

ST MARY LAND & EXPLORATION CO

Form 8-K

December 23, 2008

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported)
December 23, 2008 (December 18, 2008)

St. Mary Land & Exploration Company
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

001-31539
(Commission
File Number)

41-0518430
(I.R.S. Employer
Identification No.)

1776 Lincoln Street, Suite 700, Denver, Colorado
(Address of principal executive offices)

80203
(Zip Code)

Registrant's telephone number, including area code: (303) 861-8140

Not applicable
(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2.):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

On December 18, 2008, upon recommendation of the Nominating and Corporate Governance Committee, the Board of Directors approved an amendment to St. Mary Land & Exploration Company's ("St. Mary" or the "Company") Restated By-Laws (the "Amendment"), effective immediately. Apart from non-substantive language and conforming changes, the principal components of the Amendment are briefly summarized below. The summary of the Amendment is not intended to be complete and is qualified in its entirety to the Restated By-Laws, as amended, attached as Exhibit 3.1 to this report and incorporated herein by reference.

Section 4 of the Amendment clarifies the advance notice provisions relating to stockholders proposals for stockholder-proposed board nominations and for stockholder-proposed business generally. Generally, the Amendment clarifies the application of advance notice provisions to extend to all stockholder proposals and nominations for election as directors of St. Mary, revises and expands the scope of information that a stockholder needs to provide to St. Mary in connection with any proposal, and requires the person making the proposal to provide St. Mary with a completed written questionnaire concerning the director nominee and provide certain representations to St. Mary. The Amendment also requires disclosure of all forms of ownership (including, for example, any derivative instruments directly or indirectly owned beneficially), and all relationships, proxies and other agreements that would entitle or enable a stockholder to acquire equity in the Company or control votes.

Section 21 of the Amendment clarifies the rights of directors and officers to indemnification and advancement of indemnification expenses. The Amendment adds language expressly stating that the rights to indemnification and advancement of expenses are deemed to have fully vested at the time the indemnitee assumes his or her position with St. Mary.

Section 17 of the Amendment clarifies certain requirements with respect to action by stockholders taken by written consent. The Amendment requires that a stockholder seeking to take action by written consent must first submit a notice containing specified information to the Company and to request the Board of Directors to promptly, but in all events within ten days after the date on which such a written request is received, to adopt a resolution fixing a record date for such action.

Item 7.01 Regulation FD Disclosure.

In accordance with General Instruction B.2. of Form 8-K, the following information, including Exhibit 99.1, shall not be deemed filed for purposes of Section 18 of the Securities Exchange Act of 1934, nor shall such information and Exhibit be deemed incorporated by reference in any filing under the Securities Act of 1933, except as shall be expressly set forth by specific reference in such a filing.

On December 22, 2008, St. Mary issued a press release announcing its 2009 capital program guidance. Additionally, in that press release and as more fully detailed below in Item 8.01, the Company announced it has entered into agreements that grant the Company the opportunity to earn approximately 43,000 net acres located in McKean and Potter counties, Pennsylvania. A copy of the press release is furnished as Exhibit 99.1 to this report.

Item 8.01 Other Events.

On December 22, 2008, St. Mary announced that the Company has entered into agreements that grant the Company the opportunity to earn approximately 43,000 net acres (50,000 gross acres) with potential for the Marcellus shale in north central Pennsylvania. The acreage is located in McKean and Potter counties, Pennsylvania.

This report contains forward looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. The words “will,” “believe,” “plan,” “intend,” “estimate,” “forecast,” “expect,” “opportunity,” and “potential” and similar expressions are intended to identify forward looking statements. These statements involve known and unknown risks, which may cause St. Mary’s actual results to differ materially from results expressed or implied by the forward looking statements. These risks include such factors as the pending nature of the reported acquisition agreements as well as the ability to complete the transactions, the uncertain nature of the expected benefits from the acquisition of oil and gas properties and the ability to successfully integrate acquisitions, the imprecise nature of oil and gas reserve estimates, and other such matters discussed in the “Risk Factors” section of St. Mary’s 2007 Annual Report on Form 10-K and subsequent Quarterly Reports on Form 10-Q filed with the SEC. Although St. Mary may from time to time voluntarily update its prior forward looking statements, it disclaims any commitment to do so except as required by securities laws.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits. The following exhibits are filed or furnished as part of this report:

Exhibit	Description
3.1*	Restated By-Laws of St. Mary Land & Exploration Company amended as of December 18, 2008.
99.1**	Press release of St. Mary Land & Exploration Company dated December 22, 2008.

* Filed with this Current Report on Form 8-K.

** Furnished with this Current Report on Form 8-K.

SIGNATURES

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

ST. MARY LAND & EXPLORATION COMPANY

December 23,
Date:2008

By:/s/ MARK T. SOLOMON

Mark T. Solomon
Controller

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Total cash, cash equivalents, and restricted cash shown in the statement of cash flows

\$61,729 \$71,334 \$81,441

In May 2017, the FASB issued ASU No. 2017-09, *Compensation Stock Compensation (Topic 718): Scope of Modification Accounting*, or ASU 2017-09, to clarify when to account for a change to the terms or conditions of a share-based payment award as a modification. Under this new guidance, modification accounting is required if the fair value, vesting conditions, or classification of the award changes as a result of the change in terms or conditions. ASU 2017-09 is effective for annual reporting periods beginning after December 15, 2017, including interim reporting periods within each annual reporting period. The Company adopted this standard on January 1, 2018. The adoption did not have any impact on the Company's financial statements.

In June 2018, the FASB issued ASU No. 2018-07, *Compensation Stock Compensation (Topic 718): Improvements to Nonemployee Share-Based Payment Accounting*, or ASU 2018-07. The guidance in this ASU expand the scope of Topic 718 to include sharebased payment transactions for acquiring goods and services from nonemployees. The new standard is effective for annual reporting periods beginning after December 15, 2019, including interim reporting periods within each annual reporting period. The Company is currently evaluating the impact of the adoption of this ASU on the financial statements.

In August 2018, the FASB issued ASU No. 2018-03, *Fair Value Measurement (Topic 820): Disclosure Framework Changes to the Disclosure Requirements for Fair Value Measurement*, or ASU 2018-03. The guidance in this ASU modify the disclosure requirements on fair value measurements in Topic 820, Fair Value Measurement. Under the new guidance, transfers between asset classes and the valuation related to level 3 assets is modified. The new standard is effective for annual reporting periods beginning after December 15, 2019, including interim reporting periods within each annual reporting period. The Company is currently evaluating the impact of the adoption of this ASU on the financial statements.

Table of Contents**ZIOPHARM Oncology, Inc.****NOTES TO FINANCIAL STATEMENTS****4. Property and Equipment, net**

Property and equipment, net, consists of the following:

<i>(in thousands)</i>	December 31,	
	2018	2017
Office and computer equipment	\$ 1,249	\$ 1,215
Software	1,030	913
Leasehold improvements	1,839	1,553
Research and development equipment	1,182	1,161
	5,300	4,842
Less: accumulated depreciation	(4,203)	(3,631)
Property and equipment, net	\$ 1,097	\$ 1,211

Depreciation charged to the statement of operations for the years ended December 31, 2018, 2017, and 2016 was \$573 thousand, \$369 thousand and \$290 thousand, respectively.

