

BIODELIVERY SCIENCES INTERNATIONAL INC

Form S-3

June 19, 2009

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As filed with the Securities and Exchange Commission on June 19, 2009

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-3
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

BioDelivery Sciences International, Inc.

(Exact name of registrant as specified in charter)

Delaware

(State or jurisdiction of incorporation or organization)

35-2089858

(I.R.S. Employer Identification No.)

801 Corporate Center Drive, Suite 210

Raleigh, NC 27607

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(919) 582-9050

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

Mark A. Sirgo, Pharm.D.

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(919) 582-9050

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

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Approximate date of proposed sale to the public: As soon as practicable, after this registration statement becomes effective.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plans, please check the following box.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box.

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

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

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box. "

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Dollar Amount to be registered	Proposed	Proposed	Amount of registration fee
		maximum offering price per unit	maximum aggregate offering price	
common stock, par value \$0.001 per share, underlying warrant with an exercise price of \$2.90	2,500 shares ⁽¹⁾	\$2.90	\$7,250	\$0.40
common stock, par value \$0.001 per share, underlying warrant with an exercise price of \$3.00	45,000 shares ⁽¹⁾	\$3.00	\$135,000	\$7.53
common stock, par value \$0.001 per share, underlying warrant with an exercise price of \$3.50	50,000 shares ⁽¹⁾	\$3.50	\$175,000	\$9.77
common stock, par value \$0.001 per share, underlying warrant with an exercise price of \$5.25	225,000 shares ⁽¹⁾	\$5.25	\$1,181,250	\$65.91
TOTAL	322,500 shares		\$1,498,500	\$83.61

⁽¹⁾ Also registered hereby are such additional and indeterminable number of shares as may be issuable due to adjustments for changes resulting from stock dividends, stock splits and similar changes as well as anti-dilution provisions applicable to the warrants.

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

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

Preliminary Prospectus

Subject To Completion, dated June 19, 2009

322,500 Shares

Common Stock

This prospectus relates to the public offering of up to 322,500 shares of our common stock, par value \$0.001 per share, for sale by the selling stockholders named herein for their own accounts. The shares to be sold by the selling stockholders include: (i) up to 2,500 shares of our common stock, issuable upon the exercise of a warrant, which we refer to as the Wyrick Warrant, previously issued by us to Wyrick Robbins Yates & Ponton LLP, or Wyrick; (ii) up to 45,000 shares of our common stock, issuable upon the exercise of a warrant, which we refer to as the IRG Warrant, issued by us to Investor Relations Group, Inc., or IRG; (iii) up to 50,000 shares of our common stock, issuable upon the exercise of a warrant, which we refer to as the Aveva Warrant, issued by us to Aveva Drug Delivery Systems, Inc., or Aveva; and (iv) up to an aggregate of 225,000 shares of our common stock, issuable upon the exercise of warrants, which we refer to as the RBC Warrants, issued by us to Ferris Baker Watts, Inc. (now owned by RBC Wealth Management, a division of RBC Capital Markets Corporation, or RBC), and certain other individuals. We collectively refer to the Wyrick Warrant, the IRG Warrant, the Aveva Warrant and the RBC Warrants herein as the Warrants .

Our common stock is quoted on the Nasdaq Capital Market under the symbol **BDSI** . On June 18, 2009, the closing sales price for our common stock on the Nasdaq Capital Market was \$6.39 per share.

To the extent the selling stockholders wish to sell their shares of our common stock as provided for herein, they may offer and sell such shares on a continuous or delayed basis in the future. These sales may be conducted in the open market or in privately negotiated transactions and at market prices, fixed prices or negotiated prices. We will not receive any of the proceeds from the sale of the shares of common stock underlying the Warrants, but we will receive funds upon the exercise of the Warrants. Such proceeds, if any, will be used for working capital and general corporate purposes. Prospective investors should read this prospectus and any amendment or supplement hereto together with additional information described under the heading **Where You Can Find More Information**.

Our principal executive offices are located at 801 Corporate Center Drive, Suite 210, Raleigh, North Carolina 27607. Our telephone number is (919) 582-9050.

Investing in our common stock involves a high degree of risk. See the section entitled Risk Factors beginning on page 4 and in the documents incorporated by reference herein before you decide to buy our common stock.

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

The date of this prospectus is , 2009

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You should rely only upon the information contained in this prospectus and the registration statement of which this prospectus is a part. We have not authorized any other person to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume the information appearing in this prospectus is accurate only as of the date on the front cover of this prospectus. Our business, financial condition, results of operations and prospects may have changed since that date. This prospectus is based on information provided by us and other sources that we believe are reliable. We have summarized certain documents and other information in a manner we believe to be accurate, but we refer you to the actual documents for a more complete understanding of what we discuss in this prospectus. In making an investment decision, you must rely on your own examination of our business and the terms of the offering, including the merits and risks involved.

We obtained statistical data, market data and other industry data and forecasts used throughout, or incorporated by reference in, this prospectus from market research, publicly available information and industry publications. Industry publications generally state that they obtain their information from sources that they believe to be reliable, but they do not guarantee the accuracy and completeness of the information. Similarly, while we believe that the statistical data, industry data and forecasts and market research are reliable, we have not independently verified the data, and we do not make any representation as to the accuracy of the information. We have not sought the consent of the sources to refer to their reports appearing or incorporated by reference in this prospectus.

