992 Agreement, but contended that the \$20,000 paid to him under the agreement was not consideration for the assignment of the Invention. We filed a motion for summary judgment on Dr. Berger’s claims and, on August 17, 2009, the Court issued an order granting our motion and dismissing Dr. Berger’s complaint and amended complaint with prejudice. Berger appealed the decision of the trial court granting our motion for summary judgment, and we filed a notice of cross-appeal solely with respect to the decision of the trial court to apply Kentucky law to the facts of the case. On January 4, 2011, the Kentucky Appellate Court issued an order taking up Berger’s appeal and the our cross-appeal on the papers. We intend to vigorously defend this action.

**Other Litigation**

In November 2008, Richard Sagall, an alleged stockholder, commenced an action in the U.S. District Court for the Southern District of New York seeking to certify a class of shareholders who held Savient securities between December 13, 2007 and October 24, 2008. The suit alleges that we made false and misleading statements relating to the GOUT1 and GOUT2 phase 3 clinical trials and that we failed to disclose in a timely manner serious adverse events which occurred in five patients in these trials. In March 2009, the Court issued an order appointing a lead plaintiff and the law firm Pomerantz Haudek Block Grossman & Gross LLP as lead counsel. The action was also re-captioned as *Lawrence J. Koncelik vs. Savient Pharmaceuticals, et al.* . Thereafter, the lead plaintiff filed his amended complaint in April 2009, seeking unspecified monetary damages. In June 2009, we and the other named defendants moved to dismiss the complaint. The lead plaintiff subsequently filed an opposition of the motion to dismiss and we filed our reply in October 2009. Oral arguments were heard by the Court in February 2010 relating to our motion to dismiss. On September 29, 2010, the Court issued a memorandum decision and order granting our motion to dismiss the amended complaint in its entirety. On October 28, 2010, the lead plaintiff timely filed a notice of appeal of the Court’s decision with the United States Court of Appeals for the Second Circuit, and the briefing on that appeal was completed in June 2011. The Second Circuit is unlikely to issue a decision on the appeal before the fall 2011. We intend to continue to vigorously defend against this action.

From time to time, we are subject to legal proceedings and claims in the ordinary course of business. Such claims, even if without merit, could result in the significant expenditure of our financial and managerial resources.

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### ITEM 1A. RISK FACTORS

*This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995 and Section 21E of the Securities Exchange Act of 1934, as amended, that involve substantial risks and uncertainties. All statements, other than statements of historical fact, including statements regarding our strategy, future operations, future financial position, future results of operations, future cash flows, projected costs, financing plans, product development, possible strategic alliances, competitive position, prospects, plans and objectives of management, are forward-looking statements. We often use words such as “anticipate,” “estimate,” “expect,” “project,” “intend,” “plan,” “believe,” “may,” “predict,” “will,” and “would,” and similar expressions, to identify forward-looking statements, although not all forward-looking statements contain these identifying words.*

*These forward-looking statements include, among other things, statements about:*

- the success of our marketing efforts and our ability to commercialize KRYSTEXXA<sup>®</sup> (pegloticase),*
- market demand and our ability to gain market acceptance for KRYSTEXXA among physicians, patients, health care payors and others in the medical community,*
- our market expansion plans, including our recently filed Marketing Authorization Application, or MAA, with the European Medicine Agency, or EMA,*
- market acceptance of reimbursement risks with third-party payors during the initial phases of market introduction,*
- the risk that the market for KRYSTEXXA is smaller than we have anticipated,*
- our reliance on third parties to manufacture KRYSTEXXA, and*
- risks associated with stringent government regulation of the biopharmaceutical industry.*

*We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements, and you should not place undue reliance on our forward-looking statements. Actual results or events could differ materially from the plans, intentions and expectations disclosed in the forward-looking statements that we make. We have included important factors in various cautionary statements included in this Quarterly Report on Form 10-Q, particularly in the “Risk Factors” section, that we believe could cause actual results or events to differ materially from the forward-looking statements that we make. Our forward-looking statements do not reflect the potential impact of any future acquisitions, mergers, dispositions, joint ventures or investments we may make.*

*You should read this Quarterly Report on Form 10-Q completely and with the understanding that our actual future results may be materially different from what we expect. We undertake no obligation to update any forward-looking statements.*

*The following risk factors have been updated to reflect developments subsequent to the filing of our Annual Report on Form 10-K for the year ended December 31, 2010, and we have denoted with an asterisk (\*) in the following discussion those risk factors that are materially revised.*

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### **\*Risks relating to the commercialization and further development of KRYSTEXXA and our ability to accomplish our future business objectives**

***\*Our business focuses primarily on the commercialization in the United States of a single product, KRYSTEXXA. Commercializing KRYSTEXXA in the United States is complex and requires substantial capital resources. If our U.S. commercialization strategy is unsuccessful, market acceptance of KRYSTEXXA may be harmed, and we will not achieve the revenues that we anticipate and may need additional funding.***

Our business focuses primarily on the commercialization of KRYSTEXXA in the United States. The secondary focus of our business is the pursuit of regulatory approval for KRYSTEXXA in the European Union and other foreign jurisdictions and the investigation of the expansion of the clinical utility for KRYSTEXXA. We do not have any material assets other than KRYSTEXXA. As a result of our reliance on this single product and our primary focus on the United States market in the near term, much of our near term results and value as a company depend on our ability to execute our commercial strategy for KRYSTEXXA in the United States.

We completed the full promotional launch of KRYSTEXXA in the United States in the first quarter of 2011. However, the successful execution of our launch strategy is a complex and ongoing process and will require substantial capital resources. We have no prior experience commercializing a biologic drug product. If we are not successful in executing our commercialization strategy, market acceptance of KRYSTEXXA may be harmed, we will not achieve the revenues that we anticipate and we may need additional funding or seek a strategic licensing or co-promotion transaction in certain territories as a means of raising additional funding.

***\*Our business also focuses on the worldwide clinical development and commercialization of KRYSTEXXA outside of the United States, particularly in the European Union. If we fail to achieve regulatory approval for KRYSTEXXA in the European Union or in other jurisdictions outside of the United States, or if regulatory approval in those jurisdictions is delayed, then market acceptance of KRYSTEXXA in those markets may be harmed and we will not achieve the revenues that we anticipate.***

We intend to market KRYSTEXXA outside the United States either by ourselves or with third-party collaborators. In order to market KRYSTEXXA in the European Union and other foreign jurisdictions, we must obtain separate regulatory approvals and comply with numerous and varying regulatory requirements. In early May 2011 we submitted our MAA for marketing authorization for KRYSTEXXA in the European Union. In late May 2011, the EMA validated and accepted for review our MAA and initiated the regulatory review process of KRYSTEXXA in the European Union. Our MAA could fail to be approved by the EMA, or such approval could be delayed. If our MAA is not approved, or if such approval is delayed, then market acceptance of KRYSTEXXA in the European Union may be harmed and we will not achieve the revenues that we anticipate.

The procedures to obtain marketing approvals vary among countries and can involve additional clinical trials or other pre-filing requirements. The time required to obtain foreign regulatory approval may differ from that required to obtain U.S. Food and Drug Administration, or FDA, approval. The foreign regulatory approval process may include all the risks associated with obtaining FDA approval, or different or additional risks. We may not obtain foreign regulatory approvals on a timely basis, if at all. Approval by the FDA does not ensure approval by regulatory authorities in other countries, and approval by one foreign regulatory authority does not ensure approval by regulatory authorities in other foreign countries. If we pursue commercialization of KRYSTEXXA outside the United States through development and commercialization collaborations, third parties may be responsible for obtaining regulatory approvals outside the United States. If this occurs, we will depend on such third parties to obtain these approvals. We and our collaborators may not be able to file for regulatory approvals and may not receive necessary approvals to commercialize KRYSTEXXA in any market. If we fail to receive approval in these jurisdictions, we will not generate any revenue from sales of KRYSTEXXA in these jurisdictions.

***\*We have completed the hiring and training of our sales and marketing personnel and have substantially completed the establishment of our infrastructure and expansion of other capabilities for commercialization of KRYSTEXXA in the United States. If we are not able to successfully recruit and retain sales and marketing personnel in the United States and establish an appropriate infrastructure, our ability to commercialize KRYSTEXXA and generate product sales will be impaired.***

Until recently, we had limited marketing and no sales capabilities. We have completed the hiring and training of our sales and marketing personnel and have substantially completed the establishment of our infrastructure and expansion of other capabilities for the commercialization of KRYSTEXXA in the United States. These efforts have been and will continue to be difficult, expensive and time consuming. We may not have accurately estimated the size or capabilities of the sales force necessary to successfully commercialize KRYSTEXXA and may not be able to attract, hire and train qualified sales and marketing personnel necessary to achieve or maintain an effective sales and marketing force for the sale of KRYSTEXXA, or we may have underestimated the time and expense to achieve this objective. Similarly, we may not be successful in establishing the necessary commercial infrastructure and capabilities, including managed care, medical affairs and pharmacovigilance teams. If we do not rapidly succeed in establishing the necessary infrastructure and capabilities, or if our efforts to do so take more time and expense than anticipated, our ability to market and sell KRYSTEXXA and generate revenue from sales to customers will be impaired and result in lower than expected revenues.

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***\*Our business may be harmed if we have inaccurately predicted the market size for KRYSTEXXA.***

The market size for KRYSTEXXA is difficult to predict. We currently estimate the total addressable market for KRYSTEXXA to be approximately 120,000 patients in the United States, which we are basing on a market sizing study that was completed in July 2011. However, the actual number of patients in the U.S. market may be substantially lower than our estimate. In addition, the total addressable market opportunity for KRYSTEXXA will ultimately depend on, among other things, our marketing and sales efforts, the potential success of label expansion activities, reimbursement and market acceptance by physicians, infusion site personnel, healthcare payors and others in the medical community.

If we have overestimated the market size for KRYSTEXXA, we could incur significant unrecoverable costs from creating excess manufacturing capacity or commercial sales and marketing capabilities and commercial infrastructure, and our revenues will be lower than expected, possibly materially so. Alternatively, if we underestimated the market size for KRYSTEXXA, we may not be able to manufacture sufficient quantities of KRYSTEXXA to enable us to realize full revenue potential from sales of KRYSTEXXA. Any of these results could materially harm our business.

***The commercial success of KRYSTEXXA will depend upon the degree of market acceptance by patients in this largely previously untreated adult patient population, physicians, infusion site personnel, healthcare payors and others in the medical community. If KRYSTEXXA does not achieve an adequate level of market acceptance, we may not generate sufficient revenues to achieve or maintain profitability.***

Those patients who suffer from chronic gout and who are refractory to conventional therapy comprise a largely previously untreated patient population. KRYSTEXXA may not gain or maintain market acceptance by these patients, or by physicians, infusion site personnel, healthcare payors or others in the medical community. Additionally, we believe that a significant number of potential patients for KRYSTEXXA may be treated by primary care practitioners and we will need to educate these physicians about KRYSTEXXA in order to facilitate referrals of patients to rheumatologists or other infusion providers who will administer KRYSTEXXA. If we are unsuccessful in educating these primary care practitioners about KRYSTEXXA, or if they do not refer patients to sites of care, we would not expect to achieve an appropriate level of market acceptance for KRYSTEXXA. We could incur substantial and unanticipated additional expense in an effort to increase market acceptance, which would increase the cost of commercializing KRYSTEXXA and could limit the commercial success of KRYSTEXXA and result in lower than expected future revenues. We believe the degree of market acceptance of KRYSTEXXA will depend on a number of factors, including:

- its efficacy and potential advantages over alternative treatments,
- the extent to which physicians are successful in treating patients with alternative products or treatments, such as allopurinol and Uloric<sup>®</sup> (febuxostat), which, because they are pills, offer greater relative convenience and ease of administration and are substantially less expensive compared to KRYSTEXXA,
- whether patients receive multiple courses of KRYSTEXXA treatment or are able to be successfully managed with allopurinol or Uloric following treatment with KRYSTEXXA,
- the extent to which physicians and patients experience similar or better clinical results and experience to that reported on the approved product labeling.
- market acceptance of the per vial cost at which we sell KRYSTEXXA in the United States of approximately \$2,300 for a single dose of treatment once every two weeks,
- the extent to which concern among physicians and patients about anaphylaxis and infusion reactions that affect many patients treated with KRYSTEXXA, and the boxed warning on the approved product labeling for KRYSTEXXA warning of such reactions, limits sales of KRYSTEXXA,
- the prevalence and severity of other side effects that we have observed to date or that we may observe in the future,
- the extent to which the risk evaluation and mitigation strategy, or REMS, program required as part of the KRYSTEXXA approval is perceived by physicians to be burdensome,
- the timing of the release of competitive products or treatments, including potentially competitive products in clinical development,
- our marketing and sales resources, the quantity of our supplies of KRYSTEXXA and our ability to establish a distribution infrastructure for KRYSTEXXA,
- whether third-party and government payors cover or reimburse for KRYSTEXXA, and if so, to what extent and in what amount, and
- the willingness of the target patient population to be referred by the primary care physicians to rheumatologists, nephrologists or infusion centers.

If market acceptance of KRYSTEXXA is adversely affected by any of these or other factors, then sales of KRYSTEXXA may be reduced and our business may be materially harmed.

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***\*The FDA approved our Biologic License Application with a final label that prescribes safety limits and warnings, including a boxed warning, and we are required to implement post-approval commitments and a REMS program to minimize the potential risks of the treatment of KRYSTEXXA. Such additional obligations and commitments may increase the cost of commercializing KRYSTEXXA, limit the commercial success of KRYSTEXXA and result in lower than expected future earnings.***

In clinical trials of KRYSTEXXA, anaphylaxis and infusion reactions were reported to occur during and after administration of KRYSTEXXA. In the Phase 3 trial for KRYSTEXXA, anaphylactic reactions were reported in 6.5% of patients treated with KRYSTEXXA, compared to 0% with placebo, and infusion reactions were reported to occur in 26% of patients treated with KRYSTEXXA, compared to 5% of patients treated with placebo. Physicians may be reluctant to treat patients with KRYSTEXXA because of concern regarding the occurrence of these anaphylactic and infusion reactions. In addition, the approved United States full prescribing information, or labeling, for KRYSTEXXA contains safety information, including a prominent warning on the full prescription information, or package insert, referred to as a “black box warning,” regarding anaphylaxis and infusion reactions, as well as contraindications, warnings and precautions. The prevalence and severity of these adverse reactions and the related labeling for KRYSTEXXA may reduce the market for the product and increase the costs associated with the marketing, sale and use of the product.

We also are required to implement a REMS program to minimize the potential risks of KRYSTEXXA treatment. The REMS program includes a Medication Guide for patients, a Communication Plan to healthcare providers and an Assessment Plan to survey patients’ and providers’ understanding of the serious risks of KRYSTEXXA. The FDA may further revise the REMS program at any time, which could impose significant additional obligations and commitments on us in the future or may require post-approval clinical or non-clinical studies. The FDA also required that we conduct an observational trial in 500 patients treated for one year to further evaluate and identify if there are any other serious adverse events associated with the administration of KRYSTEXXA therapy. In addition, the FDA is requiring us to conduct several post-approval non-clinical and chemistry, manufacturing and control, or CMC, studies. Such additional obligations and commitments may increase the cost of commercializing KRYSTEXXA, limit the commercial success of KRYSTEXXA, result in revised safety labeling or REMS requirements and result in lower than expected future revenues.

***\*Although a number of private managed care organizations and government payors have added medical benefits coverage for KRYSTEXXA, we are continuing to seek reimbursement arrangements with them and additional third-party payors. If we are unable to obtain adequate reimbursement from third-party payors, or acceptable prices, for KRYSTEXXA, our revenues and prospects for profitability will suffer.***

Our future revenues and ability to become profitable will depend heavily upon the availability of adequate reimbursement for the use of KRYSTEXXA from government-funded and private third-party payors. Reimbursement by a third-party payor may depend upon a number of factors, including the third-party payor’s determination that use of a product is:

- a covered benefit under its health plan,
- safe, effective and medically necessary,
- appropriate for the specific patient,
- cost effective, and
- neither experimental nor investigational.