5. Accrued Expenses

Accrued expenses consist of the following:

<i>(in thousands)</i>	December 31,	
	2018	2017
Clinical consulting services	\$ 3,003	\$ 3,022
Employee compensation	1,786	1,919
Preclinical services	1,247	2,210
Manufacturing services	1,164	902
Professional services	745	256
Accrued vacation	363	361
Payroll taxes and benefits	349	1,017
Other consulting services	106	222
Total	\$ 8,763	\$ 9,909

6. Related Party Transactions

Collaborations with Intrexon/ Precigen

During the year ended December 31, 2018, the Company and Precigen entered into an Exclusive License Agreement (Note 7).

During the year ended December 31, 2018, the Company issued an aggregate of 11,415 shares of Series 1 preferred stock to Intrexon, the holder of all of the outstanding shares of the Company's Series 1 preferred stock, as monthly dividend payments. The Company recorded such shares of Series 1 preferred stock at a fair value of \$18.9 million, which is a component of temporary equity and recorded a loss on the change of the derivative liabilities in the amount of \$1.3 million. See Notes 3 and 12 for additional discussion regarding the accounting for and valuation of these derivative financial instruments.

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ZIOPHARM Oncology, Inc.

NOTES TO FINANCIAL STATEMENTS

6. Related Party Transactions (Continued)

During the years ended December 31, 2018, 2017, and 2016, the Company expensed \$8.1 million, \$21.4 million, and \$22.2 million, respectively, for services performed by Intrexon. As of December 31, 2018, and 2017, the Company recorded \$1.9 million and \$6.8 million, respectively, in current liabilities on its balance sheet for amounts due to Intrexon.

Collaboration with Precigen and MD Anderson

On January 13, 2015, the company, together with Intrexon, entered into the MD Anderson License with MD Anderson (which Intrexon subsequently assigned to Precigen). Pursuant to the MD Anderson License, the company, together with Precigen, hold an exclusive, worldwide license to certain technologies owned and licensed by MD Anderson including technologies relating to novel CAR T-cell therapies, non-viral gene transfer systems, genetic modification and/or propagation of immune cells and other cellular therapy approaches, Natural Killer, or NK Cells, and TCRs, arising from the laboratory of Laurence Cooper, M.D., Ph.D., who became the Company's Chief Executive Officer in May 2015 and was formerly a tenured professor of pediatrics at MD Anderson and is now currently a visiting scientist under that institution's policies. In partial consideration for entering into the MD Anderson License, the Company issued MD Anderson an aggregate of 11,722,163 shares of common stock for which the Company incurred a \$67.3 million charge recorded in 2015.

The Company has determined that the rights acquired in the MD Anderson License represent in-process research and development with no alternative future use. During the year ending December 31, 2018, the Company made one quarterly payments totaling \$2.7 million, bringing the total aggregate payments to \$41.9 million under this arrangement. The net balance of cash resources on hand at MD Anderson available to offset expenses and future costs is \$27.8 million, of which \$18.4 million is included in other current assets and the remaining \$9.4 million is included in non-current assets at December 31, 2018. The classification is based on management's current estimate of plans to utilize the prepaid balance and is subject to revision on a quarterly basis.

7. Settlement of a Related Party Relationship

Exclusive License Agreement with Precigen

On October 5, 2018, the Company entered into the license agreement with Precigen. As between the Company and Precigen, the terms of the License Agreement replace the terms of: (a) the Channel Agreement, including all amendments to the Channel Agreement; (b) certain rights and obligations pursuant to the Ares Trading Agreement; (c) the MD Anderson License; and (d) that certain Research and Development Agreement between the Company, Intrexon and MD Anderson with an effective date of August 17, 2015 (the "Research and Development Agreement"), and any amendments or statements of work thereto.

Pursuant to the terms of the License Agreement, Precigen has granted the Company an exclusive, worldwide, royalty-bearing, sub-licensable license to research, develop and commercialize (i) products utilizing Precigen's RheoSwitch® gene switch, or RTS, for the treatment of cancer, referred to as IL-12 Products, (ii) CAR products directed to (A) CD19 for the treatment of cancer, referred to as CD19 Products, and (B) a second target, subject to the rights of Ares Trading (now Intrexon) to pursue such target under the Ares Trading Agreement, and (iii) T-cell receptor, or TCR, products designed for neoantigens for the treatment of cancer. Precigen has also granted the Company an exclusive, worldwide, royalty-bearing, sub-licensable license for certain patents relating to the *Sleeping Beauty* technology to research, develop and commercialize TCR products for both neoantigens and shared antigens for the treatment of cancer, referred to as TCR Products.

The Company is solely responsible for all aspects of the research, development and commercialization of the exclusively licensed products for the treatment of cancer. The Company is required to use commercially

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ZIOPHARM Oncology, Inc.

NOTES TO FINANCIAL STATEMENTS

7. Settlement of a Related Party Relationship (Continued)

reasonable efforts to develop and commercialize IL-12 Products and CD19 Products and after a two-year period, the TCR Products. Precigen has also granted the Company an exclusive, worldwide, royalty-bearing, sub-licensable license to research, develop and commercialize products utilizing an additional construct that expresses RTS IL-12 for the treatment of cancer, referred to as Gorilla IL-12 Products.

Ziopharm agreed to reimburse Precigen for certain historical costs of the licensed programs up to \$1.0 million, payable quarterly. The Company determined that the fair value of this program was \$1.0 million and this was expensed in accordance with ASC 730, Research and Development during the year ended December 31, 2018 and it has been included in accrued expense on the balance sheet.

The agreement also calls for an annual license fee of \$100 thousand as long as the agreement is effective. The Company will also make milestone payments totaling up to an additional \$52.5 million for each exclusively licensed program upon the initiation of later stage clinical trials and upon the approval of exclusively licensed products in various jurisdictions. In addition, the Company will pay Precigen tiered royalties ranging from low-single digit to high-single digit on the net sales derived from the sales of any approved IL-12 Products and CAR Products. The Company will also pay Precigen royalties ranging from low-single digit to mid-single digit on the net sales derived from the sales of any approved TCR Products, up to a maximum royalty amount of \$100.0 million in the aggregate. The Company will also pay Precigen 20% of any sublicensing income received by the Company relating to the licensed products.

The Company is responsible for all development costs associated with each of the licensed products, other than Gorilla IL-12 Products. The Company and Precigen will share the development costs and operating profits for Gorilla IL-12 Products, with the Company responsible for 80% of the development costs and receiving 80% of the operating profits, and Precigen responsible for the remaining 20% of the development costs and receiving 20% of the operating profits.

Precigen will pay the Company royalties ranging from low-single digits to mid-single digits on the net sales derived from the sale of Precigen's CAR products, up to \$50.0 million.

