ALEXION PHARMACEUTICALS INC
Form S-3/A
May 24, 2005
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As filed with the Securities and Exchange Commission on May 24, 2005

Registration No. 333-123828

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Amendment No. 1

to

FORM S-3

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

ALEXION PHARMACEUTICALS, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware	**13-3648318**
(State or Other Jurisdiction of Incorporation or Organization)	**(I.R.S. Employer Identification Number)**

352 Knotter Drive

Cheshire, CT 06410

(203) 272-2596

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

Thomas I.H. Dubin

Vice President and General Counsel

352 Knotter Drive

Cheshire, CT 06410

(203) 272-2596

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

Copies of all communications, including all communications sent to the agent for service, should be sent to:

Merrill M. Kraines, Esq.

Lawrence A. Spector, Esq.

Fulbright & Jaworski L.L.P.

666 Fifth Avenue

New York, New York 10103

(212) 318-3000

Approximate date of commencement of proposed sale to the public: From time to time after the effective date of this Registration Statement.

If the only securities being registered on this Form are being offered pursuant to dividend or interest reinvestment plan, 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, as amended, other than securities offered only in connection with dividend or interest reinvestment plans, check the following box. x

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	**Amount To Be Registered**	**Proposed Maximum Price Per Unit**	**Proposed Maximum Aggregate Offering Price**	**Amount of Registration Fee**
1.375% Convertible Senior Notes due 2012	$150,000,000(1)	100%(2)	$150,000,000(2)	$17,655(7)
Common Stock, $.0001 par value per share	4,768,710 shares (3)(4)(5)	(5)	(5)	(6)

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(1) Represents the aggregate principal amount of the 1.375% Convertible Senior Notes due 2012 issued by Alexion Pharmaceuticals, Inc. prior to the date of this registration statement.
(2) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(i) under the Securities Act of 1933, as amended.
(3) All shares of common stock of the registrant carry rights to purchase Junior Participating Cumulative Preferred Stock, par value $.0001 per share. Such purchase rights are attached to and trade with the common stock. Value attributable to such rights, if any, is reflected in the market price of the common stock.
(4) Plus such additional indeterminate number of shares as may become issuable upon conversion of the 1.375% Convertible Senior Notes due 2012 being registered hereunder by means of adjustment of the conversion price.
(5) Such number represents the number of common shares that are initially issuable upon conversion of the notes registered hereby. For purposes of estimating the number of common shares issuable upon conversion of the notes, the registrant used a conversion rate of 31.7914 per $1,000 principal amount of notes.
(6) Pursuant to Rule 457(i) under the Securities Act of 1933, as amended, there is no filing fee with respect to the shares of common stock issuable upon conversion of the 1.375% Convertible Senior Notes due 2012 because no additional consideration will be received upon conversion.
(7) This fee was previously paid in connection with the Registrant s initial filing on Form S-3 filed on April 4, 2005.

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, as amended, or until the registration statement shall become effective on such date as the Securities and Exchange 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. The selling securityholders 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.

SUBJECT TO COMPLETION, DATED MAY 24, 2005

PROSPECTUS

$150,000,000

ALEXION PHARMACEUTICALS, INC.

1.375% Convertible Senior Notes Due 2012 and

Shares of Common Stock Issuable Upon Conversion of the Notes

This prospectus covers resales by selling securityholders of our 1.375% convertible senior notes due 2012 and shares of our common stock into which the notes are convertible.

The notes will mature on February 1, 2012. We will pay interest on the notes each February 1 and August 1. We will make the first interest payment on August 1, 2005.

We do not have the right to redeem the notes at our option prior to February 1, 2012.

The notes are convertible into our common stock at any time before February 1, 2012 at a conversion price of approximately $31.46 per share, subject to adjustment for specified events. The initial conversion price is equivalent to a conversion rate of approximately 31.7914 shares per $1,000 principal amount of notes.

Holders may require us to repurchase their notes upon the occurrence of a designated event in cash at 100% of the principal amount of the notes being repurchased, plus accrued and unpaid interest, if any. In addition, holders may be entitled to receive additional shares of common stock if they elect to convert their notes in connection with the occurrence of a designated event that is also a fundamental change that occurs prior to the maturity date of the notes.

The notes are senior unsecured obligations and rank, in right of payment, the same as all of our existing and future senior unsecured indebtedness. The notes rank senior in right of payment to all of our subordinated indebtedness and will be effectively subordinated to any secured indebtedness.

Our common stock is quoted on The Nasdaq National Market under the symbol ALXN. The last reported sale price of our common stock on May 23, 2005 was $22.70 per share. Prior to this offering the notes have been eligible for trading in the PORTAL Market[SM], a subsidiary of The Nasdaq Stock Market, Inc.

We do not intend to list the notes on any securities exchange. Although the notes issued in the private placement to initial purchasers are eligible for trading in the PORTAL Market[SM], the notes sold using this prospectus will no longer be eligible for trading in the PORTAL Market[SM].