Obtaining reimbursement approval for KRYSTEXXA from each government-funded and private third-party payor is a time-consuming and costly process, which in some cases requires us to provide to the payor supporting scientific, clinical and cost-effectiveness data for KRYSTEXXA’s use. We may not be able to provide data sufficient to gain acceptance with respect to reimbursement.

For instance, Medicaid coverage for KRYSTEXXA is currently pending. If state-specific Medicaid programs do not provide adequate coverage and reimbursement, if any, for KRYSTEXXA, it may have a negative impact on our operations. Recently enacted legislation has increased the amount that pharmaceutical manufacturers are required to rebate to Medicaid and this may have a negative effect on our revenues. Specifically, the minimum rebate for single-source covered outpatient drugs in the Medicaid program has been increased from 15.1% to 23.1% of average manufacturer price effective January 1, 2010.

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In March 2011, we were awarded a contract from the U.S. Department of Regulatory Affairs, or the VA, for KRYSTEXXA to be covered for reimbursement for VA member patients. This contract award is effective on April 1, 2011 and calls for us to sell KRYSTEXXA to the VA at a price of \$1,748 per vial, an approximate 24% discount to our list selling price for our other customers. If we are unable to negotiate smaller discounts to the list price for KRYSTEXXA with other third-party payors, our profitability will be materially and adversely affected.

Even when a third-party payor determines that a product is generally eligible for reimbursement, third-party payors may impose coverage limitations that preclude payment for some product uses that are approved by the FDA or similar authorities or impose patient co-insurance or co-pay amounts that may result in lower market acceptance and which would lower our revenues. Where third-party payors require substantial co-insurance or co-pay amounts, we subsidize these amounts for some needy patients, which reduces our profit margin on KRYSTEXXA for those patients. Some payors establish prior authorization programs and procedures requiring physicians to document several different parameters, which may impede patient access to therapy. Moreover, eligibility for coverage does not necessarily mean that KRYSTEXXA will be reimbursed in all cases or at a rate that allows us to sell KRYSTEXXA at an acceptable price adequate to make a profit or even cover our costs. If we are not able to obtain coverage and adequate reimbursement promptly from third-party payors for KRYSTEXXA, our ability to generate revenues and become profitable will be compromised.

The scope of coverage and payment policies varies among private third-party payors, including indemnity insurers, employer group health insurance programs and managed care plans. These third-party payors may base their coverage and reimbursement on the coverage and reimbursement rate paid by carriers for Medicare beneficiaries, which are traditionally at a substantially discounted rate. Furthermore, many such payors are investigating or implementing methods for reducing healthcare costs, such as the establishment of capitated or prospective payment systems. Cost containment pressures have led to an increased emphasis on the use of cost-effective products by healthcare providers. If third-party payors do not provide adequate coverage or reimbursement for KRYSTEXXA, it could have a negative effect on our revenues and results of operations.

***If we fail to comply with regulatory requirements or experience unanticipated problems with KRYSTEXXA, the product could be subject to restrictions and be withdrawn from the U.S. market and we may be subject to penalties, which would materially harm our business.***

The marketing approval for KRYSTEXXA in the United States, along with the manufacturing processes, reporting of safety and adverse events, post-approval commitments, product labeling, advertising and promotional activities, and REMS program, are subject to continual requirements of, and review by, the FDA, including thorough inspections of third-party manufacturing and testing facilities.

These requirements include submission of safety and other post-marketing information and reports, registration requirements, current Good Manufacturing Practices, or cGMP, relating to quality control, quality assurance and corresponding maintenance of records and documents, and recordkeeping. The FDA enforces compliance with cGMP and other requirements through periodic unannounced inspections of manufacturing and laboratory facilities. The FDA is authorized to inspect manufacturing and testing facilities, marketing literature, records, files, papers, processes, and controls at reasonable times and within reasonable limits and in a reasonable manner, and we cannot refuse to permit entry or inspection.

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If, in connection with any future inspection, the FDA finds that we or any of our third-party manufacturers or testing laboratories are not in substantial compliance with cGMP requirements, the FDA may undertake enforcement action against us.

In addition, the approval of KRYSTEXXA is subject to limitations on the indicated uses for which it may be marketed. The approval also contains requirements for post-marketing testing and surveillance to monitor KRYSTEXXA's safety and/or efficacy, as well as a commitment for an observational trial in patients treated for one year to further evaluate the identification of any serious adverse events associated with the administration of KRYSTEXXA therapy. Subsequent discovery of previously unknown problems with KRYSTEXXA or its manufacturing processes, such as known or unknown safety or adverse events, or failure to comply with regulatory requirements, may result in, for example:

- revisions of or adjustments to the product labeling,
- restrictions on the marketing or manufacturing of KRYSTEXXA,
- imposition of postmarketing study or postmarketing clinical trial requirements,
- imposition of new or revised REMS requirements, including distribution and use restrictions,
- public notice of regulatory violations,
- costly corrective advertising,
- warning letters,
- withdrawal of KRYSTEXXA from the market,
- refusal to approve pending applications or supplements to approved applications,
- voluntary or mandatory product recall,
- fines or disgorgement of profits or revenue,
- suspension or withdrawal of regulatory approvals, including license revocation,
- shutdown, or substantial limitations on the operations of manufacturing facilities,
- refusal to permit the import or export of products,
- product seizure,
- debarment from submitting certain abbreviated applications, and
- injunctions or the imposition of civil or criminal penalties.

If any of these events were to occur, our business would be materially harmed.

***We may face substantial competition and our competitors may develop or commercialize alternative technologies or products more successfully than we do.***

The pharmaceutical and biotechnology industries are intensely competitive. We face competition with respect to KRYSTEXXA from major pharmaceutical companies and biotechnology companies worldwide. Potential competitors also include academic institutions and other public and private research institutions that conduct research, seek patent protection and establish collaborative arrangements for research, development, manufacturing and commercialization. Our competitors may develop products that are safer, are more effective, have fewer side effects, are more convenient or are less costly than KRYSTEXXA.

On September 14, 2010, we received FDA approval for KRYSTEXXA for the treatment of chronic gout in adult patients refractory to conventional therapy, a subset of the broader population of patients with gout. By far, the most prevalent current treatment for gout is allopurinol, which can lower uric acid levels by inhibiting uric acid formation. Allopurinol is a generic and inexpensive treatment which has achieved widespread acceptance by payors, physicians and patients. A small number of patients with gout are treated with probenecid, which can lower uric acid levels by promoting excretion of uric acid. In addition, febuxostat was approved by the FDA in early 2009 for the chronic management of hyperuricemia in patients with gout. Febuxostat lowers uric acid levels by inhibiting uric acid formation through the same mechanism of action as allopurinol. Although febuxostat is labeled for the chronic management of hyperuricemia in patients with gout, in the event febuxostat is used to treat patients who failed on or were contraindicated to allopurinol, or if patients are otherwise treated with febuxostat prior to being treated with KRYSTEXXA, market demand for KRYSTEXXA could be affected. Each of these approved treatments is both less expensive than KRYSTEXXA and available as a pill. Pills are significantly more convenient for patients than KRYSTEXXA, which requires a visit to an infusion center for a four to five hour treatment. If KRYSTEXXA does not achieve an adequate level of market acceptance, we may not generate sufficient additional revenues to achieve or maintain profitability.

There are also a number of companies developing new treatments for gout. Some of these development stage treatments are currently in late stage clinical trials. Depending on their cost, safety, efficacy and convenience, one or more of these new therapies, if approved, could provide substantial competition for KRYSTEXXA.

The PPACA, among other things, permits the FDA to approve biosimilar or interchangeable versions of biological products like KRYSTEXXA through an abbreviated approval pathway following periods of data and marketing exclusivity. The approval of such versions could result in the earlier entry of similar, competing, and less costly products by our foreign and domestic competitors, including products that

may be interchangeable with our own approved biological products. The market entry of these competing products could decrease the revenue we receive for any approved products, which, in turn, could adversely affect our operating results and our overall financial condition.

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Many of our competitors have significantly greater financial resources and expertise in research and development, manufacturing, pre-clinical testing, conducting clinical trials, obtaining regulatory approvals and marketing and distributing approved products than we do. Smaller or early stage companies may also prove to be significant competitors, particularly through collaborative arrangements with large and established companies. These competitors also compete with us in recruiting and retaining qualified scientific and management personnel, as well as in acquiring products, product candidates and technologies complementary to, or necessary for, our programs or advantageous to our business.

***If we are unable to maintain orphan drug exclusivity for KRYSTEXXA, we may face increased competition.***

Under the Orphan Drug Act of 1983, the FDA may designate a product as an orphan drug if it is a drug intended to treat a rare disease or condition affecting fewer than 200,000 people in the United States. A company that first obtains FDA approval for a designated orphan drug for the specified rare disease or condition receives orphan drug marketing exclusivity for that drug for a period of seven years from the date of its approval. This orphan drug exclusivity prevents the approval of another drug containing the same active ingredient and used for the same orphan indication except in very limited circumstances, based upon the FDA's determination that a subsequent drug is safer, more effective or makes a major contribution to patient care, or if the manufacturer is unable to assure that a sufficient quantity of the orphan drug is available to meet the needs of patients with the rare disease or condition. Orphan drug exclusivity may also be lost if the FDA later determines that the initial request for designation was materially defective.

KRYSTEXXA was granted orphan drug designation by the FDA in 2001, which we expect will provide the drug with orphan drug marketing exclusivity in the United States until September 2017, seven years from the date of its approval. However, such exclusivity may not effectively protect the product from competition if the FDA determines that a subsequent pegloticase drug for the same indication is safer, more effective or makes a major contribution to patient care, or if we are unable to assure the FDA that sufficient quantities of KRYSTEXXA are available to meet patient demand. In addition, orphan drug exclusivity does not prevent the FDA from approving competing drugs for the same or similar indication containing a different active ingredient. If a subsequent drug is approved for marketing for the same or similar indication we may face increased competition, and our revenues from the sale of KRYSTEXXA will be adversely affected.

***\*We may need to raise additional capital to execute upon our commercial strategy for KRYSTEXXA, including completing the further development and seeking regulatory approval outside of the United States for KRYSTEXXA, particularly in the European Union. Such financing may only be available on terms unacceptable to us, or not at all. If we are unable to obtain financing on favorable terms, our business, results of operations and financial condition may be materially adversely affected.***

As of June 30, 2011, we had \$240.3 million in cash, cash equivalents and short-term investments, as compared to \$64.9 million as of December 31, 2010. As of June 30, 2011, we had an accumulated deficit of \$359.4 million. The development and commercialization of pharmaceutical products requires substantial funds and we currently have no committed external sources of capital. Historically, we have satisfied our cash requirements primarily through equity offerings, product sales and the divestiture of assets that were not core to our strategic business plan. Most recently, we have increased our cash position through the offer and sale of our 4.75% Convertible Senior Notes due 2018. We have been less successful in increasing our cash position in recent years through product sales of Oxandrin<sup>®</sup> and our authorized generic Oxandrin brand equivalent product, oxandrolone, due to a substantial decline in sales. Although we may consider divesting Oxandrin and oxandrolone, any proceeds of that divestiture would not significantly improve our capital position and we do not have further non-core assets to divest.

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Although our Board of Directors expects to continue to evaluate strategic alternatives available to us to maximize value, we are proceeding with our commercial launch of KRYSTEXXA in the United States, have submitted and had validated and accepted for review by the EMA our MAA for KRYSTEXXA in the European Union and are pursuing additional regulatory filings in other jurisdictions. Our future capital requirements will depend on many factors, including:

- the cost of manufacturing activities,
- the cost and results of our post-approval commitments to the FDA,
- the cost of clinical development activities directed to potential label expansion for KRYSTEXXA in the United States,
- the cost of commercialization activities, including product marketing, sales and distribution, and
- whether we choose to pursue additional collaborative arrangements relating to the commercialization of KRYSTEXXA in the European Union or in other jurisdictions outside of the United States, and if we choose to do so, our ability to establish and maintain such arrangements.

Based on our current plans for completing the commercial launch of KRYSTEXXA, including our anticipated expenses for completing the recruitment of sales and marketing personnel and completing development of a commercial infrastructure, sales and marketing expenses, the cost of purchasing additional inventory, the cost of clinical development activities directed to potential label expansion for KRYSTEXXA in the United States and the cost of pursuing additional development regulatory approval in the European Union, and assuming that we are able to generate KRYSTEXXA revenues at the level that we are currently expecting, we believe that our existing cash, cash equivalents and short-term investments will be sufficient to fund our anticipated operations for at least the next twenty-one months.

We expect that the cash needed to successfully complete the commercial launch of KRYSTEXXA in the United States and seek regulatory approvals in countries other than the United States will be substantial, and we may require the need to seek additional funding through customary methods or explore a strategic licensing or co-promotion transaction in certain territories as a means of raising additional funding. Should we elect to seek additional funding through customary methods, we may not be able to obtain additional financing or, if such financing is available, such financing may not be on terms that are acceptable to us. If we raise additional funds by issuing equity securities, dilution to our then-existing stockholders will result. If we issue preferred stock, it would likely include a liquidation preference and other terms that would adversely affect our stockholders. If we raise additional funds through the issuance of debt securities or borrowings, we may incur substantial interest expense and could become subject to financial and other covenants that could restrict our ability to take specified actions, such as incurring additional debt or making capital expenditures. If explore a strategic licensing or co-promotion transaction, one may not be available to us or may only be available on terms that are not acceptable to us. If additional funds are not available on favorable terms, or at all, our business, results of operations and financial condition may be materially adversely affected, and we may be required to curtail or cease operations.

***If we market KRYSTEXXA in a manner that violates healthcare fraud and abuse laws, or if we violate false claims laws or fail to comply with our reporting and payment obligations under the Medicaid rebate program or other governmental pricing programs, we may be subject to civil or criminal penalties or additional reimbursement requirements and sanctions, which could have a material adverse effect on our business, financial condition, results of operations and growth prospects.***

In addition to FDA restrictions on the marketing of pharmaceutical products, several other types of state and federal healthcare fraud and abuse laws have been applied in recent years to restrict certain marketing practices in the pharmaceutical industry. These laws include anti-kickback statutes and false claims statutes. Because of the breadth of these laws and the narrowness of the safe harbors, it is possible that some of our business activities could be subject to challenge under one or more of these laws.

The federal healthcare program anti-kickback statute prohibits, among other things, knowingly and willfully offering, paying, soliciting or receiving remuneration to induce, or in return for, purchasing, leasing, ordering or arranging for the purchase, lease or order of any healthcare item or service reimbursable, in whole or in part, under Medicare, Medicaid or other federally financed healthcare program. This statute has been interpreted to apply to arrangements between pharmaceutical manufacturers on the one hand and prescribers, purchasers and formulary managers on the other. Although there are several statutory exemptions and regulatory safe harbors protecting certain common activities from prosecution, the exemptions and safe harbors are drawn narrowly and practices that involve remuneration intended to induce prescribing, purchasing or recommending such healthcare items or services may be subject to scrutiny if they do not qualify for an exemption or safe harbor. Our practices may not in all cases meet all of the criteria for safe harbor protection from anti-kickback liability.

Federal false claims laws prohibit any person from knowingly presenting, or causing to be presented, a false claim for payment to the federal government or knowingly making, or causing to be made, a false statement in order to have a claim paid. Recently, several pharmaceutical and other healthcare companies have been prosecuted under these laws for a variety of alleged promotional and marketing activities, such as providing free trips, free goods, sham consulting fees and grants and other monetary benefits to prescribers, reporting inflated average wholesale prices to pricing services that were then used by federal programs to set reimbursement rates and engaging in off-label promotion that caused claims to be submitted to Medicaid for non-covered, off-label uses. Such activities have been alleged to cause the resulting claims for reimbursement to be “false” claims. Most states also have statutes or regulations similar to the federal anti-kickback and false claims laws, which apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payor.