In consideration of the Company entering into the License Agreement, Intrexon forfeited and returned to the Company all shares of the Company's Series 1 preferred stock held by or payable to Intrexon as of the date of the License Agreement. In addition, Precigen is required to transfer all of Ziopharm's rights and obligations under the Ares Trading Agreement to Intrexon (or its affiliate). As a result, Ziopharm shall not be responsible for any remaining obligations under the Merck Agreement. Additionally, Intrexon forfeited and returned to the Company all shares of the Company's Series 1 preferred stock held by or payable to Intrexon as of the date of the License Agreement.

The Company determined that this transaction represented a capital transaction between related parties. The Company fair valued the preferred stock and the derivative liability on the date of the transaction, noting a total fair value of \$163.3 million. The relinquishment of the Ziopharm's obligation under the Ares Trading Agreement was also

considered part of the overall capital transaction. The Company recognized an additional credit to accumulated deficit of \$49.5 million as a result of the relief of the obligation under the Ares Trading Agreement (Note 8). The total amount of the settlement was \$212.8 million.

The Company incurred approximately \$7.4 million of transaction advisory costs with third-party vendors, of which \$5.4 million was considered a direct cost associated with the Series 1 preferred stock extinguishment and is also included as part of the consideration transferred. The remaining \$2.0 million of transaction costs were recognized as an expense during the year ended December 31, 2018.

Table of Contents**ZIOPHARM Oncology, Inc.****NOTES TO FINANCIAL STATEMENTS****7. Settlement of a Related Party Relationship (Continued)**

The Company recognized a net credit to accumulated deficit of \$207.3 million, calculated as the difference in the carrying value of the Series 1 preferred stock, derivative liability, and contract liability, and the consideration transferred of \$5.4 million, in connection with the transaction. This amount is included in net income available to common shareholders in the calculation of earnings per share (Note 3).

8. Commitments and Contingencies**Operating Leases**

Prior to December 31, 2012, the Company entered into an operating lease in New York, NY for office space. In accordance with this agreement, the Company entered into a letter of credit in the amount of \$388 thousand, naming the Company's landlord as beneficiary. In January 2012, the Company amended the lease agreement, adding additional office space. The collateral for the letter of credit was recorded in other current assets on the balance sheet as of December 31, 2017. The lease for office space in New York, NY expired in October 2018.

On October 17, 2013, the Company entered into a sublease agreement to lease all of its New York office space to a subtenant. The Company recorded a loss on the sublease in the amount of \$729 thousand for the year ended December 31, 2013, representing the remaining contractual obligation of \$2.3 million, less \$1.6 million in payments from its subtenant. The sublease agreement for the New York office space expired in October 2018 in conjunction with the Company's lease expiring for the New York office space.

In June 2012, the Company entered into a master lease for the Company's Boston office, which was originally set to expire in August 2016. On December 21, 2015 and April 15, 2016, the Company renewed the sublease for the Company's corporate headquarters in Boston, MA through August 31, 2021. As of December 31, 2018 and 2017, a total security deposit of \$128 thousand is included in deposits on the balance sheet.

On January 30, 2018, the Company entered into a lease agreement for office space in Houston, TX at MD Anderson. Under the terms of the Houston lease agreement, the Company leases approximately two hundred and ten square feet and are required to make rental payments at an average monthly rate of approximately \$1 thousand through April 2021. All future rent expense incurred in Houston, will be deducted from the Company's prepayments at MD Anderson described in the license agreement section below.

Future net minimum lease payments under operating leases as of December 31, 2018 are as follows (in thousands):

2019	723
2020	736

2021

488

Future minimum lease payments, net

\$ 1,947

Total rent expense was approximately \$0.7 million, \$0.7 million, and \$0.3 million for the years ended December 31, 2018, 2017, and 2016, respectively.

The Company records rent expense on a straight-line basis over the term of the lease. Accordingly, the Company has recorded a liability for deferred rent at December 31, 2018 and 2017 of \$17 thousand (\$13 thousand current and \$4 thousand long-term) and \$142 thousand (\$141 thousand current and \$1 thousand long-term) respectively, which is recorded in deferred rent on the balance sheet.

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ZIOPHARM Oncology, Inc.

NOTES TO FINANCIAL STATEMENTS

8. Commitments and Contingencies (Continued)

License Agreements

Exclusive License Agreement with Precigen, Inc.

On October 5, 2018, the Company entered into an exclusive license agreement, or the License Agreement, with Precigen, Inc., or Precigen, a wholly owned subsidiary of Intrexon Corporation, or Intrexon. As between the Company and Precigen, the terms of the License Agreement replace and supersede the terms of: (a) that certain Exclusive Channel Partner Agreement by and between the Company and Intrexon, dated January 6, 2011, as amended by the First Amendment to Exclusive Channel Partner Agreement effective September 13, 2011, the Second Amendment to the Exclusive Channel Partner Agreement effective March 27, 2015, and the Third Amendment to Exclusive Channel Partner Agreement effective June 29, 2016, which was subsequently assigned by Intrexon to Precigen; (b) certain rights and obligations pursuant to that certain License and Collaboration Agreement effective March 27, 2015 between ZIOPHARM, Intrexon and ARES TRADING Trading S.A., or Ares Trading, a subsidiary of Merck KGaA, or Merck, as assigned by Intrexon to Precigen, or the Ares Trading Agreement; (c) that certain License Agreement between the Company, Intrexon, and MD Anderson, with an effective date of January 13, 2015, or the MD Anderson License, which was subsequently assigned by Intrexon and assumed by Precigen effective as of January 1, 2018; and (d) that certain Research and Development Agreement between the Company, Intrexon and MD Anderson with an effective date of August 17, 2015, or the Research and Development Agreement, and any amendments or statements of work thereto.

Pursuant to the terms of the License Agreement, Precigen has granted the Company an exclusive, worldwide, royalty-bearing, sub-licensable license to research, develop and commercialize (i) products utilizing Precigen's RheoSwitch® gene switch, or RTS, for the treatment of cancer, referred to as IL-12 Products, (ii) CAR products directed to (A) CD19 for the treatment of cancer, referred to as CD19 Products, and (B) a second target, subject to the rights of Merck to pursue such target under the Ares Trading Agreement, and (iii) TCR products designed for neoantigens for the treatment of cancer. Precigen has also granted the Company an exclusive, worldwide, royalty-bearing, sub-licensable license for certain patents relating to the *Sleeping Beauty* technology to research, develop and commercialize TCR products for both neoantigens and shared antigens for the treatment of cancer, referred to as TCR Products.

The Company will be solely responsible for all aspects of the research, development and commercialization of the exclusively licensed products for the treatment of cancer. The Company are required to use commercially reasonable efforts to develop and commercialize IL-12 products and CD19 products and after a two-year period, the TCR Products.

Precigen has also granted the Company an exclusive, worldwide, royalty-bearing, sub-licensable license to research, develop and commercialize products utilizing an additional construct that expresses RTS IL-12 for the treatment of cancer, referred to as Gorilla IL-12 Products.