This prospectus contains, or incorporates by reference, trademarks, trade names, service marks and service names of BioDelivery Sciences International, Inc. and other companies.

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NOTE ON FORWARD LOOKING STATEMENTS

Certain statements contained or incorporated by reference in this prospectus constitute forward-looking statements as that term is defined under the Private Securities Litigation Reform Act of 1995 and releases issued by the SEC and within the meaning of Section 27A of the Securities Act and Section 21E of the Securities Exchange Act of 1934, as amended, (the Exchange Act). The words believe, expect, anticipate, intend, estimate, plan, project and other expressions which are predictions of or indicate future events and trends and which do not relate to historical matters identify forward-looking statements. Reliance should not be placed on forward-looking statements because they involve known and unknown risks, uncertainties and other factors, which may cause our actual results, performance or achievements to differ materially from anticipated future results, performance or achievements expressed or implied by such forward-looking statements. Factors that could cause actual results to differ materially from those expressed or implied by such forward-looking statements include, but are not limited to:

our plans regarding the timing and outcome of research, development, commercialization, manufacturing, marketing, distribution and sales efforts relating to the BEMA and Bioral technology platforms and any proposed formulations or products relating thereto (including, without limitation, ONSOLIS , formerly known as BEMA Fentanyl);

the domestic and international regulatory process relating to our technologies and proposed products and formulations, including the timing, status and results of our filings with the FDA and other similar international regulatory agencies, and the timing, status and results of pre-clinical work and clinical studies;

our ability to manufacture and generate commercial viability and acceptance of our BEMA and Bioral technology platforms and our proposed formulations and products;

our ability to finance our operations on acceptable terms, either through the raising of capital, the incurrence of convertible or other indebtedness or through strategic financing partnerships;

the protection and control afforded by our patents, or our interest in licensed patents, or our ability to enforce our rights under such patents or licenses;

our ability to enter into and/or perform under strategic partnerships for the development, commercialization, manufacturing and distribution of our proposed products and formulations;

the ability of our sublicensed partners to commercially exploit our drug delivery platforms and our ability to enter into sublicenses and to receive royalty and other payments from parties to whom we have sublicensed our technologies;

our ability to retain members of our management team and our employees;

our ability to receive federal, state, government or private grants; and

the competition that may arise in the future.

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The foregoing does not represent an exhaustive list of risks. Please see **Risk Factors** for additional risks which could adversely impact our business and financial performance. Moreover, new risks emerge from time to time and it is not possible for our management to predict all risks, nor can we assess the impact of all risks on our business or the extent to which any risk, or combination of risks, may cause actual results to differ from those contained in any forward-looking statements. All forward-looking statements included in this prospectus are based on information available to us on the date of this prospectus. Except to the extent required by applicable laws or rules, we undertake no obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future events or otherwise. All subsequent written and oral forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by the cautionary statements contained throughout this prospectus.

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PROSPECTUS SUMMARY

The following summary highlights selected information contained or incorporated by reference in this prospectus. This summary does not contain all of the information you should consider before investing in the securities. Before making an investment decision, you should read the entire prospectus carefully, including the risk factors section as well as the financial statements and the notes to the financial statements incorporated herein by reference.

In this prospectus and any amendment or supplement hereto, unless otherwise indicated, the terms BioDelivery Sciences International, Inc. , BDSI , the Company , we , us , and our refer and relate to BioDelivery Sciences International, Inc. and its consolidated subsidiaries.

Our Company

We are a specialty pharmaceutical company that is utilizing licensed and owned proprietary patented drug delivery technologies to develop and commercialize, either on our own or in partnerships with third parties, clinically-significant new formulations of proven therapeutics.

Our drug delivery technologies include:

the patented BEMA (transmucosal, or applied to the inner cheek membrane) drug delivery technology, and

the patented Bioral cochleate drug delivery technology, designed for a potentially broad base of applications.

Utilizing our patented and licensed delivery technologies, we are currently developing formulations of pharmaceuticals aimed principally at acute (i.e., short term) conditions occurring in cancer and surgical patients, mostly notably in the areas of pain and fungal infections.

Our lead product candidate is ONSOLIS (fentanyl buccal soluble film, formerly known as BEMA Fentanyl), a treatment for breakthrough cancer pain (i.e., episodes of severe pain which break through the medication used to control the persistent pain) in opioid tolerant patients. In December 2008, we resubmitted our New Drug Application, or NDA, for ONSOLIS to the U.S. Food and Drug Administration, or FDA, following our receipt of a complete response letter from FDA in August 2008. The only NDA deficiency that FDA noted in their complete response letter was the need for a Risk Evaluation and Mitigation Strategy (REMS) which the FDA had not required prior to the submission of our ONSOLIS NDA in October 2007. On June 15, 2009, we announced that we had reached agreement with the reviewing division at FDA on all aspects of our ONSOLIS NDA, including the REMS. Although the FDA did not meet its action date for this NDA, the reviewing division has informed us that FDA will not be issuing a review extension letter as their action on the NDA is forthcoming.