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See Risk Factors beginning on page 6 of this prospectus to read about factors you should consider before buying the notes or 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 _____, 2005

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INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

We are incorporating by reference into this prospectus the following documents filed with the SEC (excluding any portions of such documents that have been furnished but not filed for purposes of the Exchange Act):

- our proxy statement on Schedule 14A, filed November 4, 2004;
- our annual report on Form 10-K for the fiscal year ended July 31, 2004, filed on September 28, 2004;
- our quarterly reports on Form 10-Q for the quarterly periods ended October 31, 2004 and January 31, 2005, filed on December 6, 2004 and March 8, 2005 respectively;
- our current reports on Form 8-K, filed on November 18, 2004, December 13, 2004, December 16, 2004, January 19, 2005, January 20, 2005, January 25, 2005, March 14, 2005, and March 16, 2005;

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our registration statement on Form 8-A, filed on February 21, 1997, as amended by Amendment No. 1 to Form 8-A filed on October 6, 2000, Amendment No. 2 to Form 8-A filed on February 12, 2002 and Amendment No. 3 to Form 8-A filed on November 17, 2004; and

our registration statement on Form 8-A, filed on February 12, 1996.

Any statement contained in this prospectus or a document incorporated or deemed to be incorporated by reference in this prospectus will be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus or in any other subsequently filed document that is deemed to be incorporated by reference in this prospectus modifies or supersedes the statement. Any statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

All documents that we file with the SEC pursuant to Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, or the Exchange Act, from the date of this prospectus to the end of the offering of the notes and common shares issuable upon conversion of the notes shall also be deemed to be incorporated herein by reference and will automatically update information in this prospectus.

We will provide a copy of any and all of the information that is incorporated by reference in this prospectus to any person, without charge, upon written or oral request. Requests for such copies should be directed to the following: Alexion Pharmaceuticals, Inc., 352 Knotter Drive, Cheshire, Connecticut 06410, Attention: General Counsel, telephone number (203) 272-2596.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

Some of the statements in this prospectus are forward-looking statements, as defined in the Private Securities Litigation Reform Act of 1995, or the PSLRA. Forward-looking statements in this prospectus are being made pursuant to the PSLRA and with the intention of obtaining the benefits of the safe harbor provisions of the PSLRA. Forward-looking statements are those that do not relate solely to historical fact. They include, but are not limited to, any statement that may predict, forecast, indicate or imply future results, performance, achievements or events. You can identify these statements by the use of words like intend, plan, believe, anticipate, may, will, could, continue, expect an these words or comparable words or phrases of similar meaning. They may relate to, among other things:

our ability to operate profitably;

our substantial capital requirements and financial risks;

fluctuations in our revenues and results of operations;

our ability to manage future growth;

our ability to maintain effective systems of disclosure controls and internal controls;

our competition; and

other risks detailed in the section entitled Risk Factors beginning on page 6.

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These forward-looking statements reflect our current views with respect to future events and are based on assumptions and subject to risks and uncertainties, including, but not limited to, economic, competitive, governmental and technological factors outside of our control, that may cause actual results to differ materially from trends, plans or expectations set forth in the forward-looking statements. These risks and uncertainties may include those discussed in Risk Factors. We cannot assess the extent to which any factor, or combination of factors, may cause actual results to differ from those contained in forward-looking statements. Given these risks and uncertainties, we urge you to read this prospectus completely and with the understanding that actual future results may be materially different from what we plan or expect. Also, these forward-looking statements present our estimates and assumptions only as of the date of this prospectus. Except for our obligation to disclose material information as and when required by federal securities laws, we do not intend to update you concerning any future revisions to any forward-looking statements to reflect events or circumstances occurring after the date of this prospectus. We expressly disclaim any obligation to release publicly any updates or revisions to these forward-looking statements to reflect any change in our expectations.

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SUMMARY

This summary provides an overview of selected information and does not contain all the information you should consider. You should read the entire prospectus, including the section entitled Risk Factors and our consolidated financial statements and related notes, included elsewhere and incorporated by reference in this prospectus carefully before making an investment decision. When used in this prospectus, unless otherwise indicated, the terms we, our, and us refer to Alexion and its subsidiaries.

The Company

We are engaged in the discovery and development of therapeutic products to treat patients with a wide array of severe disease states, including hematologic, cardiovascular, autoimmune disorders, and cancer. Since our incorporation in January 1992, we have devoted substantially all of our resources to drug discovery, research, and product and clinical development. Additionally, through our wholly owned subsidiary, Alexion Antibody Technologies, Inc., or AAT, we are engaged in the discovery and development of a portfolio of additional antibody therapeutics targeting severe unmet medical needs.

We have significant expertise in the discovery and development of antibody therapeutics, as well as in understanding and inhibiting the aberrant manifestation of a component of the human immune system known as complement. Our two lead product candidates are each in Phase III clinical development. One of our product candidates, eculizumab, is in Phase III clinical development for treatment of a chronic hematologic disease and our second product candidate, pexelizumab, is in Phase III clinical development for two distinct acute cardiac indications. We designed both of these product candidates with the goal of eliciting the intended clinically therapeutic effect by inhibiting the aberrant manifestation of complement.