In consideration of the licenses and other rights granted by Precigen, the Company will pay Precigen an annual license fee of \$100 thousand and has agreed to reimburse Precigen for certain historical costs of the licensed programs up to \$1.0 million, payable quarterly.

The Company will make milestone payments totaling up to an additional \$52.5 million for each exclusively licensed program upon the initiation of later stage clinical trials and upon the approval of exclusively licensed products in various jurisdictions. In addition, the Company will pay Precigen tiered royalties ranging from low-single digit to high-single digit on the net sales derived from the sales of any approved IL-12 products and CAR products. The Company will also pay Precigen royalties ranging from low-single digit to mid-single digit

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ZIOPHARM Oncology, Inc.

NOTES TO FINANCIAL STATEMENTS

8. Commitments and Contingencies (Continued)

on the net sales derived from the sales of any approved TCR products, up to a maximum royalty amount of \$100.0 million in the aggregate. The Company will also pay Precigen 20% of any sublicensing income received by the Company relating to the licensed products.

The Company is responsible for all development costs associated with each of the licensed products, other than Gorilla IL-12 products. ZIOPHARM and Precigen will share the development costs and operating profits for Gorilla IL-12 products, and ZIOPHARM is responsible for 80% of the development costs and receiving 80% of the operating profits, and Precigen responsible for the remaining 20% of the development costs and receiving 20% of the operating profits.

Precigen will pay the Company royalties ranging from low-single digits to mid-single digits on the net sales derived from the sale of Precigen's CAR products, up to \$50.0 million.

In consideration of entering into the License Agreement, Intrexon has forfeited and returned to the Company all shares of Series 1 preferred stock held by or payable to Intrexon as of the date of the License Agreement (Note 7).

License Agreement The University of Texas MD Anderson Cancer Center

On January 13, 2015, ZIOPHARM, together with Intrexon, entered into the MD Anderson License with MD Anderson (which Intrexon subsequently assigned to Precigen). Pursuant to the MD Anderson License, the Company, together with Precigen, holds an exclusive, worldwide license to certain technologies owned and licensed by MD Anderson including technologies relating to novel CAR T-cell therapies, non-viral gene transfer systems, genetic modification and/or propagation of immune cells and other cellular therapy approaches, Natural Killer, or NK Cells, and TCRs, arising from the laboratory of Laurence Cooper, M.D., Ph.D., who became the Company's Chief Executive Officer in May 2015 and was formerly a tenured professor of pediatrics at MD Anderson and is now currently a visiting scientist under that institution's policies.

On August 17, 2015, ZIOPHARM, Precigen and MD Anderson entered into the Research and Development Agreement, to formalize the scope and process for the transfer by MD Anderson, pursuant to the terms of the MD Anderson License, of certain existing research programs and related technology rights, as well as the terms and conditions for future collaborative research and development of new and ongoing research programs.

Pursuant to the Research and Development Agreement, ZIOPHARM, Precigen and MD Anderson have agreed to form a joint steering committee that will oversee and manage the new and ongoing research programs. Under the License Agreement with Precigen, ZIOPHARM and Precigen agreed that Precigen would no longer participate on the joint steering committee after the date of the License Agreement. As provided under the MD Anderson License, the Company provided funding for research and development activities in support of the research programs under the Research and Development Agreement for a period of three years and in an amount of no less than \$15.0 million and no greater than \$20.0 million per year. On November 14, 2017, the Company entered into an amendment to the

Research and Development Agreement extending its term until April 15, 2021. During the year ended December 31, 2018, the Company made payments in the aggregate amount of \$2.7 million to MD Anderson compared to \$13.0 million during the year ended December 31, 2017. The decrease in cash paid to MD Anderson during the year ended December 31, 2018 as compared to the same period in the prior year is a result of the final quarterly payment being made to MD Anderson in January 2018 and the result of approved expenditures incurred by us being deducted from the January 2018 quarterly payment.

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ZIOPHARM Oncology, Inc.

NOTES TO FINANCIAL STATEMENTS

8. Commitments and Contingencies (Continued)

The net balance of cash resources on hand at MD Anderson available to offset expenses and future costs is \$27.8 million, of which \$18.4 million is included in other current assets and the remaining \$9.4 million is included in non-current assets at December 31, 2018.

The term of the MD Anderson License expires on the last to occur of (a) the expiration of all patents licensed thereunder, or (b) the twentieth anniversary of the date of the MD Anderson License; provided, however, that following the expiration of the term of the MD Anderson License, the Company, together with Precigen, shall then have a fully-paid up, royalty free, perpetual, irrevocable and sublicensable license to use the licensed intellectual property thereunder. After ten years from the date of the MD Anderson License and subject to a 90-day cure period, MD Anderson will have the right to convert the MD Anderson License into a non-exclusive license if ZIOPHARM and Precigen are not using commercially reasonable efforts to commercialize the licensed intellectual property on a case-by-case basis. After five years from the date of the MD Anderson License and subject to a 180-day cure period, MD Anderson will have the right to terminate the MD Anderson License with respect to specific technology(ies) funded by the government or subject to a third-party contract if the Company and Precigen are not meeting the diligence requirements in such funding agreement or contract, as applicable. MD Anderson may also terminate the agreement with written notice upon material breach by us and Precigen, if such breach has not been cured within 60 days of receiving such notice. In addition, the MD Anderson License will terminate upon the occurrence of certain insolvency events for both us and Precigen and may be terminated by the mutual written agreement of us, Precigen, and MD Anderson.

Cooperative Research and Development Agreement (CRADA) with the National Cancer Institute

On January 10, 2017, the Company announced the signing of the CRADA with the NCI for the development of adoptive cell transfer, or ACT,-based immunotherapies genetically modified using the *Sleeping Beauty* transposon/transposase system to express TCRs for the treatment of solid tumors. The principal goal of the CRADA is to develop and evaluate ACT for patients with advanced cancers using autologous peripheral blood lymphocytes, or PBL, genetically modified using the non-viral *Sleeping Beauty* system to express TCRs that recognize neoantigens expressed within a patient's cancer. Research conducted under the CRADA will be at the direction of Steven A. Rosenberg, M.D., Ph.D., Chief of the Surgery Branch at the NCI, in collaboration with the Company's researchers and Precigen researchers. The remaining obligation, as of December 31, 2018, for the CRADA is \$2.5 million over the next year, payable in \$625 thousand payments on a quarterly basis. During the twelve months ended December 31, 2018 and 2017, the Company made payments of \$2.5 million, each year. In February 2019, the Company extended the CRADA with the NCI for two years, committing an additional \$5.0 million to this program (Note 3).

Exclusive Channel Partner Agreement with Precigen for the Cancer Programs

From 2011 to 2018, the Company was party to various arrangements with Intrexon (now Precigen) in which the Company used Precigen's technology to research and develop cancer treatments in return for various future profit sharing and royalty arrangements. These agreements were modified or terminated by the License Agreement

described in Note 7.

Exclusive Channel Collaboration Agreement with Precigen for GvHD

On September 28, 2015, the Company entered into the GvHD Agreement with Intrexon (now Precigen), under which the Company would use Precigen's technology directed towards *in vivo* expression of effectors to

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ZIOPHARM Oncology, Inc.