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We participate in the federal Medicaid Rebate Program established by the Omnibus Budget Reconciliation Act of 1990, as well as several state supplemental rebate programs. Under the Medicaid rebate program, we pay a rebate to each state Medicaid program for our products that are reimbursed by those programs. Federal law requires that any company that participates in the Medicaid rebate program extend comparable discounts to qualified purchasers under the Public Health Service Act pharmaceutical pricing program, which requires us to sell our products to certain customers at prices lower than we otherwise might be able to charge. If products are made available to authorized users of the Federal Supply Schedule, additional pricing laws and requirements apply. Pharmaceutical companies have been prosecuted under federal and state false claims laws in connection with allegedly inaccurate information submitted to the Medicaid Rebate Program, for knowingly submitting or using allegedly inaccurate pricing information in connection with federal pricing and discount programs or for failing to file or timely file periodic drug pricing reports to the Medicaid Rebate Program.

Pricing and rebate calculations vary among products and programs. The calculations are complex and are often subject to interpretation by us or our contractors, governmental or regulatory agencies and the courts. Our methodologies for calculating these prices could be challenged under false claims laws or other laws. We or our contractors could make a mistake in calculating reported prices and required discounts, revisions to those prices and discounts, determining whether a revision is necessary or we or our contractors may fail to timely file such calculations which could result in retroactive rebates (and interest, if any). Governmental agencies may also make changes in program interpretations, requirements or conditions of participation, some of which may have implications for amounts previously estimated or paid. If this were to occur or if we were to fail to file or timely file periodic drug pricing reports as required, we could face, in addition to prosecution under federal and state false claims laws, substantial liability and civil monetary penalties, exclusion of our products from reimbursement under government programs, criminal fines or imprisonment or the entry into a Corporate Integrity Agreement, Deferred Prosecution Agreement, or similar arrangement.

In addition, federal legislation now imposes additional requirements. For example, as part of the PPACA, a federal physician payment disclosure provision based on the Physician Payments Sunshine Act was enacted, which requires pharmaceutical manufacturers to report certain gifts and payments to physicians beginning in 2013. These reports will then be placed on a public database. Failure to so report could subject companies to significant financial penalties.

Efforts to ensure that our business arrangements with third parties will comply with applicable healthcare laws and regulations could be costly. It is possible that governmental authorities will conclude that our business practices may not comply with current or future statutes, regulations or case law involving applicable fraud and abuse or other healthcare laws and regulations. If our operations, including anticipated activities conducted by our sales team in the sale of KRYSTEXXA, are found to be in violation of any of these laws or any other governmental regulations that may apply to us, we may be subject to significant civil, criminal and administrative penalties, damages, fines, exclusion from government funded healthcare programs, such as Medicare and Medicaid, and the curtailment or restructuring of our operations. If any of the physicians or other providers or entities with whom we expect to do business are found to be not in compliance with applicable laws, they may be subject to criminal, civil or administrative sanctions, including exclusions from government funded healthcare programs.

### ***Foreign governments tend to impose strict price controls, which may adversely affect our revenues.***

In some foreign countries, particularly the countries of the European Union and Canada, the pricing of prescription pharmaceuticals is subject to governmental control. In these countries, pricing negotiations with governmental authorities can take, at a minimum, an additional six to 12 months after the receipt of marketing approval for a product. To obtain reimbursement or pricing approval for KRYSTEXXA in some countries, we may be required to conduct a clinical trial that compares the cost-effectiveness of our product candidate to other available therapies. The conduct of such a clinical trial would be expensive and result in delays in commercialization of KRYSTEXXA in such markets. If reimbursement is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, our business could be adversely affected.

The MMA contains provisions that may change U.S. importation laws and expand pharmacists' and wholesalers' ability to import lower priced versions of certain drugs from Canada, where there are government price controls. Controlled substances, biological products and certain other drugs that are infused, inhaled or intravenously injected are exempt from these provisions, but it is possible that changes to the law could be made that would impact the ability to import these types of products. These changes to U.S. importation laws will not take effect unless and until the Secretary of Health and Human Services, or HHS, certifies that the changes will pose no additional risk to the public's health and safety and will result in a significant reduction in the cost of products to consumers. This certification has not yet been made, and the Secretary of HHS has not announced any plans to do so. Even if the importation provisions of the MMA do not become effective, a number of other federal legislative proposals have been offered to implement similar changes to U.S. importation laws and to broaden permissible imports in other ways, such as expanding the number of countries from which importation is allowed. If the MMA importation provisions become effective, or if similar legislation or regulatory changes are enacted, this could permit more widespread importation of drugs from foreign countries into the United States. This may include re-importation from foreign countries where the drugs are sold at lower prices than in the United States. Such legislation, or similar regulatory changes, could decrease the revenue we receive for any approved products, which, in turn, could adversely affect our operating results and our overall financial condition.

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*We may elect or be required to perform additional clinical trials for other indications or in support of applications for regulatory marketing approval of KRYSTEXXA in jurisdictions outside the United States. These additional trials could be costly and could result in findings inconsistent with or contrary to the data from the clinical trials that supported our U.S. filings with the FDA, which could restrict our marketing approval of KRYSTEXXA.*

Before obtaining regulatory approval for the sale of KRYSTEXXA in their respective jurisdictions, we must provide foreign regulatory authorities with clinical data to demonstrate that KRYSTEXXA is safe and effective. Clinical trials of KRYSTEXXA must comply with regulation by numerous regulatory agencies in other countries. We may decide, or be required by regulators, to conduct additional clinical trials or testing of KRYSTEXXA. For example, we have made a post-approval commitment to the FDA that we will conduct an observational trial in patients treated for one year to further evaluate and identify any serious adverse events associated with the administration of KRYSTEXXA therapy. Clinical testing is expensive and difficult to design and implement. Clinical testing can also take many years to complete and the outcome of such testing is uncertain. Success in pre-clinical testing and early clinical trials does not ensure that later clinical trials will be successful and interim results of a clinical trial do not necessarily predict final results.

We may also be required, or we may elect, to conduct additional clinical trials or pre-clinical animal studies for or in support of our applications for regulatory marketing approval in jurisdictions outside the United States, such as the EMA. Regulatory authorities in jurisdictions outside the United States may require us to submit data from supplemental clinical trials, or pre-clinical animal studies, in addition to data from the clinical trials that supported our United States filings with the FDA. For example, in December 2010, the Pediatric Committee of the EMA approved our pediatric investigation plan for the treatment and prevention of hyperuricemia, which was a condition to our ability to file for marketing approval in the European Union. Any requirements to conduct supplemental trials would add to the cost of developing KRYSTEXXA, and we may not be able to complete such supplemental trials. Additional trials could also produce findings that are inconsistent with the trial results we have previously submitted to the FDA, in which case we would be obligated to report those findings to the FDA. This could result in additional restrictions on the marketing approval of KRYSTEXXA, including new safety labeling. Inconsistent trial results could also lead to delays in obtaining marketing approval in the United States for other indications for KRYSTEXXA and could cause regulators to impose restrictive conditions on marketing approvals, including but not limited to the expansion of our REMS program to include distribution and use restrictions, and could even cause our marketing approval to be revoked.

Any of these results would materially harm our business and impair our ability to generate revenues and achieve or maintain profitability.

*If we receive regulatory approval for the sale of KRYSTEXXA in the European Union and other foreign jurisdictions in which we intend to market KRYSTEXXA, our commercial success in these foreign jurisdictions will depend on our ability to either conduct commercial activities in such countries ourselves or enter into collaborative arrangements relating to the commercialization of KRYSTEXXA.*

We do not currently have foreign operations, and establishing operations for the sales, marketing and distribution of KRYSTEXXA will be difficult, time consuming, require a significant capital commitment and is subject to foreign regulations. Moreover, our efforts to establish commercial operations in the European Union or other foreign jurisdictions may not be successful.

It will be particularly difficult for us to commercialize KRYSTEXXA outside the United States without entering into collaborative arrangements. Entering into collaborative arrangements for the commercialization of KRYSTEXXA in the European Union and other foreign jurisdictions may also be time consuming, and may not be on terms favorable to us, if we are successful in entering into such arrangements at all.

The commercialization of KRYSTEXXA outside the United States would subject us to additional risks, including:

- potentially reduced protection for intellectual property rights,
- unexpected changes in tariffs, trade barriers and regulatory requirements,
- economic weakness, including inflation, or political instability in particular foreign economies and markets,
- compliance with tax, employment, immigration and labor laws for employees traveling abroad,
- foreign taxes,
- foreign currency fluctuations, which could result in increased operating expenses and reduced revenues, and other obligations incident to doing business in another country,
- workforce uncertainty in countries where labor unrest is more common than in the United States, and
- business interruptions resulting from geo-political actions, including war and terrorism, or natural disasters, including earthquakes, volcanoes, typhoons, floods, hurricanes and fires.

These and other risks may materially adversely affect our ability to attain or sustain profitable operations or collaborations in jurisdictions outside of the United States.

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*If we fail to attract and retain senior management and key personnel, we may not be able to complete the development of or execute upon our commercial strategy for KRYSTEXXA.*

We depend on key members of our management team, including John H. Johnson, who was appointed by our Board of Directors as our Chief Executive Officer effective January 31, 2011 and Chief Executive Officer and President effective May 30, 2011. As a result of changes in our senior management, in recent years we have relied more heavily on our Board of Directors, particularly our Chairman, Stephen O. Jaeger, and Lee S. Simon, M.D., who has been providing consulting services to us since January 2009. The loss of the services of Mr. Jaeger or Dr. Simon, or any member of our senior management team, particularly Mr. Johnson, could harm our ability to complete the development of and execute our commercial strategy for KRYSTEXXA. We have employment agreements with Mr. Johnson and other key members of our management team and a consulting agreement with Dr. Simon, but these agreements are terminable by the individuals on short or no notice at any time without penalty. In addition, we do not maintain, and have no current intention of obtaining, “key man” life insurance on any member of our management team.

Recruiting and retaining qualified scientific and commercial personnel, including clinical development, regulatory, sales and marketing executives and field personnel, is also critical to our success. We may not be able to attract and retain these personnel on acceptable terms given the competition among numerous pharmaceutical and biotechnology companies for similar personnel. We also experience competition for the hiring of scientific personnel from universities and research institutions. If we fail to recruit and then retain these personnel, we may not be able to effectively pursue the development of and execute our commercial strategy for KRYSTEXXA.

### Risks relating to our reliance on third parties

*We have no manufacturing capabilities and limited manufacturing personnel. We depend on third parties to manufacture KRYSTEXXA. If these manufacturers fail to meet our manufacturing requirements at acceptable quality levels and at acceptable cost, and if we are unable to identify suitable replacements, our commercialization efforts may be materially harmed.*

We have limited personnel with experience in, and we do not own facilities for, the manufacturing of any of our products. We depend on third parties to manufacture KRYSTEXXA. We have entered into commercial supply agreements with third-party manufacturers, including:

- Bio-Technology General (Israel) Ltd., or BTG, for the production of the pegloticase drug substance,
- NOF Corporation of Japan, or NOF, for the supply of mPEG-NPC, a key raw material in the manufacture of the pegloticase drug substance, or drug substance, and
- Sigma-Tau PharmaSource, Inc., or Sigma-Tau, for the production of the KRYSTEXXA drug product.

These companies are our sole source suppliers for the mPEG-NPC, the drug substance and the KRYSTEXXA drug product.

Our third-party manufacturers have limited experience manufacturing KRYSTEXXA on a sustained basis and at a capacity that would support our market projections for KRYSTEXXA. In addition, in order to produce KRYSTEXXA in the quantities necessary to meet our long-range anticipated market demand, our contract manufacturers will need to increase the overall manufacturing capacity for the drug substance. If we are unable to increase our manufacturing capacity or qualify an additional supplier, or if the cost of the increased capacity is uneconomical to us, we may not be able to produce KRYSTEXXA in a sufficient quantity to meet future demand, or at a satisfactory cost, either of which would adversely affect our projected revenues and gross margins.

Moreover, the FDA has previously identified manufacturing deficiencies and violations of cGMP at one of our manufacturers. Some of these deficiencies were significant and required substantial capital to remediate. Although we believe that these violations and deficiencies have since been remediated, the FDA may identify further violations or deficiencies in future inspections of our manufacturers’ facilities, which may impede their ability to timely provide us with product, if they are able to do so at all.

In addition, BTG is located in Israel. Future hostilities in the Middle East could harm BTG’s ability to supply us with the drug substance and could harm our commercialization efforts. Reliance on third-party manufacturers entails risks to which we would not be subject if we manufactured products ourselves, including:

- reliance on the third party for regulatory compliance, quality assurance and adequate training in management of manufacturing staff,
- the possible breach of the manufacturing agreement by the third party because of factors beyond our control, and
- the possibility of termination or non-renewal of the agreement by the third party, based on its own business priorities, at a time that is costly or inconvenient for us.

Any of these risks could cause us to be unable to obtain sufficient quantities of KRYSTEXXA to meet future demand, which would adversely affect our projected revenues and gross margins.

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*We experienced some batch failures of KRYSTEXXA based on one manufacturing specification. If we continue to experience a high rate of batch failures, our gross margin in selling KRYSTEXXA will decrease, we may not have enough product to meet demand and the FDA may require us to take further steps to address these issues, any of which could materially harm our commercialization efforts.*

In the second half of 2010, we experienced some batch failures of KRYSTEXXA based on one manufacturing specification. Although we believe that these batch failures are within normal industry failure rates experienced for the commencement of biologic commercial manufacturing, this failure rate is nonetheless above the level that we believe to be acceptable for normal ongoing operations. With the assistance of an outside manufacturing and quality consulting firm, we have completed a review of these batch failures. Although we believe that we have identified the root cause of the batch failures, we may not have done so, or there may be additional factors causing these batch failures. Under our direction, our third-party contract manufacturers are in the process of implementing remediation steps that we believe will minimize or eliminate these failures in the future. However, the remediation steps that we have implemented may fail to minimize or eliminate these batch failures.

Subsequent to the implementation of these remediation steps, we have successfully completed the manufacture of several batches and continue to pursue scheduled manufacturing. However, if we continue to experience a high rate of batch failures, then our cost of producing KRYSTEXXA will increase and our gross margin in selling KRYSTEXXA will therefore decrease. We also may not have enough product to meet demand. In addition, the FDA could require us to take further steps to reduce this batch failure rate, which could be costly and could require us to stop manufacturing KRYSTEXXA in order to implement these further remediation steps. Any reduction in our gross margin, inability to meet demand or FDA requirement to implement further remediation steps could materially harm our commercialization efforts.

*The manufacture and packaging of pharmaceutical products such as KRYSTEXXA are subject to the requirements of the FDA and similar foreign regulatory bodies. If we, or our third-party manufacturers, fail to satisfy these requirements, our product development and commercialization efforts may be materially harmed.*

The manufacture and packaging of pharmaceutical products, such as KRYSTEXXA, are regulated by the FDA and similar foreign regulatory bodies and must be conducted in accordance with the FDA's cGMPs and comparable requirements of foreign regulatory bodies. Our third-party manufacturers, including BTG, Sigma-Tau and NOF, are subject to periodic inspection by the FDA and similar foreign regulatory bodies. If our third-party manufacturers do not pass such periodic FDA or other regulatory inspections for any reason, including equipment failures, labor difficulties, failure to meet stringent manufacturing, quality control or quality assurance practices, or natural disaster, our ability to execute upon our commercial strategy for KRYSTEXXA will be jeopardized. Failure by us, or our third-party manufacturers, to comply with applicable regulations, requirements, or guidelines could result in sanctions being imposed on us, including fines, injunctions, civil penalties, failure of regulatory authorities to grant approval of pending marketing applications for our product, delays, suspension or withdrawal of approvals, license revocation, seizures or recalls of product, operating restrictions and criminal prosecutions, any of which could significantly and adversely affect our business.