We have granted commercialization and distribution rights for ONSOLIS on a worldwide basis (except in South Korea and Taiwan) to Meda AB, a leading international specialty pharmaceutical company based in Sweden. ONSOLIS will be marketed as BREAKYL in Europe. In this prospectus, we refer to ONSOLIS and BREAKYL collectively as ONSOLIS .

Our follow on product to ONSOLIS is BEMA Buprenorphine, a treatment for moderate to severe pain conditions which is currently in Phase I trials.

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Our lead Bioral formulation is an encochleated version of Amphotericin B, an anti-fungal treatment for treating systemic fungal infections. This product is also currently in Phase I human testing. We also believe this drug delivery technology has the potential to be applied to other types of pharmaceuticals and also to other therapeutics such as small interfering RNA, or siRNA.

Some of our products, such as ONSOLIS and BEMA Buprenorphine, may also have broader indications that would allow for chronic use. When such products present a viable commercial opportunity, we will also consider developing the product for chronic uses.

We currently generate revenue from licensing milestone payments and royalties, and have generated revenue from grants. Ultimately, if we secure approval from the FDA and other regulatory bodies throughout the world for our licensed and/or proprietary products and formulations, our goal will be to augment these revenues from sales of such products and formulations, on which we will also pay royalties or other fees to our licensors and/or third-party collaborators where they exist.

Our development strategy focuses on, but is not limited to, the utilization of the FDA's 505(b)(2) approval process to obtain more timely and efficient approval of new formulations of previously approved therapeutics which incorporate our licensed drug delivery technologies. Because the 505(b)(2) approval process is designed to address new formulations of previously approved drugs, we believe it has the potential to be more cost efficient and less time consuming than other approval methods of the FDA.

Our principal executive offices are located at 801 Corporate Center Drive, Suite 210, Raleigh, North Carolina 27607. Our telephone number is (919) 582-9050.

The Offering

Outstanding Common Stock	20,608,302 shares of common stock issued and 20,592,812 outstanding as of June 17, 2009.
Common Stock Offered	Up to 322,500 shares of common stock for sale by the selling stockholders for their own account. These shares include: <ul style="list-style-type: none"> (i) up to 2,500 shares of our common stock issuable upon the exercise of the Wyrick Warrant; (ii) up to 45,000 shares of our common stock issuable upon the exercise of the IRG Warrant; (iii) up to 50,000 shares of our common stock issuable upon the exercise of the Aveva Warrant; and (iv) up to an aggregate of 225,000 shares of our common stock issuable upon the exercise of the RBC Warrant.
Selling Stockholders	The selling stockholders are: <ul style="list-style-type: none"> (i) Wyrick Robbins Yates & Ponton LLP, which was issued the Wyrick Warrant on February 20, 2006, in connection with legal services rendered to our company;

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(ii) Investor Relations Group, Inc., which was issued the IRG Warrant on December 21, 2005, in connection with investor relations services provided to our company;

(iii) Aveva Drug Delivery Systems, Inc., which was issued the Aveva Warrant on October 17, 2005, in connection with services provided as our manufacturing partner for ONSOLIS ; and

(iv) Each of RBC (as the successor in interest to Ferris Baker Watts, Inc.) and Scott T. Bass, David H. Ferris, Richard K. Prins (former employees of Ferris Baker Watts, Inc.), who were issued the RBC Warrants on November 29, 2004 in connection with acting as the underwriter of our 2005 follow on public offering.

Proceeds

We will not receive any proceeds from the sale of our common stock by the selling stockholders.

We would, however, receive proceeds upon the exercise of the Warrants which, if such warrants were exercised in full at their present exercise prices, would be approximately \$1,498,500.

The selling stockholders are under no obligation to exercise the Warrants. Proceeds, received, if any, from the exercise of the Warrants will be used for general corporate purposes.

Risk Factors

The securities offered hereby involve a high degree of risk. See Risk Factors.

Nasdaq Capital Market Symbol

BDSI

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RISK FACTORS

An investment in our company is extremely risky. You should carefully consider the following risks, in addition to the other information presented in this prospectus before deciding to buy or exercise our securities. If any of the following risks actually materialize, our business and prospects could be seriously harmed, the price and value of our securities could decline and you could lose all or part of your investment.

Risks Relating to Our Business

Since we have not generated any revenues from the sale of products to date and have incurred significant losses since inception, you cannot rely upon our historical operating performance to make an investment decision.

Since our inception in January 1997 and through March 31, 2009, we have recorded accumulated losses totaling approximately \$96.9 million. As of March 31, 2009, we had a working capital deficit of approximately \$47.9 million. Our ability to generate revenue and achieve profitability depends upon our ability, alone or with others, to complete the development of our proposed formulations and products, obtain the required regulatory approvals and manufacture, market and sell our proposed formulations and products. We may be unable to achieve these goals.

Although we have generated some licensing-related and other revenue to date, we have not generated any revenue from the commercial sale of products. Since our inception, we have engaged primarily in research and development, licensing technology, seeking grants, raising capital and recruiting scientific and management personnel. Since 2005, we have also focused on commercialization activities, mostly relating to ONSOLIS. This relatively limited operating history may not be adequate to enable you to fully assess our ability to develop and commercialize our technologies and proposed formulations or products, obtain FDA approval and achieve market acceptance of our proposed formulations or products and respond to competition. We may be unable to fully develop, obtain regulatory approval for, commercialize, manufacture, market, sell and derive material revenues from our proposed formulations or products in development in the timeframes we project, if at all, and our inability to do so would materially and adversely impact our viability as a company.