Our two lead product candidates are therapeutic antibodies that address specific diseases that arise when the human immune system produces inflammation in the human body. Antibodies are proteins that bind specifically to selected targets, or antigens, in the body. After the antibody binds to its target, it may activate the body s immune system against the target, block activities of the target or stimulate activities of the target.

We are developing eculizumab, an antibody that inhibits complement, for the treatment of a rare blood disorder known as Paroxysmal Nocturnal Hemoglobinuria, or PNH. We are developing pexelizumab, a single-chain antibody that also inhibits complement, in collaboration with Procter and Gamble Pharmaceuticals, or P&G, as a therapeutic to reduce the incidence of death, myocardial infarction, or heart attack, and other complications associated with coronary artery bypass graft, or CABG, surgery. We are also developing pexelizumab as a therapeutic to reduce the incidence of death and morbidity often experienced by patients suffering acute myocardial infarction, or AMI, who receive angioplasty, a procedure for opening up narrowed or blocked arteries that supply blood to the heart.

To date, we have studied our two lead product candidates in a variety of clinical development programs enrolling over 6,600 patients in clinical trials. In addition to our Phase III programs, we have initiated the development of a global patient registry for PNH patients, may also pursue additional indications for eculizumab, and have other product candidates in earlier stages of development.

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To date, we have not received any revenues from the sale of our products. We have incurred operating losses since our inception. As of January 31, 2005, we had an accumulated deficit of approximately $383.0 million. We expect to incur substantial and increasing operating losses for the next several years due to expenses associated with product research and development, pre-clinical studies and clinical testing, regulatory activities, manufacturing development, scale-up and commercial-scale manufacturing, pre-commercialization activities and developing a sales and marketing force. We will need to obtain additional financing to cover these costs.

We were incorporated in Delaware in 1992. The address of our principal executive office is 352 Knotter Drive, Cheshire, CT 06410, and our telephone number is (203) 272-2596.

Recent Developments

On March 8, 2005, we appointed Ruedi E. Waeger, Ph.D. as a member of our Board of Directors. Most recently, Dr. Waeger, 62, was President and Chief Executive Officer of Aventis Behring L.L.C., a global plasma therapeutics product business which was acquired by CSL Ltd last year to form ZLB Behring. While at Aventis Behring, Dr. Waeger played a key role in guiding the company as it refined its product pipeline and built its extensive manufacturing facilities. Dr. Waeger became the head of Aventis Behring following the merger of the owners of Centeon L.L.C., a leader in plasma proteins, where Dr. Waeger was Chief Executive Officer. Prior thereto, Dr. Waeger was President and Chief Executive Officer of ZLB Central Laboratories, Blood Transfusion Service of the Swiss Red Cross and before that he spent more than 20 years at Sandoz Ltd., where he had consecutive worldwide responsibilities for Strategic Research and Development Planning; Human Resource Management; and Marketing; including responsibility for three global product launches. Dr. Waeger currently sits on the boards of Guidant Corporation and PharmaServ GmbH & Co, where he is Chairman. He earned a Ph.D. in Biochemistry from the Swiss Federal Institute of Technology.

On March 16, 2005, we announced the resignation of Carsten Boess, our Chief Financial Officer. Mr. Boess is leaving to pursue other opportunities. David Keiser, our President and Chief Operating Officer, will temporarily resume the direct responsibility for functions managed by Mr. Boess while a search for a permanent replacement is conducted.

On April 12, 2005, we announced that we had completed enrollment for our pivotal Phase III efficacy trial of our product candidate eculizumab in patients with PNH.

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The Offering

Securities Offered	$150,000,000 principal amount of 1.375% convertible senior notes due 2012 convertible into an aggregate of 4,768,710 shares of our common stock, subject to adjustment for specified events.
Maturity Date	February 1, 2012.
Interest	1.375% per annum on the principal amount, payable semi-annually in arrears in cash on February 1 and August 1 of each year, beginning August 1, 2005.
Ranking	The notes are our general, unsecured obligations, rank equally in right of payment to our future senior unsecured debt, junior to any secured indebtedness to the extent of any assets securing such indebtedness and senior to any subordinated indebtedness. The notes are structurally subordinated to all liabilities of our subsidiaries to the extent of the assets of such subsidiaries. As of March 15, 2005, we had $150 million of senior debt and our subsidiaries did not have any outstanding debt. The indenture governing the notes does not limit the amount of indebtedness that we or any of our subsidiaries may incur.
Redemption	We do not have the right to redeem any of the notes at our option prior to maturity.
Conversion	You may convert the notes into shares of our common stock at a conversion rate of 31.7914 shares per $1,000 principal amount of notes, representing a conversion price of approximately $31.46 per share, subject to adjustment at any time prior to the close of business on the final maturity date of the notes.
	In addition, subject to our rights described under Description of the Notes Public Acquirer Change of Control, if you elect to convert notes in connection with the occurrence of a designated event that is also a fundamental change that occurs prior to the