*Qualifying a global secondary source supplier of drug substance, any other change to any of our third-party manufacturers for KRYSTEXXA or any change in the location where KRYSTEXXA is manufactured would require prior FDA review, approval of the manufacturing process and procedures for KRYSTEXXA manufacture. This qualification and FDA review and approval will be costly and time consuming and could delay or prevent the manufacture of KRYSTEXXA at such facility.*

We have engaged a secondary source supplier of the drug substance used in the manufacture of KRYSTEXXA. In connection with the FDA's consideration of this secondary source supplier of drug substance, this supplier is required to produce validation batches of the drug substance to demonstrate to the FDA that the materials produced by this supplier are comparable to those produced at BTG. If we cannot establish to the satisfaction of the FDA that the drug substance manufactured by the secondary source supplier is comparable to the drug substance manufactured at BTG, we will not be permitted to use the drug substance manufactured by the secondary source supplier in the formulation of KRYSTEXXA for marketing in the United States. During the first quarter of 2010, the performance batch production campaign commenced, and as a result of batch failures, based on one manufacturing specification, the campaign was terminated in December 2010. The Company renegotiated the agreement in June 2011 and conformance batch production is planned to re-start during the second half of 2011. The Company expects the additional costs associated with its conformance campaign to approximate \$10.0 million, which includes non-refundable fees of \$1.0 million to reserve manufacturing capacity for the conformance batch campaign. The timing of the conformance batch production and the expected campaign cost will be dependent on us reaching a satisfactory amendment to the service agreement. We do not expect FDA approval of the secondary source manufacturing facility to be completed until the second half of 2012, at the earliest. If the FDA requires that we conduct clinical or non-clinical trials to demonstrate that the drug substance manufactured by the secondary source supplier is equivalent to the drug substance manufactured by BTG, we could incur significant additional costs or delays in qualifying the secondary source supplier for the drug substance.

If we elect to manufacture the drug substance used in KRYSTEXXA at the facility of another third-party supplier, if we elect to utilize a new facility to fill and finish KRYSTEXXA or if we change the location where KRYSTEXXA is manufactured, we would need to ensure that the new facility and the manufacturing process are in substantial compliance with the FDA's cGMPs and obtain prior FDA approval. Any such new facility could also be subject to a pre-approval inspection by the FDA, and a successful technology transfer and subsequent validation of the manufacturing process would be required by the FDA, all of which are expensive and time-consuming endeavors. Any delays or failures in satisfying these requirements could delay our ability to manufacture KRYSTEXXA in quantities sufficient to satisfy market demand and our needs for any future clinical trials or other development purposes.

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***If the company from which we source our mPEG-NPC is unable to supply us with product, our business may suffer.***

We procure mPEG-NPC, a key raw material in the manufacture of drug substance, from a single supplier, NOF, whose manufacturing facilities are in Japan. Our contract with NOF requires us to purchase this material on an exclusive basis from NOF. Although we have a contractual right to procure this material from another supplier in the event of a supply failure, procuring this material from another source would require time and effort which may interrupt the supply of mPEG-NPC and thereby cause an interruption of the supply of drug substance and KRYSTEXXA to the marketplace and for any future clinical trials or other development purposes. For example, the FDA could require that we conduct additional clinical or non-clinical trials in support of the change to a new manufacturer, which could result in significant additional costs or delays. Any interruption of supply of mPEG-NPC could cause harm to our business.

***If the company on which we rely for fill and finish services for KRYSTEXXA is unable to perform these services for us, our business may suffer.***

We have outsourced the operation for KRYSTEXXA fill and finish services to a single company, Sigma-Tau. We have commenced efforts to engage a secondary third-party fill and finish manufacturer for KRYSTEXXA. However, at this time, we do not have redundancy in our supply chain for these fill and finish functions and currently have no substitute that can provide these services. If Sigma-Tau is unable to perform these services for us, we would need to identify and engage an alternative company or develop our own fill and finish capabilities. Any new contract fill and finish manufacturer or capabilities that we acquire or develop will need to obtain FDA approval. Identifying and engaging a new contract fill and finish manufacturer or developing our own capabilities and obtaining FDA approval could involve significant cost and delay. As a result, we might not be able to deliver KRYSTEXXA orders on a timely basis, and we might not have sufficient supply to meet our needs for any future clinical trials or other development purposes, any of which would harm our business.

***We rely on third parties to conduct our clinical activities and non-clinical studies for KRYSTEXXA and those third parties may not perform satisfactorily, which could impair our ability to satisfy our post-approval commitments to the FDA and any clinical development activities that we may undertake in the future.***

We do not independently conduct clinical activities for KRYSTEXXA. We rely on third parties, such as CROs, clinical data management organizations, medical institutions and clinical investigators, to perform these activities, including the observational study for serious adverse events associated with the administration of KRYSTEXXA therapy that the FDA is requiring that we implement as part of its approval of KRYSTEXXA, any additional clinical trials that may be required in the future by the FDA or similar foreign regulatory bodies, and any other clinical studies that we may elect to conduct. We also will rely on these third parties to perform the post-approval non-clinical studies that the FDA is requiring us to conduct for KRYSTEXXA. We use multiple CROs to coordinate the efforts of our clinical investigators and to accumulate the results of our trials. Our reliance on these third parties for clinical activities and non-clinical studies reduces our control over these activities. We are responsible for ensuring that each of our clinical trials is conducted in accordance with the general investigational plan and protocol for the trial. Moreover, the FDA requires us and third parties acting on our behalf to comply with good clinical practices, or cGCPs, for conducting, recording and reporting the results of clinical trials to ensure that data and reported results are credible and accurate and that the rights, integrity and confidentiality of trial participants are protected. Our reliance on third parties that we do not control does not relieve us of these responsibilities and requirements. Furthermore, these third parties may also have relationships with other entities, some of which may be our competitors.

If these third parties do not successfully carry out their contractual obligations, meet expected deadlines or conduct our clinical development activities in accordance with regulatory requirements or our stated protocols, we may not be able to, or may be delayed in our efforts to, successfully execute upon our commercial strategy, and obtain additional regulatory approvals, for KRYSTEXXA. We also may be subject to fines and other penalties for failure to comply with requirements applicable to the conduct and completion of post-marketing studies and clinical trials within specified timeframes and to the public reporting of clinical trial information on the registry and results database maintained by the National Institutes of Health.

We also rely on third parties to store and distribute drug supplies for our clinical development activities. Any performance failure on the part of such third parties could delay the commercialization of KRYSTEXXA, causing us to incur additional expenses and harming our ability to generate additional revenue.

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*We may seek a collaborator for the further development and commercialization of KRYSTEXXA outside the United States. However, we may be unsuccessful in identifying such a transaction on favorable terms or consummating such a transaction. If we are not successful in these efforts, we may fail to meet our business objectives.*

We may seek a development and commercialization collaborator for KRYSTEXXA outside the United States. We face significant competition in seeking appropriate collaborators. In addition, such collaboration arrangements may not be scientifically or commercially successful or we may not be able to consummate such a transaction on favorable terms. If we are unable to reach agreement with a development and commercialization collaborator on favorable terms, or if such an arrangement is terminated, our ability to develop, commercialize and market KRYSTEXXA may be harmed and we may fail to meet our business objectives for KRYSTEXXA.

The success of any collaboration arrangement will depend heavily on the efforts and activities of any potential collaborators. Any potential collaborators will have significant discretion in determining the efforts and resources that they will apply to such collaborations. The risks that we face in connection with potential collaborations include the following:

- collaboration agreements are generally for fixed terms and subject to termination under various circumstances, including, in many cases, on short notice without cause,
- we expect that any collaboration agreement will require that we not conduct specified types of research and development in the field that is the subject of the collaboration, which may have the effect of limiting the areas of research and development that we may pursue, either alone or in cooperation with third parties,
- collaborators may develop and commercialize, either alone or with others, products and services that are similar to or competitive with our products that are the subject of the collaboration with us, and
- collaborators may change the focus of their development and commercialization efforts.

Pharmaceutical and biotechnology companies historically have re-evaluated their priorities following mergers and consolidations, which have been common in recent years in our industry. The ability of KRYSTEXXA to reach its potential could be limited if any potential collaborators decrease or fail to increase spending related to any collaboration.

Collaborations with pharmaceutical companies and other third parties often are terminated or allowed to expire by the other party. Such terminations or expirations can adversely affect us financially as well as harm our business reputation.

### **Risks relating to intellectual property**

*If we fail to comply with our obligations in our intellectual property licenses with third parties, we could lose license rights that are important to our business.*

We are party to various license agreements and we may enter into additional license agreements in the future. For example, we license exclusive worldwide rights to patents and pending patent applications that constitute the fundamental composition of matter and underlying manufacturing patents for KRYSTEXXA from Mountain View Pharmaceuticals, Inc., or MVP, and Duke University, or Duke. Under the agreement, we are required to use best efforts to bring to market and diligently market products that use the licensed technology. We also must provide MVP and Duke with specified information relating to the development of KRYSTEXXA. The agreement requires us to pay to MVP and Duke quarterly royalty payments within 60 days after the end of each quarter based on KRYSTEXXA net sales we make in that quarter. The royalty rate for a particular quarter ranges between 8% and 12% of net sales based on the amount of cumulative net sales made by us. Under the agreement, we are also required to pay royalties of 20% of any milestones, revenues or other consideration we receive from sub-licensees during any quarter. As of June 30, 2011 we had made aggregate payments of approximately \$2.5 million to MVP and Duke for the achievement of milestones under this agreement, including the approval of our biologics license application, or BLA, for KRYSTEXXA.

The agreement with MVP and Duke remains in effect, on a country-by-country basis, for the longer of 10 years from the date of first sale of KRYSTEXXA in such country or the date of expiration of the last-to-expire patent covered by the agreement in such country. The licensors may terminate the agreement with respect to the countries affected upon our material breach, if not cured within a specified period of time, immediately after our third or subsequent material breach of the agreement or our fraud, willful misconduct or illegal conduct. The licensors may also terminate the agreement in the event of our bankruptcy or insolvency. Upon a termination of the agreement in one or more countries, all intellectual property rights conveyed to us under the agreement with respect to the terminated countries, including regulatory applications and pre-clinical and clinical data, revert to MVP and Duke and we are permitted to sell off any remaining inventory of KRYSTEXXA for such countries.

In addition, we could have disputes with our current and future licensors regarding, for example, the interpretation of terms in our agreements. Any such disagreements could lead to delays in the development or commercialization of any potential products or could result in time-consuming and expensive litigation or arbitration, which may not be resolved in our favor.

If we fail to comply with our obligations under the agreement, we could lose the ability to commercialize KRYSTEXXA, which could require us to curtail or cease our operations.

*If we are unable to obtain and maintain protection for the intellectual property relating to our technology and products, the value of our technology and products will be adversely affected .*

Our success will depend in large part on our ability to obtain and maintain protection in the United States and other countries for the intellectual property covering or incorporated into our technology and products. The patent situation in the field of biotechnology and pharmaceuticals is highly uncertain and involves complex legal and scientific questions. We may not be able to obtain additional issued patents relating to our technology or products. Even if issued, patents may be challenged, narrowed, invalidated or circumvented, which could limit our ability to stop competitors from marketing similar products or limit the length or term of patent protection we may have for our products. Generic forms of our product Oxandrin were introduced to the market in late 2006. As a result, our results of operations have been harmed. The composition of matter, methods of manufacturing and methods of use patents expire and, if issued, patent applications relating to KRYSTEXXA would expire between 2019 and 2026. Changes in either patent laws or in the interpretations of patent laws in the United States or other countries may diminish the value of our intellectual property or narrow the scope of our patent protection. For example, the PPACA allows applicants seeking approval of biosimilar or interchangeable versions of biological products like KRYSTEXXA to initiate a process for challenging some or all of the patents covering the innovator biological product used as the reference product. This process is complicated and could result in the limitation or loss of certain patent rights. In addition, such patent litigation is costly and time-consuming and may adversely affect our overall financial condition.

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Our patents also may not afford us protection against numerous competitors with similar technology. Patent applications in the United States and many foreign jurisdictions are typically not published until 18 months after filing and in some cases not at all. Therefore, because publications of discoveries in the scientific literature often lag behind actual discoveries, neither we nor our licensors can be certain that we or they were the first to develop the inventions claimed in issued patents or pending patent applications, or that we or they were the first to file for protection of the inventions set forth in these patent applications. Even in the event that our patents are upheld as valid and enforceable, they may not foreclose potential competitors from developing new technologies or “workarounds” that circumvent our patent rights. This means that our patent portfolio may not prevent the entry of a competitive product into the market. In addition, patents generally expire, regardless of their date of issue, 20 years from the earliest claimed non-provisional filing date. As a result, the time required to obtain regulatory approval for a product candidate may consume part or all of the patent term. We are not able to accurately predict the remaining length of the applicable patent term following regulatory approval of any of our product candidates.

***If we are unable to protect the confidentiality of our proprietary information and know-how, the value of our technology and products could be adversely affected.***

In addition to patented technology, we rely upon unpatented proprietary technology, processes and know-how. We seek to protect this information in part through confidentiality agreements with our employees, consultants and third parties. If any of these agreements are breached, we may not have adequate remedies for any such breach. In addition, any remedies we may seek may prove costly. Furthermore, our trade secrets may otherwise become known or be independently developed by competitors. If we are unable to protect the confidentiality of our proprietary information and know-how, competitors may be able to use this information to develop products that compete with our products, which could adversely affect our business.

***If we infringe or are alleged to infringe intellectual property rights of third parties, our business may be adversely affected.***

Our development and commercialization activities, as well as any product candidates or products resulting from these activities, may infringe or be claimed to infringe patents or patent applications under which we do not hold licenses or other rights. We are aware of patent applications filed by, and patents issued to, other entities with respect to technology potentially useful to us and, in some cases, related to products and processes being developed by us. Third parties may own or control these patents and patent applications in the United States and abroad. These third parties could bring claims against us, our licensors or our collaborators that would cause us to incur substantial expenses. If such third-party claims are successful, we could be liable for substantial damages. Further, if a patent infringement suit were brought against us, our licensors or our collaborators, we or they could be forced to stop or delay research, development, manufacturing or sales of the product or product candidate that is the subject of the suit.

As a result of patent infringement claims, or in order to avoid potential claims, we, our licensors or our collaborators may choose or be required to seek a license from the third party and be required to pay license fees, royalties or both. These licenses may not be available on acceptable terms or at all. Even if we, our licensors or our collaborators were able to obtain a license, our rights may be non-exclusive, which could result in our competitors gaining access to the same intellectual property. Ultimately, we could be prevented from commercializing a product, or be forced to cease some aspect of our business operations if, as a result of actual or threatened patent infringement claims, we or our collaborators are unable to enter into licenses on acceptable terms. This could harm our business significantly.

The pharmaceutical and biotechnology industries have experienced substantial litigation and other proceedings regarding patent and other intellectual property rights. In addition to infringement claims against us, we may become a party to other patent litigation and other proceedings, including interference proceedings declared by the U.S. Patent and Trademark Office and opposition proceedings in the European Patent Office or in another patent office, regarding intellectual property rights with respect to our products and technology. The costs to us of any patent litigation or other proceeding, even if resolved in our favor, could be substantial. Some of our competitors may be able to sustain the costs of such litigation or proceedings more effectively than we can because of their substantially greater financial resources.

Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could adversely affect our ability to compete in the marketplace. Patent litigation and other proceedings may also absorb significant management time.

***In the future, we may be involved in costly legal proceedings to enforce or protect our intellectual property rights or to defend against claims that we infringe the intellectual property rights of others.***

Litigation is inherently uncertain and an adverse outcome could subject us to significant liability for damages or invalidate our proprietary rights and adversely impact our ability to market and further develop KRYSTEXXA. Legal proceedings that we initiate to protect our intellectual property rights could also result in counterclaims or countersuits against us. Any litigation, regardless of its outcome, could be time consuming and expensive to resolve and could divert our management’s time and attention. Any intellectual property litigation also could force us to take specific actions, including any of the following:

- cease selling products or undertaking processes that are claimed to be infringing a third party’s intellectual property,
- obtain licenses to make, use, sell, offer for sale or import the relevant technologies from the intellectual property’s owner, which licenses may not be available on reasonable terms or at all,
- redesign products or processes that are claimed to be infringing a third party’s intellectual property, or
- pursue legal remedies with third parties to enforce our indemnification rights, which may not adequately protect our interests.