As a result of our current lack of financial liquidity and a negative stockholders' deficit, our auditors have expressed substantial doubt regarding our ability to continue as a going concern.

As a result of our current lack of financial liquidity, continued losses and a negative stockholders' deficit, our auditors' report for our 2008 financial statements, which are incorporated in this prospectus by reference, contains a statement concerning our ability to continue as a going concern. Our lack of sufficient liquidity could make it more difficult for us to secure additional financing or enter into strategic relationships on terms acceptable to us, if at all, and may materially and adversely affect the terms of any financing that we may obtain and our public stock price generally.

Our continuation as a going concern is dependent upon, among other things, achieving positive cash flow from operations and, if necessary, augmenting such cash flow using external resources to satisfy our cash needs. Our plans to achieve positive cash flow include negotiating up-front and milestone payments on pipeline products under development, and royalties from sales of our products which secure regulatory approval and any milestone payments associated with such approved products. These cash sources could, potentially, be supplemented by financing or other strategic agreements. However, we may be unable to achieve these goals and therefore may be unable to continue as a going concern.

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We may need to raise additional capital to continue our operations, and our failure to do so would significantly impair our ability to fund our operations, develop our technologies, attract commercial partners or promote our formulations or products.

Our operations have relied almost entirely on external financing to fund our operations. Such financing has historically come primarily from license and royalty fees, the sale of common and preferred stock and convertible debt to third parties, related party loans and, to a lesser degree, from grants and loans. At March 31, 2009, we had cash of approximately \$2.7 million. We anticipate, based on our current proposed plans and assumptions relating to our operations (including the timetable of, and costs associated with, new product development), the recent exercise of certain of our outstanding warrants, that our current working capital and committed financing will be sufficient to satisfy our contemplated cash requirements through approximately the fourth quarter of 2009, assuming that we do not accelerate the development of other opportunities available to us, engage in an extraordinary transaction or otherwise face unexpected events, costs or contingencies, any of which could effect our cash requirements.

We expect to receive an additional aggregate \$31.9 million from Meda representing milestone payments in connection with FDA approval and commercial launch of ONSOLIS in both the U.S. (\$26.9 million) and Europe (\$5 million). However, if ONSOLIS is not approved in either or both of the U.S. and Europe and we do not receive such payments, and given that our current cash on hand will not fully fund all development costs of our leading product formulations, we may need to raise additional capital to fund our anticipated operating expenses and progress our business plans. If ONSOLIS is not approved, we may be unable to find the needed capital, whether from external sources or related parties, to progress our business plan. If additional financing is not available when required or is not available on acceptable terms, we may be unable to fund our operations and planned growth, develop or enhance our technologies, take advantage of business opportunities or respond to competitive market pressures. Any negative impact on our operations may make the raising of capital more difficult and may also result in a lower price for our securities.

We may have difficulty raising any needed additional capital.

We may have difficulty raising needed capital in the future as a result of, among other factors, our lack of an approved product and revenues from sales, as well as the inherent business risks associated with our company and present and future market conditions. Our business currently does not generate any sales, and current sources of revenue are limited and may not be sufficient to meet our present and future capital requirements. We have expended and plan to continue to expend substantial funds in the research, development and pre-clinical and clinical testing of our drug delivery technologies and product candidates. We will require additional funds to conduct research and development, establish and conduct pre-clinical and clinical trials, secure clinical and commercial-scale manufacturing arrangements and provide for the marketing and distribution, especially if ONSOLIS is not approved by the FDA and we therefore do not receive expected additional milestone payments from Meda. If adequate funds are unavailable, we may be required to delay, reduce the scope of or eliminate one or more of our research, development or commercialization programs, product launches or marketing efforts, any of which may materially harm our business, financial condition and results of operations.

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Our long term capital requirements are subject to numerous risks.

Our long term capital requirements are expected to depend on many factors, including, among others:

the number of potential formulations, products and technologies in development;

continued progress and cost of our research and development programs;

progress with pre-clinical studies and clinical trials;

time and costs involved in obtaining regulatory (including FDA) clearance;

costs involved in preparing, filing, prosecuting, maintaining and enforcing patent, trademark and other intellectual property claims;

costs of developing sales, marketing and distribution channels and our ability to sell our drug formulations or products;

costs involved in establishing manufacturing capabilities for commercial quantities of our drug formulations or products;

competing technological and market developments;

market acceptance of our drug formulations or products;

costs for recruiting and retaining employees and consultants;

costs for training physicians; and

legal, accounting, insurance and other professional and business related costs.

We may consume available resources more rapidly than currently anticipated, resulting in the need for additional funding. We may seek to raise any necessary additional funds through the exercising of our public warrants, equity or debt financings, collaborative arrangements with corporate partners or other sources, which may be dilutive to existing stockholders or otherwise have a material effect on our current or future business prospects.

Our additional financing requirements could result in dilution to existing stockholders.