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	maturity date of the notes, you will be entitled to receive additional shares of common stock upon conversion in some circumstances as described under Description of the Notes Conversion of Notes Make Whole Payment Upon the Occurrence of a Designated Event that is also a Fundamental Change.
Public Acquirer Change of Control	In the case of a fundamental change that is a public acquirer change of control, as defined under Description of the Notes Public Acquirer Change of Control, we may, in lieu of adjusting the conversion rate as described in the preceding paragraph, elect to adjust the conversion rate and the related conversion obligation such that from and after the effective date of such public acquirer change of control, holders of the notes will be entitled to convert their notes into an adjusted number of shares of public acquirer common stock.
Designated Event	If a designated event, as described under Description of the Notes Redemption at Option of the Holder, occurs prior to maturity, you will have the right to require us to redeem all or part of your notes at a redemption price equal to 100% of their principal amount, plus accrued and unpaid interest and liquidated damages, if any, up to, but excluding, the redemption date.
Form and Denomination	The notes are issued in fully registered form in the minimum denomination of $1,000 and integral multiples of $1,000 in excess thereof.
Sinking Fund	None.
Registration Rights; Liquidated Damages	If we do not comply with certain covenants set forth in the Registration Rights Agreement, we will be required to pay liquidated damages. See Description of the Notes Registration Rights.
Use of Proceeds	We will not receive any cash proceeds from the sale of the notes or underlying common stock by the selling securityholders. We used proceeds from the sale of the notes to redeem our 5¾% Convertible Subordinated Notes due 2007 and will use the remainder for general corporate purposes.

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Listing and Trading of the Notes	We do not intend to list the notes on any national securities exchange. Although the notes issued in the initial private placement are eligible for trading in the PORTAL Market[SM], the notes sold using this prospectus will no longer be eligible for trading in the PORTAL Market[SM]. There is currently no public market for the notes.
Nasdaq Market Symbol of Alexion Pharmaceuticals, Inc. Common Stock	ALXN

For a more complete description of the terms of the notes, please read Description of the Notes on page 27. For a more complete description of our common stock, please read Description of Capital Stock on page 43.

Risk Factors

You should carefully consider all of the information contained or incorporated by reference in this prospectus prior to investing in the notes or our common stock. In particular, we urge you to carefully consider the information under Risk Factors beginning on page 6 of this prospectus, so that you understand the risks associated with an investment in our company.

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RISK FACTORS

This prospectus includes forward-looking statements. In particular, statements about our expectations, beliefs, plans, objectives, assumptions or future events or performance contained or incorporated by reference in this prospectus. We have based these forward-looking statements on our current expectations about future events. While we believe these expectations are reasonable, such forward-looking statements are inherently subject to risks and uncertainties, many of which are beyond our control. Our actual results may differ materially from those suggested by these forward-looking statements for various reasons, including those discussed below. Some of the key factors that could cause actual results to differ from our expectations are described below. Given these risks and uncertainties, you are cautioned not to place undue reliance on such forward-looking statements. The forward-looking statements included in this prospectus are made only as of the date hereof. We do not undertake and specifically decline any obligation to update any such statements or to publicly announce the results of any revisions to any of such statements to reflect future events or developments.

Risks Related To Our Business

If we continue to incur operating losses, we may be unable to continue our operations.

We have incurred losses since we started our company in January 1992. As of January 31, 2005, we had an accumulated deficit of approximately $383.0 million. If we continue to incur operating losses and fail to become a profitable company, we may be unable to continue our operations. Since we began our business, we have focused on research and development of product candidates. We have no products that are available for sale and do not know when we will have products available for sale, if ever. We expect to continue to operate at a net loss for at least the next several years as we continue our research and development efforts, continue to conduct clinical trials and develop manufacturing, sales, marketing and distribution capabilities. Our future profitability depends on our receiving regulatory approval of our product candidates and our ability to successfully manufacture and market approved drugs. The extent and the timing of our future losses and our profitability, if we are ever profitable, are highly uncertain.

We are subject to extensive government regulation; if we do not obtain regulatory approval for our drug products, we will not be able to sell our drug products.

We and our partners cannot sell or market our drugs without regulatory approval. If we or our partners do not obtain and maintain regulatory approval for our products, the value of our company and our results of operations will be harmed. In the United States, we or our partners must obtain and maintain approval from the U.S. Food and Drug Administration, or FDA, for each drug that we intend to sell. Obtaining FDA approval is typically a lengthy and expensive process, and approval is highly uncertain. Foreign governments also regulate drugs distributed outside the United States, whose approval can also be lengthy, expensive and highly uncertain. None of our product candidates has received regulatory approval to be marketed and sold in the United States or any other country. We may not receive regulatory approval for any of our product candidates for at least the next several years, if ever.