NOTES TO FINANCIAL STATEMENTS

8. Commitments and Contingencies (Continued)

research, develop and commercialize products for use in the treatment or prevention of GvHD. The GvHD Agreement granted the Company a worldwide license to use specified patents and other intellectual property of Precigen in connection with the research, development, use, importing, manufacture, sale, and offer for sale of products developed under the GvHD Agreement.

In November 2017, the Company determined that the pursuit of GvHD as an indication was not a material part of its corporate strategy and therefore stopped pursuing the development of engineered cell therapy strategies, used either separately or in combination, for targeted treatment of GvHD. At such time, the Company reverted the rights under the GvHD program back to Precigen.

Ares Trading License and Collaboration Agreement

On March 27, 2015, the Company, together with Intrexon (now Precigen), signed the Ares Trading Agreement, with Ares Trading S.A., a subsidiary of the biopharmaceutical business of Merck KGaA, Darmstadt, Germany, through which the parties established a collaboration for the research and development and commercialization of certain products for the prophylactic, therapeutic, palliative or diagnostic use for cancer in humans.

Precigen was entitled to receive \$5.0 million, from Ares Trading, payable in equal quarterly installments over two years for each identified product candidate, which will be used to fund discovery work. The Company was responsible for costs exceeding the quarterly installments and all other costs of the preclinical research and development. For the year ended December 31, 2018, the Company expensed \$0.1 million under the Ares Trading Agreement. For the year ended December 31, 2017, the Company has expensed \$1.6 million under the Ares Trading Agreement, respectively. The Company did not incur any costs under the agreement for the year ended December 31, 2016.

Ares Trading paid a non-refundable upfront fee of \$115.0 million to Intrexon as consideration for entry into the Ares Trading Agreement. Pursuant to the ECP Amendment, the Company was entitled to receive 50% of the upfront fee, or \$57.5 million, which was received from Intrexon in July 2015.

Under the License Agreement, Precigen agreed to perform all future obligations of the Company under the Ares Trading Agreement other than certain payment obligations. Accordingly, the Company recognized the remaining deferred revenue as part of the settlement of related party relationships as described in Note 7.

Patent and Technology License Agreement The University of Texas MD Anderson Cancer Center and the Texas A&M University System

On August 24, 2004, the Company entered into a patent and technology license agreement with MD Anderson and the Texas A&M University System, which the Company refers to, collectively, as the Licensors. Under this agreement, were granted an exclusive, worldwide license to rights (including rights to U.S. and foreign patent and patent applications and related improvements and know-how) for the manufacture and commercialization of two classes of

organic arsenicals (water- and lipid-based) for human and animal use. The class of water-based organic arsenicals includes darinaparsin.

The Company issued options to purchase 50,222 shares outside of its stock option plans following the successful completion of certain clinical milestones, of which 37,666 shares have vested. The remaining 12,556 shares vested upon enrollment of the first patient in a multi-center pivotal clinical trial *i.e.* a human clinical trial intended to provide the substantial evidence of efficacy necessary to support the filing of an approvable

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ZIOPHARM Oncology, Inc.

NOTES TO FINANCIAL STATEMENTS

8. Commitments and Contingencies (Continued)

New Drug Application, or NDA. An expense of \$87 thousand was charged to research and development expense for the vesting event which occurred in March 2016. This trial was initiated by Solasia Pharma K.K., or Solasia, on March 28, 2016 and triggered a \$1.0 million milestone payment to the Company from Solasia which was received in May 2016. An equivalent of \$1.0 million milestone payment was subsequently made to MD Anderson and reported net. In addition, the Licensors are entitled to receive certain milestone payments. In addition, the Company may be required to make additional payments to the Licensors (as defined in the MD Anderson License) upon achievement of certain other milestones in varying amounts which, on a cumulative basis could total up to an additional \$4.5 million. In addition, the Licensors are entitled to receive single digit percentage royalty payments on sales from a licensed product and will also be entitled to receive a portion of any fees that the Company may receive from a possible sublicense under certain circumstances.

Collaboration Agreement with Solasia Pharma K.K.

On March 7, 2011, the Company entered into a License and Collaboration Agreement with Solasia. Pursuant to the License and Collaboration Agreement, the Company granted Solasia an exclusive license to develop and commercialize darinaparsin in both intravenous and oral forms and related organic arsenic molecules, in all indications for human use in a pan-Asian/Pacific territory comprising Japan, China, Hong Kong, Macau, Republic of Korea, Taiwan, Singapore, Australia, New Zealand, Malaysia, Indonesia, Philippines and Thailand.

As consideration for the license, the Company received an upfront payment of \$5.0 million to be used exclusively for further clinical development of darinaparsin outside of the pan-Asian/Pacific territory and will be entitled to receive additional payments of up to \$32.5 million in development-based milestones and up to \$53.5 million in sales-based milestones. The Company will also be entitled to receive double digit royalty payments from Solasia based upon net sales of licensed products in the applicable territories, once commercialized, and a percentage of sublicense revenues generated by Solasia. The \$5.0 million upfront payment received in March 2011 was amortized over the period of the research and development effort, which was completed in March 2016.

On July 31, 2014, the Company entered into an amendment and restatement of the License and Collaboration Agreement granting Solasia an exclusive worldwide license to develop and commercialize darinaparsin, and related organoarsenic molecules, in both intravenous and oral forms in all indications for human use. In exchange, the Company will be eligible to receive from Solasia development- and sales-based milestones, a royalty on net sales of darinaparsin, once commercialized, and a percentage of any sublicense revenues generated by Solasia.

Solasia will be responsible for all costs related to the development, manufacturing and commercialization of darinaparsin. The Company's Licensors, as defined in the agreement, will receive a portion of all milestone and royalty payments made by Solasia to the Company in accordance with the terms of the license agreement with the Licensors.

On March 28, 2016, Solasia initiated a multi-center pivotal clinical trial intended to provide substantial evidence of efficacy necessary to support the filing of an application for an NDA for darinaparsin in certain of the territories

assigned to Solasia. The initiation of the trial on March 28, 2016 triggered a \$1.0 million milestone payment from Solasia to the Company which was received in May 2016. The Company subsequently made an equivalent payment to MD Anderson as the ultimate licensor of darinaparsin (see above).

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ZIOPHARM Oncology, Inc.

NOTES TO FINANCIAL STATEMENTS

8. Commitments and Contingencies (Continued)

License Agreement with Baxter Healthcare S.A.

On November 3, 2006, the Company entered into a definitive Asset Purchase Agreement for indibulin and a License Agreement to proprietary nanosuspension technology with affiliates of Baxter Healthcare S.A. The purchase included the entire indibulin intellectual property portfolio as well as existing drug substance and capsule inventories. The terms of the Asset Purchase Agreement included an upfront cash payment and an additional payment for existing inventory. During the year ended December 31, 2017, the Company made the final payment of \$250 thousand under the asset agreement. The Company is not actively pursuing the development of indibulin.