The additional financings which we have undertaken and which we will in the future require, have and may be obtained through one or more transactions which have diluted or will dilute (either economically or in percentage terms) the ownership interests of our stockholders. Further, we may not be able to secure such additional financing on terms acceptable to us, if at all. We have the authority to issue additional shares of common stock and preferred stock, as well as additional classes or series of ownership interests or debt obligations which may be convertible into any one or more classes or series of ownership interests. We are authorized to issue 45 million shares of common stock and 5 million shares

of preferred stock. Such securities may be issued without the approval or other consent of our stockholders.

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If we breach our agreements with CDC, CDC has rights to gain control of our ONSOLIS asset.

Under our agreements with CDC IV, LLC, which we have previously entered into in connection with the development of ONSOLIS, if we do not meet certain conditions, CDC can assume control of the ONSOLIS product and related intellectual property assets. For example, in the event that we do not diligently pursue the development and regulatory approval of ONSOLIS or encounter certain specified negative circumstances regarding the development of ONSOLIS, CDC has the right to require the assignment of our ONSOLIS assets to CDC and to pursue development and commercialization of ONSOLIS pursuant to an exclusive, world-wide, royalty-free license, which includes the right to sublicense. CDC has made claims against us in the past under our agreements with them. Our loss of ONSOLIS to CDC would have a material adverse effect on our business.

CDC's right of first refusal on future financings of ours could impede our ability to raise capital.

Under our May 2006 Securities Purchase Agreement with CDC, as amended, until such time as our public share price reaches \$9 for certain time periods, in the event that we seek to raise money through the offer and sale of debt or equity securities, we must first offer CDC an opportunity to provide financing to us. If CDC elects to exercise its right to such opportunity, we must negotiate exclusively with CDC the terms of a financing for 30 days which must match the terms of the financing we present to them. If no terms are agreed to, we may pursue a financing with a third party for 60 days, but only on terms and conditions no less favorable to us than the terms and conditions presented to CDC. CDC has exercised similar rights to our detriment in the past, and it is possible that CDC will seek to exercise this right again in the future. The existence or alleged existence of CDC's right of first refusal, or CDC's exercise thereof or claims related thereto, has and may in the future deter potential investors from providing us needed financing, which would have a material adverse effect on our operations and viability as a company.

Acceptance of our formulations or products in the marketplace is uncertain and failure to achieve market acceptance will prevent or delay our ability to generate revenues.

Our future financial performance will depend, at least in part, upon the introduction and physician and patient acceptance of our proposed formulations or products. Even if approved for marketing by the necessary regulatory authorities, our formulations or products may not achieve market acceptance. The degree of market acceptance will depend upon a number of factors, including:

receipt of regulatory clearance of marketing claims for the uses that we are developing;

establishment and demonstration of the advantages, safety and efficacy of our formulations, products and technologies;

pricing and reimbursement policies of government and third-party payers such as insurance companies, health maintenance organizations and other health plan administrators;

our ability to attract corporate partners, including pharmaceutical companies, to assist in commercializing our proposed formulations or products; and

our ability to market our formulations or products.

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Physicians, various other health care providers, patients, payers or the medical community in general may be unwilling to accept, utilize or recommend any of our proposed formulations or products. If we are unable to obtain regulatory approval, or are unable to manufacture, commercialize and market our proposed formulations or products when planned, we may not achieve any market acceptance or generate revenue.

We are dependent on our collaborative agreements for the development of our drug delivery technologies and business development which exposes us to the risk of reliance on the viability of third parties.

In conducting our research and development activities, we currently rely, and will continue to rely, on numerous collaborative agreements with third parties such as manufacturers, contract research organizations, commercial partners, universities, governmental agencies and not-for-profit organizations for both strategic and financial resources. Key among these agreements is our U.S. and European commercialization agreements with Meda and our manufacturing development and supply agreement with Aveva (one of the selling stockholders named herein) and LTS Lohmann Therapie-Systeme AG, or LTS, relating to ONSOLIS and with LTS relating to BEMA Buprenorphine. The loss of, or failure to perform by us or our partners under, any applicable agreements or arrangements, or our failure to secure additional agreements for other products in development, would substantially disrupt or delay our research and development and commercialization activities, including our in-process and anticipated clinical trials. Any such loss would likely increase our expenses and materially harm our business, financial condition and results of operation. This is particularly true with regard to our relationship with Meda, who is our worldwide commercialization partner for our lead product ONSOLIS .

In addition, under our collaborative agreements with Meda, we are responsible for paying the certain costs relating to ONSOLIS . Our inability to adequately project or control such costs would have a material adverse effect on our potential profits from such agreements.

We are exposed to product liability, pre-clinical and clinical liability risks which could place a substantial financial burden upon us, should law suits be filed against us.

Our business exposes us to likely product liability and other liability risks that are inherent in the testing, manufacturing and marketing of pharmaceutical formulations and products. We expect that such claims are likely to be asserted against us at some point. In addition, the use in our clinical trials of pharmaceutical formulations and products and the subsequent sale of these formulations or products by us or our potential collaborators may cause us to bear a portion of or all product liability risks. A successful liability claim or series of claims brought against us could have a material adverse effect on our business, financial condition and results of operations.

Since we do not currently have any FDA-approved products or formulations, we do not currently have any product liability insurance covering commercialized products, and we maintain liability insurance relating only to clinical trials on our products in development. We may be unable to obtain or maintain adequate product liability insurance on acceptable terms, if at all, and there is a risk that our insurance will not provide adequate coverage against our potential liabilities. Furthermore, our current and potential partners with whom we have collaborative agreements or our future licensees may not be willing to indemnify us against these types of liabilities and may not themselves be sufficiently insured or have sufficient assets to satisfy any product liability claims. Claims or losses in excess of any product liability insurance coverage that may be obtained by us could have a material adverse effect on our business, financial condition and results of operations.