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We and our partners, contract manufacturers and suppliers are subject to rigorous and extensive regulation by the FDA, other federal and state agencies, and governmental authorities in other countries. These regulations apply both before and after approval of our product candidates, if our product candidates are ever approved, and cover, among other things, testing, manufacturing, quality control, labeling, advertising, promotion, and export of biologics. Failure to comply with the laws, including statutes and regulations, administered by the FDA or other agencies could result in administrative and judicial sanctions, including, warning letters; fines and other civil penalties; delay in approving or refusal to approve a product candidate; product recall or seizure; interruption of production; operating restrictions; injunctions; and criminal prosecution.

The FDA has granted fast track status for pexelizumab for use during cardiopulmonary bypass, or CPB, and for treatment of AMI, and for eculizumab in treatment of membranous nephritis. Although fast track status may expedite development and FDA review of an application, there can be no assurance that pexelizumab or eculizumab will be reviewed more expeditiously for their fast-track indications than would otherwise have been the case or will be approved promptly, or at all. Further, the FDA could revoke fast track status for pexelizumab or eculizumab.

The FDA has granted orphan drug designation for eculizumab in the treatment of PNH and membranous nephritis. Orphan drug designation does not convey any advantage in, or shorten the duration of, the FDA review and approval process. If a product which has an orphan drug designation subsequently receives the first FDA approval for the indication for which it has such designation, the product is entitled to orphan exclusivity, i.e., the FDA may not approve any other applications to market the same drug for the same indication for a period of seven years, except in limited circumstances.

If our drug trials are delayed or achieve unfavorable results, we will have to delay or may be unable to obtain regulatory approval for our products.

We must conduct extensive testing of our product candidates before we can obtain regulatory approval for our products. We need to conduct both preclinical animal testing and clinical human trials. These tests and trials may not achieve favorable results. We would need to reevaluate any drug that did not test favorably and either alter the study, the drug or the dose and perform additional or repeat tests, or abandon the drug development project. In those circumstances, we would not be able to obtain regulatory approval on a timely basis, if ever. Even if approval is granted, the approval may require limitations on the indicated uses for which the drug may be marketed.

Clinical trials completed to date have not achieved their primary endpoints.

In December 1999, we completed a Phase IIb trial of pexelizumab for the treatment of complications in patients after CABG with CPB, including the reduction of the frequency and severity of myocardial infarctions and frequency of death. The primary therapeutic pre-set goal of the trial, referred to as the primary endpoint, was not achieved. However, in the pre-specified population that included approximately 90% of the patient population (i.e., the 800 patients who had CABG surgery without valve surgery), those that received pexelizumab at the highest dose

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level experienced a statistically significant reduction in larger post-surgical heart attacks. Based on these results, in January 2002, we commenced enrollment of a Phase III clinical trial of pexelizumab in patients undergoing CABG with CPB. We completed the target patient enrollment of approximately 3,000 patients in February 2003. In August 2003, we disclosed preliminary results that indicated that the primary endpoint was not achieved with statistical significance. The primary endpoint in this Phase III trial was a composite of the incidence of death or myocardial infarction, measured at 30 days post-procedure, in patients undergoing CABG without simultaneous valve surgery.

We have concluded two Phase II studies with pexelizumab in AMI: one study in patients receiving angioplasty, a procedure for opening up narrowed or blocked arteries that supply blood to the heart, and the other in patients receiving thrombolytic therapy, a procedure for dissolving clots that block heart vessels. The angioplasty study, called COMMA, and the thrombolytic study, called COMPLY, completed patient enrollment in March 2002 and January 2002, respectively. Results from both studies were reported at the November 2002 annual meeting of the American Heart Association. In both studies, the primary endpoint of a reduction of myocardial infarction was not reached; however in the COMMA study, pexelizumab treatment was associated with a statistically significant, dose-dependent reduction in death.

In 2001, we announced the completion of a Phase IIa trial of eculizumab for the treatment of rheumatoid arthritis, or RA. The primary endpoint for this trial was met by the group of patients who received the mid-level, monthly dosing regimen of eculizumab, but patients who received higher or lower doses of eculizumab in the clinical trial did not achieve the primary endpoint. The primary endpoint in this Phase IIa trial was ACR 20 at 3.25 months.

In January 2004, we announced preliminary results of a Phase IIb study of eculizumab in approximately 350 RA patients. Results of the trial indicate that the primary endpoint was achieved with statistical significance in one of the dosing regimens (the monthly dosing arm), but not in the higher, bimonthly dosing arm.

Completion of these and other trials does not guarantee that we will initiate additional trials for our product candidates, that if the trials are initiated what the scope and phase of the trial will be or that they will be completed, or that if the trials are completed, the results will provide a sufficient basis to proceed with further trials or to apply for or receive regulatory approvals or to commercialize products. Results of trials could be inconclusive, requiring additional or repeat trials. If the results achieved in our clinical trials are insufficient to proceed to further trials or to regulatory approval of our product candidates our company would be materially adversely affected. Failure of a trial to achieve its pre-specified primary endpoint generally increases the likelihood that additional studies will be required if we determine to continue development of the product candidate, and reduces the likelihood of timely development of and regulatory approval to market the product candidate.