9. Warrants

The Company assesses whether an equity classified financial instrument is indexed to an entity's own stock for purposes of determining whether a financial instrument should be treated as a derivative.

In connection with the November 2018 financing (Note 2), the Company issued warrants to purchase an aggregate of 18,939,394 shares of common stock which are exercisable six months after the closing. The warrants have an exercise price of \$3.01 per share and have a five-year term. The relative fair value of the warrants was estimated at \$18.4 million using a Black-Scholes model with the following assumptions: expected volatility of 71%, risk free interest rate of 2.99%, expected life of five years and no dividends.

The Company assessed whether the warrants require accounting as derivatives. The Company determined that the warrants were (1) indexed to the Company's own stock and (2) classified in stockholders' equity in accordance with Financial Accounting Standards Board (FASB's) Accounting Standards Codification (ASC) Topic 815, *Derivatives and Hedging*. As such, the Company has concluded the warrants meet the scope exception for determining whether the instruments require accounting as derivatives and should be classified in stockholders' equity.

10. Income Taxes

There is no provision for income taxes because the Company has incurred operating losses since inception. The reported amount of income tax expense for the years differs from the amount that would result from applying domestic federal statutory tax rates to pretax losses primarily because of the changes in the valuation allowance. Significant components of the Company's deferred tax assets at December 31, 2018 and 2017 are as follows:

	December 31,	
<i>(in thousands)</i>	2018	2017

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Net operating loss carryforwards	\$ 106,430	\$ 89,098
Start-up and organizational costs	33,977	37,488
Research and development credit carryforwards	33,684	32,395
Stock compensation	990	1,330
Capitalized acquisition costs	5,160	5,822
Deferred revenue		11,126
Depreciation	132	136
Other	920	993
	181,293	178,388
Less valuation allowance	(181,293)	(178,388)
Effective tax rate	\$	\$

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ZIOPHARM Oncology, Inc.

NOTES TO FINANCIAL STATEMENTS

10. Income Taxes (Continued)

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amount of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. At December 31, 2018, the Company has aggregate net operating loss carryforwards for federal tax purposes of approximately \$403.0 million and \$344.0 million for Federal and state purposes, respectively, available to offset future federal and state taxable income to the extent permitted under the Internal Revenue Code, or IRC, expiring in varying amounts through 2038. Additionally, the Company has approximately \$34.0 million of research and development credits at December 31, 2018, expiring in varying amounts through 2038, which may be available to reduce future taxes.

In March 2016, the FASB issued ASU No. 2016-09, Improvements to Employee Share-Based Payment Accounting (ASU 2016-09), which is intended to simplify several aspects of accounting for share-based payment transactions, including the income tax effects, statutory withholding requirements, forfeitures, and classification on the statement of cash flows. ASU 2016-09 is effective for annual reporting periods after December 15, 2016, including interim reporting periods within each annual reporting period. The Company adopted this standard on January 1, 2017. The update revises requirements in the following areas: minimum statutory withholding, accounting for income taxes, and forfeitures. Prior to adoption, the Company recognized share-based compensation, net of estimated forfeitures, over the vesting period of the grant. Upon adoption of ASU 2016-09, the Company elected to change its accounting policy to recognize forfeitures as they occur. The new forfeiture policy election was adopted using a modified retrospective approach with a cumulative effect adjustment of \$122 thousand recorded to retained earnings as of January 1, 2017. The update requires the Company to recognize the income tax effect of awards in the income statement when the awards vest or are settled without triggering a liability. The income tax related items had no effect on the current period presentation and the Company maintains a full valuation allowance against its deferred tax assets. As a result, an accumulated excess tax benefit of 10.2 million was recognized as a deferred tax asset with a full valuation allowance against it. Additionally, the Company continued to estimate the number of awards expected to be vested. The adoption had no material impact on the Company's financial statements for the 2017 tax year or the interim periods within.

In May 2014, the FASB issued an accounting standard update which provides for new revenue recognition guidance, superseding nearly all prior revenue recognition guidance. The new revenue standard outlines a single comprehensive model for accounting for revenue from contracts with customers and requires more detailed revenue disclosures.

The Company adopted the new revenue standard on January 1, 2018 and as a result of the adoption increased deferred revenue by \$8.1 million and decreased retained earnings by the same amount. Previously the Company had recorded revenue of \$15.9 million and had deferred revenue of \$41.5 million at December 31, 2017. The increase in the deferred revenue represented the recapture of revenue that was previously recorded and taxed. There was no impact to tax as the increase to the deferred tax asset was fully offset by the Company's full valuation allowance.

Under the IRC Section 382, certain substantial changes in the Company's ownership may limit the amount of net operating loss carryforwards that can be utilized in any one year to offset future taxable income.

Section 382 of the IRC provides limits to which a corporation that has undergone a change in ownership (as defined) can utilize any net operating loss, or NOL, and general business tax credit carryforwards it may have. The Company commissioned an analysis to determine whether Section 382 could limit the use of its carryforwards in this manner. After completing the analysis, it was determined an ownership change had occurred in February 2007. As a result of this change, the Company's NOLs and general business tax credits

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Table of Contents**ZIOPHARM Oncology, Inc.****NOTES TO FINANCIAL STATEMENTS****10. Income Taxes (Continued)**

from February 23, 2007 and prior would be completely limited under IRC Section 382. The deferred tax assets related to NOLs and general business credits have been reduced by \$11.2 million and \$636 thousand, respectively, as a result of the change. The Company updated the IRC Section 382 analysis through December 31, 2018. There was no change in ownership at this time.

The Company has provided a valuation allowance for the full amount of these net deferred tax assets, since it is more likely than not that these future benefits will not be realized. However, these deferred tax assets may be available to offset future income tax liabilities and expenses. The valuation allowance decreased by \$2.9 million in 2018 primarily due to net operating loss carryforwards and the increase in research and development credits.

Income taxes using the federal statutory income tax rate differ from the Company's effective tax rate primarily due to non-deductible expenses related to the Company's issuance of preferred stock along with the change in the valuation allowance on deferred tax assets.

A reconciliation of income tax expense (benefit) at the statutory federal income tax rate and income taxes as reflected in the financial statements is as follows:

<i>(in thousands)</i>	Year Ended December 31,		
	2018	2017	2016
Federal income tax at statutory rates	21%	34%	34%
State income tax, net of federal tax benefit	4%	4%	1%
Research and development credits	2%	3%	3%
Stock compensation	-1%	-1%	-1%
Channel rights	0%	0%	-25%
Research and development true-up	0%	-7%	0%
Officers compensation	-1%	-2%	0%
Other	-2%	-3%	0%
Federal rate change	3%	-124%	0%
Change in valuation allowance	-26%	96%	-12%
Effective tax rate	0%	0%	0%

The Company adopted ASC 740, Accounting for Uncertain Tax Positions on January 1, 2007. ASC 740 clarifies the accounting for uncertainty in income taxes recognized in an enterprise's financial statements in accordance with FASB Statement No. 109, Accounting for Income Taxes. ASC 740 prescribes a recognition threshold and measurement of a tax position taken or expected to be taken in a tax return. The Company did not establish any additional reserves for uncertain tax liabilities upon adoption of ASC 740. There were no adjustments to its uncertain tax positions in the

years ended December 31, 2018, 2017, and 2016.