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If we receive FDA approval for ONSOLIS, we will need to obtain product liability insurance. Such insurance is costly, and due to the nature of the pharmaceutical products underlying ONSOLIS, we may not be able to obtain such insurance, or, if we do, we may not be able to do so on economically feasible terms. If an ONSOLIS-related action is brought against us prior to our obtaining product liability insurance for ONSOLIS, we could face crushing liability.

We may be sued by third parties who claim that our products, and formulations, methods of manufacture or methods of use infringe on their intellectual property rights.

We may be exposed to future litigation by third parties based on claims that our technologies, formulations, methods, or products infringe the intellectual property rights of others or that we have misappropriated the trade secrets of others. This risk is exacerbated by the fact that the validity and breadth of claims covered in pharmaceutical patents are complex. Any litigation or claims against us, whether or not valid, could result in substantial costs, could place a significant strain on our financial and human resources and could harm our reputation. Most of our license agreements require that we pay the costs associated with defending this type of litigation. Such a situation may force us to do one or more of the following:

incur significant costs in legal expenses for defending against a patent infringement suit;

cease selling, making, importing, incorporating or using one or more or all of our technologies and/or formulations or products that incorporate the challenged intellectual property, which would adversely affect our revenue;

obtain a license from the holder of the infringed intellectual property right, which license may be costly or may not be available on reasonable terms, if at all; or

redesign our formulations or products, which would be costly and time-consuming.

With respect to our BEMA™ delivery technology, the mucoadhesive erodible drug delivery device technology space is congested. There is a risk that a court of law in the United States or elsewhere could determine that ONSOLIS or another of our BEMA based products is in conflict with or covered by external patents. We have been granted non-exclusive license rights to European Patent No. 949 925, which is controlled by LTS to market ONSOLIS within the countries of the European Union. Freedom to operate searches and analyses is currently ongoing, but has not been completed for other proposed BEMA™ based products.

With respect to our Bioral technology, we are currently aware of United States patent 5,616,334 dealing with lipid formulations of Amphotericin B products. We do not believe that our Bioral products are covered by or in conflict with this patent, although there is a risk that a court of law in the United States might determine otherwise. Accordingly, we do not believe that we require a license under this patent. If a court were, however, to determine that we were infringing this or other patents and that those patents were valid, we might be required to seek one or more licenses to commercialize our Bioral formulation of Amphotericin B. We may be unable to obtain such licenses from the patent holders. In addition, if we were unable to obtain a license, or if the terms of the license were onerous, there may be a material adverse effect upon our business plan to commercialize these products.

If a lawsuit were to be filed against us for patent infringement, we would incur significant attorney costs to defend ourselves. Furthermore, if a court were to determine that we infringe any other patents and that such patents are valid, we might be required to seek one or more licenses to

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commercialize our Bioral and/or BEM^{AM} products (including, without limitation, ONSOLIS). We may be unable to obtain such licenses from the patent holders. In addition, if we were unable to obtain a license, or if the terms of the license were onerous, we might be precluded from developing or commercializing these products, which would likely have a material adverse effect on our results of operations and business plans.

In addition, certain portions of the development of our cochleate technology were supported by funding from the United States government. This support provides the United States government certain rights in technologies developed solely by government employees. We believe to the extent the United States government would have rights in technologies developed under our agreements we may need to obtain a license, likely royalty bearing, relating to the United States government's rights in the technology. Rights to negotiate a license to any United States government rights are provided for in our agreements.

If we are unable to adequately protect or enforce our rights to intellectual property or secure rights to third-party patents, we may lose valuable rights, experience reduced market share, assuming any, or incur costly litigation to, enforce, maintain or protect such rights.

Our ability to license, enforce and maintain patents, maintain trade secret protection and operate without infringing the proprietary rights of others will be important to our commercializing any formulations or products under development. The current and future development of our drug delivery technologies is contingent upon whether we are able to maintain licenses and access patented technologies. Without these licenses, the use of technologies would be limited and the sales of our products could be prohibited. Therefore, any disruption in access to the technologies could substantially delay the development and sale of our products.

The patent positions of biotechnology and pharmaceutical companies, including ours which involves licensing agreements, are frequently uncertain and involve complex legal and factual questions. In addition, the coverage claimed in a patent application can be significantly reduced before the patent is issued. Consequently, our patents, patent applications and licensed rights may not provide protection against competitive technologies or may be held invalid if challenged or could be circumvented. Our competitors may also independently develop drug delivery technologies or products similar to ours or design around or otherwise circumvent patents issued to us or licensed by us. In addition, the laws of some foreign countries may not protect our proprietary rights to the same extent as U.S. law.