There are many reasons why drug testing could be delayed or terminated.

For human trials, patients must be recruited and each product candidate must be tested at various doses and formulations for each clinical indication. Also, to ensure safety and effectiveness, the effect of drugs often must be studied over a long period of time, especially for the chronic diseases that we are studying. Unfavorable results or insufficient patient enrollment in our clinical trials could delay or cause us to abandon a product development program.

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Additional factors that can cause delay or termination of our clinical trials include:

- slow patient enrollment;
- long treatment time required to demonstrate effectiveness;
- lack of sufficient supplies of the product candidate;
- adverse medical events or side effects in treated patients;
- the failure of patients taking the placebo to continue to participate in our clinical trials;
- lack of effectiveness of the product candidate being tested; and
- lack of sufficient funds.

We may expand our business through new acquisitions that could disrupt our business and harm our financial condition.

Our business strategy includes expanding our products and capabilities, and we may seek acquisitions to do so. Acquisitions involve numerous risks, including:

- substantial cash expenditures;
- potentially dilutive issuance of equity securities;
- incurrence of debt and contingent liabilities, some of which may be difficult or impossible to identify at the time of acquisition;
- difficulties in assimilating the operations of the acquired companies;
- diverting our management s attention away from other business concerns;
- risks of entering markets in which we have limited or no direct experience; and
- the potential loss of our key employees or key employees of the acquired companies.

We cannot assure you that any acquisition will result in short-term or long-term benefits to us. We may incorrectly judge the value or worth of an acquired company or business. In addition, our future success would depend in part on our ability to manage the rapid growth associated with some of these acquisitions. We cannot assure you that we will be able to make the combination of our business with that of acquired businesses or companies work or be successful. Furthermore, the development or expansion of our business or any acquired business or companies may require a substantial capital investment by us. We may not have these

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necessary funds or they might not be available to us on acceptable terms or at all. We may also seek to raise funds by selling shares of our stock, which could dilute current stockholders ownership interest in our company, or securities convertible into our stock, which could dilute current stockholders ownership interest in our company upon conversion.

If we fail to obtain the capital necessary to fund our operations, we will be unable to continue or complete our product development.

We believe we have sufficient capital to fund our operations and product development for at least twenty-four months. We may need to raise additional capital before or after that time to complete the development and commercialization of our product candidates. We are currently conducting or initiating several clinical trials. Funding needs may shift between programs and potentially accelerate and increase if we initiate new pivotal trials for our product candidates, including any pivotal clinical trial of pexelizumab for AMI patients undergoing angioplasty. We rely heavily on P&G to fund development of pexelizumab. If P&G were to terminate the pexelizumab collaboration, we could have to raise additional capital or find new collaboration partners in order to continue the development of pexelizumab.

Additional financing could take the form of public or private debt or equity offerings, equity line facilities, bank loans, collaborative research and development arrangements with corporate partners and/or the sale or licensing of some of our property. The amount of capital we may need depends on many factors, including:

- the existence, terms and status of collaborative arrangements and strategic partnerships, such as our collaboration with P&G;
- the progress, timing and scope of our research and development programs;
- the progress, timing and scope of our preclinical studies and clinical trials;
- the time and cost necessary to obtain regulatory approvals;
- the time and cost necessary to further develop manufacturing processes, arrange for contract manufacturing or build manufacturing facilities and obtain the necessary regulatory approvals for those facilities;
- the time and cost necessary to develop sales, marketing and distribution capabilities;
- the cost necessary to sell, market and distribute our products, if any are approved;
- changes in applicable governmental regulatory policies; and
- any new collaborative, licensing and other commercial relationships that we may establish.

We may not get funding when we need it or funding may only be available on unfavorable terms. If we cannot raise adequate funds to satisfy our capital requirements, we may have to delay, scale-back or eliminate our research and development activities or future

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operations. We might have to license our technology to others. This could result in sharing revenues that we might otherwise retain for ourselves. Any of these actions would harm our business.

We are significantly leveraged.

In January 2005, we completed the sale of $150 million principal amount of our 1.375% convertible senior notes due 2012 to qualified institutional buyers pursuant to Rule 144A under the Securities Act of 1933, as amended, or the Securities Act. The net proceeds of approximately $145.3 million from the 1.375% convertible senior notes due 2012 offering was applied to redeem our outstanding $120 million principal amount of 5¾% convertible subordinated notes due March 2007 and the remainder will be used for general corporate purposes. The degree to which we are leveraged could, among other things:

- make it difficult for us to make payments on our notes;
- make it difficult for us to obtain financing for working capital acquisitions or other purposes on favorable terms, if at all;
- make us more vulnerable to industry downturns and competitive pressures; and
- limit our flexibility in planning for, or reacting to changes in, our business.

Our ability to meet our debt service obligations will depend upon our future performance, which will be subject to financial, business and other factors affecting our operations, many of which are beyond our control.

If our collaboration with P&G is terminated or P&G reduces its commitment to our collaboration, our ability to develop and commercialize pexelizumab in the time expected, or at all, and our business would be harmed.