The Company has not recognized any interest and penalties in the statement of operations because of the Company's net operating losses and tax credits that are available to be carried forward. When necessary, the Company will account for interest and penalties related to uncertain tax positions as part of its provision for federal and state income taxes. The Company does not expect the amounts of unrecognized benefits will change significantly within the next twelve months.

The Company is currently open to audit under the statute of limitations by the Internal Revenue Service and state jurisdictions for the years ended December 31, 1999 through 2018.

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ZIOPHARM Oncology, Inc.

NOTES TO FINANCIAL STATEMENTS

10. Income Taxes (Continued)

The Tax Cuts and Jobs Act, or the Tax Act, was enacted in December 2017. The act significantly changes US tax law by, among other things, lowering US corporate income tax rates, implementing a territorial tax system, and imposing a one-time transition tax on deemed repatriated earnings of foreign subsidiaries. The Tax Act reduces the US corporate income tax rate from 35% to 21%, effective January 1, 2018. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to reverse. As a result of the reduction in the US corporate tax rate from 35% to 21% under the Tax Act, the Company revalued its ending net deferred tax assets at December 31, 2017. There was no impact as a result of the revaluation of the deferred tax assets as the calculated provisional tax benefit of approximately \$67.0 million was offset by the Company's subsequent change in valuation allowance. There was no impact to the Company with regards to the implementation of the territorial tax system as the Company has no foreign subsidiaries.

11. Preferred Stock and Stockholders' Equity (Deficit)

On April 26, 2006, the date of the Company's annual stockholders meeting that year, the shareholders approved the adoption of an Amended and Restated Certificate of Incorporation pursuant to which the Company has 280,000,000 shares of authorized capital stock, of which 250,000,000 shares are designated as common stock (par value \$0.001 per share), and 30,000,000 shares are designated as preferred stock (par value \$0.001 per share).

Common Stock

On November 11, 2018, the Company entered into a securities purchase agreement with certain institutional and accredited investors, pursuant to which the Company agreed to issue and sell to the Investors an aggregate of 18,939,394 immediately separable units, with each unit being composed of (i) one share of the Company's common stock, par value \$0.001 per share, and (ii) a warrant to purchase one share of common stock, at a price per unit of \$2.64, for net proceeds of approximately \$47.1 million.

On May 11, 2017, the Company sold in an underwritten offering an aggregate of 9,708,738 shares of its common stock. The price to the investor in the offering was \$5.15 per share, and the underwriters agreed to purchase the shares from the Company pursuant to the Company's registration statement on Form S-3ASR (File No. 333-201826) previously filed with the SEC, and a prospectus supplement thereunder. The net proceeds from the offering were approximately \$47.3 million after deducting underwriting commissions and estimated offering expenses payable by the Company.

Preferred Stock

The Company's Board of Directors are authorized to designate any series of Preferred Stock, to fix and determine the variations in relative rights, preferences, privileges and restrictions as between and among such series.

On June 29, 2016, the Company entered into the 2016 ECP Amendment and 2016 GvHD Amendment with Intrexon (now Precigen) (Note 8). In consideration for the execution and delivery of the 2016 ECP Amendment and the 2016 GvHD Amendment, the Company issued to Intrexon 100,000 shares of its newly designated Series 1 preferred stock. Each share of the Company's Series 1 preferred stock had a stated value of \$1,200, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other recapitalization. The Series 1 preferred stock had certain rights, preferences, privileges and obligations, including dividend rights, conversion rights, consent rights with respect to certain Company actions, and rights to

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Table of Contents**ZIOPHARM Oncology, Inc.****NOTES TO FINANCIAL STATEMENTS****11. Preferred Stock and Stockholders' Equity (Deficit) (Continued)**

preferential payments in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company or a change of control or sale, lease, transfer or exclusive license of all or substantially all of the Company's assets prior to the conversion of the Series 1 preferred stock.

During the year ended December 31, 2018, the Company and Precigen entered into the License Agreement to replace all existing agreements between the companies that will provide Ziopharm with certain exclusive and non-exclusive rights to technology controlled by Precigen. The License Agreement was dated October 5, 2018. In consideration of the Company entering into the License Agreement, Intrexon forfeited and returned to the Company all shares of the Company's Series 1 preferred stock held by or payable to Intrexon as of the date of the License Agreement. (Notes 6 and 7)

12. Derivative Financial Instruments

The Company determined that certain embedded features related to the Series 1 preferred stock were derivative financial instruments. The company values the embedded derivative financial instruments related to the Series 1 preferred stock as Level 3 financial liabilities (Note 3).

On October 5, 2018, the Company entered into the License Agreement with Precigen. In partial consideration for the termination of the former agreements, the companies agreed that Intrexon would forfeit all outstanding shares of the Series 1 preferred stock held by Intrexon, including any accrued dividends.

The change in the derivative liability for the years ended December 31, 2018, 2017 and 2016 consists of the following:

	Fair Value
Balance, June 30, 2016	\$ 694
Dividends	44
Change in fair value	124
Balance, December 31, 2016	\$ 862
Dividends	267
Change in fair value	1,295
Balance, December 31, 2017	\$ 2,424
Dividends	223
Change in fair value	(158)

Settlement of a related party relationship	(2,489)
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Balance, December 31, 2018	\$
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The fair value of the Series 1 preferred stock dividends was estimated using a probability-weighted approach and a Monte Carlo simulation model. The fair value of the embedded derivatives was estimated using the with and without method where the preferred stock was first valued with all of its features (with scenario) and then without derivatives subject to the valuation analysis (without scenario). The fair value of the derivatives was then estimated as the difference between the fair value of the preferred stock in the with scenario and the preferred stock in the without scenario. The model also takes into account, management estimates of clinical success/failure based upon market studies and probability of potential conversion and liquidation events. If these

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Table of Contents**ZIOPHARM Oncology, Inc.****NOTES TO FINANCIAL STATEMENTS****12. Derivative Financial Instruments (Continued)**

estimates were different, the valuations would change, and that change could be material. Inputs to the models included the following:

	December 31,	
	2018	2017
Risk-free interest rate	2.50 - 3.13%	1.92 - 2.12%
Expected dividend rate	0	0
Expected volatility	77.6 - 82.4%	68.7 - 80.4%
Preferred stock conversion limit percentage of outstanding common stock	19.90%	19.90%
Preferred conversion floor price	\$ 1.00	\$ 1.00

See Note 3 for additional discussion regarding the accounting for and valuation of these derivative financial instruments.

13. Stock Option Plan

The Company adopted the 2012 Equity Incentive Plan, or the 2012 Plan, in May 2012. Including subsequent increases, the Company has reserved 14.0 million shares for issuance. At December 31, 2018, there are 5,284,988 shares reserved for issuance and 3,895,923 available for future grant.