We also rely upon trade secrets, technical know-how and continuing technological innovation to develop and maintain our competitive position. We require our employees, consultants, advisors and collaborators to execute appropriate confidentiality and assignment-of-inventions agreements with us. These agreements provide that materials and confidential information developed or made known to the individual during the course of the individual's relationship with us is to be kept confidential and not disclosed to third parties except in specific circumstances. These agreements may be breached, and in some instances, we may not have an appropriate remedy available for breach of the agreements. Furthermore, our competitors may independently develop substantially equivalent proprietary information and techniques, reverse engineer, or otherwise gain access to our proprietary technology. We may be unable to meaningfully protect our rights in trade secrets, technical know-how and other non-patented technology.

Although our trade secrets and technical know-how are important, our continued access to patented technology is a significant factor in the development and commercialization of our drug delivery products. Aside from the general body of scientific knowledge from other drug delivery processes and

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lipid technology, access to patented technologies, to the best of our knowledge and based upon our current scientific data, is the only intellectual property necessary to develop and apply our Bioral™ and BEMA™ drug delivery systems to the drugs to which we are attempting to apply them.

We may have to resort to costly and time consuming litigation to protect or enforce our rights under certain intellectual property, or to determine their scope, validity or enforceability. Enforcing or defending our rights is expensive, could cause significant diversion of our resources and may not prove successful. Any failure to enforce or protect our rights could cause us to lose the ability to exclude others from using our technologies to develop or sell competing products.

We are dependent on third party suppliers for key components of our delivery technologies and products.

Key components of our drug delivery technologies may be provided by sole or limited numbers of suppliers, and supply shortages or loss of these suppliers could result in interruptions in supply or increased costs. Certain components used in our research and development activities, such as the active pharmaceutical component of our products, and lipids, are currently purchased from a single or a limited number of outside sources. The reliance on a sole or limited number of suppliers could result in:

potential delays associated with research and development and pre-clinical and clinical trials due to an inability to timely obtain a single or limited source component;

our potential inability to timely obtain an adequate supply of required components; and

the potential for reduced control over pricing, quality and timely delivery.

Except for our agreements with Aveva and LTS, we do not have long-term agreements with any of our suppliers and, therefore, the supply of a particular component could be terminated without penalty to the supplier. Any interruption in the supply of components from Aveva or other third party suppliers could cause us to seek alternative sources of supply or manufacture these components internally. If the supply of any components is interrupted, components from alternative suppliers may not be available in sufficient purity or in volumes within required time frames, if at all, to meet our needs. This could delay our ability to complete clinical trials, obtain approval for commercialization or commence marketing; or cause us to lose sales, force us into breach of other agreements, incur additional costs, delay new product introductions or harm our reputation. Furthermore, components from a new supplier may not be identical to those provided by the original supplier. Such differences, if they exist could have material effects on our overall business plan and timing, could fall outside of regulatory requirements, affect product formulations or the safety and effectiveness of our products that are being developed.

We have limited manufacturing experience and therefore depend on third parties to formulate and manufacture our products. We may not be able to secure or maintain the manufacture of sufficient quantities or at an acceptable cost necessary to successfully commercialize our products.

Our expertise is primarily in the research and development and pre-clinical and clinical trial phases of product development. We have more limited experience or expertise in the formulation and manufacturing of our products and have limited equipment and no facilities of our own from which these activities could be performed. Therefore, we are dependent on third parties for our formulation development, manufacturing and the packaging of our products. This may expose us to the risk of not being able to directly oversee the production and quality of the manufacturing process and provide ample commercial supplies to successfully launch and maintain the marketing of our products. Furthermore,

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these third party contractors, whether foreign or domestic, may experience regulatory compliance difficulty, mechanical shut downs, employee strikes, or any other unforeseeable acts that may delay or limit production. Our inability to adequately establish, supervise and conduct (either ourselves or through third parties) all aspects of the formulation and manufacturing processes would have a material adverse effect on our ability to commercialize our products.

There are risks associated with our reliance on third parties for marketing, sales, managed care and distribution infrastructure and channels.

We expect that we will be required to enter into agreements with commercial partners (such as our agreements with Meda) to engage in sales, marketing and distribution efforts around our products in development. We may be unable to establish or maintain third-party relationships on a commercially reasonable basis, if at all. In addition, these third parties may have similar or more established relationships with our competitors. If we do not enter into relationships with third parties for the sales and marketing of our proposed formulations or products, we will need to develop our own sales and marketing capabilities.

We may be unable to engage qualified distributors. Even if engaged, these distributors may:

fail to satisfy financial or contractual obligations to us;

fail to adequately market our formulations or products;

cease operations with little or no notice to us; or

offer, design, manufacture or promote competing formulations or products.

If we fail to develop sales, managed care, marketing and distribution channels, we would experience delays in generating sales and incur increased costs, which would harm our financial results.

We will be subject to risks if we seek to develop our own sales force.

If we choose at some point to develop our own sales and marketing capability, our experience in developing a fully integrated commercial organization is limited. If we choose to establish a fully integrated commercial organization, we will likely incur substantial expenses in developing, training and managing such an organization. We may be unable to build a fully integrated commercial organization on a cost effective basis, or at all. Any such direct marketing and sales efforts may prove to be unsuccessful. In addition, we will compete with many other companies that currently have extensive and well-funded marketing and sales operations. Our marketing and sales efforts may be unable to compete against these other companies. We may be unable to establish a sufficient sales and marketing organization on a timely basis, if at all.

If we are unable to convince physicians as to the benefits of our proposed formulations or products, we may incur delays or additional expense in our attempt to establish market acceptance.