We rely heavily on P&G to perform development, obtain commercial manufacturing, and provide sales and marketing for pexelizumab. While we cannot assure you that pexelizumab will ever be successfully developed and commercialized, if P&G does not perform its obligations in a timely manner, or at all, our ability to commercialize pexelizumab will be significantly adversely affected. We rely on P&G to provide funding and additional resources for the development and commercialization of pexelizumab. These include funds and resources for:

- clinical development and clinical and commercial manufacturing;
- obtaining regulatory approvals; and
- sales, marketing and distribution efforts worldwide.

P&G has the right to terminate the collaboration or sublicense its collaboration rights at any time. Termination of our agreement with P&G would cause significant delays in the development of pexelizumab and result in significant additional development costs to us. If we were to continue development of pexelizumab following termination by P&G, we would need to

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fund the development and commercialization of pexelizumab on our own or identify a new development partner. We would need to develop or acquire replacement expertise in many areas necessary for the development and potential commercialization of pexelizumab, or enter into agreements with other companies with respect to those matters. We do not have the resources to replace some of the functions provided or funded by P&G. Accordingly, we might have to stop the development of pexelizumab or shift resources from other product development programs until alternative resources were obtained. Sublicense by P&G also could cause significant delays in the development of pexelizumab and result in substantial additional development costs to us. We might also have to repeat testing already completed with P&G. In addition, sublicense would introduce a new collaboration partner which could create new and additional risks to the development of pexelizumab that cannot be identified at this time.

We cannot guarantee that P&G will devote the resources necessary to successfully develop and commercialize pexelizumab in a timely manner, if at all. Furthermore, P&G may devote the necessary resources, but we may still not successfully develop and commercialize pexelizumab.

If we are unable to engage and retain third-party collaborators, our research and development efforts may be delayed.

We depend upon third-party collaborators to assist us in the development of our product candidates. If any of our existing collaborators breaches or terminates its agreement with us or does not perform its development work under an agreement in a timely manner, or at all, we would experience significant delays in the development or commercialization of our product candidates. We would also experience significant delays if we could not engage additional collaborators when required. In either event we would be required to devote additional funds or other resources to these activities or to terminate them. This would divert funds or other resources from other parts of our business.

We cannot assure you that:

- current collaboration arrangements will be continued in their current form;
- we will be able to negotiate acceptable collaborative agreements to develop or commercialize our product candidates;
- any arrangements with third parties will be successful; or
- current or potential collaborators will not pursue treatments for other diseases or seek other ways of developing treatments for our disease targets.

If the trading price of our common stock continues to fluctuate in a wide range, our stockholders will suffer considerable uncertainty with respect to an investment in our stock.

The trading price of our common stock has been volatile and may continue to be volatile in the future. Factors such as announcements of fluctuations in our or our competitors operating results or clinical or scientific results, fluctuations in the trading prices or business prospects of our competitors and collaborators, including, but not limited to P&G, changes in our prospects,

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and market conditions for biotechnology stocks in general could have a significant impact on the future trading prices of our common stock and our convertible senior notes. In particular, the trading price of the common stock of many biotechnology companies, including ours, has experienced extreme price and volume fluctuations, which have at times been unrelated to the operating performance of the companies whose stocks were affected. This is due to several factors, including general market conditions, the announcement of the results of our clinical trials or product development and the results of our attempts to obtain FDA approval for our products. In particular, since August 1, 1999, the sales price of our common stock has ranged from a low of $9.05 per share to a high of $119.88 per share. While we cannot predict our future performance, if our stock price continues to fluctuate in a wide range, an investment in our stock may result in considerable uncertainty for an investor.

If we cannot protect the confidentiality and proprietary nature of our trade secrets, our business and competitive position will be harmed.

Our business requires using sensitive technology, techniques and proprietary compounds that we protect as trade secrets. However, since we are a small company, we also rely heavily on collaboration with suppliers, outside scientists and other drug companies. Collaboration presents a strong risk of exposing our trade secrets. If our trade secrets were exposed, it would help our competitors and adversely affect our business prospects.

In order to protect our drugs and technology more effectively, we need to obtain and maintain patents covering the drugs and technologies we develop. We may obtain patents through ownership or license. Our drugs are expensive and time-consuming to test and develop. Without patent protection, competitors may copy our methods, or the chemical structure or other aspects of our drugs. Even if we obtain and maintain patents, the patents may not be broad enough to protect our drugs from copycat products.

If we are found to be infringing on patents owned by others, we may be forced to pay damages to the patent owner and obtain a license to continue the manufacture, sale or development of our drugs and/or pay damages. If we cannot obtain a license, we may be prevented from the manufacture, sale or development of our drugs.