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We have been involved in several lawsuits and disputes regarding intellectual property in the past. We could be involved in similar disputes or litigation in the future. An adverse decision in any intellectual property litigation could have a material adverse effect on our business, results of operations and financial condition.

### **Risks relating to our results of operations and our common stock**

*We have incurred operating losses from continuing operations since 2004 and anticipate that we will incur substantial expenses in connection with our commercial launch of KRYSTEXXA in the United States and further development and efforts to obtain regulatory approval for KRYSTEXXA outside of the United States. If we do not generate significant revenues from the sale of KRYSTEXXA, we will not be able to achieve profitability.*

Our ability to achieve operating profitability in the future depends on the successful commercialization and further development of KRYSTEXXA. We expect to incur significant expenditures in connection with the commercialization of KRYSTEXXA in the United States and further development and effort to seek regulatory approval for KRYSTEXXA outside of the United States. If sales revenue from KRYSTEXXA is insufficient, we may never achieve operating profitability. Even if we do become profitable, we may not be able to sustain or increase our profitability on a quarterly or annual basis.

*We expect sales of Oxandrin and oxandrolone to remain flat or continue to decrease, which may continue to harm our results of operations.*

Sales of Oxandrin and oxandrolone have declined substantially in recent years due to generic competition. Our sales of Oxandrin and oxandrolone in the United States are also affected by fluctuations in the buying patterns of the three major drug wholesalers to which we principally sell these products. In the past, wholesalers have reduced their inventories of Oxandrin and oxandrolone. We expect that wholesalers will keep their inventory levels flat or continue to reduce them as a result of generic competition, which could further decrease our revenues from these products.

Sales of Oxandrin and oxandrolone have also decreased as a result of the elimination of reimbursement, or limited reimbursement practices, by some states under their AIDS Drug Assistance Programs via their state Medicaid programs for HIV/AIDS prescription drugs, including Oxandrin and oxandrolone. Other state formularies may follow suit.

We have considered the demand deterioration of Oxandrin and oxandrolone in estimating future product returns. However, our demand forecasts are based upon our management's best estimates. Future product returns in excess of our historical reserves could reduce our revenues even further and adversely affect our results of operations.

In addition, we do not have the ability to independently distribute our oxandrolone tablets and depend on our distribution partner, Watson Pharma, Inc., or Watson, to distribute this product for us. If Watson fails to carry out its contractual obligations, does not devote sufficient resources to the distribution of oxandrolone, or does not carry out its responsibilities in the manner we expect, our oxandrolone product may not compete successfully against other generics, and our results of operations could be further harmed. In addition, we no longer have an effective agreement with a third-party manufacturer to produce Oxandrin and oxandrolone tablets and therefore our ability to supply the market with Oxandrin and oxandrolone may be materially diminished and our existing market share may decrease.

*Our stock price is volatile, which could adversely affect your investment.*

Our stock price has been, and will likely continue to be, volatile. Since January 1, 2009, our common stock has traded as high as \$23.46 per share and as low as \$3.45 per share. The stock market in general, and the market for biotechnology companies in particular, has recently experienced extreme volatility that has often been unrelated to the operating performance of particular companies. The market price of our common stock may be influenced by many factors, including:

- the cost of commercialization activities, including product marketing, sales and distribution,
- whether we are successful in marketing and selling KRYSTEXXA,
- market acceptance of KRYSTEXXA by physicians and patients in this largely previously untreated patient population,
- the cost of our post-approval commitments to the FDA, including an observational study and a REMS program,
- the price that we charge for KRYSTEXXA and under what conditions private and public payors will reimburse patients for KRYSTEXXA,
- whether and when we face generic or other competition with respect to KRYSTEXXA,
- our ability to maintain a sufficient inventory of KRYSTEXXA to meet commercial demand,
- the timing and costs of regulatory approval for KRYSTEXXA in any countries other than the United States,
- the timing of any future capital raising transactions by us, and the structure of such transactions and amount of capital raised,
- announcements of technological innovations or developments relating to competitive products or product candidates,

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- market conditions in the pharmaceutical and biotechnology industries and the issuance of new or revised securities analyst reports or recommendations,
- period-to-period fluctuations in our financial results,
- legal and regulatory developments in the United States and foreign countries, and
- other factors described in this “Risk Factors” section.

The volatility of our common stock imposes a greater risk of capital losses for our stockholders than a less volatile stock would. In addition, volatility makes it difficult to ascribe a stable valuation to a stockholder’s holdings of our common stock. This volatility may affect the price at which you could sell the common stock, if any, you receive upon conversion of your notes, and the sale of substantial amounts of our common stock could adversely affect the price of our common stock.

***We are a party to a stockholder lawsuit regarding the adequacy of our public disclosure, which could have a material adverse affect on our business, results of operations and financial condition.***

In November 2008, Richard Sagall, an alleged stockholder, commenced an action in the U.S. District Court for the Southern District of New York seeking to certify a class of shareholders who held Savient securities between December 13, 2007 and October 24, 2008. The suit alleges that we made false and misleading statements relating to the GOUT1 and GOUT2 Phase 3 clinical trials and that we failed to disclose in a timely manner serious adverse events which occurred in five patients in these trials. In March 2009, the Court issued an order appointing Lawrence J. Koncelik, Jr. as lead plaintiff and the law firm Pomerantz Haudek Block Grossman & Gross LLP as lead counsel. Thereafter the lead plaintiff filed his amended complaint in April 2009, seeking unspecified monetary damages. In June 2009, we and the other named defendants moved to dismiss the complaint. The Court heard oral arguments on the motion on February 24, 2010. On September 29, 2010, the Court issued a memorandum decision and order granting our motion to dismiss the amended complaint in its entirety. On October 28, 2010, the lead plaintiff timely filed a notice of appeal of the Court’s decision with the United States Court of Appeals for the Second Circuit. The briefing on that appeal was completed June 2011. The second circuit is unlikely to issue a decision for this appeal before fall of 2011. We intend to continue to vigorously defend against this action.

We expect that the costs related to this suit will continue to be significant and we can provide no assurance as to its outcome. If we are not successful in defending this action, we may be required to pay substantial damages to the plaintiffs. As a result, our business, results of operations and financial condition could be materially adversely affected. In addition, even if we are successful, the defense of this action will continue to divert the attention of our management and other resources that would otherwise be engaged or utilized in operating our business.

***Effecting a change of control of our company could be difficult, which may discourage offers for shares of our common stock.***

Our certificate of incorporation and the Delaware General Corporation Law, or the DGCL, contain provisions that may delay or prevent a merger, acquisition or other change of control that stockholders may consider favorable, including transactions in which stockholders might otherwise receive a premium for their shares. These provisions include the requirements of Section 203 of the DGCL. Section 203 prohibits a publicly held Delaware corporation from engaging in a business combination with an “interested stockholder,” generally deemed a person that, together with its affiliates, owns or within the last three years has owned 15% of our voting stock, for a period of three years after the date of the transaction in which the person became an interested stockholder, unless:

- our Board of Directors approves the transaction before the third party acquires 15% of our stock,
- the third party acquires at least 85% of our stock at the time its ownership exceeds the 15% level, or
- our Board of Directors and the holders of two-thirds of the shares of our common stock not held by the third-party vote in favor of the transaction.

Our certificate of incorporation also authorizes us to issue up to 4,000,000 shares of preferred stock in one or more different series with terms fixed by our Board of Directors. Stockholder approval is not necessary to issue preferred stock in this manner. Issuance of these shares of preferred stock could have the effect of making it more difficult for a person or group to acquire control of our company. No shares of our preferred stock are currently outstanding. Although our Board of Directors has no current intention or plan to issue any preferred stock, issuance of these shares could also be used as an anti-takeover device.

***Product liability lawsuits could cause us to incur substantial liabilities.***

We face an inherent risk of product liability exposure related to product sales of Oxandrin, oxandrolone and KRYSTEXXA. We also face the risk of product liability exposure related to the testing of KRYSTEXXA. If we cannot successfully defend ourselves against claims that our products caused injuries, we will incur substantial liabilities. Regardless of merit or eventual outcome, liability claims may result in:

- decreased demand for KRYSTEXXA,
- injury to our reputation,
- withdrawal of clinical trial participants,
- withdrawal or recall of a product from the market,
- modification to product labeling that may be unfavorable to us,



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- costs to defend the related litigation,
- substantial monetary awards to trial participants or patients, and
- loss of revenue.

We currently have product liability insurance coverage in place, which is subject to coverage limits and deductibles. The amount of insurance that we currently hold may not be adequate to cover all liabilities that may occur. Product liability insurance is difficult to obtain and increasingly expensive. We may not be able to maintain insurance coverage at a reasonable cost and we may not be able to obtain insurance coverage with policy limits that will be adequate to satisfy any liability that may arise.

***We recently incurred indebtedness that may adversely affect our cash flow and otherwise negatively affect our operations.***

In February 2011, we issued \$230 million aggregate principal amount of 4.75% Convertible Senior Notes due 2018. The notes are convertible, under certain circumstances and during certain periods, based on an initial conversion rate of 86.6739 shares of common stock per \$1,000 principal amount of the notes, which is equivalent to an initial conversion price of approximately \$11.54 per share of common stock, subject to adjustment in certain circumstances. Upon conversion, the notes may be settled, at our election, in cash, shares of our common stock or a combination of cash and shares of our common stock. We may redeem some or all of the notes for cash under certain circumstances on or after February 1, 2015. The notes bear interest at a rate of 4.75% per year.

We may in the future incur additional indebtedness, including long-term debt, credit lines and property and equipment financings to finance capital expenditures. We intend to satisfy our current and future debt service obligations from cash generated by our operations, our existing cash and investments and, in the case of principal payments at maturity, funds from external sources. We may not have sufficient funds and we may be unable to arrange for additional financing to satisfy our principal or interest payment obligations when those obligations become due. Funds from external sources may not be available on acceptable terms, or at all.

Our indebtedness could have significant additional negative consequences, including:

- increasing our vulnerability to general adverse economic and industry conditions;
- limiting our ability to obtain additional financing;
- requiring the dedication of a substantial portion of our cash flow from operations to service our indebtedness, thereby reducing the amount of our expected cash flow available for other purposes, including capital expenditures and research and development;
- limiting our flexibility in planning for, or reacting to, changes in our business and the industry in which we compete; and
- placing us at a possible competitive disadvantage to less leveraged competitors and competitors that have better access to capital resources.

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**ITEM 6. EXHIBITS**

**a) Exhibits**

The exhibits listed in the Exhibit Index are included in this report.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

S AVIENT P HARMACEUTICALS , I NC .  
(Registrant)

By: / s/ J OHN H. J OHNSON

**John H. Johnson**  
**Chief Executive Officer & President**  
**(Principal Executive Officer)**

By: / s/ D AVID G. G IONCO

**David G. Gionco**  
**Group Vice President, Chief Financial Officer &**  
**Treasurer**  
**(Principal Financial Officer)**

Dated: August 8, 2011

**EXHIBIT INDEX**

<u>Exhibit No.</u>	<u>Description</u>
10.1	Employment Agreement, dated as of Jul 1, 2011, by and between the Company and Dr. Kenneth M. Bahrt
31.1	Certification of principal executive officer pursuant to Rule 13a-14(a)/15d-14(a) under the Securities Exchange Act of 1934, as amended
31.2	Certification of the principal financial officer pursuant to Rule 13a-14(a)/15d-14(a) under the Securities Exchange Act of 1934, as amended
32.1	Statement pursuant to 18 U.S.C. §1350
32.2	Statement pursuant to 18 U.S.C. §1350
101.INS*	XBRL Instance Document
101.SCH*	XBRL Taxonomy Extension Schema Document
101.CAL*	XBRL Taxonomy Extension Calculation Document
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document

\* To be filed by amendment

**EMPLOYMENT AGREEMENT**

This Agreement is made, entered into, and is effective as of the Effective Date, by and between the Company and the Executive.

**Article 1. Term of Employment**

1.1 The Company hereby agrees to employ the Executive and the Executive hereby agrees to serve the Company in accordance with the terms and conditions set forth herein, for a period of three years, commencing as of the Effective Date (such three year period, as it may be extended pursuant to Section 1.2, the "Term").

1.2 Commencing on the third anniversary of the Effective Date, and each anniversary thereafter, the Term shall automatically be extended for one additional year, unless at least 90 days prior to such anniversary, the Company or the Executive shall have given notice in accordance with Section 12.2 that it or he does not wish to extend the Term.

1.3 Restricted Shares; Stock Options. The Company shall grant to the Executive on the Employment Date the following long-term incentive awards under and pursuant to the terms and conditions of the Company's 2011 Incentive Plan:

(a) Time-Based Restricted Shares. A restricted stock award of 50,000 shares of the Company's common stock. In the event that the Executive's employment is terminated for Cause or is voluntarily terminated by the Executive other than for Good Reason, any such shares that are unvested at the time of such termination of employment shall be forfeited to the Company (in exchange for no consideration). Such shares will vest as to 12,500 shares on the first anniversary of the Employment Date and as to an additional 3,125 shares at the end of each successive three-month period following the first anniversary of the Employment Date until the fourth anniversary of the Employment Date.

(b) Time-Based Stock Options. A stock option to purchase 150,000 shares of the Company's common stock, with an exercise price equal to the closing price of the Company's common stock on the date of grant, a ten year term, and that will vest and become exercisable as to 37,500 shares on the first anniversary of the Employment Date and as to an additional 9,375 shares at the end of each successive three-month period following the first anniversary of the Employment Date until the fourth anniversary of the Employment Date.

(c) Performance-Based Stock Options. A stock options to purchase 50,000 shares of the Company's common stock, with an exercise price equal to the closing price of the Company's common stock on the date of grant, a ten year term, and that will vest and become exercisable upon the satisfaction of the performance conditions to be agreed by the Executive and the Company's Board of Directors.

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Article 2. Definitions

2.1 “Agreement” means this Employment Agreement.

2.2 “Annual Bonus” means the annual bonus that may be paid to the Executive in accordance with the Company’s annual bonus program as described in Section 5.3.

2.3 “Base Salary” means the salary of record paid to the Executive as annual salary, pursuant to Section 5.2, excluding amounts received under incentive or other bonus plans, whether or not deferred.

2.4 “Beneficial Owner” shall have the meaning ascribed to such term in Rule 13d-3 under the Securities Exchange Act.

2.5 “Beneficiary” means the persons or entities designated or deemed designated by the Executive pursuant to Section 15.6.

2.6 “Board” means the Board of Directors of the Company.

2.7 “Cause” means:

(a) Executive has materially breached any of the terms of this Agreement and failed to correct such breach within 15 days after written notice thereof from the Company;

(b) Executive has been convicted of a criminal offense involving a felony giving rise to a sentence of imprisonment;

(c) Executive has breached a fiduciary trust for the purpose of gaining a personal profit, including, without limitation, embezzlement;  
or

(d) Despite adequate warnings, Executive has intentionally and willfully failed to perform reasonably assigned duties within the normal and customary scope of the Position.