As of December 31, 2018, the Company had outstanding options to its employees to purchase up to 4,146,135 shares of the Company's common stock, to its directors to purchase up to 1,120,950 shares of the Company's common stock, as well as options to consultants in connection with services rendered to purchase up to 10,000 shares of the Company's common stock.

Stock options to employees generally vest ratably in annual installments over three years, commencing on the first anniversary of the grant date and have contractual terms of ten years. Stock options to directors generally vest ratably over one or three years and have contractual terms of ten years. Stock options are valued using the Black-Scholes option pricing model and compensation is recognized based on such fair value over the period of vesting on a straight-line basis. The Company has also reserved an aggregate of 526,364 additional shares for issuance under options granted outside of the 2003 and 2012 Plans.

Proceeds from the option exercises during the years ended December 31, 2018, 2017, and 2016 amounted to \$0.2 million, \$0.1 million and \$0.7 million respectively. The intrinsic value of these options amounted to \$0.1 million, \$0.2 million and \$0.8 million for years ended December 31, 2018, 2017 and 2016, respectively.

Table of Contents**ZIOPHARM Oncology, Inc.****NOTES TO FINANCIAL STATEMENTS****13. Stock Option Plan (Continued)**

Transactions under the 2012 Plan for the years ending December 31, 2018, 2017, and 2016 were as follows:

<i>(in thousands, except share and per share data)</i>	Number of Shares	Weighted- Average Exercise Price	Weighted- Average Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding, December 31, 2015	3,481,468	\$ 4.96		
Granted	362,800	6.40		
Exercised	(234,833)	4.57		
Cancelled	(144,100)	6.43		
Outstanding, December 31, 2016	3,465,335	5.07		
Granted	688,800	5.27		
Exercised	(180,000)	3.67		
Cancelled	(122,000)	6.64		
Outstanding, December 31, 2017	3,852,135	5.12		
Granted	1,744,950	2.35		
Exercised	(104,167)	2.30		
Cancelled	(215,833)	5.72		
Outstanding, December 31, 2018	5,277,085	\$ 4.24	6.86	\$ 88
Options exercisable, December 31, 2018	3,099,935	\$ 5.15	4.93	\$ 88
Options exercisable, December 31, 2017	2,925,502	\$ 5.12	5.58	\$ 1,152
Options available for future grant at December 31, 2018	3,895,923			

In September 2017, the Company granted an option for 500,000 shares of its common stock, with an exercise price of \$6.16 per share, which vests ratably in annual installments over three years, commencing on the first anniversary of the grant date and has a contractual term of ten years. This option was granted outside of the 2012 plan and therefore, is not included in the table above. The grant date fair value was \$2.2 million. As of December 31, 2018, all 500,000 options are outstanding.

At December 31, 2018, total unrecognized compensation costs related to non-vested stock options outstanding amounted to \$5.1 million. The cost is expected to be recognized over a weighted-average period of 1.53 years.

Restricted Stock

In December 2018, the Company issued 30,000 shares of restricted stock to its employees, which vest ratably in annual installments over three years, commencing on the first anniversary of the grant date. In December 2017, the Company issued 838,000 shares of restricted stock to its employees, which vest ratably in annual installments over three years, commencing on the first anniversary of the grant date. In December 2016, the Company issued 625,750 shares of restricted stock to its employees, which vest ratably in annual installments over three years, commencing on the first anniversary of the grant date. In December 2018, the Company issued 120,321 shares of restricted stock to its non-employee directors, which vest in their entirety on the one-year anniversary of the grant date. In December 2017, the Company issued 69,032 shares of restricted stock to its non-employee directors, which vest in their entirety on the one-year anniversary of the grant date. In December 2016, the Company issued 86,020 shares of restricted stock to its non-employee directors, which vest in their entirety on the one-year anniversary of the grant date.

Table of Contents**ZIOPHARM Oncology, Inc.****NOTES TO FINANCIAL STATEMENTS****13. Stock Option Plan (Continued)**

In the year ended December 31, 2018, the Company repurchased 514,349 shares at average prices ranging from \$1.70 to 4.41 to cover payroll taxes. In the year ended December 31, 2017, the Company repurchased 394,269 shares at average prices ranging from \$4.14 to \$7.12 to cover payroll taxes. In the year ended December 31, 2016, the Company repurchased 133,656 shares at average prices ranging from \$5.35 to \$7.74 to cover payroll taxes. A summary of the status of non-vested restricted stock as of December 31, 2018, 2017 and 2016 is as follows:

	Number of Shares	Weighted-Average Grant Date Fair Value
Non-vested, December 31, 2015	1,586,388	\$ 9.00
Granted	711,770	5.35
Vested	(617,666)	8.90
Cancelled		
Non-vested, December 31, 2016	1,680,492	7.49
Granted	907,032	4.14
Vested	(778,965)	7.66
Cancelled		
Non-vested, December 31, 2017	1,808,559	5.74
Granted	150,321	1.87
Vested	(1,005,377)	6.62
Cancelled	(271,433)	5.00
Non-vested, December 31, 2018	682,070	\$ 3.47

As of December 31, 2018, there was \$2.6 million of total unrecognized stock-based compensation expense related to non-vested restricted stock arrangements. The expense is expected to be recognized over a weighted-average period of 1.33 years.

14. Employee Benefit Plan

The Company sponsors a qualified 401(k) retirement plan under which employees are allowed to contribute certain percentages of their pay, up to the maximum allowed under Section 401(k) of the IIRC. The Company may make contributions to this plan at its discretion. The Company contributed approximately \$329 thousand, \$90 thousand, and \$75 thousand to this plan during the years ended December 31, 2018, 2017, and 2016, respectively.

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Table of Contents**ZIOPHARM Oncology, Inc.****NOTES TO FINANCIAL STATEMENTS****15. Selected Quarterly Information (Unaudited)**
(in thousands, except per share amount)

Year Ended December 31, 2018	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Revenue	\$ 146	\$	\$	\$
Total operating expenses	16,342	12,378	12,570	12,762
Loss from operations	(16,196)	(12,378)	(12,570)	(12,762)
Preferred stock dividends	(5,120)	(5,462)	(6,074)	(342)
Settlement of a related party relationship				207,361
Net income (loss) applicable to common shareholders	(21,540)	(17,493)	(18,659)	194,538
Net income (loss) per share, basic	\$ (0.15)	\$ (0.12)	\$ (0.13)	\$ 1.29
Net income (loss) per share, diluted	\$ (0.15)	\$ (0.12)	\$ (0.13)	\$ 1.29
Year Ended December 31, 2017	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
Revenue	\$ 1,597	\$ 1,597	\$ 1,598	\$ 1,597
Total operating expenses	15,562	14,611	14,676	15,033
Loss from operations	(13,965)	(13,014)	(13,078)	(13,436)
Preferred stock dividends	(4,171)	(4,865)	(4,903)	(4,999)
Net (loss) applicable to common shareholders	(19,658)	(17,727)	(17,604)	(18,272)
Loss per share, basic and diluted	\$ (0.15)	\$ (0.13)	\$ (0.13)	\$ (0.12)