Use of our proposed formulations and products may require physicians to be informed regarding our proposed pharmaceutical formulations or products and the intended benefits. The time and cost of such an educational process may be substantial. Inability to successfully carry out this physician education process may adversely affect market acceptance of our proposed formulations or products. We may be unable to timely educate physicians regarding our intended pharmaceutical formulations or

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products in sufficient numbers to achieve our marketing plans or to achieve product acceptance. Any delay in physician education may materially delay or reduce demand for our formulations or products. In addition, we may expend significant funds toward physician education before any acceptance or demand for our formulations or products is created, if at all.

We currently rely on the facilities of the University of Medicine and Dentistry of New Jersey (UMDNJ) for a significant portion of our research activities relating to our Bioral technology, which activities could be materially delayed should we lose access to those facilities.

We have no research and development facilities of our own. As of the date of this prospectus, we are entirely dependent on third parties to use their facilities to conduct research and development. To date, we have relied on University of Medicine and Dentistry of New Jersey, which we refer to herein as UMDNJ, for this purpose in relation to our Bioral technology, as well as third party providers of testing and trial services. Additionally, the UMDNJ and Albany Medical College, which we refer to herein, collectively with UMDNJ, as the Universities, own certain of the patents to our encochleation drug delivery technology. Our inability to conduct research and development, or our inability to find suitable third party providers of research and development services on an outsourcing basis, may delay or impair our ability to gain FDA approval and commercialization of our drug delivery technologies, formulations and products.

We leased our research facility from UMDNJ under a lease that expired December 31, 2005. We are currently leasing the space on a month to month basis. No assurances can be given that we will be able to continue, extend or renew this arrangement, and we may decide to relocate, scale back and/or outsource such operations. Should the lease expire or if we are otherwise required to relocate on short notice, we do not currently have an alternate facility where we could relocate. The cost and time to establish or locate an alternative research and development facility to develop our technologies, or to find suitable third party providers of research and development services on an outsourcing basis, could be substantial and might delay gaining FDA approval and commercializing our formulations and products, assuming that we have not defaulted on the terms of our intellectual property licenses and can continue with our approval process.

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

The projections that our management may provide from time to time (including, but not limited to, those relating to potential peak sales amounts, product approval, production and supply dates, commercial launch dates, and other financial or operational matters) reflect numerous assumptions made by management, including assumptions with respect to our specific as well as general business, economic, market and financial conditions and other matters, all of which are difficult to predict and many of which are beyond our control. Accordingly, there is a risk that the assumptions made in preparing the projections, or the projections themselves, will prove inaccurate. There will be differences between actual and projected results, and actual results may be materially greater or less than those contained in the projections. The inclusion of the projections in (or incorporated by reference in) this prospectus should not be regarded as an indication that we or our management or representatives considered or consider the projections to be a reliable prediction of future events, and the projections should not be relied upon as such.

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Risks Related to Our Products in Development and Regulation

Our failure to obtain costly government approvals, including required FDA approvals, or to comply with ongoing governmental regulations relating to our technologies and proposed products and formulations could delay or limit introduction of our proposed formulations and products and result in failure to achieve revenues or maintain our ongoing business.

Our research and development activities and the manufacture and marketing of our proposed formulations and products are subject to extensive regulation for safety, efficacy and quality by numerous government authorities in the United States and abroad. Before receiving FDA or foreign regulatory clearance to market our proposed formulations and products, we will have to demonstrate that our formulations and products are safe and effective on the patient population and for the diseases that are to be treated. Clinical trials, manufacturing and marketing of drugs are subject to the rigorous testing and approval process of the FDA and equivalent foreign regulatory authorities. The Federal Food, Drug and Cosmetic Act and other federal, state and foreign statutes and regulations govern and influence the testing, manufacture, labeling, advertising, distribution and promotion of drugs and medical devices. As a result, regulatory approvals can take a number of years or longer to accomplish and require the expenditure of substantial financial, managerial and other resources.

Moreover, we may never receive regulatory approval of our proposed products and formulations, and we have received one non-approvable letter from the FDA in the past regarding our Emezine[®] NDA. We may be unable to obtain all required regulatory approvals, and our failure to do so would materially and adversely affect our business, results of operations and viability. This is especially true with respect to our lead product, ONSOLIS, on which we submitted an NDA in October 2007. We expect that a decision by FDA on our ONSOLIS NDA is forthcoming; however, it is possible that a decision by FDA could be significantly delayed.

Our failure to complete or meet key milestones relating to the development of our technologies and proposed products and formulations would significantly impair the viability of our company.

In order to be commercially viable, we must research, develop, obtain regulatory approval for, manufacture, introduce, market and distribute formulations or products incorporating our technologies. For each drug that we formulate with our drug delivery technologies, we must meet a number of critical developmental milestones, including:

a demonstration of the benefit from delivery of each specific drug through our drug delivery technologies;

a demonstration, through pre-clinical and clinical trials, that our drug delivery technologies are safe and effective; and

the establishment of a viable Good Manufacturing Process capable of potential scale-up.

The required capital and time-frame necessary to achieve these developmental milestones is uncertain, and we may not be able to achieve these milestones for any of our proposed formulations or products in development. Our failure to meet these or other critical milestones would adversely affect the viability of our company.