2.8 A “CIC” shall be deemed to have occurred as of the first day that any one or more of the following conditions is satisfied, provided, in each case, that such event constitutes a “Change of Control Event” within the meaning of Treasury Regulation 1.409A-3(i)(5)(i):

(a) Any consolidation or merger in which the Company is not the continuing or surviving entity or pursuant to which shares of the Common Stock would be converted into cash, securities, or other property, other than (i) a merger of the Company in which the holders of the Common Stock immediately prior to the merger have the same proportionate ownership of common stock of the surviving corporation immediately after the merger, or (ii) a consolidation or merger which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (by being converted into voting securities of the continuing or surviving entity) more than 50% of the combined voting power of the voting securities of the continuing or surviving entity immediately after such consolidation or merger and which would result in the members of the Board immediately prior to such consolidation or merger (including for this purpose any individuals whose election or nomination for election was approved by a vote of at least two-thirds of such members) constituting a majority of the Board (or equivalent governing body) of the continuing or surviving entity immediately after such consolidation or merger;

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(b) Any sale, lease, exchange, or other transfer (in one transaction or a series of related transactions) of all or substantially all the Company's assets;

(c) The Company's stockholders approve any plan or proposal for the liquidation or dissolution of the Company;

(d) Any Person has become the Beneficial Owner of 35% or more of the Common Stock other than pursuant to a plan or arrangement entered into between such Person and the Company; or

(e) During any period of two consecutive years, individuals who at the beginning of such period constitute the entire Board shall cease for any reason to constitute a majority of the Board unless the election or nomination for election by the Company's stockholders of each new director was approved by a vote of at least two-thirds of the directors then still in office who were directors at the beginning of the period.

2.9 "CIC Severance Benefits" means the payment of severance compensation associated with a Qualifying Termination occurring subsequent to a CIC, as described in Section 8.3.

2.10 "Code" means the Internal Revenue Code of 1986, as amended.

2.11 "Common Stock" means the common stock of the Company, \$.01 par value per share.

2.12 "Compensation Committee" means the Compensation and Human Resources Committee of the Board, or the committee appointed by the Board to perform the functions of such committee, or if no such committee exists, the Board.

2.13 "Company" means Savient Pharmaceuticals, Inc., a Delaware corporation, or any Successor Company thereto as provided in Section 11.1.

2.14 "Director" means any individual who is a member of the Board.

2.15 "Disability" or "Disabled" has the meaning ascribed to such term in the Company's long-term disability plan, or in any successor to such plan.

2.16 "Effective Date" means July 1, 2011.

2.17 "Effective Date of Termination" means the date on which a termination of the Executive's employment occurs.

2.18 "Employment Date" means July 31, 2011

2.19 "Executive" means Kenneth M. Bahrt, M.D., FACR.

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2.20 “Good Reason” shall mean, without the Executive’s express written consent, the occurrence of any one or more of the following:

- (a) A reduction of the Base Salary;
- (b) A failure to maintain Executive’s amount of benefits under or relative level of eligibility for participation in the Company’s employee benefit or retirement plans, policies, practices, or arrangements in which the Executive participates as of the Effective Date of this Agreement, including any perquisite program; provided, however, that any such change that applies consistently to all executive officers of the Company or is required by applicable law shall be deemed not to constitute Good Reason;
- (c) A failure to require any Successor Company to assume and agree to perform the Company’s obligations hereunder;
- (d) Requiring Executive to be based at a location that requires the Executive to travel more than an additional 35 miles per day;
- (e) Requiring Executive to report to a position which is at a lower level than the highest level to which Executive reported within the six months prior to the CIC;
- (f) Demoting Executive to a level lower than Executive’s level in the Company as of the Effective Date;
- (g) The Company’s failure to extend the Term pursuant to Section 1.2 (if the Agreement would expire unless the Term is extended within such period), as evidenced by a Notice of Termination delivered by the Company to the Executive; or
- (h) A material breach of any material provision of this Agreement by the Company or a Successor Company which is not cured within 30 days of receiving a written notice from the Executive with such notice explaining in reasonable detail the facts and circumstances claimed to provide a basis for the Executive’s claim.

2.21 “Notice of Termination” means a written notice indicating the specific termination provision in this Agreement relied upon, and that sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive’s employment under the provisions so indicated, and, where applicable, which shall specifically include notice pursuant to Section 1.2 that Company has elected not to extend the Term.

2.22 “Payment Date” shall have the meaning ascribed to it in Section 15.12.

2.23 “Person” shall have the meaning ascribed to such term in Section 3(a)(9) of the Securities Exchange Act and used in Sections 13(d) and 14(d) thereof, including a “group” as defined in Section 13(d) thereof.

2.24 “Position” shall have the meaning ascribed to it in Section 3.1.

2.25 “Qualifying Termination” means any of the events described in Section 8.2, the occurrence of which triggers the payment of CIC Severance Benefits hereunder.

2.26 “Release” shall have the meaning ascribed to it in Section 15.12.

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2.27 “Securities Exchange Act” means the Securities Exchange Act of 1934, as amended.

2.28 “Section 409A” shall have the meaning ascribed to it in Section 9(a)(i).

2.29 “Severance Benefits” means the payment of severance compensation as provided in Sections 7.4 and 7.6, and not payable due to a CIC.

2.30 “Six-Month Payment Date” shall have the meaning ascribed to it in Section 10.1.

2.31 “Successor Company” means any company that (i) acquires more than 50% of the assets of the Company or (ii) acquires more than 50% of the outstanding stock of the Company, or (iii) is the surviving entity in the event of a CIC.

### Article 3. Position and Responsibilities

3.1 During the Term, the Executive agrees to serve as Senior Vice President, Chief Medical Officer of the Company, reporting to the Chief Executive Officer, or in such other position which Executive shall agree to accept or to which Executive shall be promoted during the Term (the “Position”).

### Article 4. Standard of Care

4.1 During the Term, the Executive shall devote substantially his full time, attention, and energies to the Company’s business and shall not be engaged in any other business activity, whether or not such business activity is pursued for gain, profit, or other pecuniary advantage, unless such business activity is approved by the Board or Compensation Committee.

### Article 5. Compensation

5.1 As remuneration for all services to be rendered by the Executive during the Term, and as consideration for complying with the covenants herein, the Company shall pay and provide to the Executive those items set forth in Sections 5.2 through 5.8.

5.2 The Company shall pay the Executive a Base Salary in an amount established from time to time by the Board or the Compensation Committee; provided, however, that such Base Salary shall not be at an annualized rate of less than \$400,000 per year.

(a) This Base Salary shall be paid to the Executive in equal installments throughout the year, consistent with the normal payroll practices of the Company.

(b) The Base Salary shall be reviewed at least annually during the Term, to ascertain whether, in the judgment of the Board or Compensation Committee, such Base Salary should be changed based primarily on the performance of the Executive during the year.

5.3 Annual Bonus. In addition to the Base Salary, the Executive shall be entitled to participate in the Company’s annual short-term incentive program, as such program may exist from time to time, at a level commensurate with the Position. The percentage of Base Salary

targeted as annual short-term incentive compensation shall be 50% of Base Salary (the "Targeted Annual Bonus Award") (subject to pro-ration for the calendar year 2011). The Executive acknowledges that the amount of annual short-term incentive, if any, to be awarded shall be at the sole discretion of the Board or Compensation Committee, may be less or more than the Targeted Annual Bonus Award, and will be based on a number of factors set in advance by the Board or Compensation Committee for each calendar year, including the Company's performance and the Executive's individual performance. Nothing in this Section 5.3 shall be construed as obligating the Company, the Board or the Compensation Committee to refrain from changing, and/or amending the short-term incentive program, so long as such changes are equally applicable to all executive employees of the Company.

5.4 Long-Term Incentives. The Executive shall be eligible to participate in the Company's long-term incentive plan, as such shall be amended or superseded from time to time; provided, however, that nothing in this Section 5.4 shall be construed as obligating the Company, the Board or the Compensation Committee to refrain from changing, and/or amending the long-term incentive plan, so long as such changes are equally applicable to all executive employees of the Company.

5.5 Retirement Benefits. The Company shall permit the Executive to participate in any Company qualified defined benefit and defined contribution retirement plans as may be established during the Term; provided, however, that nothing in this Section 5.5 shall be construed as obligating the Company, the Board or the Compensation Committee to refrain from changing, and/or amending the non-qualified retirement programs, so long as such changes are equally applicable to all executive employees of the Company.

5.6 Employee Benefits. During the Term, and as otherwise provided within the provisions of each of the respective plans, the Company shall make available to the Executive all benefits to which other executives and employees of the Company are entitled to receive, as commensurate with the Position, subject to the eligibility requirements and other provisions of such arrangements as applicable to executives of the Company generally.

(a) Such benefits shall include, but shall not be limited to, comprehensive health and major medical insurance, dental and life insurance, and short-term and long-term disability.

(b) The Executive may likewise participate in any additional benefit as may be established during the Term, by written policy of the Company.

5.7 Vacation. The Executive shall accrue such paid vacation as is customary for the Position in corporate institutions of similar size and character in the determination of the Board or Compensation Committee, but in any event not less than 25 paid vacation days during each calendar year (subject to pro-ration in calendar year 2011).

5.8 Perquisites. The Company shall provide to the Executive, at the Company's expense, such perquisites as the Board or Compensation Committee may determine from time to time to provide.

5.9 Right to Change Plans. The Company shall not be obligated to institute, maintain, or refrain from changing, amending, or discontinuing any benefit plan, program, or perquisite, so long as such changes are equally applicable to all executive employees of the Company.

#### Article 6. Expenses

6.1 Upon presentation of appropriate documentation, the Company shall pay, or reimburse the Executive for all ordinary and necessary expenses, in a reasonable amount, which the Executive incurs in performing his duties under this Agreement including, but not limited to, travel, entertainment, professional dues and subscriptions, and dues, fees, and expenses associated with membership in appropriate professional, business, and civic associations and societies. All such reimbursements shall be subject to the terms and conditions set forth in Section 9(c).

#### Article 7. Employment Terminations

7.1 Termination Due to Death. In the event the Executive's employment is terminated during the Term by reason of death, subject to Section 7.1(g), the Company's obligations under this Agreement shall immediately expire. Notwithstanding the foregoing, the Company shall be obligated to pay to the Executive the following:

(a) Base Salary through the Effective Date of Termination;

(b) An amount equal to the Executive's unpaid Targeted Annual Bonus Award, established for the fiscal year in which such termination is effective, multiplied by a fraction, the numerator of which is the number of completed days in the then-existing fiscal year through the Effective Date of Termination, and the denominator of which is 365;

(c) All outstanding long-term incentive awards shall be subject to the treatment provided under the applicable long-term incentive plan of the Company or grant agreement;

(d) Accrued but unused vacation pay through the Effective Date of Termination; and

(e) All other rights and benefits the Executive is vested in, pursuant to other plans and programs of the Company.

(f) The benefits described in Sections 7.1(a), (b) and (d) shall be paid in cash to the Executive in a single lump sum as soon as practicable following the Effective Date of Termination, but in no event more than 30 days after such date. All other payments due to the Executive upon termination of employment, including those described in Sections 7.1(c) and (e), shall be paid in accordance with the terms of such applicable plans or programs.

(g) With the exception of Articles 8, 9, 10, 11, 12, 15 and 16 and Section 7.1 (which shall survive such termination), the Company and the Executive shall have no further obligations under this Agreement following the Effective Date of Termination pursuant to this Section 7.1.

7.2 Termination Due to Disability. In the event that the Executive becomes Disabled during the Term and is, therefore, unable to perform his duties for more than 180 total calendar days during any period of 12 consecutive months, or in the event of the Board's reasonable expectation that the Executive's Disability will exist for more than a period of 180 calendar days, the Company shall have the right to terminate the Executive's employment as provided in this Section 7.2.

(a) The Board shall deliver written notice to the Executive of the Company's intent to terminate for Disability at least 30 calendar days prior to the Effective Date of Termination.

(b) Determinations of Executive's Disability shall be determined by the Board upon receipt of and in reliance on competent medical advice from one or more individuals, selected by the Board who are qualified to give such professional medical advice.

(c) A termination for Disability shall become effective upon the end of the 30-day notice period. Upon the Effective Date of Termination, subject to Section 7.2(f), the Company's obligations under this Agreement shall immediately expire.

(d) Notwithstanding the foregoing, the Company shall be obligated to pay to the Executive the following:

(1) Base Salary through the Effective Date of Termination;

(2) An amount equal to the Executive's unpaid Targeted Annual Bonus Award established for the fiscal year in which the Effective Date of Termination occurs, multiplied by a fraction, the numerator of which is the number of completed days in the then-existing fiscal year through the Effective Date of Termination, and the denominator of which is 365;

(3) All outstanding long-term incentive awards shall be subject to the treatment provided under the applicable long-term incentive plan of the Company or grant agreement;

(4) Accrued but unused vacation pay through the Effective Date of Termination; and

(5) All other rights and benefits the Executive is vested in, pursuant to other plans and programs of the Company.

(e) The benefits described in Sections 7.2(d)(1) and (d)(4) shall be paid in cash to the Executive in a single lump sum as soon as practicable following the Effective Date of Termination, but in no event later than 30 days after such date. The payments due to the Executive under Section 7.2(d)(2) shall be paid in a lump sum on the Payment Date (as defined in Section 15.12). All other payments due to the Executive upon termination of employment, including those in Sections 7.2(d)(3) and (d)(5), shall be paid in accordance with the terms of such applicable plans or program.

(f) With the exception of the covenants contained in Articles 8, 9, 10, 11, 12, 13, 15 and 16 and Section 7.2 (which shall survive such termination), the Company and the Executive thereafter shall have no further obligations under this Agreement following the Effective Date of Termination pursuant to this Section 7.2.

**7.3 Voluntary Termination by the Executive**. The Executive may terminate this Agreement at any time by giving Notice of Termination to the Board, delivered at least 14 calendar days prior to the Effective Date of Termination.

(a) The termination automatically shall become effective upon the expiration of the 14-day notice period. Notwithstanding the foregoing, the Company may waive the 14-day notice period; provided, however, that the Executive shall be entitled to receive all elements of compensation described in Sections 5.1 through 5.6 for the 14-day notice period, subject to the eligibility and participation requirements of any qualified retirement plan.

(b) Upon the Effective Date of Termination, following the expiration of the 14-day notice period, the Company shall pay the Executive his full Base Salary and accrued but unused vacation pay, at the rate then in effect, through the Effective Date of Termination, plus all other benefits to which the Executive has a vested right at that time (for this purpose, the Executive shall not be paid any Annual Bonus with respect to the fiscal year in which voluntary termination under this Section occurs).

(c) With the exception of Articles 8, 9, 10, 11, 12, 13, 15 and 16 and Section 7.3 (which shall survive such termination), the Company and the Executive thereafter shall have no further obligations under this Agreement following the Effective Date of Termination pursuant to this Section 7.3.

**7.4 Involuntary Termination by the Company without Cause**. At all times during the Term, the Board may terminate the Executive's employment for reasons other than death, Disability or Cause, by providing to the Executive a Notice of Termination, at least 60 calendar days (90 calendar days when termination is due to non-extension of the Term by the Company pursuant to Section 1.2) prior to the Effective Date of Termination; provided, however, that such notice shall not preclude the Company from requiring Executive to leave the Company immediately upon receipt of such notice.

(a) Such Notice of Termination shall be irrevocable absent express, mutual consent of the parties.

(b) Upon the Effective Date of Termination (not a Qualifying Termination), following the expiration of the 60-day notice period (90 days in the case of non-extension of the Term), the Company shall pay and provide to the Executive:

(1) An amount equal to the Executive's annual Base Salary established for the fiscal year in which the Effective Date of Termination occurs;

(2) An amount equal to the Executive's Targeted Annual Bonus Award established for the fiscal year in which the Effective Date of Termination occurs;

(3) A continuation of the welfare benefits of health care, life and accidental death and dismemberment, and disability insurance coverage (or if continuation under the Company's then current plans is not allowed, then provision at the Company's expense but subject to payment by Executive of those payments which Executive would have been obligated to make under the Company's then current plan, of substantially similar welfare benefits from one or more third-party providers) after the Effective Date of Termination for two years. Such benefits (or payments in lieu thereof) shall be provided or paid in accordance with the Company's regular payroll practice applicable to such benefits. These benefits shall be provided to the Executive at the same coverage level as in effect as of the Effective Date of Termination, and at the same premium cost to the Executive which was paid by the Executive at the time such benefits were provided. However, in the event the premium cost and/or level of coverage shall change for all employees of the Company, or for management employees with respect to supplemental benefits, the cost and/or coverage level, likewise, shall change for the Executive in a corresponding manner. The continuation of these welfare benefits shall be discontinued if prior to the expiration of the period, the Executive has available substantially similar benefits at a comparable cost to the Executive from a subsequent employer, as determined by the Board or Compensation Committee;

(4) All outstanding equity awards granted to the Executive that vest based solely on the passage of time (rather than performance conditions) shall become fully vested and exercisable, as applicable, and all restrictions to which such awards may be subject shall immediately lapse;

(5) An amount equal to the Executive's unpaid Base Salary and accrued but unused vacation pay through the Effective Date of Termination; and

(6) All other benefits to which the Executive has a vested right at the time, according to the provisions of the governing plan or program.