Parts of our, including our in-licensed, technology, techniques and proprietary compounds and potential drug candidates may conflict with patents owned by or granted to others. If we cannot resolve these conflicts, we may be liable for damages, be required to obtain costly licenses or be stopped from manufacturing, using or selling our products or conducting other activities. For example, we are aware of broad patents owned by others relating to the manufacture, use and sale of recombinant humanized antibodies, recombinant humanized single chain antibodies, recombinant human antibodies, and recombinant human single chain antibodies. Many of our product candidates are genetically engineered antibodies, including recombinant humanized antibodies, recombinant humanized single chain antibodies, recombinant human antibodies, and recombinant human single chain antibodies.

We have received notices from the owners of some of these patents claiming that their patents may be relevant to the development, manufacture or sale of some of our drug candidates,

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including pexelizumab and eculizumab. In response to some of these notices, we have obtained licenses, or expect to obtain licenses. However, with regard to other patents, we have either determined in our judgment that:

- our products do not infringe the patents;
- we do not believe the patents are valid; or
- we have identified and are testing various modifications that we believe should not infringe the patents and which should permit commercialization of our product candidates.

Any patent holders could sue us for damages and seek to prevent us from manufacturing, selling or developing our drugs. Legal disputes can be costly and time consuming to defend. If any patent holder successfully challenges our judgment that our products do not infringe their patents or that their patents are invalid, we could be required to pay costly damages or to obtain a license to sell or develop our drugs. A required license may be costly or may not be available on acceptable terms, if at all. A costly license, or inability to obtain a necessary license would have a material adverse effect on our business.

There can be no assurance that we would prevail in a patent infringement action; will be able to obtain a license to any third party patent on commercially reasonable terms; successfully develop non-infringing alternatives on a timely basis; or license alternative non-infringing technology, if any exists, on commercially reasonable terms. Any impediment to our ability to manufacture or sell approved forms of our product candidates could have a material adverse effect on our business and prospects.

If testing or use of our products harms people, we could be subject to costly and damaging product liability claims.

The testing, manufacturing, marketing and sale of drugs for use in humans exposes us to product liability risks. Side effects and other problems from using our products could give rise to product liability claims against us. We might have to recall our products, if any, from the marketplace. Some of these risks are unknown at this time.

In addition, we may be sued by people who participate in our trials. A number of patients who participate in such trials are already very ill when they enter the trial. Any informed consents or waivers obtained from people who sign up for our trials may not protect us from liability or litigation. Our product liability insurance may not cover all potential liabilities or may not completely cover any covered liabilities. Moreover, we may not be able to maintain our insurance on acceptable terms. In addition, negative publicity relating to a product liability claim may make it more difficult, or impossible, for us to recruit patients for our clinical trials or to market and sell our products. As a result of these factors, a product liability claim, even if successfully defended, could have a material adverse effect on our business, financial condition or results of operations.

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Use of C5 Inhibitors, such as pexelizumab and eculizumab, is associated with an increased risk for infection with Neisseria bacteria. One patient in our trials of eculizumab for the treatment of membranous nephritis became infected with Neisseria bacteria. Serious cases of Neisseria infection can result in brain damage, loss of limbs or parts of limbs, kidney failure, or death.

We are subject to environmental laws and potential exposure to environmental liabilities.

We are subject to various federal, state and local environmental laws and regulations that govern our operations, including the handling and disposal of non-hazardous and hazardous wastes, including medical and biological wastes, and emissions and discharges into the environment, including air, soils and water sources. Failure to comply with such laws and regulations could result in costs for corrective action, penalties or the imposition of other liabilities. We also are subject to laws and regulations that impose liability and clean-up responsibility for releases of hazardous substances into the environment. Under certain of these laws and regulations, a current or previous owner or operator of property may be liable for the costs of remediating its property or locations to which wastes were sent from its facilities, without regard to whether the owner or operator knew of, or necessarily caused, the contamination. Such obligations and liabilities, which to date have not been material, could have a material impact on our business and financial condition.

If we cannot manufacture our drug candidates in sufficient amounts at acceptable costs and on a timely basis, we may be unable to have the necessary materials for product testing, and later for potential sale in the market. Either event would harm our business.

For our drug trials, we need to produce sufficient amounts of product for testing. Our small manufacturing plant cannot manufacture enough of our product candidates for later stage clinical development or commercial supply. In addition, we do not have the capacity to produce more than one product candidate at a time. We depend on a few outside suppliers for manufacturing. If we experience interruptions in the manufacture of our products, our drug development and commercialization efforts will be delayed. If any of our outside manufacturers stops manufacturing our products or reduces the amount manufactured, or is otherwise unable to manufacture our required amounts at our required quality, we will need to find other alternatives. If we are unable to find an acceptable outside manufacturer on reasonable terms, we will have to divert our own resources to manufacturing, which may not be sufficient to produce the necessary quantity or quality of product. As a result, our ability to conduct testing and drug trials and our plans for commercialization would be materially adversely affected. Submission of products and new development programs for regulatory approval, as well as our plans for commercialization, would be delayed. Our competitive position and our prospects for achieving profitability would be materially and adversely affected.

Manufacture of drug products, including the need to develop and utilize manufacturing processes that consistently produce our drug products to their required quality specifications, is highl