(c) In the event that the Board terminates the Executive's employment without Cause on or after the date of the announcement of the transaction which leads to a CIC, the Executive shall be entitled to the CIC Severance Benefits as provided in Section 8.3 in lieu of the Severance Benefits outlined in this Section 7.4; provided, however, that to the extent the Executive terminates employment prior to the CIC, the CIC Severance Benefits shall be paid on the same schedule as the Severance Benefits.

(d) Payment of all but 10% of the benefits described in Section 7.4(b)(1), and payment of all but 10% of the benefits described in Section 7.4(b)(2) shall be paid in cash to the Executive in equal semimonthly installments over a period of 12 consecutive months beginning on the Payment Date, subject to the provisions of Article 9. The amounts that were withheld shall be paid in cash to the Executive in a single lump sum at the end of the 6-month restrictive period set forth in Section 13.3.

(e) Except as specifically provided in Section 7.4(f), all other payments due to the Executive upon termination of employment shall be paid in accordance with the terms of such applicable plans or programs.

(f) With the exception of Articles 8, 9, 10, 11, 12, 13, 14 and 15 and Section 7.4 (which shall survive such termination), the Company and the Executive thereafter shall have no further obligations under this Agreement following the Effective Date of Termination pursuant to this Section 7.4.

(g) Notwithstanding anything herein to the contrary, and subject to the provisions of Section 409A of the Code, the Company's payment obligations under this Section 7.4 shall be offset by any amounts that the Company is required to pay to the Executive under a national statutory severance program applicable to such Executive.

**7.5 Termination for Cause.** Nothing in this Agreement shall be construed to prevent the Board from terminating the Executive's employment under this Agreement for Cause.

(a) To be effective, the Notice of Termination must set forth in reasonable detail the facts and circumstances claimed to provide a basis for such termination for Cause.

(b) In the event this Agreement is terminated by the Board for Cause, the Company shall pay the Executive his Base Salary and accrued vacation pay through the Effective Date of Termination, and the Executive shall immediately thereafter forfeit all rights and benefits (other than vested benefits) he would otherwise have been entitled to receive under this Agreement. The Company and the Executive thereafter shall have no further obligations under this Agreement following the Effective Date of Termination pursuant to this Section 7.5 with the exception of the covenants contained in Articles 8, 9, 10, 11, 12, 13, 14 and 15 and Section 7.5 (which shall survive such termination).

**7.6 Termination for Good Reason.** The Executive shall have 60 days from the date he learns of action taken by the Company that allows the Executive to terminate his employment for Good Reason to provide the Board with a Notice of Termination.

(a) The Notice of Termination must set forth in reasonable detail the facts and circumstances claimed to provide a basis for such Good Reason termination.

(b) The Company shall have 30 days to cure such Company action following receipt of the Notice of Termination.

(c) The Executive is required to continue his employment for the 60-day period following the date in which he provided the Notice of Termination to the Board. The Company may waive the sixty 60-day notice period; however, the Executive shall be entitled to receive all elements of compensation described in Sections 5.2, 5.4, 5.5 and 5.6 for the 60-day notice period, subject to the eligibility and participation requirements of any qualified retirement plan.

(d) Upon a termination of the Executive's employment for Good Reason during the Term, and following the expiration of the 60-day notice period, the Company shall pay and provide to the Executive the following:

(1) An amount equal to the Executive's annual Base Salary established for the fiscal year in which the Effective Date of Termination occurs;

(2) An amount equal to the Executive's Targeted Annual Bonus Award established for the fiscal year in which the Effective Date of Termination occurs;

(3) A continuation of the welfare benefits of health care, life and accidental death and dismemberment, and disability insurance coverage for two years after the Effective Date of Termination (or if continuation under the Company's then current plans is not allowed, then provision at the Company's expense but subject to payment by Executive of those payments which Executive would have been obligated to make under the Company's then current plan, of substantially similar welfare benefits from one or more third-party providers). Such benefits (or payments in lieu thereof) shall be provided or paid in accordance with the Company's regular payroll practice applicable to such benefits. These benefits shall be provided to the Executive at the same coverage level, as in effect as of the Effective Date of Termination and at the same premium cost to the Executive which was paid by the Executive at the time such benefits were provided. However, in the event the premium cost and/or level of coverage shall change for all employees of the Company, or for management employees with respect to supplemental benefits, the cost and/or coverage level, likewise, shall change for the Executive in a corresponding manner. The continuation of these welfare benefits shall be discontinued prior to the end of the two-year period in the event the Executive has available substantially similar benefits at a comparable cost to the Executive from a subsequent employer, as determined by the Board or Compensation Committee;

(4) All outstanding equity awards granted to the Executive that vest based solely on the passage of time (rather than performance conditions) shall become fully vested and exercisable, as applicable, and all restrictions to which such awards may be subject shall immediately lapse;

(5) An amount equal to the Executive's unpaid Base Salary and accrued but unused vacation pay through the Effective Date of Termination; and

(6) All other benefits to which the Executive has a vested right at the time, according to the provisions of the governing plan or program.

(e) In the event of termination of Executive's employment for Good Reason on or after the date of the announcement of the transaction which leads to the CIC and up to 12 months following the date of the CIC, the Executive shall be entitled to the CIC Severance Benefits as provided in Section 8.3 in lieu of the Severance Benefits outlined in this Section 7.6; provided, however, that to the extent the Executive terminates employment prior to the CIC, the CIC Severance Benefits shall be paid on the same schedule as the Severance Benefits.

(f) The Executive's right to terminate employment for Good Reason shall not be affected by the Executive's incapacity due to physical or mental illness unless such incapacity is determined to constitute a Disability as provided herein.

(g) Payment of all but 10% of the benefits described in Section 7.6(d)(1) and payment of all but 10% of the benefits described in Section 7.6(d)(2) shall be paid in cash to the Executive in equal semimonthly installments over a period of 12 consecutive months beginning on the Payment Date, subject to Article 9. The amounts that were withheld shall be paid in cash to the Executive in a single lump sum at the end of the 6-month restrictive period set forth in Section 13.3 of this Agreement.

(h) Except as specifically provided in Section 7.6(g), all other payments due to the Executive upon termination of employment shall be paid in accordance with the terms of such applicable plans or programs.

(i) With the exceptions of Articles 8, 9, 10, 11, 12, 13, 14 and 15 and Section 7.6 (which shall survive such termination), the Company and the Executive thereafter shall have no further obligations under this Agreement following the Effective Date of Termination pursuant to this Section 7.6.

#### Article 8. Change in Control

8.1 Employment Termination Following a CIC. The Executive shall be entitled to receive from the Company CIC Severance Benefits if a Notice of Termination for a Qualifying Termination of the Executive has been delivered; provided, that:

(a) The Executive shall not be entitled to receive CIC Severance Benefits if he is terminated for Cause (as provided in Section 7.5), or if his employment with the Company ends due to death, or Disability, or due to voluntary termination of employment by the Executive without Good Reason.

(b) CIC Severance Benefits shall be paid in lieu of all other benefits provided to the Executive under the terms of this Agreement.

8.2 Qualifying Termination. The occurrence of any one or more of the following events on or after the date of the announcement of the transaction which leads to the CIC and up to 12 months following the date of the CIC shall trigger the payment of CIC Severance Benefits to the Executive under this Agreement:

(a) An involuntary termination of the Executive's employment by the Company for reasons other than Cause, death, or Disability, as evidenced by a Notice of Termination delivered by the Company to the Executive; or

(b) A voluntary termination by the Executive for Good Reason as evidenced by a Notice of Termination delivered to the Company by the Executive.

8.3 Severance Benefits Paid upon a Qualifying Termination. In the event the Executive becomes entitled to receive CIC Severance Benefits, the Company shall pay to the Executive and provide him the following:

(a) An amount equal to 1.5 times the Executive's annual Base Salary established for the fiscal year in which the Effective Date of Termination occurs;

(b) An amount equal to 1.5 times the Executive's Targeted Annual Bonus Award established for the fiscal year in which the Executive's Effective Date of Termination occurs;

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(c) An amount equal to the Executive's unpaid Base Salary and accrued but unused vacation pay through the Effective Date of Termination;

(d) All outstanding long-term incentive awards shall accelerate and become fully vested;

(e) A continuation of the welfare benefits of health care, life and accidental death and dismemberment, and disability insurance coverage for 2.5 years after the Effective Date of Termination (or if continuation under the Company's then current plans is not allowed, then provision at the Company's expense but subject to payment by Executive of those payments which Executive would have been obligated to make under the Company's then current plan, of substantially similar welfare benefits from one or more third-party providers). Such benefits (or payments in lieu thereof) shall be provided or paid in accordance with the Company's regular payroll practice applicable to such benefits.

(1) These benefits shall be provided to the Executive at the same coverage level, as in effect as of the Effective Date of Termination or, if greater, as in effect 60 days prior to the date of the CIC, and at the same premium cost to the Executive which was paid by the Executive at the time such benefits were provided.

(2) In the event the premium cost and/or level of coverage shall change for all employees of the Company, or for management employees with respect to supplemental benefits, the cost and/or coverage level, likewise, shall change for the Executive in a corresponding manner.

(3) The continuation of these welfare benefits shall be discontinued prior to the end of the 2.5-year period in the event the Executive has available substantially similar benefits at a comparable cost to the Executive from a subsequent employer, as determined by the Board or Compensation Committee.

8.4 Form and Timing of Severance Benefit. Payment of all of the benefits described in Sections 8.3(a) through (c) shall be paid in cash to the Executive in a single lump sum on the Payment Date, subject to Article 9. All other payments due to the Executive upon termination of employment shall be paid in accordance with the terms of such applicable plans or programs.

#### 8.5 Excise Taxes

(a) Notwithstanding any other provision of this Agreement, except as set forth in Section 8.5(b), in the event that the Company undergoes a "Change in Ownership or Control" (as defined below), any "Contingent Compensation Payments" (as defined below) that the Executive has the right to receive shall be either (i) reduced (but not below zero) so that the present value of the Contingent Compensation Payments will be one dollar (\$1.00) less than three times the Executive's "base amount" (as defined in Section 280G(b)(3) of the Internal Revenue Code of 1986, as amended (the "Code")) and so that no portion of the Contingent Compensation Payments received by the Executive shall be subject to the excise tax imposed by Section 4999 of the Code or (ii) paid in full, whichever produces the better net after-tax position to the Executive. For purposes of this Section 8.5, the Contingent Compensation Payments so eliminated under (i) above shall be referred to as the "Eliminated Payments" and the aggregate

amount (determined in accordance with Treasury Regulation Section 1.280G-1, Q/A-30 or any successor provision) of the Contingent Compensation Payments so eliminated shall be referred to as the “Eliminated Amount.” In addition, the override of such reduction in Contingent Compensation Payments pursuant to (ii) above shall be referred to as a “Section 8.5 Override.”

(b) For purposes of this Section 8.5 the following terms shall have the following respective meanings:

(1) “Change in Ownership or Control” shall mean a change in the ownership or effective control of the Company or in the ownership of a substantial portion of the assets of the Company determined in accordance with Section 280G(b)(2) of the Code.

(2) “Contingent Compensation Payment” shall mean any payment (or benefit) in the nature of compensation that is made or made available (under this Agreement or otherwise) to a “disqualified individual” (as defined in Section 280G(c) of the Code) and that is contingent (within the meaning of Section 280G(b)(2)(A)(i) of the Code) on a Change in Ownership or Control of the Company.

(c) Any payments or other benefits otherwise due to the Executive following a Change in Ownership or Control that could reasonably be characterized (as determined by the Company) as Contingent Compensation Payments (the “Potential Payments”) shall not be made until the dates provided for in this Section 8.5(c). Within 30 days after each date on which the Executive first becomes entitled to receive (whether or not then due) a Contingent Compensation Payment relating to such Change in Ownership or Control, the Company shall determine and notify the Executive (with reasonable detail regarding the basis for its determinations) (i) which Potential Payments constitute Contingent Compensation Payments, (ii) the Eliminated Amount, if any, and (iii) whether the Section 8.5 Override is applicable. Within 30 days after delivery of such notice to the Executive, the Executive shall deliver a response to the Company (the “Executive Response”) stating either (A) that he agrees with the Company’s determination pursuant to the preceding sentence, or (B) that he disagrees with such determination, in which case he shall set forth (i) which Potential Payments should be characterized as Contingent Compensation Payments, (ii) the Eliminated Amount, if any, and (iii) whether the Section 8.5 Override is applicable. If and to the extent that there is an Eliminated Amount, the Contingent Compensation Payments shall be reduced or eliminated, as determined by the Company, in the following order: (w) any cash payments, (x) any taxable benefits, (y) any non-taxable benefits, and (z) any vesting of equity awards, in each case in the reverse order beginning with payments or benefits that are to be paid the farthest in time from the date that triggers the applicability of the Excise Tax, to the extent necessary to avoid the Excise Tax. In the event that the Executive fails to deliver an Executive Response on or before the required date, the Company’s initial determination shall be final and the Contingent Compensation Payments that shall be treated as Eliminated Payments, if any, shall be determined by the Company in its absolute discretion. If the Executive states in the Executive Response that he agrees with the Company’s determination, the Company shall make the Potential Payments to the Executive within three business days following delivery to the Company of the Executive Response (except for any Potential Payments which are not due to be made until after such date, which Potential Payments shall be made on the date on which they are due). If the Executive states in the Executive Response that he disagrees with the Company’s determination, then, for a period of 60 days following delivery

of the Executive Response, the Executive and the Company shall use good faith efforts to resolve such dispute. If such dispute is not resolved within such 60-day period, such dispute shall be settled exclusively by arbitration in East Brunswick, New Jersey, in accordance with the rules of the American Arbitration Association then in effect. Judgment may be entered on the arbitrator's award in any court having jurisdiction. The Company shall, within three business days following delivery to the Company of the Executive Response, make to the Executive those Potential Payments as to which there is no dispute between the Company and the Executive regarding whether they should be made (except for any such Potential Payments which are not due to be made until after such date, which Potential Payments shall be made on the date on which they are due). The balance of the Potential Payments shall be made within three business days following the resolution of such dispute. Subject to the limitations contained in Sections 8.5(a) and (b), the amount of any payments to be made to the Executive following the resolution of such dispute shall be increased by amount of the accrued interest thereon computed at the prime rate announced from time to time by Citibank, N.A., compounded monthly from the date that such payments originally were due.

(d) The provisions of this Section 8.5 are intended to apply to any and all payments or benefits available to the Executive under this Agreement or any other agreement or plan of the Company under which the Executive receives Contingent Compensation Payments.

8.6 Long-Term Incentive Awards. In the event of a CIC during the Term, all outstanding long-term incentive awards held by the Executive shall immediately accelerate and become fully vested.

8.7 With the exceptions of Articles 8, 9, 10, 11, 12, 13 and 14 (which shall survive such termination), the Company and the Executive thereafter shall have no further obligations under this Agreement following the Effective Date of Termination pursuant to this Article 8.

#### Article 9. Compliance with IRC Section 409A.

(a) The following rules shall apply with respect to distribution of the payments and benefits, if any, to be provided to the Executive under Articles 7 or 8, as applicable:

(i) It is intended that each installment of the payments and benefits provided under Articles 7 or 8 shall be treated as a separate "payment" for purposes of Section 409A of the Code and the guidance issued thereunder ("Section 409A"). Neither the Company nor the Executive shall have the right to accelerate or defer the delivery of any such payments or benefits except to the extent specifically permitted or required by Section 409A.

(ii) If, as of the date of the "separation from service" of the Executive from the Company (determined as set forth below), the Executive is not a "specified employee" (within the meaning of Section 409A), then each installment of the payments and benefits shall be made on the dates and terms set forth in Articles 7 or 8, as applicable.

(iii) If, as of the date of the “separation from service” of the Executive from the Company, the Executive is a “specified employee” (within the meaning of Section 409A), then:

(1) Each installment of the payments and benefits due under Articles 7 or 8, as applicable, that, in accordance with the dates and terms set forth herein, will in all circumstances, regardless of when the separation from service occurs, be paid within the Short-Term Deferral Period (as defined under Section 409A) shall be treated as a short-term deferral within the meaning of Treasury Regulation § 1.409A-1(b)(4) to the maximum extent permissible under Section 409A and shall be paid at the time and in the manner set forth in this Agreement; and

(2) Each installment of the payments and benefits due under Articles 7 or 8 that is not described in clause (1), above, and that would, absent this subsection, be paid within the six-month period following the “separation from service” of the Executive from the Company shall not be paid until the date that is six months and one day after such separation from service (or, if earlier, the Executive’s death), with any such installments that are required to be delayed being accumulated during the six-month period and paid in a lump sum on the date that is six months and one day following the Executive’s separation from service and any subsequent installments, if any, being paid in accordance with the dates and terms set forth herein; provided, however, that the preceding provisions of this sentence shall not apply to any installment of payments and benefits if and to the maximum extent that that such installment is deemed to be paid under a separation pay plan that does not provide for a deferral of compensation by reason of the application of Treasury Regulation § 1.409A-1(b)(9)(iii) (relating to separation pay upon an involuntary separation from service). Any installments that qualify for the exception under Treasury Regulation § 1.409A-1(b)(9)(iii) must be paid no later than the last day of the Executive’s second taxable year following his taxable year in which the separation from service occurs.

(b) The determination of whether and when a separation from service of the Executive from the Company has occurred shall be made and in a manner consistent with, and based on the presumptions set forth in, Treasury Regulation § 1.409A-1(h). Solely for purposes of this Section 4.4(b), “Company” shall include all persons with whom the Company would be considered a single employer under Section 414(b) and 414(c) of the Code.

(c) All reimbursements and in-kind benefits provided under the Agreement shall be made or provided in accordance with the requirements of Section 409A to the extent that such reimbursements or in-kind benefits are subject to Section 409A. All reimbursements and in-kind benefits provided under this Agreement shall be made or provided in accordance with the requirements of Section 409A to the extent that such reimbursements or in-kind benefits are subject to Section 409A, including, where applicable, the requirements that (i) any reimbursement is for expenses incurred during the Executive’s lifetime (or during a shorter period of time specified in this Agreement), (ii) the amount of expenses eligible for reimbursement during a calendar year may not affect the expenses eligible for reimbursement in any other calendar year, (iii) the reimbursement of an eligible expense will be made on or before the last day of the calendar year following the year in which the expense is incurred and (iv) the right to reimbursement is not subject to set off or liquidation or exchange for any other benefit.

(d) The parties acknowledge and agree that the interpretation of Section 409A and its application to the terms of this Agreement is uncertain and may be subject to change as additional guidance and interpretations become available. Anything to the contrary herein

notwithstanding, all benefits or payments provided by the Company to the Executive that would be deemed to constitute “non-qualified deferred compensation” within the meaning of Section 409A are intended to comply with Section 409A. If, however, any such benefit or payment is deemed to not comply with Section 409A, the Company and Executive agree to renegotiate in good faith any such Severance Benefit or CIC Severance Benefit (including, without limitation, as to the timing of any such payment payable pursuant to the terms of this Agreement) so that either (i) Section 409A will not apply or (ii) compliance with Section 409A will be achieved.

#### Article 10. Creation of Rabbi Trust

10.1 In the event that a CIC Severance Payment is required to be made on the day that is six months and one day after the Executive’s “separation from service” pursuant to Section 9 (a)(iii), the Company shall deposit the full amount of such CIC Severance Payment in cash in a rabbi trust for the benefit of the Executive as soon as reasonably practicable following the Executive’s “separation from service”. The rabbi trust shall be governed by the terms of a trust agreement reasonably acceptable to the parties, shall be irrevocable and shall provide that the Company, or any successor thereto, may not, directly or indirectly, use or recover any assets of the rabbi trust until such time as the assets of the trust have been paid to the Executive hereunder, subject only to the claims of creditors of the Company in the event of its insolvency or bankruptcy. The assets held by the rabbi trust shall be transferred to Executive one day following the six-month anniversary of the Executive’s “separation from service” from the Company (the “Six-Month Payment Date”). The assets delivered to Executive pursuant to the rabbi trust shall reflect any investment gain or loss (as the case may be) on the CIC Severance Benefit from the date the assets comprising the CIC Severance Benefit were deposited into such rabbi trust until the Six-Month Payment Date. The Company, or any successor thereto, shall deliver and pay over to the appropriate taxing authorities if and when due all amounts subject to withholding with respect to the transfer of the CIC Severance Benefit to the rabbi trust and the transfer of the assets of the rabbi trust to Executive (as adjusted for any investment gain or loss) on the Six-Month Payment Date, and shall instruct the trustee to transfer to the Executive such assets (in such form and asset class as has been deposited initially into the rabbi trust), without any further reduction for withholding for federal, state and local taxes other than any additional amounts required to be withheld on any amounts transferred to the Executive that were not included in the initial computation of the CIC Severance Benefit.

#### Article 11. Assignment

11.1 Assignment by Company. This Agreement may and shall be assigned or transferred to, and shall be binding upon and shall inure to the benefit of any Successor Company.

(a) Any such Successor Company shall be deemed substituted for all purposes as the “Company” under the terms of this Agreement.

(b) Failure of the Company to obtain the agreement of any Successor Company to be bound by the terms of this Agreement prior to the effectiveness of any such succession shall be a breach of this Agreement, and shall immediately entitle the Executive to benefits from the Company in the same amount and on the same terms as the Executive would be entitled to receive in the event of a termination of employment for Good Reason as provided in Section 7.7 (failure not related to a CIC) or Section 8.3 (if the failure of assignment follows or is in connection with a CIC).

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(c) Except as herein provided, this Agreement may not otherwise be assigned by the Company.

11.2 Assignment by Executive. This Agreement shall inure to the benefit of and be enforceable by the Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, and legatees.

(a) If the Executive dies while any amount would still be payable to his estate pursuant to this Agreement had he continued to live, all such amounts, unless otherwise provided herein, shall be paid in accordance with the terms of this Agreement, to the Executive's Beneficiary.

(b) If the Executive has not named a Beneficiary, then such amounts shall be paid to the Executive's devisee, legatee, or other designee, or if there is no such designee, to the Executive's estate.

#### Article 12. Legal Fees and Notice

12.1 Payment of Legal Fees. To the extent permitted by law, the Company shall pay all legal fees, costs of litigation, prejudgment interest, and other expenses incurred by Executive in contesting a termination, if Executive prevails. The Company shall also pay the reasonable attorneys fees incurred by the Executive in the negotiation of this Agreement. The payment of such amounts shall be subject to the terms of Section 9(c).

12.2 Notice. Any notices, requests, demands, or other communications provided by this Agreement shall be sufficient if in writing and if sent by registered or certified mail to the Executive at the last address he has filed in writing with the Company or, in the case of the Company, at its principal offices to the attention of the General Counsel.

#### Article 13. Confidentiality and Noncompetition

13.1 Disclosure of Information. The Executive recognizes that he has access to and knowledge of confidential and proprietary information of the Company that is essential to the performance of his duties under this Agreement.

(a) The Executive will not, during and for five years after the Term, in whole or in part, disclose such information to any person, firm, corporation, association, or other entity for any reason or purpose whatsoever, nor shall he make use of any such information for his own purposes, so long as such information has not otherwise been disclosed to the public or is not otherwise in the public domain except as required by law or pursuant to administrative or legal process.

13.2 Covenants Regarding Other Employees. During the Term, and for a period of 12 months following the Executive's termination of employment for any reason, the Executive agrees not to actively solicit any employee of the Company to terminate his or her employment with the Company or to interfere in a similar manner with the business of the Company.

13.3 Noncompete Following a Termination of Employment. From the Effective Date of this Agreement until six months following the Executive's Effective Date of Termination for any reason, the Executive will not: (a) directly or indirectly own any equity or proprietary interest in (except for ownership of shares in a publicly traded company not exceeding 3% of any class of outstanding securities), or be an employee, agent, director, advisor, or consultant to or for any competitor of the Company, whether on his own behalf or on behalf of any person; or (b) undertake any action to induce or cause any customer or client to discontinue any part of its business with the Company. For the purposes of this Section 13.3, the words "competitor of the Company" shall mean a company that is developing, marketing or selling a product that is directly competitive to the products being developed, marketed and sold by the Company.

13.4 Waiver of Covenants Upon a CIC. Upon the occurrence of a CIC, the Executive shall be released from each of the covenants set forth in Sections 13.2 and 13.3, if such Executive is terminated by the Company without Cause or if the Executive terminates his employment with the Company for Good Reason.

#### Article 14. Outplacement Assistance

14.1 Following a termination of employment, other than for Cause, the Executive shall be reimbursed by the Company for the costs of all outplacement services obtained by the Executive within the one-year period after the Effective Date of Termination; provided, however, that the total reimbursement shall be limited to an amount equal to \$100,000. The provision of such outplacement services reimbursement shall be subject to the terms of Section 9(c).

#### Article 15. Miscellaneous

15.1 Entire Agreement. With the exception of the Company's Proprietary Information and Inventions Agreement previously executed by Executive, this Agreement supersedes any prior agreements, or understandings, oral or written, between the parties hereto or between the Executive and the Company, with respect to the subject matter hereof, and constitutes the entire agreement of the parties with respect thereto.

15.2 Modification. This Agreement shall not be varied, altered, modified, canceled, changed, or in any way amended except by mutual agreement of the parties in a written instrument executed by the parties hereto or their legal representatives.

15.3 Severability. In the event that any provision or portion of this Agreement shall be determined to be invalid or unenforceable for any reason, the remaining provisions of this Agreement shall be unaffected thereby and shall remain in full force and effect.

15.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together will constitute one and the same Agreement.

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15.5 Tax Withholding. The Company may withhold from any benefits payable under this Agreement all federal, state, city, or other taxes as may be required pursuant to any law or governmental regulation or ruling.

15.6 Beneficiaries. To the extent allowed by law, any payments or benefits hereunder due to the Executive at the time of his death shall nonetheless be paid or provided and the Executive may designate one or more persons or entities as the primary and/or contingent beneficiaries of any amounts to be received under this Agreement. Such designation must be in the form of a signed writing acceptable to the Board or the Board's designee. The Executive may make or change such designation at any time.

15.7 Restrictive Covenants. With the exception of the Company's willful material breach of its payment obligations under Articles 7 and 8 of this Agreement ( provided, however, that no such breach shall be deemed to have occurred until the Executive has provided the Board with written notice of such breach and a reasonable opportunity for cure), the restrictive covenants contained in Article 13 are independent of any other contractual obligations in this Agreement or otherwise owed by the Company to the Executive. Except as provided in this paragraph, the existence of any claim or cause of action by Executive against the Company, whether based on this Agreement or otherwise, shall not create a defense to the enforcement by the Company of any restrictive covenant contained herein.

15.8 The Executive shall not be obligated to seek other employment in mitigation of the amounts payable or arrangements made under any provision of this Agreement, and the obtaining of any such other employment shall in no event effect any reduction of the Company's obligations to make the payments and arrangements required to be made under this Agreement.

15.9 Previous Obligations.

(a) Executive agrees and confirms that Executive's acceptance of this Agreement and performance of his duties hereunder will not in any way require or place Executive in a position that may require or potentially may require the use or disclosure of any third party's trade secrets or proprietary information.

(b) Executive confirms that Executive has disclosed to the Company all agreements Executive has with any third party that incorporate confidentiality restrictions or a covenant not to compete.

(c) Executive believes that he is under no obligations to any third party, including any confidentiality agreements, covenants not to compete or the like, which will in any way restrict the Executive's ability to perform his duties hereunder.

(d) Executive agrees and confirms that in the event Executive is ever asked to participate in any activity or perform any job duties and responsibilities as an employee of the Company which the Executive believes may involve the utilization or dissemination of information a third party has identified as its proprietary information or a trade secret or which may fall under a previously executed covenant not to compete, Executive will immediately notify the Chief Executive Officer and General Counsel and will not undertake to participate in any activities which require or could possibly require Executive to utilize or rely upon such proprietary information or trade secret.

15.10 Review by Counsel. Prior to executing this Agreement, Executive agrees that he has consulted with his attorney who represents his interests and who has fully and completely explained the terms and conditions of this Agreement and the obligations created herein.

15.11 Director Resignation. In the event that the Executive is a member of the Board on the Effective Date of Termination, Executive shall resign from the Board effective on the Effective Date of Termination.

15.12 Release. Notwithstanding anything to the contrary in this Agreement, the obligation of the Company to make the payments or provide the benefits described in Sections 7.2(d)(2), 7.4(b)(1) through (3), 7.6(d)(1) through (3), or Section 8.3(a), (b) or (e), and the right of Executive to receive such benefits, are subject to the obligation of the Executive to deliver an executed release in a reasonable and customary form (the "Release") and any applicable revocation period with respect to the Release expiring within 60 days following the Effective Date of Termination Date. The severance payments and benefits shall be paid or commence on the first payment date following the date on which the Release becomes effective (the "Payment Date"). Notwithstanding the foregoing, if the 60<sup>th</sup> day following the date of termination occurs in the calendar year following the year of termination, then the Payment Date shall be no earlier than January 1 of such subsequent calendar year.

#### Article 16. Governing Law

16.1 To the extent not preempted by federal law, the provisions of this Agreement shall be construed and enforced in accordance with the laws of the state of New Jersey.

IN WITNESS WHEREOF, the Company, through its duly authorized representative, and the Executive have executed this Agreement as of the Effective Date.

Executive:

\_\_\_\_\_  
Kenneth M. Bahrt, M.D., FACR

Company:

Savient Pharmaceuticals, Inc.

By: \_\_\_\_\_

John H. Johnson  
Chief Executive Officer

## CERTIFICATIONS

I, John H. Johnson, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Savient Pharmaceuticals, Inc. (the “registrant”);
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant’s other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and
5. The registrant’s other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s Board of Directors (or persons performing the equivalent functions):
  - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
  - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

By: / s / J OHN H. J OHNSON  
**Chief Executive Officer & President**

August 8, 2011

## CERTIFICATIONS

I, David G. Gionco, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Savient Pharmaceuticals, Inc. (the “registrant”);
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant’s other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and
5. The registrant’s other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s Board of Directors (or persons performing the equivalent functions):
  - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
  - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

By: / s / D AVID G. G IONCO  
**Group Vice President, Chief Financial Officer &  
Treasurer**

August 8, 2011

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Savient Pharmaceuticals, Inc. (the "Company") on Form 10-Q for the quarter ended June 30, 2011 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, John H. Johnson, Chief Executive Officer and President of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: / s / J OHN H. J OHNSON  
**Chief Executive Officer & President**

August 8, 2011

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Savient Pharmaceuticals, Inc. (the "Company") on Form 10-Q for the quarter ended June 30, 2011 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, David G. Gionco, Group Vice President, Chief Financial Officer and Treasurer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: / s / D AVID G. G IONCO  
**Group Vice President, Chief Financial Officer &  
Treasurer**

August 8, 2011